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MESSAGE

Vitasta School of Law, Nowgam deserves appreciation for regularly publishing its annual journal under the name and style of Vitasta Law Journal (VLJ). The journal is of high caliber and would be of immense help to the students, research scholars, law teachers, lawyers and social activists. The present volume of 2017 of the journal contains research papers of great social relevance as these touch upon the role and performance of police, the newer kinds of crime such as cybercrime and the role of information technology in the investigation of crimes. The social contract of India guaranteeing religious freedom to all and protection given in particular to minorities in this behalf has been analysed.

I wish the journal a success.

Prof (Dr.) Mehraj –Ud –Din Mir
Vice Chancellor
The Central University of Kashmir

Editorial

It is a matter of pleasure to present volume 7 of our annual research product, 'Vitasta Law Journal' (VLJ) to our esteemed readers. It also gives us satisfaction for having been able to maintain regularity in the publication of this journal.

It is disheartening to notice that even in the present times of globalization and enlightenment, which should have broadened our vision as well as enlightened our thought the communal tendencies in India have not receded. Naked interference into matters of faith of the people in the name of 'protection', have created an atmosphere of scare where minorities feel betrayed and insecure. The constitutional imperative of secularism is dwindling on account of glaring attempts to make inroads into this constitutional imperative. It seems to have shattered the trust of the people of different faiths in constitutionalism as they find lack of security for the social contract that they relied on since the days of independence. This issue of immense social relevance has been analyzed in the present volume of VLJ.

It may not be out of place to mention here the distinction between the 'social morality' and the 'constitutional morality' drawn by the Supreme Court in the most recent case of *Navtej Singh Johar* v *UOI* (judgment delivered on 6TH September 2018), legalizing homosexuality and the approving and appreciating sexual orientation, is likely to raise questions of social survival and solidarity.

In India crime is on a rise, be it the traditional crime or the modern cyber crime. This is particularly true of crimes against women where we see rape and murder becoming an everyday affair despite the recent enhancement in its punishment. Acid attacks continue to deface and destroy the females and hate crime is growing, sowing the seeds of social disintegration. These issues of immediate social relevance have been thoroughly discussed in the present volume of VLJ in a historical perspective with a comparative approach.

Crime investigation has suffered from many weaknesses in the past resulting in dismissal of prosecution cases. Now, new approaches and mechanisms, with the help of modern technology, have come in vogue, which, if adopted and applied judiciously, would be of great help in the process of administration of justice, leading to eradication or at least reduction of crime from the society. It is hoped that the police and other related crime investigation agencies in India would take full advantage of the modern methods of investigation without violating the fundamental rights of the accused and within the parameters of judicial prescriptions. This would not only speed it up but would also improve the investigation with better results. Hence, the role of police in the process of investigation becomes crucial. The improved and efficient investigation would also help the judiciary in its task of administration of justice, which could attain speed

and sustenance. These issues have been discussed in the present volume of VLJ in a historical perspective, in the light of statutory provisions and the judicial law. The issues are discussed in a comparative manner.

The editorial team of VLJ deserves appreciation for their tireless efforts in reaching the journal to its present form. The support staff of the law school gave its unstinting co-operation and assistance in making this publication possible. The directorate of the law school was magnanimous in extending financial and other support without which VLJ may not have achieved its fruition. It is hoped that the journal would be helpful to students, researchers, lawyers, teachers and the law makers.

Any suggestions from our esteemed readers would be appreciated as the same would help us in further improvement of the publication.

Prof. Dr. Ali Mohammad
Matta
(Principal)

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Prof. A. M. Matta

Abstract

In terms of its population India is the second largest country of the world, wherein a mixed populace of Hindus, Muslims, Sikhs. Bodhs, Parsis, and Christians - having different faiths, religions, languages and cultures, have lived together for centuries in a largely peaceful and harmonious atmosphere. The social and economic disparities have lived with all sects of Indian population and the efforts of different governments from time to time, in eradicating poverty and other forms of social inequities have largely been peaceful as these efforts rarely aimed at making blunt dents in the social structure based on the social contract to which adherence is always imperative in secular societies. Legislative measures to improve the condition of farmers immediately after Independence of the country followed by various labour welfare schemes and laws, the streamlining of the penal laws and the utilisation of tax laws for the benefit of the people did a great service to the society in its development, without destabilising the secular basis of the country. Democracy and secularism, as the foundation stones of the Indian constitution were largely adhered to. Democracy provides a constitutional process for social change but secularism is the foundation and the philosophy for the Indian multi-religious society on the anvil of which all constitutional changes shall be tested. The attempts being made, by the present political dispensation of the country, to meddle with the religious matters of minorities by denying them the freedom to profess, practice and propagate their religious faith, are fraught with danger of destabilising the society. All such attempts to meddle with the religious faith of minorities violate the basic tenet of religious freedom mandated in its preamble and guaranteed as an enforceable right under part IIIrd of the constitution. Such attempts shall have to pass the judicial scrutiny, as the custodian of the constitution.

Key words*: Social contract, Society, Secularism, democracy, law*

INTRODUCTION

In their process of development Law and Society go together hand-in-hand except where one is deceitfully made to betray the other. They reciprocate each other's

efforts in obtaining an orderly and peaceful society necessary for a smooth process of development. This happens in all civilized and progressive societies to which India is no exception, where law has served the purpose of a vehicle for economic and social development.

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After independence the immediate task for the national leadership was to frame the policies and prepare a road-map for the country for its future development. Its political, social and economic goals were determined. It was resolved to work for India to be a nation where all sections of society would have equal opportunities for their development- social, economic and political. The economic and social disparities within the society were sought to be removed through various legislative measures, such as compensatory policies without impairing the religious and cultural rights of the minorities. The constitution was adopted after protracted deliberations, in the form of a social contract between different groups of people in which due care was taken of their needs and aspirations. India was constituted into a Sovereign, Socialist, Secular, Democratic Republic, where basic rights of the people were guaranteed and made enforceable through courts of law. **Socialism, secularism** and **democracy** thus constituted the foundation of the social contract between different religious groups of the society and the independent judiciary, as the repository of the people's trust, became its custodian.

It is likely that in the performance of its ever increasing administrative functions the government may face limitations put in place under the constitution in terms of the inviolable guarantees given to its citizens. In such situations of conflict between the powers of the government and the rights of the people the courts have to remind the government of the constitutional limits within which it has to function. A proper balance has to be maintained between democracy and secularism so that the populist approach, coloured as democratic, does not demolish the secular basis of the society on which it is founded.

The post independence era saw some dramatic changes brought in the society through the instrument of law. After independence the policy implementation began in right earnest. The agricultural economy of India survived for some years after which the thrust was shifted to industry. Some of the pressing social and economic issues that faced the society during this period were resolved through legislation, which saw *zamindari abolition* as a big relief to the farmers and labour welfare laws to redress the grievances of the labour so as to better their socio-economic condition. The policy of protective discrimination was adopted as a soother to the weaker and neglected sections of the society to help them improve their condition- socially, economically and educationally. Although the relief through protective discrimination was meant specifically for people belonging to Scheduled Castes and Scheduled Tribes, the state was empowered to make special

provision also for women and children, who were prone to exploitation because of their inbred weakness. The laws governing the other spheres of life, such as the law of crimes, laws for the welfare of women and children, laws governing the use of science and technology and the laws of taxation, were utilised purposefully to safeguard the social interest and remove the social and economic disparities among the people and establish an orderly and peaceful society necessary for future development. The implementation of these policies did show some good results, but not without dissatisfaction and dispute for which the courts had to be called in for resolution.

These policies ran largely smooth as long as these were applied in an open and unbiased manner, for the benefit of real deserving people. The minorities were not averse to these policies of protection and social development as long as their right to freedom of religion was protected by the state. The situation appears to have taken an ugly turn as some recent averments and actions at the hands of present political dispensation intrude into the religious freedoms of Muslim minority in utter disregard of the social contract enshrined in the constitution as its basic structure. The present day growing communalistic tendencies are in no way in accord with the spirit of the constitution. The governmental policies appear to throw constitutionalism to winds by pursuing policies that are non-secular, fraught with the danger of social disruption and disintegration. These disruptive policies need to be checked if India has to stand as an emancipated, secular and democratic country governed by the rule of law rather than by parochialism and the religious fanaticism of the ruling class. It may be reminded here, that the demolition of centuries old Babri Masjid on 6th December 1992 had cost the BJP its governments in four states where they were then ruling as the Supreme Court had held that these governments had acted against secularism, which was a basic feature of the constitution.

LAW AND SOCIETY—THE MEANING

The expression ‘Law and society’ involves two great institutions viz., “law” and “society”. The two words used in the expression carry their own independent meaning, standing for two great institutions but the two have to be understood in the sense and in the perspective they reflect when used in combination with each other. Used in combination, the expression requires not only the study both of the institution of ‘law’ and of ‘society’, but also their interrelationship, their inter-dependence and their reciprocity of influence in the process of their evolution. Law, for that matter is, in brief, a code of conduct laid down for human behaviour, aimed generally at the disciplined, peaceful and targeted development of the society. Society is by and large defined in terms of the relationship under which a

large group of humans live together. Admittedly, society is a vibrant institution with an ever-changing web of social relations. This relationship may be economic or political in the least but it is always grounded in mutual recognition and there has to be something held and shared in common among the members of the society. Putting the two words, “law” and “society”, together has a special significance, as it involves law as an instrument of social change and the society as a growing organization, which, in its process of growth, uses law to steer it towards the predetermined goals of development. Thus, in the process of their development, within the basic constitutional framework, the two play a complementary role and grow in mutual understanding and reciprocity. The two also impact each other in the process of their development.

The significance of the two and their interdependence is well understood when we study a particular society at various stages of its development. Take for example India where in times of agricultural economy, men used to work in the field while women looked after the household. It was considered a breach of the social norm--based on culture, to send women out for work, although their participation in work at the paddy fields of their husbands was not an affront to the cultural ethos. Education, to whatever little extent available, was confined to men alone. Women were, generally, prevented from social interaction and were largely confined to their homes. Gradually this conservative scenario changed during the mid-twentieth century till a complete social transformation took place in the beginning of the twenty first century where men and women began to share responsibilities together in almost all walks of life. Now, education is no more a monopoly of men, women give them a tough competition in this field. Women work shoulder to shoulder with men not only in paddy fields but also in other spheres of human activity such as industry, corporate sector, educational institutions, health care, entrepreneurship, institutions of science and technology, space exploration, police, armed forces and para-military forces. In this process of transformation the instrument of law has been successfully used in opening up equal opportunities for women in the process of their development. Similarly, in the field of politics also women have achieved great heights by reaching the highest political positions. Their mal-representation in political institutions was sought to be rectified by reservation of seats for women in the state and central legislatures of the country. Unfortunately the proposed Women’s Reservation Bill, which has already been passed by the Rajya Sabha on 9th March 2010 has been stalled for more than eight years and is expected to be tabled in Lok Sabha in the Mon Soon Session of parliament beginning on 18th July 2018. Hence, it is through the instrument of law that these achievements in social reform have been made possible, without impairing the balance between democracy and secularism.

In its beginning, the determinant factors in the growth of a society have been its

immediate needs and requirements and in the determination of their needs and requirements religion and philosophy have been of great influence. Religion and philosophy have also helped the early societies in selecting their developmental goals as also the roadmap suitable to achieve them. In modern secular societies the religion has lost much of its lustre in public life resulting in its relegation to secondary levels. It has now been confined to the personal and private life of an individual. Philosophy also appears to have lost much of its ground to realism. On the contrary law, in its secular manifestation, as an instrument of social change, has assumed a key role in almost every aspect of modern complex political, economic and social life. Hence, the society, for its sustenance and development requires law as a guide for achieving its social, political and economic objectives. The law moulds itself in shapes suitable for catering to the changing needs and aspirations of the society. In this way the two grow in a spirit of reciprocity and co-operation as long as the basic values of the society including secularism remain unimpaired.

RELATION BETWEEN LAW AND SOCIETY

For a meaningful discussion of ‘law and society’ one needs to understand the different aspects of the meaning that the concept involves. One aspect is the relation between the ‘law’ and the ‘society’; second is their interdependence and the third, their influence on each other. The two stand in a close relationship as they supplement each other in the process of their growth. They are interdependent in the sense that the positive law has no application in the absence of a society. Conversely, the society would be unguided and uncontrolled, like in its primitive stages, in the absence of a legal system and would, in the modern parlance, be ridiculed as a lawless society. The primitive man, unaware of social life, lived in caves and was the unfettered master of his will. Now that stone-age is long lost. Man has grown social where he respects society and the society reciprocates by giving him protection. His relation with the society is governed by the code of conduct or the social contract evolved by the society with mutual consent. This code of conduct has now taken a constitutional form reflecting the social aspiration and commitment for a peaceful achievement of its goals through the agency of state. Since the social goals are ever-changing, law has to constantly reshape itself for leading the society towards the newer goals. Consequently, the two work in close coordination in a spirit of mutual respect in their march forward. In the context of a multicultural and multi-religious country like India the ultimate success of law in the peaceful transformation of the society would depend much on whether it is being used in a spirit of faithfulness to the basic value of secularism or is thrust upon the people as a majority rule, the minorities being not only neglected but also forced to surrender and submit. The latter situation reflects

parochialism rather than emancipation, which results in social conflict leading to degeneration of the society. The social contract theory happens to be very old but it never lost ground to modernity. Disregard for social contract has resulted in the fall of powerful governments such as the downfall in 1975 of Mrs Indira Gandhi, the most powerful prime minister of India. At the root of social contract, as political theory, is that no man can be subjected to the political power of another without his consent. Obedience to authority is thus legitimated by voluntary submission to those who exercise authority.

In modern times almost all areas of human activity have been brought under legal regime so as to guide them in a socially purposeful direction. Laws were promulgated to discipline various economic, trade and political activities and safety of the person and property of the society was ensured through a set of stringent criminal laws. It is not within the scope of this paper to discuss all the laws which were aimed at social welfare from time to time, only a few of them shall be discussed here for the purpose of explaining the relation between law and society in their quest for peaceful development.

The changing nature of the law and the society can be vouched by the study of any society in its formative and its developmental stages. Independent India, at its birth in 1947, had to face many challenges in its mission for equity, peace and development. These challenges were sought to be overcome through policy planning. The instrument of law was used, inter alia, for the common objective of social development, without impinging upon or compromising the secular basis of the society. An instance can be taken from the ancient agricultural economy of India where land lords exploited the agricultural labour, by denying them a fair deal. Ironically an agricultural labourer, being the real producer of grains, got in return, grains not enough to feed his family. The poor labourer, in his simplicity, took it in its stride, as his destiny. This was a state of exploitation, which reduced the labour class to a pitiable naught. The situation was sought to be rectified by invoking the state powers including the power of eminent domain. Law was faithfully used in good spirit to protect the interest of the agricultural labour by bringing in several agrarian reforms in many states of India, the *Zamindari abolition* laws being the major ones during 1950s However, the condition of agricultural labour has not improved in India to the desired level.

The post-independence era witnessed a shift in Indian economy towards industry. All avenues were geared towards industrial development for which law was used as a vehicle. Although the object of gradual strengthening of the industrial base of the country was achieved the condition of the industrial workers remained pitiable for a long time. They had to toil long hours without adequate returns. Their working conditions were deplorable, exposing them to grave risk of health and life. Women workers were the worst sufferers as they were exposed to most deplorable

work culture and risky working conditions. Added to this was the disparity in wages as women workers were paid much less than the men, for the same work. Children of tender age were not only put to work but were even employed in hazardous industry in gross violation of human rights, away from the culture of education and nourishment. These inhuman labour practices were an affront to the social ethos and a threat to social justice. It failed the nation in its constitutional vow to strive for a prosperous egalitarian society. Gradually, through a barrage of labour welfare legislations, the situation was greatly retrieved. Collective bargaining through trade unions greatly contributed in bettering the condition of the industrial labour. The industrial indiscipline and exploitation of labour was sought to be arrested through legal measures for obtaining industrial peace and economic justice. The safety of the industrial workers has now been ensured. Child labour has been prohibited, particularly in hazardous industry and during night. In the non-prohibited areas of employment the conditions of work for children have been regulated. The contract labour, which was responsible for much of the labour exploitation has now been abolished in respect of the notified categories and regulated in respect of other categories. Social security schemes have been put in place such as the employer aided insurance for employees and bonus payable by the employer. The employer aided provident fund with provisions for Employees' Pension Scheme and Employees' Deposit-linked Insurance Scheme has been put in place. Maternity benefits for women workers have been made available. The disparity between the sexes in respect of their remuneration for work has been removed. Bonded labour, used as the worst kind of human exploitation, has been abolished. Mining, which was notorious for taking many lives due to deficient safety and security for its workers, is now safer as many safeguards have been put in place for the protection of workers in mines. Gratuity is now payable to employees. Thus different methods of labour exploitation have been put under legal control. These legislative reforms for labour welfare had no anti-secular overtones and were whole heartedly welcome by all segments of the society. India's huge size and its burgeoning population have thrown many serious challenges to its political leadership. The disparity in the social and economic structure of the society glares us in our eyes. Even after seventy years of independence social and economic parity is far from a reality. The masses remain steeped in poverty with little hope of their economic and social improvement. The caste based social stratification among the majority Hindu religious community in India has been the major cause of social inequity. Removing these caste based inequalities from the face of the society has been a daunting task for the policy planers. Various legislative measures were initiated to reduce the gap between the people of various castes. Reservations were made, in the lower houses of both the state as well as the central legislature, for the people belonging to Scheduled

Castes and Scheduled Tribes, who constitute 25% of the country's population. Reservation was also made for them in services and posts. The constitution also empowers the state under Article 15 (3) to make special provisions for the betterment of women and children who are prone to exploitation on account of their weakness. Such benefits were subsequently extended, fractionally though, also to other socially and educationally backward classes (OBCs) of the society within the purview of Article 15 (4) of the constitution. Legal aid and assistance schemes were adopted for the poor enabling them to effectively defend their rights. These measures have succeeded but partially in removing the gap between the rich and the poor. Such measures would succeed only when their benefits reach the deserving people without exploitative and abusive practices based on petty political and other considerations. Our politicians need to shun their parochial outlook while framing developmental policies aimed at achieving the broader social objectives rather than the myopic objective of securing the vote bank for them. The policies should reflect secularity if a prosperous and egalitarian society is to be achieved. It is pertinent to mention here that the affirmative action is no more considered as a matter of grace on the part of the state nor is it any more treated as an exception to the fundamental right of equality but is treated as an integral aspect of it. Hence, backwardness could not be related to caste alone but other factors viz., economic and educational, could equally be the other relevant factors for determining backwardness. It may not be out of place to mention here that a huge mass of reports from various expert committees underlining the need for educational and economic improvement of Muslims in India has accumulated but not enough is being done in this regard. As a result the potential human resource remains undeveloped and untapped, depriving the country of the effective tool of education for use in addressing many questions of social relevance. Art 21-A has been inserted in the constitution as a fundamental right of free and compulsory education for children in the age group of 6-14 years. A consequential legislation in the form of Right of Children to Free and Compulsory Education (RTE) Act, 2009 has also come into being. It is to be seen as to how these legislative measures are directed and implemented towards improvement of the educational, social and economic condition of Muslims.

In civilized societies, the interplay of law and society is imperative for ensuring safety and security of the person and property of the people. For this, there have to be stringent laws against crime. In India too, the penal code has made socially harmful behaviour punishable. This was necessary for obtaining a peaceful, safe and orderly society. However, like other nations, India too had only a partial success in this endeavour. Although recent spate in sexual crimes forced the state to add more teeth to the law against crime, crime could not be abolished nor could criminals be deterred. The policy of soft sentencing is probably one of the causes

for unabated crime. The other causes include poverty, inefficiency in crime investigation, corruption and politicization of crime. The crime against women is not a new thing, particularly in India, where women have traditionally remained at the receiving end. Ignorance has denied them the position of equality and placed them abysmally low in the social set up. They have faced dowry deaths due to un-satiated appetite of their in-laws for dowry. The improvement in their educational status has not helped much in changing such anti-women mindset. The domestic violence against women, by their family members and in-laws, continues unabated despite specific laws against it. Probably, it needs redoubling of efforts to protect the weaker sex from these traditional as well as the newer kinds of crime. The offence of rape culminating in murder of the victim has witnessed an upward trend in India in recent times. *Nirbhaya* case is still fresh in our minds where the victim of gang rape in a moving bus in Delhi was murdered by the rapists. This incident sent shivers down the spine of the nation, which rose in unison to demand enhanced punishment for the crime. The demand was also to lower the age for the offenders to 16 years in order for them to claim trial under the Juvenile Justice (Care and Protection of Children) Act, 2000. The mass agitation, that ensued *Nirbhaya* incident, brought tremendous pressure on the state, forcing it to add further deterrence to law against rape. This offence now carries imprisonment for a minimum term of twenty years. Custodial rape has been made severely punishable. The sexual offence of incest has also raised its ugly head, which needs to be strongly curbed. Acid attack cases were also on the rise in recent times. In order to check the incidence of acid attacks amendments were made in 2013, in laws dealing with crime, roping in the crime of causing grievous hurt by throwing acid, stalking, voyeurism and human trafficking, with enhanced punishments. However, these legal measures are bound to fail unless an impartial and rule of law approach is adopted in dealing with the crime without political or other interference. Using the law and the state machinery on selective basis is bound to be counterproductive, which will thwart every effort aimed at the eradication of crime from the society.

The impact of modern developments in science and technology has also been felt in crime detection techniques. The modern methods of investigation like DNA, Finger print etc., have been supplemented by the new scientific methods such as Narco-Analysis, Polygraph and Brain Mapping. These new techniques have given rise to many legal issues, throwing new challenges to the institution of law. In particular, these new methods of crime detection are alleged to violate the law against self incrimination for which a solution has to be found. These methods were found to have the propensity of misuse and their compulsory administration has been turned down by the Supreme Court of India as unconstitutional. Thus law has succeeded in maintaining a balance between the rights of the people and the

powers of the authorities.

The growing criminality among children is another menace, which has not left India un-infested. Dealing delinquent children with the same system of criminal law as the adults proved to be counterproductive. The atmosphere in police lock-ups and prisons, where they were lodged along with the adult criminals, exposed them to highly obnoxious culture of criminality and made them easy targets of sexual abuse. Several measures were contemplated for remedying this scenario. Resort was taken to law for a number of reformatory measures for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected and delinquent children. It may be pointed out that it is the exposure of the children to many vices, some of which have invaded us from the West that has been responsible for the growing criminality among them. The misuse of internet, posting obscene matter on social media, misuse of cell phones, big screen and small screen films, inter alia, have contributed to this menace. Since children are the future of a nation they need to be kept away from delinquent tendencies, which requires a multipronged approach to channel their energies in a productive manner, including the one for their spiritual education and education in national ethos.

The new strides in the fields of science and technology have also opened up new avenues for activities both beneficial and harmful. This has thrown yet another challenge to law. These strides in science and technology in various spheres of life have certainly impacted the two organs of ‘law’ and ‘society’ and have rendered the pace of their growth faster than ever before. Perceptible changes have been made in people’s lives through these new technologies. Trade and travel, learning, shopping, legal relations, research, engineering and health care, have all benefitted from these innovative techniques. The innovative facilitation of hassle free e-banking through new technology has been made possible. One can appreciate the change from the scenario of long waiting hours in cues for banking purposes to e-banking with ease while sitting at your place. At the same time the new technology has exposed the society to many newer kinds of crimes, i. e., cybercrime and the common man is exposed to many risks on this account. Also the banking frauds committed through internet have assumed alarming proportions. Although, the use of these new technologies has been brought under legal regulation it needs constant vigil to ensure that these ever changing techniques are prevented from misuse.

In modern times one law that has been effectively used in removing the economic disparity in the society, is the law of taxation and in particular the direct taxation. Apart from being a source of revenue for the government it has, simultaneously, been used to achieve many social welfare objectives. Under direct tax laws it is the rich from whom the tax is charged and the money so got is utilised equally for the benefit of the poor non-taxpayers. For a successful implementation of developmental policies the government declares various incentives and benefits for

those who participate in such policy implementation. Different incentives, including that of tax holiday, are provided for investments in backward areas with a view not only to foster development, but also to create jobs and other opportunities in those areas. Incentives are also provided for investment in priority sectors in order to give them a boost. Here the law is used as a device for resource mobilization for the developmental needs of the society as also a device for bridging the gap between the rich and the poor as also between the advanced and the backward areas of the country.

The analysis of a few laws above has demonstrated the relation between the law and society, the impact of the two on each other and the manner in which the two can produce beneficial results, in a spirit of reciprocity, aimed at social welfare, without being used in the negation of the basic values of the social contract reflected in the constitution, thus preventing the society from disintegration.

EXTERNAL INFLUENCES IN CHANGING LAW AND SOCIETY

The growth of the ‘law’ and the ‘society’ has also not been immune from external influences, which have increased much more in modern times than ever before. In modern times the scientific and technological advances have minimised distances, made communication and travel easier and faster. In the present day reign of openness national barriers mean very little. With the advent of internet access to information has become fast and easy. The vision media has been responsible for giving rise to a world culture where national values have lost much of their relevance. These days the societies are being governed not only by their domestic laws but also by global trends and international laws. This has resulted in changing the people’s outlook towards religious, social, cultural and moral beliefs in which the Western world has taken a position of dominance and has been able to culturally invade the rest of the world pervading almost all aspects of human life. The habits of eating, drinking, dressing, sleeping, awaking, working, studying, behaving, walking, talking, have largely changed in tune with the life in the West. Religion seems to have lost its appeal. Vulgarity, nakedness, sexual exhibitions, mixing of sexes, is considered as a high mark of advancement and is gaining popularity, especially among youth, who is vulnerable to these kinds of influences. This for the reason that their immature desires, their infatuation, their appetite for liberty and their vulnerability to the vices of absolute freedom has exposed them to the influences of Western culture. The youth is so much fascinated about the West that everything Western is embraced without realising its demerits. The Western concept of absolute freedom is the greatest attraction for them. Economic advancement is, doubtlessly, essential but the spiritual development, which has

been the hallmark of many great old civilizations, is equally important for the youth to catch the right path and steer the nation in a right direction. The great philosophers of Greece and Rome in their valued discourses emphasized the spiritual aspect of human life and so do the religious lessons of the major religions of the world, which teach and remind us not only of the material world and its development or our relationship with our human society and our surroundings but also our relation with our creator before whom we are accountable. The West has also suffered on account of liberalising the concept of freedom beyond all limits. Their family life has shattered, the number of illegitimate children is swelling, sexually transmitted diseases are rising and indecency, in the Eastern sense, is pervading. Also the disruption in the Western society on account of free sex, has given rise to cases of doubtful paternity which has, in turn, given rise to many complexities and distortions.

USE AND MISUSE OF LAW

The essence of a society is that it is not a herd of cattle but a social group of human beings who have agreed to constitute the society on certain principles. There are bound to be differences in a society without which there remains little or no scope for a social agreement. The society involves both likeness and differences. Although likeness is primary and difference secondary but differences play a reciprocal role in all patterns of social relationship. In a society the behaviour of the group is patterned and standardized so as to maintain the organization in a cohesive manner. Sociologists unanimously believe that once the essence of a social relationship is betrayed the social cohesion is lost. It needs to be realized that the regulatory principles expressed in terms of standards set up by the group for the control of conduct of its members in relation to one another and to the group as a whole are not to be *imposed* on men, because they are not like the laws that a master makes for a slave or an empire makes for a subjugated people. For the most part, they are the ways in which the group as a whole has become accommodated to the necessities and the amenities of social life, as recognized at its own level of intelligence, education and opportunity. They are changed as the group grows conscious of the need for change, rather than forcing the change on any group from outside. Unfortunately, the experience has shown that the dominant group exploits its position in either framing or changing the regulations guided by its own interest and making it mandatory for all to follow at the threat of state coercion. It is true that coercion through sanctions is necessary for order and peace but in a social set up maliciously limiting the range of choice of a group either directly, through present control or through indirect threat of evil consequences, violates the basic norm of social relationship. Order is always based on some principle and the state’s concern should be the broad social policy expressed through the given order. In the

present day context of power being vested in the state, exercise of physical force to control or prevent action is a compulsion in its purest unconditional form or what has often been termed as naked power. The real service of force is as a safeguard against attempts of exploitation of its position, restraining stronger organization from exploiting weaker ones, curbing greed, lawlessness, self-interest and intolerance. It is true that without force law is in danger of being dethroned but force alone can never keep law on its throne. Force negates the possibility of co-operation, necessary for social relationship. In most cases it is the end of neutrality. The more it is used, the more it breeds resistance-thus necessitating still more enforcement. In large societies with multiple religious communities and different cultures there are, besides the larger groups, more intensive more specialized and more limited interests which unite groups within it. There are divergent and conflicting interests which properly create their own associations. There are also interests, which unite men on a great scale but not as members of the state. To this order belong the broader cultural interests including the religions. The state is not well adapted to sponsor the more intimate or more personal interests, those which admit a variety of spontaneous and variant expressions. Most modern constitutions set limits to the things that the state can do. Generally a constitution forbids the state to require the profession of any religion of its citizens or to discriminate between citizens with respect to their religion. In doing so by the state a mere majority shall not suffice to alter these constitutional guarantees whatever practical difficulties may arise from such provisions, they surely bear witness to the intention of “the people” or the community to set limits to the place and power of the state itself.

The constitution of India documents the scheme of administration of the country based on the terms of the social contract, which was the outcome of protracted discussions and deliberations by the representatives of all the communities of India in the Constituent Assembly. The Indian State was to be a neutral body, which was forbidden from having any religion of its own or from discriminating between citizens on the basis of their religion (preamble of the constitution and articles 15(1) and (2), 16(2), (29 (2) and 325, (prohibiting discrimination in different matters on the basis of religion). Different religious groups of the society have been given freedom of religion that includes freedom to profess, practice and propagate their own religion (articles 25-28). The cultural rights of the minorities have been guaranteed as India happens to be a free, secular and a democratic state (article 30). Hence the Indian society is the outcome of an agreement where secularism and rule of law constitute the basic principles of governance. It is the respect for these basic principles that holds the society together. Any attempt to disregard and disrespect these principles is likely to shatter and disintegrate the society. This, by no stretch of imagination, serves any social or national interest.

The Supreme Court has repeatedly emphasised the basic nature of secularism and held it as an un-amendable basic feature of the constitution which cannot be abrogated or destroyed.

For a peaceful and cohesive society it is imperative that the guarantees given to the people under the founding document are maintained inviolate rather than massacred in a bid to implement some hidden agenda under the cloak of democracy. Imposing the ideology of the majority religious community is fraught with danger of disintegration. The efforts of the ruling majority to push through a Uniform Civil Code for the whole population of the country is an affront to secularism guaranteed under the constitution. The minorities consider it as a ploy for their assimilation into the mainstream majority religion in disregard of their religious faith. In legal terms it violates the guarantee of secularism contained in its preamble and the fundamental right to freedom of religion guaranteed under part third of the constitution. It, therefore, needs to be ensured that law is not used as an instrument of suppression for the numerically weaker groups of the society or as a tool for assimilation of the minorities into the majority complex with loss of their identity.

ROLE OF JUDICIARY

The judiciary as the conscience keeper of the nation and custodian of the constitution has stood to its task and prevented intrusions in the constitutional propriety from time to time. Attempts of various governments of the time to work in negation of the basic constitutional norms have been foiled by the judiciary. Inroads into the fundamental rights of the people belonging to them either as individuals or as groups, particularly those which guarantee right to freedom of religion have been disallowed. The basic structure of the constitution including secularism has been maintained inviolate by the judiciary. The role of judiciary becomes all the more crucial when the constitution, as the founding document of the nation, faces an onslaught at the hands of the executive through its politically motivated policies, disguised as democratically ensued developmental policies, detrimental to the secular character of the nation and harmful for social cohesion. In such cases the judiciary has discharged the trust reposed in it by the people and struck down such anti-social and anti-national laws on the ground of bad *vires* and as violative of the basic structure of the constitution.

In modern times the role of the state in administrative spheres of governance has increased tremendously, opening up chances of misuse of power by the people in authority. It is the judiciary, which is under a constitutional pledge to safeguard the people’s interest in such situations of abuse of power. Lord Denning has aptly remarked that there is no denying the fact that today due to the intensive form of

government, there is a tremendous increase in the functions of the administration as a facilitator, regulator and provider. At the same time there are possibilities of abuse of power by the state organs. If these new-found powers are properly used these may lead to a real socio-economic growth and if abused these may lead to a totalitarian state. This spirit is discernible in those judgements of the courts in India where they, with a view to safeguard the basic rights of the people, have struck down the executive action as unconstitutional. The judiciary has never been averse to the developmental work of the government. It has taken its hands off from the decisions of the government relating to economic policies unless the policies impinge upon the basic structure of the constitution or violate the rule of law or are arbitrary. State's function in curbing the evil has not been hampered by the judiciary, it has rather been given wide latitude in such matters. Nevertheless, the courts have interfered only when the pursuit of governmental policies is beyond the powers of the authority or is illegal. The developmental plank of the government cannot justify erosion of the basic law of the land, which has secured a place of safety and security for the minorities in the country. Development is welcome but it does not have to be at the cost of the basic values of the life in a given society. It is not the state's good intention to work for development alone that justifies its action but the good intention needs to be backed by a commitment to secularism and neutrality. The power of judicial review works as a sentinel on the *qui vive.*

CONCLUSION

People of various faiths have lived together in harmony in India for centuries in a state of peace and brotherhood, transforming the nation into an admirable position. They have stood by each other not only in the freedom struggle of the nation but also in its task of future development. All sections of the society, irrespective of their faith have supported rather than resisted the developmental plans and policies of the government. The governmental moves aimed at social justice and equity, have received social approval from all irrespective of their religion, caste or creed. The policies of support for the weaker sections of the society have been lauded when formulated and implemented in consonance with the imperatives of the constitution and in fairness to all. Unnecessary and unsolicited interference in their religious matters is something which is an affront to the people, particularly the minorities. They have offered equal sacrifices in liberating the nation from the yoke of foreign rule. At the time of independence they agreed to live together as a nation where they would enjoy freedom rather than compulsion. This agreement formed the basis of the social contract between people of different faiths in the country. All, including the minorities, were guaranteed the right to freedom of religion, encompassing freedom to profess, practice, and propagate their religious faith. This was enshrined as an objective of free India in its preamble and an

avowed guarantee under part III rd of the constitution. The minorities, nursing apprehensions about the safeguard of their faith and culture, were guaranteed the group right to preserve their identity in terms of their language and culture. With these guarantees the apprehensions of the minorities were effectively addressed giving them a sound sleep. Reservations made in favour of the people belonging to Scheduled Castes and Scheduled Tribes and later extended to other backward classes of people were largely welcome by all; *Zamindari* abolition freed the farmers from the yoke of slavery; labour welfare legislation considerably improved the social and economic condition of the industrial labour; the taxation laws were successfully used as a tool for removing economic and regional disparities; the use of science and technology was beneficially regulated. All these policy and legislative measures were beneficial to the society as a whole and had no communal overtones. However, attempts to undermine the constitutional guarantees to the people have not stopped. The recent averments and actions at the hands of the government with the object of interfering in matters of religion of the minorities amounts to gross violation of the basic structure of the constitution. It appears that the country is being ruled in accordance with the religious zeal and fanaticism of the ruling class than in accordance with the constitution and the rule of law. This has terrorised the minorities, especially the Muslims who feel like being forcibly assimilated in the mainstream Hindu culture. It is now the courts that the people are looking to as the custodian of the constitution and protector of their rights with the hope that they shall discharge the people’s trust and save the constitution from being trampled with impunity.

2. An overview of cyber crimes vs. cyber law - Indian and international perspective

Sandeep Kumar Sharma

INTRODUCTION

The advent and growth of information technology has changed the entire facet of human life. There is no gainsaying that it has made our lives easier and convenient but every coin has two sides, same is with the latest trend of information and communication technologies. We use it at the cost of being misused and preyed of fraudsters and technological stratagem. Undoubtedly, the precipitate development of information technology and the integration of computer and communication technology have made significant changes to human lives and information activities but the massive growth in technology has also provided a breeding ground for delinquent behavior. Whilst society is inventing and evolving, at the same time, criminals are deploying a remarkable adaptability in order to derive the greatest benefit from it. The enormous growth in using the internet can easily be identified with the increasing numbers of users in early 1990's less than 100,000 people were able to log on to the internet worldwide. Now around 500 million people are hooked up to surf the net around the globe. Computers and computer networks are ubiquitous and changed the entire facets of human live be it personal, social, economical, political or every facet of modern society but it also become one of the major

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*Advocate Delhi High Court

enablers for unscrupulous individuals to commit crime and escape apprehensions by law enforcement agencies.

BIG SCREEN DRAMA SHOWS THE UNIMAGINABLE EFFECTS OF CRIME

The term cybercrime cannot be associated to any individual or group of few. The impact of it can be seen from a single person to the society as a whole. The enormous effect and reach of cybercrime have been a buzzword not only in the corridors of powers but at every place where the human is even the big screen is incessantly showing how the misuse of information technology may create catastrophes. In late 1990's the computer and web world was started taking the world in its grips. I remember, in 1992 a movie was released "Sneakers". It was one of the first movies which had predicted the impact computers would have upon the world. The plot of the movie revolves around a team of renegade hackers who test security systems. One of the characters, Cosmo (played by Ben Kingsley), prophetically said:

“The world isn’t run by weapons anymore, or energy, or money. It’s run by ones and zeros—little bits of data—it’s all electrons.... There’s a war out there, a world war. It’s not about who has the most bullets. It’s about who controls the information—what we see and hear, how we work, what we think. It’s all about information.” He was certainly correct when he said “It’s all about who controls the information.” Since the movie’s release, the pervasiveness of computers has expanded primarily from government, academia and business entities to universal usage by virtually everyone on earth. Along with their exponential growth has been their nefarious use to create a new methodology of crime.
Recently, in a latest movie of James Bond series ‘Sky fall’, in which it has shown that how a person hacks into top secret Government systems, exposes the identities of covert agents online and in one of the most memorable scenes causes an explosion at the heart of MI6 by manipulating sensitive computer systems. Though it was shown in the movie but it was not a far-fetching story and a figment of an imagination of the moviemakers but could be the reality of the present time. The danger and threats of misuse of technology is much graver than the proportion of convenience and ease involved in it. Therefore a cautious and judicious approach needs to be adopted in order to avoid the new generations crime i.e. Cyber Crime.

CYBERCRIME- MEANING, KINDS AND DIMENSIONS

Cyber crime is any criminal activity in which a computer or network is the source, target or tool or place of crime. According to The Cambridge English Dictionary cyber crimes are the crimes committed with the use of computers or relating to computers, especially through the internet. Crimes which involve use of information or usage of electronic means in furtherance of crime are covered under the ambit of cyber crime. Cyber space crimes may be committed against persons, property, government and society at large. Despite almost forty years of incidents, cybercrime still does not have a universally accepted definition in literature. Most authors classify cybercrimes based on the role of technology and criminal modus operandi.

- Computer crimes-(or “true” cybercrimes), such as hacking, denial of service, and production of malware, in which computer systems and networks are the target of criminal activity; and
- Computer related crime-in which computers serve as instruments of otherwise non-digital crime, such as forgery, fraud, sexual abuse of children, or copyright infringement.

"Cybercrime" combines the term "crime" with the root "cyber" from the word "cybernetic", from the Greek, "kubernân", which means to lead or govern. The "cyber" environment includes all forms of digital activities, regardless of whether they are conducted through networks and without borders. This extends the

previous term "computer crime" to encompass crimes committed using the Internet, all digital crimes, and crimes involving telecommunications networks. Internet allows the users to disseminate information in the form of text, images (still or video), and sounds. Felonious mind misuses the technology and offensive content such as pornography, hate speech and defamatory materials. The modern trend of online crimes makes the intellectual property rights most vulnerable as works of authors and artists are violated through the unauthorized circulation. There has also been an upsurge in instances of financial fraud and cheating in relation to commercial transactions conducted online.

The internet has connected us all in a way that was barely imaginable in early 90's but now almost every home in the developed countries and four out of five homes in the developing countries have access to the internet; two fifths of adults are smartphone users. People not only work online but live part of their lives online by communicating on social media, exchanging messages, pictures or connecting friends and family from thousands of miles away. Economy of countries is increasingly going digital. People manage their finances online, do shopping; the market of annual online retail sales has become multi million. The dimension of Information technology is hard to pen down as it is now an indispensable part of our life. But if we are taking the benefits of the technology then we have to confront the growing digital dangers that could put this at risk and this is one of the biggest challenges we face in recent times.

The archaic/ obsolete laws and the rapid development of information and communication technology precisely constitute a contradiction and taking it to the level where it becomes almost impossible to deal with the problem of cybercrime effectively. Therefore, by merely relying on the traditional laws and legal provisions the menace of cyber wrongdoing cannot be effectively dealt with. The various forms and diverse purposes of cybercrime complicate the formulation of measures to tackle it. Initial concerns about unauthorized access to private information soon expanded into concerns that computers could be used to facilitate further crimes. Threats to property were joined by threats to the security of information, and even to the security of nation. These threats have increased at an alarming scale.

KINDS OF CYBERCRIMES

Though there is no concrete or finalized definition and types of cybercrime has not been formulated yet but it can broadly be classified as under-

i) Hacking-

Hacking is an umbrella term that applies to a variety of human activities that interfere with the proper operation of computer systems and networks. Most legal systems, however, do not use the term hacking due to its ambiguity. A list of more

specific hacking behaviours is criminalised instead. The U.S. Computer Fraud and Abuse Act defines a number of criminal offenses related to hacking that include- Computer espionage, Computer trespassing with the aim to obtain data or to interfere with the intended computer use, damaging a protected computer by various means including malware or trafficking in passwords and other hacking tools.

But The Council of Europe Convention on Cybercrime (2001) similarly defines a list of five offenses related to hacking, that includes-

Unauthorised access to computer systems and networks, unauthorised interception of transmitted or displayed data, unauthorised data interference, such as data deletion, alteration, suppression, deterioration, etc, unauthorised hindering of system operation (denial of service), making or possessing hacking tools, such as malware, remote access exploits, databases of stolen passwords, etc. The key requirement of the above criminal offenses is the absence of authorisation and – in some cases – the dishonest intent or attempt to bypass security controls.

There are 3 different classes of Hackers.

a) **White Hat Hackers** – They are those hackers who believe that information sharing is good, and that it is their duty to share their expertise by facilitating access to information. However there are some white hat hackers who are just "joy riding" on computer systems.

b) **Black Hat Hackers** – Black hat hackers cause damage after intrusion. They may steal or modify data or insert viruses or worms which damage the system. They are also known as crackers.

c) **Grey Hat Hackers** – These type of hackers are typically ethical but occasionally they can violate the hacker ethics. They will hack into networks, stand-alone computers and software. Network hackers try to gain unauthorized access to private computer networks just for challenge, curiosity, and distribution of information.

DISSEMINATION OF MALICIOUS SOFTWARE- (MALWARE)

Malware is defined as software designed to perform an unwanted illegal act via the computer network. It could be also defined as software with malicious intent. Malware can be classified based on how they get executed, how they spread, and/or what they do. Some of them are discussed below.

a) Virus- A virus is a program that can infect other programs by modifying them to include a possible evolved copy of itself. A virus can spread throughout a computer or network using the authorization of every user using it to infect their program. Every program so infected may also act as a virus and thus the infection grows. Viruses normally affect program files, but in some cases they also affect data files

disrupting the use of data and destroying them completely.
b) Worms- Worms are also disseminated through computer networks, unlike viruses, computer worms are malicious programs that copy themselves from system to system, rather than infiltrating legitimate files. For example, a mass mailing e-mail worm is a worm that sends copies of itself via e-mail. A network worm, on the other hand makes copies of itself throughout a network, thus disrupting an entire network.
c) Trojans- Trojan is another form of Malware; trojans do things other than what is expected by the user. Trojans are used to create back-doors (a program that allows outside access into a secure network) on computers belonging to a secure network so that a hacker can have access to the secure network. Unlike viruses, Trojan horses do not replicate themselves but they can be just as destructive. One of the most insidious types of Trojan horse is a program that claims to rid your computer of viruses but instead introduces viruses onto your computer.
d) Hoax- It is an e-mail that warns the user of a certain system that is harming the computer. The message thereafter instructs the user to run a procedure (most often in the form of a download) to correct the harming system. When this program is run, it invades the system and deletes an important file.
e) Spyware- It invades a computer and, as its name implies, monitors a user's activities without consent. Spywares are usually forwarded through unsuspecting e-mails with bonafide e-mail i.ds. Spyware continues to infect millions of computers globally.

PHISHING

Phishers lure users to a phony web site, usually by sending them an authentic appearing e-mail. Once at the fake site, users are tricked into divulging a variety of private information, such as passwords and account number.
Following could be some of the fishing related activities:
a) Data Related Data interception –Hijacking e-mails, interference of an intermediary in the network, may be a prelude to another type of computer crime, typically data modification.
b) Data diddling –It is done in conjunction with data interception, valid data intended for a recipient is hijacked or intercepted and then is replaced with an erroneous one. This could also apply to illegal tapping into database and altering its contents. Basically, any form of alteration without appropriate authorization falls under this category.
c) Data theft – It is outright stealing of most commonly classified or proprietary information without authorization. This could be the result of data interception. It might also be the unlawful use or possession of copyrighted works such as songs,

pictures, movies or other works of art.
d) Network Related Network interference -any activity that causes the operation of a computer network to be temporarily disrupted. Interference implies something momentarily such as Denial of Service Attacks that causes delays in data transmission by using up all available bandwidth. Distributed denial of service, ping of death and smurf attacks also fall under this category.
e) Data Security Network sabotage – causing permanent damage to a computer network such as deleting files or records from storage.

CONVENTIONAL CYBERCRIME

a) Defamation- It comprises of both libel (defamation by means of writing) and slander (defamation by speaking). After the popularity of the printing press, one witnessed and increase in libel. With the advent of information technology and the Internet, libel has become much more common and of course, easier. In simple words, it implies defamation by anything which can be read, seen or heard with the help of computers/technology.
b) Digital Forgery-It is creation of a document which one knows is not genuine and yet projects the same as if it is genuine. It implies making use of digital technology to forge a document. Desktop publishing systems, colour laser and ink-jet printers, colour copiers, and image scanners enable crooks to make fakes, with relative ease, of cheques, currency, passports, visas, birth certificates, ID cards, etc.
c) Online Gambling- It is illegal in many countries. It uses computer as a medium for the purposes of online gambling. The main concern with online gambling is that most virtual casinos are based offshore making them difficult to regulate. It is in this situation that the Internet helps the gamblers to evade the law. Anyone with access to a personal computer and an Internet connection can purchase lottery tickets or visit gambling sites anywhere in the world. The world of online gambling, due to its anonymity, unfortunately has many other hazards like danger of illegal use of credit card or illegal access to bank account.
d)Online sale of illegal articles- There are certain articles like drugs, guns, pirated software or music that might not be permitted to be sold under the law of a particular country. However, those who would want to sell such articles find Internet as a safe zone to open up online shops. There are specific concerns with regard to increase in online sale of drugs. The sale of illegal articles on the Internet is also one of those computer crimes where the computer is merely a tool to commit the crime.
e) Cyber Warfare- It is an Internet-based conflict involving politically motivated attacks on information and information systems. It can disable official websites and networks, disrupt or disable essential services, steal or alter classified data, and cripple financial systems. In 2010, Stuxnet, which was designed to attack industrial

programmable logic controllers was directed against the Iranian nuclear programme. Since the discovery of the Stuxnet malware, other “cyber weapons” have made their appearance. Cyber war would not actually be war because there aren’t loss of human lives, but analyzing these incidents and the continuous discoveries of malicious state-sponsored malware, it is possible to understand the great activities in cyberspace and related unpredictable repercussions on civil and military infrastructures.

f) Obscene, indecent and pornography- The use of internet for pornography, sexual abuse and the relative cases is one of the biggest problem to be dealt with. As in the absence of any geographical limitations and boundaries it is very hard to check and stop it. In recent times when nearly two third of the urban population carries smart phone anybody can access it from anywhere. Increasing number of users makes it more profitable business and consequently person involves in the pornographic business adopting all the means to provide the inhibited content, regardless to age and social culture of the users. Therefore, the same may be accessed calls for strict regulation.

WHY CYBER LAWS AT ALL

“Cyber bullies can hide behind a mask of anonymity online, and do not need direct physical access to their victims to do unimaginable harm.” -Anna Maria Chavez.

We may ask why is there a need for a separate law to govern the Cyber World? This may also assume significance looking to the fact that the phenomenal spread of Internet has been enabled mainly due to the absence of a centralised regulating agency. Anyone who has access to a computer and a telephone network is free to get hooked to the Internet. This uncontrollable growth of the Internet makes the need for regulation even more badly felt. Systems across the globe have many different rules governing the behavior of users. These users in most of the countries are completely free to join/ leave any system whose rules they find comfortable/ not comfortable to them. This extra flexibility may at times lead to improper user conduct. Also, in the absence of any suitable legal framework, it may be difficult for system administrators to have a check on Frauds, Vandalism or Abuses, which may make the life of many online users miserable. This situation is alarming as any element of distrust for Internet may lead to people avoiding doing transactions with online sites thereby directly affecting e-commerce growth. The (Mis)Use of Internet as an excellent medium of communication may in some situations lead to direct damage to physical societies. Non-imposition of taxes on online transactions may have its destructive effect on the physical businesses and also government revenues. Terrorists may also make use of web to create conspiracies and make violence in the society. Therefore, all of us whether we directly use Internet or not, will like to have some form of regulation or external control for monitoring online

transactions and the cyber world for preventing any instability.

WHY WE NEED LAWS AT INTERNATIONAL LEVEL

By their very nature, cybercrime investigations require extensive cross-border co-ordination. The international legal framework needs to catch up with this reality. Few months back almost every country of the world became victims of an unprecedented cyberattack which used the ransomware Wannacry, the wrongdoers not only attacked the system of the individuals but also caused inconvenience to organisations (Government or Private) around the world. But due the limitless reach of the internet it is almost impossible to identify and catch the culprits and to accomplice this task a detailed complex international investigation is needed. However, the existing international legal framework for co-operation on cybercrime is a fragmented one, with no single governance architecture, which complicates investigations and risks leaving the perpetrators at large and criminals always managed to go scot-free under the aegis of these lacunas of law.
The paramount issue with the cybercrime is to not having any proximity between the offender the victim, which leads to the uncertainty and the ambiguity in the investigation to the crime. As the delinquent may perform his ill-intentions from the one corner of the world without going to the place of offence. Therefore, not having any tangible boundaries and limits of the offence makes almost impossible to reach to the wrongdoer. Because in the virtual world we can reach at any corner of the world and this is where the point of friction between the cyber world and the territorial world begins as in the territorial world there are limitations set up by the sovereignty of the nation which is not the case in the cyber world. A judicial system can function effectively if it is well regulated; it is these regulations that identify every functional aspect of the judicial system including the jurisdiction of the courts. A court in order to deliver effective judgments must have proper and well defined jurisdiction, as without a jurisdiction the court’s judgments would be ineffective. The conventional requirement as to a party can sue another is at the place where the defendant resides or where the cause of action arises. This itself is the problem with Internet jurisdiction as on the net it is difficult to establish the above two criteria’s with certainty. Jurisdictional limitations can hamper one of the most challenging aspects of a cybercrime investigation – attribution. Every time a law enforcement agency needs to undertake a cross-border investigation, it has do so through official, and at times bureaucratic, legal channels to request assistance which makes investigations more complicated to navigate. Not only is this process lengthy and convoluted but it also jeopardizes the global evidence gathering process. This is due to the volatile and fragile nature of the electronic evidence which requires agility in its collection while protecting its integrity and

maintaining.

CYBER CRIME BEING A GLOBAL PHENOMENON REQUIRES MULTI-NATIONAL COOPERATION TO COMBAT

Cybercrime is not something which is related to any specific region but these days it has become a global phenomenon which has a considerable cost implication, it is estimated that crimes in cyberspace will cost the global economy $445 billion in 2016; however, it should be noted that such estimates are typically very rough, due to under-reporting, different definitions of what cybercrime is, difficulty in assessing damages (e.g. loss of reputation), and so forth. These crimes are growing in terms of scope, sophistication, number and types of attacks, number of victims and economic damage. In September 2016 a multinational internet technology company disclosed a massive hack which had taken place in 2014, in which at least 500 million user accounts were compromised – this hack has been described the biggest data breach in history. Many security and police professionals spend their time analyzing the technical and mechanical aspects of cybercrime, dissecting malware and exploit tools, forensically analyzing code and techniques.

Last year in the month of October a shocking incident came in the light where it was revealed that more than thirty lakhs ATM/Debit cards have been hacked in India and embezzled millions of rupees of the card holder. During investigation it was came in the light that the hacking was done from China through a malware but because of the animosity of the delinquent and in the absence of a definite legal frame work perpetrators are still at large and yet to be identified.

International treaties, international efforts to address cybercrime and e-evidence as a matter of criminal justice have been pursued since the 1980s, initially by the Council of Europe and the Organisation for Economic Cooperation Development (OECD), and from the mid-1990s also by G8. At the Council of Europe, this led to the adoption of soft-law recommendations providing guidance on the criminalisation of computer-related offences (1989) and on law enforcement powers regarding cybercrime and electronic evidence six years later (1995). These were precursors to the Budapest Convention which was opened for signature in 2001. By 2001 the problems of cybercrime and e-evidence were sufficiently important to warrant an international treaty but cybercrime and information technologies were not yet considered too relevant on national interests and security of states to prevent consensus. At the United Nations, it has not been possible to reach a consensus so far as to whether an international treaty on cybercrime was necessary and feasible and what it would possibly comprise. The matter of “combating the criminal misuse of information technologies” was the subject of a resolution at the UN Congress on Crime Prevention and Criminal Justice in Havana in 1990. It referred to the work of the OECD and the Council of Europe,

but no follow-up was given by the UN. In 2001 and 2002, it was taken up again in UN General Assembly Resolutions but at that point, the Budapest Convention had been opened for signature. Subsequently, the question was on the agendas of UN Crime Congresses (in 2005, 2010 and 2015) and annual UN Crime Commissions but not much progress had been made. The Intergovernmental Group of Experts on Cybercrime, established at the Salvador Crime Congress in 2010, "in view of examining options to strengthen existing and to propose new national and international legal or other responses to cybercrime," noted in its most recent meeting in 2013 "broad support for capacity-building and technical assistance" and "diverse views" on options of new international instruments. It would seem that from around 2001, the focus within the UN had shifted from cybercrime as a matter of criminal justice to the protection of critical information infrastructure and cyber or information security as a matter of international security. From 2004, Groups of Governmental Experts (GGEs) have been meeting to examine "existing and potential threats from the cyber-sphere and possible cooperative measures to address them." Though progress is slow at the UN towards norms, rules or principles of "responsible state behaviour" in cyberspace, it is considered the most relevant forum on state-to-state relations concerning cyber security.

WHAT WE NEED TO DO

Yes, though there are international treaties are on place to deal with cybercrime but they have not been proved apposite and adequatebecause of its limitless reach, world need to have a definite piece of legislation by which it can not only be minimized but also be curbed. For that we need to initiate a fresh round of deliberations keeping in view the changes in nature of crime, felonious mindset of criminals, diverse social and legal structure of participant nations so that an apropos piece of statute may be enacted.We may deal the menace by- (i) establishing a Global Virtual Task Force for the investigation and Prosecution including law enforcements, INTERPOL, non-governmental organisations, key stakeholders in the global IT industry and sector, financial service industry, academia, working in a partnership. A task force will be necessary for the prevention, detection, and reposes to the global cyber crimes and global cyber attacks in fast and effective investigative measures and arrests, having real-time access to global information in cyberspace.

(ii) Establishing an International Criminal Court or Tribunal for Cyberspace (ICTC): Criminal prosecution based on international law need an international criminal court or tribunal for any proceedings. The most serious cybercrimes of global concern could be considered in the list of crimes within the jurisdiction of the International Criminal Court (ICC). An alternative solution could be to establish an International Criminal Court of Tribunal for cyberspace.

(iii) Recommendations for a global treaty on cyber security issues: Security models for the Information and Communication Technology (ICT) in cyberspace must be developed on a global level, defining a global and national cyber security strategy. Technical and procedural measures, organizational structures, capacity building and international co-operation are the most important issues that should be included in a global treaty.

INDIAN PERSPECTIVE

Talking about Indian scenario of cyber space crimes and cyber space laws, there was no statute in India for governing Cyber Laws involving privacy issues, jurisdiction issues, intellectual property rights issues and a number of other legal questions. With the tendency of misusing of technology, there arisen a need of strict statutory laws to regulate the criminal activities in the cyber world and to protect the true sense of technology IT ACT, 2000 was enacted by Parliament of India to protect the field of e-commerce, e-governance, e-banking as well as penalties and punishments in the field of cyber crimes. The above Act was further amended in the form of IT Amendment Act, 2008. Also certain sections of IPC and as some cyber space crime are invading right to privacy, article 21 of Indian constitution are some governing laws for cyber space crime which imposes various liabilities in India.

CONSTITUTIONAL LIABILITY

Hacking into someone’s private property or stealing some one’s intellectual work is a complete violation of his right to privacy. The Indian constitution does specifically provide the “right to privacy” as one of the fundamental rights guaranteed to the Indian citizens and it is protected under various laws.Right to privacy is an important natural need of every human being as it creates boundaries around an individual where the other person’s entry is restricted. The right to privacy prohibits interference or intrusion in others private life. Recently the nine judges bench of Supreme Court of India has clearly affirmed in its judicial pronouncement that right to privacy is very much a part of the fundamental right guaranteed under article 21 of the Indian constitution.Thus right to privacy is coming under the expended ambit of article 21 of Indian constitution. So whenever there is some cyber crime which is related to the persons private property or its personal stuff then the accused can be charged of violation of article 21 of Indian constitution, and prescribed remedy can be invoked against the accused.

CRIMINAL LIABILITY

Criminal liability in India for cyber crimes is defined under the Indian Penal Code (IPC). Certain Following sections of IPC deal with the various cyber crimes:

- Sending threatening messages by e-mail (Sec .503 IPC)
- Word, gesture or act intended to insult the modesty of a woman (Sec.509 IPC)
- Sending defamatory messages by e-mail (Sec .499 IPC)
- Bogus websites , Cyber Frauds (Sec .420 IPC)
- E-mail Spoofing (Sec .463 IPC)
- Making a false document (Sec.464 IPC)
- Forgery for purpose of cheating (Sec.468 IPC)
- Forgery for purpose of harming reputation (Sec.469 IPC)
- Web-Jacking (Sec .383 IPC)
- E-mail Abuse (Sec .500 IPC)
- Punishment for criminal intimidation (Sec.506 IPC)
- Criminal intimidation by an anonymous communication (Sec.507 IPC)
- Obscenity (Sec. 292 IPC)
- Printing etc. of grossly indecent or scurrilous matter or matter intended for blackmail (Sec.292A IPC)
- Sale, etc., of obscene objects to young person (Sec .293 IPC)
- Obscene acts and songs (Sec.294 IPC)
- Theft of Computer Hardware (Sec. 378)
- Punishment for theft (Sec.379)
- Other then the IPC some other piece of legislations also imposes criminal liability on the accused and these legislations are:-
- Online Sale of Drugs (NDPS Act)
- Online Sale of Arms (Arms Act)
- Copyright infringement (Sec.51 of copyright act, 1957)
- Any person who knowingly infringes or abets the infringement of (Sec.63 of copyright act, 1957)
- Enhanced penalty on second and subsequent convictions (Sec.63 A of copyright act, 1957)
- Knowing use of infringing copy of computer program to be an offence (Sec.63B of copyright act, 1957)

TORTIOUS LIABILITY

Basic liability in cyber crime is established through the principle of neighborhood

established from the case of Donoghue v. Stevenson. But the major tortuous liability in cyber crimes is through Information Technology Act, 2000 (as amended).

In India the Information Technology Act 2000 was passed to provide legal recognition for transactions carried out by means of electronic communication. The Act deals with the law relating to Digital Contracts, Digital Property, and Digital Rights, any violation of these laws constitutes a crime. The Act prescribes very high punishments for such crimes. The Information Technology (amendment) Act, 2008(Act 10 of 2009), has further enhanced the punishments. Life imprisonment and fine upto rupees ten lakhs may be given for certain classes of cyber crimes. Compensation up to rupees five crores can be given to affected persons if damage is done to the computer, computer system or computer network by the introduction of virus, denial of services etc.

COMPARATIVE STUDY

As against the Information Technology Act in India, in many other nations globally, there are many legislations governing e-commerce and cyber crimes going into all the facets of cyber crimes. Data Communication, storage, child pornography, electronic records and data privacy have all been addressed in separate Acts and Rules giving thrust in the particular area focused in the Act.

UNITED STATES OF AMERICA

USA have the Health Insurance Portability and Accountability Act popularly known as HIPAA which inter alia, regulates all health and insurance related records, their upkeep and maintenance and the issues of privacy and confidentiality involved in such records.The Sarbanes-Oxley Act (SOX) signed into law in 2002 mandated a number of reforms to enhance corporate responsibility, enhance financial disclosures, and combat corporate and accounting fraud. Besides, there are a number of laws in the US both at the federal level and at different states level like the Cable Communications Policy Act, Children’s Internet Protection Act, and Children’s Online Privacy Protection Act etc.

UNITED KINGDOM

In the UK, the Data Protection Act and the Privacy and Electronic Communications Regulations etc are all regulatory legislations already existing in the area of information security and cyber crime prevention, besides cyber crime law passed recently in August 2011.Similar to these countries we also have cyber crime legislations and other rules and regulations in other nations like Australia,

New Zealand, China etc.Cyber crime is a new form of crime that has emerged due to computerization of various activities in an organization in a networked environment. With the rapid growth of information technology cyber crimes are a growing threat.

CONCLUSION

Change is inevitable and the dilemmas & threat that advancement in technology poses cannot be avoided, the truth is that the era of orthodox crimes has been gone and evil minded person have changed their method and have started relying on the advanced technology, and in order to deal with them the society the legal and law enforcement authorities, the private corporations and organizations will also have to change. Ordinarily the law keeps pace with the changes in technology but the pace of technological developments in the recent past, especially in the field of information and technology is impossible to keep pace with legal system. Law is as stringent as it enforcement, therefore we not only evolve the better laws to deal with the felony of recent times but also have to assured strict enforcement. The biggest problem is to deal with it is its global character and limitless reach, so we must have a piece of law at international level so that cooperation, investigation, detection and prosecution of the wrongdoer may be assured. Another aspect which needs to be highlighted is that a culture of continuous education and learning needs to be inculcated amongst the legal and the law enforcement authorities because the Information Technology field is a very dynamic field as the knowledge of today becomes obsolete in a very short time. The law cannot afford to be static, it has to change with the changing times and viz. cyber space this is all the more required, as there many application of the technology that can be used for the betterment of the mankind, similarly it equally true that such application can also be used for the detriment of the mankind. The bottom –line is that the law should be made flexible so that it can easily adjust to the needs of the society and the technological development.

3. HATE CRIME: A GLOBAL CHALLENGE

Sadaf Sareen Khan

Abstract

Apart from well known and common crimes such as riots, affray, assault, murder, robbery *etc., law recognizes a specific variety of crime which is called as hate crime. A hate crime is also known as bias-motivated crime. It is an offence which manifests evidence of prejudice based on race, religion, ethnicity, disability or sexual orientation. Hate crime is a hate violence committed because of victim's actual or perceived race, color, religion, origin etc. The most targeted victims of hate violence are racial or religious minorities and in particular vulnerable caste people. Precisely stated, hate crimes involve victimization of minorities due to their racial or ethnic identity by members of the majority. The key factor in hate crimes is the emphasis on the group and not the individual identity of the victim.*

Key Words: Hate crime, victimization, bias-motivated crime, xenophobia, prejudice, Islamophobia, mob-lynching, atrocities.

INTRODUCTION

A hate crime is a traditional offence like murder, arson or vandalism with an added element of bias. It is an offence against a person or property motivated in whole or in part by an offender's bias against a particular race, religion, ethnicity or gender identity. It is a prejudice motivated crime, usually violent which occurs when a victim is targeted by the perpetrator only because of his affiliation or perceived affiliation to a particular caste, race, religion, color or group. Such incidents may involve physical assault, damage to property, bullying, harassment, verbal abuse, insults, offensive graffiti or letters (hate mail). Hate crimes occur when individuals purposely select their victims and inflict violence and other intimidating acts upon those victims because of their specific characteristics. Hate crime may generate as a reaction to race crime.

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HISTORY

Hate crimes have occurred throughout history. Hatred, bigotry, racial prejudice and religious differences have led to innumerable conflicts, bloodshed and even world wars. The U.S. Justice Department's Bureau of Justice Statistics states that "the problem of hate crimes is hardly a recent phenomenon. Hate crimes have shaped and sometimes defined the history of nations". Ethnic cleansings have occurred and unfortunately still occur in certain places around the globe.

The term ‘hate crime’ came into common usage in the United States during the 1980’s but the term is often retrospectively used in order to describe events which occurred prior to that era. From the Roman persecution of Christians to the Nazi slaughter of Jews, hate crimes were committed by both individuals as well as governments long before the term was commonly used. The Holocaust in which an estimated 6 million European Jews were systematically exterminated under the orders of German leader Adolf Hitler was an example of a monstrous hate crime. In U.S. history the shackling of slaves and the forced relocation of Native Americans to reservations could be classified as hate crimes. For nearly a century, the Ku Klux Klan, an organization of white racists, often lynched individuals because of their race and terrorized African Americans who attempted to vote and change the legal system.

During the past few decades, typical examples of hate crimes in United States include lynching of African Americans in the South, Mexicans and Chinese in the West, cross burnings to intimidate black activists or to drive black families from predominantly white neighborhoods, assaults on white people travelling in black neighborhoods, assaults on bisexual and transgender people and xenophobic responses to a variety of minority ethnic groups. The murders of Channon Christian and Christopher Newsom in 2007 and the Wichita Massacre in 2000 were not classified as hate crimes by the U.S. investigative officials and the media. In the early 21st century, conservative commentators, David Horowitz, Michelle Malkin and Stuart Taylor (journalists) did describe these events as hate crimes against whites by blacks.

PSYCHOLOGICAL EFFECTS OF HATE CRIMES

Hate crimes can have significant and wide ranging psychological consequences, not only for their direct victims but for others as well. By targeting a person’s identity, hate crimes cause greater harm than ordinary crimes. The immediate victim may experience greater psychological injury and increased feelings of vulnerability because he or she is unable to change the characteristics which led to his or her victimization. Psychological and affective disturbances, repercussions on the victim’s identity and self-esteem; both reinforced by the degree of violence of a specific hate crime, which is usually stronger than that of a common crime. Hate crime victims can also develop depression and psychological trauma. It creates a generalized terror on the group to which the victim belongs, inspiring feelings of vulnerability, unease, insecurity, discomfort and other complexes among its other members who could be the next hate crime victim.

Hate crimes present potentially serious public order problems. It results in ominous effects on minority groups or other vulnerable groups or groups that identify themselves with the targeted group, especially when the referred hate

is based on an ideology or a doctrine that preaches simultaneously against several groups. The community that shares the characteristic of the victim may also be frightened and intimidated. It causes factions and divisions as a response to hate crimes. It causes great damage to multicultural societies creating a feeling of distrust and insecurity.

GLOBAL INCIDENCE OF HATE CRIMES

Hate crime is not confined to any individual country but is a global phenomenon with varying degrees of intensity and causality.

HATE CRIMES IN THE UNITED STATES OF AMERICA

In 3 years there have been 5 incidents of hate crime killings in the Kansas City area in United States of America. On February 22, 2017, a white American man, Adam Purinton, at the Austin's Bar and Grill hurled slurs at two Indian men, who he had mistaken for Iranians, at one point saying, "get out of my country". Patrons at the bar complained and a bartender threw the man out. But a short time later, the man returned with a gun and opened fire, killing Srinavas Kuchibotla and injured his friend Alok Madasani. He had asked victims if their status was legal. A third man Ian Grillot was shot when he tried to intervene. Madasani was released from the hospital later. The crime has drawn national attention. But this was not the first time a deadly kind of hate visited this area.

Just 11 miles away from the Austin's bar there is another memorial, the Jewish Community Center. It was here on April 13, 2014 that an avowed neo-nazi and white supremacist named Frazier Glenn Miller started a shooting spree targeting Jews. He killed three Christians instead, 53 year old LaManno, 14 year old Real Griffin Underwood and Reat's 69 year old grandfather, Dr. William L. Corporon.

Tragically what happened at the Jewish Community Center was not an isolated incident. Seven months later, in December 2014, a 15 year old Somali-American boy, Abdisamad Sheikh-Hussein, was intentionally run over and killed outside the Somali Center of Kansas City mosque. The driver was a Somali Christian man who had been harassing the family of the boy for months.

The following year, in 2015, FBI (Federal Bureau of Investigation) statistics show that hate crimes in the Kansas City area jumped 35 percent. The same was true across US where general hate crimes rose by 7 percent.

More than 15 years after 9/11, the number of Islamophobic attacks recorded in the US continues to soar. Reports suggest that incidents of Islamophobia rose by 57% in 2016. This resulted in 44% increase in anti-Muslim hate crimes. The report by the Council on American-Islamic Relations (CAIR) revealed that anti-muslim bias incidents have largely increased. The Council

received 1597 reports of potential bias between January 1 and March 31. Calls to go back to your country are commonly found.

One of the recent incidents which deserve to be mentioned here is the Las Vegas shooting. On October 02, 2017, at least 50 people were killed and more than 200 injured in a mass shooting at a music concert. This attack was called as the “deadliest mass shooting in US history”. The gunman opened fire into the outdoor country music festival from the 32nd floor of Las Vegas Mandalay Bay Resort and Casino at 10:30 p.m. on Sunday while singer Jason Aldean was performing on the stage. The lone attacker was shot dead by the police later. He was identified as 64 year old local resident, Stephen Paddock who had converted to Islam months ago. The Islamic State group claimed responsibility of the attack referring it as a response to calls to target countries engaged in military operations against the Jihadists.

HATE CRIMES IN THE UNITED KINGDOM

On June 3, 2017, an attack took place in the Southwark district of London, England when a van mounted the pavement of London Bridge and was driven into pedestrians. The van crashed and the three male occupants ran to the nearby Borough Market pub and restaurant area where they stabbed people with long knives. The attackers were shouting ‘this is for Allah’ as they stabbed indiscriminately. Amber Rudd, the Home Secretary, stated that the attackers were probably Islamist terrorists. Reports of religious hate crimes increased by three times after this terror attack. Eight people were killed and 48 were injured including four unarmed police officers who attempted to stop the assailants. The three attackers who wore fake explosive vests were all shot dead by police. It was the third terrorist attack in Great Britain in just over two months, following a similar attack in Westminster in March.

On March 22, 2017, a terrorist attack took place in the vicinity of the Palace of Westminster in London, seat of British Parliament. The attacker, 52 year old Briton Khalid Masood, drove a car into pedestrians on the pavement along the South side of Westminster Bridge injuring more than 50 people, four of them fatally. After the car crashed into the fence, Masood abandoned it and ran into New Palace Yard where he fatally stabbed an unarmed police officer. He was then shot by an armed police officer and died at the scene. Police treated the act as Islamist-related terrorism.

In late May 2017, a suicide bomber killed himself and 22 others outside the arena where singer Ariana Grande had just performed at Manchester Arena. After the Manchester suicide bombing, the incidence of hate crimes soar in Manchester to a critical level.

As a response to these attacks, a wave of anti-Islamic hate crimes surfaced. In 2001, 481 incidents of hate crime were recorded. Incidents as defined by FBI may include multiple offences. Comparatively only 28 incidents against Muslims were recorded in 2000 according to FBI. The increased attacks against Muslims showed most drastically in the religion-biased crime count.

CAUSES OF HATE CRIME

Historically, about half of all hate crimes have been racially charged according to FBI reports. Of these race-biased crimes, the majority have targeted black people. In 2015 only, there were 1745 anti-black hate crimes reported. In one of the incidents in June 2015, nine people were killed in a traditionally black church in Charleston, South Carolina, by a white supremacy shooter. The 22 year old shooter, Dylann Roof, entered the Church and sat with the Bible study group for about 45 minutes. During the final prayer when everyone's eyes were closed, he started firing. He stood over some of the fallen victims, shooting them again as they lay on the floor. Roof was charged and he confessed to the killings and was eventually convicted and sentenced to death in 2017.

HATE CRIME AGAINST LGBT

Hate crimes have been committed against LGBT (Lesbian, Gay, Bisexual and Transgender) people also. There have been scores of attacks on LGBT spaces some of which received more attention than others. A pride month night of celebration and fun --- the weekly Latin Night at the popular Orlando Club, Pulse, focused on Latin music, performances and dancing----- turned into a morning of mass death and devastation. On June 12, 2016, Omar Mateen, a 29 year old security guard, killed 49 people and wounded 58 others in a terrorist attack inside the club. He was then killed by the police after three-hour standoff. But the brutal reality that jarred Orlando's LGBT community and the entire world is something that LGBT people have always experienced, as gay and lesbian bars and clubs have been targeted consistently by those who harbor hate towards LGBT community.

Eric Rudolph, also known as the Olympic Park Bomber because of his terror attack on the Centennial Olympic Park in Atlanta in 1996, also targeted lesbian bars in addition. In 1997, he targeted the Otherside Lounge, a lesbian bar in Atlanta with two bombs one of which detonated in the bar and injured five people. The second bomb, found in the parking lot of the bar, was detonated by the police without injury. Rudolph associated with the extremist group 'Army of God' and later pleaded guilty. He was convicted with life imprisonment without parole in July 2005.

Again in 2014, Musab Masmari was convicted and sentenced to

10 years imprisonment for setting fire to a Seattle gay nightclub on New Year's Eve in 2013 pouring gasoline on a carpeted stairway inside the club.

In Brazil, on February 15, 2017, Dandara dos Santos, a transgender woman was tortured and then stoned to death by five men and the incident was captured on a video. On June 27, 2016, Antonio Kvalo was beaten for being gay in Rio de Janerio.

In Turkey, on July 15, 2008, Ahmet Yildiz, a gay man, was shot to death in Istanbul.

Hate crimes against LGBT people have not dissipated since the arrival of marriage equality and have in fact been on the rise in recent years. These terrible tragedies are a reminder of the threat and violence against LGBT community which continues even today.

HATE CRIMES IN MYANMAR (ROHINGYA CRISIS)

The Rohingya people are stateless Indo-Aryan people from Rakhine State, Myanmar. The majority of them are Muslims while a minority comprise of Hindus. They have been described as one of the most persecuted minorities in the world by the United Nations in 2013. According to Human Rights Watch, the 1982 laws effectively deny to the Rohingyas the possibility of acquiring nationality. They are also restricted in terms of freedom of movement, State education and civil service jobs. The legal conditions faced by Rohingyas in Myanmar have been compared to apartheid.

The Rohingyas have faced military crackdowns in 1978, 1991-92, 2012, 2015 and 2016-2017. United Nations Officials and Human Rights Watch have described Myanmars persecution of the Rohingyas as ethnic cleansing. The UN Human Rights Envoy to Myanmar reported that "the long history of discrimination and persecution against the Rohingya community could amount to crimes against humanity". Yanghee Lee, the UN Special Investigator on Myanmar, believes the country wants to expel its entire Rohingya population. Probes by United Nations have found evidence of increasing incitement of hatred and religious intolerance by "ultra-nationalist Buddhists" against the Rohingyas , while the Myanmar security forces have been conducting "summary executions, enforced disappearances, arbitrary arrests and detentions, torture, ill-treatment and forced labour" against the community.

Before the 2015 Rohingya refugee crisis and the military crackdown in 2016 and 2017, the Rohingya population in Myanmar was around 1.1 to 1.3 million, chiefly in Northern Rakhine townships. Over 900,000 Rohingya refugees have fled to Southeastern Bangladesh as well as to other surrounding countries. More than 100,000 Rohingyas in Myanmar are confined in camps for internally displaced persons. Following a Rohingya rebel attack that killed 12

security personnel on August 25, 2017, the military launched “clearance operations” that left thousands of Rohingyas dead and many more injured, tortured, raped, villages burned and over 400,000 Rohingyas (about 40% of remaining Rohingya in Myanmar) fleeing to Bangladesh and the figures are still increasing.

HATE CRIMES IN INDIA

Hate crime is not new to Indian society as was admitted by the Home Secretary, Rajiv Mehrishi in a recent statement. It was a feudal crime which has happened over ages. But today such crimes shake the conscience of people and disturb them much more than in the past.

On 27th March, 2017, a mob in the Indian city of Noida brutally beat a Nigerian student, Endurance Amalava after residents blamed Nigerians for the death of an Indian teenager. Several other Nigerians were attacked in different incidents that day, following protests demanding that all Nigerian students in Noida’s educational institutions leave the area. The death of the Indian teenager who had gone missing on March 24 spurred these incidents. Residents broke into the home of five Nigerian students and searched their refrigerator, accusing them of cannibalism. The missing teenager returned the next morning, but died later that afternoon of suspected drug overdose. The family alleged that Nigerian students abducted him and forced him to consume drugs. The Police also arrested several Nigerians on suspicion of drug peddling, abduction and murder but released them for lack of evidence.

Attacks against African nationals in India are not a new development. In a case in 2014, a mob attack was carried against an African woman. In February, 2016, a mob attacked a 21 year old Tanzanian student in Bangalore as she drove with her friends, beating her, tearing off her shirt and setting her car ablaze. This incident caused national embarrassment.

Hate crimes against Muslims in India are soaring. Rising trends of Islamophobia need to be condemned. The pattern of hate crimes committed against Muslims is deeply worrying. The growing religious intolerance against Muslims has resulted in many terrible deaths. The BJP’s campaign for cow protection appears to have emboldened vigilante groups and this had added fuel to the fire.

In Dadri, Uttar Pradesh, on September 28, 2015, a mob attacked the house of a Muslim man, Mohammad Ikhlaq, with sticks and bricks as he was suspected of stealing and slaughtering a cow calf. In this attack, the 52 year old Ikhlaq died and his 22 year old son was seriously injured.

In Jharkhand, on June 27, 2017, Usman Ansari, was beaten up by a mob of about 100 people and his house was also set on fire reportedly after a dead cow was seen outside his house.

In Haryana, on June 22, 2017, 15 year old Junaid Khan was stabbed to death on a train when an argument about seating arrangements turned into an attack based on religious identity. He was called a ‘mulla’, a ‘beef eater’ and his skull cap was thrown away before he was killed. His brother was severely injured. At least 20 people were involved in the attack.

In Maharashtra, on May 26, 2017, two Muslim meat traders were attacked by a cow vigilante squad in Malegaon on suspicion of possessing beef. They were also slapped, abused and forced to say “Jai Sri Ram”

Decades after independence, the graph of atrocities against Dalits is going upwards. They continue to bear the brunt of violence, humiliation and discrimination which was highlighted by the tragic death of a Ph.D student, Rohith Vemula, in the Hyderabad Central University who hanged himself blaming his birth as a ‘fatal accident’ in his final note on January 17, 2016. Rohith’s is not the lone tragedy. A spectre of suicide deaths by several Dalit students is haunting India. Out of 25 students who committed suicide only in North India and Hyderabad since 2007, 23 were Dalits. Systematic data does not exist for such suicides but the problem runs far deeper than a few students deciding to end their own lives after being defeated by the system. According to a 2010 report by National Human Rights Commission (NHRC) on the Prevention of Attrocities against Scheduled Castes, a crime is committed against a Dalit every 18 minutes. Every day on an average, three Dalit women are raped, two Dalits murdered, and two Dalit houses burnt.

We may be the largest democracy in the world, we may be a republic, but justice, equality, liberty and fraternity, the four basic tenets promised in the Preamble of our Constitution are clearly not available to all.

HATE CRIMES AND HUMAN RIGHTS VIOLATIONS

Human Rights encompass an articulation of the need for people to be treated in a just, decent and humane way regardless of their ethnic, religious or racial profile. These are the basic rights which are believed to belong to every person just by virtue of being a member of human species. These rights are universal and inalienable. The first line of Universal Declaration of Human Rights (UDHR), adopted by United Nations General Assembly on December 10, 1948 refers to the “*recognition of the inherent dignity and of equal and inalienable rights of all members of the human family.”* It is a theme repeated in most UN Human Rights instruments and in the core constitutional documents of almost every State in the world. Article 1 of UDHR reads, “All human beings are born free and equal in dignity and rights.” Its Article 3 reads, “Everyone has the right to life, liberty and security of person.”

Human Rights violations are always a trauma for victims. No

matter what the context or the reason is but human suffering is always unfair. Human rights violation involves denying human beings their basic moral entitlements. Some examples of human rights violations also called, “crimes against humanity” include genocide, torture, rape, slavery, wanton starvation and medical experimentation among others.

Hate crimes are machines of collective pain and sorrow. They constitute a direct attack on human rights structures and values. Hate crime not only alters, and sometimes ends individual lives but it creates fear that can oppress entire communities. ‘Hate Crime’, write hate crime scholars, Barbary Perry and Patrick Olsson, ‘is by nature a sustained and systematic violation of human rights.’ The idea echoes claims made by several Human Rights Organisations including Office for Democratic Institutions and Human Rights (ODIHR) and Human Rights First which is a non-profit Human Rights Organisation based in New York City. In political discourse, one finds the statement made by former UK Home Secretary, Alan Johnson, that ‘hate crime limits people’s equality of opportunity and infringes their basic human rights.’ Also, judgments from the European Court of Human Rights on cases involving hate crime incidents offer another example of how hate crimes can be registered as human rights violations, namely, as violations of the right to life, the right not to be subjected to inhuman or degrading treatment and the right not to be discriminated against on the basis of race, color, religion and the like.

International organizations have made the issue of hate crimes a priority. A number of human rights treaties make general statements relating to discrimination. Both the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) require states to refrain from racial discrimination including discrimination based on ethnicity or national origin and to provide their residents with equal protection of laws. In addition, Article 4 of United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief requires states to “*prevent and eliminate discrimination on the grounds of religion”* and to “*take all appropriate measures to combat intolerance on the grounds of religion.”*

Some instruments specifically call on states to criminalize certain acts. Article 4 of CERD imposes an obligation on states to take *“immediate and positive measures in regard to acts of racial discrimination”*, paragraph (a) goes on to require that it should be an offence to *“disseminate ideas based on racial superiority or hatred, incitement to racial discrimination…”* The committee overseeing CERD has called upon states to define offences with bias motives as specific offences and to enact appropriate legislation that enables the bias motives of perpetrators to be taken into account. The European Commission on Racism and

Intolerance (ECRI) has also called for the criminalization of such acts.

Hate crimes violate the ideal of equality between the members of society. The equality norm is a fundamental value that seeks to achieve full human dignity and to give an opportunity to all people to realize their full potential. The status and importance of the concept of equality is evidenced by its constant reiteration in human rights documents. The violation of basic human values and norms by hate crimes has a weighty practical and symbolic impact on the human race as a whole.

LEGAL PERSPECTIVE WITH REFERENCE TO HATE CRIMES

Hate crimes are violent manifestations of intolerance and have a deep impact not only on the immediate victim but the group with which that victim identifies or associates. They affect community cohesion and social stability. A vigorous response is, therefore, important both for individual and communal security. If hate crimes are treated like other crimes and are not recognized as a distinct category they are often not dealt with properly. In cases of poor investigation, prosecution and punishment of hate crimes the victim feels insecure and discriminated even at the hands of law enforcement agencies. In contrast, where the prosecution and sentence takes account of the bias motive, such public acknowledgement reassures the victim that his or her experience has been fully recognized. This in turn can inspire trust in other members of the community that hate crimes will not go unpunished. Codifying the social condemnation of hate crimes into law is very important for the victim communities in particular and also for the whole society in general. This can generate trust and credibility in the criminal justice system and can thus repair social fissures.

HATE CRIME LAWS IN THE UNITED STATES OF AMERICA

In the United States, there are State and Federal laws intended to protect against hate crimes. Although State laws vary, current statutes permit federal prosecution of hate crimes committed on the basis of person's protected characteristics of race, religion, nationality, gender and ethnicity.

Since 1968, when Congress passed and President Lyndon Johnson signed into law the first federal hate crime statute, the Department of Justice has been enforcing federal hate crime laws. The Civil Rights Act, 1968 makes provision for prosecution of anyone who "willingly injures, intimidates or interferes with another person, or attempts to do so, by force, because of the other person's race, color, religion or national origin or because of the victim's attempt to engage in one of six types of federally protected activities, such as, attending school, patronizing a public place/ facility, applying for employment, acting as a juror in a State Court or voting. Persons violating this law shall face fine or

imprisonment of up to one year or both. If bodily injury results or if such acts involve use of firearms or explosives, individuals can receive prison terms of up to 10 years, while crimes involving kidnapping, sexual assault or murder shall be punishable with life imprisonment or death penalty.

In 1996, Congress passed the Church Arson Prevention Act. Under this Act, it is a crime to deface damage or destroy the religious property or interfere with a person's religious practice.

In 2009, Congress passed and President Obama signed, the Mathew Shepherd and James Byrd Jr. Hate Crimes Prevention Act, expanding the federal definition of hate crimes, enhancing the legal toolkit available to prosecutors and increasing the ability of law enforcement agencies.

HATE CRIME LAWS IN THE UNITED KINGDOM

Hate crime laws in England and Wales are found in several statutes. This does not necessarily mean that they apply throughout the United Kingdom, given that both Scotland and Northern Ireland have different legal systems. Expression of hatred towards someone on account of that person's color, race, religion, ethnicity, nationality or sexual orientation is forbidden. Any communication which is threatening or abusive and is intended to harass, alarm or distress someone is also forbidden.

A series of legislation starting with Public Order Act, 1986 then moving towards Criminal Justice and Public Order Act, 1994, the Racial and Religious Hatred Act, 2006, and the Criminal Justice and Immigration Act, 2008, all aim at combating the menace of hate crimes in the United Kingdom.

POSITION IN INDIA

In the past few decades, there has been a rise in the incidence of hate crimes, particularly in the fast growing and extra-ordinary economies and also in the countries which have traditionally been diverse, such as, India. So this is the high time when hate crimes should be categorized as a distinct category of crimes and stringent rules should be framed to control them. The reason that India too needs a separate legislation for such types of crimes is that they cause greater individual and societal harm. As Blackstone said long ago, "*it is but reasonable that, among crimes of different natures, those should be most severely punished which are the most destructive of the public safety and happiness.*"

The constitution of India and its hate speech laws aim to prevent discord among its many ethnic and religious communities. The laws allow a citizen to seek the punishment of anyone who shows the citizen disrespect on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever. The laws specifically forbid anyone from outraging someone's

“religious feelings.”

In 2014, while hearing the *Pravasi Bhalia Sangathan V. Union of India & Ors.,* which concerns hate speech made by politicians, the Supreme Court of India referred the issue to the Law Commission of India and asked it to come up with guidelines to prevent such provocative statements from being made. The Law Commission of India, an advisory body to the Union Ministry of Law and Justice, submitted a report in which it proposed new laws in order to curb hate speech which furnishes a fertile ground for commission of hate crimes particularly in a culturally diverse nation. Headed by former Supreme Court Judge, Dr. Justice B.S. Chauhan, the report was submitted on March 23, 2017. It suggests making incitement to hatred as well as causing fear, alarm or provocation to violence punishable offences. The report argues that Indian law defines as well as penalizes hate speech haphazardly. For instance, following sections of Indian Penal Code, 1860 deal with hate speech or hate crimes;

Section 153-A: Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language and doing acts prejudicial to maintenance of harmony.

Section 153-B: Any imputation that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India.

Section 295: Injuring any place of worship to insult the religion.

Section 295-A: Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.

Section 296: Voluntarily causing disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremonies.

Section 297: Trespassing on the burial places with the intention of insulting the religion of any person.

Besides these provisions contained in the Indian Penal Code, 1860, there is The Schedules Castes and Scheduled Tribes (Prevention of Atrocities) Act, 2015 and also The Transgender Persons (Protection of Rights) Draft Bill, 2016 which incidentally touch the issue of hate crimes.

However, according to the report, there is no water-tight compartment to deal with the various acts relating to hate speech which generally overlap. As a solution, the report proposed two amendments to the Indian Penal Code. The recommendations made by the Law Commission are not binding either on Parliament or the Union Government.

PROPOSED AMENDMENTS

The Law Commission, in order to effectively deal with the menace of hate crimes has made the following recommendations:

- The first would deal with an incitement to hatred. It says:

"Whoever, on the grounds of religion, race, caste or community, sex, gender identity, sexual orientation, place of birth, residence, language, disability or tribe—

- uses gravely threatening words, either spoken or written, signs, visible representations within the hearing or sight of a person with the intention to cause fear or alarm; or
- advocates hatred by words, either spoken or written, signs, visible representations, that causes incitement to violence;

shall be punishable with imprisonment of up to two years, and/or a fine of up to Rs. 5000."

- The second proposed amendment would curb speech that causes fear, alarm or is a provocation to violence. It says:

"Whoever, in public, intentionally, on grounds of religion, race, caste or community, sex, gender, sexual orientation, place of birth, residence, language, disability or tribe, uses words or displays any writing, sign or any other visible representation which is gravely threatening or derogatory:

- within the hearing or sight of a person, causing fear or alarm, or;
- with the intent to provoke the use of unlawful violence;

shall be punished with imprisonment of up to one year, and/or fine up to Rs 5000,"

Overall, the report takes a broad view of what constitutes hate speech. It rebuts the limited view that only speech that incites violence needs to be restricted, arguing that even the speech that does not incite violence may have the potential of marginalizing a certain section of society or individual. The document also takes into account the spread of internet access in India, accusing it of promoting "incitement to discrimination". The report says;

"The anonymity of the internet allows a miscreant to easily spread false and offensive ideas. These ideas need not always incite violence but they might perpetuate the discriminatory attitudes prevalent in society".

Since the recommendations made by the Law Commission of India lack any binding effect, the proposed amendments remained confined to paper only.

There is a need to address the issues of hate crimes in India. Legal provisions are required to deal with crimes originating out of racial prejudices. A mechanism of proper and expeditious enquiry into the matter is the need of the hour. Incidents of hate crimes have been prevailing for a very long time in India. However, no active steps have been taken by the government in this regard. A comprehensive legislation that would specifically deal with the problem of hate speech and hate crimes is much needed to maintain harmony in a secular and culturally diverse country like India.

CONCLUSION

Hate crimes are defined federally as a criminal offence committed against a person or property, motivated, in whole or in part, by the offender's bias against a race, religion, ethnicity or national origin, gender, disability or the like. These biases have established protected groups of people. A hate crime can be charged even if the accused person was incorrect in their association with the victim to one of the protected classes. Hate crimes are different from other crimes as they are not directed at a specific individual, instead they symbolize an attack on an entire group or class of people. Hate crimes are meant to create fear and intimidation. However, in hate crimes the accused and the victim are more likely to be strangers with the accused believing that the victim belongs to a particular group.

Hate crimes violate the ideal of equality between members of society. The equality norm is a fundamental value that seeks to achieve full human dignity and to give an opportunity to all people to realize their full potential. The status of the equality norm is evidenced by its constant reiteration in human rights documents. The violation of these basic values and norms by hate crimes has a weighty practical and symbolic impact. International Organizations have made the issue of hate crimes a priority. Though different countries have made different laws and enacted a variety of legislations to tackle the problem of hate crimes but the ground realities are somewhat bitter. Many social groups and organizations are working on this grave issue to pull out the problem from its roots but much has not been achieved. Since the problem is global, therefore, efforts on international level are required to combat it. But steps at domestic level are equally important.

As a step forward to stand against the menace of hate crimes and express solidarity with the victims and in a bid to counter the growing religious intolerance, mob lynching incidents, prominent and historic Muslim Organization—Jamiat Ulama-i-Hind (JUH) on August 13, 2017 organized 'Aman (Peace) March' simultaneously in more than 800 cities and towns across India. The peace marches were also taken out in all major cities including Mumbai, Kolkata, Bangalore, Hyderabad, Chennai and other places. Dalit leaders also joined the march. Steps of this kind send a clear message of peace, unity and brotherhood and can have a great impact on the minds of people. These rallies and marches where people participate surpassing their race, religion, color and caste appeal the conscience of people. Such efforts create an atmosphere of tolerance which is much needed not only in India but throughout the world because laws and statutes on paper are not enough unless and until there is a general awakening of conscience of people. The growing darkness in the world can be removed by the message of love and peace.

4. Police Administration in India: An Analytical Audit of the Issue and Approaches

Dr. Mudasir Bhat

Abstract

Police as a conscience keeper of the society is considered as an important constituent of the criminal justice system entrusted with the duty of maintaining law and order as well as detection and prevention of crimes. Police is considered to be the largest organised force which is taken from the community to serve and operate in our social milieu. However, because of misuse of power by the police personnel, there is police public trust deficit. The police force in our country is functioning under the British enacted Indian Police Act of 1861 which is outdated as in most of the cases it is unable to effectively tackle the problems of modern developing society. In this direction even National Police Commission in 1977 has suggested draft of new Police Act. Number of States appointed commissions to suggest police reformation but nothing concrete and substantial has been achieved. Recommended action includes exhaustive police training, management of police force and trustworthy police public relationship.

Keywords: Crime Prevention; Crime Detection, Law Enforcement; Police Public Relationship, Police Training; Police Management.

Introduction

Police force is the creation of society. It has existed in one form or the other wherever and whenever society existed. Police in almost all parts of the world is considered as the most visible manifestation of the government. Police is known to influence public attitudes towards law, government, and civic responsibilities. Moreover, the police reflects the social setting in which they operate. Policing policies and their activities and methodology adopted by them are often shaped by major forces of the National and State politics. Therefore, police cannot be seen in isolation from the changes and developments taking place in the society. They influence and are in turn influenced by such changes. A well organised, well motivated and well equipped police force is an asset and benign influence in grappling with the problems of a changing society.

Conceptual Dimensions

The primary purpose of a police force is the maintenance of law and order, preservation of peace and protection of life and property against the attacks by criminals and injuries caused by the careless and inadvertent offenders. It,

therefore, plays an important role in criminal justice system. Of late, police duties have increased enormously and are becoming more and more diversified. The modern police force must protect the public against the physical dangers, rescue people, regulate traffic and preserve law and order in the society. The word 'police' originally was used in a wider sense to connote the management of internal economy and the enforcement of governmental regulations in a particular country. With the passage of time, the term 'police' began to be used in a much narrower sense to connote an agency of the state to maintain law and order and enforce the regulations of the Code of Criminal Procedure.

The term 'police' is derived from the Greek word *Politeia* or its Latin equivalent *Politia*. The term *Politia* stands for the 'State' or 'administration'. The term police, according to oxford dictionary, means "a system of regulation for preservation of order and enforcement of law: the internal government of a State". In the present context, the term 'police' connotes a body of civil servants whose primary duties are preservation of law and order and detection of crimes.

Police is considered as an indispensable appendage of State organisation in almost all the societies. Only the person of proven ability and those having thorough knowledge of local regions and its subjects were recruited in the police force so that they could tackle the problem of law enforcement effectively. However, with the progress of civilisation and development of knowledge, the dimensions of police functions have extended beyond limits. Now it has assumed the role of a social service organisation in the modern welfare states and has no longer remained a mere watch-dog agency of the state.

Historical Background

The beginning of civil protection against crime and disorder in England came with the promulgation of the Edict West Minister in 1285 by King Edward I. Under this system, local groups of property owners numbering about hundred each were responsible for maintenance of peace in their districts. By the advent of eighteenth century United Kingdom witnessed a considerable increase in crimes of violence. Therefore, a police force of 126 constables was set up by the Middlsex Justice Act, to arrest the growing crime and violence. However, for the maintenance of peace and tranquillity in Ireland, a regular system of constabulary was established in England by the Act of British parliament in 1787. This system could not prove efficient therefore Sir Robert Peel (the then Home Secretary of England) pleaded for a change in constabulary system. This led to the passing of Metropolitan Police Ac of 1829, which provided for a separate police force for Metropolitan city of London.

Similarly, before the United States came under the influence of the Britain, the civilians performed the functions of night-watchman by rotation. Eventually, in

1844 a regular police force was established in New York. However, regular force was setup in America by the Dougan Charter of 1886.

In India the Police force has been in existence in one form or another from the very ancient times. There are references to the existence of police system in epics, namely *Mahabharata* and *Ramayana. Manu*, the great ancient law-giver also emphasised the need of police force for the maintenance of law and order. The history of ancient India further reveals that there was a well organised police force during the reigns of ancient Hindu rulers. The Gupta dynasty in ancient India was particularly known for its excellent law and order situation through a well organised system of police.

The Mughal rulers in India also had a well organised police force for maintaining law and order in society. This system was, however, different from the earlier one. The police official called the *Fauzdar* was in charge of the entire police force with a number of subordinate officials called *Darogas* or *Kotwals* working under him. The policeman called the *Sipahi* was the official of the lowest rank in the Moghal police constabulary. During this period detective branch of the police force which assisted in criminal investigations was known as *Khuphia. Nizam* or *Subedar* was the chief police administrator of the province.

When the British took over the government of the provinces in the late eighteenth century and early nineteenth century, they adopted the system of administration that they found in each locality and made as few changes as possible. The history of Police in British India prior to 1860 was largely a series of experiments with the old system of fauzdars and the introduction of new system such as the appointment of a superintendent of police in 1808 in Bengal. At the initiative of Sir Charles Napier, who was appointed as the Governor of Sind (1843-47), the police in Sind was organised in the pattern of the Royal Irish Constabulary and was made a separate and self-contained organisation under the supervision of its own officers. In 1847, Sir George Clerk, Governor of Bombay, on his visit to Sind, found the policing so efficient that he decided to introduce a similar pattern in the Deccan. In 1853 a superintendent of police was appointed in Bombay. A change in Madras was effected soon after in 1859. In Lucknow the force was constituted on the lines of the London police. Thus, by the time the commission of 1860 was setup to recommend the pattern of policing in India, the stage had been set and the solution was in place in bits and peices, for a policing system to be adopted for the entire country.

First attempt to introduce a law-enforcing agency with a uniform structure in the greater part of India was the Police Act of 1861. The Act was a major departure from the old system, although it retained some of the features of the old system. The darogha, for example was retained but with a new name, the Sub-Inspector of police. The Police system created by the Police Act of 1861 has been retained in

independent India.However, this act was not made applicable to Bombay Presidency which continued to function under Bombay Regulation XII of 1872. In the year 1866 Railway Police was constituted, and the responsibility for prevention, detection and prosecution and maintenance of the order on railway platforms were entrusted to the Railway Police, on the recommendation of the Railway Committee. In order remove certain defects in the Police Act of 1861, the Police (Amendment) Act, 1895 was enacted. After that Lord Curzon appointed another commission called the Police Commission of 1902 to suggest various measures for reforms in police working. Unfortunately, the Commission instead of suggesting any reformative measures highly recommended the prevailing setup.

In 1912 the Royal Commission known as "Islington Commission" on the police services in India was appointed and it submitted a report in August 1915. It recommended various changes including that not less than 10% of the Superintendents should be filled by promotion from the Provincial Services and that this should be gradually raised to 20%. In the year 1922 the Police (Incitement to Disaffection) Act was enacted to punish those causing disaffection against government. In 1923 another Royal Commission known as the "Lee commission" was appointed. This Commission recommended that the superior post for the Indians in the Indian Police Service cadre were to be filled at 50% to be achieved by 1939. There were hurried expansion of the force in all Provinces during and immediately after the World War II, but substantial increase was effected after Independence and merger of the Princely States in 1948-49.

Consequent to the Indian independence in 1947, the colonial police setup was hardly suited to the radical changes in the Indian community, but unfortunately, the same set up with little modifications still continues despite more than seventy years after the end of the colonial rule in this country. In 1949 the Central Reserve Force Act was passed constituting an armed police force under the control of the central government. In 1951 the All India Services Act was enacted constituting an All India Services known as the Indian Administrative Services and the Indian Police Services. Rules were framed regulating the recruitment and conditions of services, pay etc of the members of the Indian Police Service.

The Constitution of India, 1950 makes policing a State subject and therefore the State governments have the responsibility to provide their communities with a police service. However, even after-independence most States have adopted the British enacted Police Act of 1861 without any change, while other States have passed laws heavily based on the 1861 Act. The need for police reforms in India and the police laws has been long recognised. There has been debate and discussion by the government created committees and commissions on the way forward for police reform, but unfortunately India remains saddled with an outdated old-fashioned law, while report after report gathers dust in government

offices without any positive implementation. The National Police Commission began sitting in 1979, in the context of a post-Emergency India, and produced eight reports. In the year 1996, two former senior police officers filed a public interest litigation (PIL) in the Supreme Court of India, asking for the Court to direct governments to implement the recommendations of the National Police Commission. The Supreme Court directed the government to set up a committee to review the recommendations of the Commission. Consequent to this a Committee was set up, headed by J.F. Ribeiro (Former chief of Punjab Police) which sat over 1998 and 1999 and produced two reports. In 2000, the government set up a third committee on police reform under the headship of former union Home Secretary, K. Padmnabhaiah. This committee produced its report in the same year. After that the Malimath Committee Report submitted in March, 2003 has very articulately laid down the foundation of a restructured and reoriented police system. The Committee in its report observed that the success of the whole process of Criminal Justice Administration depended completely on the proper functioning of the police organisation especially in the investigation stage. Apart from the investigation of offences, the police also have the duty of maintaining law and order. Again in the year 2005, the government under the headship of Mr. Soli Sarabjee put together a group to draft a new Police Act. This committee submitted a Model Police Act in late 2006. At the same time, the Supreme Court made further directions in the long running PIL's on police reform. The court directed the government of India to implement police reforms, and provided them with a framework within which to begin the reform process. These PIL's included the one filed in 2007 by former DIG of Police Prakash Singh. After examining the PIL, the Supreme Court of India issued directions regarding control and structural mechanism of police. Even Justice J.S. Verma Committee constituted in 2012 also recommended the implementation of the directives issued by the Apex Court in *Prakash Singh's case*which include, State security commissions in every state to ensure that the State Government does not exercise unwarranted or pressure on the state police, selection and minimum tenure of DGP, I.G and other police officers, investigation police shall be separated from law and order police to ensure speedy investigation, Police Establishment Board in each State which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police, Police Complaints authority and National Security Commission.

The Indian Police Set-up

The Hierarchy of police officials working in the State police forces include, Director-General of Police, the Inspector-General of Police, Deputy Inspector General of Police, Superintendent of Police, Deputy Superintendent of Police,

Circle Inspectors, Sub-Inspectors, Assistant Sub-Inspectors, Head Constables and Recruit Constables, etc. However in metropolitan cities of Bombay, Calcutta, Madras, Hyderabad etc., the powers of Superintendent of Police and those of District Magistrate are combined in one single official called the Police Commissioner. Though the Constitution of India enumerates police as a State subject in the List, it includes long list of allied and quasi-police subjects in the Union List. For example, Preventive detention, arms, ammunition, explosives, extradition, passport etc. are the sole responsibilities of the Central Government. It also determines the selection and service conditions of all India Police Services.

The Women Police Force in India

In India, early history of policing by women is available in the Ramayana, Mahabharata, 'Arthashastra' of Kautilya and the Ashokan edits. The Ramayana gives the clear description of how Sita was put under surveillance of the women police who carried all round vigil. Similarly, the Ashokan edicts frequently speak about the 'Prativedikas' who protected the royal chambers from intruders and kept the king informed about the day to day happenings.

Modern society has evolved from the conflicts between the traditional and the modern, the rational and the irrational. Old relationships and taboos are being broken and new patterns are emerging. The category of people suffering the most, because of this traumatic transformation, women all over the world have had to struggle hard, to make a breakthrough into the police services. At first instance women were first entrusted with a very limited role in cases relating to women and children. By the 1970's, women had broken the legal and practical barriers to enter into police departments. Despite skepticism and hostility, women police force demonstrated that they were as capable as men in handling routine police tasks. In country like India, the problem of policing has taken an entirely new dimension due to the rapidly changing socio-economic and political conditions. In several States, increasing involvement and participation of women in various political agitations, riots, student demonstrations have become a regular feature. The increasing involvement of women in crime, delinquency, deviancy and agitations stresses the need for developing women police units, suitably trained in the tasks attuned to them.

It is significant to note that India has the credit of setting up the first women police station in the world. It was set up at Calicut in the State of Kerala on October 27, 1973. Thereafter, the Mahila police stations were set up in Madhya Pradesh, Rajasthan and Jammu and Kashmir. With the opening of Women Police Stations, people particularly women feel their complaints will be dealt with faster and that they will get prompt relief. It has been seen, however, non-functioning of the women police stations during night hours is a cause of inconvenience for the

genuine complainants as they have to take their complaints to man-manned police station or have to wait till morning.

Police Image in India

Public opinion of the police varies from country to country. In some countries police stand as the symbol of security and protection, while in some other countries the police are viewed as an object of terror and hatred. In India, public distrust of the police is very great and police have never enjoyed the same sort of love, respect and friendliness on the part of general public. Relations between the police, public and press in India have been a story of love-hate one, more of the latter. The citizens view the police as the strong arm of the State that harass and not befriends them. Cordial police- public relationship, despite some successful experiments remained a dream, and this is something unprecedented in India and has to be approached in a sincere and serious manner.

Police Training Programme

Crime prevention and its investigation is the primary and major task of police force, it has to collect facts, evidence, witness and other materials which influence the process of truth searching in the establishment of guilt. Police among the law enforcement constituents is the first to reach on the site of crime, it has to play an important role in the administration of justice. Therefore, it becomes important to provide police force exhaustive training and education about the crime prevention and its investigation. Criminals in this modern and developed era use many modern types of techniques to commit crimes. It has thus become need of the time that police forces must be acquainted with the modern scientific knowledge. It is suggested that police personnel at the entry level into the force must be given the exhaustive training of science, law and social work.

The Role and Functioning of Police

The police force is under professional duty demanding from them the highest standards of conduct, at most honesty, impartiality and integrity. It is rather unfortunate that the police in modern Indian Society is looked with fear, suspicion and distrust by the people at large. The role of police after independence of India has been very dubious. Even after decades of freedom the police have not been able to throw off the legacy of the British times. During the British rule police force was organized to crush the people who opposed the foreign hegemony. Naturally the police force was tyrannous. They dealt with the patriots and revolutionaries as if they were habitual criminals. The process continued even in free India unchecked, unabated. The climax was reached by the time Emergency was declared in 1975 when one could see the brutal a police oppression for two

and a half years-Emergency in the North India nicknamed as 'Police Raj'. It can be pleaded that bribe and corruption have become a part of Indian society. Even police force which is meant to stop crimes like corruption is deeply indulged in this menace. As the police force is drawn from the society itself it is necessary that the 'societal attitude' should change. Expecting the police to change when society itself is chained to a set of deep-rooted beliefs (like corruption) is like putting the cart before the horse.Even judiciary does not hold police in high esteem. Justice A.N. Mulla of the Allahabad High court characterised police force as the largest single lawless group and held that crimes in India could be reduced half if the police was disbanded.

The severe criticism and hostility towards the police force cannot improve the police efficiency. The major problem for the modern police force in India is to inspire the general public to appreciate the police values. The general impression that every police-man is inefficient, brutal and corrupt must be brushed aside and they should be encouraged to perform their duties with honesty and sincerity.

The main functions of the police force are prevention of crime and maintenance of law and order. These may be also referred to as traditional police functions. However, it would be more appropriate to call these functions as primary functions of the police. The major functions which the police is lawfully required to perform are as under:-

- Patrolling and surveillance for the purpose of watch and ward.
- Preventive functions of the police includes preventing law breakers and suspected criminals.
- The police has the power to release accused on conditional release bond with or without sureties.
- Investigation by police for the collection of evidence.
- Interrogation and frisking of offenders as a measure of safety and security.
- Search and seizure for the purpose of smooth trial of case.
- Assist public prosecutor in the court of law.

The Police Problems

After independence India has shown tremendous socio-economic growth. With the development, task of the police force too has become hard. Criminals by the use of new technology always try to outsmart the police force and the police makes efforts to find out the culprit by using scientific means. In this process police are confronted with numerous problems. *Firstly,* during investigation of crimes job of the police personnel becomes difficult because of lack of public cooperation and support. People in most of the cases are not willing to assist the police in the detection and investigation of crimes. *Secondly,* Criminalisation of

politicians provide undesirable protection to professional offenders and all sorts of pulls and pressures are exerted on the police to be lenient with the offenders. *Thirdly,* in the court of law evidence collected by police during investigation is looked with suspicion. *Lastly,* the worst problem faced by the police force in India is rioting. Problem of communal rioting depends mainly on the political solution of the problem created by the existing relations between the two communities. In fundamentals, communal rioting is a political rather than a police problem.

Conclusion

The police system in our country is conceived as to serve the interests of the ruling class, even after the 70 years of independence, the condition of the police system is same as left by the British. The respective governments, especially the politicians ruling state governments, want the police force to function like their private army. Enforcement of law, prevention of crimes, establishment of justice, etc, are not important to selfish politicians. So they do not want police establishment to become modernized and function impartially and efficiently. The Indian police is becoming notorious for rights abuse, corruption and lack of efficiency. The police personnel are poorly paid. They do not get proper training. The politicians treat them like private servants. If police force does not sub-serve their interests and 'somehow' implement their instructions, they would find it very difficult to carry on their corrupt practices. Despite repeated directives from the Supreme Court State governments drag on the much recognised subject of police reforms in India.

In the interest of the country and good governance, there is an overdue need for urgent and concrete reformation of police system in India. It is also true that unless the people realize the importance of police reforms and continuously insist upon State governments for the same, none of the selfish political parties at their own is likely to take any initiative in the reformation of the police administration in India.

5. ROLE OF INFORMATION TECHNOLOGY IN CRIMINAL JUSTICE SYSTEM.

NIDA KHAN
IRFAN NAZIR KUCHAY

ABSTRACT
The development in science and technology also had its impact in the criminal justice system. The rapid growth of information technology is likely to create more deep change in the criminal justice system. The electronic devises are coming very fast and acquiring the positions of manual system in court rooms. The criminal justice system is likely to become an information analyzing system in which the heavy load of information enters in the form of cases including evidence and it is usually processed manually by the administration and goes out as judgments, orders, etc. In the manual processing there are various limitations like delay in processing, errors, delay in delivery and access to information. The significance of technology oriented information delivery process in criminal justice system is that it increases speed and proficiency. The technology has become a helping hand to the judiciary in providing information to the general public effortlessly as well as in processing the accumulated cases. The introduction of information technology has reduced the cost of litigants and thereby given them easy and equal access to criminal justice system. The present paper attempts to analyze the role of information technology in criminal justice system and its impact in providing speedy justice, the paper also focuses on the drawbacks associated with the E-Management of court system.

INTRODUCTION

As in many other areas of human activity, one of the fastest growing applications of technology to criminal justice and security is in the sphere of information and communications. Information or intelligence has sometimes been referred to as the ‘lifeblood’ of policing and the ability to handle information—such as the names and details of suspects, defendants and prisoners—lies at the heart of attempts to develop an effective and efficient criminal justice system. Since the mid-1980s strenuous attempts have been made to computerize case management systems with the explicit goal of using technology as a means to enable the creation of a system from the various criminal justice organizations.

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With the appearance of Information Technology (IT) many advanced countries have switched over from paper based commerce to e-commerce and from paper based governance to e-governance.Today, Computers and the Internet touch and influence almost every aspect of our lives. From the moment we wake up to moment we sleep, we interact with computers and their various connectivity's.

RELEVANCE OF INFORMATION TECHNOLOGY

The criminal justice system runs on information. There is information about criminal incidents and information about potential defendants. There is information about people who are incarcerated either serving their sentences or awaiting trial. There is information about the court process including scheduled events and outcomes of past events. All of this information affects the way people are treated in the system and perhaps impacts the final outcome of any individual case. The quantity, quality, and timeliness of information are crucial to participants in the system. Information flows can also affect the way the entire system works. The efficiency of the system and the quality of justice dispensed are highly inter-related. Criminal justice administrators must be able to understand the flow of cases through their system.

The use of information technology (IT) in our justice-system crossed an important threshold with the introduction of the electronic-filing of cases before the Supreme Court of India. Similar e-filing systems are being planned for the various High Courts in the near future and eventually in the District Courts as well. In this regard, a clear roadmap has been prepared in the form of the 'National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary.'

The efficiency of judicial functions is also being enhanced with the use of information technology (IT) for case management. Until a few years ago, the allocation of matters before different judges and the preparation of cause-lists was a time-consuming process. However, computerization in the higher judiciary since 1990 has led to tremendous improvements. The detailed particulars of the cases are entered into the computer which permit grouping and tagging of cases with similar subject-matter. They are categorized and classified, so that similar matters are heard by the same benches in order to avoid conflicting and overlapping decisions. The progressive introduction of these measures in the Supreme Court has helped in

increasing the disposal rate by avoiding undue repetition of similar cases.

Potential Reasons for Computerisation

A leading potential reason for the introduction of information technology in the administration of criminal justice is that computerization can improve the quality and the time lines of information. Higher quality information and more timely information lead to improved decision-making. Further, higher quality information means also more information for policy analysis. Finally, higher quality information and more timely information lead to increased system efficiency of the criminal justice system; also an important issue in managing the criminal justice system.

Existing manual information systems make the availability of high quality, timely and accurate information increasingly unlikely. Further, as society and the nature of crime grow more complex, the structure of the data required to properly administer the criminal justice system become more complex as well. These complexities soon overwhelm the ability of a manual system and even some more rudimentary computer-based systems. To properly investigate the more complex crimes found in today's society and to more efficiently allocate scarce criminal justice system resources, administrators require more information about criminal events and crimes. In addition, the way the information is used evolves. Instead of using simple statistics such as counts of events, administrators will more intensively process the data using statistical models. In addition, new more powerful graphical and spatial forms of analysis can be employed. These methodologies require the speed, access, and dimensionality of data that are not supported within manual systems.

Further, the need of criminal justice officers and organizations to share data increases as the scope and complexity of crime increases. Much of the data captured in a typical criminal justice information system has utility to multiple organizations within the same government. This presents two problems. First, that data is captured multiple times with all the inherent data capture costs and the costs of redundancy. Second, it produces the potential for inconsistency since the data may be generated at different times and is potentially measured in different ways even though the underlying concept is the same. Both problems can create problems for criminal justice administrators.

A main assumption about the need to have criminal justice information is that of creating conditions for informed decision-making related to the pursuance of the goals of crime prevention and criminal justice. Planning, monitoring and evaluation should rest on comprehensive, reliable and timely information which must be purposefully produced, processed, analyzed, utilized and made available

for public utility. Criminal justice systems cannot be managed effectively without knowledge and detailed monitoring of both the factors underlying the development of crime and the operation of the criminal justice agencies. Such monitoring is impossible in the absence of reliable and expedient information. Strategic planning, policy development and evaluation across the criminal justice system and operational running of the agencies require such information. This implies a need to develop, maintain and properly utilize crime and criminal justice information. An understanding of the factors underlying the development of crime and of criminal justice processes cannot be expected to unfold simply from the production and distribution of statistical data, nor from efforts to promote information technology. While these are of enormous importance they have to be placed within a strategy of a credible and effective crime prevention and criminal justice policy based on community expectations, human and financial resources and the operational potential of the system.

Potential Benefits of Computerization in Criminal Justice

Below is a sampling of the potential benefits arising from the computerization of criminal justice broken down into prosecution, courts and the correctional service.

Prosecution:

- Improved case output through the use of computer-based systems to assist with the recording of case details and to track progress on each case and to trigger reminders when actions fall due;
- Easier recording and collating of information pertaining to cases, and hence better use of clerical and professional resources;
- More rapid transfer of case details from law enforcement, through the use of computer communications systems;
- Positive identification of other prosecutions pending on individuals, through access to the case registers of other prosecutors and courts;
- Higher rate of successful prosecution through better analysis of case details, and assistance with decision making in the selection of charges, through the provision of rapid access to statutes and case law;
- Assistance with decision making in the selection of charges, through the ability to use computer systems to examine the effects of adopting combinations of charges and pleas;
- More efficient use of professional resources through better and more direct communication with case information held by courts and other agencies;

- More flexible and rapid access to summary statistics on case throughput, the work of prosecutors, facilitating policy decisions;
- Better use of staff resources, focusing on the interpretation of recorded facts, through the use of computers to assist with administration and information recording.

Courts

- More rapid transfer of case details from law enforcement or prosecutors, through the direct interchange of computer based information;
- Improved case throughput through the use of computer-based systems to assist with the recording of case details and to track progress on each case and to trigger reminders when actions fall due;
- Higher case throughput resulting from better information being available to court clerks and judges (to assist with managing the court hearings themselves);
- More rapid decision-making on individual cases as a result of improved access to statute and case law in computerized form, using key-word searches, enabling cases to be found and retrieved very much more rapidly and reliably than by manual methods;
- Fewer cases being dismissed on account of procedural errors in administration;
- Improved sentencing decisions through the availability at sentence, of accurate criminal history information, as well as of court-related information (such as the payment history on outstanding fines);
- More potential to involve clerical staff in the in-court work, for result processing during the hearing, document preparation and account initiation, providing more challenging and demanding duties;
- Better utilization of court resources, through better case scheduling, resulting from analysis of case characteristics to predict hearing times;
- Easier scheduling of adjournments, through provision of access to a central computer-based court diary, reducing the change of double-booking, and enabling better use to be made of court resources; in some cases these are linked to the computer-based diaries of lawyers and police witnesses;
- Easier management of accounts associated with payment of fines, fees, costs, fixed penalties, etc., leading to more prompt enforcement of penalties and hence improved cash flow in fines and fees payments;
- Better presentation of case papers, facilitating the reading and assimilation of case details;

- Easier committal of cases to a higher court, through the automatic transfer of case details and automated scheduling of case hearings;
- Ability to monitor the throughput and sentencing patterns of individual judges, and to allocate cases between judges to take account of experience and practice;
- Easier collation of information on offence and sentencing patterns, to assist with formulation of sentencing guidelines.

Correctional Administration:

- Less requirement for clerical staff for routine clerical duties, associated with maintaining inmate records, door lists, inmate accounts, etc.;
- Better operation of prison regimes, through the availability of centrally-held information on the individual regimes for individual inmates;
- More efficient (lower running costs and higher productivity) operation of prison workshops and related facilities, through the use of computer-based work scheduling systems, product design systems and stock control systems;
- More efficient use of resources in transferring and escorting prisoners between courts and prisons, and between prison establishments, through the use of computer-based transportation planning systems;
- Improved security, through the use of logging systems to record the location and movements of inmates within and between prison establishments, as well as the use of computer-based recording systems to note prisoner associations, psychological information and changes in behavioral patterns;
- Improved monitoring of the use of resources, regime management, statutory requirements, etc., through the collation and aggregation of inmate records held at individual establishments;
- Easier production of statistics for publication and as basis for policy formulation;
- Better prediction of future prison populations, to guide the prison building programmer.

BENEFITS OF INFORMATION TECHNOLOGY IN CRIMINAL JUSTICE ADMINISTRATION

The efficiency of judicial functions is also being enhanced with the use of information technology (IT) for case management. Until a few years ago, the allocation of matters before different judges and the preparation of cause-lists was a time-consuming process. However, computerization in the higher judiciary since 1990 has led to tremendous improvements. The detailed particulars of the cases are

entered into the computer which permit grouping and tagging of cases with similar subject-matter. They are categorized and classified, so that similar matters are heard by the same benches in order to avoid conflicting and overlapping decisions. The progressive introduction of these measures in the Supreme Court has helped in increasing the disposal rate by avoiding undue repetition of similar cases.
The implementation of information technology (IT) solutions right from the Supreme Court to the subordinate courts at the district level is therefore fully endorsed. Information technology will enable judges to assume far greater responsibility in tracking and managing cases. A national level tracking mechanism can therefore enable the monitoring of the progress of cases, the scheduling of judges' workloads and the listing of cases among other parameters. The progress of a case right from the stage of first instance to its conclusion can be recorded and information about costs and delays can be made available. Indeed the availability of this information increases the accountability of the judiciary and would thereby increase its efficiency. It is also perceived that the wide circulation of such statistics will increase the public scrutiny of the performance of individual judges. There is also a suggestion to the effect of making judgments authenticated by digital signatures available online. Such innovative suggestions are a welcome addition to our efforts in improving efficiency and making our courts more accessible. Technology thus opens up myriad possibilities to improving case flow, co-ordination between courts, maintaining statistics and is an important component of the roadmap for reforms in the administration of justice in India.
The Indian judiciary is facing mounting pressures to reform its apparatus. Even the judiciary itself has come to recognize, on the books, that change is long overdue. Some estimates have it that it would require almost three years to clear the current backlog of cases in High Courts. While technocrats herald that the enormous backlog of cases may eventually be the death knell for India's judicial branch, reform efforts must go beyond achieving the speedier delivery of justice and work towards tackling other inadequacies of the system if “access to justice for all” is to become a reality. As e-government initiatives continue to transform the nature of India's bureaucracy and enhance the quality of government services, there is a mood of great optimism that ICT (Information and Communication Technology, hereinafter referred to as ICT) will also come to play a central role in judicial reform efforts. Notable success in implementing ICT in the judiciary has also been achieved in Canada, Australia, and in several countries across Latin America.

There are numerous ways in which ICT may be used to transform the judicial system, and, additionally, there are many ways such an endeavor provides the IT sector with “new opportunities”. Dr M. Veerappa Moily, Former Union Minister for Law and Justice, has proposed for India a centrally funded and administered

National Judicial Technology Program. Such a program aims to use ICT in the courtrooms to free the legal system of “historical inefficiencies". It is of no doubt that ICT can reduce the duplicity of the paper world and make courts more green through electronic case filing and video conferencing. Online case filing systems can increase speed in which citizens can have their cases heard, and real time access to online repositories of legal information drastically expedites the case cycle.

E-MANAGEMENT OF CRIMINAL JUSTICE SYSTEM IN INDIA

In India, the Ministry of law and justice has published the report stating the importance of implementing electronic facility for court proceedings. The vision statement is as follows:

Integration of ICT in the current scenario:

- Presiding officers of the court will be given laptops preinstalled with suitable software enabling them to type out quick and short judgements. Where necessary personal executives will provide additional assistance.
- Video conferencing technology should be used extensively: (a) For cases involving traffic offences or bailable offences. (b) For the purpose of witness testimony including cross examinations.
- A moderated, on-line web dialogue between lawyers, sitting and retired judges should be launched on inputs for reduction of arrears, very similar to the “digital dialogues initiative” in the U.K.
- The integration of ICT in the current system will avoid considerable waste of the judicial time that occurs at present because of the system of calling out all the listed cases which are not yet ripe for final disposal to address purely procedural issues, such as:
  - Whether notices are served.
  - Whether defects are cured.
  - Whether affidavits, rejoinders, etc are filed.
  - Whether parties have taken necessary steps at different stages of case.

ICT intervention for tackling the criminal justice system

- There is an urgent need to modernize police stations by having technologically equipped interrogation rooms. State of the art telephone recording systems with programmed interface and mobile forensic vans.
- Statements of witnesses should be videotaped by police. Confessions made to a police officer which are intended to be admissible as evidence under special statutes must also be videotaped.

- Technical evidence like recovery of material as well as samples can be done through electronic systems so that hostile witness can be avoided.
- Charge sheets, FIRs, statements and other essential documents can also be filed not only in hard copy form but also electronically, e.g. the recent Delhi gang rape case where charge sheet was filed on an electronic device i.e. CD/DVD's.
- FIR should be electronically generated and stored and may be made available to the complainant and accused, through use of a password or secure key. This is being practiced in Delhi.

E-Courts

The E-Courts mean paperless courts. This system is being followed by courts at various levels in the United States, as well as in our Supreme Court, though with limited success. The technology information, forecasting and assessment council of the Department of Science and Technology, Government of India, is in the process of undertaking a project in relation to E-Courts, which aims a higher level of interfacing between science and technology and judiciary. The said project is set to function in a collaborative mode with the judiciary, investigating agencies, forensic laboratories and science and technology organizations.

In Supreme Court there are various electronic facilities like judgment information system, daily orders, case status, cause lists and E-Filing. JUDIS(The Judgment Information System) is a link in the SC website through which one can electronically download judgments delivered by SC and several High Courts in India.

Problems

While ICT should facilitate the reform process, past experiences have shown that the over zealous use of technology has too-often resulted in less than impressive results. Many deep-seated challenges must be overcome before the use of ICT can be truly transformative. Often cited is the level of resistance judicial cultures express towards externally imposed change. Quite logically, those required to make change are also those who may have the most to lose in the short-term by doing so. Similarly, it is also difficult garnering the levels of political support judicial reforms require to be effective. Because the judiciary is such a highly politicized apparatus, efforts to fundamentally transform the system will require the support of a vast number of stakeholders. The low level of technological literacy which exists among India's judges is also problematic. Not only will members of the judiciary be open to new ways of doing business, they will also have to be diligent in adopting a new skill-set in which they may be more than a decade behind in acquiring. Other deep-rooted limitations of India's judicial system are becoming increasingly apparent today. Questions surrounding access to justice

remain deeply embedded in the asymmetries of class power, which are often reinforced by the political nature of the judiciary. Constitutional law in India also remains unstable, as the principles informing judicial action have become increasingly less clear. Furthermore, the courts have come to maintain a disproportionate share of power and influence in the Indian political sphere. It is questionable if ICT can work to ameliorate some of these malignancies, or if its use will only come to reinforce them. If technology is appropriated in a way which serves to make the judicial process more transparent and accountable, protect the rights of citizens, and provide greater and more equitable access to justice, it may be safe to assume that a more tech-savvy judiciary is a positive development for citizens. Online case-filing services may unintentionally, due to cost or lack of awareness, erect further barriers to justice for individuals who traditionally remained outside of the sphere of access

Without a legal framework which is considered to be socially just, greater speed of the judicial process, aided by technology, may become a tool which enables the judiciary to act more arbitrarily, more efficiency. This could be troubling for individuals who are already marginalized by certain policies or legal practices. Technology can also make it possible for judges to insulate themselves from the necessary checks and balances required in the law-making process.

Whether technology will be appropriated to facilitate a more equitable justice system is unknown, but it is certain that such will require a coherent national reform strategy with long-term political backing. Short-shorted technological fixes may improve India's judicial efficiency in the short term, but may, however, overshadow opportunities to bring about a more transparent and accountable system in the long-term.

CONCLUSION

The amendments in the Copy Right Act, the Indian Penal Code and the Indian Evidence Act demonstrate India's willingness to meet the challenge of the computer age, because the new computer age require new skills from lawyers, who would have to develop new skills to meet the new challenges for instance, the skill of comprehension, rather than interpretation

New challenges are presented by the need for security in electronic networks. Due to lack of security very precious information is hacked by terrorists which has given birth to cyber terrorism. We have need to develop computer forensics. We, as a legal community, also have to recognize, and resolve, the difficulties, which new technological development has brought with them; conflict of laws (jurisdictional problems across world), protection of intellectual property, security, data protection, privacy and other forms of regulation. The message is simple: It is Time to be enlightened. Now we are living in global village- it is only because of information technologies. So there is need to strengthen computer forensics. Police

investigation and forensic investigation are two entirely different aspects. Forensic help is the best help in cyber crime investigation.

Case management and planning is therefore vital to the functioning of a modern judiciary. Its implementation will however at some stage require serious reflection on the changes required in our system.

Meanwhile, Judges should not be reluctant to accept information technology to be incorporated in justice delivery system while waiting for suitable answers to the issues raised by it. Justice delayed is justice denied, and technology has proved to be constructing and helpful in justice delivery system. The investigation process needs to be hastened by acknowledging scientific evidence as powerful tool of current and future need; otherwise the criminal justice system will suffer.

Hence it can be said that the developments of the science and technology became a greater helping hand to the criminal justice system. The electronic case management system contributes to efficiency and time saving. The impact of ICT could reduce the cost of litigation and thereby provide easy and equal access to criminal justice. In short the electronic assistance system promotes the concept of Rule of Law.

6. International Labour Organisation Standards and the Rights of Migrant Workers

Sheeba Ahad

Abstract

The concept of migration is as old as the history of humankind. It is a significant feature of human civilization. Seen in the wide sweep of history, labour migration has been an integral and vital part of human development. For many poor people around the world migration is a way of life, and has been for centuries. But globalization has radically altered the scale of migration: people are now more aware of opportunities elsewhere and it has become easier for them to travel. Labour Migration is both Internal and International. International labour migration has emerged as a major global issue that affects most nations in the world. This paper throws light on how migration is continuing in different parts of the world and how it is becoming more and more crucial towards improving livelihood status. An endeavour has been made to examine the ILO norms which provide an elaborate framework on labour standards regarding migrant workers. The paper also highlights that inspite of a plethora of laws there is a wide gap in the existing legal and policy framework and practical approaches for protecting the welfare of the migrant workers. The legislative bodies and the policy makers exhibit a lackdaiscal approach towards incorporating ILO norms related to migrant workers within the legislative and policy framework respectively.

Key Words: Migration, Labour, Human Rights, exploitation, Convention, International Labour Organisation(ILO).

Migration: A Conceptual Analysis

In an increasingly globalized and shrinking world, migration of human beings is becoming more and more common. It is a major demographic process that has been an integral and salient feature of human history since time immemorial. It has been an important means by which human civilization has spread out, enriching cultures, disseminating ideas and generating social, political and economic changes at the places of origin and of destination. As an area of study, migration has been continuously drawing the attention of policy-planners and academicians interested in looking into the various impacts of population mobility from place to place. The characteristic features of migrants at the place of origin and destination, reasons for In-migration or Out-migration, the process of adaptation at the place of destination and the interrelationship between migration and economic development have generally been the focus of such studies. It is enviable and necessary to examine the related concepts of migration based on the

studies which have already been conducted in India and elsewhere.

Migration is a complex phenomenon said to be caused by a multiplicity of factors, sometimes bifurcated in “push” and “pull” aspects. The consequences of migration are equally complex. It is a movement of people from one permanent residence to another more or less permanent residence for substantial period of time. Normally, the crossing of administrative and socio-cultural boundaries is involved in migration. The word “migrate” means to change residence, but every change of residence cannot be called migration; a forced change of residence (say due to construction of dams) is evacuation and not migration. Nomadism involves change of residence, but it is of nomadic nature and not permanent.

Migration is ordinarily defined as the relatively permanent movement of persons over a significant distance. This is the most general form in defining the nature of migration. It involve many forms such as local moves of little economic significance, temporary population movements in search of seasonal jobs, permanent shift of individuals and groups from one economic system to another, employment patterns and social change, creation of an unorganised and unskilled labour force .

The term migration has been defined in the new Webster’s Dictionary as’ the act or an instance of moving from one area to another in search of work”. As per the Encyclopaedia of Americana migration is a form of spatial mobility involving change of usual residence between clearly defined geographic units. The temporary changes through excursions and business trips to town etc. are not included in migrations. Thus the term migration has in general usage, permanent changes in residence between specially designated political or geographical areas. In the Indian Census, the term migration is solely defined by the concept of place of birth and place of enumeration. Accordingly a person born at a place other than the village or town of enumeration is considered as migrant. Migration may take the form of out-migration or in-migration.

According to Theodore Caplow, “Migration is strictly speaking a change of residence and need not necessarily involve any change in occupation, but is closely associated with the occupation shift of one kind or another. The principle directions of migration are illustrated by more or less continuous movements from rural area towards the city, from the area of stable population towards the center of industrial or commercial opportunities, from densely settled countries to less densely settled countries and from the centres of cities to their suburbs”.

S. Everatt Lee defines migration broadly as “a permanent or semi permanent change of residence. No restriction is placed upon the distance of the move or upon the voluntary and involuntary nature of the act, and no distinction is made between external and internal migration”.

Migration is a very complex phenomenon determined by various reasons and

aspects that generally link to socio-economic condition of the poor people. The Law of Migration by E.G. Ravenstein noted that migrants proceeding long distances generally go by preference to one of the great centres of commerce or industry. The natives of towns are less migratory than those of the rural parts of the country Migration being movement of human beings in pursuit of certain cherished objects like better employment, better wags and better quality of life, there is apparently nothing wrong or objectionable in migration per se which is a social and economic phenomenon occurring as a normal and natural process.

After carefully examining the diverse concepts suggested by the various authors it can be pointed out that different discipline have different concepts of migration. The opinions differ in terms of explanation, classification, typology, motivating factors i.e mainly push and pull factors , theories, laws and socio-economic consequences. Finally it can be remarked that every year millions of women and men leave their homes and cross national borders, state territories for a variety of reasons may be in search of better employment opportunities, education, decent standard of life, protection against discrimination etc. All through the human history, migration has been an audacious expression of the individual's determination to overcome hardship and to live a improved life. Virtually, the meaning and the extent of migration are becoming day-by-day more complicated and problematic.

Migrant Workers

An assortment of conventions and protocols has defined migrant labour over the last few decades. Thus, it is very essential to understand the exact connotation of the expression 'migrant labour' hence given below are a few of the leading definitions. According to the International Labour Organisation (hereinafter ILO), 'migrant worker' is defined as "People who are economically active in a country of which, they are not nationals but excluding asylum seekers and refugees".
A migrant worker has been defined in the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, "as a worker who is to be engaged or has been engaged in a remunerated activity in a state of which he or she is not a national".According to Migrant Workers(Supplementary Provisions)Convention,1975,(No. 143) the definition of the term 'migrant worker' refers to – " a person who migrates or who has migrated from one country to another with a view to be employed otherwise than on his own account and includes any person regularly admitted as a migrant worker".

The Indian Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 defines a migrant workman "as any person who is recruited by or through a contractor in any state under an agreement or other arrangement for employment in an establishment in another state whether with or

without the knowledge of the principal employer of such establishment". According to Indian Census, a person is considered a migrant, if birth place or place of last residence is different from place of enumeration. A person is considered as migrant by place of last residence, if the place in which he is enumerated during the census is other than his place of immediate last residence. The National Sample Survey Organisation (NSSO) of the Government of India defines a migrant as 'a person whose place of enumeration is different from his/her last usual place of residence (UPR)'.The last usual place of residence is the place where the person stayed continuously for at least six months immediately prior to moving to the place (village/town) of enumeration".

Labour Migration and International Labour Organisation (ILO)

The International Labour Organisation(ILO) is the central agency for the protection of the interest of Workers including the migrant workers.The preamble of the ILO Constitution states 'the protection of the interests of workers when employed in countries other than their own' to be one of the main tasks of the Organisation. As Valticos writes:

'*foreign workers and in particular migrant workers are often isolated in countries with whose laws and customs they are not familiar, they are more likely to be exploited and are often unable to defend their interests effectively .It is therefore natural that the ILO should devote special attention to their protection'*.

Migration has occurred throughout history, and contemporary trends certainly show that it will keep on to increase in the future. It has been a fundamental part of human history, shaping and reshaping societies, cultures and economies. The twenty-first century is undoubtedly no exception. The bulk of migrants travel in search of employment, taking their families with them; it was estimated that there will be 214 million international migrants in the world in 2010. International Labour Office estimates that economically active migrants will number some 105.4 million in 2010; these and family members accompanying them will account for almost 90 per cent of total international migrants. In 2013 theUnited Nations, estimated the number of International Migration Worldwide reaches 232 million.

International migration is a well-known phenomenon, involving flow of more than 100 million people per year and a growing number of countries. There are many ways of distinguishing different groups of migrant workers, based on motivation for migrating, skills, age, sector, occupation and distance from origin. The distinctions most commonly used are based on anticipated duration of stay, reflecting the fact that control over who enters a country and how long they stay is a core aspect of national sovereignty. On this basis, the admission of migrant workers falls into two broad categories:

(a**) Permanent migration**: referring to admission of workers falling under

different immigration categories (i.e. family reunification, highly skilled) for an indefinite period of stay, that is, a stay without a time limit imposed by the destination country.
(b) **Temporary migration:** referring to admission of workers (sometimes referred to as “guest workers”) for a specified time period, either to fill year-round, seasonal or project-tied jobs, or as trainees. Seasonal labour migration is the most familiar form of temporary labour migration. A seasonal worker is commonly understood as “a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year”, typically for between three and nine months.
The forces motivating migration are diverse and multifarious, and global explanations may not apply to all individual situations. Poverty, conflicts, famine and oppression are certainly among the major causes of migration, but there are other factors as well. Some of the motivations for crossing national borders include population stress on scarce natural capital; wages inequality between poor and rich countries; growing urbanization; decline in the cost of transport and communications, resulting in increasing interfaces among societies; the dearth of respect for human rights in some countries; and establishment of migration networks by earlier migrants. In the future, climate change may raise migration pressures.

International migration is an important feature of the present time and it has reached unprecedented proportions in some regions. While international migration can be a positive experience for migrant workers,many suffer pitiable working and living conditions, including low wages, unsafe working environments, a implicit absence of social protection, denial of freedom of association and workers’ rights, discrimination and xenophobia. Their potential benefits are often worn by inadequate regard to the security of migrant workers’ rights, resulting in their abuse.
The International Labour Organisation was created in 1919 at the post-war Peace Conference in Paris as Part XLII of the Treaty of Versailles, originally an agency of the League of Nations, also created in 1919. It became the United Nation’s first agency when it was established in 1946. In 1944 the Philadelphia Declaration was the ILO’s statement of intent to expand its operations especially in setting and monitoring basic labour rights. This declaration, which redefined the aims of the ILO, remains the ILO’s guiding manifesto. It includes the principles like:
Labour is not a commodity, Freedom of expression and-of association are essential to sustain progress, Poverty everywhere constitutes a danger to prosperity everywhere and all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and spiritual development in conditions of freedom and dignity, economic security and equality of the opportunity.

The ILO being UN'S agency with a mandate to improve standards and conditions of work, and to encourage productive and decent employment throughout the world. The ILO's most important function is to adopt- conventions and recommendations, which set minimum labour standards internationally. The ILO's Governing Body has identified eight conventions as "fundamental", covering subjects that are considered as fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. There are currently over 1,200 ratifications of these conventions, representing 86% of the possible number of ratifications.
Human and labour rights of migrant workers are articulated in the international labour conventions adopted by the tripartite members of the ILO. Migrant workers are entitled to the enjoyment of these rights by the mere fact of being workers. ILO member States are bound to apply the conventions they have ratified.

Basic Labour Rights are Human Rights: ILO Approach
What is characteristic of fundamental human rights in the labour field is that they are universal rights in the sense that they are applicable regardless of a country's level of economic, political or other development. Unlike the economic, social and cultural rights enunciated in the United Nations International Covenant on Economic, Social and Cultural Rights,1996 (ICESCR), which can as a matter of law be achieved 'progressively' (article 2(1)), the fundamental principles and rights for which the International Labour Organization stands cannot be made subject to prior economic development. The principles apply in full here and today, the rights specified in international labour standards apply in full one year after ratification. Most core labour standards that are held today to be of key importance date back to the early years of the codification process of human rights. These include the rights of workers to associate in the defence of their interests; freedom from slavery or forced labour; and everyone's right to equal opportunity and treatment. Children, by contrast, are new- comers to the world of international human rights. The 1989 Convention on the Rights of the Child signalled this elevation to human rights status. The international Labour Organization, almost a generation earlier, had adopted an international standard designed 'to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons'.When in the 1990s newspapers and TV increasingly featured children who were trafficked into debt bondage or made to work as prostitutes or perform hazardous industrial or agricultural work, the Organization's members elaborated a further standard that obliges ratifying

countries to eliminate as a priority the worst forms of child labour (Convention No. 182).

By no means all the Human Rights enunciated in the Universal Declaration on Human Rights(UDHR) and the two covenants i.e International Covenant on Civil and Political Rights(ICCPR),1966 and International Covenant on Economic, Social and Cultural Rights(ICESCR),1966 that relates to the world of work enjoy high status today. Some seem to enjoy little status in practice e.g ,the rights of social security(UDHR, article 22 and25, and ICESCR, article 9), right to work (UDHR, article 23 and ICESCR, article 6),to free choice of employment and just conditions of work(ICESCR, article 7) had preoccupied the post-World War II generation. But this aura of important human rights seems to have evaporated. Growth and Investment are terms heard more often in their context than the word Right. In the contemporary time the Rights in the labour field which are considered as fundamental human rights is indicated hereunder.

(1) Freedom of association

It was the UDHR that boldly proclaimed that ‘everyone has the right to freedom of assembly and association’, and ‘everyone has the right to form and to join trade unions for the protection of his interests’. The two 1966 Covenants i.e International Covenant on Civil and Political Rights(ICCPR),1966 and International Covenant on Economic, Social and Cultural Rights(ICESCR),1966, reiterated these principles in slightly different and still gender-insensitive language. ‘Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests’ . ‘States Parties...undertake to ensure: (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests’. The International Labour Organization’s two core standards in this field are Convention Nos. 87 and 98.

(2) Elimination of all forms of forced or compulsory labour

The global human rights codification in this area began with the League of Nations Slavery Convention 1926. Twenty-seven years later, the UN General Assembly amended this Convention by a Protocol. In 1956, it supplemented it by the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. The Universal Declaration on Human Rights affirmed the basic principles summarily by stating: ‘No one shall be held in slavery or servitude; slavery and the slave trade shall he prohibited in all their forms’. The International Covenant on Civil and Political Rights covered slavery and forced labour in one comprehensive article. ‘No one shall be held in slavery;

slavery and the slave trade in all their forms shall he prohibited'; and 'No one shall be required to perform forced or compulsory labour'.The two core standards of the international labour Organization in this area followed those of the League of Nations and United Nations with a short time lag and by focusing on work Convention No. 29 and 105

(3) Abolition of Child Labour

While children were the first subject of protective labour legislation at the national level, hundred seventy four years elapsed before article 24(1) of the ICCPR recognized children as a possessor of human rights at the international level. A further 13 years later, in 1989, the wide-ranging Convention on the Rights of the Child was adopted by the United Nations. The International Labour Organization's core standards in this field are Convention Nos. 138 and 182.

(4) Elimination of discrimination in respect of employment and occupation

UN instruments usually have a general non-discrimination clause among their initial provisions .They also contain specific equality provisions aimed at men and women or that extend to specific categories or which are open-ended in terms of the scope of their application. The UDHR lays down a long-cherished principle of the workers' movement: 'Everyone, without any discrimination, has the right to equal pay for equal work' . The two Covenants i.e International Covenant on Civil and Political Rights (ICCPR),1966and International Covenant on Economic, Social and Cultural Rights(ICESCR),1966, are even broader ; as it is provided there under that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.The International Labour Organization's two core standards in this field are Convention Nos. 100 and 111.

ILO's Fundamental Conventions for Protection of Migrant Workers Right at Work.

The ILO Constitution proclaims that labour is not a commodity. But in a situation where wage rates differ not only between national and foreign workers, but even among the migrant workers themselves according to country of origin, the worker is reduced to a status of "import commodity". Fully recognising problems of this kind, the ILO continuously endeavours to combat all forms of exploitation and discrimination of migrant workers, through its standards. In fulfilment of its

constitutional responsibilities for the protection of migrant workers, and as a tripartite forum best equipped to appreciate their problems and needs, the ILO has a crucial role to play in this field. Therefore, 2 Conventions and 3 Recommendations have been adopted on the subject. They are summarised as follows:

(A)•Migration for Employment Convention (Revised), 1949 (No.97)

Scope: Migrant workers, other than frontier workers and seamen (short-term entry by artists and members of the liberal profession is not covered).

Object: The Convention seeks to regulate the recruitment, placement, and conditions of work and life of migrants for employment.

Current Status: 49 States have ratified the Convention.

(B)Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

Scope: Migrant workers other than frontier workers, and seamen (short-term entry by artists and number of liberal professions, persons on training or education, and employees on specific assignments is not covered).

Object: The Convention aims at promoting equality of opportunity and treatment, and eliminating abusive conditions of migrant workers.

Current Status: 23 States have ratified the Convention.

Recommendations

(i) Migration for Employment Recommendation (Revised), 1949 (No. 86)

It is supplementary to Convention No. 97. It deals in particular with the information, selection and conditions of residence of migrants. The free service provided in each country to assist migrants should be conducted by public authorities or by voluntary non-profit-making organisations or partly by public authority and partly by such voluntary organisations.

(ii) Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955 (No.100)

The Recommendation calls for the taking of measures for the protection of workers and their families participating in migratory movements within a developing country, or from such a country to another country, and while in transit through third countries.

(iii) Migrant Workers' Recommendation, 1975 (No.151)

The Recommendation is supplementary to Convention No.143 and envisages further provisions on equality of opportunity and treatment, social policy in regard to migrants, their employment and residence. The Recommendation entitles the migrant workers and their families to social services benefits on equal terms with the other nationals of the country and lists a network of additional social services

for them.

UN Convention for Protection of Migrant worker's Rights at Work.

The General Assembly of the United Nations adopted a Resolution in 1978, calling for improvement in the situation of migrant workers. In the same year the Secretary General of United Nations prepared a report outlining the situation of migrant workers and their families) Both these led to the Second General Assembly Resolution in 1979, which created a working group and in December 17, 1979, the working group decided to create an entirely new comprehensive instrument addressed to the special needs of migrant workers. By 1981, a preliminary draft convention was compiled. It, took 10 years of deliberations for its adoption and in 1991, the UN General Assembly adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,1990. The Assembly calls upon the UN member States to consider signing and ratifying or acceding to the Convention as a matter of priority, reiterating that:

'in spite of the existence of an already established body of principles and standards, there is a need to make further efforts to improve the situation and ensure the human rights and dignity of all migrant workers and their families'.

The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides a broad range of protections for migrant workers and their families in many areas of work and life. The Convention came into force on July 1, 2003 in accordance with Article 87, Para 1 of the Convention. As on May 4, 2014 the Convention had 47 State Parties.

Impact of Fundamental Conventions of ILO : A Grim Reality

Mere existence of international standards relating to protection and promotion of human rights has no meaning unless they are enforced and implemented by enacting laws and creating general awareness about the existing machinery to address the violations of human rights.

Over the world, core work rights, are considered by many to be fundamental human rights. Why in the contemporary world would it be a good idea for one to need to quantify the accomplishment of these rights? Basically, in light of the fact that their non-accomplishment handicaps a huge number of lives and numerous economies, as well - and that is well worth archiving . It isn't adequate to have right just yet in the meantime those rights ought to be ensured additionally by some efficient Mechanism. Nevertheless, over half of the world's workers -more than 1.5 billion people - still work in vulnerable, contingent jobs; they are low-paid; their fundamental rights are not protected; and they have little or no security in the event of unemployment or the materialization of personal risks. The most acute social and employment challenges remain in South Asia and Sub Saharan Africa, where 75 percent of the workers are employed in contingent labour. Around the world,

some 2.3 million workers die annually from workplace-related accidents and illnesses. The majority of work-related health hazards remain prevalent in developing countries, where many of the dangerous economic sectors are located, such as the agriculture, mining, and fishing industries.

In the event that we discuss the privilege to the right to organize and bargain, it is revealed that in 2014, workers in at least 53 countries were either dismissed or suspended from their work for attempting to negotiate better working conditions through collective representation. Governments in at least 35 countries arrested or imprisoned workers as a tactic to prevent collective representation and in nine of those countries, murder and unexplained disappearances of workers were used as means of intimidation.

Forced labour which is discarded by each state the world over as it is ethically unforgivable to all with the exception of the individuals who execute it and benefit from it. The profits that landlords, recruiters, middlemen, traffickers and others make on the back of the poor are not legitimate by the mere fact of being profits. Modern forms of trafficking boys and girls, adult men and women into brothels or sweatshops generally deprive the workers of protection in the event of accident or illness and the State of revenue. In 2012, the International Labour Organization (ILO) estimated that nearly 21 million people are victims of forced labour globally. This includes women and girls who are sold into prostitution and vulnerable migrant workers who are forced to work in harsh conditions when their passports are taken from them or out of fear of deportation. There are estimated 232 million migrants workers around the world. One of the most troubling consequences of this development is that in many countries, workers who are not recognized as citizens of the state -such as migrant workers - are only partially or not at all protected by the domestic labour laws. The ILO’s International Labour Migration Survey revealed that fewer than half of the countries surveyed had national legislation that ensures some form of protection against discrimination at work for migrant workers. In Kuwait and Saudi Arabia, for example, the national social and labour laws do not apply to migrant workers.

There is wide acknowledgment that child labour must be abolished but

in reality it is not it isn't the genuine picture ,in 2012, 168 million children around the world, which is 10.6 percent of children worldwide, were still involved in child labour. Eighty-five million children are engaged in “hazardous work,” which includes, for example, small-scale mining and quarrying, where the children endanger their health by carrying heavy loads for long hours, setting explosives, and inhaling harmful dust while crawling through narrow tunnels.’ There are an estimated one million children working in the mining industry, where they are

often exposed to dangerous toxins, such as lead and mercury, while mining diamonds, gold, and precious metals in Africa; gems and rocks in Asia; and gold, coal, emeralds, and tin in South America.

Indeed, even in the 21st Century the majority of workers encounter discrimination in access to work and while being employed - women, racial, ethnic, social or religious minorities, among other!. Women continued to be overwhelmingly discriminated against, relative to men, in the global labour market. According to the 2013 ILO Equal Pay Report, the global earnings gap between male and female workers stands at 22.9 percent. Many of the production workers employed in Global Supply Chains (GSC5), particularly women in developing countries, are employed in appalling conditions, working unrestricted hours and without even the most minimal safety and health conditions.

One endeavour, undertaken by the ILO, was the 1998 Declaration on Fundamental Rights at Work, known as the "Social Declaration," which prioritized a narrow list of core labour rights: (1) freedom of association and an effective right to collective bargaining; (2) the elimination of all forms of forced or compulsory labour; (3) the effective abolition of child labour; and (4) the elimination of discrimination in respect of employment and occupation. These four core rights were incorporated into most bilateral and multilateral trade agreements that have since followed the Declaration. Nevertheless, as described above, these rights are consistently violated across the globe.

Conclusion

The Plights and problems of migrant labourers have in recent years, caught the attention of the researchers, social workers, media personalities, judiciary and of course Government. Social workers have raised their concern about the exploitation and miserable plight of the migrant workers. Labour is primarily a human being and secondarily a worker and as a human being entitled to the inalienable human rights. In other words, human rights are relevant for workers in all categories and situations regardless of whether they are organised or unorganised.

Mere existence of international standards relating to protection and promotion of human rights has no meaning unless they are enforced and implemented by enacting laws and creating general awareness about the existing machinery to address the violations of human rights. The appalling poverty of masses, the widening gap between the job seekers and job opportunities, the unorganised or weakly organized labour and inequality of incomes had made the traditionally weaker labour the weakest in India. However, the common criticism of the ILO is that it is good at setting standards, but in a weak position to enforce them.

It is the responsibility of the state to promote development and the institutions in a

manner where social and economic democracy would be a way of life, inequalities of income should be removed and to eliminate the inequalities of status .The state should provide facilities and opportunities to ensure development by appropriate economic and social reforms and also to provide opportunities for the development of human personality by ensuring and enforcing inalienable fundamental human rights. Now the time has come that human rights be adopted as a way of life.

Suggestions

The international labour Standards adopted by the ILO take the form of international labour Conventions and international labour Recommendations. While the Conventions are international treaties intended to create international obligations for Member States upon ratification, the Recommendations do not create obligations but provide guidelines for government action and are not open for ratification. In view of the discussions above the following suggestions are made with a view to further improve the mechanism of Protection of the rights of migrant labour:

1. An orderly and equitable process of labour migration should be promoted in both origin and destination countries to guide men and women migrant workers through all stages of migration, in particular, planning and preparing for labour migration, transit, arrival and reception, return and reintegration.

2. The absence of formal management for migration and national policies in some countries contributes to the increasing number of irregular migrants. These irregular migrant workers face situations, like sexual and physical harassment, debt bondage, retention of identity documents, and threats of denunciation to the authorities and are without effective access to legal protection. Governments should formulate and implement, in consultation with the social partners, measures to prevent these abusive practices and they should also work towards preventing irregular labour migration.

3. Governments and employers and workers organizations should work with the ILO to promote coherence of labour migration policies at the international and regional levels.

4. The human rights of all migrant workers, regardless of their status, should be promoted and protected. In particular, all migrant workers should benefit from the principles and rights in the 1998 ILO Declaration on Fundamental Principles and Rights at Work, which are reflected in the eight fundamental ILO Conventions, and the relevant United Nations human rights Conventions.

7. WOMAN THE PRAY OF ACID ATTACKS UNDER THE MERCY OF WEAK LAWS-A COMPARATIVE STUDY

Mohmad Yousuf Dar

Abstract

Human rights are inherent and inalienable rights of all human beings. Everybody is entitled to them not because they are conferred upon them by State but because of being born as Human. State is under an obligation to protect them without any discrimination. Right to dignified human life is one of the most cherished Human Right. Many International and National efforts were made for the protection of these rights without discrimination. Women is a vulnerable section of our society who are equally entitled to these human rights but states have failed in protecting their these rights. As we see there is increase in violence rate against the women throughout the Globe. One of the recent forms of violence against women is Acid Attacks. This paper is an endeavour towards analyzing the various laws across globe for the protection of these Acid Attacks and accordingly suggesting the measures which can be taken in India for combating such violent incidents.

Key words: Human Rights, Survivors, Disfigure, Discrimination, Maim

INTRODUCTION

Human rights are the basic rights and freedoms to which all human beings are entitled to by virtue of theirs being born in the family of Homo Sapiens. The fundamental rationale behind the concept of human rights is that each person is a moral and rational being who deserves to be treated with human dignity and respect. Human rights are based on equality and the concept's basic philosophy strikes at discrimination among humans. The Preamble of the Universal Declaration of Human Rights states:

"Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world".

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Human rights have achieved tremendous significance in 21st Century due to tireless efforts of many people throughout ages. International Conventions, Regional Treaties and also the statutory provisions in most of the countries expressly uphold and protect the human rights of all persons in general and women in particular. Women form one of the most vulnerable sections of the society, having faced perpetual violence and discrimination since times immemorial. A woman bears the brunt of hypocrisy and discrimination right from the moment she is conceived in her mother's womb, and then through different stages of her life- as a daughter, sister, a wife, as a mother and above all as a woman. Violence against women is a universal issue and is a direct violation of their basic human and natural rights. There are many forms and shapes of violence that are directed against women, but one of the most heinous forms of violence committed against woman is the menace of **Acid Attack.**

MEANING AND DEFINITION OF AN ACID ATTACK

The research conducted by UNICEF reveals, "Acid attack is a serious problem all over the world, even children become victim of acid attack in many cases. In an Acid attack, acid is thrown at the face or body of the victim with deliberate intent to burn and disfigure. Most of the victims are girls, many below the age of 18, who have rejected sexual advances or marriage proposals„ "Acid attack" or Vitriol age is defined as the act of throwing acid onto the body of a person "with the intention of injuring or disfiguring [him] out of jealousy or revenge". Aim of most acid attacks is not to kill, but to disfigure and debilitate, something more brutal than murder. In such cases, the perpetrator wants the victim to live and suffer physically and emotionally for the rest of his life. These attacks are used as a weapon to silence and control the victim by destroying what is constructed as the primary constituent of his identity, i.e., his body.

Acid attack is a form of violent assault defined as the act of throwing acid or a similarly corrosive substance onto the body of another "with the intention to disfigure, maim, torture or kill. Perpetrators of these attacks throw corrosive liquids at their victims, usually at their faces, burning them, and damaging skin tissue, often exposing and sometimes dissolving the bones. An acid attack involves the premeditated throwing of acid on a victim, usually on the face. In addition to causing psychological trauma, acid attacks result in severe pain, permanent disfigurement, subsequent infections, and often blindness in one or both eyes. Perpetrators commit acid attacks for a number of reasons, including revenge for refusal of a marriage proposal or other romantic or sexual advances; land disputes; perceived dishonour; and jealousy.

EFFECTS OF ACID ATTACK

Acid has a devastating effect on the human body, often permanently blinding the victim. The aftermath being the inability to do many everyday tasks such as working and even mothering are rendered extremely difficult if not impossible. The victim is faced with physical challenges, which require long term surgical treatment, as well as psychological challenges, which require in depth intervention from psychologists and counsellors at each stage of physical recovery. The victims are often left with no legal recourse, limited access to medical or psychological assistance, and have no means to support themselves.

- Physical - Acid eats through two layers of the skin, i.e. the fat and muscle underneath, and sometimes not only eats through to the bone but even dissolve the bone. The deepness of injury totally depends on the strength of the acid and the duration of its contact with the skin. When thrown on a person's face, acid rapidly eats into eyes, ears, nose and mouth. Eyelids and lips may burn off completely. The nose sometimes melts, closing the nostrils, and ears shrivel up. Acid can quickly destroy the eyes, blinding the victim. Skin and bone on the skull, forehead, cheeks and chin may dissolve. When the acid splashes or drips over the neck, chest, back, arms or legs, it burns everywhere it touches. The biggest immediate danger for victims is breathing failure. Inhalation of acid vapours can create breathing problems in two ways:
  - By causing a poisonous reaction in the lungs.
  - By swelling the neck, this constricts the airway and strangles the victim. When the burns from an acid attack heal, they form thick scars which pull the skin very tight and can cause disfigurements. For instance, eyelids may no longer close, the mouth may no longer open; and the chin becomes welded to the chest.

- Psychological

Acid assault survivors face many mental health issues upon recovery. Acid violence victims have been reported with higher levels of anxiety, depression, due to their appearance. According to the Rosenberg Scale, the women reported lowered self esteem and increased self consciousness, both in general and in the social sphere.

- Social and Economic

Acid attacks usually leave victims handicapped in some way, rendering them dependent on either their spouse or family for everyday activities, such as eating and running errands. They face a lifetime of discrimination from society and they become lonely. These dependencies are increased by the fact that many acid

survivors are not able to find suitable work, due to impaired vision and physical handicape. As a result, divorce, abandonment by husbands is common in such cases. Moreover, acid survivors who are single when attacked almost certainly become ostracized from society, effectively ruining marriage prospects. They are embarrassed that people may stare or laugh at them and may hesitate to leave their homes fearing an adverse reaction from the outside world. Victims who were not married are not likely to get married and those victims who have got serious disabilities because of an attack, like blindness, will not find jobs and earn a living. Discrimination from other people, or disabilities such as blindness, make it very difficult for victims to defend for themselves and they become dependent on others for food and money.

CAUSES

According to researchers and activists, countries typically associated with acid assault include Bangladesh, India, Pakistan, Cambodia, Vietnam, Laos, Hong Kong China, the United Kingdom, Kenya, South Africa, Uganda and Ethiopia. Acid attacks are most prevalent in Bangladesh, Cambodia, India and Pakistan. Women are at an increased risk of acid violence in certain countries, such as Bangladesh and India. One factor that puts victims at increased risk for an acid assault is their socioeconomic status, as those living in poverty are more likely to be attacked. Additionally, all three nations with the most noted incidence of acid attacks; Bangladesh, India and Cambodia - are ranked 93rd, 114th and 104th, respectively, out of 134 countries on the Global Gender Gap Index, a scale that measures equality in opportunities between men and women in nations. Acid attacks are often referred to as a ‘crime of passion,’ fuelled by jealousy and revenge. Actual cases though, show that they are usually the result of rage at a woman who dares to refuse the advances of a male. One study showed that refusal of marriage proposals accounted for 55% of acid assaults, with abuse from husband/ family member (18%), property disputes (11%) and refusal of sexual or romantic advances (2%) as other leading causes. Additionally, the use of acid attacks in dowry arguments has been reported in Bangladesh with 15% of cases studied by the Acid Survivors Foundation citing dowry disputes as the motive. The chemical agents most commonly used to commit these attacks are hydrochloric acid and sulphuric acid. India is the fourth most dangerous place in the world for women to live in as women belonging to any class, caste or creed and religion can be victims of this cruel form of violence and disfigurement, a premeditated crime intended to kill or maim her permanently and act as a lesson to “put her in her place”. In India, acid attacks on women who dared to refuse a man’s proposal of marriage or asked for a divorce are a form of revenge. The number of acid attacks has been rising in India. It is estimated that there are, 1,000 acid attacks a year in India. India’s incidence rate of chemical assault has been increasing in the past decade, with a high 27

reported cases in 2010. Altogether, from January 2002 to October 2010, 153 cases of acid assault were reported in Indian print media, while 174 judicial cases were reported for the year of 2000. However, scholars think that this is an underestimation, given that not all attacks are reported in the news, nor do all victims report the crime to officials.

There is no separate statistics for acid violence cases in India till early 2013 because the Indian Criminal Law did not recognize it as a separate offence. With the amendment in Indian Penal Code in February 2013, incidents of acid attack are now being recorded as a separate offence under section 326A and 326B. The first data available after the amendment relate to the year 2014 when 349 cases were reported from all over India. This is almost 300 per cent more than the average number of such cases witnessed during the preceding three years. The years 2011, 2012 and 2013 witnessed 83, 85 and 66 cases being reported respectively, but this number shot up to 309 in 2014 – almost four times the average number of acid attack cases in the preceding years. Uttar Pradesh topped the list with 185 cases till November 2014, followed by Madhya Pradesh with 53 cases. Among the seven UTs, acid attack cases were reported only from Delhi, which witnessed 27 such cases last year. The number of persons arrested is only 208 as against 309 cases reported. While in UP there were no arrests in at least 66 cases, in Delhi only 7 persons were arrested in 27 cases. In the preceding three years 336 persons were arrested in total 234 cases. The latest figures indicate that earlier estimates of likely number of cases at 100 to 500 per annum made on the basis of past records & comparison with neighbouring countries where similar socioeconomic conditions prevail were perhaps nearer the truth. The Indian Journal of Plastic Surgery of Dec 2007 concluded that in India alone “we would estimate 7 00, 000 to 800, 000 burn injuries annually”. There is a big possibility of such cases being not only accidents but results of opposing and getting burnt. Indian Government statistics also show that an estimated 7000 brides are killed and 18000 are maimed every year in India over dowry disputes alone.

INFAMOUS CASES

- LAXMI

Laxmi, 26 year old woman from Delhi is an acid attack survivor. Two men poured acid on her while she was waiting for a bus near Tughlaq road in 2005. She had refused to marry one of her attackers aggrieved by which he left her disfigured for life. Acid had severely burnt her whole face. She had undergone seven surgeries and still needs four more surgeries to make her physical appearance resemble of what it was. She belongs to a poor family and would have never been able to treat herself had she not been helped by a benefactor who bore her medical expenses of approximately Rs. 2.5 lakhs. Laxmi can never look the way she used to but she is

still an inspiration to all such women who have been victim of acid like her. She didn't loose courage and had advocated against acid violence by gathering 27,000 signatures for a petition in Supreme Court of India to curb acid sales. Her PIL sought framing of a new law, or amendment to the existing criminal laws like IPC, Indian Evidence Act and CrPC for dealing with the offence, besides asking for compensation. She had also pleaded for a total ban on sale of acid, citing increasing number of incidents of such attacks on women across the country. It was her petition which led Supreme Court to give a historic decision regarding regulations on sale of acid. She is in present the director of Chhanv Foundation, a NGO dedicated to help the survivors of acid attacks in India. Laxmi received a 2014 International Women of Courage award by US First Lady Michelle Obama. She was also chosen as the NDTV Indian of the Year.

- HASEENA HUSSAIN The accused Joseph Rodriguez, the ex-boss of the victim threw 1.5 litres of sulphuric acid on her when she decided to quit her job. The acid melted her face, fused her shoulder and neck, burnt a hole in her head, merged her fingers and blinded her for life. The accused was convicted under section 307 of IPC and was sentenced to imprisonment for life. A compensation of Rs. 2,00,000 in addition to the Trial Court fine of Rs. 3,00,000 was paid to the victim. This is a landmark case as it was the first time that a large sum was awarded to the victim to meet her medical expenses.

- PREETI RATHI

Preeti had got a job as a Lieutenant in Indian Navy and had come to Mumbai to join in the INHS Asvini, the naval hospital in Colaba. On her way to work on 2nd may 2013, a man flung acid on her face which damaged her eye and infected her kidneys. The acid entered her oesophagus, windpipe and trachea causing her unbearable pain. She succumbed to injuries and lost her life. The perpetrator was booked under IPC section 302(murder), 326-A(voluntarily causing grievoous hurt by use of acid), 326-B(voluntarily throwing or attempting to throw acid).

- STUDENT OF KASHMIR LAW COLLEGE

It was on a chilly morning of December 11, 2015 that two youths splashed acid on the 21-year-old law student, disfiguring her face and eyes outside her college in the Nowshera area of Srinagar.

For days together the attackers remained at large and unidentified, which prompted the Kashmir Bar Association to move the High Court with a public interest litigation, wherein constitution of a special investigation team was demanded to

trace the attackers. But still the attackers are not punished for this heinous crime due to the snail's pace trial. She has to undergo multiple surgeries and requires a specialised treatment, which is available in Chennai. Owing to her financial condition, her father is unable to meet her medical expenses. The State is not providing any additional monetary support so as to enable her to get the treatment done. It was due to the intervention of the High Court that the initial cost of medical treatment/ surgery an amount of Rs 16 – 18 Lakhs was reimbursed to her. However no further expenses are being paid for the ongoing treatment which is costing her around 25 lakhs more.

COMPENSATION FOR ACID ATTACK VICTIMS

SECTION 357 B has been newly inserted in CrPc which reads as :
"The compensation payable by the State Government under section 357A shall be in addition to the payment of fine to the victim under section 326A or section 376D of the Indian Penal Code".

Free Medical Treatment Section 357 C has been newly inserted whereby all hospitals, public or private are required to provide first aid or medical treatment free of cost. The section reads as:
"All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376B, 376C, 376D or section 376E of the Indian Penal Code and shall immediately inform the police of such incident."

Apart from the above legislations, The Supreme Court of India has given state authorities three months to implement new rules to control over-the-counter sales of acids, which have been used to disfigure, maim and even kill people, particularly women, for decades. The apex court has directed all 29 states and seven union territories to issue licenses to retailers selling acid. They are now required to keep details like the quantity sold and the addresses of buyers, who will need to present photo identification to purchase acids. The retailers are required to declare the amount of acid being stocked to the police and any case of failure in doing so would lead to undeclared stock being confiscated and a fine of up to 50,000 rupees ($840). It has also barred anyone under the age of 18 from purchasing acids like hydrochloric, sulphuric and nitric acid.

Recently a bill was introduced in the Parliament entitled THE PREVENTION OF ACID ATTACKS AND REHABILITATION OF ACID ATTACK VICTIMS BILL, 2017 that seeks to put an end to acid attack against women and also provides a comprehensive policy for their compensation and rehabilitation. Chapter III of the said Bill is reproduced as under:

Section 5 of the Bill reads as:
"Where an acid attack has caused such substantial bodily harm or disfigurement to the victim, as may be prescribed, such victim shall be deemed to be person with disability for the purposes of availing benefits under various schemes, including employment under the Central Government, any State Government, any local body, autonomous bodies under any Government or any public sector undertakings."
Section 6
"Where an acid attack victim has suffered such bodily harm or disfigurement in an acid attack that it is likely to impair her chances of obtaining gainful employment or carry on any gainful occupation, the appropriate Government shall pay a monthly allowance to such victim and the amount of such allowance shall not be less than four times the amount of old age pension payable at the place where the victim ordinarily resides."

LEGISLATION IN BANGLADESH

In 2002, Bangladesh introduced the death penalty for acid attacks and laws strictly controlling the sale, use, storage, and international trade of acids. The acids are used in traditional trades carving marble nameplates, conch bangles, goldsmiths, tanneries, and other industries, which have largely failed to comply with the legislation. Salma Ali of the Bangladesh National Women Lawyers' Association derided these laws as ineffective. The names of these laws are the Acid Crime Control Act (ACCA) and the Acid Control Act (ACA), respectively.
The ACCA directly impacts the criminal aspect of acid attacks, and allows for the death penalty or a level of punishment corresponding to the area of the body affected. If the attack results in a loss of hearing or sight or damages the victim's face, breasts, or sex organs then the perpetrator faces either the death penalty or life sentence. If any other part of the body is maimed, then the criminal faces 7–14 years of imprisonment in addition to a fine of US$700. Additionally, throwing or attempting to throw acid without causing any physical or mental harm is punishable by this law and could result in a prison term of 3–7 years along with a US$700 fine. Furthermore, conspirators that aid in such attacks assume the same liability as those actually committing the crime.
The ACA regulates the sale, usage, and storing of acid in Bangladesh through the creation of the National Acid Control Council (NACC). The law requires that the NACC implement policies regarding the trade, misuse, and disposal of acid, while also undertaking initiatives that raise awareness about the dangers of acid and improve victim treatment and rehabilitation. The ACA calls for district-level committees responsible for enacting local measures that enforce and further regulate acid use in towns and cities

MERE LEGISLATION WON'T DO

The success of any law is determined by its implementation. Most stringent of laws will be of no avail if they are not properly implemented. The Criminal Law (Amendment) Act, 2013 has brought positive changes in the laws against acid violence. Prior to the Act, no provision of strict punishment was there to punish the culprits and either no or a compensation of a very meagre amount was used to be given to the victim. The amendment made special laws to punish the culprits and also provided for the provision of providing medical aid to the victim. But, framing of laws is never enough unless it is properly executed. The Indian Judicial System is overloaded with cases. It takes years for the trial to take place. In addition to this, lawyers try to delay the prosecution of the accused by requesting the Court to extend the date of trial. As a result of this, case remains pending for years and the criminal is not punished for his acts for years in spite of the stringent laws. Thus, a separate Tribunal or Bench can be formed to look after the cases of acid attacks. Such a body will be exclusively reserved for such cases which will ensure quick deliverance of justice and aid to the victim. The decision of the Tribunal or Bench should be binding and final which will save the victim from various appeals in different courts of the country. In addition to the stringent penal laws, provisions have also been made to regulate the sale of acid. The acids used for attacks are easily available as they are used in domestic use as well as for scientific and research purposes. A monitoring system should be formed to check the effective implementation of the rules by the people. Many people in the country (particularly the shopkeepers and retailers) due to illiteracy or ignorance have no knowledge of the new rules of regulation on sale and purchase of acid. Steps should be taken by the government to make people aware of the new rules. The Criminal Law (Amendment) Act, 2013 is a welcome step which has brought positive and effective changes. Justice can never be delivered to the victim unless the law is properly implemented. Thus, steps should be taken to effectively execute the new laws to curb such violence.

BANGLADESH MODEL

Given the rising number of acid attack cases in India, particularly after the Criminal law (Amendment Act) legal experts and activists working on this issue are increasingly referring to neighbouring Bangladesh as a model for how to tackle the problem.

Until a few years ago, Bangladesh recorded the highest incidence of acid attacks in the world. It then passed two laws to curb such attacks: Acid Offence Control Act, 2002, and Suppression of Offense by Acid Attack, 2002. Before 2002, the country saw about 500 acid attacks a year. But with the legislation coming into force, along with other measures, the number of attacks came down to about 100 a year. These

laws not only instituted a complete ban on over-the-counter sale of acid but also mandated the setting up of tribunals to deal with acid attacks, and the creation of a National Acid Control Council. Bangladesh has made it mandatory that investigation in these cases should be completed within 30 days.
This is in sharp contrast to the present position in India where, apart from a shameful track record in compensating victims, there is also an abysmal conviction rate.

CONCLUSION

One important way to combat acid violence is to limit the easy availability of acid. In an effort to limit its availability, Bangladesh adopted a law that requires business users of acid to obtain licenses. Even though this law has not been fully implemented or enforced, the rate of acid attacks decreased in Bangladesh approximately 15% to 20% each year since the law's adoption in 2002. Cambodia is considering similar legislation, but no similar proposals are being considered in India, and the rates of attacks continue to rise in both Cambodia and India. To combat acid violence, governments must end the widespread impunity perpetrators enjoy by effectively implementing laws that provide for perpetrators' prosecution and punishment. Bangladesh has enacted criminal legislation improving criminal procedures in acid attack cases and heightening criminal penalties. However, India and Cambodia have not adopted laws that provide for adequate punishments for acid attackers. In all three countries, acid survivors face a number of obstacles to obtaining adequate healthcare and justice. Thus, when acid attacks do occur, governments should provide compensation to victims for healthcare and other essential needs. Companies can also play an important role in combating acid violence. Evidence shows that acid attacks occur at increased rates in areas where acid is widely used for industrial or other business purposes. Companies that produce, distribute, or otherwise use acid should ensure that their activities do not have negative human rights impacts. Companies and other businesses should assess the ways they can reduce the negative human rights impacts of their activities. For example, corporations and businesses that use acid in their manufacturing can deter acid violence by adopting procedures to ensure that acid is not stolen from them. Businesses that distribute acid to individual users can place warning labels on acid advising users of its harmful effects and the legal penalties that may ensue from its misuse.

8. Codification of Parliamentary Privileges in India

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Abstract

The bedrock of the India constitution is based on the principle of Separation of Powers between Legislature, Executive and Judiciary, which forms the basis of institutional independence. The independence of the House and its members is preserved by parliamentary and legislative privileges. The Art. 105 & 194 of the Constitution provides that the House and its members shall enjoy the freedom of Speech and immunity from proceedings in respect of anything said in the House. However, Clause 3 of Art. 105 and 194 provides that the rest of the privileges shall be same as enjoyed by the Parliament at the commencement of the constitution on January 26, 1950.

In independent India the situations have arised when the ambiguity due to non-codification of the Parliamentary Privileges has resulted in demand for the codification. This article is an effort to examine the need for codification of Parliamentary and Legislative privileges in India and also seeks to suggest a draft legislation in this regard.

Key Words: *Parliamentary Privileges, Codification, Freedom of Speech, Freedom of Press.*

INTRODUCTION

The term *Codification* denotes the creation of Codes, which are compilations of Statutes, Rules and Regulations that inform the public of acceptable and unacceptable behavior. Codification is the reduction of whole *Corpus-Juris* in the form of enacted law.

Codification is said to provide a 'fresh-start' but fresh start cannot mean an entirely new kind of law. Codification in Savigny's view, should be preceded by "an organic, progressive, scientific study of the law" by which he meant, historical study.

The societies, which go on developing their law by new methods, are called

progressive societies. They develop their law with the help of three instruments and methods, namely, legal fiction, equity & legislation, in order to make law harmonious to social needs & change.

CODIFICATION OF LAW IN INDIA

The common law system — a system of law based on recorded judicial precedents- came to India with the British East India Company. The company was granted Charter by King George-I in 1726 to establish "*Mayors Courts*" in Madras, Bombay and Calcutta (now Chennai, Mumbai and Kolkata respectively). Judicial functions of the company expanded substantially after its victory in Battle of Plassey and by 1772 companys courts expanded out from the three major cities. In the process, the company slowly replaced the existing Mughal legal system in those parts.

The Nineteenth century was the period when law reforms and codification were undertaken in England itself. Persons like *Bentham* and *James Mill* were strong advocates of law reforms. It was due to their efforts that many important reforms in the field of law and procedure were undertaken and their influence also projected into India when under the provisions of the Charter Act of 1833, a beginning was made in the direction of codification of laws in India.

Section 53 of the Charter Act of 1833 provided as under:

"A general system of judicial establishments and police to which all persons, whatsoever, as well Europeans as natives, may be subject shall be established at an early date and that such laws as may be applicable in common to all classes of inhabitants due regard being had to the people should be enacted, that all laws and customs having the force of law within should be ascertained and consolidated, and as occasion may require amend."

Under Charter Act of 1833, the First Law Commission in India was established in 1834 under the Chairmanship of *Lord Macaulay*. The first law commission recommended codification of the Penal Code, the Criminal Procedure Code and a few other matters. After that three more law commissions were established in British Era. The Indian Code of Civil Procedure, Indian Contract Act, Indian Evidence Act, Transfer of Property Act etc. are outcome of the works of Law Commissions of British Era.

CONSTITUTION OF INDIA & THE PARLIAMENTARY PRIVILEGES

In independent India a written constitution was adopted by the Constituent Assembly which is the basic grundnorm. It defines and determines the legal structure of India and the working of the institutions viz., *Legislature, Executive*

and *Judiciary*. The constitution provides for *Separation of Powers* between these institutions to ensure free and fair working in their respective spheres defined and delienated ithe constitution.

The three institutions of governance in the country enjoy constitutional basis for the existence and their working is protected from mutual interference to maintain the basic level of independence in their functioning. Simultaneously, a system of checks and balances is also provided in the constitutional scheme of things so as to ensure that institutional independence can be contained within certain limits and boundaries so as to prevent it from self-destruction.

The Parliament and the State Legislature enjoys this institutional independence under Art. 105 and 194 of the Constitution of India. These articles lay down the Parliamentary and legislative privileges under the Indian Constitution. The purpose of these Parliamentary and Legislative privileges is to confer upon the House and its members certain Powers, Privileges and Immunities so that its working is independent.

The fundamental Parliamentary privileges and most basic immunities therefore have been incorporated in the text of the constitution under Art. 105 and 194 by providing the privileges of Freedom of speech in Parliament and immunity to members from any proceedings in any court of law in respect of anything said or vote given by them in Parliament or any committee thereof.

The Constituent Assembly, however, decided to leave the powers, privileges and immunities of each House of Parliament and State Legislatures as well as their members and committees in other respects, to be defined by law by the respective House from time to time. The Clause (3) of Art. 105 provides as under:

"In other respects, the power, privilege and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and until so defined, [shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the constitution (Forty-fourth Amendment) Act, 1978]".

The Chairman of the drafting committee of the Constitution of India *Dr. B.R. Ambedkar*, justified the non-codification of the Parliamentary Privileges by stating that it was not possible rather practicable to enact a complete code on privileges and immunities of parliament as a part of the constitution and the best course was to leave it to parliament itself to define its privileges and in the meanwhile to

confer on parliament the privileges enjoyed by the House of commons.

Dr. Alladi Krishnanswami Ayyar justified the reference to the House of Commons for Parliamentary Privileges under Constitution of India in these words:

"If you have the time and if you have the leisure to formulate all the privileges in a compendious from, it will be well and good. I believe a committee Constituted by the speaker on legislative side found it very difficult to formulate all the privileges unless they went in detail into the whole working of Parliamentary Institutions in England and the time was not sufficient before the legislature for that purpose, under these circumstances, submit there is absolutely no question of infra-dig."

Dr. Rajendra Prasad, the President in discussion on Parliamentary Privileges in Constituent Assembly stated:

"…the Parliament will define the powers and privileges but until the Parliament has undertaken the legislation and passed it, the privileges and powers of the House of Commons will apply so it is a temporary affair."

A CASE FOR CODIFICATION OF PARLIAMENTARY PRIVILEGES IN INDIA

In India, the demand for codification of parliament privileges has been raised from time to time both inside and outside parliament. The press has been particularly foremost in raising this demand. It has been complaining against the exercise of penal powers by the legislature, and it has been particularly insistent on the codification of privileges, as too often it has to bear the brunt of legislative displeasures.

In 1950, a Committee consisting of four speakers was appointed to examine the recommendations received from the provinces on the question of legislation on the subject. The issue of the codification of privileges and the report of the committee of speakers were discussed in detail at the conference of presiding officers held in *August 1950*. The Chairman (Speaker Shri. G. V. Mavalankar) in his opening address observed:

“There will be two great difficulties and handicaps if we were to think of any legislation in respect of the privilege. These are:

1. Any legislation at the present stage would mean legislation only in regard to matters acceptable to the executive government of the day. It is obvious that, as they command the majority, the House will accept only what they think proper to

concede. It is important to bear in mind that the privileges of members are not to be conceived with reference to this or that party, but as privileges of every member of the House, whether he belongs to government or the opposition party. My fears are therefore, that an attempt at legislation would mean a substantial curtailment of the privileges as they exist today.

2. Another reason is that any legislation will crystallize the

privileges and there will be no scope for the presiding authorities to widen or change the same by interpretation. Today they have an opportunity of adopting the principles on which the privileges exist in the U.K. to conditions in India".

However, if the privileges are codified by an Act of Parliament in India, the position changes entirely. The statute will be examined in the same way as any other statute passed by parliament and the courts may come to the conclusion that in view of the provisions in the fundamental rights, it is not open to any legislature in India to prescribe that the speaker may issue a valid warrant without disclosing the grounds of commitment on the face of the warrant... all matters would come before the courts and parliament would lose its exclusive right to determine matters relating to its privilege.

During the discussion that took place in the conference opinions were divided. Some members expressed their views in favour of undertaking legislation while others opposed the idea. No decision was ultimately taken by the conference on the subject. The plea for codification of privileges was also put forward in 1954 by the press commission, but it was not upheld by Speaker Mavalankar who, in his address to the conference of presiding officers at Rajkot on January 3, 1955 observed:

"The press commission considered this matter purely from the point of view of the press. Perhaps they may have felt the difficulties of the press to be real; but from the point of view of the legislature, the question has to be looked at from a different angle. Any codification is more likely harm the prestige and sovereignty of the legislature without any benefit being conferred on the press. It may be argued that the press is left in the dark as to what the privileges are? The simple reply to this is that these privileges which are extended by the constitution to the legislature, its members etc. are equated with the privileges of the House of Commons in England. It has to be noted here that the House of Commons does not allow the creation of any new privileges; and only such privileges are recognized as have existed by long time custom. No codification, therefore, appears to be necessary".

The conference debated the issue and unanimously decided that "*in the present circumstances, codification is neither necessary nor desirable*".

It was contended in a writ petition filed in the Madras High Court that Article 194(3) was transitional or transitory in character, that non-enactment of any law on the subject was a deliberate inaction with the consequence that what was guaranteed under the second limb of the said article was no longer available, and must be held to have lapsed by default. In this connection, the court observed:

"It is very difficult to see how any theory of automation lapse, or lapse due to inaction, can apply to Article 194(3) in its relation to the State Legislature. It is impossible to arrive at any conclusion that the inaction is deliberate; for more so, to sustain any theory that such inaction has the effect of a lapse or extinction. Per contra, where the constitution intends setting a term to any situation of rights, it explicitly says so, and Articles 334, 337 and 343 are very clear instances."

As regards the question of codification of privileges, *Hidyatulla J*. Former Chief Justice of India has made the following observations:

"If there is mutual trust and respect between parliament and courts, there is hardly any need to codify law on the subject of privileges. With a codified law more advantage will flow to persons bent at vilifying parliament, its members and committees and the courts will be called more and more to intervene. At that moment, given a proper understanding on both sides, parliamentary right to punish for breach of its privileges and contempt would rather receive the support of courts than otherwise. A written law will make it difficult for parliament as well as courts to maintain that dignity which rightly belongs to parliament and which the courts will always uphold as zealously as they uphold their own."

Another hurdle in respect of codification of parliamentary privileges in India is the presence of fundamental Rights contained in Part III of the constitution. Under the chapter of fundamental rights, the courts can inquire into the reasonableness of any law made by the House of Legislatures. According to *Subba Rao, J*;

"... if a law of privilege is made, it will be subject to fundamental rights but if no law is made, the said privileges would be absolute. This is an argument of evasion of our constitutional provisions and particularly of fundamental rights, which are given a transcendental position."

Thus, the question of codification of parliamentary privileges has for long been in

consideration. It has been widely discussed and debated in the press, scholarly writings, seminar gatherings, parliament and at the presiding officers conferences.

The academic circles, and the press have been, by and large, in favour of codification. The case for codification has been that:

I. The parliamentary privileges, immunities and powers need to be clearly defined with a view to enabling the citizens of India to know what is permissible and what is not permissible.

II. In the situation as obtained today, the citizens are at the sweet mercy of the legislature. In a country, which has accepted the principle of rule of law, it is necessary for the citizens to know what the law is. But as far as privileges of legislatures are concerned, a citizen knows the law when he is tried and not before. This violates the fundamental principle of the rule of law.

III. A member of the legislature is allowed to enjoy his freedom of speech even to the extent of casting aspersions on the character of a citizen who is not a member. But such a citizen has no remedy against the irresponsible and defamatory statements made by the member on the floor of the legislature. If such a citizen resorts to some means to vindicate his honour, he may be accused of committing contempt of the House, and sentenced for the same. Thus, the House becomes a judge in its own cause. This is against the principle of natural justice.

IV. While courts are non-political, a legislature is essentially a political party, and one party which is in majority in a House may become oppressive and using the power of the House to commit for its contempt to stifle criticism of the Government

The arguments against codification have been mainly two:

That codification of privileges by law would make the privileges of parliament subject to the fundamental rights provisions of the constitution and therefore subject to judicial scrutiny and determination; and

That it would not be possible to add to the existing privileges once they were codified.

Further, some very critical observations have been made regarding codification of privileges. These are:
Sovereignty of parliament has increasingly become a myth and a fallacy for, sovereignty, if any, vests only in the people of India who exercise it at the time of

general elections to Lok Sabha and to State Assemblies;

In a system wedded to freedom, democracy and rule of law, rights of the individual; independent judiciary and constitutional government, it is only fair that the fundamental rights of the citizens-enshrined in the constitution should have primacy over any privileges or special rights of any class of people including the elected legislators and that all such claims should be subject to judicial scrutiny, for situations may arise where the right of the people may have to be protected even against the parliament or against captive or capricious parliamentary majorities of the moment;

The constitution specifically envisaged privileges of Houses of Parliament and State Legislatures and their members and committees being defined by law by the respective legislatures and as such the constitution-makers definitely intended these privileges being subject to the fundamental rights provisions of the constitution and the jurisdiction of the courts;

It is best if matters which are amenable to judicial scrutiny are dealt with by courts and in any case, there is hardly any reason why courts which have full power to enquire into the existence of Privileges, Powers and Immunities claimed by the House of parliament should not also look to their proper exercise, and to set aside any order made by the Houses or to give interim relief to a complaint pending final disposal of the complaint; and

In any case, there is no question of any fresh privileges being added in as much as:

a) Under the constitution, even at present, parliamentary privileges in India having been equated with the privileges of the House of Commons as at the commencement of the constitution on January 26, 1950, are limited; and

b) In the House of Commons itself, creation of new privileges is not allowed.

Thus, though from the point of view of press and people, it is necessary that some privilege, especially privilege in respect of contempt of the House be codified. But on the other hand, if privileges are codified, it may happen that during the codification, it will place restriction on the power of a House to deal with privilege matters in the way they like and they might lose their present flexibility of approach.

Taking into account various aspects and ramifications of this question and in view of the prevailing public uncertainty and anxiety in regard to this matter, as discussed above, the time is now ripe for liberalizing parliamentary attitudes on

matters of privileges of parliament vis-a-vis rights of the citizens and for initiating steps for the codification of the privileges, powers and immunities of the House of Parliament, their members and committees. A strong argument in favour of the time now being ripe for codification of the parliamentary privileges is that during last five decades sufficient experience has been gained and considerable case laws, sound conventions and a number of precedents have already grown on the subject.

Regarding parliamentary privileges, several stock arguments may be found in favour of codification. Society is never still and as new developments take place, the existing pattern tends to become out-moded. In India till now parliament does not think it proper to legislate and lay down a code of privileges. After having adopted an elaborate constitution for free India, it does not look well that we should be dependent on the un-codified usages of the British House of Commons. One fails to understand why the legislature should refuse to codify the privileges.

Time is now ripe for removing the existing uncertainty and anxiety of the press and the people through early codification. A joint Committee of the two Houses may be set up to lay down the privileges in precise terms and to recommend appropriate piecemeal or comprehensive legislation.

CONCLUSION & SUGGESTION:

The last 65 years of Constitutional history of independent India has produced a lot of heat involving Parliamentary Privileges in India. India has sufficient experience of the working of Parliamentary Privileges and the time is just and proper to adopt and enact a law on the subject in India. Some countries like Australia, New Zealand and Shri-Lanka have enacted legislations on Parliamentary Privileges. The Common World Countries have generally referred to Bill of Rights or the British Conventions on the subject even after Independence like in the case of India. However, a beginning has to be made by enacting a statutory law on the Privileges and the Parliamentary Privileges in India.

Criticism for non-codification without suggesting a code would be criticizing without attempting to suggest a solution to the non-codification of Parliamentary Privileges. Accordingly, to contribute positively by suggesting solution to non-codification, a draft legislation is proposed which is only illustrative but not exhaustive and thus a humble effort to illuminate the existing grey area of our constitutional development.

SUGGESTED DRAFT LEGISLATION:

Parliamentary Privileges Act

An act to declare and define the privileges, immunities and powers of parliament and of the members thereof; to secure freedom of speech and debate or proceedings in parliament; to

Provide for the punishment of breaches of the privileges of parliament; and to give protection to persons employed in the publication of the reports, papers, minutes, votes or proceedings of parliament.

1. **Short title**

This Act may be cited as the Parliamentary Privileges Act, ____.

2**. Commencement**

This Act shall come into operation on the day on which it receives the Assent of the President of India.

3. **Interpretation**

(1) In this Act, unless the contrary intention appears:
‘*committee”* means any standing, select or other committee of Parliament;

“Parliament” means the Parliament of India, and includes a committee;

“member” means a Member of Parliament or its Committes and includes the Speaker and any member presiding in Parliament or in committee;

“officer of Parliament” means any person who may from time to time be appointed to the staff of Parliament, whether permanently or temporarily, and includes the Clerk and any police officer on duty within the precincts of Parliament;

“Speaker” includes the member for the time being presiding over Parliament.

PART - I

Powers, Privileges and Immunities and Supplementary Provisions

4. Freedom of Speech and debate:

(1) There shall be freedom of speech, debate and proceeding in Parliament.

(2) The freedom of speech, debate or proceedings shall not be liable to be impeached or questioned in any court or place out of Parliament.

5. Freedom from arrest in civil proceedings: No member shall be liable to any civil or criminal proceedings, arrest, imprisonment, or damages by reason of anything which he may have said in Parliament or by reason of any matter or thing which he may have brought before Parliament by petition, bill, resolution, motion or otherwise.

6. Immunity against the publication of proceedings before Courts: No member of the Parliament shall be Liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be liable in respect of the publication by or under the authority of either House of the Parliament of any report, paper, votes or proceedings.

7. Person not liable in damages for acts done under authority of Parliament: No person shall be liable in damages or otherwise for any act done under the authority of Parliament and within its legal powers.

8. Power to provide Parliamentary Procedures: The parliament shall have the power to lay down Parliamentary procedures and the rules for the conduct of the business by the Parliamentary Committees and its sub-committees.

Provided the procedures prescribed reasonable and are non-discriminatory in nature.

9. Power to provide Privileges and Immunities: The Powers, Privileges and immunities of each house of the Parliament, and of the members and the Committees of the House, shall be such as may from time to time be defined by the Parliament by Law.

10. Immunities from arrest and attendance before courts

(1) A member:

(a) shall not be required to attend before a court or a tribunal; and

(b) shall not be arrested or detained in a civil cause;

on any day:

(c) on which the House of which that member is a member meets;

(d) on which a committee of which that member is a member meets; or

(e) which is within 40 days before or 40 days after a day referred to in paragraph (c) or (d).

(2) A person who is required to attend before a House or a committee on a day:

(a) shall not be required to attend before a court or a tribunal; and

(b) shall not be arrested or detained in a civil cause; on that day.

(4) Except as provided by this section, a member and a person required to attend before a House or a committee has no immunity from compulsory attendance before a court or a tribunal or from arrest or detention in a civil cause by reason of being a member or such an officer or person.

11. Contempt of the House: The Conduct (including the use of words) which are intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the members duties as a member shall constitute the Contempt of the House.

Provided that the Words or acts shall not be taken to be an offence against a House by reason only that those words or acts are defamatory or critical of the Parliament, a House, a committee or a member.

Explanation:

The proviso to Section 7 shall not apply to words spoken or acts done in the presence of a House or a committee.

Part II

Exception to Parliamentary Powers, privileges and Immunities

12. Powers, Privileges and Immunities shall not be applicable for Criminal Offences: The privilege of freedom from arrest cannot be claimed in respect of criminal offences or statutory detention and thus the Parliamentary Privileges cannot be allowed to interfere with the administration of criminal Justice or Emergency Legislation like National Security Act and Preventive Detention Act.

13. Expulsion of the member of the House: Notwithstanding anything in any law for the time being in force, the House has no power to make a members seat become vacant by expelling the member (whether to discipline or punish the member, to protect the House by removing an unfit member, or for any reason or purpose) from membership of the House.

14. Resolutions and warrants for committal: Where a House imposes on a person a penalty of imprisonment for an offence against that House, the resolution of the House imposing the penalty and the warrant committing the person to custody shall set out particulars of the matters determined by the House to

constitute that offence.

Part-III

Penalties under the Act

15. **Penalties to be imposed by Houses:**

(1) A House may impose on a person a penalty of imprisonment for a period not exceeding 6 months for an offence against the Powers, Privileges or Immunities defined by the Act or such others acts under section 9 of this Act.

(2) A resolution of a House ordering the imprisonment of a person in accordance with this section may provide that the Speaker of the House shall have the power, either generally or in specified circumstances, to order the discharge of the person from imprisonment.

(3) A House may impose on a person a fine:

(a) not exceeding Rs5,000, in the case of a natural person; or

(b) not exceeding Rs25,000, in the case of a corporation;

for an offence against that House determined by that House to have been committed by that person.

(4) A fine imposed under subsection (3) shall be a debt due to be recovered as arrears of rent by the court of competent jurisdiction or by any person appointed by a House for that purpose.

(5) A fine shall not be imposed on a person under subsection (3) for an offence for which a penalty of imprisonment is imposed on that person.

(6) A House may give such directions and authorise the issue of such warrants as are necessary or convenient for carrying this section into effect.

Part — IV

Witness and Evidence

16. Parliament to exercise the powers of a Civil Court: The Parliament shall have the power of a civil court in matters relating to the examination of the witnesses and production of evidence in respect of the proceedings for the charge of breach of Parliamentary Privilege.

17. Perjury before Parliamnet or Committee: Any person who —

before Parliament or any committee (and whether or not that person has been sworn or has made a solemn affirmation or declaration), after being duly cautioned as to his liability to punishment under this section, intentionally gives a false answer to any question material to the subject of inquiry which may be put to him during the course of any examination; or intentionally gives false evidence in the course of any statement made by him for the purposes of section 16 of this Act, shall (in addition to any offence under Part II of this Act of which he may be guilty) be guilty of an offence under section 191 of the Penal Code.

Part — V

General Provisions

18. Privileges to be judicially noticed: All privileges, immunities and powers of Parliament shall be part of the general and public law of India, and it shall not be necessary to plead the same, but the same shall in all courts in India be judicially noticed.

19. Removal of the Difficulties: In case a question arises as to the availability of a privilege which has not been expressly defined in the Act, the decision by a 2/3rd majority of both the houses of the Parliament subject to the assent of the president shall be final and binding as to the existence and availability of that privilege to the house and its committees and sub-committees.

Provided further that such powers, privileges and immunities is found expedient for the smooth conduct of the proceedings by the house or its committees and is reasonable in nature.

SCHEDULE

OFFENCES TO BE PUNISHABLE UNDER THE ACT

Assaulting, insulting or willfully obstructing any member coming to or going from Parliament or on account of his conduct in Parliament or any committee, or endeavoring to compel any member by force, insult or, menace to declare himself in favour of

or against any proposition or matter depending or expected to be brought before Parliament or any committee.

Sending to a member any threatening letter or challenging a member to fight on account of his conduct in Parliament or committee.

Tampering with, deterring, threatening, beguiling or in any way unduly influencing any witness in regard to evidence to be given by him before Parliament or any committee.

Presenting to Parliament or to any committee any false, untrue, fabricated or falsified document with intent to deceive Parliament or any committee.

Willfully publishing any false or perverted report of any debate of proceedings of Parliament or committee or

Willfully misrepresenting any speech made by a member in Parliament or in committee.

Willfully publishing any report of any debate or proceedings of Parliament or a committee the publication of which has been prohibited by Parliament or committee.

Willfully publishing any report of any debate or proceedings of Parliament containing words or statements after the Speaker has ordered such works or statement to be expunged from the official report of Parliamentary Debates (HANSARD).

The publication of any defamatory statement reflecting on the proceedings and the character of Parliament.

The publication of any defamatory statement concerning any member in respect of his conduct as a member.

The offering to or acceptance by any member or officer of Parliament of a bribe to influence him in his conduct as such member or officer, or the offering to or

acceptance by any member or officer of Parliament of any fee, compensation, gift or reward for

or in respect of the promotion of or opposition to any Bill, resolution, matter, rule or thing submitted to or intended to be submitted to Parliament or any committee.

The printing of copy of any Act or Ordinance or of report, paper minutes or notes or proceedings of Parliament or any committee, which purports to have been printed by the Government Printer or by or under the authority of Parliament or any committee

but which in fact has not been so printed or the tendering in evidence of any such copy as aforesaid.

The abetment of any act or omission specified in any of the preceding paragraphs.

The willful failure or refusal to obey any order or resolution of Parliament under this Act, or any order of the President or Speaker or any member which is duly made under this Act.

Willful disobedience to any order for attendance or for production of papers, books, records or documents made by Parliament or any committee duly authorized in that behalf unless such attendance or production be excused as provided in section 13 and

section 15 of the Act.

Refusing to be examined before or to answer any lawful and relevant question put by Parliament or any such committee, as provided in section 16.

Creating or joining in any disturbance in the Chamber or in committee or in the vicinity of Parliament while Parliament or any committee is sitting, knowing or having reasonable grounds to believe that proceedings of Parliament or committee are likely

to be interrupted.

Disrespectful conduct in the precincts of Parliament.

Prevarication or other misconduct as a witness before Parliament or in committee.

The publication of any proceedings in committee of Parliament before they are reported to Parliament.

The abetment of any act or omission specified in any of the preceding paragraphs.

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