A Critical Comparative Analysis on Unfair Trade Practice in India with Special Reference to United States & United Kingdom

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Introduction:

The world today, unlike the world before the industrial revolution and the rapid growth of international trade and trade, is an interconnected global economy. This industry boom has resulted in a wide variety of consumer productsto appeal to newly evolving consumer demands and a range ofservices as well. At the same time, distributors and suppliers have become more and more organized. This created a discrepancy in the negotiating power of the weaker party in the customer transaction. A variety of legal initiatives have been adopted and guidelines and regulations have been framed, both at the international and domestic level, in order to discourage and protect the abuse of consumers. India has a special statute, the Consumer Protection Act 1986, to protect the interests of the consumer.

The author has attempted to understand the ground level reality of these practices especially in places like airports, five star hotels, shopping malls and multiplexes where the balance of the bargaining power is heavily tilted in the favour of these institutions and study the treatment of the same under the laws currently in effect. The has focused on the major differences that are prevalent between the consumer protection legislations of the two major powers, the United States of America and the United Kingdom paper to evaluate the efficacy of their laws *vis-à-vis* each other. Ultimately, an attempt has been made to study the current consumer protection legislation that is present in India for the protection of the consumers against the unfair trade practices and Consumer Protection Bill, 2015 has also been touched upon and suggestions to improve the same have been provided thereto.

Unfair Trade Practice includes a wide variety of violations, many of which include economic harm caused by misleading or wrongful actions. Claims such as trade secret misappropriation, unfair competition, misleading advertising, palming-off, dilution and disparagement are among the legal theories that can be claimed. Although attempts have been made to strengthen the customer's status and attempts have been made to make the consumer the king, he or she is still vulnerable to many unfair market practices implemented by retailers and manufacturers to achieve greater profits and sales revenues. There is a great deal of manipulation that revolves around product pricing.

Price is often the most important determinant in translating a consumer's interest in the product into sale. The market forces of demand and supply may sometimes make the consumer vulnerable and the retailer could easily exploit the situation to extract a larger price. In order to prevent this from happening, there are some requirements like declaration of the maximum retail price on the packaging of products. However, this is insufficient as there are still widespread instances of non-declaration, overpricing and differential pricing.

Unfair Trade Practice

Before delving into a critical analysis of the unfair trade practices specifically related to the maximum retail price, it is important to obtain a deeper understanding of these two crucial terms. As it is known, the legal definition and interpretation of a lot terms differ from the usage they have in common parlance.

Section 2(1)(r) of the Consumer Protection Act, 1986[2] defines the term "unfair trade practice" Section 2(1)(r) of the Consumer Protection Act, 1986 defines the term

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[2] Consumer Protection Act, 1986.

[3] *"a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices,"* namely; — (1) the practice of making any

"unfair trade practice" and includes under its ambit a wide array of practices deemed to be disadvantageous to consumers.[3]

The above is a partial extract from Section 2(1)(r) and includes, inter alia, the unfair denial of a transaction, the exclusion of unfairly justified rivals, the unfair solicitation of customers, the intimidation of customers, the unequal treatment of a transacting party, the unfair abuse of a specific bargaining position by the transacting party, the conduct of business and conducting business under terms and conditions that unfairly curtail a negotiating party's trading ventures, "disrupting another company's business activities, and unequal provision of financial, assets, manpower, etc.[4]

Unfair trade practice has much to do with unjustified injury to the consumer: such injury must be substantial, not outweighed by any benefit to the consumer, not adverse to competition, and the injury must be such that the consumer could not have reasonably avoided it.[5] It therefore follows that any injury will not be considered to be 'unfair'. Substantial injury includes monetary harm, damage to the health of consumers, coercion, and information asymmetry amongst other things.[6]

Emotional disturbance or mental injury is not usually considered to be grounds for unfair trade practice, although there are exceptions to this. The Consumer Forums and Commissions take into account the economic costs incurred by the company in question, and coststo society such as reduced innovation and more regulation on the flow of information.[7]

Until the Consumer Protection Act, and after it the Monopolies and Restrictive Trade Practices Act,[8] came into force, the principle behind buyer-seller interactions in India was that of *caveat emptor* or "let the buyer beware". The buyers were expected to obtain sufficient information about the product/service and only then purchase it.

However, in this day and age, rising competition and globalisation has led to numerous cases of unfair trade practices. Some may even say that we are moving into the era of *caveat venditor,* i.e. "let the seller beware". The author would not go as far to agree with that sentiment; however, we must admit that a large benefit has accrued to consumers with the genesis of the Consumer Protection Act, 1986.

One amongst many unfair trade practices is that of charging a higher Maximum Retail Price than that printed on the outer packaging. There have also been instances where a higher MRP is printed on the same product, with the same quality, but to be sold at a different place. Such places commonly include airports, malls, multiplexes, and five star hotels. Various aspects related to this are explored in the upcoming parts of the paper. Section 2(1)(r) of the Act is in furtherance of free and informed C2B (consumer-to-business) transactions and interactions.

statement, whether orally or in writing or by visible representation which, —

(i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;

(ii) falsely represents that the services are of a particular standard, quality or grade;

(iii) falsely represents any re-built, second-hand, reno•vated, reconditioned or old goods as new goods;

(iv) representsthat the goods or services have sponsor•ship, approval, performance, characteristics, accesso•ries, uses or benefits which such goods or services do not have;

(v) represents that the seller or the supplier has a spon•sorship or approval or affiliation which such seller or supplier does not have;

(vi) makes a false or misleading representation concern•ing the need for, or the usefulness of, any goods or services;

[4] P.K. Majumdar, LAW OF CONSUMER PROTECTION IN INDIA, 102.
[5] J.N. Barowalia, COMMENTARY ON CONSUMER PROTECTION ACT, 1986, 13, (2008)
[6] Majumdar, Supra note 3, p. at 102.
[7] Lydia Kerketta, Unfair Trade Practices in India, (July 13, 2015), LEGAL SERVICES INDIA, available at `http://www.legalservicesindia.com/article/article/unfair-trade-practice-in-india-1861-1.html` (Last visited on December 1, 2015).
[8] Monopolies and Restrictive Trade Practices Act, 1969.

Maximum Retail Price

Today, one can see all packaged goods in India, be it beverages, electronic goods or cosmetics, stamped with a price. This is dictated by the manufacturer as the maximum allowable cost to the consumer. However, this system of Maximum Retail Price (MRP) is exclusive to India and Sri Lanka. Even in India this was not always the case. Most other countries have a system of 'suggested retail price'.[9]

India has seen the evolution of several pricing mechanisms over several decades. Up to 1974, the Market determined pricing system was in force. This was replaced by the Administrative pricing system. It remained in force for 14 years until it was decided to follow the Import Parity Price mechanism in 1998. Then this was replaced with the Import Parity Price Mechanism. Finally, the present pricing mechanism is the one adopted in 2006 and it is the Trade Parity Price Mechanism.[10]

The present-day version of the MRP was adopted towards the end of 1990. Before this, the manufacture could print the price of the products in two ways. The first was in the form of 'Retail Price + Local Taxes (extra)'. The second was 'Maximum Retail Price (inclusive of all taxes)'. This practice was done away with due to widespread allegations from consumers and organisation that retailers were overcharging them under the pretext of adding additional local taxes. In reality, the actual rate of local taxes was far lower. This malpractice resulted differing rates – a consumer would end up paying up a far higher price than someone in the neighbouring town.[11] Both of these events prompted the Ministry of Consumer Affairs, Food and Public Distribution, formerly known as the Ministry of Civil Supplies, and its executive branch, the Department of Legal Metrology, to make amendments to the Rules of Weights & Measures Act (Rules of Packaged Commodities)[12]

This move was meant to bring the concerns and issues of overcharging customers to a full stop. This did not fix any problems absolutely. In order to cut competition, there have been allegations of undercharging goods compared to MRP. However, the emphasis of this paper is limited to the problems of differential pricing and overcharging from a consumer-centred point of view.

The Consumer Goods (Mandatory Printing of Cost of Production and Maximum Retail Price) Act 2006[13] has established such guidelines to avoid charging the consumer more than the maximum price printed by the producers on the packaging of the goods.

Market products, manufacturing cost, printing and maximum retail price are specified by these guidelines. The legislative requirement to print the retail price at a noticeable place and in the languages of English, Hindi and the local languages was created by these definitions. This act has made it mandatory for printing.[14]

Also, in compliance with Rule 6 of Chapter II of the 2011 Rules on Legal Metrology (Packaged Commodity), the manufacturer is required to make certain declarations on the package.

Rule 6(1)(e) mandates that the retail selling price of the package be announced. Such exceptions are also provided for.[15] Provision for prohibiting any product charging more than the MRP & obligations on the

[9] J. Blythman, RETAIL MARKETING, 197.
[10] A. Kalhan and M Franz, Regulation of retail: comparative experience, 44(32) E. P. W. 56, 57.
[11] *Ibid.*
[12] Standards of Weights & Measures Act, 1976.
[13] The Consumer Goods (Mandatory Printing of Cost of Production and Maximum Retail Price) Act, 2006.
[14] Rule 6(1)(e), Legal Metrology (Packaged Commodity) Rules, 2011.
[15] "Provided that for packages containing alcoholic beverages or spirituous liquor, the State Excise Laws and the rules made there under shall be applicable within the State in which it is manufactured and where the state excise laws and rules made there under do not provide for declaration of retail sale price, the provisions of these rules shall apply."
[16] Rule 18(2) which states "No retail dealer or other person including manufacturer, packer, importer and wholesale dealer shall make any sale of any commodity in packed form at a price exceeding the retail sale price thereof"
[17] "No wholesale dealer or retail dealer or other person shall obliterate, smudge or alter the retail sale price, indicated by the manufacturer or the packer or the importer, as the case may be, on the package or on the label affixed thereto.

product packaging respectively under Rule 18(2)[16] & Rule 18(5)[17]

Unfair Trade Practice

It is important to understand the historical reasons for certain practices being termed unfair and how the definitions have undergone changes with time in order to understand the intent of the legislators and its current application.

For the longest time, there was little to no remedy available to consumers in India. They could not even approach the courts to seek redressal for any grievances.

Although The Monopolies and Restrictive Trade Practices Act was intended to protect consumers, it failed to adequately do so. Due to this, it was amended in 1984 with the recommendations ofthe Sachar Committee, and a part on unfair trade practices was introduced:

1) Making false or misleading claims about a product or service through an advertisement or otherwise.
2) Offering bargain prices and bait advertisements.
3) Offering pseudo prizes or gifts and conducting sales promotion contests, lotteries, or games of chance/skill.
4) Supplying hazardous or unsafe products.
5) Hoarding or destroying goods, or refusing to sell goods, resulting in a price increase.[18]

Earlier, the government had to take *suo moto* cognizance of any unfair trade practice and pursue the issue themselves. Certain specific enactments did allow the consumer to approach the courts directly, but only for the particular product mentioned in such enactment. Another amendment to the MRTP Act in 1986, gave consumers the right to approach the Commission directly, where previously only a group of 25 members or by a consumer association with 25 members or more could do so.[19]

Then 1986 came, and brought with it the Consumer Protection Act, which was hailed as one of the greatest steps towards consumer protection, being one of the most progressive socioeconomic legislations. In Section 2(1)(r) of the Consumer Protection Act, unfair trade practices were defined, and consumers were now free to contact the forums and commissions themselves. Also, after the Consumer Protection Act came into effect, the MRTP Commission has tried a large number of cases relating to unfair trade practices.[20]

The Consumer Protection Act kick started a long line of positive steps: the Department of Consumer Affairs was set up in 1991; the exemption with respect to unfair trade practice enjoyed by public sector undertakings, cooperative societies, and financial institutions was withdrawn in 1991; and certain provisions in the MRTP Act were strengthened.[21] Further, issues of medical practice were also included under the ambit of Consumer Protection Act. Such is the evolution of unfair trade practice in India.

Legal Position in India of Unfair Trade Practices

The author seeks to provide a clear picture of the current legal position regarding the malpractices of overpricing and hiking the maximum retail price in these sections by touching upon the relevant sections of the various related legislations. The definitions and provisions related to the terms 'unfair trade practice' and 'maximum retail price' have already been dealt with in detail in the preceding sections.

[18] D.P.S. Verma, Developments in Consumer Protection in India, 25, JOURNAL OF CONSUMER POLICY, 107, p.110 (2002).
[19] Sec 36, Monopolies and Restrictive Trade Practices Act, 1969.
[20] Verma, *Supra* note 17 at 114.
[21] The power to compel parties to appear before it (Monopolies and Restrictive Trade Practices Act, Sec 13B), to punish for contempt of itself (Monopolies and Restrictive Trade Practices Act Sec 12A), to issue ex parte decisions (Monopolies and Restrictive Trade Practices Act, Section 36 D(1)).
[22] M.S. Sreedhar, Modus operandi: How you get cheated, THE HINDU (March 28, 2013), available at http://www.thehindu.com/news/cities/Hyderabad/modus-operandi-how-you-getcheated/article4557695.ece?ref=relatedNews (Last visited on December 1, 2015).

Further, malls often alter the MRP on products by using price printing machines, in order to lure customers with the pretence of a discount on the MRP.[22] The goods are also sold at this inflated price in many instances. The vendors claim to have no choice but to do this as rentals at malls are very high.

Prahlad was traveling along the Mumbai-Goa highway in January 2009 and stopped at the Kamat Hotel to buy a bottle of water. He charged Rs 25/- for it, but later realized that the same bottle was being sold at other stores on the highway for Rs.15/- without any difference in quality or quantity.[23] Prahlad transferred the Pune-based Dhariwal Industries Limited (the producers of the bottled water in question) and Vitthal Kamat of Kamat Hotels to the Raigad District Consumer Disputes Redressal Forum against Rasiklal Dhariwal.

By arguing that the extra fee was for the environment offered by the hotel, they contested the argument. The Forum denied its appeal, arguing that it was devoid of substance and that there were no distinguishable qualities that could justify the higher MRP. It is notable that this decision is only applicable to retail outlets on the counter and not for sit-in customers.

In another such instance involving hotels, the National Consumer Dispute Redressal Commission (NCDRC)[24] ordered Nyay Mandir, in Gujarat, to pay 1.5 lakh to the consumer welfare fund and upheld the Gujarat State Commission's decision ordering Nyay Mandir to pay Rs. 6,000/- as compensation to complainant Ishwar Lal Jinabhai Desai, who had approached the forum for having been charged Rs 18 for the popular carbonated drink 'Miranda', despite its MRP being marked at only Rs. 12.50/.[25]

While this wasn't a five-star hotel, it is astounding that little to no data in terms of news coverage and consumer reports was available on customers seeking redressal in any manner against five star hotels which engage in similar practices. The NCDRC also ruled in favour of Delhi's DK Chopra when he filed a complaint regarding Snack Bar at Chennai's Kamaraj Domestic Terminal.

They charged him Rs. 300/- for 2 cans of Red Bull, an energy drink, when the price printed on the can was Rs.75/-. Previously, the Chennai District Forum, and the Tamil Nadu State Commission, had both dismissed the complaint. The NCDRC also ordered Snack Bar to pay 50 lakhs towards the consumer welfare fund for unjust enrichment.

The Commission also distinguished between restaurants and hotels which provide a service, and stalls or shops which do not do so, stating that the former could levy a charge above the MRP. They observed that the Airports Authority of India seemed to be colluding with retailers and turning a blind eye to such practices so that they could charge a higher license fee which would be otherwise unaffordable.[26]

Vindya Ramachandran was in transit at an airport, and stopped to buy a drink and some snacks. Much to her surprise, she was asked to pay double to triple of the MRP mentioned on the bottle of water (Rs. 10/-), and on the bar of chocolate (Rs. 20/-). She also observed that all the items sold at the store were being uniformly overcharged. The clerk at the counter ignored her query regarding the matter, so Vindhya proceeded to register a written complaint with the Airport Duty Manager.[27]

[23] A.J. Lakade, Hotel can't sell bottled water at higher price: Consumer Forum, THE INDIAN EXPRESS (February 22, 2012), available at http://indianexpress.com/article/cities/pune/hotel-cant-sell-bottled-water-at-higher-priceconsumer-forum/ (Last visited on November 28, 2015).

[24] The apex consumer body with respect to C2B dispute redressal in India.

[25] Hotel fined Rs 1.5 lakh for charging Rs 5 above MRP costs, THE ECONOMIC TIMES (Decemeber 27, 2010), available at http://articles.economictimes.indiatimes.com/2010-12-27/news/28392816_1_mrp-consumer-forum-hotel (Last visited on November 29, 2015).

[26] J. Gai, How not to get exploited by dual pricing, overcharging, BUSINESS STANDARD (June 1, 2014), available at http://www.business-standard.com/article/pf/how-not-to-get-exploited-by-dual-pricing-overcharging114060100725_1.html (Last visited on December 1, 2015).

[27] B. Jairaj, Check before you pay, THE HINDU (May 22, 2006) available at http://www.thehindu.com/todayspaper/tp-features/tp-metroplus/check-before-you-pay/article3193002.ece (Last visited on December 1, 2015).

The section in which the researcher have presented the findings of the empirical study and interviews conducted has also dealt with a few case laws in the course of comparison to draw upon the experiences of the complainants – namely, *Hotel Nyay Manndir v. Ishwar Desai,*[28] *Kamat Hotels v. Prahlad Padalikar,*[29] *Adithya Banavar & Ors v. Pepsi Co & Ors,*[30] and *D.K. Chopra v. Snack Bar*[31] among others. A prelude to the Legal Metrology Act (Packaged Commodity Rules) 2011 has also been provided through the interviews with the Assistant Controller as well as with many aggrieved consumers and precedents.

This section will deal with the Packaged Commodities Rules with reference to the definition of the term 'institutional consumers' in greater detail. Further, there will deeper analysis and comparison of the relevant sections of the Consumer Protection Act. Three specific case laws will be dealt with in depth. Through the case law, it will also be attempted to provide a simplistic understanding of how a consumer use the redressal mechanism in force to prevent future instances of exploitation.

One of the famous illegal practices used by shopping malls is to put stickers over the original label with different MRPs. The shop owner does not place the new price tag over the original one in the event of offering a discount.

Under the provisions of the Packed Commodity Rules dealt with earlier, this widespread practice of affixing new MRP stickers is punishable. The method of registering complaints via telephone and electronic mail has also recently been implemented by the Legal Metrology Department. In addition, toll-free numbers for customers to come forward and lodge complaints have also been provided.[32]

The National Consumer Disputes Redressal Commission, New Delhi, decided what would go on to be a beacon of light for consumers everywhere. In, Hotel *Nyay Mandir v Ishwar Lal Jinabhai Desai*[33] the complainant was travelling on the Mumbai Goa highway and stopped for refreshment at Hotel Nyay Mandir.[34]

He was charged in excess of the MRP printed for the aerated drink 'Mirinda', i.e. he had to pay Rs.18/- per bottle instead of Rs.12.50/-. Mr Ishwar filed a complaint with the District Forum, on the grounds of deficiency of service, and prayed for a refund of the excess money among other things. The District Forum found in favour of the complainant; the decision was appealed to the State Commission who upheld the decision of the District Forum.[35]

The NCDRC too upheld the same decision and approved of District Forum's decision. The petitioner argued that the complaint could not have been filed without the written permission of the District Forum as it was being filed on behalf of numerous consumers with the same interests, as under Rule 8, Order 1 of the Civil Procedure Code of 1908.[36]

[28] Hotel Nyay Mandir v. Ishwar Lal Jinabhai Desai, Revision Petition No. 550 of 2006, National Consumer Disputes Redressal Commission, New Delhi.
[29] Kamat Hotels & Anr v. Prahlad Padalikar, First Appeal No. a/09/890 Before the Hon'ble State Consumer Disputes Redressal Commission, Maharashtra.
[30] Adithya Banavar & Ors v. Pepsi Co & Ors, Complaint No. 2010 Before the Hon'ble Urban District Consumer Disputes Redressal Forum, Cauvery Bhavan, Bangalore.
[31] D.K. Chopra v. Snack Bar, Revision Petition No. 4090 of 2012, National Consumer Disputes Redressal Commission, New Delhi.
[32] Now, stopping that MRP misuse is just an SMS away, THE HINDU (March 22, 2013), available at `http://www.thehindu.com/news/cities/Hyderabad/now-stopping-that-mrp-misuse-is-just-an-smsaway/article4539027.ece` (Last visited on December 1, 2015).
[33] Hotel Nyay Mandir v. Ishwar Lal Jinabhai Desai, Revision Petition No. 550 of 2006, National Consumer Disputes Redressal Commission, New Delhi.
[34] Hotel Nyay Mandir v. Ishwar Lal Jinabhai Desai, Revision Petition No. 550 of 2006, National Consumer Disputes Redressal Commission, New Delhi.
[35] Hotel Nyay Mandir v. Ishwar Lal Jinabhai Desai, Revision Petition No. 550 of 2006, National Consumer Disputes Redressal Commission, New Delhi.
[36] Hotel Nyay Mandir v. Ishwar Lal Jinabhai Desai, Revision Petition No. 550 of 2006, National Consumer Disputes Redressal Commission, New Delhi.

Both the State and National Commissions held that this proviso was to be applied only in case of identifiable complainants who could have their claims *"canvassed against one another"* and not in cases such as this, where the consumer has filed a grievance due to an unfair trade practice not only against him but many unidentified consumers.[37]

In *Rupasi Multiplex v. Mautusi Chaudhuri & Ors*,[38] the respondents bought tickets to watch a movie in the petitioner's cinema hall. They paid Rs 330 for the same sum. For safety reasons, they were not permitted to carry drinking water inside the cinema hall. This was despite the ticket containing no express prohibition that prevented the same from happening. It was also claimed that the water facility was available at the entry gate of the hall in the lobby. The complainants addressed the District Forum in question, accusing infrastructure failures and the petitioner's implementation of unfair trade practices.[39]

This complaint was dismissed by the District Forum. The aggrieved plaintiff filed the same appeal before the Commission of the State concerned. The State Commission allowed the appeal and ordered the opposite party to pay the claimant for the deficiency of service a total of Rs 10,000 as compensation along with another Rs 10,000 quantified as the expense of litigation.

In addition, the payment of compensation had to be rendered within thirty days of the date on which an interest of 9% per annum was to be charged. Rupasi Multiplex was also required to deposit an amount of Rs 5,000 in the State Commission Legal Aid Account.[40]

Aggrieved with the verdict of the State Commission, Rupasi Multiplex appealed before the National Consumer Disputes Redressal Commission. The arguments furthered by them were that, they imposed the restriction on carrying beverages inside the cinema hall to ensure the safety of the customers. Water was available inside the cinema hall – available for sale in the cafeteria and for free. There was a disagreement whether the term beverages included drinking water. The honourable bench referred to several reliable authorities on the English language to conclude that the term beverages did not include water.[41]

The bench also drew the observation that it cannot be reasonably expected for a movie watcher to remain without water for the entire duration of the movie. This would cause substantial discomfort. The demographics of the movie watching population includes small children and the infirm. Water is a basic necessity, and it has to be made available inside the cinema hall if they prohibit carrying. Non-availability of potable drinking water would be classified as a deficiency in rendering services.[42]

The high cost of the drinking water sold in the cinema halls makes its availability insufficient since it may beyond the affordability of many movie watchers who would not be able to shell such a huge amount for water when it is available at a price several times lower in the market outside the cinema halls. It can reasonably be concluded that the profit from the sale of the exorbitantly priced water would be going to the pocket of the cinema hall owner.[43]

Unfair Trade Practice within the scope of Section 2(1)(r) of the Consumer Protection Act 1986 would

[37] Hotel Nyay Mandir v. Ishwar Lal Jinabhai Desai, Revision Petition No. 550 of 2006, National Consumer Disputes Redressal Commission, New Delhi.
[38] REVISION PETITION NO. 3972 OF 2014 (Against the Order dated 19/09/2014 in Appeal No. 16/2014 of the State Commission Tripura)
[39] Rupasi Multiplex v. Mautusi Chaudhuri & Ors, Revision Petition No. 3972 of 2014, National Consumer Disputes Redressal Commission, New Delhi.
[40] Rupasi Multiplex v. Mautusi Chaudhuri & Ors, Revision Petition No. 3972 of 2014, National Consumer Disputes Redressal Commission, New Delhi.
[41] Rupasi Multiplex v. Mautusi Chaudhuri & Ors, Revision Petition No. 3972 of 2014, National Consumer Disputes Redressal Commission, New Delhi.
[42] Rupasi Multiplex v. Mautusi Chaudhuri & Ors, Revision Petition No. 3972 of 2014, National Consumer Disputes Redressal Commission, New Delhi.
[43] Rupasi Multiplex v. Mautusi Chaudhuri & Ors, Revision Petition No. 3972 of 2014, National Consumer Disputes Redressal Commission, New Delhi.

constitute a ban on the carrying of drinking water within the hall where free drinking water is not made available to them, requiring them to buy the same at a considerably higher price.

The bench also observed that the unfair and deceptive practices listed in Section 2(1)(r) are not exhaustive but inclusive and that there may be practices that are unfair or deceptive business practices other than those expressly listed in them.[44]

In *Adithya Banavar & Ors v. Pepsi Co & Ors,* the complainants submitted the arguments that identical products were being sold with carrying MRPs and that such variations might have been practiced at the manufacturer's level also. The opposite partyargued that the manufacturer had marked two different prices on identical products to cover the service charges of the outlet.[45]

The complainants submitted that the differential marking of the MRPs is not only an unfair trade practice under a purposive reading of Section 2(1)(r) of the Consumer Protection Act but also defeated the very purpose of requiring a manufacturer to mark his products with MRP. It was a blatant practice of cheating of consumers who are unaware of this differential marking of the MRPs.[46]

The lack of warning either on the product or separately fromthe outlet regarding the availability of an identical product at a much cheaper rate at other retail shops was an unfair trade practice which affected the whole body of consumers and led to unjust enrichment of the opposite parties. In addition to this it also caused mental agony to individual consumers due to the inflated bills. The entire sequence or chain of action starting from the manufacturer to the final retailer constituted an unfair trade practice.[47]

The complainants won their consumer forum action against Pepsi Co, the opposite party, for charging differential MRPs on drinks, with the forum finding the 'unfair' and 'illegal' practices. In an order dated April 1, 2011, the consumer forum ruled that printing different MRP leads to Unfair Trade Practice.[48] Furthermore, complainant Adithya Banavar claimed that Pepsi had been instructed by the Forum to avoid the differential labelling of MRPs on the same quantities of goods. They were further made to award Rs 5000 as damages and Rs 2000 to cover the cost of litigation. On the basis that its position was limited to leasing and collecting rent, the shopping mall was relieved of its obligation. It had no involvement in selling the food or drink in the conduct of business and did not engage in fixing or charging the taxes impugned.[49]

The case of *Federation of Hotels & Restaurants Association of India & Ors v. Union of India & Ors*[50] specifically deals with subject matter of maximum retail price with reference to five star hotels and their

[44] Rupasi Multiplex v. Mautusi Chaudhuri & Ors, Revision Petition No. 3972 of 2014, National Consumer Disputes Redressal Commission, New Delhi.

[45] Adithya Banavar & Ors v. Pepsi Co & Ors, Complaint No. 2010 Before the Hon'ble Urban District Consumer Disputes Redressal Forum, Cauvery Bhavan, Bangalore.

[46] Adithya Banavar & Ors v. Pepsi Co & Ors, Complaint No. 2010 Before the Hon'ble Urban District Consumer Disputes Redressal Forum, Cauvery Bhavan, Bangalore.

[47] Adithya Banavar & Ors v. Pepsi Co & Ors, Complaint No. 2010 Before the Hon'ble Urban District Consumer Disputes Redressal Forum, Cauvery Bhavan, Bangalore.

[48] "These printing different rent MRPs for the same material without any change in the material either in the contents or in the quantity is nothing but an unfair trade practice and selling it to the consumers is really unfair trade practice and also deficiency in service. This has to be curtailed. How can the same material have a different M.R.P. at different places? There is no answer. If the retailer wants to sell it for a higher price, it is his business and he has to satisfy the customers that he is selling it at a particular price in case customers wants to take it they may take, if they may not take or they may reject it, but the manufacturer cannot print different prices for the same commodity, it is nothing but an unfair trade practice. As the prints different M.R.P. will allow the retailer to gain more profit for the same material which is impermissible in law. The complainants are the customers. The material purchased at a particular place has a particular M.R.P. the same material must have the same M.RP. at different places also. It cannot have two different M.R.Ps. Hence, printing different M.R.Ps is bad in law, is unfair trade practice."

[49] *Ibid.*

[50] 1988 AIR 1291 (High Court of Delhi).

[51] Federation of Hotels & Restaurants Association of India & Ors v. Union of India & Ors, 1988 AIR 1291 (High Court of Delhi).

right or lack there of to charge over and above the maximum retail price.[51] In this case Justice Vikramjit Sen held & observed that[52]

The provisions of the Consumer Protection Act, in particular Section 2(1)(d), do not extend to an individual who goes to a hotel or restaurant and orders and consumes those items while he or she is there. The act of providing such goodsshould not be regarded as a transfer of property, but is in reality an activity to facilitate the person's provision of service.[53]

The term 'retail package' under the Legal Metrology (Packaged Commodities) Rules 2011 prior to the 2013 amendment included only those packages intended for retail sale to the ultimate consumer for the purpose of consumption. Rule 3 of the Rules specifically excluded the applicability of Chapter II to packaged commodities to be sold to industrial or institutional consumers.[54]

Institutional consumers refer to *"transportation, airways, railways, hotels, hospitals or any other service institutions who buy packaged commodities directly from the manufacturer for use by that institution"*.[55] Due to this exclusion, the institutional consumers were exempt from the requirement of the declaration of a retail sale price on the principal display panel. They were not required to comply with the mandated rules of Chapter II. However, after the amendment they have been included in the ambit of the term 'retail package' and are required to make the necessary declarations as per Rule 6 of Chapter II.[56]

It is also relevant to look into some of the recommendations of the Sachar committee regarding unfair trade practices. Although, there is no exception to Section 2(1)(r) of the Consumer Protection Act, the Committee felt a few should be adopted to ensure a more balanced approach which would prevent the manufacturers from feeling that the Act was skewed in the favour of the consumers.[57] This would only increase their willingness to comply with the requirements of the Act since it would create a possibility for them to defend themselves on reasonable grounds.

The first exception is where the retailer or producer took appropriate measures to procure a quantity of the product that would have been reasonable according to the purpose of the advertising but was unable to do so because of circumstances outside its control that could not have been reasonably expected.[58]

The second exception is similar to the first exception in all respects except that it refers to the quantity of the product and the lead time of acquiring the same. He or she cannot be held liable in case they are unable to meet the demand of the product because demand thereof surpassed reasonable expectations.[59]

The third exception refers to the specifications of the product including the quality and bargain price. The retailer should be absolved of the liability if he undertook the efforts expected of a reasonable man to supply the same product or any equivalent product of the same or better quality.[60]

While these recommendations were made in the context of the responsibility and obligations of a retailer or manufacturer in case ofthe advertisements launched by them and their fulfilment of the promises made to the consumers and their expectations thereof, it has

[52] "I hold that charging prices for mineral water in excess of MRP printed on the packaging, during the service of customers in hotels and restaurants does not violate any of the provisions of the SWM Act as this does not constitute a sale or transfer of these commodities by the hotelier or Restaurateur to its customers. The customer does not enter a hotel or a restaurant to make a simple purchase of these commodities. It may well be that a client would order nothing beyond a bottle of water or a beverage, but his direct purpose in doing so would clearly travel to enjoying the ambience available therein and incidentally to the ordering of any article for consumption."
[53] Federation of Hotels & Restaurants Association of India & Ors v. Union of India & Ors, 1988 AIR 1291 (High Court of Delhi).
[54] Rule 3, Legal Metrology (Packaged Commodities) Rules, 2011.
[55] Rule 3, Legal Metrology (Packaged Commodities) Rules, 2011.
[56] Rule 6, Legal Metrology (Packaged Commodities) Rules 2011
[57] High Powered Expert (Sachar) Committee on Companies Act and MRTP Act, 252 (1978).
[58] High Powered Expert (Sachar) Committee on Companies Act and MRTP Act, 252 (1978).
[59] High Powered Expert (Sachar) Committee on Companies Act and MRTP Act, 252 (1978).
[60] High Powered Expert (Sachar) Committee on Companies Act and MRTP Act, 252 (1978).

relevance with respect to the unfair trade practices related to pricing. It shows the importance of not transposing the entire burden onto the opposite party which could have the effect of making them seem liable even before the complaint is examined.

Comparison of the US and UK Consumer Protection Regimes

The United Kingdom has central legislations governing consumer protection against unfair trade practices. It has a uniform regime of regulation and enforcement. The USA has general consumer protection legislation, but each state has its own laws to combat unfair trade practices. In some US states, there is no private cause of action and individuals cannot file suitsin courts. This was the case in the UK too where only enforcement authorities could take up cases until the Consumer Protection (Amendment) Regulations 2014 were passed which allowed direct action.[61] The meaning of 'unfair', as expressed in both legal systems is essentially the same. In the UK it is that which is contrary to professional diligence and honestbusiness practice while in the USA it is differently worded as that which is against normal business behaviour or is unreasonable. However, the standard to hold a trader liable is very different in both cases. In the US, intention to commit a breach is necessary to be shown. In the UK, Breaches of the general prohibition will require proof that the trader acted knowinglyor recklessly. Other breaches do not require any proof of a specific state of mind.[62] In fact, forthe rest of the offences, strict liability exists.[63] The intention is not so important in UK law as the fact that an act had the effect of breaching CPRs. The scope of unfair trade practice is verynarrow in the USA while in the UK it is, on purpose, as broad as can be, to deal with all possiblepresent situations and those arising in the future. UK authorities are permitted to frame future regulations but not their US counterparts. Part 3 of the UK Consumer Rights Act contains special provisions for digital content along with goods and services but the US general consumer legislation has no such provisions. Both countries have statutory enforcement authorities like the Federal Trade Commission in the US and the erstwhile Office of Fair Trading in the UK which have powers to regulate, investigate and prosecute in cases of unfair trade practices. In most US states, criminal liability is absent in consumer law cases but in the UK, even individuals in managerial positions are criminally liable. If pronounced guilty in summary proceedings, they can be fined or imprisoned for a maximum period of two years. American law does not provide any remedy for unique, new cases that may arise in the future.

Any new offence must come under the already established heads of unfair trade practices. UK law, being, by its very nature so broad, allows for new cases of unfair trade practice to arise in addition to the 31 already blacklisted practices. In the USA, a mandatory arbitration clause imposed by companies in standard term contracts would be absolutely binding on consumers. On the other hand, the British legislation encourages arbitration as it is faster and involves lesser costs but does not make it binding on the consumer. In fact, the 2015 Act, extends the scope of arbitration to all sectors now. With regard to unfair terms in standard form contracts, insurance companies in the US are fully exempted from all liabilities if there is such a clause excluding liability in the contract. In the UK, generally firms cannot evade liability by imposing unfair terms in small print as the consumer may not have the time to read them carefully, but even here, insurance firms are an exception.

In conclusion, UK consumer law for protection from unfair trading practices is far more consumer-friendly than the one in the USA. Their scope is wider, there are far less loopholes and exceptions, stricter provisions for enforcement and far more easily available remedies. The British OFT is believed to have saved con-

[61] http://www.freshfields.com/uploadedFiles/SiteWide/Knowledge/00805_BS_MBD_COM_Consumer_Law_V1.pdf.
[62] http://www.out-law.com/page-9002
[63] Office of Fair Trading, Guidance on the Consumer Protection from Unfair Trading Regulations, 2008, (2008), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284442/oft1008.pdf
[64] Office of Fair Trading: Protecting the Consumer from Unfair Trading Practices https://www.nao.org.uk/report/office-of-fair-trading-protecting-the-consumer-from-unfair-trading-practices/.

sumers about 100 million pounds by combating unfair trade practices.[64]

Suggestions for the Indian Consumer Protection Bill, 2015

There are several positives in the UK law which the draftsmen of the current bill would do well to incorporate. The 2015 Consumer Rights Act in the UK contains, in addition to goods and services, a special chapter on digital content. There are provisions for its replacement and repair too. The 2015 bill also contains similar sections on e-commerce and electronic intermediaries. Thus, both laws have taken into account changes in business to consumer contracts brought about by electronic transactions. The UK legislation has a much wider ambit for what constitutes unfair trade practice while the Indian legislation is more specific and contains particular definitions of different kinds of unfair trade practices. The problem with this is that it does not take into account the possibility of future developments which may not fit into any of the existing categories. It must also lay more emphasis on unfair terms which may be foisted on consumers who could not make an informed decision as to their implications. The CPRs in the UK contain clear definitions of misleading acts, omissions and aggressive commercial practices which could also be made part of the upcoming Indian legislation. Specific remedies like the right to reject, discount, refund or unwind could be added. It must also be more flexible with respect to the standard of care which can vary as per the establishment and also according to the average consumer of a particular grouping. Unlike India, UK consumer law enforcement authorities like the Trading Standards Services are far more proactive while Consumer Courts in India suffer from a backlog of cases. For this reason, perhaps, a new Consumer Protection Authority is being established for better enforcement. Any new enforcement authority must have wide-ranging investigative powers but to grant them the same powers as their UK counterparts is a point to be debated. As arbitration has been made the preferred form of Alternate Dispute Resolution in the UK, mediation has been incorporated in chapter 5 of the Indian Bill. Other forms of ADR can also be explored to ensure speedy and inexpensive redressal of grievances and clear the backlog of cases.

Conclusion

The paper introduces the broad legislation for consumer protection of consumers in the India, United Kingdom and the United States of America particularly against the unfair trade practices. It also brings to attention the very fact that in the United Kingdom, by reason of the chaos spread by the World War II, there was a dire need for consumer protection, in the light of which Monopolies and Restrictive Practices Enquiry and Controls Act was adopted in 1948. Due to the advancement in technology a need arose to address the same and then the Government introduced the Consumer Rights Act, 2015 which inculcated a very wide definition of unfair trade practice and novel remedies in the interest of the consumers. The ambit of the powers given to the enforcement authorities in the United Kingdom are quite large and can be construed to be consumer friendly as against the position in United States.

It has been concluded through the study that the position of the legislation in the United States in stark difference to the position in the United States. In order to prevent the interest of the consumers against malpractices that take place in the market every state in the United States has a separate statute namely the Unfair and Deceptive Acts and Practices to address the same which in itself have been adopted to suit their own needs and naturally there are differences in the different legislations. The paper also brings to attention the very fact that in the consumer law in certain industries in the United States works in favor of the producers as against the consumers and in the light of this certain suggestions have been provided which if adopted could render the consumers in a better position.

In addition, the paper concentrated on the major disparities that are present between the two major forces, the United States of America, and the United Kingdom, in consumer protection laws. The new consumer protection law in India for consumer protection against unfair and restrictive trade practices has also been debated and suggestions have been made.

Religion as a panacea for Environmental Protection: A long overdue revisit of Rights, Duties and Law

Manjeri Subin Sunder Raj[1]

Introduction:

An anecdote with its timeless beauty depicts accurately the dependence of humankind on Mother Earth and the nature of their relation. Justice O. Chinnappa Reddy in *Shri Sachidanand Pandey and Anr. v. The State of West Bengal and Others*[2] had quoted the same in paragraph two of his judgment and taking into account the beauty of the same, a very short part is reproduced. The backdrop of the story is in USA, circa 1854, when 'the wise Indian Chief of Seattle' retorted to 'the great White Chief in Washington' who wanted to buy their land, that *if one does not own natural features and entities, how can one buy it?*[3]

If one takes a walk back in time, there is no doubt that one would come across the myriad debates and deliberations that have taken place to fathom, realise and curb the impact Mother Nature endures, as a result of the 'developmental activities' that are ever on the increase. It has held fort for quite a long time, ever changing. The time has exceeded for a remedy to pop up, just like that, almost like a magic potion, and present hope and succour, and translate itself to a much needed, much awaited, saviour for humankind as it is ever dependent on Mother Nature, without whom it has no future.

The first way out that comes across one's mind, when one talks about a saviour, is obviously, law - a factor that has played a great role in bringing about some sort of a control over mankind over time; a factor that still plays a great role, if not the greatest to ensure that man's activities are kept under control. It is built on a structure composed of a large number of component concepts. These are identified to be the elements of law and as a result are perched on a high pedestal.

Meaning Demystified

The inimitable perception relating to *'Rights'* and *'Duties'* as parts of law also arises from the said *'elements of law'*.[4] These components, by its sheer presence tend to clarify the stand of law and the need for the same, as compared to the needs of the society in which it exists.[5] Their presence becomes an absolute necessity. The very spirit and vigour of law which helps such a system to command supremacy over the society and binds it materialises with these concepts. This in turn helps the very functioning of every legalsystem; ensuring that it works in a smooth and effective manner. Ever since there was the birth of 'state', the population looked upon it and saw it as a 'provider of rights. What was envisaged by the whole populace, i.e., the governed, was that in return of them surrendering before the sovereign, the sovereign who would be the all-powerful, would provide the necessary 'rights' and adequate protection. The corresponding part of 'Rights' were the 'Duties' that were cast upon the pop-

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[2] A.I.R.1987 S.C.1109

[3] * Independent Member, Knowledge Network Experts, United Nations Harmony with Nature. This article, as the name suggests is a revisit - more of an introspection which aims at putting across suggestions to use religion as a tool to foster environment protection. The first part of this article has been published by CEERA, NLSIU in 2013. Manjeri Subin Sunder Raj, *Fostering Environment Protection: Is Religion the MuchAwaited Panacea?* CEERA Newsletter 2013, p. 7.

[4] For more see, F Schmidt, The Four Elements of Law. The Cambridge Law Journal, 33(2), 1974, 246-259.accessed on 19/02/2017.

[5] Joseph W. Bingham, The Nature of Legal Rights and Duties, Michigan Law Review 12, no. 1 (1913): 1-26. Accessed 24/02/2017. For a sociological take see, Christopher N. J. Roberts, Human Rights and Sociological Duties", Sociological Forum 32, no. 1 (2017): 213-16, accessed on 19/02/2017.

[6] Ori J. Herstein, A Legal Right to do Legal Wrong, Oxford Journal of Legal Studies 34, no. 1 (2014): 21-45, accessed February24, 2017. See also, John S Mackenzie,. Rights and Duties, International Journal ofEthics 6, no. 4 (1896): 425-41. See also, Abbye Atkinson, Borrowing Equality, Columbia Law Review120, no. 6 (2017): 1403-470.

[7] Susan S. Silbey, The Availabilityof Law Redux: TheCorrelation of Rights and Duties, Law & SocietyReview 48, no. 2 (2014):

ulace and they are known as correlative of rights.[6] A legal duty is the legal condition of a person whom the law directs to do or not to do an act.[7] The act commanded or forbidden is known as the content of the duty.[8] It is the subject matter of the duty.[9] They apply regardless of whether or not one desires to do that which one has a duty to do. If a person has a duty to carry out an act he is supposed to do, even if he likes it or not, he has to do it because it is his duty.[10] Corresponding duties which are owed both to the sovereign as well as to the other people arise in response to the rights that we have which are given by the sovereign. Thereby the concept of duties has some sort of a relation to the concept of rights and they are correlative. But then, Austin had, said that all rights have correlative duties but not vice versa.

It is quite crucial that for a legal system to be effective and smooth functioning, a healthy bond should exist between the rights and duties that are prevalent in the society, both individually as well as collectively. Not being superior but to be able to exist together, symbiotically is what is needed. This in turn ensures the relation between members be healthy as well as foster better societal needs in general.

Human tendency is concerned more on rights and not on duties. Human, in general, are concerned about what they are eligible to and in very few circumstances do they think beyond the *right* aspect and cross over to the *duty* aspect. The time that one understands that duties too are an integral part of the system and they hold an equal, if not more importance as when compared to rights, which in turn ensures the smooth functioning of the society and the legal system which control the society, has long gone by.

Religion: A Saviour?

Human race has a duty to protect the environment. This has taken shape as a co relative to the right that we have as regards the environment, i.e., the right to live in a healthy environment.[11] The time is not far, before we lose our environment, to the uncontrollable expanse of human activity and the problems that it gives rise to.

Having come face to face with such a circumstance, whether religion is able to ensure a higher degree of compliance, is an area that needs attention. The role it has played is understood well and is quite definitive. Starting from determining a man's attitude and way of life, to affecting almost all his day-to-day activities; religion has been able to carve a niche for itself over mankind. An attribute of religion which differentiates it from law can be understood to be that there is no fear of sanction *as* far as religion is concerned as is present in law. Religion urges one to do his duty that has been imposed by the principles and puts it across that if one fails to do so, one would definitely suffer divine consequences that are beyond man's comprehension. This, to a religious person is much bigger a reprimand than anything that can be accredited to law. The fear that a divine sanction would work against him in some way ensures that a person would not do anything which are against his religion. This in turn leads to an observation that religion plays a greater role in ensuring that man does his duty. As opposed to Law which speaks of 'rights' more often than 'duties', religion speaks more of the 'duties'. Whether religion squarely fits into the scheme of environment protection is debatable. Since one can relate religion in so far as it has instigated the individual to perform

297-310. See also, Henry T. Terry, Legal Duties and Rights, 12 The Yale Law Journal 185 (1903), at p.186, available at http://www.jstor.org/stable/781938, accessed on 19/02/2017.

[8] Jules L Coleman,. Legal Duty and Moral Argument, Social Theory and Practice 5, no. 3/4 (1980): 377-407, accessed on 19/02/2017; Henry T. Terry, The Correspondence of Duties and Rights, 25 The Yale Law Journal 171, at p. 172, available at http://www.jstor.org/stable/786397, accessed on 19/02/2017.

[9] Henry T. Terry, Duties. Rights and Wrongs, 10 American Bar Association Journal 123 (1924), available at http://www.jstor.org/stable/25711521, accessed on 19/02/2017.

[10] Joseph Raz, Liberating Duties, 8 Law and Philosophy 3 (1989), at p. 5, available at http://www.jstor.org/stable/3504627, accessed on 19/02/2017.

[11] This right is included in the Indian Constitution, under Article 21.

[12] Varapa Rakrachakarn, George P. Moschis, Fon Sim Ong, and Randall Shannon, Materialism and Life Satisfaction: The Role of Religion, Journal of Religion and Health 54, no. 2 (2015): 413-26; J Hill, Rejecting Evolution: The Role of Religion, Education, and

solemn obligations ofsocial life from time immemorial,[12] there is little to think of it being considered as one of *the* factors that determine man's behaviour and shapes his conduct. But what needs to be realised is the way in which it surpasses its spiritual form and converts into physical action, wherein followers are exhorted to perform their duties thereby auguring better levels of environment protection. The fear of divine sanction gives religion an enviable position, because it is the reason why religion has been able to exert a solid control over the man's actions and behaviour.

Theoretical underpinnings

Lynn White in his essay, 'The Historical Roots of Our Ecological Crisis', had opined that religion does play a great role in shaping one's attitude.[13] Quite understandably, religion has had a powerful impact on mankind. It has ensured that mankind as a whole act in ways which are favourable to the environment thereby guaranteeing protection and safety. To realise the relation religion and law has, it is quite imperative that one falls back on decided cases which have played a great role in bringing out opinions of various jurists. *In The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*,[14] the court was of the opinion that *"religion is a matter of faith with individuals or communities, and it is not necessarily theistic"*. Similarly in *Davis v. Beason*,[15] it was opined that religion does have an innate connection with an individual's idea and conception of the all-powerful. The role that needs to be played by religion, in the betterment of the society, too was dealt with by the Supreme Court of India, in *Sri Adi Visheshwara of Kashi Vishwanath Temple Varanasi and others v. State of U.P. and others*.[16] Religion, it was opined, was to *"guide community life and advise people to follow the tenets laid down so as to ensure that an egalitarian social order can be created"*.

But then, it has not always been a cake-walk. Religion and religious rites have in quite a large number of circumstances drawn the ire of the judiciary and the people alike. In *Minersville School District Board of Education v. Gobitis*,[17] Justice Frankfurter had to deal with the intricacies of religion and society. He said that people should never be relieved from obeying general law. If a person has a religious belief or conviction which contradicts the rules of the society, it does not take away the duty to follow the general law which casts political and social responsibilities. The Himachal Pradesh High Court in *Ramesh Sharma v. State of Himachal Pradesh*[18] dealt with animal sacrifice in places of worship and laid down that such practises need be done away with. The Court went to the extent to say that *"we must permit gradual reasoning into religion"*.[19]

An Introspection

Environment protection is the need of the hour; it can be said without any hesitation whatsoever. The harm that has been caused by us, humans, to the environment has been unfathomable. Ever since man settled down, he has been in one way or the other causing some harm to the environment. The growth of science furthered this, as man got to use a lot of hitherto unknown, unseen and unheard ways of endangering the environment.

The greatest peril that has ever befallen on mankind has cataclysmic powers. Time was not far away when we, humans faced the wrath of nature. It was only at a much later stage that man realized his folly and

Social Networks. Journal for the Scientific Study of Religion, 53(3), 575-594; Colleen Murphy, "Religion & Transitional Justice." Daedalus 149, no. 3 (2017): 185-200.

[13] .All about Religion and the Environment, available at `http://www.uvm.edu/~gflomenh/ENV-NGOPA395/articles/Lynn-White.pdf, accessed on 19/02/2017.` See also, Matthew B. Arbuckle, and David M. Konisky, Social Science Quarterly 96, no. 5 (2015): 1244-263.

[14] AIR 1954 SC 282

[15] (1888) 133 US 333, at p. 342 G

[16] (1997) 4 SCC 606

[17] 310 US 586, 594-595, 84 L. Ed. 1375, 60 S Ct 1010 (1940)

[18] MANU/HP/0934/2014

[19] *Ibid,* para 78

soon he was frantically seeking steps to overcome the harm he had caused. It wasthen, that he realized that it was not an easy task, but an arduous one that had to be tackled meticulously, lest all life perish. The eco-system was on the verge of a collapse that would possibly put an end to all life; and here was man, resting on his laurels and achievements. He was basking in the glory of his accomplishments; least cared about the consequences that his wanton acts would one day bring. And bring it did! Soon he was running helter-skelter. Realizing the effects that such a situation would give rise to, man engaged himself in a lastditch effort to save nature. Selfishness still rules, one can argue, for man, who is straining every nerve of his to save the Earth, is engaging himself in such activities, when he was at the receiving end. Little did he bother, when his actions were suffocating all other life forms.

Turning back, we can see that man's actions were to be controlled and it was precisely as a result of this line of thought laws were made by the state. They aimed to keep a check on the activities of man and regulate them for common good. Punishments were present to ensure that such unwanted actions were not done. But throughout history it was seen that laws however stringent they may be, are seen as having a compulsory nature and has its limitations in reforming man. Reformative punishment aims to make man understand the wrongdoing of his acts and tries to create a sense of repentance in man when he realizes his mistake. Law, as said earlier, many a time lacks this sort of an effect on man. Law has not been able to stop man from destroying the environment, owing to his wanton acts. There are a lot of laws that were passed to protect the environment, when it was realized that it needs to be protected. But were they successful? Laws emerged as a result of the growing sense of environment protection amongst world nations. World conferences were held and declarations were made regarding the hot topic of 'environment protection'. Punishments for environmental degradation, as said earlier, were galore and they were made out for a variety of offences, under numerous laws. The enforcement mechanism, though not satisfactory in implementation, made its presence felt. Various bookings under various Acts were made and lots of people were punished. Environmental protection was the watchword. Thus being so, people were aware of the consequences they would face, if they do anything which was in contravention of the law present.

An Analysis

But was the so called 'law' successful in protecting the environment by deterring and more importantly reforming man from his anti-environment acts? The answer is a big and blatant, on the face, 'NO'! This is made evident by the innumerable circumstances that have been caused by man, wherein he was plundering the resources given by nature, shamelessly and consciously. Mother Nature was suffering at the very behest of her 'loving' sons and daughters! Law, with all the sanction that it prescribed was not able to restrict man from harming the environment.

For sure, law made its presence felt when people were punished for actions harming the environment. But then still people continue doing so. Law, it can be said has had a very limited role in making man aware; making him realize the gravity of the situation. This is because formal laws do not have the effect of creating awareness; as for the common man, it is made by the rulers and imposed on him. This situation happens even in a democratic society, as the common man's participation is very limited in law making. Law thus remains aloof from the people for whom it is made. The compliance is ensured not through the hearty cooperation of people, but through coercive measures. This is the greatest limitation of law in any case, and particularly so in the case of protection of environment.

Law has had a very restricted effect in the sense that we all are aware of the fact that environmental pollution and degradation is on the rise and has reached at levels which are threatening the very existence and continuation of all life on planet Earth. This situation has arisen due to mankind's irresponsibility and uncontrolled wanton acts. Though laws were present, they were not able to ensure that man stop his activities that harm nature. Even in the presence of such a large number of laws, that purportedly were enacted

to provide some sort of a succor to the tormented environment, there was still no dearth of instances wherein man continued his rampage and destroyed nature.

Law, it can be argued, had miserably failed in creating awareness in man as regards environment protection. More importantly, it has failed in creating a thought in man that he is part of the environment, and it is his duty to ensure its protection, owing to his superior place on Earth. Man had this sort of a feeling long time back; that he was part and parcel of nature and was to revere nature. This feeling that existed has been clearly depicted in the musings of the Indian Chief.[20] It was this sense of oneness that was to be created so as to ensure that man had an inner feeling, an innate urge, to live in tune with nature and take care of it.

But why has law failed? This called for a thorough introspection. With the onset of laws, it can be seen that man was concerned more about his rights. Duties, a component of similar status, if not more, were completely overlooked by man. Overshadowed by rights, duties had been treated with 'contempt', if liberty can be taken to use such strong words. This 'alien' treatment of duties is what has been the main reason for the failure of law.

The reason for this failure can be attributed to the compulsory nature of law; the 'imposition' of it on man. Law is an external agency. It is a child of the state. It has not come from within. Had it had come fromwithin; it would have definitely played a greater part in controlling man's actions. Though it can be said without an inkling of doubt that religion has the necessary attributes to foster human duty to protect the environment, whether it would transform itself and be successful or just be an over hyped panacea, only time would tell! But if it is so, what legal systems, around the world, can imbibe from religion to guarantee better protection of the environment can be looked into and action can be taken to help law enjoy a higher level of compliance as well as create an inborn affinity, which it previously did not have.

Religion and its relevance

Religion was mooted as the alternative for law. Religion, as we all are aware of, has a control over its followers that is far beyond common man's perception. It has been able to mould man and restrict his activities in a way that is conducive to its teachings. Religion thereby exerts a much higher influence on man than laws that are present.

Religion, it can be found has an impact on man that law is not capable of exerting. Law has its limitations, owing to man treating it as an external factor; a factor that is imposed on man by reason of him being a subject of a particular land. It is this aspect of religion that helps it big time to score in an area where law has not been able to make its mark. Stamping its authority, religion it can be said, has been highly successful in checking the actions of man and creating in him a sense of togetherness with all things present in nature in general and all life in particular.

Suggestions

Law's relevance cannot be done away with. To have the sanction of the State is one of the essential features of law. That is where the strength of law lies. Religion has a drawback when compared to law in the sense that its principles are 'binding', rather followed, only by followers. It lacks the power to unite people from all faiths. So what is proposed is that an atmosphere be made so as to enable the principles of religion to be incorporated into law; as well as to protect by law what has been protected by religion. By such a step it can be made applicable to all, irrespective of the religion that one belongs to. Steps, a few which have been listed out, can be initiated so as to ensure that such principles are incorporated in law.

- A brief study of various religions should be made compulsory in schools, so that the students get an idea about various religions that are practiced and the principles that are present in them. The incorporation of principles as regards environment protection and ways in which the environment is to be treated that are embodied in religious texts should be compulsorily taught at schools. The students should be made aware of the consequences of damage caused to the environment. Everything in nature responds to our

[20] Supra n.1

acts, irrespective of it being good or bad. The fact that trees respond to the love and affection showered on them; that they, on realizing man's presence, tries to catch his attention like animals is to be realized. An opportunity for the children to realize this should be created in the schools as a part of their curriculum. This will enable the children to love the nature as their own friend or mother and be successful in instilling the attitude at a very young age itself.

- Studies which are restricted between the four walls of the classes should be done away with and an education system that proliferate the growth of an environment friendly approach should be created whereby the students get an opportunity to be close to nature. By doing so an affinity would be developed inherently.

- Keeping in mind the fact that a large majority of children lack primary education, steps should be initiated at the grass root level so as to ensure the message of environment protection is spread.

- Religious practices that foster environment protection and the like should be given much prominence and be highlighted, and people made more aware of the consequences of such acts. In short, an education or a creating of awareness in people as regards the benefits of environment protection is what is needed. Such awareness should not be restricted to any age group as it would not serve the purpose. Only if the grownups are aware would they pass on to their young the same values.

- Curbing of religious activities that cause harm to the environment should be implemented through law after making the people aware of the harmful effects.

- Religious leaders should come forward and play an important role in instilling in the minds of people the need to take care of the environment.

Concluding Remarks

Religion to a great extent helps man realize himself, and thereby other life forms as well. It helps him channelize his energy and intelligence. It 'awakens' man's inner being. The essence of all religions is sacred and environment friendly. While there are laws to prohibit the evil effects of religion like Sati, child marriage etc., it is sad that there is no legal initiative in harnessing the positives of religion and making it available to all, irrespective of religion. Lawyers, religious leaders, social reformers, academicians, politicians and common man together can do a lot to protect environment, by creating a feeling of oneness in the minds of people, not by making legislations, but by arranging camps, seminars, workshops, and many other such programmes, which should be sponsored by the State. After all, creating an innate sense of love for the environment and all that it encompasses is the only sure way to win this last battle; to ensure that mankind continues to roam on this Earth.

Prostitution: Sexual autonomy or Exploitation of Women?

Rachita Agrawal[1]

Introduction:

Prostitution is perhapsthe most stigmatized and condemned line of work in the society in which women is engaged. In most of the third world countries talking about sexuality and sexual preferences in itself considered as a sin. Indeed, it is women who majorly take part in prostitution as work; the over whelming majority of prostitutes are female, while nearly all of their customers are male.[2] Though largely in many parts of the world, women are considered as property of men and perceived as a sexual commodity, but the level of perception declines more in case of a prostitutes as they are well-thought-out as a sick person, who has no sense of character, purity and is physically as well as morally ill.

Prostitution around the world is accepted with varying degrees of legality. In some places, prostitution itself is legal but the varying degrees of legality. In some places, prostitution itself is legal but the activities that make it possible-such as "soliciting" or "pandering"- are not. Prostitution is illegal in the vast majority of areas in the United States as a result of state laws rather than federal laws. It is, however, legal in some rural counties within the state of Nevada. In Germany, Switzerland, Austria, Greece, Turkey, the Netherlands, Hungary, etc. prostitution is legal and regulated.

In Indian context, traffic in human beings and forced labour is prohibited under article 23 of the Constitution of India [3]. As regards the Directive Principles of State Policy under Part IV of the Constitution, it is significant to refer Article 39 which particularly contains certain directives. Under clause (e) of Article 39[4] , one of the directives is that the State should, in particular, secure that childhood and youth are protected against abuse and against moral abandonment. The objectives reflect the intent of the Constitution makers to safeguard the welfare of the children of our country, who often become victims of immoral trafficking and forced illegal acts.

'Freedom' and 'liberty' is usually understood to be virtually synonymous terms and defines them both as the absence of coercion.[5] Women in prostitution is often looked upon as they are deprived of basic notion of liberty which is considered to be a state of being free from oppressive restrictions imposed on one's way of life, behavior, profession, social or political views by people in the mainstream society.

This research paper tries to analyze the areas where liberty of sex workers is compromised along with how persistent inequalities have led to devastating and harmful situation in a way that injustice is a gift to them from the society.

Transition from non-prostitute to a prostitute

Young women or children are majority of trafficked persons who have been forced into sex work or sexual activities. Forced human trafficking for sexual purposes is outcome of poverty, illness in family, worse economic conditions, sexual activity for enjoyment, peer association, family neglect often when they are in age group of 12-20 years.

Not only this but domestic clashes, drug addiction in husbands and in involuntarily, forced rape, sexual assault, early marriages, trafficking, deceived by family

[1] Law student,NLU Delhi.

[2] Karen Peterson Iyer, Prostitution: A Feminist Ethical Analysis, Journal of Feminist Studies in Religion, Fall, 1998, Vol. 14, No. 2 (Fall, 1998), pp. 19-44

[3] Constitution of India, 1950

[4] Ibid.

[5] By defining coercion as subjection to the arbitrary will of another Hayek creates the im- pression that liberty is diminished only by the discretionary action of persons granted wide powers by the law. Hayek says that 'coercion implies both the threat of inflicting harm and the intention thereby to bring about certain conduct' (p. 134).

or lover are also factors contributing in substandard and worse conditions of women.

Published literature further points to an growing demand for younger children and virgins led to overall sophistication of human trafficking systems controlled by organized crime and development of new destinations for trafficked persons partly fueled by the fear of HIV/AIDS.[6] There are certain freedoms and fundamental rights that are significant part by virtue of being born as a human being. These inalienable principles and fundamentals are violated at large extent in forced organized crimes against children at very tender age.

Prostitution as a vicious form of violence against women and maintains that, where prostitution is legal, human trafficking will upsurge to meet the open demand for sex.[7] It can be noted that it is intrinsically a form of violation of human rights of women perpetuating men's dominance in society and forms the basis of gender inequality serving as social evil. From ancient times, man arbitrary deprives women from material and non- material sources that she is entitled to, behind the alleged aseptic exchange ofsex for money lies a relation of power in which women are required to sacrifice their respect and dignity.[8] Stigma, discrimination and marginalization demeaning very existence violate the fundamental equality of all persons associated with prostitution. In a country like India where practicing untouchability in any form is considered to be a constitutional violation, still prostitutes are looked upon and treated as untouchables. There might be claims that society have headed towards progressive change but at the grassroots level, in villages or small towns women are pushed into forced sex in exchange of money and are suffering as a victim of male dominating social order and patriarchy.

Whoredom is "the great social evil" representing a flagrant defiance of common decency and social norms governing women's sexuality. The harlot is a threat to the family, societal predetermined structure and she corruptsthe young. To engage in prostitution signifies a total loss of social image and character.[9] With so many negative aspects it's hard to believe that there exists element of freedom of choice for women in prostitution. It is hard to believe that transition of most of the women into non-dignified figure in the society is a liberty that she wants to exercise, for many liberties might have a meaning to get her body secured from objectifying and implementation of fundamental protection provided in article 17 and 23 of constitution of India.

Legal and societal response to prostitution

Major section of society considered talking about prostitution a shameful act. Such discomfort is not limited only to backward or uneducated people but also exists among highly educated persons, working in apex education, administrative and health institutions, who carefully evades pronunciation of the words like prostitution and sex-workers etc. The limited scope of education on sexuality in schools and condemning sex talks in public makes it clear that sex is considered a taboo in countries like India. And, in a social and cultural structure that makes sex a taboo, legalizing sex work is almost blasphemous.[10] The prostitute body carries with herself the imposed burden of countless identities by the mainstream society dominating her existence. An identity is a mirror ofthe perception

[6] International Labor Organization. Demand side of human trafficking in Asia: Empirical findings Regional Project on Combating Child Trafficking for Labour and Sexual Exploitation (TICSA-II), Bangkok, Thailand; 2006 available at `http://www.humantrafficking.org/uploads/publications/ilo06_demand_side_of_human_tiaefpdf;` (last accessed on 13-12-2017) Asian Development Bank, Combating trafficking of women and children in south Asia - Regional synthesis paper for Bangladesh, India, and Nepal. 2003 available at `http://www.adb.org/Documents/Books/Combating_Trafficking/Regional_Synthesis_Paper.pdf;` (last accessed on 13-12-2017) Asian Development Bank, Combating trafficking of women and children in south Asia: Guide for integrating trafficking concerns into ADB operations. 2003 available at `http://www.adb.Org/Documents/Guidelines/Combating_Trafficking/GuideJntegrating_Trafficking_Concems.pdf.` (last accessed on 13-12-2017)

[7] Nichols, Andrea. (2017). 10. Sex Trafficking and Exploitation of LGBTQ+ People: Implications for Practice. 10.7312/nich18092-011.

[8] Agustin Vicente, *Prostitution and the Ideal State. A Defense of a Policy of Vigilance;* Ethical Theory and Moral Practice, April 2016, Vol. 19, No. 2 (April 2016), pp. 475-487

[9] Lars O. Ericsson, *Charges Against Prostitution: An Attempt at a Philosophical Assessment,* 90(3) Ethics. 335,366 (1980)

[10] Palak Sharma, Legalizing sex work: both sides of the debate (2017) available at `https://blogs.lse.ac.uk/socialpolicy/2017/12/10/legalising-sex-work-both-sides-of-the-debate/` (last accessed on 13-12-2017)

of what societydictatesthe norms of what is acceptable and unacceptable behaviour in the society.[11]

An Act named as The Immoral Traffic (Prevention) Act, 1956,[12] has been promulgated in pursuance of the implementation of International Convention signed at New York on the 9th May, 1950, for the deterrence of immoral traffic. The preamble of convention[13] states:

"Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community"

The Suppression of Immoral Traffic Act, 1956 was put into operation in the year 1958 (SITA for short),[14] aimed at defeating the evils of prostitution, and to provide opportunity to fallen women and girls to acclimatize and rehabilitate themselves as decent members of the society.[15] But contrary to all expectations, the said Act has failed to prove an effective deterrent to the commercialized vice of prostitution which still continues unabated, although surreptitiously, in the different industrial belts.

Judicial activism and public interest litigations has emerged over the years, judiciary has a significant influence and manifestation on how an issue is perceived. There has been a constant effort by court to examine into situations of lawlessness that demand consideration, and tried to give a valued well-reasoned judgement. In *Vishal Jeet vs Union of India*[16] the court claims the forced prostitution is "destructive of moral value" and also states that rehabilitative measures would be taken for "these fallen women."

Different Moral standard for men and women

Women from time memorial have been considered as a social entity and classified on the basis of morality, chastity, purity and promiscuousness, her individuality is denied and suppressed in different forms by the prevailing structure. However, promiscuousness cannot be viewed as prostitution, when there was no system of marriage in the early Vedic era.[17] It is ironical to note that even in the Rigveda the first text that indicates prostitution in the name of female as illicit lover, there is no question on the character and chastity of the male counterpart. Women who could not find husbands, or had grieved early widowhood, or who had been forcefully violated, abducted or enjoyed therefore, deprived of an honourable status in the main stream society.[18] The situation of women as prostitute in past was miserable and same is today, all the burden ofshame and disgrace is contemplated upon the women in contrast there are no morality standards are set for men. Women identity in the societal set up has been gradually abridged from "a whole person to vagina and womb" rendering them fit only for sex-labor and perceived as a sexual property of men.[19]

There are both male and female commercialized sex workers within the continuum of commercialized sex practices.[20] However, according to Hochschild (1983),[21] there is a significant and more widespread expectation for women to engage in the field of commercialized sex than there is for men. Female sex workers are more vulnerable to violence, exploitation, stigmatization and disease than men. On comparing arrests by police officials in cases of prostitution, it is observed that commercial sex workers, who are pre-

[11] Shannon Bell, Reading writing and rewriting prostitute body 1 (1994)
[12] Act No. 104 of 1956
[13] Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, came into force on 25 July 1951. It was signed by Shri Gopala Menon on behalf of India on the 9th May, 1950.
[14] By Section 3 of the Suppression of Immoral Traffic in Women and Girls (Amendment) Act, 1986 (44 of 1986) the nomenclature of the Act has been changed with effect from 20th January, 1987. Now it stands asthe Immoral Traffic (Prevention) Act 1956 (104 of 1956).
[15] State of Uttar Pradesh v. Kaushailiya, AIR 1964 SC 416 at 419, 420
[16] Vishal Jeet v. Union Of India And Ors , 1990 AIR 1412
[17] S.N. Sinha & N.K. Basu , History of Marriage and Prostitution, Vedas to Vatsyayana56(1992)
[18] Sukumari Bhattacharji, Prostitution in Ancient India, 15(2) Social Scientist. 32,61 (1987)
[19] Dworkin, A. (1983). Right-Wing Women. New York: Putnam. p. 79
[20] Debra Satz, Markets in Women's Sexual Labor, Vol. 106, No. 1 (Oct., 1995), pp. 63-85
[21] Hochschild, A. (1983).The Managed Heart: Commercialization of Human Feeling, London: University of California Press
[22] World Health Organization, Regional Office for the Western Pacific. (2001). Sex work in 4 Asia. Manila, Philippines: Author.

dominately woman, are arrested ten times more often than their clients, who are predominately man.[22]

Males who are often involved in prostitution think they are really big and real brave as they can dominate sexuality of a women and treat them as their slaves. They're very proud of themselves-they brag a lot and for satisfaction of their ego, there have been instances that sometimes they get involved in abusive sexual activities.[23] There is a necessity to look into the role of men in romanticizing prostitution and in this process its cost to women as she becomes culturally invisible and subjected to harsh inequalities. Often male use the power of societal structure, the economic power, the cultural power and the social power, to create silence among those who have been injured, miffed and the silence of the women who have been used for sexual pleasures.[24]

Women as a prostitute is being subject of humiliation and symbol of dirt in the mainstream society and over the years have been overpowered by mail dominance and desires.

Identity as a prostitute – Choice or force?

There have been contrasting views whenever it comes to identity of a women as a prostitute, is it a symbol of sexual autonomy and empowerment or as a result of bleak factors resulting in this demean recognition.

A prostitute body by people at large in the society is understood as "flesh and blood body hired in exchange of payment for sexual interaction."[25] It is also not at all surprising to learn that wherever women choose to engage in sex work, they are forced to live on the margins of the law. A women enforced in prostitution resign herself to regular rape, thrashings, discernment and all other forms of mistreatment that a human being do not deserve.[26] Fundamental dignity and respect as a human being is sacrificed on all fronts.

Fundamental feminists condemning the world's oldest profession, therefore do not view sex work as a legitimate form of labor. The reason is very much apparent and substantial as sex work embodies male domination over women sexuality and private parts. In problematic historical reference to the anti-slavery movement, these fundamental feminist advocates call themselves "abolitionists". They seek to supposedly liberate women from shackles of patriarchy controlling and commodifying sexual organs by 'abolishing prostitution'.[27]

Women prostitutes had to face worse and severe consequences in respect of their health like unwanted pregnancy, abortion, undesirable children, HIV/AIDS as a result of unprotected sexual activities which are part and parcel of this profession. Drug addiction, forcefully abusive acts, violence, threatening, involvement with criminals, ovarian issues, some other psychological and social issues in respect of customers' behavior like refusing of payment, beating, kidnapping and sexual assault have magnified impact on their mental well-being as well.[28]

With the intensification of the HIV/AIDS epidemic in the 1980s, commercial prostitutes again became scapegoats to proliferate sexually transmitted diseases.[29] Many commercial sex workers were exposed to greater risk of HIV/AIDS and other sexual transmitted infections as they were unable to enforce the use of condoms by the clients.[30] Absence of consent

[23] Andrea Dworkin, Prostitution and Male Supremacy, 1 MICH. J. GENDER & L. 1 (1993)
[24] Ibid.
[25] Supra Note 13
[26] Swagata Sen and Sushmita Choudhary, Gen-Me: Word by Word, India Today (20/02/2006). Available at http://indiatoday.intoday.in/story/ideas-and-trends-that-explain-the-indian-youth/1/181898.html (last accessed on 13-12-2017)
[27] International Committee on the Rights of Sex Workers in Europe, 2016, "Feminism Needs Sex Workers, Sex Workers Need Feminism: For A Sex Worker Inclusive Women's Rights Movement" available at http://www.sexworkeurope.org/news/general-news/feminism-needs-sexworkers-sex-workers-needfeminismsex-worker-inclusive-women (last accessed on 13-12-2017)
[28] Shahid Qayyum, Causes and decision of women'sinvolvement into prostitution and its consequences in Punjab, Pakistan, Vol - 4 Academic Research International
[29] Sacks, V. Women and AIDS: An analysis of media misrepresentations, Social Science & Medicine, 42, 59–73 (1996)
[30] Supra 24

and autonomy while performing sexual acts is a kind of forced violence against female mind, body and reputation. In societalset up like India, where having sex before marriage is considered to be sin and women are deemed as characterless, impure etc. if they do so. Acceptance of prostitutes as a dignified human being is a far from reality in such societal and mentalset up.

Fundamental feminism views female sexuality as intimately connected to norms establishing male dominance in the society. Some fundamental feminists argue that over the years all sexual relationships of women with men are inherently subordinating and controlled by desire of man.[31] Also, trading sex for money is contemplated to be demeaning women and involve the unacceptable commodification of female sexuality.

The counterargument views hold that prostitution is a form ofsexual emancipation, expression ofsexual desires and women's agency. Moen is his study *'Is prostitution Harmful'*[32] suggested that the way people stigmatize and disvalue those who work as prostitutes it is the primary source of harm to them. Virtually any job or activity would correlate with significant tribulations to its practitioners if the social order and culturally established norms treated them the way prostitutes are typically perceived and treated. Stigma associated with women as a prostitute also averts sex workers from discover employment and clients in the formal labor market.

'Sex-work is work' feminists differ in the degree to which they perceive sex work as something which may be empowering or an overall positive experience (sex-radical feminists), and those who think that sex work is largely a negative experience, similar to many other forms of precarious work under capitalism.[33]

Long held debate that the agency of prostitutes must be recognized and protected have been supported by sex workers' rights activists, feminist allies and human rights advocates. That all aspects of sex work should be decriminalized bringing a change into already established societal norms, and that sex in exchange of money should be recognized as work and regulated under legal frameworks.[34]

The constant tussle between both the views is unending, what is more important is freedom as what it exists. Freedom of women to choose between living a life as prostitute or as a not prostitute is what seems most significant. The path a woman chooses as a right of her freedom should be respected and look upon with dignity. Acts imposed on women by coercion in any form are anti-thesis to their freedom of choice.

Conclusion

All individuals irrespective of their gender, caste, profession etc. must be afforded social/economic justice, equal educational, employment opportunities and access to necessary health care (including mental health and substance abuse treatment). The taboo created around sex work, is leading to marginalization of prostitutes from main stream society. There exists no element of sexual autonomy, prostitution is result of forced factors for instance worse financial conditions, debt, sex for pleasure, peer association, family abandonment, domestic clashes, betrayal from lover etc.

Internationally, United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons adopted in 2000,[35] United Nations Declaration on the Elimination of Violence against Women in 1993, the United Nations Convention on the Elimination of all Forms of Discrimination against Women in 1979,[36] and these are instruments which tries to condemn forced sex

[31] Leeds Revolutionary Feminist Group, Love Your Enemy? – Debate Between Heterosexual Feminism and Political Lesbianism, (London: Only women Press, Ltd., 1981)

[32] Ole Martin Moen, Is prostitution harmful? Journal of Medical Ethics , February 2014, Vol. 40, No. 2 (February 2014), pp. 73-81

[33] International Committee on the Rights of Sex Workers in Europe, 2016, "Feminism Needs Sex Workers, Sex Workers Need Feminism: For A Sex Worker Inclusive Women's Rights Movement."

[34] Sex Work and Gender Equality, Global Network of Sex Work Projects 2017

[35] Violence against women Definition and scope of the problem available at `https://www.who.int/gender/violence/v4.pdf (last accessed on 13-12-2017)`

[36] The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) available at `https://www.un.org/womenwatch/daw/cedaw/cedaw.htm` (last accessed on 13-12-2017)

work and support the elimination of human trafficking for sexual abuse and exploitation.

There should be access to all possible health care facilities and HIV prevention activities for sex workers ensuring equality and liberty of their community, acceptance in the mainstream society as a human being along with reduction in negative factors contributing in forced prostitution to secure justice.

There should be access to all possible health care facilities and HIV prevention activities for sex workers ensuring equality and liberty of their community, acceptance in the mainstream society as a human being along with reduction in negative factors contributing in forced prostitution to secure justice.

Many injecting drug users, male and female, work as a sex worker to fund their drug addiction habit. The requirement to earn money for drugs can often supersede the desire to perform safe sex and dignified choice. Many clients who are aware of this weakness, will attempt to procure person for sexual interaction in exchange of less money, sometimes without a condom, exposing the person to sexually transmitted risks. Programs for drug treatment and reducing the risk of HIV should be initiated to with a aim of increasing awareness and understanding about these sensitive issues, breaking the vicious circle of sex work for drugs.

Child and adolescent victims and survivors of marketable sexual manipulation and sex trafficking should be given community-based training and enduring education along with proper health consultancy. The focus should not only be on sex workers, the customers of sex work, who have been criminalized, should be given regular sessions, as to what they are doing is not natural, rather it is an act of subjugation, violence equivalent to harassment and rape, demeaning the life of person by pushing them into darkness where no autonomy to oneself exists.

Gender based Discrimination and Human Rights: A Gift of Goddess Lakshmi

Shubha Vats and Sejal Talgotra[1]

Introduction:

Every human being should be treated equally and given the choice of gender. Gender will never be a determining factor in the pursuit of fundamental rights. As a result, no gender disparities can exist. A dignified life, in addition, necessitates education for proper personality growth. A Gift of Goddess Lakshmi, a biography of India's first transgender school principal, was cowritten by Manobi Bandyopadhyay and Jhimli Mukherjee Pandey. Manobi Bandyopadhyay's quest for self-identity via education is depicted in this biography. The tension between Manobi's gender identity and her biography is the central theme. It's her fight and struggle that we're talking about over here. Humans have some natural and natural rights as a result of their being human. These rights are referred to as human rights. These rights are theirs simply by virtue oftheir being, and they become effective with their birth, regardless of caste, creed, faith, sex, or nationality. These rights are consistent with human dignity and equality and promote physical, moral, social, and spiritual well-being. By establishing favourable circumstances, they assist citizens in advancing materially and morally. Fundamental rights, inherent rights, natural rights, and birth rights are all terms used to describe human rights.

The term "Loka Samastha Sukhino Bhawanthu," which translates to "Loka Samastha Sukhino Bhawanthu," Sama is a character in the filmSama Sam is a man who enjoys doing stuff. Human rights are the greatest cultural and civilizational gift of classical and contemporary human thought. Every society is still fighting for the security, promotion, and preservation of human rights. The womb of the old gives birth to new privileges.[2]

The first clause of the Universal Declaration of Human Rights says that all human beings are born free and should be treated equal as far as dignity and individuality is concerned. They are gifted with reason and conscience, and must behave in fraternal manner with each other. Everyone has the right to all of the Declaration's rights and freedoms, irrespective of their race, colour, gender, religion, political beliefs, nation, society, property, birth and class. No distinction will be made based on a person's political influence or the country's international status. Thirty Articles of the Declaration are divided not only into civil and political rights, but also talks about economic, social, and cultural rights of mankind.

Developmental Phase

Many of the rights mentioned above are available to humans. As a result, transgender people, as well as everyone who may not fit into the binary gender mould are also considered as humans. Almost all international documents claim that everyone is born with an intrinsic right to life and that law shall be protecting this right; and that no one's right to life will be violated arbitrarily. Transgender people and other sexual minorities will also benefit from these rights. Transgender people, on the other hand, have been persecuted, mocked, and despised all over the world. Even if they've had a bad life, transgender people are entitled to all of the protections outlined in international treaties. The United Nations has been a leader in the fight to protect and advance the rights of sexual minorities, including transgender people.[3]

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[2] Sharma Shobharam, "Transgender in India: Human Rights and Social Exclusion" All India Reporter 86 (2013).

[3] Ghoshal & Somak. "The Brave but Heart-breaking Journey of India's First Transgender College Principal." Huffpost. (2016).

The Office of the High Commissioner for Human Rights released its first report on LGBT people's human rights in December 2011. This study examines various types of discrimination and violence against LGBT people around the world, including discrimination in the workplace, health care, education, imprisonment, and torture. The Human Rights Council made two significant decisions in response to the publication of this report. A resolution calling for the decriminalization of homosexuality was signed by 85 countries in March 2011. Second, South Africa passed a resolution in favor of gay rights in June 2011. In the battle against homophobia and transphobia, the study emphasizes the value of shared community responsibility, and it calls on countries to defend citizens of all sexual orientations and gender identities.[4]

Discernment on the basis of sexual orientation and gender identity is a violation of the universal principle of equal dignity and rights for all people. Discrimination of this kind is prohibited by international law, both explicitly and implicitly. Almost every country recognizes man and woman as the two traditional gender identities and socialroles, while all other gender identities and expressions are ignored. Some nations, however, have laws that recognize a third gender. As a result of a deep and broader understanding of the breadth of concepts outside of the conventional definitions of man and woman, many self-descriptions such as pander, polygender, genderqueer, and nonbinary are now becoming part of literature. Sex reassignments are now recognized in many countries, which encourage people to change their legal gender on their birth certificate.

Different Perceptions

All humans should be treated as equals and given the option regarding gender. In the pursuit of fundamental rights, gender can never be a deciding factor. As a consequence, there should be no gender inequality. Furthermore, for proper personality growth, a dignified life necessitates education. For children aged 6 to 14, the Indian Constitution recognizes the right to free and compulsory education.[5] When education is withheld, discrimination exists. All should learn it because it gives people a sense of dignity and self-identity. Only a small number of transgender people have access to education, and they are fighting for their rights.

Manobi Bandyopadhyay and Jhimli Mukherjee Pandey collaborated on A Gift of Goddess Lakshmi, a biography of India's first transgender principal. Manobi Bandyopadhyay's quest for identity and individuality through education is depicted this biography. In June 9, 2015, she became India's first transgender principal at Krishnagar Women's College in West Bengal.

"Education: If we understand, all of our problems will be solved," she tells her group. The plot follows a transgender woman who fights the myth that transgender people are strange, repulsive beings that are probably criminals and definitely worthy of contempt. Despite the factthat she was born transgender, Manobi sees herself as a woman trapped in a man's body. Despite her humiliation, Manobi tries to accept herself for who she is. Through the influence of education, she was able to change the trajectory of her life by gaining self-acceptance and social acceptance.[6]

In June 2015, Manobi Bandyopadhyay hit the headlines when she became the world's first transgender principal of any educational institution. The government-aided Krishnagar Women's College in Nadia district, about 100 kilometers north of Kolkata, was taken over by Bandyopadhyay, who was 50 at that time. The state was appreciated for this progressive decision to uplift the suppressed trans community. Bandyopadhyay was the first transgender person to get the degree of doctorate and to be the professor (she transitioned while teaching).

Formative viewpoints

A year before she was appointed principal, the Supreme Court issued a landmark decision granting third-gender status to transgender people if they so desired and ordering governments to safeguard the

[4] Web source: (PDF) Transgender Rights as Human Rights (researchgate.net)(Last accessed on 24 Dec 2017).
[5] Chakrapani Venkatesan, "Hijras/Transgender Women in India: HIV, Human Rights and Social Exclusion" Tg Issue Brief 8 (2010)
[6] Web source: ijlljs.in/wp-content/uploads/2017/12/ARTICLE_ON_TG_1-1.pdf (Last accessed on 24 Jan 2017).

community by giving them the equal opportunities following years of indifference and discrimination. Bandyopadhyay is now a member of West Bengal's Transgender Development Board. Bandyopadhyay, the youngest ofthree siblings born in 1964, rose to national prominence as a result of the news. As Bandyopadhyay's biography to journalist Jhimli Mukherjee Pandey reveals, he was already a trailblazer and a public figure. When you are a transgender person, it is impossible to be non-transgender.

Bandyopadhyay's socially odd status was only augmented by her academic accomplishments, which she defied gender norms. She refused to join any hijra gharana and continued to live with her family despite their inability to assist her and was subjected to exploitative relationships as well as psychological trauma from colleagues.

Bandyopadhyay's life[7] is a complicated story in several respects. It's a fascinating look at the origins of queer Indians: From the mid-1990s onwards, Bandyopadhyay published Abomanob (sub-human), a magazine that dealt with transgender issues. The fact that transgenderism was already being debated disproves the commonly held idea that millennials are the first generation to question gender and sexuality norms. Through the narrative of Jagadish, Bandyopadhyay's friend, we learn that some segments of Bihar's society are more accepting of homosexuality. The biography's sections on Jagadish emphasize Bandyopadhyay's heteronormative perspective on sex and marriage. Millennials are the first generation to question gender and sexuality norms. Through the narrative of Jagadish, Bandyopadhyay's friend, we learn that some segments of Bihar's society are more accepting of homosexuality. The biography's sections on Jagadish emphasize Bandyopadhyay's heteronormative perspective on sex and marriage.[8]

Additionally, the biography includes a list of transgender individuals' accounts of being bullied and discriminated against. She discusses her battle with the state's higher education department, which denied her promotion due to a discrepancy between the names on her pre-transition academic certificates and those on her PhD certificate. Additionally, she lists the number of times she has been forced to relocate due to conflict with her neighbors or the community. Bandyopadhyay encountered hostility in liberal spaces such as Jadavpur University (JU), where she studied in the 1980s. "Just because JU culture was more refined does not mean it was not divided into two sexes, as it was elsewhere in the world," she writes.

Conclusion

Simultaneously, the assumptions[9] and biases of the narrator must be critically examined. When addressing one of her more serious relationships, she extols the domestic gender position that women must play. "I had already started looking after his general well-being and asked him to stop cooking," she writes, "even though I wasn't married to him yet." This may be just what she wanted, but it still perpetuates a myth that oppresses women all over the world. In December, Bandyopadhyay was back in the news. Due to a lack of support from the faculty and some students, she had resigned from the college. This biography places her point in detail. A Gift of Goddess Lakshmi depicts the extraordinary and courageous struggle of a transgendered woman to develop her identity and reach new heights. The core theme of Manobi's biography is her conflict with her gender identity. It is her fight and struggle.[10]

[7] Bandyopadhyay, Manobi & Jhimli Mukherjee Pandey. A Gift of Goddess Lakshmi: A Candid Biography of India's First Transgender Principal. India: Penguin Books, (2017)

[8] Mousumi Padhi & Purnima Anjali Mohanty, "Securing Transgender Rights through capability development", Economic and Political Weekly Web source: pdf (epw.in) (Last accessed on 21 Dec 2017).

[9] Web source: 4115GI.p65 (socialjustice.nic.in)(Last accessed on 21 Jan 2017).

[10] Ibid.

Use of Alternative Dispute Resolution methods for effective consumer protection- A Critical Analysis

Sree Krishna Bharadwaj H[1]

Introduction:

Dispute resolution has two prominent categories, namely Adversarial and Non-Adversarial i.e. Adjudicatory and Non-Adjudicatory. One of the most formal methods is Adversarial which includes trial and arbitration. This method, by virtue of being the most formalized methods, is also the most widely used methods of dispute resolution.[2] The Non-Adjudicatory methods of dispute resolution include Negotiation, Mediation, Conciliation, and Lok Adalat.

The differences between Adversarial and Non-Adversarial process

One of the most important differences between the two methods is that while the first method involves a legally set up, due procedure and procedural laws, the latter does not involve any due process.[3] The Non-Adversarial system is not coercive and the parties can withdraw whenever they want.

The parties involved in a dispute have full control over the non-Adversarial system of dispute resolution. In the Adversarial system, the focus is on facts and goes strictly by the facts available on the table, whereas the non-Adversarial system considers relationships between the disputing parties.

The Adversarial system looks at past and is regressive in nature. It goes by set precedents and then arrives at a conclusion The Non-Adversarial system seeks to resolve issues in a manner that maintains the goodwill relationship of the parties involved and keeps their future in mind.[4] The Adversarial system establishes liability, whereas the non-Adversarial system focuses primarily on maintaining or in fact utilizing the relationship between the two parties.

The first method is thus a rather divisive method, whereas the latter is a more constructive method aiming at arriving at rather amicable solutions for a given dispute.[5]

As is visible with the judicialsystem, the Adversarialsystem establishes a clear-cut winner and loser. The Adversarial system decides a winner and a loser involving lawyers and legal-experts whereas the non-Adversarial system looks for a solution that is acceptable for all the parties involved and the parties themselves play a crucial part in reaching a settlement.

Alternative Dispute Resolution solves issues in a cost-effective manner while preserving a healthy relationship between the parties involved in the dispute.[6] ADR tends to find different ways (beyond regular litigation) which can act as a suitable substitute for litigation and can resolve grievances and disputes, ADR is a procedure that is widely recommended in order to reduce the number of cases by providing a cheaper, less adverse and economical type of justice that is quite semi-formal and less complicated in nature. Even Judges recommend ADR to reduce the number of court cases court cases. The development of the information and the communication technologies which are especially based on internet communications has permitted the ADR services for moving into a whole new online virtual mechanism called online dispute resolution.

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[2] Rick Sarre, Alternative dispute resolution and non-adversarial regulation: why are they still not mainstream and can they ever become mainstream? Asia-Pacific Mediation Forum Conference, Adelaide, 29 November – 1 December 2001.

[3] Australian Law Reform Commission, Discussion Paper 62: Review of the Federal Civil Justice System. Sidney (1999).

[4] Judy Gutman, "The Reality of Non-Adversarial Justice: Principles and Practice", 14 Deakin Law Review 29-51 (2009).

[5] Harry N. Mazadoorian, "Putting together an ADR plan: The building blocks of a corporate program", 3(1) Business Law Today 40-44 (1993).

[6] Steven Shavell, "Alternative Dispute Resolution: An Economic Analysis", 24(1) The Journal of Legal Studies1-28 (1995).

Problems in Indian Judiciary

Before understanding the problems of the judiciary, it is necessary to know some key concepts which define some problems in the judiciary. Report No. 245 of the Law Commission of India titled "Arrears and Backlog: Creating Additional Judicial (wo)manpower" gives the key concepts as under:

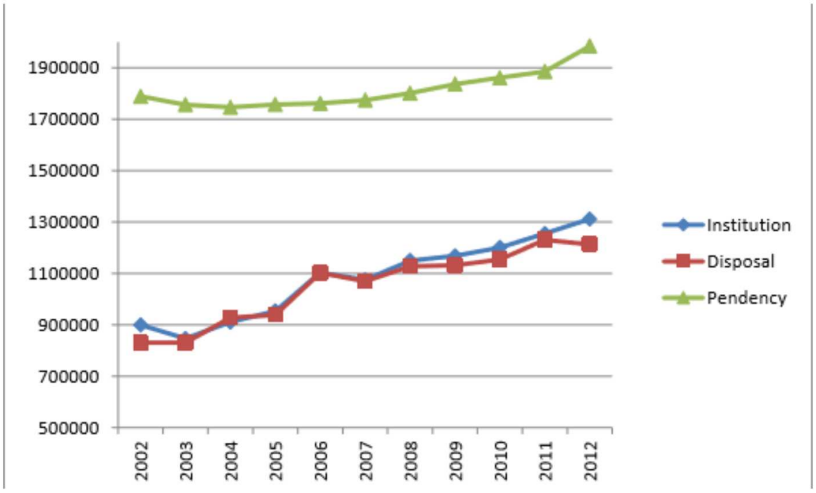
Pendency: Case filed but have not been disposed of irrespective of when it was filed

Delay: When the adjudication takes more time than normal time for a similar case.

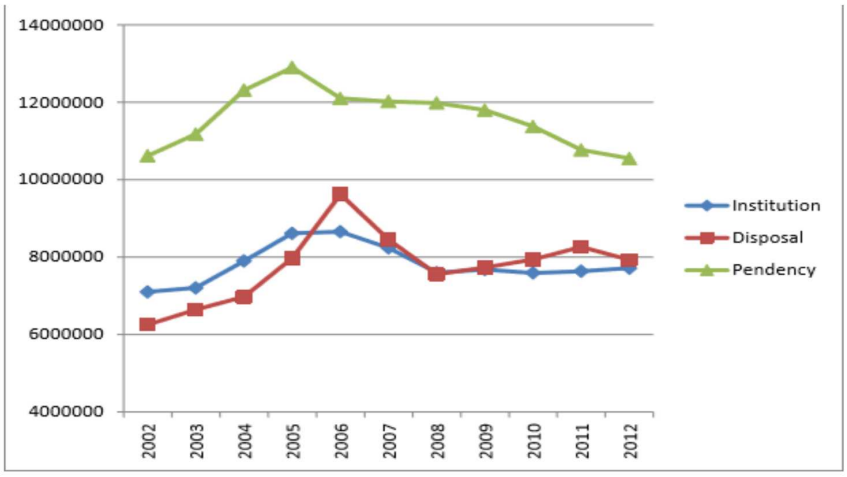
Arrears: Cases which are delayed more than the normal time but for valid reasons.

Backlog: If in a given time frame, the number of new cases filed is higher than the number of cases disposed of, then the difference between the two is called backlog.

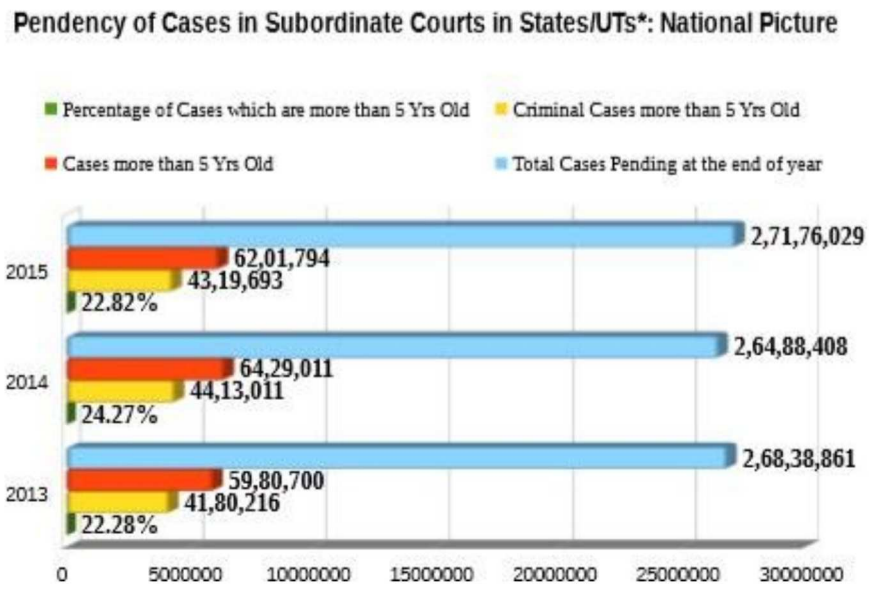
The Report also gives the increasing pendency of cases in the judiciary. It is to be noted that the pendency of cases is on a rise in the higher judiciary while the disposal rate is constant in the lower judiciary.



Graph 1: Cases filed, Disposed, Pendent in the "Higher Judicial Service" during 2002- 2012.



Graph 2: Cases filed, Disposed, Pendent in the "Subordinate Judicial Service" during 2002-2012.



Graph 3: Cases' pendency in the "Subordinate Courtsin States/UTs" during 2013 to 2015

A report by Centre for Research & Planning, Supreme Court of India, New Delhi titled "Subordinate Courts of India: A Report on Access to Justice 2016" highlights the problems of judiciary with respect to pendency and vacancies as under:

Year	Opening Balance	Institution	Disposal	Pendency	Cases more than 5 Yrs Old	Criminal Cases more than 5 Yrs Old	Sanctioned Strength	Working Strength	Vacancy
2015	2,65,09,688	1,90,44,877	1,83,78,256	2,71,76,029	62,01,794	43,19,693	20,558	16,176,	4,382
2014	2,68,39,293	1,92,81,971	1,93,28,283	2,64,88,408	64,29,011	44,13,011	20,174	15,585	4,589
2013	2,69,07,252	1,8670,907	1,87,37,745	2,68,38,861	59,80,700	41,80,216	19,526	15,128	4,398

The Supreme Court and High Courts have realized that the task of clearing all the pending cases by the judiciary is next to impossible. They also suggest the use of ADR methods for clearing of the pendency of cases. The Legal Services Authority was set up with the purpose "to organize *Lok Adalats* to secure that the operation of the legal system promotes justice on abasis of equal opportunity."[7] Supreme Court has released mediation training manual[8] and various High Courts have framed the Rules for court-annexed mediations. ADR is now being considered as an essential element of the justice system by both the legislature and the judiciary in the country. The National Consumer Dispute Redressal Commission also has permitted the use of ADR for dispute resolution at consumer fora level.[9]

Effectiveness of CPA, 1986

Evaluation Report on Impact and Effectiveness of Consumer Protection Act, 1986[10]

[7] Preamble to the Legal Services Authority, 1987.

[8] The same is *available at:* http://supremecourtofindia.nic.in/sites/default/files/Mediation%20Training%20Manual%20of%20India.pdf

[9] Bijoy Sinha Roy by Lr. vs Biswanath Das, 2017 (11) SCALE 391

[10] Indian Institute of Public Administration (IIPA), Evaluation Report on Impact and Effectiveness of Consumer Protection Act, 1986, (2013), available at: http://www.consumereducation.in/ResearchStudyReports/cpa_exec_sum.pdf (visited on: January 21, 2016).

The impact of the Consumer Protection Act can be found with some statistical data retrieved from the research. The data says that, about 43.7 percent of the consumers who have gone through exploitation have stayed idle without filing complaint or any necessary action. This might be due to various reasons like financial inability of the exploited consumer, fear of the opponent, time issues and other unidentifiable reasons. In the end, all of them have just set the problem aside with no concern. The next case is quite similar to the first one but has got a difference in approach. About 41.7 percent of consumers have not taken the matter legally or just left it unnoticed. Instead, they have made a try to get the price of the defective product refunded. This category not only denotes price return, but also the replacement of the whole product. And 17.3 percent have tried to mobilise the issue. Out of 100, only four percent of the consumers have made complaints to the manufacturers and the producers of goods. Rest ninetyfour percent were left ignored or did not complain even in the district forum. All these problems have a central reason, which is nothing but poor awareness about the act and the process. On seeing the knowledge or awareness level that has reached the public, 67.2 percent of the exploited consumers are unaware ofthe fact that there is something called Consumer Protection Act. Some know about the Act in depth and their percent is 10.2. The rest comprising of 22.6 percent have minimal knowledge about the Act and the redressal techniques available for affected consumers. The data retrieved has clear information with regards to even gender and age. In gender perspective, unawareness is seen in about 63.5 percent in male category, and 71 percent in female category. And with the view of age, 70.2 percent of people below the age of thirty are unaware of the Act and the 61 percent of people who fall above the age of fifty are with no knowledge about the Consumer Protection Act. These percent values are to make clear views on the present condition of the Act and to notify that more awareness is needed.

The first reason was that there were adjournments made without actual necessity at that place. As already mentioned, the cases and complaints made cannot be adjourned as and when required without any reason under the grounds of a “sufficient cause”. Also, the reason for these adjournments should be made as written record for later evidences. It accountsfor twenty-seven percent ofthe whole reasons for the delay. The next reason would be poor administration. Poor administration here means the less skilled staff or inadequate number of workers in the commission for carrying out the whole process. Also, there should be an efficient administrative control within the commission to follow up the case and to make sure that all the cases admitted are brought for proceeding. Cases can at times be recorded as a disposed case even before the proceeding. Such errors occurred are purely due to improper administration. Support staffs are an integral part of any working body and when it comes to commissions handling consumer disputes, it is mandatory to have a very decent strength of support staff. There should not be work stoppage due to less support staff since it might interrupt a very expensive process. Apart from this proper administration is very necessary to maintain the infrastructure of the office as they may reveal the very first impression of the performance of the office. This reason amounts to about nineteen percent of the total reasons causing late disposal of cases. The last reason is bound to the consumer’s nature or is a consumer’s inherent disadvantage. Exploitation happens if the person harmed is uneducated. Not that educated people do not fall under the umbrella of exploitation, but the chances are high when it is about illiterates. It gives the confidence to the sellers or providers of a defective product or deficient service that the victim will not take further steps to file a case on him. There arise the problems for the uneducated victims. Now, this illiteracy or poor education stands as a reason for the delay in disposal of cases too. The victims who file case on the seller or provider basically suffers from the inability to survive the whole process without proper knowledge.

Legal documentation or any work requiring education will be a barrier to these victims and it finally prolongs the case. Hence, poor education will also be taken as a reason if there is a delay in the case disposal and this reason takes eleven percent share of the total reasons. Vacant positions of the President and Members of the commission takes a huge part in interrupting

the services of the commissions. It is a known fact that if there are no appointed people in the respective posts, their responsibility will be left unnoticed or undone. The fact has proven in this case, and there has been a tremendous delay in disposal of cases due to vacancy of positions. The next reason is the limited or very less number of benches of the commissions. Restricted infrastructure and very less space may also be an issue for operation of any organisation. Similarly, poor infrastructure has created an impact on the cases involved and has created a situation of late disposal of cases. Insufficiency in the required tools to execute an operation is also a drawback of the infrastructure which leads to uncleared cases. Some cases will demand for a clear investigation or analysis to arrive at a decision. In such a situation, there exists excess time duration of the investigation process resulting in the breakdown of thewhole system even if one of the processes stop working or is held for any valid reason. Test reports are very important to provide a fair judgement or to make further move in a case. If there is a considerable delay in receiving the reports, there will definitely be delay in the processof clearing the case. The case might be held uncleared if the test reports completely don't reachthe commission even after providing excess time. Starting from a basic business firm to the court/forum, training for every individual working is mandatory. Training and learning together is a process which should be indulged in all the organisations to preserve the rules and regulations set in it. Ifthere is a member or a president in a commission without proper training, the duties allotted for them will not be efficient in the output. They will lag more in terms of quality and time while performing an operation of the commission. This condition also takes the case handled to a state of uncleared case or delayed disposal. Redressal may be slow even due to insufficient funds from the consumer's side. The complainant who has filed a case should be ready with the necessary finance to travel through the whole process without any interruption. The cases taken might not be redressed at its earliest if the complainant fails to make any required payment during the process. Thus, the financial status of the complainant is also an important factor to be taken into consideration to make sure that there is no delay in redressal. All these reasons are provided in values of percentage to show each reason's share in the total percent. They are as follows,

- Vacancy of positions – nine percent
- Limited number of benches – eight percent
- Poor infrastructure - seven percent
- Delay in lab testing - five percent
- Insufficient training - four percent
- Complainant's ability to pay – three percent

Minor reasons which amount to delay in redressal

- The summons and notices sent by the commissions may not reach the consumer or the complainant on time and here starts the issue of delay. The person receives it late, then responds late and finally the whole process becomes more time consuming making the redressal lingering. This delay in the receiving of the summons and notices is due to the channel by which they are sent. Postal couriers are the only means by which these notices are sent and fault from courier's side cannot be accounted for the delay in redressal or late delivery of the notices.
- Accumulation of uncleared or undisposed cases makes the commission unable to handle the newly admitted cases. A number of the case pending in the commission demands for redressal making the new cases delayed. And it goes as a cycle where thecourt or commission finally makes an increase in the pendency of cases.
- Funds for operation and carrying out the necessary processes in the commissions and forums are not available always. This poor financial status holds the process as and when there is a necessity. Thus, the source of money is a problem which makes the commissions unable to work.
- While appointing a judicial member, the qualifications needed are checked for but the training aspect is missed out. The member appointed in the commission holds only the qualification for the position and is unaware of the practices and customs of the commission. Training is thus a

very important factor which decides the functioning of the commission and if it is a drawback, then the cases handled will be delayed in redressal.

- Another rare reason for the delay in redressal would be the illegal strikes happening around the state. Due to these unavoidable or undesirable happenings, the commission has to stop function for two or three days till the strike is closed. Meanwhile, the cases stay pending or will be redressed with the delay in future.
- Employee satisfaction is a catalyst for better output by an organization. The members of the commission should be given appropriate amounts ofsalary and incentives as and when there is a need. This is the only motivation which will lead to increased level of performance. But, unfortunately, the commissions have lost in this aspect by giving less salary to the members. Also, the transport facilities demanded by the members were not made by the commission. All these issues have led to delay in redressal making it clear that poor compensation will end up in poor performance.
- There is one more situation where the case after passing the order, will stay uncleared. This is because the judgment made needs the approval of the district collector or the police department of the respective location. Hence, the implementation of the orders is becoming complex due to approval by various office bearers. If there is implementation of the commission, the number of cases pending will reduce to a great extent.

Members who feel that there is an efficient operation in the commission fall were 24 percent and the rest still have not realised or felt the empowerment in the functioning of the commission. They found few reasons for such a situation with close supervision and efficient analysis. The first reason was a very common one which pointed the delay in redressal. No matter how efficient a system is, if the factor called timeliness is lost the whole system stands unfit or non-productive. Having said this, the commissions should take measures in order to reduce the time taken for each case. The orders passed should be implemented/executed within the commission and its absence makes the members feel that the commission holds less power. The authority to pass orders after every case should be given to the commission which will indirectly create a positive impact on the time taken for the redressal of cases. Strict rules should be made regarding adjournments where the case cannot be adjourned according to the party's wish. No case can be adjourned without stating explicit and valid reason inwriting. Themembers feel that the commission suffers from this control of adjournments and have stated that this is also a reason for inefficiency of the commission. The members have pointed the reason for the low efficiency of the commission as poor empowerment status of the commission when compared to the empowerment status of the civil courts. They feel that the rights and powers of the civil court is far more than the commission because of which the commission isquite not chosen as the best option to deal with cases. Also, on the part of compensation provided to the consumers or the plaintiff, the commission orders only a very less amount. Recovery and refund do not completely compensate the loss faced by the complainant. This reason completely eliminates the commission from being called as an empowered one.

State of the Indian Consumer 2012[11]

Though the exploited consumers or the complainants can represent themselves in the commissions, only a few consumers do so and the rest finds a substitute for it. The consumers are mostly represented by the advocates in the State Consumer Dispute Redressal Commission and the District Consumer Dispute Forum. Other few will represent themselves by nonGovernmental organizations or by the government. They are as follows,

- Self - representation -nine percent

[11] Consumer Unity & Trust Society (CUTS International), State of The Indian Consumer Analyses of the Implementation of the United Nations Guidelines for Consumer Protection, 1985 in India (2012), available at: `http://www.cuts-international.org/Cart/pdf/State_of_the_Indian_-Consumer.pdf` (visited on: January 12, 2016).

- Representation by commissions and forums – eighty-nine percent
- Representation by government bodies and non-governmental organizations – one percent each

The summary of the survey

- The summary has come up with few findings relating to the commission and the behavior of the consumers.
- About three-fifths of the exploited consumers do not take the issue to the commission or civil court, instead, they deal it directly with the sellers or the last person of the supply chain from whom the product was purchased. Complaints are made directly to the seller without involving any legal body to address the issue.
- There is another group of consumers who have not taken any action for the loss they have faced. They have neither complained to the seller nor made the case to be addressed by the commission. This group accountsfor about ninety-three percent of the whole exploited consumers. Another group of consumers accounts for three percent who have registered the complaint with the product's company. In the end, the survey reveals that only 0.3 percent of the affected consumers have really approached the consumer for a seeking redressal. This means that the efficiency and the existence of the consumer for a should be well communicated. More awareness programmes should be created in all possible areas for creating knowledge about these commissions in the minds of people. Also, the techniques of redressal should be informed so that a sense of trust arises and with that, they approach the commission for redressal.
- In the survey, about four-fifths of the respondents have marked that the process of redressal through these commissions as tedious. On seeing the reasons for such an answer, it is seen that the commissions have failed to make the process clear and simpler. The complexity of it has stopped many of the consumers from approaching the commissions for redressal. Also, three-fourths of the admitted cases were not resolved as desired. There were confusions and commotions with the case disposal. And among this, eighteen percent of the undisposed cases were handled by the higher authorities for redressal as an appeal. This change means that the lower authorities are quite inefficient in handling the case.
- Poor timing maintained for case disposal was also a finding of the survey. About twothirds of the cases were not solved or provided with a judgment in a given time frame. Most of the cases were pending and it took a very long time to even initiate the case again. The survey says that the cases take more than the fixed time of 100 or 150 days to get solved. There are situations where few cases are left pending even for more than ten years. Adjournment, poor number ofsupport staff and the illiteracy condition of the complainants may be the three reasons contributing for the delay in disposal of cases.
- On the fifth of the respondents marked a mistake in terms of money. They have felt that the method of redressal demand for more money. This expensive process thus stays inefficient due to direct coststhat have to be paid by the consumes or the complainants.
- Also, there is unawareness about the inherent redressal mechanism provided by the company. This unawareness is seen in about fifty-five percent of the consumers.
- Seven percent of the consumers have a strong belief that the inherent redressal mechanism in the companies does not facilitate transparency in handling the issues. There is suspicion about the reliability of the company too.
- And there is one more crowd which does not even know that there is redressal mechanism outside the company. These people amount to about fifty-three percent and are more towards-the redressal mechanism provided internally.
- Regarding the accessibility, the respondents have made points stating that the redressal mechanism cannot be accessed by a common man since those mechanisms are highly inde-

pendent. Also, few others have stated that it is possible to access it easily. They are separated as thirty-eight percent in the first category and twenty-seven percent in the next category.

- A sense of trust is created only in twelve percent of consumers. This group strongly believes that the functioning of these redressal mechanisms is very positive and will be a one favoring the consumers. They also believe that the capability of redressing the issues and the level of security here in these redressal systems is high.
- From the consumer forum about thirty-four percent of people believe that consumer education will be helpful in making the redressal process a very smooth one. Also, the rights that can be availed by the consumers should be informed to them so that they know how to handle various issues. Another group of members holding twenty-four percent, opine that the consumers can be provided with legal and technical assistance to make the process more convenient.
- Finally, only twenty-four percent of the State Consumer Dispute Redressal Commission has accepted that they are sufficiently powered to try all cases. Rest of them are still in the status of a dilemma to decide on the efficiency of the commission.

Thus, it is clear from the above that neither the mainstream judiciary nor the quasi judicial structure under the Consumer Protection Act, 1986 are good for the consumers who want swift justice which is inexpensive as well.

Importance of Alternative Dispute Resolution

Alternative Dispute Resolution is regarded as a grievance solving system outside the doors of the court of the country. Alternative Dispute Resolution mechanisms give the parties the freedom and flexibility to solve disputes with harmony and with ease instead of taking it to the court for claim via the formal procedure of the court.[12] Alternative Dispute Resolution is now an important part of the civil judicial system of the country and has developed on its own way.[13] ADR is the result when the search is of a simple, fast and flexible dispute solving system. The main objective of ADR is to avoid vexation, high expenses and time consumption in decision making which has made it the ideal form of seeking Justice, the Alternative Dispute Resolution techniques are conciliation, arbitration, mediation, hybrid procedures, and negotiations. Parties can exit the ADR methods when they wish and all methods in the ADR methods are voluntarily reached.[14]

ADR in other laws

ADR methods have been extensively used in laws. Some of these are mentioned below:

1. Industrial Disputes Act, 1947: Section 2(p) of the Act defines Settlement as – "(p) "settlement" means "a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorized in this behalf by the appropriate government and the conciliation officer;"

   The Conciliation officers are given the duty of mediating and resolving the disputes amicably as given under Section 4(1).

   "(1) The appropriate government may, by notification in the Official Gazette, appoint such number of persons, as it thinks fit to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes."
2. The Hindu Marriage Act, 1955: The provision provides that the court shall give due consideration towards the counseling and reconciliation of the parties.

[12] Faye A. Silas, "Settling disputes: Law firms get into ADR act", 72(4) ABA Journal 37 (1986).
[13] Anurag K. Agarwal, "Resolving Business Disputes Speedily", 41 (21) Economic and Political Weekly 2417- 2418 (2006).
[14] Robert D. Raven, "ADR: New Options for Clients" 75(6) ABA Journal 8 (1989).

"Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties."[15]

3. The Family Courts Act, 1984: Section 9 of the Family Courts Act says that wherever possible the Family Court shall try to settle the matter.[16]

   "In every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit.

If in any suit or proceeding, at anystage, it appearsto the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a settlement."

It may also be noted that while Section 89, CPC confers the jurisdiction on the court to refer a particular dispute under its consideration to an ADR mechanism, it is Rules 1A, 1C of Order X that lay down the manner in which the court is supposed to exercise its jurisdiction. It may be noted that the number of options available for availing ADR path, permit the parties to choose the process by consensus. If the consensus is not reached, the mechanism allows resuming of the legal process.

Mediation under Consumer Protection Bill, 2015

As discussed in the previous chapter, the Consumer Protection Bill contains a separate chapter on Mediation. The process of mediation is briefly explained below.[17]

After the admission of a complaint in the district forum, if there is any sign present in the complaint showing the possibility of redressing it through mediation, then the commission can direct the case to the mediation process. However, this cannot be done in cases where there are loss or serious conditions of injury or death to the consumer. The cases can be directed for mediation after one hearing or at any stage during the proceeding.

There should be proper guidance given by the district forum regarding the processes of mediation. Also, the decision of the consumers to opt for mediation is to be considered before directing them to such a settlement.

After arriving at a decision to solve the dispute through mediation, it is mandatory for the parties to submit an application to the commission regarding the use of mediation for redressal. This application has to be made within five days of the commission's direction for redressal through mediation. After this application it is the duty of the commission to refer the matter for mediation which should possibly be done within five days after receiving the application. Further, the mediation process is carried out by the Chapter five provisions of the Act.

The state governments can establish Consumer mediation cell attached to district forum of each district and state commission of the state. In the similar way, the Central Government can have Consumer mediation cell attached to the national commission.

The other duties of the mediation cell are to maintain a regular and clear database on a daily basis which is submitted as a report every month. The mediation cell should also maintain the list of trained mediators in the centre to carry out the mediation process. The appointment of mediators by the national commission for handling or settling a case is done by choosing a

[15] Section 23(2)
[16] Section 9
[17] Chapter V of the Bill
[18] Rick Sarre, Alternative dispute resolution and non-adversarial regulation: why are they still not mainstream and can they ever become mainstream? Asia-Pacific Mediation Forum Conference, Adelaide, 29 November – 1 December 2001.

panel of mediators and putting it on the notice board or the official website of the national commission.[18]

The national commission alone holds the power to make appointments of mediators with the assistance or recommendation of the selection committee consisting of the President and two other members of the national commission. The same procedure is applied to state commissions and district fora *mutatis mutandis.* It is necessary to get the consent from the respective mediators in handling the case. Without this, the commissions cannot put up the names of the appointed mediators in the notice board and the website.

The commissions can look for qualified mediators by checking their success history in settling disputes through mediation. The suitability of the mediators to carry out the process should also be checked for before nominating them for mediation.

Parties involved in the mediation process may offer a mutually acceptable solution at any stage of the proceeding without "prejudice". Also, offers can be made "with prejudice" at any stage of the proceeding. These two incidents cannot happen without the notice to the mediator involved. After arriving at a settlement, the commissions can pass the orders with the recorded settlement. This happens seven days after the receival of the settlement by the commission and thereby the case is disposed. If the settlement has solved only few issues of the case, then the national, state commission or the district forum can pass orders with other terms and conditions including the settlement.[19]

Conclusion

It is not strange in India to find a law which has been ineffective. Even Consumer Protection Act, 1986 which aimed[20] at providing swift justice which is cost and time effective failed the consumers of this country with many issues. Even otherwise ADR methods especially mediation and conciliation can be very effective for consumers in terms of both time and cost. The government has realized this and thus, brought forward the new Bill which envisions the rationale for having mediation as a precursor for consumer litigation in India.

[19] Australian Law Reform Commission, Discussion Paper 62: Review of the Federal Civil Justice System. Sidney (1999).

[20] Consumer Unity & Trust Society (CUTS International), State of The Indian Consumer Analyses of the Implementation of the United Nations Guidelines for Consumer Protection, 1985 in India (2012), available at: http://www.cuts-international.org/Cart/pdf/State_of_the_Indian_-Consumer.pdf (visited on: January 12, 2016).

Investigative Journalism in India: Case studies of prominent Journalists

Siddharth Negi[1]

Introduction:

Indian journalism took the investigative route with hesitant yet effective steps. The government and media organizations gave little importance to investigative journalism. It is only after the emergency that investigative journalism gained importance with the efforts of a few committed journalists. Several journalists such as Arun Shourie, challenged the might of the then government and thus had to pay a price. The socio-political conditions of the country helped in the growth of the Indian investigative journalism. Later, the work and effort of journalists institutionalized investigative journalism in India. The lives and times of these journalists can[2] throw light on the development of this genre in India. The researcher would like to study the works of major investigative journalists and also the media history of the period in bringing out the unique contribution of the journalists. In the art ofstatecraft, 'Arthshastra' is one of the fundamental and historical books[3] written by Chanakya. According to this ancient text, even the honesty of judges should be periodically tested by the agent provocateurs. Arthshastra can be called as the best example of investigative journalism in Indian history. It can be said that modern day sting used in investigative journalism derives same authority from the writings of Chanakya.

After getting freedom from the British yoke our leaders promised us a free press. Even the tall promises regarding the freedom of expression and speech have been made in our Indian Constitution in Article 19. Paradoxically, Indian Constitution nowhere gives any independent provision regarding press. It is considered to be the part and parcel of Article 19 whereas American Constitution specifically provides a right to press. The historian Robin Jeffery has pointed that "the first amendment to the US constitution guaranteed freedom ofspeech and the press. The first amendment to the Indian constitution, passed in June 1951, curtailed those rights. It permitted governments to ban publication of material likely to disturb public order, incite people to commit a crime as harm relations with foreign powers".

Ironically, press is also considered to be the fourth pillar of democracy in India yet it has not been able to rise from a partisan role. The press from 1947-1967 can be called free but it was always in cooperation with the government. During this time the press hardly tried to evaluate the decisions and policies of the State. The status of press after independence can be described clearly in the words of Rajender Puri: "The national press after independence has been traditionally obedient. In the early years this was partly due to momentum of the freedom struggle, partly due the towering personality of Nehru. All our national newspapers also happen to be patterned after the quality press of Great Britain and the upper-class restraint that the English exercised there was caricatured into an obsequious obedience to authority by the journalists here".

This period fromthe 1947-1967 can be termed asthe black period in the historyof investigative journalism in India. Journalists used to support the State instead of being watchdogs of Indian democracy. The Times of India, Hindustan Times, Indian Express, The Statesman and The Hindu also called Pachyderms were the five big and important newspapers after independence. These all five newspapers were the voice ofthe State and none ofthem believed in investigative journalism. These newspapers believed in the bureaucratically given information and worked hand in glove with the State in the so-called development of the nation. Rajender Puri critiques the late sixties as, "The newsmen of Delhi certainly proved themselves to be committed journalists in those days, but their commitment was not to the ethics of their profession, or to the skill

[1] Research Scholar, Department of Media Studies, Punjab University Chandigarh.
[2] Trehan, Madhu (2005). Tehelka as Metaphor. New Delhi: Roli Books.
[3] Puri, Rajinder (1971). A Crisis of Conscience. New Delhi: Orient Paperbacks.

of their craft, or even to the will of the people, but only the will of the government". Till 1968 that is 21 years after the independence, not much had changed in the Indian media scenario. The Pachyderms worked[4] as usual and cared little about the investigative journalism. There was no real competition for these five big newspapers. There were only a few reporters working as watchdogs. Kuldip Nayar and Inder Malhotra were outstanding reporters of their times. Nayar's column 'Between the lines' was extremely well informed and popular among the masses. It was only after the emergency that the investigative journalism gathered pace in India. National emergency was declared by the Prime Minister Smt. Indira Gandhi in June 1975. "She had advised the president to proclaim emergency without consulting her cabinet." Due to the emergency, fundamental rights guaranteed by Article 19 were suspended.

The paper focuses on the unique contribution of four journalists who have contributed immensely to this genre of journalism in India. The lives and works of these journalists illuminate development of investigative journalism in India.[5]

(1) Kupdip Nayar

Kuldip Nayar in the early seventies wrote against the then prime minister of India, Indira Gandhi. In his articles he challenged the authoritarian government of Indira Gandhi. Indira Gandhi was hailed as 'Durga' by the opposition leader Atal Bihari Vajpayee, after her victory against Bangladesh war in 1971. According to Nayar, Indira Gandhi felt herself as a roman emperor returning after a triumphant war . This supreme power and a sense of authority gave Indira Gandhi an impression that she was above all authority.

Nayar says, "The basic departure in her approach was that the politics which since independence had had a consensual element began bearing her personal domineering stamp. She, in fact, began going out of her way to rub her political opponent the wrong way" (Nayar, 2012, 220). Article 19 1(a) which gives the power of speech and expression was completely blocked. Barring few media houses (Indian Express, Seminar) the media in general took the line of the state. It is in such difficult times that real journalist are born. Kuldip Nayar is one such journalist who stood for the press values and also went to the prison during the emergency. The courage and quest for truth that Nayar showed gave encouragement to other journalists to indulge in investigative reporting. The emergency can be understood from the book written by Nayar called "The Judgement" (1977).

One of the reasons for the emergency as stated by Kuldip Nayar in his autobiography "Beyond the lines" was Justice Krishna Iyer. "I suspect that being a leftist in his leaning he held a soft corner for Indira Gandhi who said[6] to be left of centre. The left generally supported her because of her nationalization of banks and insurance companies. Some responsibility for what happened during the Emergency rested on the shoulders ofJustice Iyer because he gave her the stay" . This seems to be an interesting reason neglected by the historians.

It is believed that Nayar was arrested by the state for being bold in his opposition ofEmergency. The son of the then prime minister Indira Gandhi wanted to silence the top journalist after imposing press censorship. He remained in the jail for a period of three months. Not a single journalist in the country supported Nayar's family when he was in the prison. "It had been tough on my family because no relative or journalist or personal friends of mine had dared to contact them during the three months I was in jail" . The isolation of Nayar by his fraternity and the state oppression seems to be absolute. In the release of Nayar the judiciary played an important role. Later, he was released by the judgement of the court. But those judges who gave decision in favour of Nayar had to face severe consequences.

After being released from the prison Nayar once again raised his voice against the state oppression. His effort saw no success as none in his fraternity supported him. "I tried to pick up the thread of protest where I had left

[4] Subramaniam, Chitra (1993). Bofors: The Story Behind News. New Delhi: Viking Publishers.
[5] Singh, Manorma (2007). Sting Operation. New Delhi: Sachin Printers.
[6] Rangarajan, L. N. (1992). Kautilya The Arthashastra. New Delhi: Penguin Books India

it off before I was jailed. However, my efforts bore no fruit. I found journalists were afraid to say anything about the Emergency in public, and editors proved to be the most cowardly. It appeared asif they had been co-opted bythe system" (Nayar, 2012, 244).

Sanjay Gandhi played an important and powerful role in the Emergency. He has given very few interviews and little is known about his side of the story. In his autobiography Nayar has for the first time written about his interview with Sanjay. This interview was taken in the first place for the book called "The Judgement". But it was not included in that book as per the wish of Sanjay Gandhi. "Sanjay had heard about the book I was writing. Strangely, he asked me not to include any part of our conversation.....I have however no obligation after his death and therefore disclosing the gist of our conversation for the first time".[7]

This interview brings out the real side of Sanjay Gandhi the architect of Emergency who wanted the "Emergency for at least 20 to 25 years or more until they have changed the people's way of thinking". Sanjay also believed in a state completely devoid of fundamental rights, freedom of speech and expression.

Indira Gandhi ended the emergency and the congress lost the elections held after the emergency. It was in the response to the incapability shown by the leading newspapers that journalism saw the trend[8] of daring publications like Nayar's "The Judgement". The book presents the authentic inside story of the emergency. It is an important document in the area of Indian media history. The book starts from 12 June 1975, the day Allahabad High Court judgement unseating Mrs Gandhi came. The volume traces the decline in quality of the democratic values in India with the implementation of emergency. In the conclusion the book also brings up the judgement rendered by the people in favour of democracy. The people who ruled during the emergency lost the elections. In addition Nayar also brings out the Maruti scandal, the fate of MISA (Maintenance of Internal Security Act) prisoners, and the role of intelligence organization and police.

The press of that time supported and applauded Nayar and his book. "Top of the heap was the newly sainted (after his jail spell) Kuldip Nayar whose judgement was an instant bestseller." This trend was followed by Janaradan Thakur who became famous for his book 'All the Prime Minister's Men'. The title seems to be inspired by the famous book on Watergate, 'All the President's Men'.

The art of writing books to present important issues was further developed by the father of Indian investigative journalism, Arun Shourie. Nayar throughout his long career has used books as a powerfulsource of examining intricate subjects. In his autobiography he has broughtout the problem of commercialization and other challenges faced by the media. In the history of investigative journalism Nayar emphasised the fact that even a dictatorial regime can be challenged by the force of pen. The heroism of Nayar at the time of emergency motivated the journalists to take the watchdog role. It also gave birth to the narrative of dissent and challenged the authority in the name of freedom of expression. Thus, Nayar paved the path for investigative journalism in India with many other journalists of his times.

During 1977, emergency was the most significant incident. Judiciary, executive, legislature, and press had to face the authoritarian rule of Mrs Gandhi. But Indira Gandhi again came to power and was able to re-establish the dynastic rule. She was able to regain the support of judiciary, executive, and legislature however she failed to garner the support of the press. Emergency led to three things, "Firstly the influence of pachyderms declined. In 1977, there was a general feeling that the major dailies had let the country down by supporting the dictatorial government of Mrs Gandhi. Secondly, the emergency created hunger for a new kind of news. The news that went beyond the blended official statements and dug out what was really happening is investigative reporting. Thirdly, as the papers went into decline in the immediate post-Emergency phase, a new crop of slick, professionally produced magazines mushroomed to take their place".

[7] Shorie, Arun (1978). Symptoms of Fascism: New Delhi: Vikas Publishing House Pvt Ltd.
[8] Pandey, J.N (2006). Constitutional Law of India. Allahabad: Central Law Agency.

(2) Arun Shourie

Arun Shourie can be called the real product of emergency in the field of media. He is considered as the father of investigative journalism in India. Shourie used both newspaper and books as the medium to investigate important and challenging matters. The best thing about the Shourie brand of investigative journalism is that it believes in meticulous research of the documents or available material. It is on the basis of these documents that Shourie was able to expose many wrong doings of the regime.

In the beginning Shourie was encouraged by his organization but eventually he was fired for his courageous style of writing. Shourie started his journalistic career by writing opinion pieces for the magazine India today. Shourie was hired by the owner of the Indian Express, Mr. Ram Nath Goenka, as an executive editor. Goenka later came to know about the superb journalistic skills that Shourie possessed. Shourie did not change much in the Indian Express. The single significant thing he did was that he called his journalists to investigate every bureaucratically given information.

Shourie exposed A R Antulay the then chief minister of Maharashtra in 1981. Mr. Antulay was involved in corrupt practices. He was allotting cement quotas to builders in lieu of some contributions towards the trusts that he had founded. He had to resign after the stories about him were reported. Another important story done by the Indian express under Shourie was about the flesh trade in Madhya Pradesh. The story was broken in1981.The reporter Ashwini Sarin,[9] exposed the flesh trade racket by buying a girl named 'Kamla' for Rs. 2300(Lakshman (ed.), 2007). Writing for 'The Illustrated Weekly of India' in 1985, Malavika and Vir Sanghvi highlighted the impact of Shourie on indian journalism.

According to the writers, "Arun Shourie had an impact on Indian journalism that few will be able to equal. Firstly, he found the power of the newspapers: if you have a story on the front page of every one of your editions when parliament is in session, then the government has to take notice. Secondly, he showed journalists how to push themselves, how to always investigate further and to document everything. Thirdly, he became the first Indian journalist to become a nationally respected figure and thereby attested the entire perception of journalism as profession". Shourie after his term in the Indian Express, could not keep his job intact for a long time. Shourie had to resign for his courage and brave ideas. Shourie after his newspaper work started writing books in order to investigate important matters of public concern which again became a great success.

According to Martha C. Nussbaum, "Shourie has been a prolific author. All his books are recognizably the creation of a smart, determined muckraking journalist. They are polemical, ad hominem, often extremely shrill in tone." She further writes, "The books written by Shourie are obviously the work of a brilliant man, with wide if idiosyncratic learning, a passion for freedom of speech and press, and a desire to get beneath current events to address underlying issues."

The two important booksthat bring out the important elements of Shourie's journalism are 'Symptoms of fascism' and the other 'Worshipping False God'. Symptoms of fascism bring out the "abuses of power" at the time of emergency. Shourie in his 1978 book 'Symptoms of Fascism' seems to be hardly impressed with the press ofthat time. An important issue regarding the deaths of hundreds of young men and women in alleged encounters in Andhra Pradesh was given little importance by the press. Shourie and eight members of his team investigated the matter and came up with two interim reports namely 'Encounters are Murders' and 'The Killing in Guntur'. According to Shourie, "press did not follow up work on its own. A couple of investigative reports and that is all. Contrast this with the space and effort it devoted to the Nanavati murder case some years ago and to the Vidya Jain murder case more recently." (Shourie, 1978, 322) It proves that sensationalism has always been present in Indian media and is not a recent phenomenon.

Shourie also have an activist zeal and believes that change can only happen when every citizen contributes towards it. With his investigative works

[9] Ibid.

Shourie also tried to educate and forewarn the citizens about the dangers of dictatorship and authoritarianism.

(3) Chitra Subramaniam

Chitra Subramaniam is one of the most renowned investigative journalist in India. Famous for her meticulous investigation of the Bofors-Indian howitzer deal. Chitra started her journalist career by reporting in India today (news magazine) in 1979. After this she moved to Switzerland in 1983. Chitra was in Greece as a united nation (UN) correspondent when she came to know about the Bofors pay off through radio. A foreign radio station can be given the credit for the most important investigative story in the history of Indian investigative journalism. The Swedish radio broadcast claimed that AB Bofors paid money to key Indian policy makers and top defense official to secure the deal. The news of this broadcast was first reported by Chitra Subramaniam for 'The Hindu' (newspaper). With the assistance of 'The Hindu' newspaper and its editor N. Ram she was able to unearth important secrets regarding corruption in the Bofors deal between India and Sweden. Colombia school of journalism has rated this story as one of the best among the hundred best stories. This story of political corruption which started on 16 April 1987 is still in news and has not reached the conclusion. In her book "Bofors: The Story Behind the News" Chitra Subramaniam gives the complete story of the Bofors scandal. This volume is significant because it disputed the official version. It is able to establish the truth with the aid of proper investigation and documents. It was an international scandal involving Sweden, Switzerland and India. The script brings out all the subtle nuances regarding this scandal at a single post. It can be called a genuine work in the area of media history.

In the area of investigative journalism this case brings out the importance of two issues. The first is the role of whistle-blowers and the second is the importance of documents. In the words of Subramaniam, "I would have had no story to narrate-and no document to back that story without 'Sting' my principle source in Sweden".Sting provided Subramaniam, "300 documents that established massive fraud in the Bofors-India howitzer payoff scandal. Among them were bank documents, credits slips, payment instructions from Bofors to the banks in Sweden and Switzerland". It can be stated that this scandal could only be unearthed due to the aid of the whistle-blower and diligent work of investigative journalist. In this story documents played an important role. All kinds of papers related to the case were studied in order to determine the truth. In the words of Subramaniam, "Nothing connected with the story was ever thrown out and the early notes, doodling, and first drafts ofstories soon grew into a large pile". In this case government of India tried its best to cover-up the whole case. In those days there was no 'whistle-blower act' and 'right to information act' in India. One significant impact of the probe was that due to it Rajiv Gandhi government lost the elections (1989). The work of Subramaniam proved corruption charges against the government. A single journalist brought down a mighty but a crooked regime. It can be summed up in the words of Subramaniam, "My phone rang off the hook with friends calling from India. 'Your stories sealed the fate of his government" said Indian journalist Vir Sanghavi.

Chitra Subramaniam wrote another book called 'India is for sale' in 1997. It contains nine satirical essays. These essays highlight the corrupt practices in Indian political organization. Subramaniam herself states that the reason and crux of the book was that "If I were to tell you something about this book in a few words, I'd say it's a little about growing up pains and a lot about those needless pains that plague you when you refuse to grow up. It is about asking the Vedas to decipher your past and the World Bank to predict your future while your present falls apart in front of you. It's about behaving like an irresponsible adolescent at 50" (Subramaniam, 1997, 3). This book was written in[10] 1997 when India turned 50. This book takes account of the challenges and failure that India faced till 1997. From the starting till the end, she maintains the muckraking and the satirical tone in her writing. She is critical of our politicians who have little knowledge regarding the economic matters. Subramaniam uses very strong words while mentioning the understanding of our leaders in economic matters. According to

[10] Nussbaum, Martha C. (2008). The Clash Within. United States of America: Harvard University Press.

her, "Davos is a big showroom where you display your country, your industry, and your services.... To this forum India sends politicians who are armed not just with their ignorance of Indian and international politics but also long list of complexes..... No other country's politicians beg for money from one side of the mouth while criticising the ways of their donors with the other as our politicians do". In the essay 'Intellectual Singh Paperwala' Subramaniam criticises the pseudo-Indian intellectual who is not aware of the real challenges that the country is facing. "In other parts of the world, intellectuals come from allsections ofsocieties. In India they come from circles so closed and incestuous that ultimately, they become irrelevant to the country's needs". The book is autobiographical in nature and "the situation drawn in this book are from real experience, the name and characters portrayed are the product ofthe author's imagination". It seems Subramaniam have used this device in the book in order to uphold the privacy of people she has written about.

(4) Mathew Samuel and use of technology in investigative journalism

The basic tools for print reporters are the pencils and notebook and for television reporters are camera and videotapes. Due to the technological innovation in present times, we are witnessing the rising importance of the new technology. This new technology has changed the way in which investigative journalism is being conducted. Undercover investigative reporting has become the new form of broadcast reporting. This has become possible due to miniature audio and video technology.[11] Today a reporter can enter any place. For instance, WikiLeaks (wikileaks.org) proved the fact that even the privacy of the most powerful nation (USA) is not secure.

The use of technology has started a debate regarding the privacy laws. The focus now is on the practices of investigative reporters and their use of hidden cameras instead of the information that has been uncovered. 'Food Lion' case is an important example. In this case, the court found[12] that ABC News was guilty of using fraudulent tactics when going undercover with a hidden camera to investigate the reports of unsanitary conditions in a local Food Lion supermarket. As the result of the Food Lion verdict, many new organizations have modified their use of undercover reporters and hidden cameras. Indian courts have taken the side of the undercover journalists as privacy laws are still at a nascent stage. The judgement of the Delhi High court in the 'Aniruddha Bahal v. State' case has supported the undercover journalism in order to unearth corruption. The following quote from the judgement, " I consider that in order to expose corruption at higher level and to show to what extent the state managers are corrupt, acting as agent provocateurs does not amount to committing a crime" brings out the Indian position. In India, Tehelka sting is one case where the matter of technical usage and privacy came into conflict for the first time. It seems that sting as an investigative tool that has been institutionalized in India.

The book named "Tehelka as Metaphor" by Madhu Trehan tries to bring out the truth of this sting. In March 2001, the website Tehelka broke "Operation West End", the biggest sting operation and undercover news story in Indian journalism. Tehlaka's reporters infiltrated the Indian government, bribed army officers, and gave money to the President of the ruling party. This eventually forced ministers to resign. In a rigorously researched and searing authentic account of the Tehelka expose' and its aftermath, Madhu Trehan did a forensic study of the imperative at the root of it, the characters and heroes and villains of the Tehelka sting operation story, and of how the system got back: by obfuscating, by attempting to destroy Tehelka and its investors. The book brings out the point that how the government used instruments of democracy to destroy the investors without leaving any footprints. In the style of Rashomon, the Tehelka operation story is related by numerous participants of the same incidents and, of course, none of the stories tally . This level of uncertainty is always attached with stings.It can be called the "Rashomon" effect. During the Tehelka sting operation the most important work was done by a lesser-known journalist called Mathew Samuel.

[11] Nayar, Kuldip (2012). Beyond The Lines: An Autobiography. New Delhi: Roli Books.
[12] Tully, Mark (2002). India In Slow Motion. Great Britain: Penguin Books.

Mathew Samuel is a Delhi based investigative journalist. In the beginning Samuel worked for Mangalam newspaper and Midday for a short period. He then worked as an investigative journalist for a dot-com company called Tehelka, which means 'sensation'. Samuel and Aniruddha Bahal together took part in the sting operation "Operation West End". This led to the resignation of the ministers of the national democratic alliance and it nearly brought down the government of India in 2001.This sting operation was the brain child of Mathew Samuel. According to him: "We began by creating fake brochures for a fake firm in London,[13] ostensibly dealing in equipment for the armed forces. We called our firm Westend. We printedvisiting cards and began by meeting people in the bottom rung. We told them we had a product – handheld thermal imagers – that could be of immense use to the military. We paid money at every level and worked our way up to several officers in the defence ministry. The entire operation lasted eight months. We could have gone even farther but for the lack of resources. We were also scared that our bluff will be called if we kept pushing our luck."One hundred and five (105) tapes were recorded by the Tehelka team and most of them were done by Mathew. It is strange that Tehelka sting is known by Tarun Tejpal, who did the little investigative work. It seems that he was not able to market himself like Tarun Tejpal, who started a weekend newspaper, Tehelka. In an interview to Madhu Trehan the failure on his part could be understood.

Madhu: "But Samuel, if you had given interviews and let people take your picture, you would have also become a star."

Samuel: "I never need like that, one thing. I never want to be celebrity, or anything. I have my own limitations. I'm warring. I'm not like an order of the day, anywhere. I'mworking like that. I got many crawls now also to give interviews. But I refuse to give interview."

Journalists like Mathew Sameul seem to be misfit in the market driven media. Marketing and public relations have become the inseparable part of media. The inner core is being neglected. There are very few journalists who want to stay with the story after the initial expose'. The case of Mathew Sameul is important because he was neglected by his fraternity and punished by the state against whom he acted. The good thing is that Mathew has broadened the space for investigative journalism in India.

(5) Important Reasons for the Later Development of Investigative Journalism in India

Investigative journalism in India is not growing at a steady rate. In comparison to America and England we are lagging behind. Investigative journalism in India is a very recent phenomenon. The investigation of Bofors guns was the high point in the late eighties. The use of new technology has its benefits, but technology cannot replace the thorough investigation required for investigative journalism. This part attempts to point out the causes for the delay of investigative journalism in India. It will also elaborate the reasons for slow growth of this trade.

Development Journalism and Lack of Competition[14]

After independence the journalists[15] in India spent most of the time on development stories. The journalist felt it was their duty to propagate the policies of the state. One important reason was also the charisma of Nehru who was able to charm the media. Thus, an atmosphere was created in which media started respecting the authority. There were very few journalists who played the role of watchdog. The other reason for the slow growth after Independence is lack of competition among the leading newspapers.

Political Pressure

In India media was never free. Our leading papers have always been owned by the industrialists. The

[13] Lambeth, E. B (1990). Waiting for New St. Benedict: Alasdair MacIntyre and the Theory and Practice of Journalism. Retrieved from http://www.jstor.org/stable/27800034.

[14] Nayar, Kuldip (1977). The Judgement: Inside Story of The Emergency In India. New Delhi: Vikas Publishing House Pvt Ltd.

[15] Jeffrey, Robin (2000). India's Newspaper Revolution. New Delhi: Oxford University Press. Lakshman, Nirmala (ed.) (2007). Writing A Nation: An Anthology of Indian Journalism. New Delhi: Rupa & Co.

politicians were able to influence the owners of media. Indira Gandhi said about press, "How much freedom can the press have in a country like India fighting poverty, backwardness, ignorance, disease and superstition". She then "answered her own question by making it clear that the less freedom the press had, the better it was, in her book" (Malvika, Sanghvi). In Indian context the state has always tried to keep its control over the press.

Legal Causes for the Late Development of Investigative Journalism in India

In India, after independence the government kept strict control over the official information. The law of Official secret act was used to prevent a citizen from scrutinizing official information. This also prevented journalists from working on investigative stories. The scenario changed in June 2005 with the passing of 'Right to information act. The Passing of this act has given a solid advantage to investigative journalism.' Watergate' and 'Bofors' both happened with the help of the whistle-blowers called 'Deep-throat' and 'Sting'. In India for more than sixty years there was no whistleblower act. In India this act has come into form only on 9 may 2014. These two laws are decisive for investigative journalism. In India the rightof freedom of speech and expression is same for all. The journalists working under difficult situation should be considered for some special rights.

Commercialization in Media

In the present-day media has become a big industry. The most important[16] goal of media industry is to earn profit. It is indulging in activities like paid news. "It is a scandalous phenomenon in Indian media, in which mainstream media (with a few exceptions) was found to be systematically engaged in publishing favourable articles in exchange for payment". In such a scenario it is difficult to think about the growth of investigative journalism.

(6) Conclusion

In India it has taken a considerable time for the establishment of investigative journalism. This journalistic genre is practiced by very few journalists in India. The journalist involved in investigative journalism face political, legal and fiscal obstacles. The work and times of the four important journalists discussed in this paper, gives us an opportunity to understand the history and development of investigative journalism in India. In India [17] it is by the effort of few individual practitioners that investigative journalism has become a respectable, coveted and distinct genre of journalism. The state of investigative journalism in India[18] can best be understood by Alasdair Macintyre's approach, who has described how social practices develop and persist overtime. Social practice according to Macintyre[19] is "a coherent complex cooperative human activity in a social setting. He says members of practice obtain goods that are specific to the practice by carrying out activities in pursuits of standard of excellence. Macintyre further argues that a social practice is sustained and indeed progresses through the efforts of practitioners to meet and extend the practice's standard of excellence." (Aucoin, 2005, 5). In India we find that journalists have on their own made efforts and have exercised courage, justice and honesty. According to Macintyre, "They are acquired human traits the exercise of which contribute materially to the development and extension of practices" (Lambeth, 1990). In India the journalists on their own are developing the field of investigative journalism but they are not able to develop powerful institutes for sustaining the practice like IRE (Investigative Reports and editors) and CIJ (Centre for investigative Journalism). The real growth as argued by Macintyre can happen when both institute and journalists are strong.[20]

[16] Malvika & Sanghavi, Vir (1985, November 10). The Typewriter Guerrillas. The Illustrated Weekly of India. Retrieved From http://www.cscarchive.org.

[17] Aucoin, L. James (2005). The Evolution of American Investigative Journalism. University of Missouri Press.

[18] Thakur, Janardan (1977). All The Prime Minister's Men. New Delhi: Vikas Publishing House Pvt Ltd.

[19] Lambeth, E. B (1990). Waiting for New St. Benedict: Alasdair MacIntyre and the Theory and Practice of Journalism. Retrieved from http://www.jstor.org/stable/27800034.

[20] Subramaniam, Chitra (1997). India Is for Sale. New Delhi: UBS Publishers' Distributors Ltd