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DHEERAJ KUMAR TIWARI
MESSAGE

From the desk of the Editor-in-Chief

On behalf of the whole editorial panel, I extend my heartiest and warmth greetings to the distinguished and researchers whose papers have been published in the inaugural issue of the International Journal of Socio-legal Analysis and Rural Development (JISARD). Surely the concepts in the research papers and articles will help a lot to increase knowledge the bank and formulation of policies for sustainable development of Law, Society and Rural arena. This all was started with a small idea of bringing the intellectual minds together and provide them with a means from where they are able exchange their views. The proper analysis of different aspects of any law made by the legislature or is yet to be made, is an integral part of a developing society. When it comes to rural development the society must focus on it as it directly affects the gross GDP of the nation. India’s most of the population still lives in the mid of the so called developed and somewhere in between of the rural society. The up liftment of these arenas is a major challenge for the policy makers and without proper analysis and knowing the grass root facts about it we cannot expect a better policy. Concerns have been drawn in many research papers and articles about the same but there is still a need of proper Socio-legal analysis and thus we all have taken efforts to come up with this and make a proper knowledge bank available in the reach of each and every one. I would like to thanks all the Senior Editors, other editorial panel, and the publisher who have given their precious time to IJSARD and contributed their intellects and resources for its success. Finally, we thank all the authors who contributed to the success of this international journal. We also sincerely wish that all the authors will get benefited academically from this and wish them success in their research endeavor.

Dheeraj Kumar Tiwari
Founder, Editor-in-chief IJSARD
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“Every Thing Starts from a Point and Ends in a Point”

The Views Expressed in this Journal are the individual views and philosophy, idea, creation of the authors. The journal bears no responsibility on behalf of any author for any violation of laws or public domain harm.
A Case Study on the Level of Awareness about Constitutional and Legal Rights Among Women of Village Bahari, District Una, H.P.

By: Dr Bhavana Sharma
Principal (Offg.), HIMCAPES School of Law, Badhera, Haroli, Una, H.P.

Although, gender discrimination has been banned by the Constitution and women have been guaranteed political equality with men, yet there is a difference between the constitutional rights and the rights enjoyed in reality by women. What are the reasons for this sorry state of affairs? Issues may be various and varied, however, a few basic issues deserve specific mention: Lack of awareness, Lack of social and economic empowerment, Lack of political will, Feebleness of accountability mechanisms, Lack of enforcement by the police force, Lack of gender culture.

Generally, the answer to how women should be empowered is suggested in the form of 'reservation'. However, a mere reservation will not solve the problem unless and until women become more conscious and aware of their rights and duties.

This study will provide a detailed overview of a topic; attempt to understand the perception of women in society and understanding of women regarding various rights and laws. This paper presents some results from a study of the level of awareness about constitutional and legal rights among women of village and p.o. Bahari, Tehsil Bangana, District Una, H.P. This paper suggests measures for effective programme and policies for awareness about laws, rights and policies among women at grass root level.

KEYWORDS: Awareness, constitutional and legal rights, empowerment, women.

In Indian society, woman occupies a vital position and venerable place. The Vedas glorified women as the mother, the creator, and one who gives life and worshipped her as a ‘Devi’ or Goddess. But their glorification was rather mythical for at the same time, in India women found her totally suppressed and subjugated in a patriarchal society. Indian women from the countries remained subjugated and oppressed because society believed in clinging on to orthodox beliefs for the brunt of violence—domestic as well as public, Physical, emotional and mental. Women once venerated as the mother and the perpetuating angel of mankind has come to be looked upon as 'the unblessed creature of God' in India, thanks to the club-and-drag caveman attitude of the traditionally male-dominated society.

However, after independence, the principle of gender equality is enshrined in the Indian Constitution in its preamble, fundamental rights, fundamental duties and directive principles. The Constitution not only grants equality to women but also empowers the state to adopt measures, a position; indiscrimination in favour of women. Within the framework of a democratic polity, our laws, developmental policies, plans and programmes are aimed at women’s advancement in different spheres. India has also ratified various international conventions to secure rights of women. The women’s movement and a widespread network of Non-Government Organisations (NGOs) having a strong grass-roots presence and deep insight into women’s concerns have contributed to inspiring initiatives for the empowerment of women. Women today are trying to understand their position in the society. Women have become increasingly aware of sexual inequalities in every sphere of life and are seeking ways to fight them.

The present study is conducted to know whether the womenfolk of our society is aware of their constitutional and legal rights. As a democratic country, India gives priority to the principles of liberty, fraternity, equality and justice. Indian constitution provides various rights necessary for securing women’s empowerment. In this regard some constitutional and legal provisions for women may be mentioned below:

**Article 14**- Equal rights and opportunities for men and women in political, economic and social spheres.
**Article 15(1)** - Prohibits discrimination against any citizen on the grounds of religion, race, caste, sex etc.
**Article 15(3)** – Empowers the state to make affirmative discrimination in favour of women
**Article 16** – Provides equality of opportunity for all citizen in matters relating to employment or appointment to any office under the state
**Article 39 (a)** – The state shall direct its policy towards securing all citizens men and women equally the right to means of livelihood
Article 39 (d) – Equal pay for equal work for both men and women
Article 42 – Directs the state to ensure provisions for the just and humane condition of work and maternity relief.
Article 46 – The state to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation
Article 47 – The state to raise the level of nutrition and the standard of living of its people and the improvement of public health
Article 51 (A) (e) – Mandates every citizen to renounce practices derogatory to the dignity of women
Article 243D (3) – Not less than one third (including the number of seats reserved for women belonging to the scheduled castes and the scheduled tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat
Article 243D (4) – Not less than one third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women.

At the same time Government of India has also been provided legal rights for women in order to achieve gender equality. Among the major legislation- the Hindu Succession Act was enacted to give daughters equal rights as sons in ancestral property. In order to stop human trafficking, the Immoral Traffic Prevention act has been launched to take stringent action against the traffickers. Various laws and legislation have been implemented for women including Sati Prevention Act, Dowry Prohibition Act, the Protection of Women from Domestic Violence Act in the year 2005 and most effective and landmark amendments were made in Cr.P.C., I.P.C. and Indian Evidence Act after Nirbhaya’s case. To ensure equal rights to counter social discrimination and various forms of violence, atrocities and to provide support services especially for women, following legal provisions have been made:

- The Employees State Insurance Act 1948
- The Plantation Labour Act 1951
- The Family Course Act 1954
- The Special Marriage Act 1954
- The Hindu Marriage Act 1955
- The Maternity Benefit Act
- The Medical Termination of Pregnancy Act 1971
- The Contract Labour (Regulation and Abolition) Act 1976
- The Equal Remuneration Act 1976
- The Criminal Law (Amendment) Act 1983
- The Factories (Amendment) Act 1986
- Indecent Representation of Women (Prohibition) Act 1986

Apart from these measures, various initiatives have been launched in India from time to time. The Ministry of Women and Child Development has set up a support system for working women hostels and crèches to help working women. To provide shelter and care services Swadhar and short stay homes have been set up for women. For economic empowerment, Rashtriya Mahila Kosh (RMK) was established in 1993 to ensure micro-credit facilities. Some other initiatives are:

National Commission for Women: In January 1992 the Government set up this statutory body with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguards provided for women, review the existing legislation to suggest amendments wherever necessary etc.
Reservation for Women in Local Self-Government: The 73rd constitution amendments Acts passed in 1992 by Parliament ensure one-third of the total seats for women in all elected offices in local bodies whether in rural areas and urban areas.
The National Plan of Action for Girl Child (1991-2000): The Policy of Action is to ensure survival, protection and development of the girl child with the ultimate objective of building up a better future for the girl child.

National Policy for Empowerment of Women 2001: The Department of Women and Child Development in the Ministry of Human Resource Development has prepared a National Policy for Empowerment of women in the year 2001. The goal of this policy is to bring about the advancement, development and empowerment of women.

OBJECTIVES: The following objectives are formulated for the present study-
1. To find out the awareness level of women about their constitutional and legal rights.
2. To highlight the importance of awareness for capacity building and skill development necessary for their empowerment.
3. To understand the correlation between education and awareness building.

RESEARCH QUESTION: The Research Questions for this study are:
1. Whether the respondents are aware of their constitutional and legal rights?
2. Whether the respondents have ever been benefitted from these rights?

METHODOLOGY:

Universe, Sampling and Research Tool: Keeping in view the socio-legal nature of the problem, the research methodology has been chosen in such a manner as to effectively coordinate the data derived from different discipline and areas and to establish linkage between them in order to highlight the different issues. The study shall make use of both primary and secondary data. The researcher has used multi-prolonged approach to collect as much as relevant information through the primary and secondary sources. The study would be purely exploratory and evaluative in nature.

The universe of the study is village Bahari, Tehsil Bangana, Una, Himachal Pradesh, India. The village is situated in tehsil Bagana on the way to the famous temple of Sada Shiv.

Primary data has been collected through the administration of the questionnaire to the respondents by picking up the random sample of 10 % of the universe to generate the information to access and evaluate their views. Interview schedule contained both types of close and open-ended questions including the variables such as gender, age, educational.

Secondary data has been gathered from the literature available in the libraries, data of NGOs, Court Judgments, Reports of EIA, Newspapers, reports, articles, research papers and other relevant documents including review of books, legal and extra-legal relevant literature has been studied, surveyed and scanned for the present study.

TABLES AND FIGURES: The Researcher chose a 10% of a random sample of the population for “Questionnaire Schedule” by using Simple Random Sampling Method. The nature of the study is exploratory. Interview schedule contained both types of close and open-ended questions including the variables such as Working status and economic background.

The variables chosen by the Researcher for the purpose of Data Analysis are:
- Working status; and
- Economic background.
After analyzing the sample chosen, i.e. 10% of the population, the Researcher found that the total number of respondents selected rare 40, out of which 9, i.e. 22.5% of the total sample selected are working females and 31, i.e. 77.5% of the total sample selected are non-working females as shown in Table number 1.

Table 2 shows that out of the total sample chosen, none of the sample chosen belongs to the high class, 26, i.e. 65% of the sample chosen belong to middle class and 14, i.e. 35% of the sample chosen, belongs to the low class.

**ANALYSIS OF THE SAMPLING:** The response of the Respondents to how far they know their rights and to what extent they are using it and being benefitted from these areas:

1. **Power to women at home:**

Table 3 shows the distribution of answers to the Question in the questionnaire, asking whether the respondent feel any power at home, only 3 (7.5 %) respondents of the sample chosen, out of the total sample chosen by the Researcher said that yes to this question, while 32 (80) of the sample chosen, said no to it and 5 (12.5%) said that they enjoy this power only to a limited extent.

2. **Perceptions of Subordination:**

Table 4 shows the distribution of answers to the Question in the questionnaire, asking what the perceptions of subordination of the respondents are. 35, i.e. 87.5 % of the respondents feel subordination at home, while none of the respondents doesn't feel any subordination at home and 5 (12.5 %) of the respondents do not have any idea about it.

**Parent’s unhappiness at the birth of girl child:**

Table 5 shows the distribution of answers to the Question in the questionnaire, asking what the perception of unhappiness at the birth of girl child by the parents are. 33, i.e. 82.5 % of the respondents feel unhappiness at the birth of girl child, while 2 (5) of the respondents do not have any idea about it.
Table 5 shows the distribution of answers to the Question in the questionnaire, asking what parents are happy with the birth of girl child. 33, i.e. 82.5 % of the respondents feel unhappiness, while 2, i.e. 5 % of the respondents answered in negative and 5, i.e. 12.5 % of the respondent said that they take it as their luck.

3. **Awareness and understanding of Constitutional and Legal Rights:**

<table>
<thead>
<tr>
<th>Awareness and understanding of Constitutional and legal Rights</th>
<th>Number</th>
<th>%age</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aware</td>
<td>15</td>
<td>37.5</td>
</tr>
<tr>
<td>No idea</td>
<td>10</td>
<td>25</td>
</tr>
<tr>
<td>Aware but can’t use</td>
<td>15</td>
<td>37.5</td>
</tr>
</tbody>
</table>

Table 6 shows the distribution of answers to the Question in the questionnaire, asking whether the respondents are aware of their constitutional and legal rights. 15, i.e. 37.5 % of the respondents answered in positive, while 10, i.e. 25 % of the respondents answered in negative and 15, i.e. 37.5% of the respondent said that they are aware of their rights but can’t use them.

4. **Awareness about women empowerment:**

<table>
<thead>
<tr>
<th>Awareness about women empowerment</th>
<th>Number</th>
<th>%age</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>30</td>
<td>75</td>
</tr>
<tr>
<td>No</td>
<td>10</td>
<td>25</td>
</tr>
</tbody>
</table>

Table 7 shows the distribution of answers to the Question in the questionnaire, asking whether the respondents are aware of women empowerment. 30, i.e. 75% of the respondents answered in positive, while 10, i.e. 25% of the respondents answered in negative.

5. **Right to Equality:**

<table>
<thead>
<tr>
<th>Right to Equality</th>
<th>Number</th>
<th>%age</th>
</tr>
</thead>
<tbody>
<tr>
<td>Observe</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Doesn’t observe</td>
<td>35</td>
<td>87.5</td>
</tr>
<tr>
<td>No idea</td>
<td>5</td>
<td>12.5</td>
</tr>
</tbody>
</table>

Table 8 shows the distribution of answers to the Question in the questionnaire, asking whether the respondents enjoy right to equality. None of the respondents answered in positive, while 35, i.e. 87.5 % of the respondents answered in negative and 5, i.e. 12.5% of the respondent said that they have no idea about it.

6. **Freedom of Speech and Expression:**

<table>
<thead>
<tr>
<th>Freedom of Speech and Expression</th>
<th>Number</th>
<th>%age</th>
</tr>
</thead>
<tbody>
<tr>
<td>Observe</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>Doesn’t observe</td>
<td>38</td>
<td>95</td>
</tr>
<tr>
<td>No idea</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Table 9 shows the distribution of answers to the Question in the questionnaire, asking whether the respondents enjoy right to freedom of speech and expression. 2, i.e. 5 % of the respondents answered in positive, while 38, i.e. 95 % of the respondents answered in negative and none of the respondents said that they have no idea about it.

7. **Knowledge of Government schemes for women empowerment:**

Table 10:
Table 10 shows the distribution of answers to the Question in the questionnaire, asking whether the respondents have knowledge of Government schemes for women empowerment. 2, i.e. 5 % of the respondents answered in positive, while 34, i.e. 85 % of the respondents answered in negative and 4, i.e. 10% of the respondent said that they have idea about it, but don’t use.

8. **Protection under Domestic Violence Act:**

Table 11:

<table>
<thead>
<tr>
<th>Protection under Domestic Violence Act</th>
<th>Number</th>
<th>%age</th>
</tr>
</thead>
<tbody>
<tr>
<td>Knowledge and understanding</td>
<td>5</td>
<td>12.5</td>
</tr>
<tr>
<td>Idea but no understanding</td>
<td>33</td>
<td>82.5</td>
</tr>
<tr>
<td>No idea</td>
<td>2</td>
<td>5</td>
</tr>
</tbody>
</table>

Table 11 shows the distribution of answers to the Question in the questionnaire, asking whether the respondents have knowledge of protection under the Domestic Violence Act. Only 5, i.e. 12.5 % of the respondents answered that they have knowledge and understanding of this Act, while 33, i.e. 82.5 % of the respondents answered that they have idea of the Act but does not understand how it works and 2, i.e. 5% of the respondent said that they have idea about it.

9. **Awareness of laws against sexual exploitation:**

Table 12:

<table>
<thead>
<tr>
<th>Awareness of laws against sexual exploitation</th>
<th>Number</th>
<th>%age</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>20</td>
<td>50</td>
</tr>
<tr>
<td>No</td>
<td>3</td>
<td>7.5</td>
</tr>
<tr>
<td>Have idea, but don’t use</td>
<td>17</td>
<td>42.5</td>
</tr>
</tbody>
</table>

Table 12 shows the distribution of answers to the Question in the questionnaire, asking whether the respondents are aware of women empowerment. 20, i.e. 50% of the respondents answered in positive, while 3, i.e. 7.5% of the respondents answered in negative and 17, i.e. 42.5% of the respondents said that they have known about these laws but don’t use it.

10. **Action against husband against cruelty:**

Table 13:

<table>
<thead>
<tr>
<th>Action against husband against cruelty</th>
<th>Number</th>
<th>%age</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, if situation prevails</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>No</td>
<td>19</td>
<td>47.5</td>
</tr>
<tr>
<td>Ashamed of using it</td>
<td>10</td>
<td>25</td>
</tr>
<tr>
<td>No idea that they can take action</td>
<td>9</td>
<td>22.5</td>
</tr>
</tbody>
</table>

Table 13 shows the distribution of answers to the Question in the questionnaire, asking whether the respondents are aware that they can take action against husband’s cruelty. Only 2, i.e. 5% of the respondents answered in positive, while 19, i.e. 47.5% of the respondents answered in negative, 10, i.e. 25% said that they feel shame in using such laws and 9, i.e. 22.5% said that they have no idea that such laws prevail.

11. **Membership of Women’s organisations:**

Table 14:

<table>
<thead>
<tr>
<th>Membership of Women’s organisations</th>
<th>Number</th>
<th>%age</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>No</td>
<td>40</td>
<td>100</td>
</tr>
<tr>
<td>No idea of such kind</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
Table 14 shows the distribution of answers to the Question in the questionnaire, asking whether the respondents have the membership of Women’s organisations. None of the respondents was a member of any women organisation nor they have any knowledge about it.

**RESULT AND DISCUSSION:** The result of the research and discussion on it is as:

Majority of women whether working or non-working (70) had the positive attitude towards the importance of empowering womenfolk. They are in favour of women empowerment as well as their emancipation for the eradication of violence, discrimination against women and protection of their rights.

Even in this 21st Century most of the women do not have any power even in their homes and their basics rights are not fully enjoyed by them till this date which is clear from this survey as:

1. Majority of the women whether they are working or non-working or belongs to any class does not have any power at home.
2. A large no. of respondents feels subordination in their lives. There are respondents who do not even had any idea about it.
3. The feeling of “parents becoming unhappy at the birth of girl child” still prevails, however, they took it as their luck.
4. The larger segment of the respondents does not feel free in expressing her desire.
5. Highly educated women have more awareness and understanding of constitutional rights than the women with no education.
6. A majority of respondents agree that women should be treated equally as men.
7. A large no. of respondents has no idea of Domestic violence act. And those who have heard about it do not have knowledge and understanding of this act.
8. Majority of the respondents have less awareness about government schemes for the development.
9. Majority of the respondents feel shame in taking any kind of action against her husband in case of cruelty because society does not like such women even if her husband beats her.
10. Majority of respondents face sexual exploitations or remarks at one time or another and they want strict actions against such persons but are not ready to come forward. And they are not even aware of the laws against any kind of sexual exploitation.
11. Most of the women do not prefer to take decisions on important matters but leave them to their menfolk’s discretion.
12. Education is found to be positively related to active participation in decision making in the family.
13. Majority of the respondents recognize economic insufficiency as one of the important barriers to empowerment.

**CONCLUSION:** The survey of this study has led to following conclusions:

No doubt, women empowerment is a continuous process of several inter-related and mutually dependent components among which awareness building is a basic one. And awareness can be gained by education which will awaken women about their rights and opportunities, the importance of these facilities and also make them aware how to seek these facilities for themselves.

One thing is clear from this study that educated women is more aware of her rights but whether educated or not women are still hesitant in using their rights and also there is lack of awareness regarding the legal process or where to approach for the infringement of rights or to enforce their rights. Even education has failed to change the mindset of people. Even modern women have to carry the bonds of tradition and till this date, she is being exploited on the name of traditions. For proper dissemination of knowledge and information of women’s rights, both education and media should be used effectively because in the present scenario need is to educate and spread awareness among not only women but men also so that status of women can be improved. Women themselves have to grow conscious of their dignity and needs only then they can emancipate themselves. It is necessary to motivate women so that they can raise their voices against any kind of exploitation and media can play important role in it. Women can be empowered in true sense only by spreading awareness and eradicating violence.

One thing is clear from the above discussion that the respondents are mostly sufferers in this whole scenario, however, a number of policies and programmes has been launched but they are not effective in absence of awareness about them and their use. In order to implicate the policies, policy and programme frames, implementation and development agencies, law enforcement machinery and the judiciary, as well as non-
governmental organization, should come forward to shoulder their responsibility. There must be a close link among Govt., NGO’s, and the general public as well as other organization to make all these programmes fruitful. Following measures need to be undertaken to implement already existing policies:

1. Promoting social awareness on gender issues and women’s human rights.
2. Review of curriculum and educational materials to include gender education and human rights issues.
3. Removal of all references derogatory to the dignity of women from all public documents and legal instruments.
4. Use of different forms of mass media to communicate social messages relating to women’s equality and empowerment.

ACKNOWLEDGEMENTS: This paper is especially dedicated to all the women. But special thanks to those women who participated in my research and contributed with their ideas without which this paper could not have been finalised in the present form. And thanks to the authors whose work I consulted throughout the research.

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Elders Abuse – A Growing Menace A Critical Study of Belagavi City

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Elderly care, or simply eldercare (also known in parts of the English speaking world as aged care), is the fulfillment of the special needs and requirements that are unique to senior citizens. This broad term encompasses such services as assisted living, adult day care, long term care, nursing homes (often referred to as residential care), hospice care, and home care. Because of the wide variety of elderly care found nationally, as well as differentiating cultural perspectives on elderly citizens, cannot be limited to any one practice. Elderly care emphasizes the social and personal requirements of senior citizens who need some assistance with daily activities and health care, but who desire to age with dignity. It is an important distinction, in that the design of housing, services, activities, employee training and such should be truly customer-centered. It is also noteworthy that a large amount of global elderly care falls under the unpaid market sector.

The number of the elders is growing in India. There are an estimated 90 million older persons in India today. Life expectancy has increased from 40 years in 1951 to 64 years. Growth rate of elderly (3.09) is higher than that of the general population (1.9). At 60+, the proportion of widows (54%) is more than widowers (16%). This demographic transition has posed tremendous challenges for healthy ageing. As per 2001 Census, total population of Senior Citizens (60+ years) was 7.7 crore, of which population of males and females was 3.8 crore and 3.9 crore respectively. Senior Citizens constituted 7.5% of the total population. Himachal Pradesh, Punjab, Uttarakhand, Haryana, Orissa, Maharashtra, Andhra Pradesh, Karnataka, Goa, Kerala, Tamil Nadu and Pondicherry have more than the national average (7.5%) of proportion of Senior Citizens population. Looking into the growing population and the problems faced by this category it was felt for the need of the study. Hence this study.

Key Words: Elder, Abuse, trauma, Psychological, Institution.

INTRODUCTION

At present 95 million people in India are above the age of 60, by the year 2025 nearly 80 million more will be added to this population bracket. With improved life expectancy rate in our country, it’s estimated that as many as 8 million people are currently above the age of 80 years. Changing family value system, economic compulsions who are of the children, neglect and abuse has caused elders to fall through the net of family care. Homes for the Aged are ideal for elderly people alone, face health problems, depression and loneliness.

Definition

Elder abuse is defined as: "a single or repeated act or lack of appropriate action occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person or violates their human and civil rights". (Protecting Our Future - Report of the Working Group on Elder Abuse, 2002)

Types of Elder Abuse

Elder abuse can occur in many forms and may be the result of deliberate intention, negligence or ignorance. A person may experience more than one form of abuse at a time. Types of elder mistreatment include:

Physical Abuse

Physical abuse has been defined as the non-accidental infliction of physical force that results in a bodily injury, pain or impairment. Physical abuse may include hitting, slapping, pushing, kicking, misuse of medication and inappropriate restraint.
Psychological Abuse

Psychological or emotional abuse may include the persistent use of threats, humiliation, bullying, intimidation, isolation, swearing and other verbal conduct that results in mental or physical distress.

Financial Abuse

Financial or material abuse has been defined as the unauthorized and improper use of funds, property or any resources of an older person. This may include theft, coercion, fraud, misuse of power of attorney, and also not contributing to household costs where this was previously agreed.

Sexual Abuse

Sexual abuse refers to any sexual acts to which an older person has not or could not consent, including talking to or toughing in a sexual way.

Neglect

Neglect refers to the repeated deprivation of assistance needed by an older person for important activities of daily living. This may include ignoring or refusing to help with physical care needs, failing to provide access to appropriate health services, or withholding necessities such as adequate nutrition and heating.

Discriminatory Abuse

Discriminatory abuse may include racism, ageism, discrimination based on disability, other forms of harassment, slur or similar treatment.

Institutional Abuse

Institutional abuse may occur within residential care and acute settings including nursing homes, acute hospitals and any other in-patient settings, and may involve poor standards of care, rigid routines and inadequate responses to complex needs.

How big is the problem?

International studies estimate the prevalence of abuse in the community at between 1% to 5% of the population aged 65 years and older. A recent report by the NCPOP, Abuse and Neglect of Older People in Ireland (2010), provided the first national prevalence statistics on the extent of elder abuse and neglect amongst community-dwelling older people.

The overall prevalence of elder abuse and neglect in the previous 12 months was 2.2%. This suggests that over 10,000 people over the age of 65 years experienced mistreatment in the past year. Financial abuse was the most common type reported at 1.3%, followed by psychological abuse (1.2%), physical abuse (0.5%), neglect (0.3%) and sexual abuse (0.05%).

Approximately 4% of older people living in the community have experienced some form of abuse since turning 65 years of age.

The HSE dedicated elder abuse service, established in 2007, receives over 1,800 referrals for alleged cases of elder abuse each year. In 2009 psychological abuse was the most frequently reported form of abuse at 28%, followed by self-neglect (21%), financial abuse (18%), neglect (17%) and physical abuse (12%), sexual abuse (1%) and other/discrimination (3%).

Constitutional and legal protection for Elders in India:

Sec-38. State to secure a social order for the promotion of welfare of the people

1) The state shall strive to promote the welfare of the people by securing and protecting a social justice, social, economic and political rights.

Sec-41. Right to work, to education and to public assistance in certain cases-
The state shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment.

Sec-42. Provision for just and humane conditions of work and maternity relief.
The state shall make provision for securing just and humane conditions of work and the maternity relief.

Sec-46. Promotion of economic and educational interests of Schedule Caste and Schedule tribes and other weaker sections.
The state shall promote with special care the education and economic interests of the weaker sections of the people and in particular and shall protect them from social injustice and all forms of exploitation.

Sec -47. Duty of the state to raise the level of nutrition and the standard of living and to improve public health

Legal protection of Elders:
The Hindu adoption and maintenance Act. 1956.
This act subject to the provisions of maintenance of legitimate or illegitimate children and aged persons Protection under Criminal Procedure Code- 1973

Sec-125. Order for maintenance of wives, Children and Parents
  a) If any person having sufficient means neglects or refuses to maintain.
  b) His wife unable to maintain herself.
  c) His legitimate or illegitimate child unable to maintain itself.
  d) His Father or Mother unable to maintain themselves a magistrate of first class order such person to make monitor allowance for their maintenance.

Schemes for Elders in Karnataka:
Old age Homes: State Govt. extend the financial assistance to NGOs to establish and implement Old Age Homes to take care of the elderly persons providing all the basic amenities including Health care protection to life etc.,

Monthly Pension scheme for older person (Implemented by Revenue Dept.):
Rs. 400/- is provided as monthly pension to needy elderly persons to maintain themselves

Eligibility Criteria:
1. He / She should be 65 years or more in age.
2. The combined annual income of the proposed pensioner and his or her spouse shall not exceed Rs.20,000/- as certified by the local revenue authority.

Help Line for Senior Citizens:
Help lines are established at 14 places in the State i.e., Bangalore, Mysore, Hubli-Dharwad, Gulbarga, Mangalore & Belgaum Davangere, Raichur, Bellary and Shimoga with the help of Police Dept. and NGO’s to redress the grievances of senior citizens who are in distress. ( other 4 help lines)

Day Care Center for Senior Citizens:
Day care centers are established at Bangalore, Hubli-Dharwar, Gulbarga and Belgaum corporation areas. The main objectives of Day Care center is to maintain well being of older persons, to provide social and emotional services, recreation, Health care etc.,

Identity Cards for Senior Citizens:
The Deputy Director Women & Child Development Department of the concerned district will identify NGOs to issue Identity Cards to Senior Citizens. The NGOs can collect Rs. 25 towards issue of Identity Cards to Senior Citizens.

SandhyaSurkasha Scheme (Implemented by Revenue Dept.):
Govt. order No. RD/97/MST/2007, Dated: 2-07-2007. The purpose of the scheme to provide financial assistance in the form of social security pension. The Senior citizens shall be eligible for pension of Rs.400/- per month under this scheme if she / he satisfy the following conditions.
1. He/She should be 65 years or more in age.
2. The combined annual income of the proposed pensioner and his or her spouse shall not exceed Rs.20,000/- as certified by the local revenue authority.
3. If the income is declared by beneficiary himself/herself, the income of Adult children need not be counted for calculation of the income of the proposed social security pensioner.
4. The total value of combined deposits held by the pensioner and his spouse shall not be exceeding Rs.10,000/-. 
5. The beneficiaries who are availing old age pension, Destitute widow pension or physically handicapped pension or any other form of pension from public or private sources are not eligible for this scheme.

6) Concessional Bus Pass:
Elder persons above the age of 65 living in Karnataka are eligible to avail concessional monthly bus passes in KSRTC also Senior Citizens eligible to avail 25% concessions in Bus fare for which they travel.

METHODOLOGY

Objectives of the study:
1. To study the conditions of Elders in their homes and reason for their Elderly Abuse.
2. To study the awareness programs conducted by the old age homes for the elderly and their views on elderly people.

Types of the research: Exploratory Research and Descriptive Method have been used in this study.

1) Methods and Tools of Data Collection:
Source of data: Primary data: The data which is collected for the study is directly from respondents is called as primary data. The information was collected through Questionnaire.
Sample and Sampling: sampling has been done by way of simple random, 73 persons has been selected, and they were 50 years of age and above target were to reach people from all sectors of society. Sample: Data is collected from elders through questioner in the month of May.

Table Showing the information of Age distribution of the elders at different Old Age Homes.

<table>
<thead>
<tr>
<th>AGE BETWEEN</th>
<th>MALE</th>
<th>FEMALE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>50 – 60</td>
<td>05</td>
<td>09</td>
<td>14</td>
</tr>
<tr>
<td>60 – 70</td>
<td>11</td>
<td>17</td>
<td>28</td>
</tr>
<tr>
<td>70 – 80</td>
<td>07</td>
<td>18</td>
<td>25</td>
</tr>
<tr>
<td>80 – 90</td>
<td>01</td>
<td>03</td>
<td>04</td>
</tr>
<tr>
<td>90 +</td>
<td>00</td>
<td>02</td>
<td>02</td>
</tr>
<tr>
<td>TOTAL</td>
<td>24</td>
<td>49</td>
<td>73</td>
</tr>
</tbody>
</table>

The above table and chart is indicates to information of age and elders age between 50-60; male 05, female 09,. Age between 60-70; male 11, female 17. Age between 70-80; male 07, female 18. Age between 80-90; male 01, female 03, and total 04. Age 90+ male 00, and female 02, and total 02. Total all male elder 24, and Total all female elders 49.

Table Showing the details of Facilities Provided in the different Old Age Homes.

Facilities in the Institution
The above table indicates that the facilities for the Elders in the old age Institution in Belagavi city all sampled institution they were give the facilities to inmates and all the institutions also provide the shelter, clothing and medicine for the old age people living in the institution. There was only one institution (Shantai vrudhashram) giving the facility of daily exercise for the inmates.

Table Showing the information of Source of Funding to the different Old Age Homes .

Sources of Funding

<table>
<thead>
<tr>
<th>Sl.No</th>
<th>Name of Institution</th>
<th>Source of Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Karunalaya</td>
<td>Family Members, Friends and Well wishers</td>
</tr>
<tr>
<td>2</td>
<td>Shri. Shivabasaveshvar vrudhashram</td>
<td>Well wishers and Religious persons</td>
</tr>
<tr>
<td>3</td>
<td>Shantaivrudhashram</td>
<td>Self funding and Well wishers</td>
</tr>
<tr>
<td>4</td>
<td>Home for homeless</td>
<td>Well wishers</td>
</tr>
<tr>
<td>5</td>
<td>St. Joseph’s home for the aged</td>
<td>Community</td>
</tr>
</tbody>
</table>

The above table indicates about funding sources for the old age institutions of Belagavi city, these funding are used for the purpose of the welfare of old age people as well as of the institution. The source comes from family members, friends, religious persons, Community persons, well wishers and some institutions have their own income source as a fund.

Data analysis:

In Belagavi city all the old age homes are run by private institutions and organization. They were not funded by the government but they have sources of funding like from family of the inmates, friends of the inmates, well wishers of the society and religious peoples. Some of them are run the institution by self funding. These old age institutions the number of staff is 33 peoples for 166 elders this means institutions suffering from lack of staff. In these institutions female are more in number as elderly abused that is 49 females and males are 24 persons, in that the age between 60-70 are more in number who are elderly abused by their family member and others. In these institutions the type of inmates comes from residence are destitute, neglected by children, poor unmarried and widows. The institutions are providing love and compassion, care and medical facility and listing of their stories.

The Awareness Programs Conducted by the Old Age Homes for the elderly and their views on Elderly people

Table No- showing the details of the Old Age Homes Working for Rejoin the Elders And Conducting the Awareness Programs.
Rejoining to Family and Awareness Programs

<table>
<thead>
<tr>
<th>Sl.No</th>
<th>Name of Institution</th>
<th>Rejoining to Family</th>
<th>Awareness Programs</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Karunalaya</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>2</td>
<td>Shri. Shivabasaveshvarvrudhashram</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>3</td>
<td>Shantaivrudhashram</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>4</td>
<td>Home for homeless</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>5</td>
<td>St. Joseph’s home for the aged</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

The above table explains about the rejoining to families and awareness programs by the institutions about old age abuse. There are only three institutions make arrangements for joining to the institution and some of them are not having this type of facilities. In Belagavi city all the old age institutions arranged the awareness program for general public.

Table Measures to Avoid Elder Abuse

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of the Institution</th>
<th>Measures To Avoid Elder Abuse</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Street Drama</td>
</tr>
<tr>
<td>1.</td>
<td>Karunalaya</td>
<td>No</td>
</tr>
<tr>
<td>2.</td>
<td>Shri. Shivabasaveshvarvrudhashram</td>
<td>Yes</td>
</tr>
<tr>
<td>3.</td>
<td>Shantaivrudhashram</td>
<td>No</td>
</tr>
<tr>
<td>4.</td>
<td>Home for homeless</td>
<td>No</td>
</tr>
<tr>
<td>5.</td>
<td>St. Joseph’s home for the aged</td>
<td>No</td>
</tr>
</tbody>
</table>

The above table shows the measures taken by the old age institution to avoid elder abuse in the Belagavi city. These are the awareness programs arranged by the institutions to make society aware about the elder abuse. Those measures are street drama, pamphlets, speeches in public and students programs and other programs. Almost all the institutions make awareness programs which are mentioned above to control elder abuse.

Data analysis:

Awareness programs are help to know about the system, rules and regulations on a particular issue in this thesis its explained that the old age institutions are have many awareness programs in the Belagavi city in the forms of giving pamphlets to the public, Street dramas in the villages as well as cities. They can also give special speeches and lectures to general public and the students in education institutions. There are some special programs for make aware about elder abuse programs on celebrations of festivals and some special days. The old age institutions also make arrangements for Rejoining of the elders to their family.

To study the family background of Elders in Old Age Homes and the reason for Joining Old Age Home.

Table INFORMATION SHOWING THOSE WHO HAVE CHILDREN

<table>
<thead>
<tr>
<th>HAVE CHILDREN</th>
<th>DON’T HAVE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>23</td>
<td>50</td>
<td>73</td>
</tr>
</tbody>
</table>
The above table and chart indicates to information showing those who leave children or orphans. Here have children are 23(68%), don’t have 50 (32%).

Table 10: **Reason for joining old age**

<table>
<thead>
<tr>
<th>Sl. No</th>
<th>Reason for Joining old age</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Male</td>
<td>Female</td>
</tr>
<tr>
<td>1</td>
<td>Medical</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>2</td>
<td>Harassment</td>
<td>4</td>
<td>7</td>
</tr>
<tr>
<td>3</td>
<td>Neglected</td>
<td>6</td>
<td>11</td>
</tr>
<tr>
<td>4</td>
<td>Economic Problem</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>5</td>
<td>Self</td>
<td>6</td>
<td>17</td>
</tr>
<tr>
<td>6</td>
<td>Other reasons</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>24</td>
<td>49</td>
</tr>
</tbody>
</table>

The above table and chart are indicates that the reason for joining the old age people to the old age institution. About 24% of the people are come for the reason of Neglected by the family and some of (24%) the inmates come by self. There are 16% of people come because of harassment by the family members.12% of peoples come for the area

**The Conditions of Elders in their homes and Reason for their Elderly Abuse**

Table Reason for their Abuse

<table>
<thead>
<tr>
<th>Sl. No</th>
<th>Reason for their Abuse</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Male</td>
<td>Female</td>
</tr>
<tr>
<td>1</td>
<td>Medical</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td>Financial</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>3</td>
<td>Other *</td>
<td>21</td>
<td>46</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>24</td>
<td>49</td>
</tr>
</tbody>
</table>

*other means no response, elder and Mental.

The above table and charts are indicates the reason for the abuse of Elders in Belagavi city. About 92% of people are get abuse because of the factors like mental sufferings and many of them are not responding for their Abuse. Only 5% of people are abuse because of the reason of Medical. And there are only 3% of People are abuse because of Financial purpose.

Opinion of the Elders about their experience in Home. They expressed that they feel lonely in the home. About 47% of people are agreed about they feel loneliness in the home. And there are 23% of people are not feel loneliness in the home. Finally about 30% of people who are not having their home.

about the opinion of elders about their feeling experience in the home. Here focus on the feeling of elders that they are forced to silent at home. There are 23% of people are agreeing that they are forced to silent at home. And 47% of people are not agreeing that they are not forced to silent at home. There are 30% of people who are not having their home.

**Table showing Forced to Work at Home**
The above table and charts are indicates about the opinion of elders about their feeling experience in the home. Here focus on the feeling of elders that they are forced to work at home. There are 27% of people who are forced to work at home. Women are forced to do domestic works. And about 44% of people are not to forced for work in the home. Finally there are 29% of people are not having their own home.

The above table and charts are indicates about the opinion of elders about their feeling experience in the home. Here focus on the feeling of elders that they are neglected by the family members. There are 51% of elders are neglected the family and there are 34% of people are not feeling any negligence in the home by family members and others. There are 15% of people are not having their own home so it is not applicable to them.

The above table and charts are indicates about the opinion of elders about their feeling experience in the home. Here focus on the feeling of elders that they are ever physically beaten by any one. There are only 8% of people are physically beaten by family members and others. About 62% of people are not physically beaten by the family members and others. 30% of people are not having home they can’t applicable to this.

Table representing the FORM OF ABUSE

<table>
<thead>
<tr>
<th>SL. NO.</th>
<th>ABUSE FORMS</th>
<th>MALE</th>
<th>FEMALE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Physical abuse</td>
<td>00</td>
<td>05</td>
</tr>
<tr>
<td>2.</td>
<td>Abusing with bad words</td>
<td>10</td>
<td>19</td>
</tr>
<tr>
<td>3.</td>
<td>Mental abuse</td>
<td>12</td>
<td>24</td>
</tr>
</tbody>
</table>

The above table and chart are indicates to form of abuse their physical abuse there are no male physically suffered (0%) but the female are 05 are physically abuse, and Abusing with bad words response of male 10, response of female 19. Mental abuse response of male 12, response of female 24

BY WHOM YOU ARE ABUSED MOST

The above table and pie chart indicates to by whom elders are abused most in the home. There are many elders are abuse most by relatives (30%), Neighbors (27%) and Brothers (22%). There are no one abused by their Daughters’. Instead if this by own child, son in law and husband also abused in a little amount.

Data analysis:

There are many elders are neglected are abuse by their own family members because of many reasons. The elder peoples are joining to the Old Age institution by their own children, friends, by institution rescue and some of them are joining because of self thinking. There are many reasons for joining to the institution. In that there are many peoples who are not response clearly. Here the opinion on their earlier feeling in home that there are many people are feeling lonely in the home earlier because there is restrictions to involve with other family members. Many of the Elders are suffering from physically and mentally so there is forced and threat to silence in home. Some time the family members are forced to work in home as a domestic worker.
Findings:

- All the old age institutions are run by private institutions or persons and those are having less number of staffs compare to the inmates.
- In karunalaya old age institution there is more number of elders (31%) compare to others.
- According to the data more number of the old age inmates are don’t have children (68%).
- In the institution female are more emotionally disturbed (67%) compare to male inmates (33%).
- There is lack of staff in the institution for care and protection of Elders (36 staff for 166 inmates)
- In the Belagavi city all the old age institutions run by the private organization or person.
- Between the age of 60-70 are more joined to the Old Age Institution (28 persons) in that female are more come for join to institution.
- There are many programs and entertainment activities takes place in the institution for happy living of the inmates.
- In the old age institution there are many facilities which are help for the old age group those are food, shelter, clothing, medicine and exercise.
- There is lack of funding and financial assistance to the Old Age Institution from the Government.
- There are many awareness programs taken by the Old Age Institution to avoiding Elder abuse.
- The people who are come to Old Age Institution are not having children (68%)
- Reason for joining to Old Age Institution that lack of medical facility and neglected by the family members.
- The main reason for their abuse is mentally ill and they are not response clearly (92%).
- There are (47%) of peoples feels loneliness in their home before joining the institution.
- Women are more forced to do domestic work in the home (27%) compared to male.
- There are more than half people are neglected by family because of many reasons (51%)
- There are fewer amounts of people who are physically beaten (8%)
- There are many elders who are suffer from proper care, medical treatment and aid (59%)
- There are many elders not involved in homely functions and celebrations (41%) because they are inability to living with them
- In the Old Age Institution many elders abuse by mentally (24%) and abused with bad words (19%)
- In the Old Age Institution women are more emotionally disturbed compared to male (67%)
- The elders who living in the Old Age Institution not having property (75%)
- In the home elders are more abuse by the relative, neighbors’ and brothers.

SUGGESTIONS:

- We care elders and we love elders because an elder wants love and care, they don’t want any money or property etc.
- Government must support to the Old Age Homes. Then they can improve their facilities.
- Free medical care may be provided with the help of some organizations.
- Attaching a day care activity for senior citizens with hospitals, primary health centre’s, educational institutions, religious places etc are possible, if we seriously consider the protection and care of the elderly as their rights.
- Social workers can help the elderly to be aware about the various policies and programs related to the welfare of the aged in our country. This will help the elderly to protect their rights.
- Take good care of them; one day will be our turn.
- Take care of senior citizen don’t harm senior citizen and be positive.
Love your old people at home. Take time and listen to them.

If in your heart, full of pain and angry but don’t show on them talk with love.

Elders mind always like a child so treat as child, with care and protection.

Give funds and financial assistance by Government to welfare of the elder homes.

Make arrangement for counseling to rejoining the elders to their families.

Make awareness programs and pity on elders who are liable of respect and dignity not a abuse.

Involvement in Homely functions and other celebrations.

CONCLUSION

Now a day’s man is became very selfish in his life he can’t understand the feelings of others because we don’t care about others sufferings. They needs everybody loves them but they are not love, care and affection for others. In the cases of take care of his own parents he became a stranger for them but the parents are never discriminate to their children and never think about this love and affection to the children.

It is evident that due to socio-economic changes in the wake of urbanization and increase in the proportion of the aged in the population, the problems of the aged have become formidable. The ultimate responsibility for supporting the aged is shifting from the family to secondary institutions. In these circumstances, it is essential for setting up a large number of Old Age Homes with adequate amenities for those who have no close relatives to look after them. But the coming generation realize that Old Age Homes are not ‘dumping place’ for the aged.

Family, the aged should be considered as a valuable cultural resources and role models for the younger generation. Therefore, government and non-governmental organizations should come forward to motivate and create awareness among the youth to take care of the aged in the family. The Old Age Homes are no substitute for families.

All should realize old age is not an issue to be taken up by some religion or a section of society. It is a common phenomenon. Unless and until a moral boosting is given, these voiceless people will remain as voiceless. So first of all families must be consented, giving them concrete vision about the dignity of human kind and especially the elderly. The picture about elderly in the eyes of the present generation must be one that of divine and majestic rather than, rustly or useless. Hence, younger generation especially children may be motivated and encouraged to take care of the aged in a family environment with due respect.

Becoming older and existence of younger one is cyclic biological process. No one can get rid of these two states of life. Old age people need care, love and healthy emotional family sharing for satisfaction. New one needs growth and success in today’s competitive world. These two objectives are to be strategically balanced. The parents are to be given high priority over everything. They should be included in the family running process so that they could feel themselves not ignored.

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Environmental Jurisprudence and the Judiciary: Analysing the Activism of Judiciary

By Faisal Ahmed Khan
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The Judiciary in India has earned for itself the title of being an activist Judiciary, on one hand it has displayed extraordinary zeal to come to the rescue of the weakest and the most vulnerable section of the citizens while on the other hand it has had played a sort of messiah as far as the protection of the environment is concerned. Not only has the Judiciary been hailed as a custodian of the environmental protection program but also it has been hailed as the last hope for the environment. So much so that people have given it fanciful names like “Green Court”, “Environmental Missionary” etc. which gives an impression that the Judiciary is extremely sensitive towards preservation and protection of environment. Strangely, the Judiciary in India has hardly been consistent as far as the protection if environment is concerned and has no uniform parameters which it follows in all cases, rather the response of the Judiciary in most cases is shaped by the type of the parties before it and the particular response is guided mostly by the position of the parties, powerful actors like government almost always being given preference over the concern of marginal groups. This approach of the Court whereas it has pushed the rules to their limit in order to accommodate the concern of powerful groups sets a worrying precedent. In this paper the author has primarily pointed out cases where the Judiciary has leaned towards powerful or state actors rather than protecting environment or livelihood of marginal sections of societies and its effect on the overall environmental protection regime.

Keywords: Judicial Activism, Environmental Jurisprudence, Environment, Livelihood, Infrastructure Projects

1. Introduction

The Indian Constitution has the unique distinction of being one of the few Constitutions of the world which makes provision for the preservation and protection of the Environment. Even though the original constitution did not contain any specific provision for the protection of environment but after the 42nd Amendment to the constitution in 1976 the two provisions were added to the Constitution for the protection of environment which were:

- Article 48-A &
- Article 51A(g)

It needs to be kept in mind that these provisions were added after the Stockholm declaration which has often been described as the magna carta of the human environment. Even after the addition of these provisions in the Constitution of India it was observed that the overall legal framework as well as general attitude towards the subject of environmental protection was lackluster to say the least. That perhaps explains one of the worst environmental disaster in the form of Bhopal Gas leakage in India which acted as a sort of rude shock to the authorities, the death, destruction and mayhem caused by the tragedy firmly pushed the opinion of not only the general public but even the judiciary towards stronger steps.

Thereafter the Courts have become much active in the field of environmental jurisprudence or at least they are perceived to have become activist. It is no wonder then that the Court relied in no less measures on the expanding concept of right to life for giving wider application to the environmental protection program.

2. Environmental Protection under Article 21 of the Constitution: An innovative approach of the Court
Article 21 of The Indian Constitution which reads as: “No person shall be deprived of his life or personal liberty except according to procedure established by Law”. The right to life as guaranteed by Article 21 of the Constitution is basic human right and the concept of right to life and personal liberty have been transformed into positive rights by active judicial interpretation. A new era ushered in the post Maneka[1] period the concept of right to life witnessed new developments and new dimensions were added to the interpretation of fundamental rights embodied in Article 21. Prior to this all the fundamental rights guaranteed in Part III of the Constitution were considered to negative in nature and imposing only negative obligation on the State[2]. For the first time, thus Supreme Court transformed these rights into positive rights and imposed an affirmative duty on the State to enforce it. This view of the Supreme Court was also reflected in Francis Carolie Mulhin v. Administrator Union Territory of Delhi[3] where Justice Bhagawati observed that “the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something more than just physical survival”. Further he added: “Right to life includes the right to life with human dignity and that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for writing and expressing oneself in diverse forms with fellow human beings. Of course, the magnitude and contents of the components of this right would depend upon the extent of the economic development of the country but it must, in any view of the matter include the right to basic necessities of life.”

This humane approach of the Court was a recurring theme in so many of the decisions of the Apex Court for example in Chameli Singh v. State of U.P [4] it held that “the need for a decent and civilized life includes the right to food, water and a decent environment. In the same sentiment the Court was of the opinion that: “In any organized society, the right to live as human being is not ensured by meeting only the animal need of men. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this subject. The right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society. All civil, political, social and cultural rights enshrined in the Universal Declaration on Human Rights or Convention or under the Constitution of India cannot be exercised without these human rights”. Observing the stand taken by the Apex Court and considering the relation between fundamental rights and environmental protection, Divan and Rosencranz have observed that: “Encouraged by an atmosphere of freedom and articulation in the after math of the emergency, Supreme Court entered one of its most creative periods. Specially, the court fortified and expanded the fundamental rights enshrined in Part III of the Constitution. In the process, the boundaries of the Fundamental right to life and personal liberty guaranteed in Article 21 were expanded to include environmental protection”[5]

3. Balancing the Right to Livelihood viz a viz the Right to Environment:

While initially the Courts were limiting their environmental protection program within the outlines set by Article 48-A and 51A(g) of the Constitution but they had an inherent limitation viz the fact they were not clearly enforceable and only made it a duty upon the state and citizens for working for protection and preservation of environment. The Doon valley[6] case was perhaps the first time that the Supreme Court referred to Right to life and healthy environment under Article 21 of the Constitution. However, there was another dilemma facing the Court that while ordering the closure of the limestone quarries it will take away the livelihood of workers of the quarry. But the court justified its decision by accepting ‘it is a price that has to be paid for protecting and safeguarding the right of people to live in a healthy environment’. Thus the Court set the tone for future decisions and has clearly stated that anything endangers or impairs that quality of life, in derogation of the laws, a citizen has a right to take recourse to Article 32 of the Constitution.

It is indeed ironical that the Court has held the Right to life as including the Right to Livelihood as well but at the same time there is no clear answer to the question that what happens when there is clear conflict between Right to Livelihood on one hand and the Right to healthy environment.

While in cases like Sushila Saw mills vs. State of Orissa[7] the Court held that the right to carry on trade and business was subject to regulations under Article 19(6) which may sometimes include total prohibition of the
trade or business, in another case of *Abhilash Textile Mills vs. Rajkot Municipal corporation*[8] Gujarat High Court decided that the right of textile industry to carry on business with the danger to public health by discharge of dirty water could be subjected to regulations in the interest of the general public under Article 19(6).

Similarly, the court totally overlooked the relocation of the workers of the polluting factories which were ordered to be shifted in case of *M.C. Mehta vs. Union of India*[9] where the factories were to be relocated for creating “green lung spaces” inside the National Capital Territory of Delhi. Workers who were settled and working in Delhi had to suddenly face a situation where the distance between their homes which usually took half to one hour of commuting time increased overnight to 6 to 8 hours which practically forced them either to leave their jobs or their home.

In yet another case of *Almitra Patel vs. Union of India*[10], the Apex Court had ruled against the informal sector labourers from public land as they were held as urban enroachers. The observations of the Court in this case however left a lot to be desired and reveal extreme class bias whereas the Court compared the ‘rewarding’ of an enroacher upon public land with free alternate sites with giving reward to a pickpocket. The Court perhaps totally overlooked the fact that it has itself held the Right to shelter as coming within the purview of Right to life and hence covered by Article 21 of the Constitution. Labourers, Vendors, hawkers etc. belong to the vulnerable sections of the society and even though they are part of informal economy yet their contribution is significant, apart from the fact that they are citizens and hence entitled to all the protections provided by welfare state.

An important common point between all the decisions cited above has been the emphasis placed by the judiciary on the interests of the community which has been given preference over the interests of individuals. Thus, in effect the Courts have given more importance to the Directive Principles over fundamental rights in many of these cases. In an important decision delivered in *Ambica Quarry Works vs. Union of India*[11], the court ordered the closure of the mining units and at the same time it observed that the obligation to the society must take precedence over the obligation to the individuals.

These decisions of the court along with many others have actually brought misery and mayhem to the poorest and most vulnerable sections of the society and in many cases to maintain the aesthetic grandeur of public places and to make them “liveable” has in fact denied a large chunk of population right to livelihood. Even in cases of mega Dam projects like *Sardar Sarovar* the beneficiaries have been surpassed by the victims.

4. The Paradox of Judicial “Inactivity” in cases involving Mega Infrastructure Projects

While the Courts in India have been hailed for their activist zeal and have been toasted as the “eco-warriors” by activists, academics etc but at the same time a closer look at the decisions of the Court paints an odd picture. The judiciary in India which has so often acted in the strictest possible manner in the issues related to environmental pollution they have displayed a surprising lack of activism which sometimes borders on the pusillanimity and unusual restraint when it comes to mega infrastructural projects. The Court has adopted a defensive approach towards the protection of environment and has thereby deviated from its own principles and precedents.

In the *Tehri dam case*[12], for example, in spite of the differences among the expert members regarding the safety aspect of the Tehri Dam which is located in a highly sensitive seismic zone was disappointing to say the least. The Court, while relying upon the government appointed committee allowed the government to build the bridge, the Court failed to consider the international covenant regarding the precautionary principle which is an important facet of environmental law. Also, the Courts should have taken the report of the expert committee which was appointed by the government itself and therefore could not be expected to act in an impartial manner.
Similarly, the Court did not follow the recommendations of the Appraisal committee in the case against construction of thermal power plant at Dahanu Taluka[13], the appraisal committee had categorically stated that Dahanu was not a suitable place for setting up a thermal power plant. The judgment has been criticized strongly as it allowed blatant violation of the guidelines issued by the Government of India.

The ruling of the Apex Court in case of Narmada Bachao Andolan case[14] was perhaps the most disappointing moment in the history of Indian environmental Jurisprudence. Especially disturbing aspect of this case was that the Court despite being aware of the fact that one of the states in the dispute was extremely careless in this respect directed the completion of the project as per the tribunal’s award. To make matters worse for the victims the Court did not issue any time bound direction to the state regarding the completion of its relief and rehabilitation program.

It is indeed quite strange that the Court on one hand seeks to protect the environment with missionary zeal, however, on the other hand the Court totally negates the agenda of environmental protection by giving a blank cheque to the development projects. It seems that the Court tends to favour the development of one section of the society at the cost of another section of the society as well as the environment.

It is indeed sad as well as strange that Court has not always displayed consistency in its zeal while deciding mega projects where the state was involved like in case of Narmada and unfortunately allowed the development of Sardar Sarovar Dam which took away not only the home of thousands of people but at the same time displaced them without any proper rehabilitation and was a cruel twist of fate which denied them not only livelihood but almost everything which they possessed. In the opinion of the Honourable Court the dam would lead to much more benefit for all, whereas anti Dam activists like Medha Patkar had estimated that over 200 villages would be submerged and over million people would be rendered homeless as the human cost of the Dam.

The Environmental Activism of the Supreme Court of India has been criticized as a classic case of display of class bias, whereas, the concerns of the middle class Indians have been largely accepted and propagated as reflecting the true concern for the environment. An unfortunate aspect of this approach is that it neglects the strong bond between environment protection and livelihood in India the adivasi population being a testament to the success of this program. That is why while ordering the closure of the industrial units, the Courts have not been as sensitive to the plight of the workers as it has been towards the concern of public health and ecology. As a result it has sometimes given decisions to the effect that environment must be protected even at the cost of unemployment and loss of revenue for the state[15].

It is apparent that the Court has failed to pay adequate attention to the multidimensional aspects of these developmental activities. In these cases the Courts have, ironically, disregarded the guidelines, directions which itself has issued in previous cases on the ground that these development activities involve technical and policy matters.

5. Judiciary & Environmental protection in cases relating to Religious events

Another area where the Judiciary has failed to take proactive steps is the cases related to the Religious structures and Religious programs. It has become a pattern that the Courts which are generally quite vigilant when it comes to protection of the environment otherwise usually develops cold feet when it comes to the issues related to the religious issues and programs etc. In some of the cases Courts have tended to look the other way while the environment was being destroyed by the construction etc related to religious structures, while in some other cases it has failed miserably when the person/organizations concerned have practically shown their clear contempt for the Courts. A few notable instances of the Court’s conspicuous inaction are being discussed here for illustration purposes.
5.1 Construction of Akshardham Temple on the Yamuna Floodplains without Environmental clearance:
The Akshardham temple situated in New Delhi on the banks of Yamuna River is a clear case where the environmental protection laws have been flouted with the active support of the government. What makes it even worse is that despite there being no environmental clearance taken for the construction of the grand temple despite that a senior Minister of the then government was perceived to have fully backed the construction of the temple, despite the fact that the environment minister acknowledged the fact that there was no clearance taken for the construction of the temple it was indeed shocking to see the minister express his inability to do anything as in his opinion whatever had happened in the past cannot be done away[16].

To make the matters even worse when the temple compound was being expanded even then the National Green Tribunal treated the issue with kid gloves by fining them a pittance of 5% of the total cost of the expansion, whereas in the first place the expansion should not have been allowed under any circumstances as it posed a clear and present danger to the floodplains of Yamuna[17]. Rather then treating the matter with the strictness it deserved the NGT displayed an abject lack of will power in the case. We would do well to remember that India is a Secular Country where Religious parochialism should never be allowed to come in the way of law enforcement otherwise it would lead to the collapse of law enforcement mechanism.

5.2 NGT’s clearance provided to ‘Art of Living’ program: The Art of Living which is a famous organization headed by the controversial Guru Sri Sri Ravi Shanker held a three day World Cultural Fest in March 2016 on the Yamuna floodplains. The event was to be attended by strong and influential people including the President of India and many senior ministers of the central Government, former Chief Justice of the Supreme Court and many other distinguished personalities. The event was mired in controversies from the beginning as no environmental clearance was taken for erecting structures on the banks of Yamuna[18]. This was not the only problem with the event as the event was totally embroiled in illegalities from the word go, Cultural Ministry had in an unprecedented move granted over 2.5 crores to the Art of Living for organizing the fest which was extremely strange as AOL itself had got sufficient resources and also it is unprecedented for the Cultural Ministry to grant such a big amount for a single event. Throwing all established precedent to air the Indian Army which is the pride of nation and is called upon in civilian operations only in emergencies like floods, riots etc. was summoned to construct pontoon bridges over the Yamuna. The event was challenged before the Delhi High Court as well as NGT by concerned environmental activists as it was clear that the event posed a danger to the Yamuna Floodplains; however the NGT in a widely criticized move allowed the event to go ahead citing delays and latches on the part of the petitioners in approaching the Court. Indeed the whole episode displayed the NGT in very poor light as there was no doubt whatsoever that the NGT was affected by the fact that the event had blessings of the Government in power and other people in strong position that is why it dragged its feet over the entire issue making much noise but indulging in very little activity and in the process damaged its own credibility[19]. An even more shocking aspect of the whole episode was that the AOL people later openly ridiculed and even blamed the NGT for the damage caused to Yamuna floodplains as it was the NGT which had allowed the event to take place after all. The expert panel which was constituted by the NGT after the event had found the AOL of having totally destroyed the floodplain which would take at least 10 years and 42 crore rupees to restore.

The whole episode was one of the worst disaster in environmental issues and totally negated the rule of law, it showed that if any person has got right connections to the powerful sections in the government then it can virtually twist every rule, every institution and every norm to get the desired result.

6. Conclusion & Suggestions:
The Judiciary in India has no fixed principles as far as the protection and preservation of the environment is concerned. As discussed above the rules made by the Judiciary are hardly uniform and more often than not they are guided by the philosophy, ideology and temperament of the particular judge concerned and there is no clear precedent which is being followed uniformly by the Courts. Of particular concern is the fact that on many occasions the Courts have displayed shocking apathy as far as the balancing of the right to livelihood
with right to pollution free environment is concerned and has given the impression that the livelihood of vulnerable sections of the society are a price which has to be paid for protection of the environment. Surprisingly, the same Court has almost always gave the benefit of doubt to mega projects involving the state and there the zeal for protection and preservation of environment is never ever treated as an impediment to these mega projects. Another pattern which has emerged from the cases decided by the Court is that it has taken a pusillanimous approach towards environmental protection when the matter has involved the religious institutions and organizations particularly those belonging to the majority community which is highly unfortunate.

One wishes that the Judiciary would do course correction and would evolve a uniform policy to protect and preserve the environment which is not the case at present and thus the environmental protection “activism” of the Courts is reduced to being a lottery where the issue at hand is certain to be decided in an uncertain manner.

[1] AIR 1978SC597
[8] AIR1988GUJ57
[10] 2000(1)SCALE568
[12] 1990Supp(1)SCC44
Make in India and Need for Labour Reforms

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Jasmin Padiya
Associate Professor, GLS University, Ahmedabad

The paper analyses, the emerging trend in Labour reforms in India for ‘Make in India’ campaign and focuses on the ease of doing business. In the recent years, it has been observed that there is noticeable reform has been initiated by the Government of India like Shram Suvidha Portal, Random Inspection Scheme, Universal Account Number, Apprentice Protsahan Yojana, Revamped Rashtriya Swasthya Bima Yojana which will transform labour standard of living, working conditions of labour and improve business environment. The paper also reviews the programme and schemes introduce by various ministries, departments and by Indian government. The paper examines, varying trends, strategies and challenges by study of secondary data for India’s labour market.

Keywords— Labour reforms, labour policy, Social Security, Make in India Public policy.

“All labour has dignity”

-- Martin Luther King Jr

Introduction

“Come. Make in India!” with those words India Prime Minister Narendra Modi announced Make in India Program in his maiden Independence Day speech from the Red fort. This slogan caught public attention nationally and internationally. Narendra Modi Prime Minister of India formally inaugurated Make in India program in Vigyan Bhawan New Delhi on the birth anniversary of Pandit Dindayal Upadhyaya i.e. 25th September 2014. This program was focused on boosting country’s manufacturing strength. The objective of the Government of India is to increases the sphere of manufacturing to 25% from 16% of GDP. This carousel task is greatest economic reforms in modern history. It seeks to unleash country true potential and yet change comes at a price. The primary purpose behind the make in India initiative is not just the transforming of the economy but to create new jobs, this is Prime ministers top most priorities.

On 16th October 2014 Prime Minister Mr. Narendra Modi launched Government of India programme Pandit Deendayal Upadhyay Shramev Jayate Karyakram. The objective of this scheme is to create a conducive environment for industrial development and doing business with ease and also expanding government support to impart skill training for workers. This is an umbrella scheme with five scheme under it as follows:

- Shram Suvidha Portal
- Random Inspection Scheme
- Universal Account Number
- Apprentice Protsahan Yojana
- Revamped Rashtriya Swasthya Bima Yojana

Shram Suvidha Portal

A dedicated Shram Suvidha Portal has been launched to allow Labour Identification Number (LIN) to nearly 6 lakh units and allow them to file online compliance for 16 out of 44 labour laws. The key features of Shram Suvidha Portal are as follows:

- It would allot Unique Labour Identification Number (LIN) to Units to facilitate online registration.
It will facilitate the filing of self-certified and simplified Single Online Return by the industry. Now Units will only file a single consolidated Return online instead of filing 16 separate Returns.

It would allow mandatory uploading of inspection Reports within 72 hours by the Labour inspectors.

It would provide timely redressal of grievances will be ensured with the help of the portal. With these facilities in its kitty, the Shram Suvidha Portal is expected to bring in necessary ease in compliance of provisions related to labour and will be a step forward in promoting the ease of doing business.

Random Inspection Scheme
The process of labour inspection has been generally opaque and the units for inspection were so far selected locally without any objective criteria. The government has brought a new all India Random Inspection Scheme to bring in transparency in the labour inspection. The key features of this scheme are as follows:

- Serious matters are to be covered under the mandatory inspection list.
- A computerized list of inspections will be generated randomly based on pre-determined objective criteria.
- Complaints based inspections will also be determined centrally after examination based on data and evidence.
- There will be the provision of Emergency List for inspection of serious cases in specific circumstances.

Thus, this scheme is expected to provide a check on the arbitrariness in compliance mechanism. It would utilize technology to eliminate human discretion in the selection of units for Inspection, and uploading of Inspection Reports within 72 hours of inspection mandatory.

Universal Account Number
Under this scheme, complete information for approximately 4.17 crore subscribers of EPF has been centrally compiled and digitized and a UAN has been allotted to all. The UAN is being seeded with Bank account and Aadhar Card and other KYC details for financial inclusion of a vulnerable section of society and their unique identification.

Apprentice Protsahan Yojana
The Apprentices Act 1961 was enacted for regulating the Apprenticeship Training Scheme in the industry for imparting on-the-job training to apprentices. Presently, there are only 2.82 lakh apprentices undergoing training against 4.9 lakh seats.

Apprenticeship Scheme has huge potential for training a large number of young person’s to make them employable. If properly revamped, it could also significantly contribute to ‘Make in India’ Mission. Similar schemes have been highly successful in countries like Germany, China, and Japan where the number of apprentices is stated to be 3 million, 20 million and 10 million respectively.

Present framework tightly regulates the number of apprentices trade-wise and is not attractive to youth because of the low rate of stipend. Further, the industry is averse to participate because the scheme is not viable for the small industries. There are a large number of establishments including MSMEs where training facilities are available but could not be utilized so far.

A major initiative has been undertaken to revamp the apprenticeship Scheme in India after extensive consultation with industry, states and other stakeholders with the vision of increasing apprenticeship seats to more than 20 lakhs in next few years. There are four components of this initiative, which are given below:

- Making the legal framework friendly to both, industry and youth. The necessary Bill amending the Act was placed and passed in Lok Sabha on 14.8.2014.
- Enhancing the rate of stipend and indexing it to minimum wages of semi-skilled workers.
Apprentice Protsahan Yojana which will support manufacturing units mainly and other establishments by reimbursing 50% of the stipend paid to apprentices during first two years of their training.

Basic training component (mainly classroom training part) of the curricula is being restructured on scientific principles to make it more effective, and MSMEs will be supported financially by permitting this component in government-funded SDI scheme.

The Apprentice Protsahan Yojana
will support one lakh apprentices during the period up to March 2017. Selected Apprentices and the Establishments ready to participate in this scheme from various states will be invited and it is proposed that Prime Minister will give sanction letters to these to mark the launch of the new scheme.

Revamped Rashtriya Swasthya Bima Yojana
Introducing a Smart Card for the workers in the unorganized sector seeded with details of two more social security schemes.

Literature Review:
(Jha P., 2017) The author argues for workers in informal employment, there is an urgent need to ensure universal social protection that improves their conditions of work and helps them live a life with dignity. (Jha S., 2017) The author describes labour reforms in true sense will take place when the labour market is full of highly skilled people ready to add to the value to manufacturing and service delivery without fear of being exploited at the hands of the employers. The author mentioned globalization and liberalization unleashed in 1991 allowed international players in India market thereby fundamentally changing the business and trade ecosystem. It is essential to have labour laws in sync with emerging trends such as casualization of labour, third-party employment, etc. at the same time, it is equally important to ensure that basic rights of the workers are protected and labour standards are implemented across industries and formal as well as informal sectors. (Srija, 2017) The author says that while the legislative and schematic initiative is bound to bring in more informal workers under the social cover, efforts also need to be taken to ensure that the new jobs created are of decent nature. (Neetha.N, 2017) The author argues that it is high time that the state and employers come together on a priority basis to find comprehensive solutions, rather than merely introducing patchy interventions which do not address the issues of women’s employment. The author describes the post-liberalization period saw a boom in programmes initiated under various ministries towards promoting self-employment for a woman. However, this seems to have not contributed to match the decline in women’s employment in agriculture. (Chandrasekhar, 2017) The author discussed that the recommendations of the working group considered together with the existing acts pertaining to interstate and construction workers provide a starting point for the national policy on internal migration in India and safeguarding the interest of migrant workers. The author argues that the number of short-term migrant workers is over 5.5 times the number of people who move permanently on account of work in any given year. Once again, they are more likely to be men rather than women. They are likely to be the young rather than aged. Being part of a migrant network helps them in the job search. They migrate due to lack of opportunities where they live. (Sekar, 2017) The author describes that child labour should be identified, rescued and released for their educational rehabilitation and economic rehabilitation of their families by way of imparting employable skills and providing income generation avenues with a special focus on migrants and vulnerable communities. The author also illustrated The Child Labour (Prohibition and Regulation) Act 1986 prohibited employment of children below 14 years in 18 occupations and 65 processes. After the amendment in 2016, the Child and Adolescent Labour (Prohibition and Regulation Act 1986 provides for a complete ban on employment of work of children below
14 years in any occupation. (Mehrotra, 2017) The author argues that the exact allocation share of the organized and unorganized segment will need to be worked out through the process of consultation also determine disbursement. This will also release general tax revenues for skill development for unorganized enterprises. The author discussed that Training provision in India has been historically supplying-driven, while the demand for skills has been neglected. There is a very strong case for using training levy funds for financing poor students who are unable to bear the opportunity cost of first undertaking training before entering the labour market. (Agrawal, 2017) The author discussed since India has already undertaken most other reforms towards export-oriented industrialization, it is now well poised to benefit substantially from labour policy reforms in the form of higher growth of employment and real earnings per employee. The author claims that somewhat surprising for a developing country, with a huge army of unemployed and underemployed, India has chosen to emphasize the welfare aspect and provided one of the most protective labour laws in the world for its organized sector workers, which is not seen even in developed countries with practically no unemployment. The author described We should experiment with more flexible labour laws, by allowing flexibility in labour laws across states (some of which might want to experiment with more flexible laws) and for example, in export processing zones because of the greater variability in export volumes and the greater need for an efficient and competitive labour force. This will also allow us to attract more foreign direct investment. The author also claims greater effort needs to be made towards improving the education and training of the workers to make them more productive. This should include compulsory basic education to class 10 for all children and greater emphasis on vocational training. (Nath, 2017) Author pronounced that technology intervention is inevitable harnessing the potential of technology for overall economic growth and well-being of people is the way forward. Upskilling, reskilling and collaboration will be the key enablers in sustaining business models. Technology will create new high-skilled jobs as well as improve the quality of existing jobs. This will lead people to be more productive and eligible for higher remuneration. The present workforce will be skilled to enable them fitting in a new technology-driven environment. (U Hemantha Kumar, 2017) Author has described economic empowerment and financial inclusion was crucial for gender empowerment and equality. The author also illustrated self-help groups have taken leadership positions, starting from economic empowerment to leadership in large social and political domains in sample villages of both the states.

**Objective**

- To review of Labour reform in Indian labour market.
- To understand labour market in India.

**Research Methodology:**

As the research paper is of conceptual and review nature, the researcher has applied exploratory research design by using varied secondary data availed from the secondary data sources. Based on the secondary data and review, the researcher has reported on various emerging trends and issues and challenges in Labour market of Indian economy. A research report, journal, and newspaper article from eminent writers have been reviewed.

**Findings**

To provide social security benefits to the workers in the unorganised sector, the Government has enacted the unorganised works Social Security Act, 2008. The 2008 Act stipulates formation of suitable welfare schemes for unorganised worker is shown in table 1.

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<tr>
<th>S.No.</th>
<th>Schemes for unorganised workers on matter relating to</th>
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<tbody>
<tr>
<td>1</td>
<td>Life and disability cover</td>
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<td>2</td>
<td>Health and maternity benefits</td>
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<td>3</td>
<td>Old age protection</td>
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Table 1 Schemes for Unorganized workers on matter relating to

**Sources:** Prepared by the author

The social security schemes being implemented by various ministries/departments for unorganised workers listed are shown in table 2.

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<thead>
<tr>
<th>S. No.</th>
<th>Social Security schemes</th>
<th>Ministries/ Departments</th>
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<tr>
<td>1</td>
<td>Indira Gandhi National Old Age Pension</td>
<td>Ministry of Rural Development</td>
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<td>2</td>
<td>National Family Benefit Scheme</td>
<td>Ministry of Rural Development</td>
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<td>3</td>
<td>Janani Suraksha Yojana</td>
<td>Ministry of Health and Family Welfare</td>
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<td>4</td>
<td>Handloom Weavers Comprehensive Welfare Scheme</td>
<td>Ministry of Textiles</td>
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<td>5</td>
<td>Handicraft Artisans' Comprehensive Welfare Scheme</td>
<td>Ministry of Textiles</td>
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<td>6</td>
<td>Pension to Master Craft persons</td>
<td>Ministry of Textiles</td>
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<td>7</td>
<td>National Scheme for Welfare of Fishermen and Training and Extension</td>
<td>Department of Animal Husbandry, Dairying &amp; Fisheries</td>
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<tr>
<td>8</td>
<td>Aam Aadmi Bima Yojana</td>
<td>Department of Financial Services</td>
</tr>
<tr>
<td>9</td>
<td>Rashtriya Swasthya Bima Yojana</td>
<td>Ministry of Health and Family Welfare</td>
</tr>
</tbody>
</table>

Table 2 Social Security schemes by Ministries/Departments

**Sources:** Prepared by the author

Table 3 illustrate social security benefit launched by central government to provide comprehensive coverage.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Social Security schemes from Central Government</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Atal Pension Yojana</td>
</tr>
<tr>
<td>2</td>
<td>Pradhan Mantri Jeevan Jyoti Bima Yojana</td>
</tr>
<tr>
<td>3</td>
<td>Pradhan Mantri Suraksha Bima Yojana</td>
</tr>
</tbody>
</table>

Table 3 Social Security Schemes from Central Government

**Sources:** Prepared by the author

Ministry of Labour & Employment have taken several reform initiative, both legislative reforms as well as governance reforms through use of technology, to reduce the compliance and bringing transparency and accountability leading to better enforcement of the labour Laws are demonstrated in table 4.

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Reforms in Labour Laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Enhancing the ceiling of wage limit for the purpose of eligibility for Bonus and for the purpose of calculation of Bonus as Rs. 21,000/- per month and Rs.7,000/- per month respectively by amending the payment of Bonus Act 1965.</td>
</tr>
<tr>
<td>2</td>
<td>Prohibition of employment of children below 14 years in all occupations and processes through amendment in the Child Labour (Prohibition &amp; Regulation) Act, 1986</td>
</tr>
<tr>
<td>3</td>
<td>Extending the coverage of Employees State Insurance by an increase in the wage ceiling from Rs. 15000/- per month to Rs. 21000/- per month.</td>
</tr>
<tr>
<td>4</td>
<td>Enabling provision under the Payment of Wages Act 1936 for payment of wages through Bank accounts.</td>
</tr>
<tr>
<td>5</td>
<td>Launching of unified Shram Suvidha Portal for allotment of a Unique Labour Identification Number (LIN) for establishments, the filing of self-certified and simplified Online Annual Return and a transparent Labour Inspection Scheme through a computerized system.</td>
</tr>
<tr>
<td>6</td>
<td>Portability of Employees Provident Fund accounts though Universal Account Number (UAN)</td>
</tr>
</tbody>
</table>

Table 4 Reforms in Labour Laws
Sources: Prepared by the author

Figure (1) confirms the picture of formal and informal employment across organized and unorganized sector. This high proportion of labour force in the informal sector is due to the fact that more than 50 percent of the workforce is self-employed and engaged in the unorganized farm sector.

![Formal and Informal Employment across Organized and Unorganized Sectors](image1)


Figure 2 shows distribution of establishments by size-class of employment in per-cent.

![Distribution of Establishments by Size-Class of Employment](image2)

**Source:** Compiled by authors from fifth & Sixth Economic Census – All India Report.

The number of units engaging less than 6 workers has increased from 93 percent in 1990 to 95.5 percent in 2013 where as the percentage of units less than 10 workers has marginally decreased from 3.5 per cent to 3.1 percent during this period. And the size of units engaging more than 10 workers in percentage terms has decreased from 3.1 percent in 1990 to 1.4 percent in 2013 and their share in employment has decreased from 37.1 percent to 21.2 percent during this period.
Figure (3) shows trend in work participation rates Males and female. This gives an overall picture as regards broad trends and patterns.

![Trends in Work Participation Rates - Males and Females - UPSS](image)

**Source:** Compiled by authors from National Sample Survey Data, Different Rounds.

The period between 1999-2000 and 2004-05 show a small revival of female employment growth, where female participation rate increased by about 3 percentage, 2004-05 being the only outlier. The trend since then shows a further decline which contradicts any signs of feminisation. Not only is the WPR lower for women, for rural women there has been a dramatic fall, while for urban women it has stagnated.

Figure (4) shows distribution of workers across broad industrial division 1999-00 to 2011-12 & broad sectoral picture in 2011-12 while 62.3 percent of women were employed in agriculture only about 20 percent were employed in the secondary sector and 18 per cent in the service.

![Distribution of Workers across Broad Industrial Division 1999-00 to 2011-12](image)

**Source:** Compiled by authors from Employment and unemployment Reports, various rounds, NSSO.

**Result and Discussion**

Labour force has the capacity to define the growth and development of any country. It plays the most important role in any economic activity. It is in this context that the labour welfare poses major challenges for the policy makers in the country in terms of creating decent work environment and ensuring well-being and prosperity of its labour force.

Indian labour market has a sharp divide between organised and unorganised sector. The small proportion of organised labour enjoyed an advantages with stringent laws and rules and regulations enabling them to fight
for their rights. This major chunk however consists of unorganized labour with almost no job or social security. Each segment of labour whether organized or unorganized, industrial or agriculture, migrate or non-migrate has its peculiar issues and challenges to deal with. The unorganized sector, whether in the urban areas or rural areas toils hard to help the rich earn huge profit margins and accumulate wealth. Rural unorganized labour on the other hand ends up toiling for the land owner for a mere pittance. The very name- unorganized – symbolizes their state of affairs with their plight being reflected in terms of low wages, bad working conditions and uncertain employment prospects. Migrant labour, moving away from their roots with family, bag and baggage, are found in places far away from where they belong. As construction workers, road works, household help, they are around us all times the time. Women labour constitute another major segment whose work is rarely seen or recognized.

With India poised to have the largest workforce in the world by 2025 it is imperative that labour issues are given the attention and the importance that they deserve. Number of laws viz. Industrial Disputes act, Minimum wages act, contract labour Act, have been introduced over the years to take care of various aspects of labour welfare. Most recent ones being The payment of Bonus (Amendment) Bill,2015, The Employee’ Compensation (Amendment) Bill,2016 the Child labour (Prohibition and Regulation ) amendment Bill,2016. Ministry of Labour & Employment is now taking steps for simplification, amalgamation and rationalisation of Central Labour laws and replacing them with 4 labour Codes viz Labour Code on Wages Bill 2015, Labour Code on Industrial Relation Bill2015, Labour Code on Social Security & Welfare, and Labour Code on Occupational safety, Health & Working Conditions. Schemes like MGNREGA, Atal Pension Yojana, Pradhan Mantri Kaushal Vikas Yojana Mudra, Pradhan Mantri Rojagra Protsahan Yojana have been introduce to ensure social and economic welfare of existing as well as prospective work force and empower them towards their own well-being.

The Government being committed to make India the largest investment destination and the manufacturing hub in the world, attempts are being made to look at labour reforms holistically with intention to make them commensurate with economic growth and ensure labour welfare in it’s true sense.

Managerial & Public policy Implication

The managerial Implication is that organization should migrate to the digital platform all labour relate work and improve working condition towards safety and social security of the labour.

Public policy Implication is that Government should implement all reform effectively so that benefit should reach to the each and every corner of the country. Labour sitting at last mile should be benefited with all these schemes. Government should consider a national policy on internal migration in India and safeguarding the interest of migrant workers.

Conclusion

As Prime Minister mention his speech in the inaugural function of Pandit Deendayal Upadhyay Shramev Jayate Karyakram that Make in India will be successful by doing labour reforms There is lot to be done in labour reform particular for providing equal opportunities to women’s and providing strict law for child labour. Migration of labour is also need to address Last but not the least Government should work for skill India for the making labour more skilful and efficient. It will boost Make in India programme and India will become a manufacturing hub. This will open doors for foregoing investor and attract more foreign direct investment. It will improve India rank on index of Ease of doing business. Therefore we Labour reforms hold vital role national growth and prosperity.

“We are all aware of Satyamev Jayate, Sharmev Jayate holds equal in importance as Satyamev Jayate for the development of the Nation”

----Mr. Narinder Modi Prime Minister of India
To sum up, while the legislative and schematic initiative are bound to bring in more informal workers under the social security cover efforts also need to be taken to ensure that the new jobs created are of decent nature.

Acknowledgement

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References

E-Banking Services and Challenges in India

By Rahul Kumar Jain
Disha Law College, Raipur (C.G)

Nowadays we are not too much worried about the working days of Bank. It is the E-Banking and development of IT infrastructure made the banking services 24x7 accessible. Within this last few years millions of people who were earlier not the part of banking system has become the part of banking system. There is a huge competition among the Banks and among the E-wallet companies. After demonetization announced on November 8, 2016 users of E-wallet has increased, leading to more and more competition among E-wallet companies. Lots of development can be seen in Indian banking infrastructure like computerization of branches, increase in numbers of Automated Teller Machine (ATM) and Bank branches etc. Internet banking, mobile banking, debit card, credit card, payment through UPI (Unified Payments Interface), AADHAR based payment etc. are the key tools of E-banking. E-banking is also helping in controlling corruption. Nowadays government is talking about the Digital India they are taking steps also but they are not sufficient enough to handle the liquidity of transactions. Through this research paper I want to highlight E-banking services and challenges in India. In Indian banking system there are challenges like cyber-attacks, lack of awareness, equal regional development, information technology development, fast services, adoption of latest network security software by banks, increasing reliability among people regarding E-banking services etc. The aim of making cashless India can be achieved only by overcoming all the challenges. Through strong steps of Reserve Bank of India, Telecom Regulatory Authority of India (TRAI), Ministry of Electronics and Information Technology, Ministry of Law and Justice of Government of India and State Government more development can be done and challenges can be overcome.

KEYWORDS: E-banking, E-wallet, Automated Teller Machine, Mobile Banking, Cyber Attacks, Information Technology.

INTRODUCTION
Banking system is one of the important part of the any country’s economy. Today banks operate in a very highly liberalized and globalized manner. There is a very healthy competition among private and public sector banks. Internet has made people’s life easy and fast. Now people don’t want to stand in queue, they now want fast transactions with the help of technology. Internet and development of the IT infrastructure makes the banking system sound and more effective. In India electronic banking is gaining popularity as an important distribution channel to provide banking services. With the help of e-banking banks are providing convenience of Anytime Anywhere Banking. With the rapid growth of information technology and other internet services, cybercrimes are increasing day by day. Bank customers have the fear of losing their confidential details and of becoming the victim. Cyber security has become a huge challenge for both banks and government. There is a need of proper approach to fight against the fraudsters, cyber criminals, hackers by making proper execution of laws and working on the loopholes.

E-BANKING
E-banking stands for electronic banking. E-banking is a process of delivery of banking services through electronic channels such as mobile phone, internet, automated teller machine (ATMs), debit card, credit card, smart card etc. The Information Technology Act, 2000 provides legal recognition to electronic transactions. E-banking came into being in 1920s in USA and UK. In India from early 1990s E-banking has become popular. After opening up of Indian economy in year 1991 many foreign banks enter Indian economy and they bring new technology with them. There are most of the banks at present who offer internet banking such as State Bank of India, ICICI Bank, HDFC Bank, AXIS Bank, Dena Bank, Union Bank, Bank of India etc. In
India now electronic transactions are done on large scale. The Reserve Bank of India has also established National Payment Corporation of India (NPCI) to oversee Retail Payment System (RPS) in India which began operating from year 2009.

SERVICES UNDER E-BANKING:-

- **Automated Teller Machines(ATMs):-**
  Facilities under ATMs are cash withdrawal, balance enquiry, mini statement of account, PIN (personal identification number) change etc. For availing this facilities customers inserts a debit plastic card, which is encoded with information on a magnetic strip and have to choose their preferred language from options available. Customers have to enter 4 digit PIN for availing any of the service under ATM. PIN are confidential. Sharing of PIN among friend or any other person can create a trouble. Depending upon the bank and nature of account there are different rules and limits for transaction. Example- Dena Bank maximum ATM cash withdrawn limit from saving account is 20 thousand per day.

- **Debit Cards:-**
  The debit cards are used for withdrawal of cash from ATM, purchase of goods and services, domestic and international fund transfer from one person to another. In recent few years use of debit card for mobile recharge, bills payment, payment at online stores as increased for getting a cashback offers and discounts. Debit card examples: - ATM card, Rupay card, Visa Card.

- **Credit Cards:-**
  It is card issued by bank that can used to buy products and services on credit. Bank charge interest on credit card use. Credit card are primarily used for short term financing. Almost every store allows for payment of goods and services through credit cards. Credit card is convenient substitute for cash and cheques.

- **Smart Card:-**
  Smart Card also known as an Integrated Circuit Card (ICC) is a plastic card about the size of debit and credit card, with an embedded microchip that can be loaded with data, used for electronic cash payments, they can be used to pay for many public transportation services, this has many benefits when the person goes to acquire health care facilities, they can be used as identification proof in many countries around the world and it can be periodically refreshed for additional use.

- **Internet Banking through Bank Website :-**
  Presently internet banking services intends to provide following online services:-
  - Account Summary: - Customers account which are internet banking enabled can check the current balance, total balance, unclear balance etc. of their saving/current/overdraft/term deposit/loan accounts.
  - Overdraft Details: - Limit and drawing power of OD accounts, repayment schedule for loan accounts may be viewed.
  - Transaction Details: - User may view, download and print of the last transactions or for specified period of selected account.
  - Online Requests: - User may request for issue of cheques book, stop payment for a particular cheques or range of cheques. User can also make change or send request for change of email address, phone number etc.
  - Fund Transfer between own Accounts:- User may transfer funds from one account to his/her another account to the extent of fund transfer limit fixed by the bank from time to time.
  - Adding of Account in Beneficiary List: - If the amounts are frequently transferred to a particular account, then the facility of adding that account in beneficiary list is available and there is also the option of providing a nick name to that account. User can view all the beneficiary that have been added and can also modify the details of a beneficiary by selecting that beneficiary.
• Fund transfer to third party account: - User can transfer fund from his/her account to any other third party account to the extent of fund transfer limit fixed by the bank.
• Standing Order: - User can give standing order for transfer of funds from one account to another to be executed on a predefined time e.g. daily, monthly. User can amend or cancel the standing order given in the manner prescribed by bank.
• E-payment facilities: - User can use E-payment facility for payment of Direct (CBDT) and Indirect (CBEC) taxes, bills, fees of institutions etc.
• TDS Details: - User can view the TDS (Tax Deducted at Source) details.
• Other options: - User can view address details, change login password, change transaction password, view login history etc.

Mobile Banking:
It is a system that allows customers of a bank to conduct a number of financial transactions through a mobile phone. Facilities such as:-
• Fund Transfer in self-linked accounts and third party transfer.
• Account Summary
• Account Statement
• Recurring Deposits Summary
• Cheques Status
• Stop Payment of Cheques
• Locate Branch and ATMs
• Bill Payment and Recharge.

BHIM (Bharat Interface for Money) Application:-
Bharat Interface for Money (BHIM) is an application developed by NPCI (National Payment Corporation of India) to enable secure, fast and reliable cashless payment through UPI (Unified Payment Interface) platform. Through this application user can:-
• Choose their preferred language
• Send, receive and request for money.
• Check balance of account
• View transaction history of BHIM application.
• Add beneficiaries using UPI id, AADHAR, Account number/ IFSC code of the party. UPI id is ten digit mobile number. **Example**- 1234567890@UPI.
• Add payment reminder
• Generate QR code
• Use facility of scan and pay.
• Block and spam users who are sending collect request from illicit sources
• Add custom payment address in addition to phone number and make it as primary address. **Example**- A person whose name is Rahul. He can add custom payment address as- rahul@upi, rahul123@upi etc., based upon the availability of name.
• Transaction limits are per transaction maximum limit of Rs.10 thousand and per day maximum transaction limit of Rs.20 thousand.
• Raise complaint, send feedback and view FAQs (Frequently Asked Questions).

REFORMS OF BANKS
• National Electronic Funds Transfer (NEFT):-
It is a system that facilitates individual, firms and corporates to electronically transfer funds from any bank branch to any individual, firm or corporate having an account with any other bank branch in the country.

Even such individual, firms or corporates who do not have a bank account can also deposit cash at NEFT enabled branch with instruction to transfer funds using NEFT.

There is no limit either minimum or maximum on the amount of funds that could be transferred using NEFT.

**Real Time Gross Settlement System (RTGS):**

- RTGS system is a fund transfer mechanism for transfer of money from one bank to another on a ‘Real Time’ and on ‘Gross Basis’. This is one of the fastest money transfer system through banking channel.
- Here settlement in ‘Real Time’ means payment transaction is not subject to any waiting period. The transaction are settled as soon as they are proceed. ‘Gross Settlement’ means the transaction is settled on one to one basis without bunching with any other transactions.
- RTGS is primarily meant for large value of transaction. The minimum amount to be remitted through RTGS is 2 lakhs.

**Indian Financial System Code (IFSC):**

- It is an alphanumeric code that identifies a participating bank and branch in electronic fund transfer.
- It is an **11 character code**.
- The IFSC code is used by NEFT, RTGS and IMPS finance transfer system.
- Reserve Bank of India (RBI) has direct the banks to print IFSC code on passbooks.
- **Example-** BKDN0123456
  
The first four character representing bank code, fifth character is zero, reserve for future use and last six character is for branch code.

**Magnetic Ink Character Recognition (MICR) CODE:**

MICR code is a system for ensuring the safety and security of negotiable instruments, to facilitate the processing of the cheques. MICR code of **9 digit number**, the first three digit represent the city, next three represent the bank and the last three digit represent the branch. MICR code is written with a special magnetic ink, thus fraud cases can be easily identify through check done by the magnetic scanner. This code can be found in all the cheques at the bottom white line which is known as **MICR Band**. MICR code can be used for international transactions as well. **Example-** MICR code- 321456123 (321 city, 456 bank, 123 branch).

**Electronic Clearing Service (ECS):**

The Electronic Clearing Service is a retail payment system that can be used to make bulk payment. Its aim is to decrease volumes of paper instruments in MICR clearing and improve customer service by ensuring prompt and secure interest/dividend payment to the beneficiaries. It is a system that is cost effective and which serve as an alternative method of bulk, low value and recurring payment transactions.

The **ECS-Credit** enables companies to pay interest or dividend to large number of beneficiary by direct credit of the amount to their bank accounts.

The **ECS-Debit** is mostly used by utility services like telephone and electricity companies to receive the bill payments directly from customer bank accounts.

**Know Your Customer (KYC):**
As per the RBI (Reserve Bank of India) guidelines issued on July 23rd 2013, banks are required to periodically update their customer’s identification document. In this connection customer (including joint account holder customer) are required to submit latest photograph, self-attested copy of identity proof and address proof along with a duly filled Customer Updation Form. As per the RBI, the KYC formalities must be fulfilled in the following format:-

- **High risk** customer- once in 2 years.
- **Medium risk** customer- once in 8 years.
- **Low risk** customer- once in 10 years.[1]

**RECENT TRENDS IN BANKING:-**

1. **One hundred banks joined National Financial Switch Network as direct members:-**
The NFSs is the largest interoperable ATM network in the country and it manages more than 95% of the domestic interbank ATM transactions. Till date, NFS network comprises of 745 members which include 100 direct members, 645 sub members including Regional Rural Banks (RRBs) and White Label ATM operators (WLAOs). The network now has 2.3 lakhs ATMs.
The NPCI (National Payment Corporation of India) said on December 7, 2016 that 100 banks have joined the NFS network as direct members. Direct members are those banks that directly participate in clearing and settlement with NPCI. Direct member bank can also act as a sponsor bank.[2]

2. **Launching of digital offerings by banks :-**
The State Bank of India (SBI) on the occasion of 61st State Bank Day, launched a social media banking platform for Facebook and Twitter users, called SBI Mingle which help the customers with a host of banking services on their social media accounts at their own convenience.[3] Banks through their social media i.e. Facebook, Twitter and Instagram promote their products and services. They tie-up with e-commerce company and bring the exciting offers for their customers. With the usage of their debit card, credit card etc purchaser get a cashback or discount. **For example:-** Instant discount of 10% at Luxehues.com with SBI debit card, offer validity from August 1, 2017 to January 31, 2018 this is one of the promotion done by SBI in their official Instagram account.[4]

3. **E-wallet companies:-**
E-wallet companies like Paytm, Freecharge and PhonePe have extended their business in millions and there is a cutthroat competition among them. E-wallet companies attract their customer by giving cashbacks. After the demonetization on November 8th, 2016 small shops and customers who were not using E-wallets have also started receiving and making payment via E-wallets. Services provided by them are making mobile phone recharge, DTH recharges, landline bill payment, water bill payment, electricity bill payment, payment of institution fees, gas refill payment, and transfer of money from one wallet to another wallet and wallet to bank account, payment of insurance premium, donate in various NGO, train tickets booking etc.

4. **Schemes by the government:-**

- **Pradhan Mantri Jan Dhan Yojana (PMJDY) :-**
This scheme was launched on August 28, 2014. Under this scheme main aim of government was to bring every Indian in the rural or urban sector to connect with banking system. This scheme offers an account holder to open account with **no minimum balance**, life cover of Rs.30 thousand, accidental insurance of Rs.1 lakh, beneficiaries of government schemes will get direct benefit transfer in these accounts, after satisfactory
operation of the account for 6 months, an overdraft facility will be permitted, overdraft facility up to Rs.5000 is available in only one account per household, preferably lady of the household.[5]

- **Direct Benefit Transfer (DBT):**
  
  This scheme is one of the most important scheme. Direct Benefit Transfer scheme is an attempt by government of India to change the mechanism of transferring subsidies to people. Under this scheme amount of subsidy is directly transfer to people’s bank account directly by government.

- **Pradhan Mantri Gramin Digital Saksharta Abhiyan (PMGDISHA):**
  
  By Ministry of Electronics and Information Technology, Government of India this scheme is launched on October 7, 2017 at IIT Gandhinagar, Gujarat. This aims to:-

  Impart digital literacy to six crore citizens in rural India, provide access to information, knowledge, education, healthcare and livelihood generation, enable financial inclusion through use of digital payments, train to avail various government schemes and citizen centric services, empower women and marginalized communities through digital inclusion.[6]

5. **Linking of bank account with AADHAR number:**

AADHAR is biometric identification system. AADHAR number is 12 digit number issued by UIDAI (Unique Identification Authority of India). As per the amended Prevention of Money Laundering Act, 2002 rules (PML rules) till December 31st, 2017 every bank account holder as to link their account with AADHAR card number.

**RECENT DATA OF FRAUD CASES:**

- **3.2 million Debit Cards details leaked and unauthorised usage done in October, 2016[7]** this was the one of the biggest ever breaches of financial data in India. People reported that their cards were unauthorised used from China. Out of 3.2 million debit cards 2.6 cards were Visa and Master-Card, 6 lakh cards were RuPay Card. The cards were of State Bank of India (SBI), HDFC Bank, ICICI Bank, Yes Bank and Axis Bank. The breach is said to have originated in malware introduced in systems of Hitachi Payment Services, enabling fraudsters to steal information and to steal funds. Hitachi, provides ATM, point of sale (PoS) and other services.

**Technology related frauds** in country like India the cybercrimes are increasing day by day as the number of users of E-banking are rapidly increasing. People and companies are using E-banking services like internet banking, mobile banking for fast services, enhancing efficiency and cost-cutting. But while banks customers have become tech-savvy and started using online banking services and products, evidence suggests that even fraudsters are devising newer ways of perpetrating frauds by exploiting the loopholes in technology system and processes. Innocent peoples are being targeted by hackers and fraudsters. Bank group wise detail of the number of technology related fraud cases with the amount involved therein over four years is as under following table:-[8]

<table>
<thead>
<tr>
<th>Bank Group wise Technology Related Frauds</th>
<th>(No. of cases in absolute terms and amount involved in Rs. Crore)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009-10</td>
<td>2010-11</td>
</tr>
<tr>
<td>2011-12</td>
<td>2012-13</td>
</tr>
<tr>
<td>Cumulative total (As at end March 2013)</td>
<td></td>
</tr>
</tbody>
</table>
### Bank Group

<table>
<thead>
<tr>
<th>Bank Group</th>
<th>No. of cases</th>
<th>Amount involved</th>
<th>No. of cases</th>
<th>Amount involved</th>
<th>No. of cases</th>
<th>Amount involved</th>
<th>No. of cases</th>
<th>Amount involved</th>
<th>No. of cases</th>
<th>Amount Involved</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nationalized Banks including SBI Group</td>
<td>118</td>
<td>1.82</td>
<td>143</td>
<td>3.39</td>
<td>172</td>
<td>7.26</td>
<td>190</td>
<td>9.85</td>
<td>824</td>
<td>25.60</td>
</tr>
<tr>
<td>Old Private Sector Banks</td>
<td>9</td>
<td>0.15</td>
<td>4</td>
<td>0.46</td>
<td>9</td>
<td>0.06</td>
<td>6</td>
<td>1.09</td>
<td>55</td>
<td>2.30</td>
</tr>
<tr>
<td>New Private Sector Banks</td>
<td>14387</td>
<td>34.53</td>
<td>9638</td>
<td>21.41</td>
<td>6552</td>
<td>16.54</td>
<td>3408</td>
<td>33.97</td>
<td>74321</td>
<td>183.48</td>
</tr>
<tr>
<td>Sub Total</td>
<td>14396</td>
<td>34.68</td>
<td>9642</td>
<td>21.87</td>
<td>6561</td>
<td>16.6</td>
<td>3414</td>
<td>35.06</td>
<td>75200</td>
<td>211.38</td>
</tr>
<tr>
<td>Foreign Banks</td>
<td>5273</td>
<td>26.88</td>
<td>4486</td>
<td>14.77</td>
<td>3315</td>
<td>14.60</td>
<td>5161</td>
<td>22.45</td>
<td>36455</td>
<td>145.95</td>
</tr>
<tr>
<td>Grand Total</td>
<td>19787</td>
<td>63.38</td>
<td>14271</td>
<td>40.03</td>
<td>10048</td>
<td>38.46</td>
<td>8765</td>
<td>67.36</td>
<td>111655</td>
<td>357.33</td>
</tr>
</tbody>
</table>

### CHALLENGES AND PROBLEMS OF E-BANKING IN INDIA:

- Due to technical defaults sometimes there is loss of data, which create insecurity among customers.
- Lack of awareness in customers. **For example** - people share ATM card number, CVV and the OTP (One Time Password) by believing in fake calls.
- Temporary not availability of bank’s website which create problems for customers while making payment, resetting passwords, checking account statements etc.
- Not in service of toll-free numbers of banks in case of problem faced by customers like loss of ATM card etc.
- Not in service and no availability of cash in ATMs.
- Deduction of amount from account even after the unsuccessful transaction while withdrawing cash from ATM, making payment through card or internet banking.
- Poor response from bank regarding transaction related to E-banking.
- Very delay refund of amount from bank in case of unnecessary deduction.
- Lack of communication between bank and customer. Many customers AADHAR card number, present phone numbers, present communication address are not updated with the banks. **For example** - Sometimes important links, SMS are sent by banks in customer’s old contact number which create a trouble.
- Poor services by banks. **For example**-
- SMS regarding debit or credit of amount and login of internet banking comes very late e.g. after 4 to 5 days. Sometimes it also happens that no SMS come from bank.
- Knowing that, they can also solve issue, bank staff send customers for approaching in another branch for solving their issue.
- Banks are over loaded with works. Even for deposit of cash through Pay in Slip many bank staff say to customers for going branch in which they have opened account.
- Lack of ATMs in villages and towns.
- Generation of OTP (One Time Password) even after the entering incorrect CVV.
- Untrained technical staffs in Banks.
- Lack of training programs for bank staff and customers.
- Many banks are not following the KYC (Know Your Customer) norms issued by RBI. On July 27, 2016 RBI has imposed monetary penalty on the following banks who had done violation of instruction/guidelines, on KYC norms. The penalties have been imposed in exercise of powers vested in RBI under the Section 47(A)(1)(c) of the Banking Regulation Act, 1949, taking into account the violation of the instruction/guidelines issued by the RBI from time to time.\[9\]

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Name of the bank</th>
<th>Penalty Amount (in ₹ million)</th>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>Allahabad Bank</td>
<td>20</td>
</tr>
<tr>
<td>2.</td>
<td>Bank of India</td>
<td>10</td>
</tr>
<tr>
<td>3.</td>
<td>Bank of Baroda</td>
<td>50</td>
</tr>
<tr>
<td>4.</td>
<td>Canara Bank</td>
<td>20</td>
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<td>5.</td>
<td>Corporation Bank</td>
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<td>6.</td>
<td>HDFC Bank</td>
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<td>7.</td>
<td>IndusInd Bank</td>
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</tr>
<tr>
<td>8.</td>
<td>Punjab National Bank</td>
<td>30</td>
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<td>9.</td>
<td>RBL Bank</td>
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<td>10.</td>
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<td>11.</td>
<td>SBM</td>
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<td>12.</td>
<td>Syndicate Bank</td>
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<tr>
<td>13.</td>
<td>UCO Bank</td>
<td>20</td>
</tr>
</tbody>
</table>

- Poor infrastructure of Banks. **Example:** there is single counter for both deposit and withdrawal of cash in many banks.

**SUGGESTIONS:**

- For providing the additional security for customers, banks should focus on adopting **Multi-Factor Authentication (MFA) system.**
- Encryption plays a crucial role in online security. All banks keeping in mind the security issues should upgrade their online portal to **256-bit SSL** (Security Socket Layer) from 128-bit SSL. Banks like SBI (State Bank of India) has already upgraded.
- The use of same password for a long time is not secure. Bank should make compulsory rule regarding change of ATM PIN, internet login and transaction password etc. after a specified period.
- Banks should educate people regarding use of genuine sites and give security tips regarding payment via credit card, debit card etc.
- By all banks, access to internet banking should be allowed only after entering **OTP (One Time Password)** which comes in registered mobile number.
- All banks should register alternate mobile number of customers and it should also be printed on the passbook along with primary mobile number.
- **Biometric ATM machines** can also be used to prevent hacking of password and to make easy for illiterate people.
• All banks should follow the **KYC (Know Your Customer) norms** and other guidelines given by apex bank (Reserve Bank of India).
• There should be timely joint **meetings** of all banks (public sector, private sector) headed by RBI.
• Government of India with the cooperation of state government, RBI and other banks connect all citizens of India with banking system.
• Government with the cooperation of banks must start a **Certificate Program** for college and school student on ‘Digital Payment’.
• There is need to increase number of ATMS for cash deposit and cash withdrawal.
• E- Banking is related with internet connectivity. In India internet connectivity and its speed is very poor. TRAI should take steps for **strengthening telecom sector**. Most of the time we don’t get messages from bank due to the poor service/network of Telecom Company.
• Strong action should be taken against the **hackers and frauds**.
• After every successful and unsuccessful transaction via internet banking, mobile banking and cards banks should provide their customer **option of sending feedback** and that feedback should also be send to RBI.

**CONCLUSION:**
We can conclude that in 21st century, life of people has become very fast and banking system being the very crucial part of economy need a lots of improvement. Now people don’t like to stand in queue in banks, they prefer doing electronic transactions. E-banking is helpful in controlling corruption in our country. As we have discuss above our Indian banking system is facing lots of problems and challenges. There is a need for IT sector development, balanced regional development in banks and look after the cyber security matters. There is also need to aware people about the risk involved in financial transaction through E-banking. People are having unnecessary insecurity in their mind while doing transaction using ATM, internet banking and mobile banking. Steps are being taken by RBI and government but they are not sufficient, we need more improvement.

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TERRORISM FINANCING- INDIA FAILS TO HIT THE BULL’S EYE

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Terrorism, in all its forms & manifestations, is one of the most vicious and unjustifiable crime against the whole humanity. The ongoing investigations of NIA and other global investigation agencies in terrorist attacks reveal that the lifeblood of this felony is finances. Along with whole world, India is also vigorously pursuing its agenda, both at international, regional & national levels, to strengthen counter-terrorism mechanisms targeted at the menace of terrorism & its financing. Thus, it can be seen that terrorism financing is the most significant, inseparable and integral element of any terrorist activity or organization or network. It is the soul of terrorism which keeps it sustaining for ages. In the light of this background, the researcher has traced the conceptual development of terrorism financing initially in the present research paper. Further, the researcher has taken an overview of various sources through which funds are obtained and channels of funding though which money reaches its evil destinations. After having understood the nature of terrorism financing, the researcher has tried to evaluate the Indian counter-terrorism mechanism along with enforcement and operational initiatives. Along with the assessment of these legal avenues, the Researcher has given a glance at social policies and outlook which silently supports the growth of the evil of terrorism & its financing. After this socio-legal critical analysis, the researcher has tried to put forth some valuable practical recommendations based upon the conclusions.

Key Words- Terrorism Financing, Money Laundering, FEMA, Hawala, Demonetization

1. INTRODUCTION-

Source- The Global Terrorism Index, 2016

The above mentioned information[1] portrays the nature of terrorism in India.
The above piece of information itself speaks that India faces the threat of various forms of terrorism which has spread in the nook and corner of the country. Time and again, India has stressed the fact that terrorism is survived and thrived on the blood of finances. Thus, terrorism financing is the crux of survival and spread of terrorism. The financing of terrorism is best described as octopus with tentacles spreading across vast territories as well as across a wide range of religious, social, economic and political realities.[2]

Initially, the present research tries to trace the conceptual development of the term “terrorism financing”. In order to understand the intricacies of the research topic, the Researcher has tried to take a brief overview of the various sources and channels through which funds are obtained and are either placed and integrated into the financial system and then used or directly mobilized in the hands of these terrorists. Thus, after examining the basic concepts related with terrorism financing, the major consideration of the Researcher is the Indian legal framework and social policies and outlook dealing with the subject of terrorism financing. Therefore, the Researcher has critically examined the counter - terrorism financing regime along with regulatory and enforcement mechanism developed by India from socio-legal perspective.
Thus, by doing all the above mentioned detailed investigation through socio-legal lens, the Researcher has tried to diagnose the measures and find out existing lacunas. After arriving at conclusion, the Researcher has provided some recommendations.

2. OBJECTIVES OF RESEARCH-
The present research is carried out with a view -
1] To understand the concept of terrorism financing and study its sources and channels;
3] To evaluate the Indian legal provisions dealing with suppression of terrorism financing;
4] To assess the successes and failures of the Indian legal mechanism and social policies dealing with socio-legal challenges posed by terrorism financing;
5] To provide practical recommendations for converting failures into successes;

3. RESEARCH METHODOLOGY-
The present research is doctrinal research. It employs descriptive, analytical, evaluative and interactive legal research models. The present paper has utilized primary data available from various statute books and secondary data which are available from various books written by authors of international and national acclaim, various online journals available on the website of jstor, oxford and online resources of websites of Finance Ministry of India etc. The Researcher has used SILC Rules for citation methodology.

4. ANALYSIS-
A] CONCEPTUAL DEVELOPMENT OF TERM “TERRORISM FINANCING”, SOURCES AND CHANNELS-
The World Bank and International Monetary Fund have defined financing of terrorism as “the financial support, in any form, of terrorism or of those who encourage, plan or engage in it.”[3] The fund raising methods of wide range of groups are most often lumped together under the general rubric of terrorism financing.[4] Terrorism financing is generally understood as an activity which deals with collecting and accumulating funds in order to support terrorism or donating to the terrorist outfits with complete knowledge regarding the intentions of the receiver of the funds.

Thus, it can be seen that terrorism financing covers within its fold all those activities which provide funding to terrorist activities of operation, training, propaganda, recruitment, compensation, social support mechanisms in one form or another. Terrorism financing is a financial as well as a public crime.

The stages of terrorism financing are as follows-

Following are the types of sources
Out of all these three types, India has and is suffering from state sponsored terrorism funding by Pakistan. Pakistan[5] is one of those states which are known to have been actively involved in terrorism financing directly and knowingly since decades.

Following are the various sources through which funds are raised by terrorists-

Money generated acquires significance only when it is channeled safely through proper path to reach its destination. Following are the various channels employed by terrorists to move their funds-

1. Formal Financial Systems;
2. Physical Channels of Personal Courier;
3. International Trade System;
4. Diplomatic channels;
5. Informal Value Transfer Systems;

In the Indian context, it has been found that cross-border trade, smuggling of precious materials like gold and other criminal activities like bank robbery are some of the important sources of terror funding. In case of channels of terrorism financing, hawala is the most widely used to channelize terror funds. Some ways of hawala transfers are shown in the following picture-
B] INTERNATIONAL & REGIONAL COMMITMENTS OF INDIA -

1. **Role in United Nations**-

India has always taken a lead role in United Nations for carrying forward the fight of international community against terrorism. India is signatory to The International Convention for the Suppression of the Financing of Terrorism, 2001. India has actively and progressively implementing the Security Council Resolutions pertaining to terrorism financing.

India has drafted the Comprehensive Convention on International Terrorism in the year 1996 and submitted to United Nations for consultations and adoption. The Convention is still under consultation in the UN Committee. Every time after the terrorist attacks anywhere in the world, India has urged the international community to set aside their differences on various issues arising out of interpretation of the Convention and adopt the Convention unanimously.

2. **Role in Regional Organizations**-

India is one of the active members of SAARC AND BRICS. India has ratified and is signatory to the SAARC Regional Convention on Suppression of Terrorism (1987) and its Additional Protocol (2004). India has been an architect of recent BRICS- Xiamen Declaration[7] which is a great leap in the development of regional counter-terrorism strategy. India is also working closely with European Union to cut the flow of funds and economic resources to individuals and to other entities involved in terrorism.[8] Thus, it can be seen that India has committed robustly to fight the menace of terrorism financing and to accord regional co-operation with full strength and vigor on multiple fore.

To enhance the functionality of the FATF in India, government agencies have launched a National Risk Assessment exercise on January 2016 so as to identify the sectors that are most susceptible to money laundering and terror funding and thereby plug deficiencies, if any. This conforms to the FATF recommendations. The World Bank had made a customizable self assessment software tool available to Indian agencies which emphasizes on all vital aspects of money laundering, including terror financing risks, and helps identify threats and vulnerabilities in different sectors.[9]

C] LEGISLATIVE INITIATIVES-

1. One of the premier acts dealing with the issue of terrorism and its financing is **The Unlawful Activities Prevention Act** which was passed and enacted in the year 1967 and amended in the years 2008 and 2013. The analysis of the said Act points out that the provisions which have targeted at terror funding are devised on two lines- funds for unlawful association and funds for terrorism and its allied activities. Besides providing direct punishment for raising funds for terrorist organizations and acts, it also imposes punishment for holding proceeds of terrorism. The newly added Section 51A[10] empowers Central Government with special powers
to freeze, seize and attach funds, other financial and economic resources held, owned or possessed by terrorist. This section reflects the international commitment of freezing assets immediately in order to thwart the terrorism financing.

The 2008 and 2013 amendments have recognized the dynamic and changing nature of terrorist organizations and networks in correct perspectives. 2013 amendment has rightly targeted one of the significant channels of counterfeiting currency[11] which funds terrorism on Indian soil to the largest extent. The amendments of 2013 has widened the scope of terrorist act by inserting a new schedule[12] which lists international treaties which contain various acts that can be termed as terrorist act. However, the perusal of the Schedule points out that the international convention dealing with terrorism financing is not included in the said schedule. Terrorism financing is a direct terrorist act which is required to be included within the purview of “terrorist act” so as to obstruct other terrorist acts.

The Act was relevant when drafted. It underwent significant amendments to cope with changing times but it lags behind in encompassing the changes and developments taken place in the typologies and nature of terrorism and terrorism financing. Procedural aspect is appreciable, but how much it is utilized is undecided question.

2. The second most important Act which addresses the issue of terrorism financing is The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1976 which is the follower of The Maintenance of Internal Security Act, 1971 (26 of 1971).

The said Act is relevant in the context of terrorism financing because of the facts that-

1. Foreign exchange is highly vulnerable component for the crime of terrorism financing and the Act tries to conserve the foreign exchange for national security and economic stability and

2. Smuggling is one of the important sources and channels of terrorism financing and the Act is enacted to remedy the menace of smuggling.

The critical analysis of the said Act reveals that the Act has been based on the policy of providing preventive detention which is in conformity with the constitutional mandate given in Article 22 of the Constitution of India. However, the said Act does not itself define the main elements of foreign exchange or what is meant by its conservation and augmentation. The grant of discretionary powers, use of value loaded and ambiguous words like “satisfaction of the officer”, imprecisely worded grounds for passing the detention order dilutes the strength of this law and makes it prone to the abuse by corrupt officials. The execution of the detention order has been left at the mercy of traditional criminal justice system, which is already riddled with its own limitations. Thus, the Act lacks clarity in terms of provisions and leaves the fate of law to be decided at the hands of Bureaucracy.

3. Another important legislation in terms of terrorism financing is The Foreign Exchange Management Act [FEMA], 1999.

Terrorism financing is closely connected with foreign exchange because it involves transnational generation and movement of money. Therefore, law dealing with the management of foreign exchange assumes great significance form the context of study of terrorism financing.

The evaluation of the said Act points out that the Act has extensive applicability[13] and it covers within its ambit all types of financial instruments and variety of financial transactions. The provisions of the Act endow legality to various transactions and dealings of foreign exchange and illegality is punished as civil contravention. The Reserve Bank of India is rule making and regulatory body for the purpose of implementation of this Act. It has devised electronic reporting system[14] which facilitates implementation of the provision. Section 36[15] of the said Act provides for the establishment of Directorate of Enforcement for the purpose of investigation into contraventions. The Central Government is amending these rules and regulations from time to time to keep them updated.
Thus, the Act represents a comprehensive and clearly worded framework dealing with management of foreign exchange. Apart from providing well articulated substantial provisions, it lays down enforcement mechanism at length. However, the inclusion of the ground of “public interest” for revocation of orders or for suspension of operation of the Act brings uncertainty and weakens the vigor of law. Further, the limited reach of execution authorities in case of civil detention orders passed against extra-territorial entities obstructs the effective enforcement of law. Considering the globalization of economy, this proves to be an important impediment in the implementation of this Act.

4. The offence of money laundering is the prime channel of terrorism financing. Due its proximity with terrorism financing, the countering mechanism also takes the same line of action. In the light of this background, The Prevention of Money Laundering Act, 2002 (Amended Up to Date) is the milestone in Indian Counter Terrorism Financing measures. It formulates rules and regulations for maintaining stability of financial system and to protect its integrity.

The said Act was enacted with a view to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering.

The scrutiny of the said Act reveals that it covers within its purview some of the important sources and channels of terrorism financing which are highly vulnerable to its threat. Besides criminalizing the act of money laundering, it has laid down a detailed mechanism for attachment, adjudication and confiscation of proceeds of crime. The said Act has enlisted the obligations of reporting entities.[16] Apart from this, the Act imposes monetary punishment for the non-compliance by the Reporting entities. Along with the Appellate mechanism, the said Act also sets up a mechanism of special courts for speedy trial. The provisions for reciprocal arrangement for assistance in certain matters and procedure for attachment and confiscation of property are intended to give effect to cross-border legislations which are of similar nature dealing with the same offence of money laundering and empower the Indian authorities to carry out transnational investigations in required cases.

The Scheduled offences under the said Act cover wide variety of offences ranging from offences under UAPA to environmental protection related statues. The Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (Amended up to date) lay down minute details of variety of provisions contained in the parent Act.

The said Act is comprehensive and consolidated piece of legislation dedicated solely to the offence of money laundering. However, it can be seen that the punishment provided under the Act for commission of offence of money laundering is very light as compared to the gravity of the offence. Lack of stringent actions against reporting entities weakens the dynamism of the law.

5. The Foreign Contribution (Regulation) Act, 2010 [FCRA] was enacted to curb the misuse of global financial opportunities for illegal and malicious purposes including funding terrorist activities. The said Act was enacted to-

6. to consolidate the law regulating the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals or associations or companies and

7. To prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to the national interest.

Endowed with extra-territorial competence, the Act has encompassed broad and elaborate definitions. The acceptance of any foreign contribution from foreign source and its delivery is well regulated to nab the state sponsored terror funding as well as to restrict the misuse of charities for terrorism financing. Apart from this, the transfer of foreign contribution is also supervised and regulated. The Act encompasses detail provisions with regard to the registration of non-governmental organizations for the purpose of acceptance of foreign
contribution. The Act provides punishment for civil contraventions as well as lays down penal provisions for non-compliance with provisions of this Act.

However, the exclusion of certain sources of foreign contribution like business payments, legal remittances, and help from relatives is not appreciable because these are proved to be vital sources of terrorism financing. The critical scrutiny of the disqualification grounds mentioned in the Sub section 4 of the Section 12 and of grounds for cancellation of certificate elucidated in Section 14 nowhere includes “terrorism financing”. In spite of having glaring experience of misuse of foreign contributions for the purpose of funding terrorism[17], the Act has failed to take cognizance of its severity and widespread existence.

6. The cyberspace is most widely abused today by the terrorist organizations and networks for spreading their wicked propaganda, recruiting and raising funds. India is also no exception to this nuisance.

The cyber law in India is mainly encoded in The Information Technology Act which was passed in the year 2000 and amended in the year 2008. With the passage of the time, new provisions dealing with cyber terrorism and national cyber security[18] were inserted. The perusal of newly added provisions reveals that it nowhere it includes the offence of terrorism financing committed through electronic medium. The misuse of cyberspace for raising funds through digital currency is emerging threat to Indian financial security. However, current Indian IT Act does not contain any provisions with this regard. The terrorist organizations are abusing websites for malicious propaganda and inspiring and radicalizing Indian youth to join terrorist organizations. Still Indian cyber law does not contain any provision for punishing hate speech made by using the platform of internet or social media.

D) EXECUTIVE INITIATIVES AND POLICIES-

1. Analysis of Enforcement Agencies-

The critical analysis of the modus operandi of FIU reveals that some transactions may escape Suspicious Transactions Reporting requirements altogether: lower-value transactions below the reporting threshold, surreptitious cash couriers, trade-based transactions, sales of illicit diamonds, gemstones or gold, smuggling, prepayment of credit cards, travel tickets, and the like. Moreover, the diversion of legitimate charitable donations to terrorist ends is particularly problematic for FIU to track in foreign jurisdictions.[19]

Further, if we critically analyze the organizational structure of FIU-IND, we can see that it employs only 75 personnel which is very negligent number for such a vast country like India. Thus, it can be said to be
understaffed. Moreover, all the personnel are recruited from different organizations which are regulatory bodies and the training of FIU-IND for the purpose of intelligence gathering is a questionable fact. Many cases have been decided within a span of three to five years which seems to be time-consuming considering the dynamic nature of the crime. Further, it can be seen that since 2014, FIU-IND has not furnished any report of its activities.

The analysis of the performance of Enforcement Directorate from the year 2012 to 2015 shows that during the period of three years, only 111 cases were investigated. Only 52 persons were arrested and only 173 prosecutions complaints were filed for the purpose of implementation of PMLA. Under the Foreign Exchange Management Act, the number of investigations initiated, as on 13/02/2012, were 5823 and as on 31/03/2015, 4776 investigations were still pending. Out of 1560 show cause notices issued in the year 2012, 1304 were still pending for adjudication in the year 2015. These figures point out towards the fact that the Enforcement Directorate is not functioning effectively and it is failure on its part that it is struggling with such a huge pendency of cases. The sanctioned strength of the Directorate is 2064 and as on 31/03/2015, only 682 persons were employed in it. It means that it is functioning with only 34% of sanctioned staff. The scarcity of human resource is hampering its efficiency and obstructing timely investigations and prosecutions. It can also be seen that it nowhere deals with the offence of terrorism financing independently.

NIA has been established under the NIA Act, 2008 but the said Act is not updated according to emerging trends. Since 2009, NIA has investigated 11 cases related to terror funding. NIA is carrying on investigations into various terrorist acts performed by ISIL, Jaish-e-Mohamad, FICN Smuggling Gangs, Harkat-ul-Mujahidin. It investigates the offences of abduction by terrorists, counterfeiting of Indian currency, connections with international terrorist organizations like ISIL, criminal conspiracy for planning and executing terrorist attacks, terrorism financing and many other. It can be seen that NIA has registered and investigated 159 cases till date. Out of that, since 2011, hardly four to five cases have been closed after investigation and only in two matters, judgments have been delivered. All other cases are at the stage of pending investigations. This is dismal state of affairs. It shows delay in investigations and remedy of effective and speedy trial is not provided in reality.

If we analyze the operational aspect of NIA, the branch offices of NIA are very few compared to the population of India and number of offences it needs to investigate. There is no branch office located nearby the Rajasthan border which touches Pakistan, which is hotbed of allied terrorist activities. The agency is facing as much as 30 percent manpower shortage on its sanctioned strength of a little over 800 people. This has forced the agency to depend on outside agencies. The shortage is worst in Kolkata and Guwahati, which have emerged as the hotbed of Jihadi terrorism.

2. Role of SEBI & RBI-

Pursuant to its agenda to promote the development of the securities market in India and in order to fulfill its mandate under the Prevention of the Money Laundering Act, 2002, Securities and Exchange Board of India (SEBI) has issued Guidelines for Anti-Money Laundering Measures. These Guidelines obligate senior management of a registered intermediary to establish appropriate policies and procedures for the prevention of money laundering and terrorist financing and ensure their effectiveness and compliance with all relevant legal and regulatory requirements. The Guidelines put forth by SEBI are all encompassing. The identification, verification, monitoring of clients ,the classification of customers according to the perceived risks, reporting requirements and suspicious transaction reporting aid the investigation authorities in constructing money trail in case of investigation into alleged terror funding links. However, it must be noted that these Guidelines are applicable only to the registered intermediaries. The unregistered intermediaries are left out of its purview and the study of sources
and channels of terrorism financing makes it clear that unregistered players play vital role in raising and moving funds. This is serious loophole which breaches the global standards set by FATF and needs to be rectified with immediate effect. Further, it can be seen that these are merely the Guidelines and their breach entails the liability of payment of monetary penalty. Therefore, these Guidelines must be converted into Regulations so that they can be made liable for more strict enforcement measures.

In order to fulfill its protective function, every year the Reserve Bank of India issues Master Circular with regard to Know Your Customer (KYC) norms / Anti-Money Laundering (AML) standards/Combating of Financing of Terrorism (CFT)/Obligation of banks under PMLA, 2002. Same types of Circulars are also issued with respect to the Non-Banking Financial Companies.[23] These Master Circulars are devised on the international standards which require the banking and non-banking entities to identify their customers, verify their identity, monitor their transactions, report the suspicious transactions and maintain appropriate record. These Circulars expire each year; therefore they are updated from time to time. However, as they are short-lived, they have transitory value.

Apart from these Master Circulars, RBI has issued Master Direction - Know Your Customer (KYC) Direction, 2016 to strengthen the mechanism of AML/CTF. This Direction is issued in pursuance of the Prevention of Money Laundering Act, 2002 and the Rules made there under. This Direction is made applicable to all the listed entities and lays down detailed principles which are required to be followed while fulfilling their KYC obligations.

RBI has also warned that any user, holder, investor and trader dealing with virtual currencies would be doing so at his/her own risk. The absence of counter parties in usage of virtual currencies including Bitcoins, for illicit and illegal activities in anonymous/pseudonymous systems could subject the users to unintentional breaches of anti-money laundering and combating the financing of terrorism laws.[24] However, it has to be noted that the use of virtual currency is not regulated by any law or regulation in India. Mere warning is not sufficient to tackle and prevent the misuse of electronic currencies.

3. Demonetization Policy-
Demonetization refers to the decision of RBI/Government to recall the status of a currency note to be used as a legal tender. Usually all the currencies issued by RBI can be used as a legal tender as the value they carry is promised by RBI and once the value has been demonetized/recalled/revoked, the currency note cannot be used.[25]

The Government of India maintained that it announced the demonetization policy in the month of November 2016 with a view to tackle the menace of black money/parallel economy/shadow economy & to prevent the cash being used for terrorist activities/terror funding.[26]

The drive of demonetization initially hit the roots of terrorism financing to some extent. In his statement to the Lok Sabha, Minister of State for Home Affairs Kiren Rijiju said that insurgent groups in North East, Maoists and terror groups in Kashmir have suffered loses of around Rs 800 crore. The money amassed by the armed groups mostly in cash through extortion, taxation and illicit hawala transfers to sustain their operations, logistics and support their manpower, is now as good as scrap paper.[27] The demonetization initiative is showing impact upon the sources of terrorism financing. For example, according to data accessed by Times of India, there have been 13 bank robberies and burglaries and 9 such attempts across the Kashmir Valley after the demonetization.[28] The sources have analyzed that before demonetization, local terrorists had hoards of cash which they were using for funding terrorist activities in valley. But after demonetization, this way was closed. This example also points out how demonetization is becoming responsible changes in the use of sources of terrorist funding.

Demonetization will deal a severe body blow to the bad money generated by the underworld, black marketers, criminals, dealers and terrorists, temporarily. But it is not a permanent death knell for terror groups,
intelligence officials and counter-terrorism, experts warn.[29] The dynamic policy and adaptive nature of terrorist networks is neutralizing the impact of the said policy. The counter-terrorism experts have opined that demonetization will hit the terror funding but only for a short period. The terrorists will find another ways to move their funds. Therefore, only the upcoming developments will help to evaluate the long term impact of demonetization.

**G] SOCIAL POLICIES AND OUTLOOK-**

India is the world’s largest democracy and a land of unity in diversity. Democracy ensures its subjects the right to live the life with dignity and equality. Since unknown times, India has cherished these democratic values in their true spirit. All the major and minor sects and religions have cohabited happily on this land since times immemorial. However, the British Rule and its divide and rule policy had sown seeds of partition on religious lines. Till date, India has been unable to shed this colonial legacy and continues to walk on the same path, with more aggressive and exclusionary attitude.

The Indian politics thrives on religious divisions and this ultimately fuels the social and cultural divisions. Today, the religious minority in India is left out of the mainstream of development and is struggling to achieve its own identity and existence. The lack of good governance and sympathetic administrative attitude towards them has forced them to adopt the extremist and terrorist ideologies. Those who are unable to involve directly in terrorist activities are supporting terrorism, within and outside country, through financial means. The winds of globalization have further fuelled these hostile sentiments and have facilitated the participation in direct and indirect ways.

Today, India lacks a consolidated social policy to assimilate the minorities into the mainstream. All the measures are guided by political considerations and therefore, they appease one religion while hurting the sentiments of others. India has always embraced refugees and stateless people into its bosom. But the recent debate of assimilating Rohingya refugees in India[30] out of fear of national insecurity is a mere outcome of insensitive and unreceptive attitude guided by religious considerations. The basic problem lies in the fact that India does not have any consolidated legislation to deal with the issue of migrants and refugees. Nor it has formulated any sound and long-lasting policy to tackle the socio-legal issues arising out of migrant crisis. Moreover, the voices of victims of terrorism are neglected and not taken into consideration while investigating or formulating any counter-terrorism strategy.

All these negative waves are breeding crime-terror nexus and are aiding cross-border terrorists to exploit various sources and channels for funding their malicious terrorist plans.

**6] CONCLUSION AND RECOMMENDATIONS-**

It is unfortunate reality that terrorism will keep haunting the humanity till infinity. Considering this, the counter-terrorism efforts of states should concentrate on eliminating the root causes which fuel the terrorist violence. Financing is the most essential and critical need of terrorist organizations and networks and it is one of the most important root causes of sustenance of terrorism. Shortage of money obstructs successful implementation of evil terrorist intentions. Therefore, countering terrorism financing assumes immense significance in plummeting the devastating consequences and spread of terrorism.

India, being the victim of terrorism since birth, has strong foundation of legislative enactments. It has taken its best efforts to translate its international commitments into domestic laws and actions. However, the Indian legal framework dealing with terrorism financing is insufficient and riddled with many lacunas. It still carries on the old traditional outlook of looking towards the offence of terrorism financing. Unfortunately, India still has not framed any legal enactment dealing exclusively with the offence of terrorism financing and enlisting the measures of countering it. The very grave subject of terrorism financing is dealt in piecemeal manner by fragmented legislations and that too inadequately. The offence of money laundering is targeted accurately with detail legal provisions but the researcher has found that there are significant differences between money
laundering and terrorism financing and both of these diseases require separate treatment. Indian legal system dealing with cyber space and cyber crimes is in very nascent stage. It is lagging far behind of technological advancement. Therefore, the broader issue of terrorism financing must be dealt in detail independently by separate legislation solely dedicated to all the angles of it.

Law emerges out of policy and it is part and parcel of it. Therefore, the lack of Counter-Terrorism Financing policy has further augmented the legal lacuna. There is a dire need of encoding all CTF mechanisms under the umbrella of single dynamic, adaptive, flexible and efficient policy which shall provide for both social and legal avenues targeted towards countering and thwarting financing of terror. The policy must envisage participation of all players engaged in various arena of terrorism.

The Indian operational and enforcement mechanism exhibits plurality of agencies, with no positive outcomes and desired success. The multitude of agencies, their uncooperative attitude, and their greed for supremacy and fierce competition between them is weakening the system and impeding effective implementation of CTF measures. These agencies need to leave behind the colonial legacy and adapt themselves to changing times to counter effectively the menace of terrorism financing. The Government must take steps to nurture capable human resources and make provisions for robust infrastructural facilities with sufficient funding.

The financial aspects of Indian economy are regulated by multiple agencies. Though these agencies have laid down a co-operative web of guidelines to be followed by financial institutions, the conflict of jurisdiction and bureaucratic rivalry between them is creating confusing environment and carving out many ways out for terrorist activities. Merely following due diligence measures is not sufficient to prevent and combat terrorism financing on ground. The short term measures like demonetization are not going to prevent the ever growing and clandestine monster of terrorism financing. The financial measures must be supported with active and supportive co-operation from national CTF agencies. These measures must be supported with sound backbone of policy and comprehensive legislative enactment.

Instead of making the law only for the purpose of making it constitutionally valid, let’s make the law to cure the nuisance which it intends to remedy. Making and implementing law is the process of social engineering. In order to shape all inclusive social policy, law must understand and take cognizance of the facts that prompt normal people to fund terrorist causes. Law must have inclusive approach. It must not let any religious or minority community to develop its own defense mechanism which is anti-national and hostile towards fellow civilians and political authorities. Law and people responsible for making and implementing law must adopt an all-encompassing attitude. Law must take cognizance of extra-legal psychological, biological, cultural and social factors influences, if it really wants to hit the bull’s eye in the context of terrorism financing.

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Right to Clean Environment: - A Basic Human Right

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Degradation of environment is one of the most severe problems human beings are suffering from. Many people do not have access to clean air and drinking water and experience health problems due to the increasing pollution. Yet, the existence of international environmental law is not rightly represented in the international legal system. International environmental law turns out to be very vague. The recent development shows that “environmental law and human rights reached a status of maturity. There are two main ways one can approach the question whether a human right to a clean environment exists. At first one looks at the existing international environmental law in order to examine whether it provides human rights norms, and second, one can study international human rights law. International environmental law is probably the youngest branch of international law. This branch says that environment protection is basic human right. In India the norms for environment protection were rather created from lawyers and activists from other available resources. Human Rights in India are guaranteed as fundamental rights under Part III (Art. 12-35) of the Constitution of India. The constitution of India under article 21 gives importance to environment by giving due regard to concept of sustainable development. In India, the jurisdiction of the Supreme Court widened the scope of the right to life in Art. 21 and included the right to a wholesome environment. Indian courts have repeatedly recognized a human right to environment. Especially the own activism of judges has to be acknowledged. Policies, which see environment and development not contradictory but rather as complementary forces for sustainable development could be enhanced and thus improve both the environmental condition and the economic situation of the people.

Environmental degradation is one of the most severe problems human beings are suffering from. Many people do not have access to clean air and drinking water and experience health problems due to the increasing pollution. Yet, the existence of international environmental law is underrepresented in the international legal system. About 200 treaties are registered under the United Nations environmental program register, and in total there are about 900 bi-literal and multilateral treaties. Many of these treaties are “soft law” and do not seem sufficient to claim a human right to a clean environment. The recent development shows that “environmental law and human rights reached a kind of maturity and omnipresence”. It is intended to show at the example of Indian constitutional law and the jurisdiction of Indian courts that human rights norms can indeed be a reasonable basis for claiming a right to environment.

A Human Right to a Clean Environment

There are two main ways one can approach the question whether a human right to a clean environment exists. At first one looks at the existing international environmental law in order to examine whether it provides human rights norms, and second, one can study international human rights law and look for environmental rights within it.

1. Role of International Conventions in Protection of Environment

Foremost among the role of International community in the protection of environment Principle 21 of Stockholm Declaration is of great importance. Principle 21 states that in accordance to UN Charter and principles of International Law the state has a sovereign right to exploit its resources and the responsibility to ensure that activities with in their jurisdiction or control do not damage to the environment of other states. Moreover international community imposes a duty towards member States to include environment protection in domestic constitution. Therefore Article 21 of the Indian Constitution is widely interpreted and now it includes right to have a wholesome environment. The main purpose of international environmental law is the
protection of the environment per se.[3] Some of the major objectives are the protection of the flora and fauna, the preservation of ecological balance and the conservation of the diversity of species. International environmental law imposes obligations on human beings and sets standards. International environmental law is probably the youngest branch of international law. Although the first multilateral international environmental law convention – the Convention for the Protection of Birds Useful to Agriculture – was already established in 1902, the consciousness to develop a more effective and comprehensive regime only arose in the late 1960s.

However, many environmentalists suggest that the purpose of environmental law is egocentric.[4] Obligations and duties are imposed on governments, companies, individual human beings or groups in order to reach these goals. The Antarctica Treaty (1959), the World Heritage Convention (1972), the Convention on International Trade in Endangered Species (1973) and the World Charter for Nature (1982) are some examples. These treaties do not exclusively exist for the benefit of human beings, but should protect the environment from exploitation.[5] The anthropocentric approach, saying that “environmental protection is primarily justified as a means of protecting humans rather than as an end itself”[6], is taken for granted. One has to keep in mind that environmental protection can negatively affect the short-term needs and objectives of human beings.[7] States and individuals could be in a situation of disadvantage, if they neglect their economic development in favor of environmental protection. Especially in developing countries, the struggle of parts of the population against poverty is often considered as more important than environmental protection. States have to permanently develop their economic capability in order to remain competitive in the international market system. Moreover, the approval of the Declaration on the Right to Development[8] by the UNGA could limit any right to environment for human beings.

But even a human right to development would not make a human right to environment impossible, since it is normal in international law to balance contradictory but equitable norms. Thus, the international community has to balance between the right to development and right to environment, then environment and development will not anymore be contradictory but complementary. This idea is often summarized under the expression “sustainable development”.

The foundation for modern international environmental law was lead at the United Nations Conference on the Human Environment in Stockholm, 1972. On this conference, the Stockholm Declaration on the Human Environment[9] (Stockholm Declaration) was unanimously adopted, albeit legally not binding. Although the conference failed to proclaim an explicit human right to environment, this document shows the concern of the international community for environmental matters and, more importantly, set the agenda and framework for future discussions and initiatives.

It is worth to turn to the Stockholm Declaration a little more in detail, in order to examine whether it contains a human right to a clean environment. Especially two principles talk very explicit of such a right. Principle 1 of the Stockholm Declaration contains the “fundamental right [for man] to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being”. Literally interpreted, this sentence has the quality of a human right. According to Principle 7 of the Stockholm Declaration, the states are required to take steps to prevent pollution of the environment by substances, which affect human health.

In 1992, the United Nations Conference on Environment and Development (UNCED) was held in Rio de Janeiro. Although environment was, as the title of the conference suggests, also an issue, UNCED focused rather on development related subjects (mostly North-South related topics). Indeed, the term “human rights” is only used three times in the Rio Declaration on Environment and Development (Rio Declaration).[10] According to Diane Shelton, there is no explicit link between human and environmental rights. At best, Principle 10 of the Rio Declaration can be considered as participatory right. It suggests that environmental
issues are “at best handled with participation of all concerned citizens”, and further requires the states to provide “effective access to judicial and administrative proceedings” Otherwise, the Rio Declaration rather focuses on the right to sustainable development, but with bias for development. A substantial and explicit right to a clean environment cannot be found. There is one more recent development, which could indeed lead to a right to environment in future. In 1989, a Sub-Commission of the United Nations Commission on Human Rights under the leadership of Mrs. Fatma Zohra Ksentini was assigned to study the possibility for a human right to environment.[11] In 1994, the Ksentini Report concluded that environmental rights are a part of the existing human rights. Boyle summarizes that from now on there is a “shift from environmental law to the [human] right to a healthy and decent environment”. In his words, the Ksentini Report “greened” existing Human Rights, meaning that existing human rights may already contain environmental rights. Thus, it is necessary to take a closer look at human rights treaties in order to examine whether humans can claim a right to a clean environment from its norms.

1. **International Human Rights Law Includes Right to Clean Environment**

The existing global and regional human rights treaties already contain environmental rights. Right to clean environment is a group right now it is not restricted to single citizen or person. Anderson suggests that environmental rights should be deduced from other existing human rights, because human rights already have a strong institutional structure and could lead to an effective right to a clean environment. Keeping in mind, that the Ksentini Report focused on the “interdependent, complement and indivisible”[12] relation between human rights and environmental rights, some specific human rights will now be reflected. Only two regional human right treaties contain an identifiable right to environment, namely the Art. 24 ACHPR and Art. 11 of the San Salvador Protocol to the ACHR. Art. 24 ACHPR will be taken as example. The ACHPR is the first international human rights instrument to adopt a right to environment. Art. 24 ACHPR is a so-called “third generation human right”. [13] Art. 24 ACHPR entitles a right to environment, which should be ‘general’, ‘satisfactory’ and ‘favorable to development.

Although the right to environment for the African People is explicitly expressed in this article, it cannot be seen as an effective right to environment. The status of third generation rights is not definite yet. Merrills argues that Art. 24 ACHPR does not have the status of a human right due to its indeterminate character and context.[14] One can see, Art. 24 ACHPR is very indefinite. The ACHPR is generally criticized of being very vague.[15] Hence, assuming that Art. 24 ACHPR has human right status is farfetched.

Although first and second generation human rights do not express explicitly a right to environment, they have a stronger institutional basis. Thus, it is useful to have a look at some of these rights, because, they could serve as legal basis for a right to environment, when teleological interpreted in the environmental context.

Civil and political rights, also called first generation human rights, are “individual rights entailing freedom from arbitrary government interference or as guaranteeing participatory rights in civil society”. They protect individuals from unlawful action of the government. Exemplary, the right to life and the right to a fair trial, both with fundamental rights character, will be briefly discussed.[16] The main question in this context is whether the right to life imposes positive obligations on the state. Does the state have to provide adequate living conditions like better drinking water and air pollution controls, so that this fundamental human right is not negatively affected? The United Nations Human Rights Committee answers this question affirmatively. Churchill concludes that the right to life is theoretically applicable in terms of the environment, even though no successful case in the international courts has yet occurred.

Furthermore people have the right to a fair trial, in case the state acted harmful to the environment. But they have to prove that their own rights were affected. This is insofar important, because virtually every
action of a state, which is detrimental for the environment and affects any of the peoples’ rights as side-effect, can be addressed in front of national courts (and in some cases in front of international human rights courts, like the European Court of Human Rights in Strasbourg). It widens the possibility for legal proceedings in environmental related questions.

Now, some examples for environmental rights derived from economic, social and cultural human rights, also called second generation human rights, will be given. Second generation rights are “concerned with encouraging governments to pursue politics which create conditions of life enabling individuals, or in some cases groups, to develop equally to their full potential”. They impose standards on governments how to act. The most interesting rights in this context are probably the right to a healthy environment and the right to decent living conditions. Its dimensions have specifically been emphasized by the UNGA, “recognizing that all individuals are entitled to live in an environment adequate for their health and well-being”.

If the rights to health and decent living conditions were fully implemented, the problems of pollution and environmental degradation would have been solved. But the right for health is very weak, because the state is only required to do the feasible with its available resources. Same is relevant for the right to decent living conditions. Although the state could be responsible for improving environmental hygiene in preventing industrial pollution, other human rights, like the right to development, will weaken this right, as shown above.

1. C. Appraisal

Thus so far, it has been shown that environmental law itself is quite weak and does not provide a human right to development. The Stockholm Declaration and the Rio Declaration are solely soft law documents and thus legally not binding. The Draft Principles of the Ksentini Report have not entered into force yet, regardless of the fact that their status would not be sufficient to grant a reliable human right to environment.

More appropriate is the approach to find environmental rights in existing human rights treaties. Human rights law provides some legal bases, which could be reinterpreted in favor of the environment. The best way to examine whether this has taken place is to study legal opinions, especially court verdicts. However, court verdicts in the international institutions dealing with environmental issues are rather rare. But “arguments for the protection of the environment as a substantive human right are almost certainly better addressed not in global terms, but in the context of particular societies and of their own legal systems”, because most of the human rights cases take place in domestic jurisdictions. Hence, it should be examined at the example of the Indian legal system whether it is possible to reinterpret human rights in favor of the environment at the domestic level.

III. Environmental Justice in India

Environmental rights in India do not really exist in written form. They were rather created from lawyers and activists from other available resources. At first, the general provisions of the Constitution of India (COI) should be introduced before examining how the Indian Courts have decided on environmental related grievances. The following analysis will be limited on constitutional rights.

1. Constitutional Right to Clean Environment

Human Rights in India are guaranteed as fundamental rights under Part III (Art. 12-35) of the Constitution of India (COI). Since India has become a member of the ICCPR and ICESCR on 27 March 1979, human rights should be in accordance with international human rights law.[17]

Interesting to note is that whereas the rights guaranteed through the ICCPR are in Part III of the COI, the rights of the ICESCR are not in Part III. They are rather included in Part IV of the COI (Art. 36-51: Directive Principles of State Policy), and hence legally not directly enforceable for individuals and groups,[18] which takes them the immediate status of fundamental rights.
The Indian Supreme Court decided in 1980 that Part III and Part IV of the COI were complementing. Whereas Part IV imposes obligations on the state, Part III is the control mechanism.[19] Therefore, citizens can theoretically demand the state to fulfill its duties, as if it were their fundamental rights.[20] In Koolwal v. Rajasthan[21], the Rajasthan High Court even decided in favor of environmental rights, although no injuries to the population were alleged in the particular case. This shows how serious Indian courts take environmental issues.

The dimension of this interpretation of the COI for environmental rights can be understood with the following interpretation. Art. 48A COI says: “The State shall Endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.” Here, the duty to protect and improve the environment is imposed on the state. Additionally, Article 51A (g)[22] of Constitution of India says: “It shall be the duty of every citizens of India – [...] g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures”

How can citizens claim environmental rights? Other than many states, the right to fair and legal procedures belongs to the fundamental rights section in India. The right to a remedy as granted by Art. 32 of Constitution of India, gives “individuals the right ‘to move to the Supreme Court by appropriate proceedings’ for the enforcement of fundamental rights”. A similar right on the state level to approach the High Courts exists under Art. 226 of Constitution of India. Art. 226 are even wider than Art. 32, because Art. 226 “may be invoked not only for the enforcement of a fundamental right but for ‘any other purpose’ as well”[23]. Hence, individuals can enforce in the High Courts that the State adheres to Part IV of the Constitution of India.

The High Court’s involves hardly any costs, because public (or social) interest litigation has become a common feature in India. Under public interest litigation, the Courts facilitated the enforcement of environmental rights. Not only can letters and telegrams from individuals or interest groups be transferred into writ petitions, the court also acted on own initiative. To say it more clearly, the court inaugurated cases in the name of its citizens, particularly because on the one hand the awareness of environmental rights is not necessarily given, and on the other hand it is impossible for many people in India to address courts and enforce rights.

This short excurse in Indian Constitutional Law was particularly important, because it provided evidence that environmental rights can be enforced under its provisions. The unique procedural remedies[24] enable to address environmental issues as human rights abuses under the High Courts and the Supreme Court.

The question now is how Indian courts have decided on cases relating to substantial environmental rights. Some cases, dealing with the right to life (Art. 21) in terms of a clean environment, will be discussed.

1. The Practice of Indian Courts

In India, the jurisdiction of the Supreme Court widened the scope of the right to life in Art. 21 and included the right to a wholesome environment. One of the most explicit and most important case in this regard is Subhash Kumar v. State of Bihar[25]. The Supreme Court ruled that “Article 32 is designed for the enforcement of Fundamental Rights of a citizen by the Apex Court”, and the “Right to live is a Fundamental Right under Art. 21 of the Constitution and it include the right of enjoyment of pollution free water and air for full enjoyment of life”. The court even went that far in saying that a petition for Art. 21 in connection with Article 32 can be invoked by “social workers or journalists”. In other words, any third person, doubtful that the environmental conditions at some place are sufficient to live a life in dignity, can call upon the courts.

This decision of the Supreme Court is revolutionary, because it set a precedent. In case there is an allegation that natural resources are polluted, the High Court or Supreme Court can be induced to investigate and eventually issue a writ petition. The authorities and private persons will have to act in compliance with minimum environmental standards.[26] Interesting to note is that the Supreme Court uses international “soft law”, earlier discussed in order to emphasize its decision.[27] Hence, international environmental law, albeit
vague, has an influence on the interpretation of rights through Indian Courts. The Supreme Court has decided similarly in other cases related to the right to life.[28]

Art. 21 have proven to be a substantial legal basis to claim environmental rights, and its application was widened by the Indian jurisprudence during the years. For instance, the Kerala High Court decided to include the right to potable water under Art. 21.[29] Thus, some Indian judges are aware that something like a right to environment exists, albeit not explicitly, and have uniquely acknowledged this through court verdicts. Anderson summarizes that “probably more than any other jurisdiction on Earth, the Republic of India has fostered an extensive and innovative jurisprudence on environmental rights”.

**Conclusion**

International environmental law does not really offer a basis for a human right to environment. The declarations and resolutions, either not in force or with soft law status, are not substantial in its nature. Thus, for logical reasons, it was rather reasonable to turn to international human rights law in order to find out whether its norms cover environmental questions. It was shown that international human rights laws could be theoretically reinterpreted in favor for a human right to environment. Since human rights abuse cases rather take place in national courts, it was supposed to demonstrate with the example of Indian courts, one of the extreme cases, that the theoretical protection of a right to environment with the anthropocentric human right approach is possible in practice. However India is the first country that legislated law for the protection of environment.

Indian courts have repeatedly recognized a human right to environment. Especially the own activism of judges has to be acknowledged. In India, the jurisdiction of the Supreme Court widened the scope of the right to life in Art. 21 and included the right to a wholesome environment. A possible right to environment, together with public interest litigation, cannot prevent that many people are heavily affected through environmental degradation without any possible remedy. The Indian courts can never handle all the existing environmental delinquencies. The reality is rather sobering.

Further, as discussed in the general part, the right to development can limit the right to environment. This is also happening in India. The right to development limits the application of the right to environment. Although there is “no judicially recognized right to development” so far, some decisions of Indian courts imply a balancing between these two aspects. Indian Court is always trying to give importance to the concept of sustainable development.

Nevertheless, the Indian example on the one hand proves that a right to environment fits in human right norms, and on the other hand gives hope that other jurisprudences acknowledge it in the same extent. In that case, pressure could be exerted on the legislative powers to create an explicit right to environment. Policies, which see environment and development not contradictory but rather as complementary forces for sustainable development could be enhanced and thus improve both the environmental condition and the economic situation of the people.

[5] Ibid.
[12] ibid, p. 3
In global human rights treaties, Art.6(1) ICCPR and Art. 14(1) ICCPR are the legal bases, respectively.


AIR 1988 Raj 2, 3, para 2. The High Court of Rajasthan decided that “Art. 51A gives a right to the citizen to move the Court for the enforcement of the duty cast on State instrumentalities, agencies, departments, local bodies and statutory authorities […]”. See also Anderson (1996b), p. 217, who takes special reference to this case.

Art. 51(A) is the only article belonging to Part IV (A) of the COI (“Fundamental Duties” [of every citizen]).


M.C. Mehta v. Union of India (1987) 4 SCC 463, 478, para 14, (also known as the “Shiram Gas Leak Case”), the Supreme Court pointed out that there has to be a minimum environmental standard for industries (in this case an annery). Yet, there is no definition of “minimal environmental standard”, which leads to the assumption that environmental standards in India are rather low, as the reality suggests. This case is a good example for suing the state for not having acted against private polluters.

Virender Gaur v. State of Haryana, 1992 (2) SCC 577, 581, para. 7: “Environmental, ecological, air, water, pollution etc. should be regarded as amounting to violation of Article 21 […] it would be impossible to live with human dignity without a humane and healthy environment”. T. Damodar Rao v. The Special Officer, Municipal Cooperation of Hyderabad, AIR 1987 AP 171, 181, para 24: “The slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation should also be regarded as amounting violation of Art. 21 of the Constitution”.

Attakoya Thangal v. Union of India 1990 (1) KLT 580, 583, para. 7.
Role of National Human Rights Commission in Rescue & Rehabilitation of Trafficked Victims: Addressing the Vulnerabilities

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The paper aims to appreciate the role of National Human Rights Commission in rescue and rehabilitation of trafficked victims in India. Human trafficking is a major cause and consequence of human rights violation across the world. It is essential to take measures to prevent and end trafficking in human for the protection of human rights. The majority presumes trafficking to be prostitution (not even forced prostitution) and fails to comprehend domestic servitude, sex labouring, agricultural labour, forced labour through debt bondage, kidnapping for training into begging, and other forms of forced exploitation as trafficking. There are mainly four stages in Human Trafficking: recruitment, in which traffickers entice vulnerable people; finding transportation and weak entry points; prearranging deals with legal or illegal businesses; and exploitation. Hence, the crime is committed at the source point, several transit points, terminating at the destination, involving several offenders like recruiters, transporters, traffickers, harbours, exploiters, and conspirators. This paper aims to appreciate the role of awareness, observance and enforcement, over the law which gives it effectiveness. Laws are merely pieces of paper unless applied. In India, we are more concerned for that piece of paper and less bothered about its enforcement. Had law in itself be a cause of crime eradication than Indian Penal Code, which is in force for more than 150 years now should have stopped the occurrence of crime long back. Instead, more than 2.5 million crimes are registered under the IPC every year in the country and the figure is increasing relentlessly. The effective role of National Human Rights Commission with other government agencies like Ministry of Women and Child Development, Ministry of Home Affairs, and National Commission for Women have to work in one vision and draw up an Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women.

Introduction

Human trafficking is the highest organized crime of world next to drugs & weapon trade. The world have recognised its grave concern and time and again affirm the actions against modern slavery. United Nations has for the first time by Universal Declaration of Human Rights, 1948 laid as the basic human rights guideline in the world which recognised in its preamble the inherent right of dignity and equality in all sense. The Protocol to Prevent, Supress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (Trafficking Protocol) that was adopted in the year 2000 and came into force in December 2003, The Government of India signed the Trafficking Protocol on 12 December 2002. This is a huge step forward in advancing the human rights of trafficked people as it not only prevents and protects the victims of trafficking but also punishes the traffickers. It encompasses the 1949 Convention for the Suppression of the Traffic of Persons and of the Exploitation of the Prostitution of Others, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC), all of which have been ratified by the Government of India. It would be pertinent to mention here that the Government of India has also ratified the two Optional Protocols to the Convention on the Rights of the Child – (i) on the Involvement of Children in Armed Conflicts and (ii) on the Sale of Children, Child Prostitution and Child Pornography. The Convention on Preventing and Combating Trafficking in Women and Children for Prostitution devised by the South Asian Association for Regional Cooperation (SAARC) in 2002, has also defined the term ‘trafficking’ as ‘the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking’. The Government of India
has also ratified this Convention. The Constitution of India, Other fundamental rights enshrined in the Constitution relevant to trafficking are Article 14 relating to equality before law, Article 15 that deals with prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, Article 21 pertaining to protection of life and personal liberty and Article 22 concerning protection from arrest and detention except under certain conditions. The fundamental law of the land, forbids trafficking in persons. Article 23 of the Constitution specifically prohibits “traffic in human beings and beggar and other similar forms of forced labour”. Article 24 further prohibits employment of children below 14 years of age in factories, mines or other hazardous employment.

In view of the existing trafficking scenario and at the request of the UN High Commissioner for Human Rights as well as on the recommendations of the Asia Pacific Forum of National Human Rights Institutions, the National Human Rights Commission nominated one of its Members to serve as a Focal Point on Human Rights of Women, including Trafficking in 2001. Giving adequate publicity, through print and electronic media including ‘child lines’ and women ‘helplines’ across the country about the problem of trafficking and its ramifications. Further NHRC also suggested certain steps to be taken in rescue of trafficking victims especially child victims. During the rescue operations, the Central and State Governments/Union Territory Administrations should consider:

- Taking effective measures for planning and devising a rescue strategy specifying victim friendly provisions and structures for trafficked victims who have been forced into brothel based and street-based prostitution.
- Creating a specialized cell for rescuing them at Centre/State/Block/District/Village level. This kind of paraphernalia would also facilitate in coordinating with other relevant departments and non-governmental organizations (intra and inter) for rescuing trafficked victims caught in brothel-based and street-based prostitution including children who have been trapped.
- Creating a confidential database on traffickers including probable traffickers, brothel owners, madams, gharwalis, etc. at all levels.
- Cultivating a network of informants who will provide specific information about trafficked women victims including child victims below 18 years who want to be rescued from brothels.
- Ensuring that rescue team should consist of both men and women police officers and representatives of non-governmental organizations/local inhabitants. Each member of the rescue team should be told about his/her role in the rescue operation and how the same is to be executed. They should also be told to maintain confidentiality and secrecy of the entire rescue operation.
- Taking due care by all concerned to ensure that trafficked women, particularly children, are not unnecessarily harassed or intimidated during the course of rescue operations. Adoption of humane and rights-based approach would go a long way in building the faith of the victims in the criminal justice system. This would also facilitate the overall rehabilitation, reintegration of the victims.
- Ensuring, in partnership with non-governmental organizations, that trafficked victims, including children, are provided access to legal, medical and counselling services. It should also be ensured that they are treated with dignity and not humiliated by the police, medical personnel or the court.
- Ensuring that any victim, including a child, who is rescued, is examined by a Registered Medical Practitioner for the purpose of age and for the detection of injuries/diseases. Trafficked victims should not be subjected to mandatory testing for diseases, including HIV/AIDS.
- Ensuring that, in cases where the victim rescued is not a child, she should not be prima facie treated as a criminal accused of soliciting clients. Steps should be taken to ensure that correct provisions of law are applied and that the FIR is not stereotyped.
- All efforts should be made to ensure anonymity and privacy of the victims during and after rescue.[1]
The NHRC has given the following directions to the State and Central Governments in rehabilitation and reintegration of trafficking victims with a special emphasis to the child victims. According to NHRC, the rehabilitation, reintegration and repatriation of victims of trafficking being a long process must be planned, taking into account the specific short and long-term needs of individual victims. Efforts must be non-punitive and aimed at protecting the rights of the victims. All stakeholders should therefore consider:

- Taking into account the specific short and long-term needs of each individual victim based on their age, education, skills, etc., the rehabilitation, reintegration and repatriation package for victims of trafficking should be worked out.
- Keeping in view the paucity of government run institutions as well as the deteriorating conditions of these institutions, there is need to identify names of fit persons and fit institutions for providing safe custody to victims of trafficking. This list should be made available to the police, courts, non-governmental organizations and civil society at large for information.
- Providing access to legal, medical and counselling services to all trafficked victims in order to restore their self-confidence and self-esteem. Special provision should be provided to those who have contracted HIV/AIDS.
- Enabling victims of trafficking to access both formal and non-formal education structures. Formal education should be made available to those victims who are still within the school going age, while non-formal education should be made accessible to adults.
- Providing gender sensitive market driven vocational training in partnership with nongovernmental organizations to all rescued victims who are not interested in education. Government and non-governmental organizations should also work together to develop partnership with public and private sector employers in order to provide training/facilitate work placement as part of the reintegration process. Due care should be taken to give ample choice to victims so that rehabilitation and reintegration becomes a holistic process, which respects their human rights.
- Involving the community in the rehabilitation, reintegration and repatriation process of trafficked victims. This means involving the families of victims and the community by enhancing their awareness about trafficking in general and the impact of trafficking on the individual.
- Monitoring the rehabilitation, reintegration and repatriation of rescued victims with the help of non-governmental organizations.
- Making available to rescued victims various developmental and anti-poverty schemes meant for the general population, both in the rehabilitation and reintegration phase.
- Upgrading the conditions and capacities of institutions/homes run by the Government and an increase in the number of such institutions/homes not only in the cities, but also at the district and taluka levels, are of utmost necessity.
- Recruiting adequate number of trained counsellors and social workers in institutions/homes run by the government independently or in collaboration with non-governmental organizations.
- Appointing trained social workers and counsellors at police stations, courts and homes/institutions of different kinds meant for accommodating victims of trafficking.
- Anti-trafficking cells/units should be set up at the Centre, State, Block District and Village levels to facilitate and monitor the process of rescue, rehabilitation, reintegration and repatriation.[2]

**Guidelines for Pre-Rescue, Rescue and Post-Rescue Operations**

The *Ministry of Women and Child Development* and the *National Human Rights Commission* has prepared a protocol and guidelines[3] to be followed by both police and civil society at the time of conducting rescue operations.

1. **Guidelines for State Governments**
- Develop an Anti-Trafficking Policy specifying victim’s friendly provisions and structures.
- Create an Anti-Trafficking Cell at the State and District level to co-ordinate with other relevant Departments and NGOs on the issues pertaining to trafficking, especially on the rescue and rehabilitation of child victims of trafficking for commercial sexual exploitation.
- Create a Database on traffickers, brothel owners, informants, decoy customers, number of cases registered, status of each case, source and destination areas in the State/District and any other relevant information. The information in the Database should be kept confidential and should be parted only to genuine information seekers.
- Form Community Vigilant Groups (CVGs) at the Community Level. The CVGs can help in rescue and rehabilitation of victims at the community level.
- Assign sufficient number of police personnel especially women Police personnel for the rescue operations.
- Prominently display signboards in hotels, tourist places, restaurants, beaches, airports, bus stands, and railway stations and other susceptible places, warning people against trafficking and use of children for commercial sexual exploitation. In case, any child is seen under suspicious circumstances in these places, the informant should inform the Police/child line (1098) / NGO immediately.
- Repatriate the victim from the Destination State to the Home State. The State would be responsible for transportation and the State Government would meet all expenses towards travel for the victim and escort, food and incidental. The State Government should provide and separate budget for repatriation of the victims.
- Give adequate publicity, through both print and electronic media, on child-lines and women help-lines over a sustained period of time.
- Declare names of fit people and fit institutions, where victims of trafficking can be kept in safe custody. The list should be circulated to all Police Head Quarters, Police Stations at State and District Levels, Courts and NGOs.
- Declare fit institutions where mentally challenged or ill child victims and women can be kept in safe custody and proper medical treatment can be provided.
- Issue directives that all Court proceedings related to child victims of trafficking are carried out in-camera.
- Assign trained Child Welfare Officers in every Police Station.
- Every Police Station should have separate clean and hygienic toilet (s) for women.

1. **For Rescue Team Members**
2. **For Rescue of Trafficked Child Victims**
   - Cultivate networks of informants who will provide specific information about trafficked under-aged child victims (below 18 years) or woman willing to be rescued from brothels. Specific information may be in the form of letters, emails, photographs, personality traits, identification marks and scars, addresses, physical presence of relatives and people known to child victim, computer graphics generated by the description and mannerisms (e.g. accent, distinctive body language like frequent rubbing of fingers, blinking of eyes or any other). It is desirable, that a small remuneration is paid to the informant, which sustains their motivation.
   - Identify the child victim by the use of decoy customers and authenticate the available information. The decoy customer should try to motivate the child to talk on a one-to-one basis and to facilitate further rescue operations.
   - Involve NGOs and Social Workers in Rescue operations carried out by the Police or the Community.
   - Prepare a strategic plan for rescue operation with minimum loss of time. The plan should include:
Compilation of all available valid information. For example, physical layout of the brothels and hideouts, specific characteristics of the location, etc. Seek help of key informants people such as petty-shop owners, sweepers, part-time maids, milkmen or any other persons who may provide their service to the brothels/hide-outs, local contractors and builders who would know the layout of the brothels/hide-outs.

Rescue team, preferably trained, should consists of the designated Special Police Officer as defined under Section 13 of Immoral Traffic Prevention Act, 1956, Assistant Commissioner of Police and/or District Commissioner of Police, police personnel including women, NGO representative and social worker. The number of rescue team members should be constituted depending on the size (number of brothels/victims) of the rescue operation.

Maintain confidentiality and secrecy of the rescue operation, all members of the rescue operation should gather at a commonplace or location at least 2 hours before the actual rescue operation.

To prevent leakage of information, prior to the actual rescue operation, mobile phones and any other mode(s) of communication belonging to the rescue operation team members should be taken in custody by the rescue team leader.

The strategy that would be adopted for the rescue operations and its various steps should be explained at this time. To each team member, explain his/her role in the rescue operation and clear any doubts that she/he may have.

Preparing key players: Formation of teams would depend upon the situation and targeted number of brothels to be covered and expected number of minors to be recovered.

Under no circumstances should the decoy customer(s) be exposed before, during and after the rescue operations.

Under no circumstances should the rescue operation be revealed to any person(s) other than those directly involved”. If by any chance, the media does happen to get word of it, they should not be allowed to cover the rescue operation.

Check /verify vacancies available in Government and other certified Homes, so that the rescued victims can be taken to the appropriate Homes for safe custody. This should be done in total confidentiality, so that any information on the rescue operation is not leaked.

Before conducting rescue operations, all police formalities should be completed.

During the rescue operations, the rescue team members should not physically touch the girls, women, or their belongings. Only female members of the rescue team should deal with the victims.

During the rescue operations, no rescue team members should use abusive language towards the girls and women.

1. Rescue Operation at a Community Level

The community should be sensitized about trafficking, the harm resulting out of this exploitative situation and what to do in case they have knowledge of such an incident. Community members should be motivated to keep a watch in the community for irregular movement of child victims to and from the area, their possible traffickers and hideouts.

The Community members should immediately provide information on suspicious people or to the nearest NGO working on rescue of trafficked victims. In absence of an NGO, the nearest police station may be informed.

Involve community group in rehabilitation of the victim, if he/she is from the same community.

iii. Strategy for Rescue Operations

Planned rescue operations should be carried out on brothel communities.
• Place the rescue team members in strategic location as pre-planned for the rescue operation, before entering the brothel/community.
• Immediately go to the place/area where the child is being kept/confined.
• Remove the Child from the brothel/community as quickly as possible. He/She should collect all his/her belongings. In case, she has a child or children of her own, make sure that she is not separated from them.
• Treat the child victim with sympathy and not as a criminal.
• Remove any mentally-challenged or ill child victim or woman in the brothel, irrespective of their age.
• Be aware of your body language and do not make any unnecessary contact, unwelcome gesture, use physical force, cause physical harm, use vulgar or inappropriate language to any inmates of the brothel.
• Seize/collection all records showing expenses/income/payment/financial transactions and any other important document from the brothel owners, as they would form important piece of material evidence in the Court.
• Identification of the victims should be kept confidential, her name, address, photograph or any other information should not be published in any newspaper, magazine, news-sheet or visual media. This is mandatory as per Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000.
• Identity and location of decoy customer should be kept confidential.
• The rescue team members should be accountable to the rescue team leader and any violation of the rights of the victim should be dealt in appropriate manner.

1. **Strategy for Post-Rescue Operations**
• Separate the victims by sight and sound from the accused. While taking the child victim to the Police Station, the child and brothel owners/traffickers should be taken in a separate vehicle. If this is not possible, they should be kept separate from each other. This is to prevent the accused from threatening or intimidating the child.
• Do not keep the child in the lock-up under any circumstances. The victim should be immediately taken to a certified place of safety after the raid. The victim is not an accused person and should not receive the same treatment as the accused. Keep her separately from the brothel owners/traffickers.
• Document the rescue operation in the diary, in presence of two independent reliable witnesses and get it signed by them for authentication.
• The First Information Report (FIR) should be immediately registered by the victims or NGO in the Police Station and it should contains details of location of crime, description of offence, victim and accused, chronology of crime right from the time the child was trafficked. The FIR should be as detailed as possible. The child should receive a copy of the FIR and it should be kept in safe custody of the NGO/Protective/children Home, where the child is kept.
• Invoke all relevant Sections of Indian Penal Code, 1860 and Immoral Traffic Prevention Act, 1956 and Juvenile Justice (Care and Protection of Children) Act, 2000 against the trafficker and brothel owners.
• Hand over the Child to a representative from the Protective/Children Home run by either the Government or NGO. The child should be counselled about her stay in protective custody and that she has been kept there for her safety and wellbeing.
• It is important to ensure that: 1) only plain-clothes police accompany the child to the Protective/Children Home; 2) the functionaries of the Protective/Children Home should ensure that the child does not come in contact with its traffickers, pimps, brothel owners or any such persons, who may have bad influence on him/her; 3) the medical examination, including age verification test is carried out properly and scientifically. The age verification test is mandatory as per Section 15 b (5A)
of Immoral Traffic Prevention Act, 1956 and Section 49 of Juvenile Justice (Care and Protection of Children) Act, 2000; 4) the child victim is produced before the Child Welfare Committee within 24 hours of taking him/her into custody. In case, the Child Welfare Committee is not available, then he/she should be produced before concerned Magistrate for relief; 5) the child has immediate access to standardized counselling, health care and legal aid. On behalf of the victim, the Personnel from the NGO, including Social Worker or Protective/Children Home should sign the vakalatnama (or the consent for a lawyer’s representation); 6) a social worker accompanies the child whenever he/she leaves the place of safety; 7) a counsellor is present whenever and child is giving testimony in the Court; 8) the concerned Magistrate or the members of the competent authority as the case may be, visits the rescue home once in every fifteen days to conduct legal proceedings; 9) the child is prepared by explaining to him/her about court proceedings, so that he/she is aware of the procedures and is mentally well prepared. After every hearing of the case, the child should be informed about the court order, if any, so that he/she is kept fully updated on his/her case; and 10) it is recommended that trafficking cases be fast tracked under Speedy Trial to reduce the trauma and suffering of the child.

1. **Strategy for Rehabilitation (for functionaries in the Protective/Children Home)**

- Ensure that the child is informally welcomed and is introduced to other residents and shown around. She should be shown to her room and her locker where she can keep her personnel belongings. It is advisable that for the first few days, she should be given space for privacy and if possible kept separately from the others or with those who have been rescued like her.
- Provide a welcome kit that includes a change of clothes, towel, undergarments, chappals/slippers and toiletries (soap, oil, hair brush/comb, tooth brush, paste, powder, rubber band, shampoo, sanitary napkins etc.), to the child on arrival.
- Explain to him/her the rules and regulation of the Protective/Children Homes and their objectives, once he/she settles down. This will make him/her feel comfortable and secure in his/her new environment. Also, explain to the child his/her responsibilities and duties during his/her stay in the Home.
- A registered medical doctor should examine the child for any ailments, allergies, skin rashes and psychological disorders or problems. Routine blood, urine, lung X-rays and stool tests should be carried out. In case, the child is suffering from any ailment, she should be given appropriate medication as prescribed by the doctor and there should be continuous follow-up on her condition.
- Talk to the child and find out whether he/she is interested in continuing with her education and accordingly, admit him/her to a regular school or make arrangements for non-formal education or tutoring so that she can catch up with his/her studies. In any case, the child should be given some basic education which will help his/her to be independent when he/she leaves the Home.
- Provide the child with vocational training, including marketing strategies that are marketable, sustainable and practical. (Please check that providing a child with vocational training and marketing strategies is not contravening any child rights or child labour laws).
- Prepare the Child for his/her repatriation/integration with his/her family. No rescued child should be sent back to his/her family without ensuring social acceptance, family support, to prevent re-trafficking and further exploitation. an adequate law enforcement response to trafficking is dependent on the cooperation and support of trafficked victims and other witnesses. In many cases, individuals are reluctant or unable to report traffickers or to serve as witnesses because of the fear that they would not only be harassed but also ill-treated.
Conclusion & Suggestions

In my opinion human trafficking is worst problem in India which is not focused by government concerned in their respective domain. It is unbelievable but true that neither law enforcement agencies nor legislature is seriously concerned about it. I would conclude my paper with the hope & suggestions that this is a black spot on our society which have to be properly tackled with greater responsibilities. My suggestions are in order that the trafficked victims and other witnesses shed their fears, the Government should consider:

1. Guaranteeing protection for witnesses and support to victims in law.
2. Making appropriate efforts to protect individual trafficked victims and other witnesses (including their families) during the investigation and trial process and any subsequent period when their safety so requires.
3. Appropriate protection programmes may include some or all of the following elements:
   • access to independent legal counsel;
   • protection of identity during legal proceedings;
   • in camera trials.
4. Deepening knowledge and understanding through sensitization and training programmes for judicial officers, law enforcement personnel (police, immigration, border control, customs officials, medical professionals/personnel and labour inspectors) and other concerned government officials on the issue of ‘trafficking’ as well as ‘gender and human rights’. These training and sensitization programmes could be organized in conjunction with the Ministries of Home Affairs, Women and Child Development, Labour, the National Human Rights Commission and the National Commission for Women.

Situation of Women in India: A Critical Analysis

By Rekha Thakur
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Human rights are essential for all-round development of the individuals in the society. It should be necessarily protected and made available to all the individuals. There are many constitutional rights guaranteed for women in India but there is a big difference in theory and practical application of these rights. Since Indian society is a male dominating, hence women are facing attack on their dignity in every sphere of life such as rape, domestic violence, sexual harassment and dowry cases. This paper will focus on the situation of women in India and analyse violence against women with the help of two different reports as United nations: mission to India and National Crime Records Bureau respectively.

In order to know the position of women in India, it will be important to discuss, what are the constitutional provisions available to women such as Article 15 of Indian Constitution states that State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them.

It is necessary to discuss fundamental rights and analyse how can we control the hegemony of males and achieve the goal of equality and how the successful implementation of women rights can help to extirpate the crime against females help to improve the situation of women in Indian society.

INTRODUCTION

In the modern world, although, women are participating in every sphere of life such as adopting different professions such as becoming doctor, engineer, player and customer agent yet the issues concerning women are not given priority especially in Indian society. Indian women are granted with constitutional rights but they get violation because of their gender. Hence violence against women is one of the reason for the inequality among men and women. If we take careful consideration of our constitutional provisions such as Article 14 and Article 15 that has been discussed later, it seems that there is a big difference in reality of practice of these provisions. The women in India have always been considered subordinate to men. Although the provisions mentioned in the Indian constitution ensures equality and non-discrimination on the grounds of sex, women is always discriminated and dishonoured at home and at workplaces. Apart from this, various legal and fundamental rights have been provided to improve the status of women in India, still the violence against women in India are increasing very fast. This will be very much clear later in this article. This paper discusses the different reports as mentioned below and fundamental rights enshrined in the constitution and situation of women in India followed by the suggestions and conclusion. Before discussing reports its becomes necessary to discuss constitution provisions accessible in India.

WOMEN RELATED CONSTITUTIONAL PROVISIONS IN INDIA

1. Fundamental Rights:

The fundamental rights which are natural and human rights of a human being are mentioned in the Indian constitution for women are listed below:

Article 14: Equality before law

Article 14 guarantees to every person the right to equality before the law or the equal protection of the laws within the territory of India. The first expression ‘equality before law’ which is taken from the English Common Law, is a declaration of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual. The second expression, ‘the equal protection of the laws’ is the
essence and core of the right to equality under which the State is obliged to take necessary steps so that every individual, man and woman should be treated equally[1].

**Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth**

**Article 15(1)** prohibits the state from discrimination against any citizen on the grounds of religion, race, caste, sex or place of birth. In other words, all laws are to be applied to members of both sexes equally, and there is an express prohibition of discrimination on the ground of sex. A law which deprived female properties to hold and enjoy her property on the ground of her sex was held violative of Article 15[2].

**Article 15(2)** provides that no citizen shall, on the ground only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction with regards to (a) access to shops, public restaurants, hotels and places of public entertainment, or (b) the use of wells, tanks, bathing ghats, roads, and places of pubic resort, maintained wholly or partly out of State funds or decided to the use of the general public[3].

**Article 15(3)** empowers the State to make special provisions for women and children only. The main object of Article 15 (3) is based on ‘protective discrimination’ keeping in view the weak physical position of women[4]. It has been held by Bombay High court in the case of Dattatraya v. State of Bombay[5], that the State can establish educational institution for women only.

**Article 16: Equality of opportunity in matters of public employment**

**Article 16 (1) and (2)** express the general rule that the State shall provide equal opportunities for all citizens in matters relating to employment or appointment to any office under the State. There shall be no discrimination on the grounds of religion, race, sex, caste or place of birth in providing employment. These provisions are an extension of the principle of equality bef before law and of the goal of ‘equality of status and opportunity’ as mentioned in the Preamble of the Constitution[6].

**Article 19 (1)(g) – Freedom of Trade and Occupation.**

Article 19(1)(g) of the Constitution guarantees that all citizens have the right to practice any profession or to carry on any occupation on trade or business[7].

**Article 23(1) – Prohibition of traffic in human beings and forced labour.**

Article 23(1) of the Constitution of India prohibits traffic in human beings and beggar and other similar forms of forced labour. “Traffic in human beings” means selling and buying human beings as slaves and also includes immoral traffic in women and children for immoral or other purposes. To control the deep rooted social evil of prostitution and to give effect of this article, the Parliament has passed “The Immoral Traffic (Prevention) Act”, 1956[8].

2. **Directive Principles of State Policy**

**Article 39 : Certain principles of policy to be followed by the State.**

**Article 39(a):** That the citizens, men and women equally, have the right to an adequate means of livelihood[9].

**Article 39(d):** That there is equal pay for equal work for both men and women[10].

**Article 39(e):** The State is required to ensure that the health and strength of women workers are not abused and that they are not forced by economic necessity to enter avocations unsuited to their strength[11].

**Article 42: Provision for just and humane conditions of work and maternity relief:** The State shall make provision for securing just and humane conditions of work and for maternity relief[12].

3. **Fundamental Duties towards woman expressed in the Constitution.**

Article 51A under Part IVA of the Constitution of India lays down certain fundamental duties upon every Citizens of India, which were added by the 42nd Amendment of the Constitution in 1976[13]. Article 51A(e),
which related to women, imposes a duty on Indian citizens “to renounce practice derogatory to the dignity of women”\(^{[14]}\).

4. **Reservation for Women.**

Part IX and IXA has been added to Constitution by 73rd and 74th Amendments. It deals with the provisions concerning the reservation of seats for women in election to the Panchayat and the Municipalities\(^{[15]}\). Reservations of Seats for women in Panchayat and Municipalities have been given in Articles 243 D and 243 T of the Constitution of India. According to Article 243 D (3), “not less than one-third, (including the number of seats reserved for women belonging to the Schedule Castes and the Schedule Tribes) of the total number of seats to be filled up by direct election in every Panchayat, shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat\(^{[16]}\), Article 243 T (3) of the constitution provides similar provisions for reservation of seats for women in direct election in every Municipality\(^{[17]}\).\(^{[18]}\)

**VIOLENCE AGAINST WOMEN : SITUATION IN INDIA**

1. **Report of the Special Rapporteur on violence against women**

This report includes the findings of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, on her visit to India from 22 April to 1 May 2013. In the report, the Special Rapporteur scrutinised violence against women in the country, including root causes and consequences, and the implications of such violence on the effective exercise of human rights by women. She also discusses the State’s responses and provides recommendations. She exposed that violence against women in India is systematic and occurs in the public and private spheres. Women are discriminated against and subordinated not only on the basis of sex, but on other grounds, such as caste, class, ability, sexual orientation, tradition and other realities. That uncovers many to a continuum of violence throughout the life cycle, commonly referred to as existing “from the womb to the tomb”. The violence against women are a reflection of the structural and institutional inequality that is a reality for most women in India\(^{[18]}\).

In this report she discussed how the Indian women face violence as following

**Violence against women in the family**: The perpetrators include husbands, in-laws and other family members such as crimes linking to dowry and honour killing

**Violence against women in the community**: According to the National Crime Records Bureau, in 2012, 2.84 cases of rape were reported every hour. Women are easy targets of attacks, including sexual violence, acid attacks and women trafficking

**Violence against women condoned or perpetrated by the State**: Women living in militarized regions, such as Jammu and Kashmir and the north-eastern states, live in a constant state of siege and surveillance, whether in their homes or in public and women in prison.

**Violence against women in the transnational sphere**: any women refugees and asylum seekers are unskilled workers who often perform hazardous labour in urban and informal settings as they are frequent targets of attacks and harassment by employers, landlords and community members in public and private spheres\(^{[19]}\).

2. **National Crime Records Bureau**

Data have been collected under the revised proformae for ‘Crime in India 2014’. The crime head-wise details of reported crimes during the year 2010 to year 2014 along with percentage variation are presented in Table 1\(^{[20]}\). The crime against women during the year 2014 has increased by 9.2% over the year 2013 and by 58.2% over the year 2010. The Indian Penal Code (IPC) component of crimes against women has accounted for 96.3% of total crimes and the remaining 3.7% were the crimes under the Special &. Local Laws (SLL) crimes against women\(^{[21]}\).

<p>| Table 1 |</p>
<table>
<thead>
<tr>
<th>Crime Head</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>% variance in 2014 over 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rape</td>
<td>22,172</td>
<td>24,206</td>
<td>24,923</td>
<td>33,707</td>
<td>36,735</td>
<td>9.0</td>
</tr>
<tr>
<td>Attempt to commit rape</td>
<td></td>
<td></td>
<td></td>
<td>4,234*</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>Kidnapping &amp; abduction of women</td>
<td>29,795</td>
<td>35,565</td>
<td>38,262</td>
<td>51,881</td>
<td>57,311</td>
<td>10.5</td>
</tr>
<tr>
<td>Dowry deaths</td>
<td>8,391</td>
<td>8,618</td>
<td>8,233</td>
<td>8,083</td>
<td>8,455</td>
<td>4.6</td>
</tr>
<tr>
<td>Assault on women with intent to outrage her/their modesty</td>
<td>40,613</td>
<td>42,968</td>
<td>45,351</td>
<td>70,739</td>
<td>82,235</td>
<td>16.3</td>
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<tr>
<td>Insult to the modesty of women</td>
<td>9,961</td>
<td>8,570</td>
<td>9,173</td>
<td>12,589</td>
<td>9,735</td>
<td>-22.7</td>
</tr>
<tr>
<td>Cruelty by husband or his relatives</td>
<td>94,041</td>
<td>99,135</td>
<td>1,06,527</td>
<td>1,18,866</td>
<td>1,22,877</td>
<td>3.4</td>
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<tr>
<td>Importation of girl from foreign countries</td>
<td>36</td>
<td>80</td>
<td>59</td>
<td>31</td>
<td>13</td>
<td>-58.1</td>
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<tr>
<td>Abetment of suicide of women</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3,734</td>
<td></td>
</tr>
<tr>
<td>Total IPC crime against women</td>
<td>2,05,009</td>
<td>2,19,142</td>
<td>2,32,528</td>
<td>2,95,896</td>
<td>3,25,329</td>
<td>9.9</td>
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<tr>
<td>Commission of Sati Prevention Act</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
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<tr>
<td>Indecent Representation of Women(P) Act</td>
<td>895</td>
<td>453</td>
<td>141</td>
<td>362</td>
<td>47</td>
<td>-87.0</td>
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<tr>
<td>The Dowry Prohibition Act</td>
<td>5,182</td>
<td>6,619</td>
<td>9,038</td>
<td>10,709</td>
<td>10,050</td>
<td>-6.2</td>
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<tr>
<td>Protection of women from domestic violence Act</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>426</td>
<td>-</td>
</tr>
<tr>
<td>Immoral Traffic(Prevention) Act#</td>
<td>2,499</td>
<td>2,436</td>
<td>2,563</td>
<td>2,579</td>
<td>2,070#</td>
<td>-</td>
</tr>
<tr>
<td>Total SLL crime against women</td>
<td>8,576</td>
<td>9,508</td>
<td>11,742</td>
<td>13,650</td>
<td>12,593</td>
<td>-7.7</td>
</tr>
<tr>
<td>Total(A+B)</td>
<td>2,13,585</td>
<td>2,28,650</td>
<td>2,44,270</td>
<td>3,09,546</td>
<td>3,37,922</td>
<td>9.2</td>
</tr>
</tbody>
</table>

The crime head-wise details of reported crimes during the year 2010 to year 2014 along with percentage variation
*Attempt to commit rape has been newly included crime head
# Immoral Traffic(Prevention)Act refer to women related crimes only.

Whereas, the proportion committed against women towards total IPC crimes has increased during last 5 years from 9.6% in the year 2010 to 11.4% during the year 2014 as shown below in Table 2[22].

<table>
<thead>
<tr>
<th>S.NO.</th>
<th>YEAR</th>
<th>TOTAL IPC CRIMES</th>
<th>IPC CRIME AGAINST WOMEN (IPC CASES)</th>
<th>PERCENTAGE TO TOTAL IPC CRIMES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2010</td>
<td>22,24,831</td>
<td>2,13,585</td>
<td>9.6</td>
</tr>
<tr>
<td>2</td>
<td>2011</td>
<td>23,25,575</td>
<td>2,19,142</td>
<td>9.4</td>
</tr>
<tr>
<td>3</td>
<td>2012</td>
<td>23,87,188</td>
<td>2,44,270</td>
<td>10.2</td>
</tr>
<tr>
<td>4</td>
<td>2013</td>
<td>26,47,722</td>
<td>12,95,896</td>
<td>11.2</td>
</tr>
<tr>
<td>5</td>
<td>2014</td>
<td>28,51,563</td>
<td>3,25,327</td>
<td>11.4</td>
</tr>
</tbody>
</table>

Finally, as shown in Table 3[23] Delhi has the highest rate of crimes against women overall. With 17,104 cases, the capital recorded a crime rate of 184.3 per 1 lakh female population. Assam is second with a rate of 148.2, with 23,258 cases. However, the high rate of crime is often a reflection of police registering cases and dealing with the crime.

<table>
<thead>
<tr>
<th>State</th>
<th>Cases</th>
<th>Per 1 lakh female population</th>
<th>%age contribution to all-India tota</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delhi</td>
<td>17,104</td>
<td>184.3</td>
<td>5.2</td>
</tr>
<tr>
<td>Assam</td>
<td>23,258</td>
<td>148.2</td>
<td>7.1</td>
</tr>
<tr>
<td>Telangana</td>
<td>15,135</td>
<td>83.1</td>
<td>4.6</td>
</tr>
<tr>
<td>Odisha</td>
<td>17,144</td>
<td>81.9</td>
<td>5.2</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>28,165</td>
<td>81.5</td>
<td>8.6</td>
</tr>
<tr>
<td>Haryana</td>
<td>9,446</td>
<td>75.7</td>
<td>2.9</td>
</tr>
<tr>
<td>West Bengal</td>
<td>33,218</td>
<td>73.4</td>
<td>10.1</td>
</tr>
<tr>
<td>Tripura</td>
<td>1,267</td>
<td>68.2</td>
<td>0.4</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>24,135</td>
<td>65.5</td>
<td>7.4</td>
</tr>
<tr>
<td>Chandigarh</td>
<td>463</td>
<td>64.8</td>
<td>0.1</td>
</tr>
</tbody>
</table>

Moreover, The conviction rate in rape cases remains far lower than that of IPC crimes in general. But it bears repeating that the NCRB is only a collection of FIRs. In court cases come for all crimes and not just for rape case, hence it can be vastly different from what an FIR said.
An analysis of district court cases has been done by the Hindu’s shows that the largest proportion of cases involved the parental criminalisation of consenting couples. It shows that total in rape cases, rape by known person to victim is involved whereas figure of the rapes by strangers is quite low. Hence it reveals that mostly crime is done by the known persons although the factor of strangers can not be denied.

CONCLUSION:

As we have discussed the various provision provided for women in Indian Constitution, at the same time analysed the report by Rashi Manjoo, and data from National Crime Records Bureau which reveals the fact that violence against women in society is increasing day by day. The most important finding is that crime against women involved the known factor which means, the victim know the person who raped her, whereas the stranger people involved in rape are very less. Apart from this, if see the programs like “crime patrol” and “Savdhaan India” which claims to be based on true stories suggest that in most cases the known factor is involved. It means that it is necessary to provide women with effective protection from violence, and to give clear message to perpetrators of violence that they will be punished according to the law for causing violence. Dominance on women in the society resulted into backwardness of women. Although, fundamental and legal framework are in existence in India but still women are fail to get respect and justice. In India, we have law in place but the strong implementation will definitely change the current situation. Quality education to children at primary stage to eradicate gender inequality and will bring change in the society. Apart from this, the boy and girl should be raised equally in the society so that there should not develop inequality in the mind of single person. All these, the united nation’s report and data both about the violence done against women raises the question that are these special rights being given to women are helping and benefiting them? The answers to these questions is far away. It is necessary to make women more aware about the various crimes and give them training how to be proactive and how to deal the situation if arises. However, The Maternity Benefit (Amendment) Act, 2017, which allows now have a maternity leave for 26 weeks for biological mothers and for mothers who have adopted a child could get a leave for 12 weeks. It is definitely a step towards the respect of women in India at workplace. Moreover, these laws should get the practical shape it should not remain in theory only in order to improve the quality of life of women.

SUGGESTIONS:

As mentioned in the report of United Nations, Rashida Manjoo, it can be suggested that government should monitor the implementation of judicial decisions on cases relating to violence against women, and ensure that victims have prompt access to effective remedies. Secondly, ensure that all allegations of violence against women are adequately investigated by the police, and that perpetrators are punished. Thirdly, to make sure that women and family members wishing to lodge complaints are free from any act of intimidation, threat or...
harassment, and that protection is provided free of cost for the victim, if necessary. Additionally, in cooperation with civil society organisations, develop monitoring and evaluation tools to assess progress in eradicating violence against women and integrate such tools in the design of relevant schemes and programmes. Moreover, there is need of more courts and judges to deal with the cases within reasonable time so that criminals could not get away. In this way, criminals will think before doing anything as strict action can be taken within time. Apart for this, in the Indian express it has been stated that in 95% cases the offender was known to victim. Total rape cases were 34,651, out of which in 33, 098 cases offender were known to the victim.

[1] INDIA CONST. art. 14
[2] INDIA CONST. art. 15(1)
[3] INDIA CONST. art. 15(2)
[4] INDIA CONST. art. 15(3)
[5] AIR 1953 Bom 311
[6] INDIA CONST. art. 16(1)(2)
[7] INDIA CONST. art. 19(1)(g)
[8] INDIA CONST. art. 23(1)
[9] INDIA CONST. art. 39(a)
[10] INDIA CONST. art. 39(d)
[12] INDIA CONST. art. 42
[13] INDIA CONST. art. 51 A
[14] INDIA CONST. art. 51A(e)
[16] INDIA CONST. art. 243 D(3)
[17] INDIA CONST. art. 243 T(3)
The Great Himalayan Game: Geo-Strategic Rivalry between India and China in Nepal

By Shabir Rehman Sheikh
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Nepal is a landlocked country, bordering with India to the east, south, and west, and the Tibet Autonomous Region (TAR) of the People’s Republic of China (PRC) to the north. Nepal holds a significant geopolitical position in the Himalayan region of the South Asia due to its geostrategic location acting as a buffer state between the two Asian giants- India and China. Nepal used to be a safe and competition-free zone between India and China. Traditionally, Nepal has been a natural ally of India due to their close geographical proximity, economic and civilizational links. Until the 1950s, China was least interested in Nepal. But, with the takeover of Tibet in 1951, Nepal shared physical boundaries with China and thus became strategically important for China. However, over the last years, South Asia has become an arena of competition between India and China; both are competing to increase their influence throughout the region, particularly in Nepal as it has a unique geo-strategical position significant to both China and India. China is rapidly extending its reach to the Himalayan state of Nepal and has tried through its long strategy to erase Nepalese dependency on India. This paper tries to examine the strategic importance of Nepal and the growing geostrategic rivalry between India and China in the Himalayan region. This paper also tries to analyze the strategic interest and stake of India and China in Nepal. This paper concludes that there is an increasing geostrategic competition and rivalry between India and China in the Himalayan region. Nepal once used to be under India’s sphere of influence has now become an arena of competition between China and India. Therefore, Nepal, which once used to be a ‘safe zone’ then ‘buffer zone’, has been now turned into a ‘competition zone’ between the two powerful players of Asia.

Introduction

India and China are the world’s largest fastest growing economies of the world. But importantly, they are also the regional powers of Asia with global power ambitions. In the twenty-first century, the incredible growth and rise of India and China are changing the international political scenario, both politically as well as economically. Some political pundits have predicted that the twenty-first century is going to be the Asian Century, with China and India as the main two main pillars. South Asia is one of the most volatile and least developed but now the fastest growing economic region in the world. It is dominated by two Asian Giants- India and China. Although India has enjoyed substantial regional influence and dominance across the South Asia due to its big size, economic might, and political power. However, over the last years, South Asia has become an arena of competition between India and China; both are competing to increase their influence throughout the region (Anderson 2015). In the recent years, China has increased its footprint in South Asia by forging particularly strong ties with the small states, like, Nepal and Sri Lanka, through economic packages, investment, infrastructure, diplomacy, and increasing cultural and people-to-people contacts. It is also connecting itself with the South Asia through a web of connectivity by constructing new roads and bridges, railways and highways and most importantly building new maritime ports and strong influential relations with the Indian Ocean littoral states. Therefore, there is an intense competition between China and India in the South Asian region, particularly in Nepal. Both India and China are competing to increase their influence in Nepal, as it has a unique geo-strategical position significant to both China and India. Both China and India need Nepal and they cannot afford to lose their grip of influence over Nepal to each other.

Nepal between India and China
Nepal is a landlocked country, bordering with India in the east, south, and west, and the Tibet Autonomous Region (TAR) of the People’s Republic of China (PRC) to the north. It shares an open border of 1,751 km with India running through 20 districts of five northeast Indian states and 1,415 km long border with China. India and Nepal are inseparable parts of a single geographical region. Both share the same civilization and have deep age-old socio-cultural and religious links. Both are well connected due to close geographical proximity and plain borders making communication smooth and possible. Under the 1950 Indo-Nepal Treaty of Peace and Friendship, India and Nepal have an open border system that allows free movement of people between the two countries without any restriction or the need for a passport or a visa. Nepali citizens enjoy several rights in India, similar to Indians, and unhindered business with rights of trade, border transit and movement of goods. Both countries have 22 agreed routes for mutual trade and 15 for land traffic. Nepal’s economy is largely dependent on India, as Nepal receives a large portion of their remittances from migrant Nepalese workers in India. On the contrary, Nepal and China have a closed border. It runs mainly through high altitude snowy mountains and glaciers, not connected well due to geographical distance and natural barriers, making people-to-people connectivity and trade difficult. Unlike India, China cannot serve as a natural transit country to Nepal due to the presence of tall and snowy Himalayas separating the two territories and also the distance between Nepal and the Chinese mainland and seaports makes it too difficult and costly.

The India-Nepal open border system has not only influenced each other’s culture and tradition but also had an impact on political, economic and strategic relations between the two neighbours. While India has an edge over China due to the geographical contiguity, historical and civilizational links with Nepal, China has been successful in projecting itself as a benign economic power rapidly penetrating in every sector of Nepal through aid and heavy investment.

**Geo-Strategic Position of Nepal**

The International political scenario is changing very fast and the new world order has emerged. There is a strong strategic shift towards Asia and some predict that the twenty-first century is going to be the Asian century, with India and China as the main players. Geopolitically, South Asia is one of the most important regions of the Asia. Nepal holds a significant position in the Himalayan region of the South Asian due to its strategic geopolitical location acting as a buffer state between the two Asian giants- India and the China. The strategic competition between China and India in South Asia is increasing and Nepal constitutes an important part.

According to Madhu Raman, “The regional and international interest in Nepal is on the rise. This owes to Nepal’s strategic location between India and China, the potential of Nepal’s being a transit economy between them, and the abundance of natural resources especially the hydropower invoking the interests of foreign investors two of the world’s important economies. In Nepal, there is an unseen strategic competition among neighbours and big powers in the country. There is a certain degree of overlap and competition over strategic space in Nepal between India, China and the United States.” (Madhu Raman, 2017).

Nepal used to be a safe and competition-free zone between India and China. Until the 1950s, China was least interested in Nepal. However, with the takeover of Tibet in 1951, Nepal shared physical boundaries with China. Thus, Nepal became strategically important in China’s foreign policy due to it being the gateway to its restive Tibetan region, which has become a national priority in the last decades. Nepal also hosts a large number of strong Tibetan exile community and, therefore, a key ally in China’s crackdown on the Tibetan independence movement. Tibetan region and Nepal are economically interdependent, as 22 of the 30 counties in the TAR shares borders with Nepal. Hence, stability in Nepal remains a priority for China as it is related to the Tibetan stability (Lema 2017).
Nepal also plays an important strategic role in the Chinese South Asian policy, as it is the most viable bridge connecting China with the South Asian region and an important part of the “New Silk Road” project that aims to connect China with Central Asia, Middle East, Europe, and Africa. India and China have border disputes, which is not going to be resolved at least in the near future, and Bhutan and China have no diplomatic relations yet and after the Dokhlam dispute, it has become worse. Practically, only Nepal can provide China physical connectivity to South Asian.

Growing Rivalry between China and India

China and India are competing for their influence in South Asia. Nepal surrounded by the two Asian giants-China and India have become an important part of this battlefield. Historically, Nepal has been always within the sphere of Indian dominance and influence. India has always considered Nepal as a natural ally, as they share historical, geographical and cultural ties. They enjoyed excellent bilateral relations in political, economic, cultural and close people-to-people contacts. The India-Nepal Treaty of Peace and Friendship signed in 1950 provides a framework for the unique bilateral relationship between the two. Since the 1950s, India used to provide financial and technical support to Nepal. India has also contributed tremendously towards the Nepal’s socio-economic and infrastructural development covering not only the basic infrastructure such as airports, agriculture, irrigation, power projects, roads and bridges, communication, etc., but also some vital social sector areas like health, human resource development, education, etc. (Abhishek, Shastri and Yadav 2016).

However, in the recent years, China has gained a foothold in Nepal increasing its influence very rapidly. For years India’s influence over Nepal has declined while as the China has increased its sphere of influence. Despite being historically close to Nepal, successive Indian governments failed to engage with the Nepali government and thus lagged before China in Nepal.

With the formation of China’s diplomatic relations with the Himalayan state of Nepal and, subsequently, the signing of Sino-Nepal Treaty of Peace and Friendship in 1960, the rivalry between the China and India have started as both are vying for influence in Nepal. India has since long considered Nepal as their natural ally and wants to uphold its traditional influence in Nepal. On the contrary, China wants to puncture the long traditional Indo-Nepal relationship, seek its own sphere of influence and space in different layers of policy-making, administration, army, security agencies and the public opinion. India tries to keep China away from the South Asian region, which it has long considered its backyard, and also does not want China to increase its footprints in the Nepal. Due to the sensitivity and volatile nature of Tibetan region, China, too, does not want India’s presence in Nepal’s northern region (Hari B 2012). Therefore, Nepal has become a strategically important playground where the China and the India are competing to increase their influence. Chinese Prime Minister LI Keqiang while meeting Nepal’s Deputy Minister and Foreign Minister Krishna Bahadur Mahara in Sep 2017 in Beijing underlined China’s three priorities in Nepal, i.e. connectivity, trade and investment. China also agreed to cooperate in energy, infrastructure and post-disaster reconstruction and tourism. China and Nepal have also agreed to work and cooperate in these areas under Belt and Road Initiatives. China and Nepal also agreed to work together to make Free Trade Agreement and development of cross-border economic zones a practicality. Interestingly, during Prime Minister Deuba’s visit to India, growing influence of China in Nepal, challenging India’s sole dominance, were discussed. There is a growing concern in Delhi about growing Chinese influence in the Himalayan state (Bhattachari 2009).

India and China competition in Nepal is clearly evident in several areas. One of the major areas of competition is connectivity, as Nepal is a landlocked country. During the Nepal’s Prime Minister KP Sharma Oli visit to China in March 2016, Nepal and China signed 10 agreements in various sectors like energy, trade and transit and connectivity sector. The strategic agreement related to the transit sector will give the Nepal right to access
to the Chinese seaport. This is game-changing in the China-Nepal strategic relations, as it will end India’s monopoly by providing an alternative route to Kolkata port of India. China has also agreed to supply oil to Nepal. China’s plans to extend its railway is another area where China is challenging India’s dominance. China has agreed to provide more connectivity to Nepal by extending Chinese railway through Tibet-Nepal border to Kathmandu, Pokhara and further to Lumbini lying just 25 kilometres from the Nepal-India border (Jha 2016). This is going to be tough competition for India in Nepal, as it will provide China more space over India and has a negative impact on the Indian security and strategic interests in the Himalayan region.

India-Nepal armies enjoy a long special relationship. India is the largest arms exporter to Nepal. But, in the recent years, China is extending more hardware and budgetary support to Nepal army. Nepal and China also held first joint military drill, which is unconventional between the two armies. China also pledged to provide assistance to Nepal Army and Nepal Police (ibid).

Both Chinese and Indian leaders, government officials and military officials are visiting Nepal very frequently. The frequent visits from India and China clearly demonstrate the competition between two giant neighbours to increase their influence in Nepal. While India seems worried about its losing influence in Nepal, China, on the other hand, has been successful in growing its footholds in Nepal through its economic and trade links (ibid).

The intention of Chinese interaction and interest in Nepal can be viewed from three different phases. In the first phase, the Chinese interest in Nepal began with the takeover of Tibet. The objective of the China’s policy of Nepal was the security of Tibet, as the region is volatile and backward dependent on the Nepal for its border trade and stability. The second phase of Chinese policy focused on ending Nepal’s overdependence on India. China’s trade with the Nepal was meagre and limited to 0.7 percent of the total trade. India used to be the largest trading partner of Nepal due to its geographical proximity and smooth connectivity. China conscious of its weakness started building new routes of connectivity. China knows that India’s influence in Nepal can be weakened by creating alternative connectivity routes to Nepal. At the same time, it encouraged Nepal to adopt an equidistance policy between the China and India. China also started providing Nepal financial assistance and funded various developmental and infrastructure projects. In the third phase, China adopted a proactive and aggressive policy to weaken India’s sphere of dominance on Nepal. This phase continues the agenda of the first and the second phase but the focus is more on encircling India and increase its own dominance (Kumar 2011). Thus, Nepal has become the proxy battleground where China and India are struggling for their dominance. As China is growing strongly its footprints in Nepal, India has become much worried about its impact on the northeastern Indian security and stability.

As Kanti Bajpai points out that, “India lives in fear of its neighbours reaching out to outsiders to balance against Indian power. Unlike India, which has often borne the consequences of misjudging the political mood in Nepal and has been regularly maligned as a ‘hegemon’, China’s Nepal policy has been largely successful. China has managed to project itself as a disinterested neighbour and a remarkably attractive alternative to ‘Big Brother’ India” (Kanti 2010).

According to Singh and Shah, “With the signing of Indo-Nepal Peace and Friendship Treaty 1950, the first step in solidifying the multifaceted bilateral relations was taken. Soon, some anti-Indianness started growing and was further strengthened because of South Asian geopolitics. India’s South Asia in general and diplomatic manoeuvres towards Nepal, in particular, drifted Nepal away from its geostrategic and geopolitical calculus, which led to a vacuum in Indo-Nepal relations. Meanwhile, China and India both have been competing for expanding their influence in South Asian countries. In order to find its geostrategic space, China has re-oriented its policy vis-à-vis Nepal in particular and for South Asia in general. Consequently, China has remained successful making it a strong partner, unlike India. It has convinced Nepal to support, China’s One
Policy. In order to achieve its vested interests in Nepal, China has been making strong strategic foray” (Singh and Shah 2016).

The strengthening of bilateral relations between the China and Nepal is obviously normal owing to the changing international arena and China-Nepal growing strategic relationship for mutual economic benefit. However, China’s increasingly exceeding dominance in Nepal has an undesirable impact on India’s northeastern security, as five of India’s states share physical borders. Nepal has been most of the time unstable and in transition. China has tried to take advantage of the unstable Nepal for its own interests. Deb Mukherjee, India's former ambassador in Kathmandu, said, “India should watch out for Chinese activities in Nepal and if China starts spreading its influence southwards to the Terai region, then it's worrying for India,”.

China has also funded the establishment of 35 Chinese Study Centers in Southern Nepal, especially near the borders with India. These Centers used as a soft power means are to popularize Chinese narrative and language and to build up anti-India public opinion in Nepal. Apart from these Chinese Study Centers, a large number of local level organizations like the Nepal-China Mutual Cooperation Society and the Nepal-China Youth Friendship Association have been established to foster cooperation at all levels (Bhatchari 2009). China is also reaching out to the political parties of Nepal to influence the policy makers to enhance its own strategic interests. Hence, Nepal has become a battleground where both India and China are fighting to increase their influence.

China is rapidly increasing its reach into the South Asian region. It is using its economic power to attract and achieve its strategic influence in the region. The South Asian region is becoming increasingly important to the China, as it has become more critical to the security and economic development of China in many ways. The South Asian region provides both new markets as well as new alternate sea routes for China’s ambitious “One Belt, One Road” project (Bajaj 2010).

China’s relation with Nepal is multi-dimensional and strategically designed for the long-term. Though China’s involvement seems to be benign, it is going to shape the Nepali attitude towards India and China in the future time. This policy of China is part of the larger big plans that will have negative impacts on India’s interests as this aims to erode India’s influence in South Asia in general and Nepal in particular (Singh 2010).

**Conclusion**

South Asia is one of the most volatile and least developed but strategically very significant which no major power can afford to ignore. China and India, the two regional powers of South Asia, are competing for their influence and dominance throughout the South Asian region, with the Himalayan state of Nepal becoming the latest battlefield due to its geostrategic importance for both powers. India considers Nepal a traditional and natural ally and needs it for the economic and security interests of the northeastern region. For the China, Nepal is the guarantor of the security and stability of Tibetan region and geostrategically important for the ambitious Belt and Road Initiative. Both are trying to lure Nepal by providing economic packages in the form of aid and loans, infrastructure development, developing hydro projects, building roads and railways, providing education, health, and other assistance.

For a long time, India has enjoyed substantial influence and dominance in the Himalayan state of Nepal, due to its big size, economic and trade links, militarily cooperation, cultural and historical links. Also due the geographical proximity and connectivity, no other country could easily replace the India in Nepal. Nepal being the landlocked country is highly over-dependent on India for its trade and transit routes.

However, in the last years, particularly after the end of monarchy system in 2008, other international players, especially China, have increased their influence in Nepal. China has emerged as a major power in South Asia competing for its influence with India throughout the South Asian region, particularly in Nepal. China has become Nepal’s top foreign investment partner breaking into Nepal's market with its export-led growth strategy. China has agreed to provide transit route and make other connectivity links to Nepal, ending India’s
monopoly over Nepal as the only the only gateway to the outside world. China is also helping and providing financial assistance, loans, trade, building railways and highways for greater connectivity, development of hydro-projects, trade, tourism, joint border management, and bringing in the overall socio-economic growth of Nepal. There has been a long history of Nepal playing China card to bargain and maximize its interests. However, in the recent years, China has involved itself more aggressively than before. Chinese diplomacy has also shifted from ‘quiet diplomacy’ to ‘vocal diplomacy’. China has also started intervening in the internal politics and government change in Nepal. Given the long history of mutual mistrust, an armed conflict in 1962 and the unresolved border dispute between the two countries, India is watching China’s increasing interest in Nepal with a certain degree of suspicion and threat to its security and strategic interests.

Therefore, Nepal, once used to be ‘safe zone’ then ‘buffer zone’, has been now turned into a ‘competition zone’ between the two powerful and influential neighbours. Indeed, recent interaction and policies offer a clear indication that there is increasing competition between India and China in Nepal. India wants to maintain its influence and dominance in Nepal, as it has been traditional, while China wants to increase its influence and space to make its foothold stronger. India perceives the growing influence of China in South Asia, particularly Nepal, not only related to economic development and trade but a part of Chinese larger strategy to encircle India in South Asia.

References


ABSTRACTS
Disaster Impact and Response- A Retrospect of 2014 Flood in Kashmir Valley

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Disasters have been distressful issues throughout the human history but they have become more serious in recent years and will continue to be even more so in the decades to come seeing the current trend of climate change. They have become issues which touch upon all spheres of life. The consequences of such incidences are both material and social. Of all the physical, geological and natural phenomena that affect the earth, floods are the most widespread. Floods are so intertwined with human history that myths about floods abound in all civilizations. The entire planet is at risk of fundamental degradation and with it human civilization itself. Climate change is a burning topic at the present time and is believed to have altered the global climate in a very negative aspect in last some decades. It is projected to alter precipitation patterns, increase the frequency and intensity of major storm events, and increase risks of floods throughout the world. The occurrence of disasters has increased in last few decades for which anthropogenic causes are mostly responsible. While changes in average conditions can have serious consequences by themselves, the main impacts of global climate change are felt due to changes in climate variability and weather extremes like floods. In 2014, Jammu and Kashmir witnessed a devastating flood which caused socio-economic and environmental problems throughout the state. It caused the death of almost 300 people. The environment was severely affected which resulted into soil erosion, deforestation, silting of Jhelum river and its tributaries, breaching of bunds, and wetland erosion. The environmental consequences affected the tourist places which in turn affected the influx of tourists in Jammu and Kashmir in years 2014 and 2015, which caused huge loss to economy. The 2014 flood resulted in tremendous amount of loss to agriculture especially to horticulture sector in Kashmir Valley. It resulted into the increase of poverty in the Valley and caused great suffering to people particularly the lower class as most of their property was damaged due to the 2014 flood. My paper will highlight the impact of 2014 flood on Kashmir Valley and the causes like unplanned development, weak infrastructure and political causes like unresponsive attitude of the administration which resulted into such a huge disaster in Kashmir Valley. It will also discuss the response of the people and administration in combating the flood as it was mostly people who did the rescue operations and saved thousands of lives. I would also like to suggest various solutions which can help in reduction of loss in future. In order to combat the problem of floods in Kashmir valley, understanding the perceptions of all that have stake in it provides with stronger ground for decision-making.

Key Words: Disasters, climate change, environmental degradation, floods, response.
Slide Show Presentation
Without Full Paper
Internet, Cybercrime, E-Banking and Security

Vipin Chandra Joshi

INTERNET

• A network which provide large number of information and communication facilities and connect people together in easiest manner.

BENEFIT OF INTERNET

• Unlimited Source Of Information.
• Great Communication Media.
• Ideal Working And Studying Environment.
• Cost Effectiveness For Business.
• The Best Relaxing Tools.

INTERNET CHANGE OUR LIFE

1- PEOPLE ARE CONNCET MORE EASILY

• In Past Year People are connected with the telegram, Telephone, etc. It take more time to send information to one person to another.
• But now a days People are connect with Social networking sites like what’s app, Facebook, Twitter, Instagram, etc.
• These social networking sites make life more easier and comfortable and not take to much time to send information.
• Specially if we are taking about villagers ,they are find out any information with the help of internet like employment news, Government Scheme, Education Scheme, Awareness program, Details of authorise hospitals, etc.

2 Reading new paper

• Only one Click provide several information around the world and people are easily updated their knowledge and also get information which is helpful for their present and future. With the help of internet it save the paper, people get information with the help of internet without facing any difficulties.
• Internet new paper provide new like Current affairs, Sports news, Business news, Entertainment news, General awareness etc.

ONLINE MARKETING AND ONLINE SHOPPING

• Today it is easiest way to advertise most of the product or thing with the help of internet, with the help of MARKETING.
• Advertisement shown in internet with proper information about that product Or thing which buyer get full information and decide whether it is useful Or Not.
• Marketing of products Or thing is the easiest way in the internet, which people are updated and buy those thing which they want.
• Most of the people use these sites like Flipkart, Abof, Jabong, Amazon, for selling and buying Product and items with the help of nominal amount which is comfortable to both the parties.
• Most of the grocery items are available in the internet which people buy their product in easiest manner with cheaper price.

WATCHING MOVIE AND MUSIC

We can stream almost anything online now. Music is available from Shaven, Wynk, Gannan.com. Movies are available from Netflix and Amazon movie.

SHOWING OUR TALENT AND CREATIVITY

• Internet change the presumption of people people’s mind. If we have a talent and creativity we can upload these things with the help of these platform like –YOUTUBE, INSTAGRAM. Which rest of people learn and gain a knowledge with the help of internet and they never keep up in their life.
CYBERCRIME

- A crime which are exploiting individual personal right and steal our personal information use in a wrongful manner.

TYPE OF CYBER CRIMES

- Hacking
- Cyber squatting
- Phishing
- Cyber Staking
- Vishing
- Email bombing
- Spamming
- Web jacking
- Inditity theft and Credit Card Fraud
- Software piracy

HACKING

- Hacking is a Crime which unauthorised access to data in a system.
- Amount of hacking is increases day by day. So it is necessary to protect a system with the help of ANTIVRIUES Software.
- Hacking is a crime under section 43 of the IT Act but at the same time, ethical hacking or better known as white collar hacking was considered legal.
- Ethical hacking is also being taught by various professionals at schools and colleges. Under the amendment IT Act in 2008, the word ‘hacker was removed from the act. The reason for the same was that ethical hacking is taught by a lot of professionals at various schools and colleges, and colleges cannot teach anything illegal. So the same word should not be used. The amendment under section 66 and section 43 by removing the word hacking from the Act

SEC 43 OF IT ACT

- Section 43 of IT Act is a civil offense where a person without permission of the owner accesses the computer and use any data or damages the data contained therein will come under civil liability.
- Under the IT Act 2000, the compensation is provided for that person who is affected. However in the amendment made in 2008, this ceiling was removed.

Section 43A of the Information Technology Act, 2000 has describe reasonable security and procedures to be followed by those dealing or handling sensitive personal data or information.

SEC 66A OF IT ACT

- Section 66B Stated about for obtaining stolen computer data or information of another person uses in a wrongful manner without the consent of actual owner of computer.
- The punishment of imprisonment for one year or a fine of rupees one lakh or both. Mens rea is play important role under section 66A.

What is the intention of that person who committed that offence weather they guilty of their offence Or Not. Because every thing is done without the consent of owner.

PROCEDURE FILE A COMPLAINNT ABOUT HACKING

- A complaint can be filed at any cyber cell, which is present in India and Complaint also file with the help of online process which we check our current status.
- Firstly write an application to the head of the cyber cell department.
- It consist following things
Second, submit the following documents with the Cyber cell:

- Server id – Id files that get automatically with the server when files are opened. It saves a list of activities performed on day to day basis.
- Hardcopy and soft copy of the affected material
- A hard copy of the original web pages
- Information about to the password which access the computer.
- Name of suspected person who may be involve in this crime.

**CYBERSQUATTING**

- It is a illegal domain name registration or use for wrongful intention.
- Cybersquatting can have a few different variations, but its primary purpose is to steal or misspell a domain name in order to profit from an increase in website.
- Cybersquatting also includes advertisers who use domain names that are similar to popular, highly trafficked websites.
- Cybersquatting is one of several types of cybercrimes.
- These domain name use in wrongful manner to earn profit from goodwill of trade mark. These domain name mislead the people providing wrongful information.

**PHISHING**

- Phishing a information which contain such as usernames, passwords, and credit card details of individual person without their consent use in a wrongful manner through email and URL address.

**VISHING**

- The fraudulent person of making phone calls or leaving voice messages purporting to be from reputable companies in order to obtain individuals to personal information, such as bank details and credit card numbers.
- Most of Victim give their details to Fraudulent person without knowing exact fact which that person use the money or any other information for their purpose with a wrongful intention.

**CYBER STAKING**

- Use of electronic communications to harass or frighten someone, for by sending emails, phone call or Message.
- Cyber stalking exploitation of minors, be it sexual or otherwise.

**EMAIL BOMBING AND SPAMMING**

- IT is a cyber crime sending huge email which have no relevance to the mail box which directly affected to Server and not use in a proper manner.
- SPAMMING -Send a bulk of message to a large number of Internet users for the purpose of annoying the users. Which contain improper information, Advertisement, Marketing of the product and sale.

**IDENTITITY THEFT AND CREDIT CARD FRAUD**

- Today, large amount of cyber crime are occur which are trying to stolen personal information like Document, id number, password etc.
- Most of innocent person are providing their information which fraudulent person are gaining huge amount of money with the help of credit card number without the consent of that innocent person.
Most of the company or organization are affect to these fraudulent person are leak their personal information which affect company reputation. So it is our duty to safeguard our personal information and never be reveal to any outside person.

Web jacking

- The Web Jacking is a phishing technique that Attackers that are using this method are creating a fake website and when the victim opens the link a page appears with the message that the website has moved and they need to click another link. If the victim clicks the link that looks real he will redirected to a fake page.
- These fake pages provided wrong information which victim move on a wrong track.
  It is a quite interesting technique that tries to trick the user to believe that the webpage is real because the link is valid. Users must be aware of this type of attack especially when they are visiting a webpage that contains similar messages about websites or objects that have moved to new locations.

Software piracy

- Software piracy is the illegal activities which contain.
  - Copying.
  - Distribution, or use of software.
  - It is a profitable "business" which frundently person gain profit to sending information to one person to another person with a cheaper price.
  - It also affect our system with large amount of viruses contain in it.

E-BANKING

- It is that bank which people provide easiest method of money transaction with the help of Internet.

  Device of E Banking
  - 1 ATM
  - 2 Credit card
  - 3 Debit card
  - 4 Smart Card

ADVANTAGE OF E BANKING

- Convenience
- Portability
- Cost Savings
- Industry Benefits
- Helpful for shopping
- Helpful for mobile recharge

DISADVANTAGE OF E BANKING

- Lack of Security
- Illiteracy
- Improper knowledge due to awareness.
- Lack of technology
- Improper handling of computer or mobile device.

E-BANKING SECURITY

- Different banks are providing their customer which contain following things like
  - Security Login ID and Password or PIN.
• Secure your computer and keep it up-to-date with latest antivirus.
• Access your accounts from a secure location or place.
• Bank provide awareness to their customer with the help of messages, email, newspaper, etc.
• Email notifications to alert

Sending current status of our bank account.

CONCLUSION
• Today Internet give new way of life which is helpful for each and every person. We can use internet in a proper manner without breaking any law and not violate any individual right.
• It is duty of government and people to provide general awareness which no one people is affected to cybercrime and their information is safeguard in a proper manner and provide proper security to the Users.
• E banking play drastically role in a society, if we use in a systematic manner it give more advantage and helpful for future generation.
• Use a Source on that manner which set example in society, it is created for people learn something without facing any difficulties.
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