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YASHWANTRAO CHAVAN LAW COLLEGE, KARAD
(Affiliated to Shivaji University, Kolhapur)



3.2.2.1 Paper Publication list with Papers

Sr.No.	Faculty Name	Title of the Paper	Journal Name	Date and Year of Publication
1.	Dr.Archana Arun Thorat	Mahatma Gandhi- A Lawyer and Social Engineer of India	Navjyot A high impact factor, Quarterly peer reviewed journal, Kamala College Kolhapur	Academic Year 2022-23 17 February 2023.
2.	Dr. Mahendra Khairnar	Land Acquisition and Fundamental Rights: Dichotomy	Research Gate	Academic Year 2022-23
3.	Dr.Archana Arun Thorat	Self -help group – a key to develop economic growth of a nation and individual stability of women	Vidhi Bharati, ISSN- 2321-6271	Academic Year 2022-23
4.	Miss.R.M.Patil	Judiciary as Catalyst for journey of women from emancipation to empowerment	Vol.LXV-1, No. 11, in "Purana" UGC care listed Group 1, peer reviewed and referred journal.	Academic Year 2022-23 November 2022

5.	Mr. Arvind Dagale	The impact of book club conversation on reluctant or struggling readers	International Journal of Advance and Applied Research ISSN – 2347-7075 Impact Factor – 7.328 Peer Reviewed Bi-Monthly Vol.10 No.1	Academic Year 2022-23 September – October 2022.
6.	Dr. P.B. Chavate	Critical Analysis of Safety and Dignity of Women in India	IJRAR International Journal of Research and Analytical Reviews E- ISSN 2348-1269 P- ISSN 2349-5138	Academic Year 2020-21
7.	Dr. S.H.Mane	Law Relating to 'Traffic in Women' - National and International Perspective	Online International Inter-Disciplinary Research Journal, [Bi-Monthly] Web Address:- www.oijrj.org Jan.-Feb., 2020 Volume-10, Issue-01 [Pg. No. 183-188] ISSN 2249-9598	Academic Year 2020-21
8.	Dr. Archana Arun Thorat	"Constructive role of Judiciary legislature in data protection laws in India an overview."	SpiritusLege, International Referred Journal, ABMSP's Y.C.Law College, Pune Journal no. 02, pp. 125-134, 2020 ISSN-2582-1784	Academic Year 2020-21

9.	Dr. P.B. Chavate	Trends in Compensatory Jurisprudence in India with reference to the Constitution	International Multidisciplinary Quarterly Research Journal Peer reviewed referred and UGC listed journal (No.40776) ISSN No. 2277-5730	Academic Year 2019-20
10.	Dr. S.H.Mane	Social Security and Unorganised Sector Workers in India – Law and Practice	Wages, Employment and Social Security in India [Pg. No. 203-212] 2019 Swacchand Publication, Kolhapur ISBN: 978-93-83797-49-1	Academic Year 2019-20
11.	Dr. Archana Arun Thorat	"Role of judiciary in the development of the right to privacy in India within 1954-2019 era: an overview,"	IJRAR, IJRAR International Journal of Research and Analytical Reviews E- ISSN 2348-1269 P- ISSN 2349-5138 1. 6, no. 2, 2019. International Open Access Journal	Academic Year 2019-20
12.	Priety K. Ghatge-Deshmukh	Contribution of Women in Sports	Women Empowerment in modern age	ISBN- 978-93-94819-09-2

13.	Dr. P.B. Chavate	Critical Analysis of Environmental degradation and its effects on Right to Livelihood- Indian Perspective.	AAYUSH International Interdisciplinary Research Journal, A Peer Reviewed and Index Journal	Academic Year 2018-19
14.	Dr. P.B. Chavate	Sustainable Development- International and National Perspective	An International Multidisciplinary Quarterly Research Journal, Peer Reviewed Referred and UGC Listed Journal No. 40776	Academic Year 2018-19
15.	Dr. Archana Arun Thorat	"Demonetization- a Pandora's Box?!"-A study."	Ajanta, An International Multidisciplinary Research Journal, vol. VIII, no. 01, pp. 25-29, 2019. ISSN 2277-5730	Academic Year 2018-19
16.	Ms. Rupali Babanrao Pawar	Globalization And Green Revolution	An International Multidisciplinary Quarterly Research Journal AJANTA ISSN 2277-5730 Volume-VIII, Issue-I, January-March-2019 ,Impact Factor- 5.5	Academic Year 2018-19


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THE IMPACT OF BOOK CLUB CONVERSATIONS ON RELUCTANT OR STRUGGLING READERS

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Abstract:

This qualitative case study details the effects on the persistence of conversations about reading among reluctant readers as well as the effect that joining a book club has on a student's desire to read. Six fourth graders and their teacher librarian participated in this study from a tiny, rural location. Different reading responsibilities were taught to the students, who used them during the book discussion. In response to the research questions, the researcher found five key themes. Diverse Perspectives Deepened Understandings is the first theme. Building Relationships Provide Safety is the second theme. Themes three and four are that aesthetic and efferent reactions were apparent and that community accountability was required. The students loved the idea of community accountability and were able to form connections that enriched their understandings. They also expressed aesthetic and efferent emotions. The professional was crucial in meeting the students' need for a professional to hear their voice and help them make these crucial connections to books by carefully listening to the students' own stories and providing the necessary sensitivity while recommending other books based on their interest level and ability level.

Keywords: Librarian, Book Club, Community, Accountability, Qualitative, Reading

Introduction:

Education professionals have evaluated and contrasted students' learning for centuries (Dresser, 2013; Johnston, 2013). However, a single exam result or a solitary demonstration of expertise is frequently given priority. Although each person is important to a society and its development, pupils' ability to collaborate with and learn from others determines how deeply they may learn (Johnston, 2013). Communities' ability to thrive ultimately depends on how well members of the community coexist and learn from one another. Building communities through discussion creates a learning environment where enthusiasm and difficulty are

shared. To fully enjoy learning, classroom cultures in our schools must be healthy.

As a culture, we spend far too much time using social media and other technological advancements to amuse ourselves. The value and interest in youngsters studying with technology will only increase (Comuntzis-Page & Hitchings, 2012-2013). But our culture's pace and objectives can cause us to lose sight of what should be far more important than work or technology: people. Everyone has to practice being present with other people in conversation on a regular basis (Goldberg & Pesko, 2000). Our culture's pace and demand for learning will only quicken, but we still need to

work on how we appreciate one another. The level of discourse generated by a book club can improve community by placing more weight on each person's perspective (Beach & Yussen, 2011).

Purpose of the Study:

This study aimed to encourage and empower young learners to participate intellectually and socially in each other's academic pursuits through book clubs. Less outside distractions resulted from reading being given a greater purpose (Rank, 2013). Social responsibility and a selfless bias were created within the framework of a book club (Beach & Yussen). Students who were able to do so improved their ability to study in other academic fields and interact socially with classmates, which further motivated them to read for their book clubs. The development of self-motivated responsibility for greater degrees of dialogue within communities and the inspiration of deeper levels of learning for students in their reading of literature are both facilitated by book clubs.

Rationale of the Study:

The impact of reading proficiency on a child's education and daily life is immense. According to recent assessments, children's scores are declining, and a child's enthusiasm in reading directly correlates with this. For this reason, book clubs could be used by librarians and educators to raise reading proficiency and general interest in reading. This is in stark contrast to the known importance of the need to develop a strong reading culture noted above in the standard. This implies that must divide the one hour of time allotted to this assignment by students in order to further emphasize the topic. With the assistance of a teacher librarian, kids in this situation would thus have six seconds

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per week to concentrate on their reading choices. Studying the book club and the reading emphasis it might give students will be beneficial for students, teachers, librarians, administrators, and parents.

Problem Statement:

Research indicates a continuing need for more techniques to encourage kids to become lifelong readers, even if numerous advancements have been achieved over the years to involve students in book discussions in which students increased in capacity to synthesize material and recognize themes.

Literature Review:

According to Dresser's (2013) research, novice teachers were unaware of the connection between social-emotional and academic development because social-emotional learning was not integrated into education, and most novice teachers did not emphasize or engage their students in social-emotional learning. Without social-emotional learning, students are less engaged in their classroom communities, which lead to a dissonance between the social-emotional and academic facets and produces unfavorable outcomes. Without involvement, the learning environment in the classroom will not support academic or social growth. Students must feel important to the community and cherished as individuals.

According to Dresser (2013), kids will be more emotionally and academically willing and interested in their learning the more connections they form with their mentors, professors, and peers. Respect and trust are built through social circumstances, empowering learning even through failure since emotional hope is found. Relationships help pupils succeed academically by making them feel respected and inspired. Individual students

are supported even through difficulties, whether they arise in the social, emotional, or academic contexts, if trust is being created within classroom communities. Higher levels of thought can frequently be motivated by emotional connections as well. Academic success is more likely to occur in a setting that is safer and helpful for pupils. Small groups of students can form book clubs to lay the groundwork for a supportive and active classroom environment. A community can safely demand a higher degree of commitment and thought, but it can also be made up of self-motivated students who are interested in one another's learning. Book clubs can encourage commitment by holding one another accountable, which promotes socializing in both book club discussions and dialogues about all topics. Book groups can foster interpersonal trust.

Everyone finds it difficult to engage in conversation, thus whether or not it is modeled and practiced at home, it should occur frequently throughout a person's educational experience. College freshmen must compare their ideas and understanding of what they have studied in order to have a deep understanding of what they have learned (Brank & Wylie, 2013). The more conversant college students are, the more effectively we can live in and assist our existing and future communities (Johnston 2013).

The value of student-led conversations, particularly in guided reading groups, was examined by Hulan (2010). Teaching and modeling debate skills is crucial. With this autonomy for the book club, students experimented and directed discussions independently of their teacher, and there was more immediate learning from the discussions' successes and mistakes. Feedback is crucial to promoting learning for both teachers and students, but the kind of feedback will

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vary based on the needs of the individual student (Hattie, 2012). Beginning with strengths while focusing on the need to get better as learners, specific praise and constructive criticism must be given.

Giving pupils control over their learning experiences is necessary to promote accountability. As students take charge of their education, there will be support as well as difficulties. With the freedoms granted, book clubs can help students get a deeper grasp of what they are reading, a deeper understanding of other people through their talks, and opportunities to fail and succeed safely. The student-led culture made possible by book clubs can be used to foster social-emotional learning. Book clubs demand and stimulate engagement in both intellectual and social obligations.

Objectives of the Study:

- 1) To what extent do book clubs help students begin to see reading in a more positive light?
- 2) How can a Teacher Librarian influence students' sustained engagement in conversations about reading?

Methodology:

To allow all students to join, the book clubs were shifted to various times during the day. Students had individual conferences to discuss the impact of book clubs on their reading, learning, and interpersonal communication at the completion of the research.

For each student, taking part in the book club experience was optional. Students in book clubs were asked if they wanted to participate in the study, emphasizing that it was optional and that their decision would not affect their participation in the book club or the learning process as a whole in our

classroom. Both research participants and non-participants received the same level of help in the classroom.

Data Collection:

Data was gathered through focus group discussions, participant observations of book club participants, and an individual student questionnaire regarding reading habits that was distributed between the first and last focus group meetings. A focus group, according to Wildemuth, is a collection of people who have been chosen and brought together by researchers to talk about and offer their opinions on the research issue based on their own experiences (p. 242). During each book club meeting, questions were posed to the focus group. For a list of the focus group questions for each of the book club's twelve meetings. One of the primary objectives of this study was to have talks, and the focus group method made that possible. Focus groups "are a considerably stronger research tool if utilized in tandem with other methodologies," claims Wildemuth. As a result, the focus group is complemented with participant observation throughout the process and a questionnaire that has been simplified to five straightforward questions for each student's response. In addition, according to Wildemuth, "participant observation is a method in which a researcher participates in the everyday rituals, interactions, and events of a group of people as one of the ways to learn about the overt and covert facets of their cultural practices". With the help of this technique, the group members could be better understood and had a stronger sense of connection. The focus group's field notes and audio recordings allowed for a more in-depth participant observation. In the field notes, the researcher noted the frequency of voluntary conversation contributions, such

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as when a participant voluntarily added a comment to another participant's earlier discussion of a book; the frequency of voluntary "popcorn reading," which enables readers to voluntarily read aloud for however long they feel comfortable by joining in when the previous reader stops and with no one else present.

Data Analysis:

The reading questionnaire, audio recording transcripts, and focus group field observations were all investigated using traditional qualitative content analysis. Because coding categories and themes can be derived both directly and inductively from the raw data, I employed the traditional qualitative analysis method.

Findings:

In a Google Document, the teacher recorded his observations of the book clubs, generalizations from informal chats with students about their experiences, and particular ideas provided during formal conversations regarding book clubs. Following their book club meeting, students gave their experience and learning in brief remarks via a Google Form. The teacher used both the Google Form replies and the teacher's diary as a source of information to direct additional research and explain the experience's strengths and priorities for students' development. Book clubs improved students' love of reading and learning through four key themes in the coding and analysis of the observations and feedback: Aesthetic and efferent responses were obvious, relationships fostered safety, various perspectives increased understanding, and community accountability was required.

- **Diverse perspectives:**

One of the opening statements in both formal and informal discussions regarding the students' book club experience frequently centered on the students' improved enjoyment of reading as a result of the diverse viewpoints from their club members. Mary said, "Book groups are great because they push me to read at higher levels and think critically. This response was made in response to a question that was left open at the start of the book club event. The students' awkward quiet during the first sessions, when they were unsure of what to do with the free time and talk, made her response unexpected. Some book clubs had trouble coming up with topics for discussion during their first few sessions, but they all aimed to maintain their independence despite these difficulties.

Earlier in the year, a few students were hesitant to join a book club because they did not want to give up their time for independent reading. The book club meeting time was moved to just before lunch as a result of this input. Bill expressed his willingness to resume book clubs informally at the start of the third quarter, saying, "I'd even be prepared to give up on my reading time to still conduct a book club." Students discovered reading to be more enjoyable since varied viewpoints helped them understand the materials better.

The kids' focus on their own reading was sharpened by the information that was shared among them. The students were able to interact with their peers during the discussion more effectively because to focused reading. Their dialogue was valued and deepened as a result of the increased emphasis on increasing their independent reading. The more in-depth their conversation, the more inspired they

were to read critically on their own time and share their findings with their book club.

Mary talked on how her participation in the book club helped her understand the book they read more thoroughly and introduced her to other works she might not have discovered otherwise. She said in a formal meeting, "I wouldn't get to read a book I never heard of, so it's a good thing. Books that I haven't heard of before don't interest me. She had been influenced to read new literary genres by the book clubs she had participated in. She would not have developed an interest in the various genres or titles if she had not engaged in talks with her friends. Her interests grew after joining a learning community.

- **Building relationships**

Students connected with one another and the community within the book clubs while providing as much personal information as they felt safe doing so. Students emphasized the importance of book clubs as a secure environment for problem solving and as a means of developing communication skills. Being in a book club helped me achieve one of my key goals of becoming better at verbally communicating with peers and becoming ready for intellectual conversations. Brady's admission that having a secure environment for learning and sharing ideas with his classmates was crucial to him during our conversation in December astounded me. I love talking about a book instead of my personal life, the man said. He continued by noting that he could be social with friends and have fun without talking about anything personal. He didn't have to provide any private information in order to engage personally with the book and their book club discussions.

For Mary, book groups were about more than just being a better reader. When asked why book clubs have been essential to her, she answered, "It helps me best in my communication." She read at a higher level, and book groups made her think more deeply as she read. She enhanced her interpersonal interactions through enhancing her communication skills.

Alicia put forth a lot of effort in school and adored reading. She was urged to participate in a book club not just to learn from others but also to enjoy reading with people in her neighborhood. She was first shy since she didn't want her passion for reading to be curbed. She gave it a try since she had the option to end the experience whenever she wanted to, and having control within the parameters of the book club offered her comfort. She found that she enjoyed participating in discussions with her classmates and forming bonds more and more as her book club meetings progressed. She gave the following response when asked to explain the goal of book clubs: "Book clubs are about learning from other people." She said she loved the experience and continued to learn alongside her classmates, but she preferred to just be in one book club. With as much personal information as they desired, students connected with one another and the community.

- **Aesthetic and efferent responses**

Students actually enjoyed the book club experience because it forced them to read at a higher level of thinking, which led to deeper thinking, and because it allowed them an unstructured time with their peers in control of their learning. The majority of the pupils found that learning independently was the most enticing part. Without reading and reflecting on an

assigned reading and engaging in focused discussion during book club time, the book club would not endure more than two weeks. The book group required everyone to take responsibility. When they had nothing they were eager to talk about or enquire about, socializing became boring. Students were not aesthetically motivated to continue book clubs without conversation arising from the efferent components of the experience; book clubs without responsible learners discontinued meeting due to frustration or apathy among learners.

Brady has participated in both successful and unsuccessful book clubs, so I asked him to explain the differences from his point of view. We are skilled because we converse with others about the same book, recognizing various things, he said. I've discovered that if you merely put in the bare minimal effort, I learn less. He discussed the premise that students were more motivated to continue learning in the community if they worked harder. Each and every student desired to interact and relate to their buddies. The book club encouraged them to use what they had learned to structure these communities throughout their day of learning across many curriculum areas, which not only helped them succeed in their own student-structured learning settings but also brought them success there as well. They were encouraged to be lifelong learners by the lessons they were learning in their book clubs, which helped them adapt to different situations and personalities.

Identifying strengths came first in the discussion of learning as a class, then what needed to be improved. We talked about the book clubs' positives as well as negative aspects in both official and casual settings. As he wrapped up his remarks, Brady emphasized the significance he placed on the efferent components of

learning, adding, "I think what needs to change is we need to talk more about our learning instead of about the book. While discussing the book is vital, learning is even more crucial.

- **Accountability**

Being individually accountable was the thing that every book club participant found the most difficult. In a book club, there were numerous duties to be performed. In order to participate in conversations, maintain concentration during those talks, finish their outside reading independently, and be aware of the time the book club convened, students had to assign reading for their book clubs. The weight of all this responsibility scared the pupils.

After a few months of attending both unsuccessful and successful book clubs, Brady told me in November, "I prefer one book club at a time because it is easier. Even though I still have more novels to read, I only need to be accountable for reading for and staying with one book club. In January, he shared with me a different perspective on his involvement in book clubs: "Because I am in two book clubs, I can communicate more about my reading. Being in more than one, in my opinion, is more enjoyable. We keep switching our prescribed reading since we enjoy the book so much; we will finish it in a week. I am reading it with a man. It makes me want to read more. He had such a strong desire to keep studying in the neighborhood. He was not only urged to read more, but he also showed enough maturity to join two book clubs. He was motivated to succeed as a learner by the responsibility he received from his colleagues in the book club setting.

Students' desire to read independently increased as they deepened their grasp of the texts they were reading through conversation. When there was choice learning time, the book club members wanted to read all day long, just like Brady did. The majority of students who participate in book groups increase their home reading. A couple kids expressed their wish to read during break because they wanted to read responsibly for their book club and have access to the school's online resources. Students' urgency and enthusiasm to read at home and at school, rather than instructor mandates, led to this desire.

Discussion and Recommendations:

The level of collaborative learning in the classroom within the framework of book clubs significantly exceeded expectations. Higher degrees of relationships were built between students and their peers as well as higher levels of learning were attained in the academic parts of reading and learning in a community. Their book club improved the quality of their conversation, which spread to other academic subject areas and other social groups they encountered throughout the day. Students discovered that their book club could be more than simply a way to engage in deep thinking during class; it could also be a fun way for them to study with their classmates in a variety of contexts throughout their lives.

Students were aesthetically driven by book clubs to seek out a depth of knowledge and connections within and outside of the academic community. Students also understood that aesthetic drive ended in the absence of difficulty. Because they were confident in their friends' support, students were more likely to take on difficult texts. Reading in a community became qualitative because

students were delving deeply into the material together, enhancing the book club discussion with a variety of perspectives and diverse schema. The group accountability became more than just quantitatively completing the assigned reading and sharing a summary.

Despite their many differences and arguments, the children were able to feel a feeling of belonging. In numerous circumstances, the experience of belonging deepened comprehension and responsibility in the academic and social facets of learning.

Recommendations:

The study was restricted by the pupils' various schedules and reading levels as well as by their varied timetables. The depth of dialogue that students reading at primary reading levels could have been constrained since their reading was more concerned with comprehension than with preparation for the topic. The more opportunities students had to participate in the book club community, the more their reading skills improved. Shorter books were read by students with lower reading skills, which made it difficult for us to supply reading material across several weeks. Because of all the interventions, learning programs, and other pullout activities like music and orchestra during the week, it was difficult to schedule a regular time when kids could have their book club discussion. As a result, during the course of the research, the planned book club time was altered several times, eventually taking up some math time.

The study was additionally constrained by the amount of time that research data was gathered. Throughout the rest of the year, the level of learning grew deeper. The pupils' academic and social experiences at school benefited from

the lessons they learned through the book club. The more the students participated in their book club, the more learning spread across the entire classroom.

Future Scope:

More investigation might look into expanding the varieties of book clubs. These book clubs could consist of nonfiction or genre-specific book groups, book groups with teachers and students, book groups with students from different classrooms, or book groups with students from other grade levels. These book clubs could offer and concentrate on a range of other academic and social methods and abilities, creating more communities and increasing the number of connections between students.

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4. Trends in Compensatory Jurisprudence in India with Reference to the Constitution

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I. Introduction

Man has certain basic, inherent, essential natural and inalienable rights and freedoms which are indispensable for life as a human being. These rights are available to him due to the only fact that he is a human being. It is the responsibility of every civilized State to protect these basic human rights at all times. But flagrant violation of human rights has occurred since times immemorial. The brutal killing of humanity during the World Wars compelled the world to seriously think about basic human rights of mankind and hence the proclamation of Universal Declaration of Human Rights in 1948. It sets out in clear terms a universal standard of conduct for all nations to achieve. The framers of the Indian Constitution took inspiration and motivation from the UDHR and incorporated various fundamental rights in our Constitution.

The very purpose of specifically incorporating various fundamental rights in the Constitution is "to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of the Majorities and officials, to establish them as legal principles to be applied by the courts".¹ The Fundamental Rights incorporated in Part III of the Constitution, if infringed, are made justiciable in the courts of law. The State is supposed to protect the fundamental rights of the people at all times. But experience has shown that, many a times, the State itself has grossly violated the fundamental rights of the people. In a modern welfare State, should the people who have suffered violations of fundamental rights at the hands of the State suffer in silence or seek remedy in the courts of law?

The Supreme Court is the protector and final interpreter of the Constitution and also the protector of the fundamental rights of the people. It is supposed to zealously protect the fundamental rights of the people. But once the fundamental rights of people have been infringed, what is the remedy available to the common man? The power of the Supreme Court in this matter is not only preventive but also remedial. It should make good the loss which has occurred to the individual for violation of fundamental rights. As a consequence, it has started awarding

compensation for gross violation of fundamental rights. Though awarding of compensation or damages is an exclusive and important remedy under the law of Torts, it has been accepted by the Apex Court in cases of violation of fundamental rights of the people. It all started in the era of liberal interpretation of Article 21 of the Constitution, after the celebrated case of *Maneka Gandhi Vs Union of India*². Compensatory jurisprudence in cases of Constitutional torts is clearly a recent development which commenced from the Bhagalpur Blinding Case, Rudul Shah's Case and reached its zenith in the Chandrima Das's case. It is pertinent to note that the Constitution has no express provisions regarding monetary compensation for infringement of fundamental rights, but the Supreme Court took the initiative for awarding compensation for violation of fundamental rights. The present article is an attempt to unravel and tress the recent trends in compensatory jurisprudence in India with reference to Constitutional provisions.

II. Compensatory Jurisprudence –Meaning

In primitive communities whenever man suffered bodily injury he had no other recourse than to private vengeance or violent self help. Seeking justice through public tribunals started only after the emergence of the State and its organized force. "Before the emergence of the State, law was enforced by individuals whose rights have been invaded, assisted by their family and clan"³. During this period, people who suffered serious bodily injury were compensated in terms of money. It can be said that, historically criminal law is a late development. It can also be said that, in ancient times, rather than criminal law, law of compensation or the law of Torts was in existence.

In early English law there was the customary practice of paying "wer" i.e. the price set on every person according to his rank, which were payable by reason of causing his death and "bot" which was payment for personal and other injuries. The element of public wrong is seen in its embryonic form in the custom of paying in some cases a "wite" or fine to the King⁴.

Now-a-days, with the emergence of the organized force of the State, law can be basically divided in to Civil and Criminal law. Sanctions under Criminal law are punitive while those under Civil law are restorative or compensatory. Awarding of compensation has been the domain of the Law of Torts. In order to analyze the trends in compensatory jurisprudence under the Constitution of India, it is important to have brief discussion regarding the nature of the Law of Torts.

The word "Tort" is derived from the Latin word "tortum" which means twisted or crooked or wrong and is in contrast to the word "rectum" which means "straight"⁵. The word tort was introduced in to English law by Norman jurist. It includes that conduct which is not straight, but twisted, crooked or unlawful. The law imposes a duty on everyone to respect the legal rights vested in others and the person making a breach of that duty is said to have done the wrongful act. When a person suffers a legal injury as a result of this wrongful act, he can initiate an action for unliquidated damages under the law of torts.

Damages are an important remedy under the law of Torts. Generally it is the only remedy under the law of torts. Unliquidated damages are those damages that are not determined by the parties themselves as in case of a contract. These unliquidated damages are totally dependent on the discretion of the court. In case of a contract the parties may decide the amount of compensation to be paid by each party in case of its breach. They may stipulate the damages to be paid in terms of contract itself. These damages are called as liquidated damages. But in case of tort, this is not possible because in most of the cases, the parties are not known to each other until the tort is committed. Also, it is difficult to predetermine the quantum of loss in case of tort. Therefore the damages to be paid are left to be determined at the discretion of the court. So these damages are called as unliquidated damages. From this it is clear that, the payment of compensation or unliquidated damages is an important feature of the law of Torts.

As stated above damages are the pecuniary compensation which the law awards to a person for injury he has sustained by the wrongful act of another. Though the idea of compensation is an important and exclusive remedy available under the law of Torts, it is also available under various statutes. Enumerating all such statutory provisions would be very exhaustive and cumbersome. But it would be worthy to mention some important legislation which incorporate the idea of pecuniary compensation in the Indian legal system, viz. The Indian Penal Code, 1860, The Indian Contract Act, 1872, The Negotiable Instruments Act, 1881, The Land Acquisition Act, 1894, The Workmen's Compensation Act, 1923, Personal Injuries (Compensation Insurance) Act, 1963, Specific Relief Act, 1963 and The Code of Criminal Procedure 1973.

III. Constitution of India and Compensatory Jurisprudence

The Constitution of India which is also the Law of the Land does not have any direct provision regarding compensation. However, the extent of liability of the government for torts of

The decision in *Kasturilal's* case has been considered as irrational by many noted jurists in the modern context. It also gives undue importance to the distinction between sovereign and non-sovereign functions, which is extremely difficult to distinguish between in an era of Welfare State, where the activities of State have increased tremendously. But later on in many subsequent cases⁹ the government was held vicariously liable for the tortuous acts of their servants.

In *Nagendrarao V State of A.P.*¹⁰, the police authorities failed to sell the seized fertilizers and food-grains of the appellant in the market rendering them useless. When the appellant's innocence was proved, he filed a suit to recover the price of the stock by way of compensation. Awarding the compensation court made a very important observation, "any watertight compartmentalization of the functions of the State as Sovereign and non-sovereign or governmental or non-governmental is not sound. It is contrary to modern judicial thinking". In this case court did away with the distinction between sovereign and non-sovereign functions. The State can claim immunity only in some primary and inalienable functions like administration of justice, maintenance of law and order and repression of crime etc. Till date, the principle of tortuous liability of the government has changed over time.

From the above discussion though it is crystal clear that the government is liable for the tortuous acts of its servants and compensation may be awarded, the important question is whether compensation may be awarded to injured person when their fundamental rights have been infringed. Normally a person can claim damages from the government by filing a Civil Suit. It is important to trace the recent trends of the Supreme Court in which it has awarded damages to persons, whose fundamental rights have been infringed, when actions were initiated under Art. 32 and Art. 226 of the Constitution of India.

IV. Judicial Response towards Compensatory Jurisprudence

With the absence of particular legislation and Article 32 and 226 providing no express provision regarding compensation, the Supreme Court of India had to shoulder the responsibility of providing compensation to the victims of flagrant violation of Fundamental Rights. Though life is invaluable, pecuniary compensation may apply some balm on the wounds of the victims or their relatives. This seems to be the foundation of compensatory jurisprudence in the Indian legal system. This was possible only after the liberal interpretation of Article 21 of the Constitution. the shortest Article in the Constitution of India i.e. Art. 21, which is the basis for providing compensation to victims whose fundamental rights have been infringed, can be divided in two

cases of violation of fundamental rights. The Court further observed that such violation must be gross and patent and ex-facia glaring. It signifies that the conscience of the judiciary and the nation at large will be shaken by only gross and patent violation of fundamental rights, while cases which are not gross will not get enough attention. The need of the hour is to respect to all fundamental rights, only then will dignity of the individual will get its due place under the present Constitutional scheme.

In *Khatri V State of Bihar*¹⁹ (Bhagalpur Blinding Case), the Supreme Court put forth an important question- "Why should the Court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the fundamental right to life and personal liberty?" this novel observation of the court may be considered as the initial step towards compensatory jurisprudence.

In *Rudul Shah V State of Bihar*²⁰ when a person rotted in prison for 14 years after his acquittal, the Supreme Court held that if it failed to pass an order of compensation, it would be doing only lip service to the fundamental rights of the individual whose right has been so grossly violated. Here the court awarded compensation of Rs. 35,000/- as an interim measure and an option of instituting a regular civil suit. Though this was an initial bold step in awarding compensation, the amount of compensation seems very meager compared to the agony and suffering the victim had to suffer for 14 years at the hands of prison authorities.

In *Sebastian Hongray V U.O.I.*²¹, when the government failed to physically produce the two men picked up by the Army Jawans, it assumed that they have met unnatural death and awarded compensation of Rs. 1,00,000/- to the wives of each men. The compensation thus given was an 'exemplary damages'.

In *Bhim Singh V State of J & K*²², when the petitioner was arrested and was not produced before the Magistrate within 24 hours, his fundamental right to attend the Assembly Session was violated. The Court awarded compensation of Rs. 50,000/-. Here it appears that the court has increased the quantum of compensation.

*Nilabati Behera V State of Orissa*²³ which was a case of police custodial death, the Court awarded compensation of Rs. 1,50,000/-. Explaining the nature of remedy it observed that payment of compensation under Art. 32 and 226 is a remedy available under Public law, based on strict liability for contravention of fundamental rights to which principle of sovereign immunity does not apply. This case is important in the history of compensatory jurisprudence as

Supreme Court has laid down the law by saying that, "right to compensation is a fundamental right under Art. 21 of the Constitution and for the torts committed by its Servants State is vicariously liable". This observation provides further boost to the idea of compensatory jurisprudence in India.

In *D.K.Basu V State of West Bengal*²⁴ the Supreme Court held that, "Monetary or pecuniary compensation is an appropriate and indeed effective and sometimes the only suitable remedy for redressal for established infringements of fundamental right to life of citizen by the Public servants and the State was vicariously liable for their act". Thus the Supreme Court has, in clear terms, acknowledged the concept of compensation for violation of fundamental rights.

In *Chairman, Railway Board V Chandrima Das*²⁵ the Court awarded exemplary damages to a Bangladeshi women who was gang raped by the employees of the Railway Department. Supreme Court held that Art. 21 is available even to non-citizens also. Court upheld the order of High Court granting the compensation of Rs. 10 lakh to the victim. It is noteworthy that the quantum of compensation has been greatly increased in this case.

In *Bodhisatva Gautam V Shubra Chakraborty*²⁶, it was held that 'rape' as an offence is violative of fundamental rights of a person guaranteed under Art. 21 of the Constitution of India and compensation can be awarded for it.

No doubt, we can conclude that the idea of compensation has been now well accepted in the Indian legal system. This was possible only after the liberal interpretation of Art. 21 of the Constitution. This activist role of the Supreme Court was not only due to in commitment to the fundamental rights of the people but also due to the inactive legislature and indifferent executive.

V. Analysis

From the above discussion, it is amply clear that compensatory jurisprudence is in a nascent stage. Its journey can be traced from *Khatri V State of Bihar* to *Chadrima Das* and further. In spite of these positive steps of the Apex Court there remains a lot distance to be traversed. It is submitted that the researcher has observed the following short falls in the compensatory jurisprudence in India, as mentioned herein below;

- There appear no directory guidelines for awarding compensation in case of violation of fundamental rights. Considering the importance of fundamental rights in our present Constitutional Scheme it would be prudent to lay down guidelines for awarding compensation to victims for violation of fundamental rights.

- The quantum of monetary compensation has varied from case to case and there is no uniformity in awarding compensation for the violation of same fundamental right.

VI. Conclusion

According to recent trends in compensatory jurisprudence, awarding of pecuniary compensation seems to be an appropriate remedy for the violation of fundamental rights of citizens. This has been possible only due to the liberal interpretation of Art 21 of the Constitution and moreover Constitution does not contain any express provision regarding awarding of compensation.

This trend of awarding compensation in cases of Constitutional tort or infringement of fundamental right is evident from various judicial pronouncements. The pioneering work of the Supreme Court in this regard deserves appreciation. The Apex Court has to shoulder this responsibility because the legislature has not yet enacted any law regarding determining the tortious liability of the government and the Constitution does not expressly provide for monetary compensation for the infringement of the fundamental rights.

Though the various pronouncements of the Supreme Court have laid down the foundation of compensatory jurisprudence in the Indian legal system, it has a long way to go. The law in this regard should be made certain instead of keeping large scope only for judicial interpretation.

In the light of above discussion and observations, the researcher intends to give following suggestions;

- The quantum of monetary compensation in cases of gross violation of fundamental rights especially right to life and personal liberty, as awarded by Court from time to time in different cases, is not adequate. It should be big enough to have deterrent effect on the State and its machinery.
- Today a victim of violation of fundamental rights has to depend only on judicial precedent for compensation. It would be prudent to incorporate the idea of compensation in Article 32 and Article 226 by suitable Constitutional Amendment.
- Considering the recommendation of First Law Commission Report, it would be the need of the time for the legislature to enact a law regarding liability of the State in Tort.

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ROLE OF JUDICIARY IN THE DEVELOPMENT OF THE RIGHT TO PRIVACY IN INDIA WITHIN 1954-2019 ERA: AN OVERVIEW

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Abstract: Privacy is an important phenomenon of every individual's life. Privacy connotes every aspect of human behavior. The concept of privacy not only relates to body, property, reputation, marriage, procreation, education, etc. but also relates to data, information, and communication in digital era. The scope of privacy has different dimensions and angles which depend upon the upbringing situation, morality, psychological and sociological background of an individual. But in simple sense, privacy means an autonomy barred by illegal interference or it is one kind of secrecy which a man would like to keep away from the society or others. Present research paper attempts to review the conscious awareness of Right to Privacy on judicial level.

IndexTerms- Right to Privacy, Data, Information, Precedent.

I. Introduction:

Privacy is an important phenomenon of every individual's life. Privacy connotes every aspect of human behavior. The concept of privacy not only relates to body, property, reputation, marriage, procreation, education, etc. but also relates to data, information, and communication in digital era. The scope of privacy has different dimensions and angles which depend upon the upbringing situation, morality, psychological and sociological background of an individual. But in simple sense, privacy means an autonomy barred by illegal interference or it is one kind of secrecy which a man would like to keep away from the society or others.

The concept of privacy is not new for mankind. From the ancient to modern stages of civilization the concept of privacy can be traced. In every religion privacy concept was at paramount level and protection has been awarded for invasion of right to privacy. It can be traced in Koutilya's Arthshastra, Quran, Bible, Manusmriti, etc.

The Constitution of India is supreme blueprint and foundation of legal procedures and rule governed life in India. No one can make a law which is going to contravene the constitutional provisions. The provision regarding right to privacy was not inserted by Constitution makers at the time of 1950 when Constitution was adopted. At the time of Constitutional debate, Dr. Babasaheb Ambedkar was of the opinion that the right to privacy shall be under the heading of fundamental rights but was unable to implicate it. It was the constant struggle of judiciary to enhance the scope of the fundamental rights which provides the approach to protect fundamental as well as personal rights of an individual. The path to achieve the recognition towards right to privacy was a track race. The journey from 1954 to 2017 was mutable. The unending efforts taken by the judiciary resulted into the new beginning of the fundamental right of privacy in India.

In digital era, privacy became the prime concern of an individual as well as the Government. The information communication technology (ICT) revolved every moment and movement of human life. Technology replaced all physical, psychological and spiritual barriers of mankind. Enhancement in technology resulted into misappropriation, fraudulent behavior, cheating and cyber-crimes. As per the growing demand of the security towards such technological embezzlement, the legislature being an important organ of the government tries to safeguard the victims by providing the shield through various laws.

Information Technology Act, 2000 and the amendments in 2008 became the giant step to tackle the incidents of infringements of privacy matters through ICT but as per the technological development, the provisions seem to be limited and restricted. Stringent and dedicated law is needed to tackle data security and cyber-crime matters.

The role of Judiciary in India is not only to develop the justice system but also to settle down the new emerging situations which arisen due to advancement in technology. In comparison with the legislature, judiciary is flexible to make law through precedents. Judiciary is always beneficial regarding evolving matters and their speedy disposals.

Present paper traces the case-to-case development of the Right to Privacy as a fundamental right.

II. Constructive Role of Judiciary:

The recognition of *Right to Privacy* as a fundamental right was not hurried footstep of judiciary. It was case to case development. Through precedents judiciary developed the scope of fundamental right. The recognition of right to privacy will be treated as marvelous journey in the history of judiciary. For present purpose, paper is divided into two parts as:-

A) Pre Puttaswami Era (1954- 2017)

B) Post Puttaswami Era (2017-2020)

It is an imperative to trace the development of Right to Privacy considering these two eras one by one as below:

A) Pre Puttaswami Era (1954- 2017):

The journey towards *Right to Privacy* began with the question regarding the search and seizure of the documents amounts violation of the right to privacy or not before the Supreme Court. The questions connecting with the domiciliary visits of police, freedom of Press, right of a prostitution regarding her settlement, surveillance by police, passport impounding matter, doctor patient relationship, rape matters, medical examination, phone tapping, etc. were before the Supreme Court. It can be looked explored through case to case in brief.

M.P.Sharma v Satish Chandra¹ (1954)

In this case, Dalmiya Group of Company was in liquidation and Central government ordered investigation of company regarding the fraudulent transactions, misuse of funds and falsification of documents. While investigation, the documents, records were taken in the custody. The company challenged the search and seizure as unconstitutional and argued that it was the violation of right to privacy and fundamental rights under Article 19(1)(f), Article 20 (3) of the Constitution.

While deciding the case, Supreme Court rejected the plea regarding the search and seizure as unconstitutional and contended that there was not infringement of fundamental rights as well as right to privacy.

Hamdard Dawakhana v Union of India² (1960)

In this case, the Supreme Court held that, Freedom of press is an integral part of fundamental right and beneficial freedom of speech and expression.

¹ AIR 1954 SC 300

² AIR 1960 SC 554

Kharak Singh v The State of Uttar Pradesh and others.³ (1963)

In this case, Kharak Singh was the suspect in case of dacoity and released due to insufficiency of evidences but kept under the surveillance under the provisions of U.P. Police Regulations. The validity of Regulation was challenged by the Kharak Singh. He argued that the domiciliary visits at night and surveillance by police authority are violating his fundamental rights under Article 19(1) (d) and Art.21 of the Constitution.

The Supreme Court sustained the U.P. Police regulation but declared the domiciliary visits at night as unconstitutional. While dealing with the privacy aspects, court observed that, "the right to privacy is not a guaranteed right under our Constitution and therefore the attempt to ascertain the movements of an individual which merely a manner in which privacy is invaded is not an infringement of a fundamental right guaranteed by Part III."⁴

The State of Uttar Pradesh v Kousalya and Others⁵ (1964)

In this case, the question regarding the privacy of prostitution and her right to reside and settle down within territory of India like other citizens was before the Supreme Court. The court while deciding the issue upheld the restrictions imposed by the Immoral Traffic Act on prostitutes and their movements within territory of India are reasonable and permissible under Indian Constitution.

Govind v State of Madhya Pradesh⁶ (1975)

In this case, Govind Shankar Pawar was the habitual criminal and kept under surveillance by Madhya Pradesh Police Regulation. The police officers authorized to have domiciliary visits and picketing of habitual offenders if necessary under this regulation. Govind challenged the false accusation against him and contended that it is violation of his right of privacy. The Supreme Court held that, the surveillance is not always an unreasonable restriction upon the privacy rights and habitual offenders are within the scope of surveillance.

Maneka Gandhi v Union of India⁷(1978)

In this case, as per the Governments direction, regional passport office impounded the passport of Maneka Gandhi without any statement of reasons. She filed petition and contended that, Art. 10(3)(c) of Passport Act,1967 is violative of Art.14, Art. 19 (1)(a),(g) and 21 of Indian Constitution. She also argued that such impoundment is against the natural justice principle and the rule of Audi Alteram Partem.

The Supreme Court held that, action of passport authority was against the natural justice principle and arbitrary. Sec. 10 (3)(c) is violative of Art.14 but not violative of Art. 19(1)(a), (g) and Art.21 of the Constitution.

Malak Singh v State of Punjab and Haryana⁸ (1981)

This case was regarding the surveillance of offenders under Punjab Police Rules. The rules were challenged by the two offenders on the ground that they are unreasonably suspecting as habitual or repeated criminals and their names have been included in surveillance register by political pressure. While deciding the case Supreme Court held that, the names in the surveillance list shall be of the persons who are having prior criminal record, previous conviction, proclaimed offenders, etc. S.C. also laid down that, the surveillance may encroach on the privacy of citizen within the limitations provided by law.

State of Maharashtra v Madhukar Narayan Mardikar⁹(1991)

In this case, the privacy of an unchaste woman was in question before Supreme Court. The police inspector in uniform demanded sexual favor from the woman named Banubi. She resisted and cried for help. Her husband and people of their vicinity called police.

The Supreme Court held, 'even a woman of easy virtue is entitled to have a right to privacy and it is not open to anyone to violate her person as and when one like'.¹⁰

³ AIR 1963 SC 129

⁴ Ibid p.1003

⁵ AIR 1964 SC 416

⁶ AIR 1975 SC 1378

⁷ AIR 1978 SC 597

⁸ 1981 1SCC 420

⁹ AIR 1991 SC 207

¹⁰ Supra at p 5

R.Rajgopal v State of Tamilnadu¹¹(1995)

This case is popularly known as Auto-Shankar's case where the freedom of press as well as right to privacy of a person was taken into consideration. The autobiography of a hardened criminal was announced to publish by the magazine 'Nakkheeran' but prison authority imposed prior restraints on the publication. While deciding the case Supreme Court laid down that, government authorities have no right to impose prior restraints on the publication but allowed to act against defamation after publication of any article or autobiography. The magazine may publish the article or autobiography with or without consent of the prisoner.

Mr. X v Hospital Z¹²(1995)

In this case, the duty of care and maintenance of secrecy of patient's medical record by the medical professionals was in discussion before the Supreme Court. A patient found HIV positive. The hospital authority disclosed his medical report due to which his proposed marriage was called off. He suffered criticism, left the job and change his place of residence. He moved towards the Supreme Court contending that, breach of secrecy by medical practitioner's amounts to violation of right to privacy. The Supreme Court held that, right to privacy is an essential element of Art.21 of Indian Constitution. But if there is a conflict between right to privacy and right to be informed, right to be informed will prevail over the right to privacy. The court also observed that the doctor-patient relationship is not an absolute one and it can be broken for requirement of protection of public interest.

People Union for Civil Liberties v Union of India¹³(1997)

In this case, the writ petition was filed by the voluntary organization known as People Union for Civil Liberties in the Supreme Court to challenge the matters relating to phone tapping incidents of politicians. Validity of Sec. 5(2) of the Indian Telegraphic Act, 1885 was challenged by the petitioner. Supreme Court held that, telephone tapping was an infringement of right to privacy under Art 21 of the Constitution.

State of Karnataka v Krishnappa¹⁴ (2000)

In this case, eight years old child was raped, and Supreme Court held that sexual violence is an unlawful interference of the body and dignity of individual.

Sharda V Dharmpal¹⁵(2003)

In this case Matrimonial court's order regarding the medical examination of a party would violate right to privacy under Art. 21 of the Constitution was the contention before the Supreme Court. The court held that right to privacy is not an absolute right and a medical examination could be ordered.

District Registrar and Collector, Hyderabad v Canara Bank¹⁶(2005)

The case was regarding the customer's right to privacy in banks regarding the investigation process. The court held that the interference regarding the law and procedure connected with the liberty and privacy of the individual shall be just and fair and not be arbitrary and oppressive.

R.R. Metrani v Commissioner of Income Tax¹⁷(2007)

The provision of search and seizure under sec.132 (5) of Income Tax Act was in question in this case. While deciding the case the S.C. declared that the section leads to encroachment of the privacy of an individual.

Suchita Srivastava v Chandigarh Administration¹⁸(2009)

In this case, the Supreme Court held that the right of woman regarding her own body is within the sphere of right to privacy under Article 21 of Indian Constitution.

Bhavesh Jayanti Lakhani v State of Maharashtra¹⁹ (2009)

In this case, interim custody orders were violated by the petitioner and she returned India with her child. US Interpol issued arrest warrant, but petitioner challenged it and contended that the CBI authority with the help of INTERPOL violated her right to privacy. Court referred two previous decisions of Kharak Singh and Govind v State of M.P. and held that right to privacy is an intrinsic part of right to life but reasonable restrictions are also allowed through procedure of law.

¹¹AIR 1995 SC 264¹² AIR 1995SC 495¹³ AIR 1997 SC 568.¹⁴ 2000 4 SCC 75¹⁵ AIR 2003 SC 3450¹⁶ (2005) 1 SCC 496¹⁷ (2007)1 SCC 789¹⁸ (2009) 9 SCC 1¹⁹ (2009) 9 SCC 551

Selvi v State of Karnataka²⁰ (2010)

In this case, the court held that, "subjecting a person to the impugned techniques was held to be a violation of prescribed boundaries of privacy."

Amar Singh v Union of India²¹(2011)

In this case, a Petition was filed by the petitioner under Article 32 of the Indian Constitution regarding his phone tapping by the service provider agency. The petitioner contended that without any verification the service provider agency tapped his phone and violated his right to privacy.

The Supreme Court held, service provider agency shall act for public interest and with accountability towards public. Intervention in the telephonic conversation of a person is a violation of his right to privacy enshrined under constitution.

Ram Jethmalani v Union of India²²(2011)

In this case, court held that, checking of bank account details without any prima facie case will be the breach of right to privacy of an individual. The court further held that the State could access the bank accounts of any individual for investigation and establishment of criminal activity, but this power of state is not available to any individual to force others to show his bank details.

National Legal Services Authority v Union of India²³(2014)

In this case, the rights of transgender and their identity, privacy, dignity was in question. S.C. held that, according to Art. 19(1) (a), persons gender expression, its presentation, and private identity has been protected. The state cannot interfere in such cases in cases of transgender also. Gender identity is one of the facets of the right to privacy and covered under Article 15 and Article 21 of the Constitution as of Constitutional rights.

Justice K.S. Puttaswamy & Another v Union of India and others²⁴ (2014)

Unique Identification Number through iris scanning, compilation of biometric and demographic data of citizens violates right to privacy under Indian Constitution was the crux of this case. While deciding this issue, the Supreme Court referred the case to declare constitutionality of right to privacy towards Constitutional bench of 9 judges.

The supreme Court upheld the Aadhar scheme as constitutionally valid, but struck down several provisions in the Aadhar Act. Sufficient security measures shall be taken to protect data, no surveillance on citizens on the basis of Aadhar, reduction of period of storage of data, Aadhar is not mandatory for opening of bank accounts, school admission, getting mobile connections, private companies not allowed to ask for Aadhar but SC made linking of Aadhar and PAN mandatory and made it compulsory at the time of filing Income Tax return.²⁵

Supreme Court Advocates on Record Association v Union of India²⁶ (2016)

The case was regarding the disclosure of information about the candidature in the appointment of judiciary in Supreme Court and High Courts. The conflict was between two rights i.e. right to privacy and right to know and which will prevail over. The court held that, independence of judiciary is an intrinsic part of the constitution. Judicial primacy is mandatory and its part and parcel of basic structure of the constitution.

Justice K.S.Puttaswamy & Another v Union of India and others²⁷(2017)

This case is considered as the milestone in the history of the Indian judiciary. A Nine Judge Constitutional Bench overruled the M.P. Sharma case and Kharak Singh case and declared that right to privacy is a fundamental right under Indian Constitution. While deciding the case, S.C. affirmed the perceptiveness and issues in judgment of the PUCL case and held that, Violation of right to privacy subjected to reasonableness test under Article 14. Restrictions of public order, obscenity under Article 19 are also applicable to violations of right to privacy if it is connected with Art. 19.

These cases have brought the assertion of Right to Privacy and laid foundations to further concrete development in its next phase as discussed below.

²⁰ AIR 2010 SC 1974

²¹ (2011) 7SCC 69

²² (2011) 8 SCC 1

²³ (2014) 5 SCC 438

²⁴ (2014) 6 SCC 433

²⁵ economicstimes.indiatimes.com

²⁶ (2016) 5 SCC 1

²⁷ (2017) 10 SCC 1, AIR 2017 SC 4161

B) Post Puttaswami Era (2017-2019):

After recognition of a right to privacy as a fundamental right, the Supreme Court widened the domain of right to privacy within the ambit of Article 21 of the Indian Constitution. The cases which were beyond the purview of the right to privacy were related to right to life and personal liberty of an individual.

Navtej Singh Johar and Ors. v Union of India²⁸(2018)

In this case, the Supreme Court declared Sec. 377 of Indian Penal Code as discriminatory towards LGBT (Lesbian, Gay, Bisexual and Transgender) community. The Supreme Court further laid down that, Sexual orientation is intrinsic part of the dignity, identity, privacy and autonomy of the LGBT community and sec. 377 of IPC is violative of Arts.14, 15, 19 and 21 of the Indian Constitution. This precedent overruled the previous decisions²⁹ of the court.

Common Cause (A Regd Society) v Union of India and Anr.³⁰(2018)

In this case, the Supreme Court held that, the choice of individual relating to the right to die with dignity is embodied within the boundaries of Art.21 of the constitution and within the purview of right to privacy.

Shafin Jahan v Asokan K.M. and Ors.³¹(2018)

In this case, the Supreme Court reaffirmed the decision of K.S. Puttaswami and held that right to marry with a choice of a life partner is within the domain of right to privacy.

Joseph Shine v Union of India³² (2018)

The Supreme Court of India struck down Sec. 497 of Indian Penal Code dealing with the concept of adultery as an arbitrary provision and it is violative as per Articles.14, 15 and 21 of the Indian Constitution. The court also observed and declared that the section 497 infringes the dignity and privacy of a woman.

Justice K.S.Puttaswamy & Another v Union of India and others³³(2019)

A Five judge constitutional bench declared that Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services Act, 2016) is valid and the provisions are not violative of fundamental right to privacy. Section 7 was the essential provision of the Aadhaar Act and it suffices the criteria of Article 110 of the Indian Constitution. Aadhaar Act was validly passed by the parliament as a Money Bill.

Kamal Nath v Election Commission of India and Ors.³⁴(2019)

The publication of voter's list in the searchable format is violative of voter's privacy under Art.21 was the issue before the Supreme Court under this case. The Court while deciding the case held that, "the Election Commission of India is duty bound to protect the privacy and profiling of the voters."

III. Conclusion:

The development of right to privacy is an exclusive journey in the history of Indian Judiciary. In Parliamentary form of Government in India, the Legislature enacted law for the country and judiciary is supposed to interpret the law passed by the legislature and deliver justice to the needy. But many times, judiciary entered into the shoes of the legislature through precedent which also known as the judge is made law. In India, as the legislature is having rigid law-making process, complicated language in the formation of law and consumption of time in the lengthy process of enactment, judiciary is seemed to be a durable solution as per the need of the society. It can be said, "When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intension of Parliament and then he must supplement the written words so as to give 'force and life' to the intention of the legislature".³⁵

Despite of all the efforts taken by the judiciary, the gaps left by the legislature cannot be filled by the judiciary. Though the right to privacy has been declared as the fundamental right by the judicial decision, this right is not an absolute right. For the protection of larger public interest, this right may be curtailed. However, the protection towards right to privacy has been increased by the judicial decisions; still India is

²⁸ AIR 2018 SC 4321

²⁹ Yusuf Abdul Aziz v State of Bombay(1954SCR 930), Sowmithri Vishnu v Union of India(1985 Supp SCC 137), Vishnu Revathi v Union of India(1988 2 SCC 72)

³⁰ (2018)5 SCC 1, AIR 2018 SC 1665

³¹ (2018) 16 SCC 368

³² AIR 2018 SC 4898

³³ (2019) 1 SCC 1

³⁴ AIR 2019 SC 336

³⁵ Seaford Court Estates Ltd. Vs Asher (1949) 2 ALL ER 155, 164

waiting for the stringent and dedicated law for the infringement of right to privacy through information communication technology. From Justice A.P.Shah expert committee (2012) to Justice B.N. Shrikrishna expert committee (2018), only personal data protection bills has been drafted but unfortunately it never turn into the dedicated data protection law for the country. The legislature passed Information Technology Act, 2000 and amended³⁶ various sections time to time but these are not sufficed to tackle the problems which are increasing due to advancement in technology.

Today, we are surrounded by the progressive technologies having social media networking sites like WhatsApp, Facebook, Twitter, Instagram, etc. on our fingertips and became the means to infringe the right to privacy of the individual with consent or without consent. People are facing trolling, cyber bullying, data tampering, etc. through these sites but unable to get remedies due to lack of direct provisions under the existing laws. Though cyber cells are established, they are not able to tackle the emerging challenges through the ICT. In focus, one can say, in this digital and virtual era, the devoted law relating to right to privacy is the need of the hour.

IV. Suggestions:

- 1) Stringent law relating to right to privacy and data protection is required in India.
- 2) International legislation dealing with the mass surveillance is necessary to deal the privacy matters of individual through cross border flow of personal information.
- 3) Establishment of E-judicial wing with technical and legal assistance to solve the electronic data issues is essential to fight against internet privacy infringement issues.
- 4) A separate recruitment of the technical personnel's is needed in the field of Cyber Police cell to handle the cyber-crimes efficiently and effectively.
- 5) Awareness movements through advertisements, mass programs are required to enhance the electronic and internet literacy of the citizens in India.
- 6) Internet digital literacy, code of internet/ digital honor and punishments on breaching of it must become the part of school and college education (Std. 8th onwards). It would provide catering of Digital literate generation with more human, sensible and responsible outlook.

Thus, it can be concluded that, Right to privacy should become the conscious practice on the personal as well as judicial level. People should take care while uploading, sharing or storing sensitive information that may cause the inconvenience and breach of right to privacy. On judicial level too, initiatives must be strengthened to provide safety as well as feeling of respect and threat of consequences on breaking the rules.

³⁶ Information Technology Amendment Act, 2008 and Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011.

Law Relating to 'Traffic in Women' - National and International Perspective

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Abstract

Every human being, man or woman, is the creature of the nature and no one has authority to treat the other person as property or commodity so that claiming ownership & control on them. The evil of Traffic in person is recognized, by International Law, as one of the inhuman acts and it is also regarded as the violation of human rights. Particularly, women and children are the most affected classes of the society in this field. Since nearly 100 years back, from the inception of the League of Nations, attempts have been made by adopting conventions to prevent and suppress such inhuman acts. Our Constitution also guaranteed protection against such evil under Art. 23.

In spite of these measures at national and international level, this evil is still in existence in all over the world and increasing day by day on the large scale. It seems that the present legal system has failed to achieve its objectives. The reasons may be numerous. The present research paper will focus on the various laws relating to traffic in women at national and international level and try to find out the reasons for failure of these laws to achieve its objectives.

KEYWORDS: Traffic in women, International Law, Indian Law, etc.

Introduction

All human beings are born free and equal in dignity and rights. Human being, as a natural and social animal, has right to live his/her life with freely and with human dignified life. In twentieth century, the concept of human rights of individuals identified, recognized and developed at the international level. There are different groups in the society and one group dominates on the other group, for example, men and women, master and servant, rich and poor, strong and weak, major and minor, etc. There basic human rights have been violated frequently by their respective dominant section of the society.

Women are considered as one of the vulnerable classes of society has been always been dominated and discriminated by men class. In the male dominant societies, they have been exploited, mentally, physically, psychologically, sexually, and so, their basic human rights have been violating from the very beginning. In wider society, the movement towards gender equality began with the suffrage movement in western cultures in the late 19th Century, which sought to all women to vote and hold elected office.¹ The first Armenian Republic (1918-1920) was one of the first countries in the

¹ https://en.wikipedia.org/wiki/Gender_equality

world to give women the right to vote and to be elected to public office.² According to the National Crimes Records Bureau of India, incidents of crimes against women are committed every three minutes.

A social evil of Trafficking in person is one of the major issues of abuse of human rights committing generally around the world and women are mostly the victims of Trafficking in person. Hence, it is necessary to study the concept, the causes, consequences, etc. of trafficking in women. The present paper is dealt with the laws relating to trafficking in women from the International and Indian perspective.

Concept of 'Trafficking in Person'

Generally speaking, the term 'Trafficking in person' is the trading of person for the purposes of certain immoral and illegal practices like sexual slavery, or prostitution, or forced or compulsory labour, etc. Person means any human being of any tender age whether men, women or otherwise. Women and Children are mostly used for these purposes. Such evil practices find in all over the world and since long time ago. 'Trafficking in women' for sexual exploitation is an International, organized, criminal phenomenon that has grave consequences for the safety, welfare and human rights of its victims.³

Definition of 'Trafficking in Person'

In 2000, the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, 1949, defines the term 'trafficking in persons' as follows:

*'Trafficking in persons' shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of threat or use of force or other forms of coercion of abduction, or fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.'*⁴

The Protocol further explains that 'the consent of a victim of trafficking in persons to the intended exploitation shall be irrelevant or where the victim is a child or an otherwise considered as 'trafficking in person'.

The above definition has got International consensus and further adopted in number of regional instruments and domestic laws. In early International and domestic laws, trafficking was synonymously with prostitution. Later, it also extended to the smuggling of male or female migrants for economic gain. Thus, the term 'trafficking in

² <http://www.socialwatch.org/node/12059>

³ <https://www.wikigenger.org/wiki/trafficking-of-women>

⁴ Article 3 of the Palermo Protocol, 2000

women' may mean transportation, recruitment, etc. of women by any means, for the purposes of sexual or other exploitation.

Law relating to 'Trafficking in Women'

As stated earlier, trafficking in women is a criminal phenomenon, it required to be curbed by way of imposing deterrent punishments. It also became one of the international issues. Hence, International Law also attempted to prevent and punish such evils.

International Law perspective

Since last 100 years, various international organs, like League of Nations, International Labour Organization, United Nations, etc. have contributed for adopting various conventions and creating mandates upon State Parties for preventing and suppressing trafficking in persons. Earlier under the auspices of the League of Nations, two Conventions were adopted, *first*, International Convention for the Suppression of the Traffic in Women and Children, 1921, and *second*, International Convention for the Suppression of the Traffic in Women of Full Age, 1933 aimed at ending the white slave trade.

After the Second World War, the United Nations recognized certain purposes under Article 1 of the United Charter. Among various purposes, it mentions that it shall promote respect for 'Human Rights and Fundamental Freedoms'. It also mention this term in various other provisions of the Charter. In order to achieve this purpose, United Nations, through various Conventions and Protocols, tried its best to promote and protect human rights on one hand and to suppress and prevent certain inhuman and immoral practices existed in the World. Currently, under the UN system, following International instruments has been adopted by consolidating two Conventions to curb traffic in persons.

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949

The Preamble states that the prostitution and accompanying evil of the traffic in persons for the purpose prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community. It adopted with respect to the suppression of the traffic in women and children.

In 2000, in order to combat trafficking, the General Assembly also adopted the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplementing the UN Convention against Transnational Organized Crime

It aims to prevent and combating trafficking in persons, paying particular attention to women and children; to protect and assist the victims of such trafficking; and to promote cooperation among States Parties in order to meet those objectives.⁵ The

⁵ Adopted in 2000.

Convention came into force in July, 1951 and it had 74 State Parties as on February, 2002.

Apart from this substantive Convention, there are following various other related conventions adopted under the auspices of the UN.

UN Convention against Transnational Organized Crime

The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.⁶

Some other relevant Conventions

- Protocol Against Smuggling of Migrants by Land, Sea and Air Supplementing the UN Convention Against Transnational Organized Crime;
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990;
- UN High Commissioner for Human Rights Principles and Guidelines on Human Right and Human Trafficking.

SAARC and Law relating to 'Traffic in Women'

At regional level, the SAARC has adopted two relevant conventions. These are: (i) *SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002*, and (ii) *SAARC Convention on Regional Arrangements for promotion of Child Welfare in South Asia, 2002*.

There are number of other International instruments⁷ under the realm of Human Rights jurisprudence, apart from these above mentioned documents which are directly or indirectly adopted for the prevention and suppression of trafficking in person. This tries to create obligations upon the contracting parties to cooperate and adopt specifically in their domestic laws.

Laws relating to 'Trafficking in Women' in India

India has ratified the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others in January, 1973. But before ratifying this Convention, our **Indian Constitution** prohibits 'traffic in human being' under **Article 23(1)**. It recognized as one of the fundamental right of the person and thus everyone who is victim of traffic in person is entitled to protection under Part III of the Constitution. It also provides that any contravention of it is an offence punishable in accordance with the law.

⁶ Article 1

⁷ Conventions dealing with Slavery and slavery-like practices, employment and force labour, Women's Rights like CEDAW, International Bill of Human Rights, etc.

Previously, sections 366 and 374 of Indian Penal Code provides for punishments for trafficking. Moreover, a special legislation also enacted in 1956 known as **the Suppression of Immoral Traffic in Women and Girls Act (SITA)**. It prevents sexual exploitation for commercial purposes.

In order to give effect to the International Convention, India has enacted **the Immoral Traffic (Prevention) Act, 1987 (ITPA)**. The purpose of this Act was to eliminate trafficking woman and children for the purpose of Prostitution as an organized means of living. It recognized various offences under sections 3 to 9 of the Act in relation to trafficking in person.

Apart from these, there are many relevant provisions under various other laws in India dealing, directly or indirectly, with the trafficking in women.⁸

Present Scenario

In spite of measures taken for suppressing such evil of trafficking in women through various laws at national, regional and international level, the issue of trafficking is increasing day by day in all over the world. It has been estimated that more than two million people World-wide are being trafficked each year, the majority of whom are women and children and at least 7000 girls are trafficked into India from Nepal for the purposes of brothels in metros, slavery or slave like work.⁹ Around 80% of the human trafficking across the world is done for sexual exploitation and the rest is for bonded labour. India is considered as the hub of this crime in Asia.¹⁰

In a Report of 2016 from UN Office on Drugs and Crime (UNODC), it has stated that the vast majority of all human trafficking victims - some 71 per cent - are women and girls and one third of total victims are children. According to the UNODC Executive Director, Yury Dedotov, "Trafficking for sexual exploitation and for force labour remain the most prominently detected forms, but victims are also being trafficked to be used as beggars, for forced or sham marriages, benefit fraud, or production of pornography".¹¹ The above data has been collected from 155 countries in the world in 2016.

In India, 8132 cases were reported in 2016 across the country compared to 6877 cases in 2015. West Bengal ranked topped in the list where 3579 cases accounting for 44 per cent of total cases. Rajasthan reported second in the list with 1422 (17.5%) cases, followed by Gujarat (548), Maharashtra (517) and Tamil Nadu (434).¹²

⁸ Relevant Laws like, *Bonded Labour System (Adoption) Act, 1976, The Child Labour (Prohibition & Regulation) Act, 1986, Transplantation of Human Organs Act, 1994, Prohibition of Child Marriage Act, 2006, and the recent one the Protection of Children from Sexual Offences (POCSO) Act, 2012, etc.*

⁹ Dr. H. O. Agarwal, *International Law & Human Rights*, 15th Edition, Central Law Publications

¹⁰ *Human Trafficking in India: Legal Protection against Human Trafficking in India* - By LAWNN.com, March 18, 2018

¹¹ <https://news.un.org/en/story/2016/12/548302>

¹² <https://www.hindustantimes.com/india-news>

Conclusion

In spite of various measures taken through laws relating to 'trafficking in person' at national and international level, this evil is still in existence in all over the world and increasing day by day on the large scale. It seems that the present legal system has failed to achieve its objectives. The reasons may be numerous. The trafficking is becoming serious concern even after 70 years of adoption of the Convention at International level and Constitutional guarantee and statutory provisions in India. Despite of these measures, it is increasing tremendously in traditional forms as well as extended in various advanced technological forms through computers, mobiles, internet or digital and social media. The modern issues relating to trafficking in women would also include the issues of pornography, dance bars, pre-natal diagnosis and female Infanticide, surrogacy, live-in-relationship, sexual relation for promise of marriage, recent exposures on "Me too" website, etc.

Human trafficking is considered the third largest organized crime globally.¹³ There may be various causes of human trafficking in India, based on social structure, such as poverty, unemployment, gender discrimination, male dominant society, lack of effective implementation of the laws, etc. Apart from these, there may be various other causes, for increasing trafficking in person, arising from human nature, like greediness, selfishness, egoistic nature of human being, impatience, etc.

In order to prevent this social evil of trafficking in women, many efforts have to be taken at different levels, local to global. Proper, effective and efficient implementation of the existing laws at national level may be the most suitable measure to combat this issue. Punishment for such offences should be severe. Apart from these, various other appropriate measures may also be adopted such as, making awareness of various women's rights, sincere efforts by NGOs providing assistance to helpless and needy women, enhancing educational standards among people, increasing moral and value education, changing attitude towards women, etc. and at International and regional levels, measures like ratification of relevant conventions by all nations and abiding those mandates, accepting principles of International cooperation and friendly relations among nations, etc. should be adopted.

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Critical Analysis of Safety And Dignity of Women in India

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ABSTRACT

I INTRODUCTION

In ancient India women used to be much respected. There is no exclusion of women according to the Vedas. Motherhood is considered the greatest glory of Hindu women. The Taittiriya Upanishad teaches, "Matrudevo bhava". Number of verses of Atharva Veda proves that women used to be very respected. The idea of equality was most forcibly expressed in the Rig Veda. Likewise in so many other mantras a woman has been presented to play an essential role in family and as wife. Similarly she has been given the lead stage in society works, in governmental organizations and for ruling the nation is also mentioned in Vedas.

India has one of the most progressive legal systems and largest democracy in the World. The irony lies in fact that in our country where women are worshiped as *Shakti*, the atrocities are committed against her in all sections of life. She is being looked down as commodity or as a slave, she is not robbed of her dignity and pride outside her house but she is also faces ill-treatment and other atrocities within the four walls of her house. Women were discriminated on every walk of her life. She was deprived of even education, independence, social status etc. The inferior status of women is often attributed to the inadequate and ineffective implementation the existing laws in India. While this is a problem, the key factor the interrelation between legislation and the treatment of women: many gender biased legislative provisions, despite the Constitutional guarantee of equality, continue to reiterate traditional feudal women's property rights and failed to provide women with equal access to economic resources.

From the aforesaid picture of women it raises a question, whether women is safe? What are parameters of women's dignity in the modern society? etc. In this backdrop, an attempt has been made to analyze and take review of Indian legal framework and different provisions in favour of women in India, so also an attempt is made to analyze the position, status and realities of the women's status and dignity in the instant paper.

II METHODOLOGY

The topic chosen for this research paper require systematic investigation of the concepts, the data available and analysis of the legal provisions and the modality of welfare institutions. Hence the author has adopted and followed the Doctrinal method.

Since in this paper different legislation, documents national and international so also judgments of Apex Court are taken, discussed and analyzed author has emphasized on the secondary data from library and news items published in the news papers.

Key Words :- Women, Dignity, Safety, Law and Judgments.

"If society will not admit of women's free development, then society must be remodeled." — Elizabeth Blackwell

I INTRODUCTION

In ancient India women used to be much respected. There is no exclusion of women according to the Vedas. Motherhood is considered the greatest glory of Hindu women. The Taittiriya Upanishad teaches, "*Matrudevo bhava*". Number of verses of Atharva Veda proves that women used to be very respected. The idea of equality was most forcibly expressed in the Rig Veda. Likewise in so many other mantras a woman has been presented to play an essential role in family and as wife. Similarly she has been given the lead stage in society works, in governmental organizations and for ruling the nation is also mentioned in Vedas.

India has one of the most progressive legal systems and largest democracy in the World. Indian philosophy and Hindu mythology carve a beautiful picture of the women in the social arena and depict her to be fortress of knowledge, wealth and power. The irony lies in fact that in our country where women are worshiped as *Shakti*, the atrocities are committed against her in all sections of life. She is not robbed of her dignity and pride outside her house but she is also faces ill-treatment and other atrocities within the four walls of her house. The perusal of ancient history reveals that, position of women in India was very miserable. Earlier women were deprived of very basic rights in our patriarchal society. Women were discriminated on every walk of her life. She was deprived of even education, independence, social status etc. The inferior status of women is often attributed to the inadequate and ineffective implementation the existing laws in India. While this is a problem, the key factor the interrelation between legislation and the treatment of women, much gender biased legislative provisions,

despite the Constitutional guarantee of equality, continue to reiterate traditional feudal women's property rights and failed to provide women with equal access to economic resources.

From the aforesaid picture of women it raises a question, whether women is safe? What are parameters of women's dignity in the modern society? etc. In this backdrop, an attempt has been made to analyze and take review of Indian legal framework and different provisions in favour of women in India, so also an attempt is made to analyze the position, status and realities of the women's status and dignity in the instant paper.

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III INTERNATIONAL EFFORTS IN FAVOUR OF WOMEN

At International level there appears many efforts taken for the protection of interest, status and dignity of women. To give it force and effect International documents in the form of Conventions, Conference etc. are brought in to existence which have made binding upon all the member States. The said International efforts/documents are discussed herein below.

The landmark Declaration, UDHR, adopted by the General Assembly on 10th December 1948, reaffirms that "All human beings are born free and equal in dignity and rights" and that "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion,... birth or other status"¹.

¹ www.un.org/overview/rights.html

As the international feminist movement began to gain momentum during the 1970s, the General Assembly declared 1975 as the International Women's Year and organized the first World Conference on Women, held in Mexico City. In 1979, the General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which is often described as an International Bill of Rights for Women. The Convention targets culture and tradition as influential forces shaping gender roles and family relations, and it is the first human rights treaty to affirm the reproductive rights of women².

Five years after the Mexico City conference, a **Second World Conference on Women** was held in Copenhagen in 1980. In 1985, the World Conference to Review and Appraise the Achievements of the UN Decade for Women: Equality, Development and Peace, was held in Nairobi. The Fourth World Conference on Women, held in Beijing in 1995, went a step farther than the Nairobi Conference. The Beijing Platform for Action asserted women's rights as human rights and committed to specific actions to ensure respect for those rights³.

The UN system continues to give particular attention to the issue of violence against women. 1993 General Assembly **Declaration on the Elimination of Violence against Women** contained "a clear and comprehensive definition of violence against women and a clear statement of the rights to be applied to ensure the elimination of violence against women in all its forms". It represented "a commitment by States in respect of their responsibilities, and a commitment by the international community at large to the elimination of violence against women". **International Women's Day is observed on 8 March**. The International Day for the Elimination of Violence against Women is observed on 25 November⁴.

On 2 July 2010, the UN General Assembly unanimously voted to create a single UN body tasked with accelerating progress in achieving gender equality and women's empowerment. The new UN Entity for Gender Equality and the Empowerment of Women- or UN Women—merged four of the world body's agencies and offices. UN Women became operational on 1st January, 2011 and former President of Chile, were appointed as Under-Secretary-General for UN Women⁵.

² www.un.org/womenwatch/daw/cedaw

³ www.un.org/womenwatch/daw/beijing/platform

⁴ www.un.org/en/events/women/iwd

⁵ www.women.org

IV LEGISLATIVE FREMEWORK IN INDIA IN THE INTEREST OF WOMEN

In India almost half of the Indian population is women. They have always been discriminated against and have suffered and are suffering discrimination in silence in the civilized as well as the primitive society. Even though self-sacrifice and self-denial are their nobility and fortitude and yet they have been made subjected to all inequalities, indignities, inequity and discrimination, from time immemorial⁶. These are few factors which prompted the legislature to make various laws to give the women their due share.

In order to ameliorate the condition of women in India Legislature enacted the large volume of enactments and many of these legislations were enacted in colonial period. Which are as follows:

- (1) 1829, Abolition of Sati;
- (2) 1856 Widow Remarriage made legal;
- (3) 1870 Female infanticide banned;
- (4) 1872 inter caste, intercommunity marriages made legal;
- (5) 1891 age of consent raised to 12 years for girls;
- (6) 1921 women get rights to vote in Madras province;
- (7) 1929 Child Marriage Restraint Act was passed;
- (8) 1937 women get special rights to property;
- (9) 1954 Special Marriage Act was passed;
- (10) 1955 Hindu Marriage Act was passed;
- (11) 1956 Suppression of Immoral Traffic in Women and Girls Act was passed;
- (12) 1961 Dowry Prohibition Act was passed;
- (13) 1981 Criminal Law Amendment Act was Passed;
- (14) 1986 The Indecent Representation of Women (Prohibition) Act was Passed;
- (15) 1987 Commission of Sati (Prevention) Act was passed.

⁶ Justice K. Ramo Swarthy in *Madhu Kishwar v State of Bihar* (1996) 5 SCC 148.

Constitution of India which is the *Law of the Land*, the **Preamble** to the Indian Constitution contains various goals including “the equality of status and opportunity” to all the citizens. This particular goal has been incorporated to give equal rights to the women and men in terms of the status as well as opportunity. Further the idea of equality is enshrined in **Article 14**. The general principle of equality is specifically enumerated in **Article 15(1)** which prohibits the State to discriminate against any citizen on the grounds only of religion, race, caste, sex, and place of birth or any of them. However, **Article 15(3)** permits the State to make special provisions for women and children. Further **Article 16** provides that “there shall be equality of opportunity for all citizens and they shall not be discriminated on the basis of religion, race, caste and sex”.

Part IV of the Constitution of India, in **Article 39(a)** provides that the State in particular direct its policy towards securing that citizen, men and women equally, have the right to an adequate means of livelihood. Further **Article 39(e)** of the Constitution provides that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

Article 42 of the Constitution incorporates a very important provision for the benefit of women. It directs the State to make provisions for securing just and human conditions of work and for maternity relief. The State has tried to implement this directive by enacting the Maternity Benefit Act, 1961.

Art. 44 direct the State to secure for the citizens a uniform civil code throughout the territory of India. This particular goal is towards the achievement of gender justice. Even though the State has not yet made any efforts to introduce Uniform Civil Code in India, the judiciary has recognized the necessity of the uniformity in application of civil laws like law of marriage, succession, adoption and maintenance etc, in the case of *Sarala Mudgal V Union of India*⁷ and others cases so as to confer a special status upon women.

The **Part IV –A** (Art. 51-A) which is a code of Ten Fundamental duties of the citizens of India, also shows concern towards women in **Article 51(A)(e)** of the Constitution which provides that “it will be the duty of every citizen to renounce practices derogatory to the dignity of women”.

⁷ AIR 1995 SC 1531.

The 73rd and 74th Amendments to the Constitution in 1993, have provided for reservation of seats in the local bodies of Panchayats and Municipalities for women, laying a strong foundation for their participation in decision making at the local levels.

The Criminal Laws like, The Indian Penal Code, Criminal Procedure Code also contains numerous provisions to deal with the crimes committed against women; enactments like Dowry Prohibition Act supplement the existing criminal laws to combat the evil of dowry. Number of labour and industrial laws provide for the protection and welfare of the women, prohibition of employment of women in dangerous activities and creche facility for the children of working women providing a sense of security and dignity to working women.

To protect the women hood, dignity of women and save the female fetus and to abet the menace of inhuman acts of killing of female fetus, the Parliament has enacted the **Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994** to arrest this undesirable trend. Recently the Government's piecemeal approach to protect women has taken a step forward enacting the Domestic Violence Act, 2005 a law providing protection to women from domestic violence.

Women who are usually exploited for prostitution, immoral trafficking or illegal activities, in need of protection from such abuse and torture the Parliament has enacted The Immoral Traffic (Prevention) Act in 1956.

For safety and dignity of working women, the Parliament enacted, **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**, to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and matters connected therewith or incidental thereto. These are various direct and indirect legislations passed for her empowerment, safety and life with dignity.

V JUDICIAL RESPONSE TOWARDS WOMEN'S DIGNITY

Our judiciary has always contributed to build a new socio-economic order and played very important role in fulfilling the dreams of our Constitution makers. The Indian Judicial System has independently and effectively intervened on the issue of women emancipation.

In *CEHAT V Union of India and others*⁸ The Apex Court has given several directions regarding sex selection and sex selective abortion and for proper implementation of enactment, saying female feticide is a heinous act and indicator of violence against women

In *C. B. Muthamma V Union of India*⁹, a provision in service rules requiring a female employee to obtain the permission of the Government in writing before her marriage is solemnized and denying her the right to be promoted on the ground that the candidate was married woman, was held to be discriminatory against woman and hence unconstitutional. However, the Court made it clear that "it does not mean that the men and women are equal in all occupations and in all situations and do not exclude the need to pragmatise where the requirements of particular employment, the sensitivities of sex or the peculiarities of social sectors of the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable, the rule of equality must govern".

In *Air India V Nargesh Mirza*¹⁰, the Supreme Court struck down the provision of rules which stipulated termination of service of an air hostess on her first pregnancy and the retirement and the option of Managing Director, as it arbitrary and abhorrent to the notions of a civilized society.

In *Pratibha Rani V Suraj Kumar*¹¹ the Supreme Court held that the **stridhan** property of married women has to be placed in her custody, and she enjoys complete control over it. The mere fact she is living with her husband and using the dowry items jointly does not make any difference and affect her right of absolute ownership over them.

⁸ AIR 2003 SSC 3309

⁹ AIR 1979 SC 1868

¹⁰ AIR 1981 SC 1829

¹¹ AIR 1985 628

In *Gita Hariharan V Reserve Bank of India*, in this case the Court interpreted section 6 of the Hindu Minority and Guardianship Act 1956 and held that the mother could act as the natural guardian of the minor during the father's lifetime if the father was not in charge of the affairs of the minor.

In *Surjit Singh Thind V Kanwaljit Kaur*¹², the Punjab and Haryana High Court has held that allowing medical examination of a woman for her virginity amounts to violation of her right to privacy and personal liberty enshrined under Article 21 of the Constitution.

In landmark judgment in *Vishaka and others V State of Rajasthan*¹³, the Supreme Court held that sexual harassment of working women at her work place of an employment amounts to violation of rights of gender equality and right to life and liberty which is clear violation of Article 14, 15 and 21 of the Constitution. The Court further observed that the meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facts of gender equality including prevention of sexual harassment or abuse. Further Supreme Court in this case said that, as there is no law relating to sexual harassment in India, therefore the provisions of International Conventions and norms are to be taken into consideration, and issued certain guidelines to be observed at all work places or other institutions, until a legislation is enacted for the purpose. The same was also retreated in *Medha Kotwal Lele V. U.O.I.*¹⁴ to ensure safe work environment for women.

Similarly court in *Sheela Barse V State of Maharashtra*¹⁵ dealt with the issue of mistreatment of women in police station and court laid down various guidelines for the protection of rights of women in custodial and correctional institutions.

In *Apparel Export Promotion Council V A.K. Chopra*¹⁶, again Supreme Court reiterated Vishka ruling and said that attempts of sexual harassment of female results in violation of fundamental rights to gender equality enshrined under Article 14 and 21 of the Constitution. The Court further stated that international instrument such as the convention on the Elimination of All Forms of Discrimination against Women and the Beijing

¹² AIR 2003 P&H 353

¹³ AIR 1997 SC 3011

¹⁴ 2015 (1) SCC 297

¹⁵ AIR 1983 SC 378

¹⁶ AIR 1999 SC 625

Declaration casts obligations on the state to take appropriate measures to prevent gender inequalities and protect the honour and dignity of women.

Recently the in the landmark judgment in *Shayara Bano V Union of India*¹⁷, the Supreme Court has objected and condemned the Oral Talaq in Muslim religion. Further the Court held that the Muslim practice of Triple Talaq unconstitutional, striking it down by 3:2 majority. The Supreme Court said Triple Talaq violates the fundamental right of Muslim women as it irrevocably ends marriage and is the basic tenets of Quran. The court pointed out that, 'The whole Quran expressly forbids a man to seek pretext for divorcing his wife, so long as she remains faithful and obedient to him'.

In *Sabarimala Temple Entry*¹⁸. A 4:1 majority held that the temple's practice of excluding women is unconstitutional. It held that the practice violated the fundamental right to freedom of religion - Article 25(1) - of female worshippers. It struck down Rule 3(b) of the Kerala Hindu Places of Public Worship Act as unconstitutional. Rule 3(b) allowed for Hindu denominations to exclude women from public places of worship, if the exclusion was based on 'custom'.

Apart from these cases numerous cases can be cited in which the Apex Court had given the judgments, helping to give a dignified status to the women, for example *Gaurav Jain V Union of India*¹⁹, *Delhi Domestic Working Women's Forum V Union of India*²⁰, *Bodhisathwa Gautam V Subhra Chakraborty*²¹.

VI ANALYSIS

Presently it is a harsh reality that women have been ill-treated in every society for ages and India is no exception. They are considered as an object of male sexual enjoyment and reproduction of children. They are discriminated at two levels, firstly they suffer because of their gender and secondly due to grinding poverty and on the basis of religion also. The vulnerability of the women as a class has nothing to do with their economic independence. The women have been a victim irrespective of her economic background. The rich and the poor

¹⁷ (2017) 9 SCC 1

¹⁸ *Indian Young Lawyers' Association V. State of Kerala*, <https://www.scobserver.in/court-case/sabrimala-temple-entry-case/plain-english-summary-of-judgment>

¹⁹ AIR 1990 SC 292

²⁰ (1995) 1 SCC 14

²¹ (1996) 1 SCC 490

alike are the victims of social barriers and disadvantages of varying kinds. Women are deprived of economic resources and are dependent on men for their living. Women works are often confined to domestic sphere, she had to do all house hold works, which are not recognized and unpaid. In modern times many women are coming out to work but have to shoulder the double responsibility. Moreover, she is last to be considered and first to be fired as she is considered to be less productive than her counterpart. Her general status in the family and in the society has been low and unrecognized.

In most families, women do not own any property in their own names and do not get a share of parental property. Due to weak enforcement of laws protecting those women continue to have little access to land and property. In fact, some of the laws discriminate against women, when it comes to land and property rights²².

In nutshell from the cradle to grave, females are under the clutches of numerous evils acts as discriminations, oppressions, violence, within the family, at the work places and in the society. In this scenario we hardly say that in reality women are not at all having honorable status and dignity.

VII CONCLUSION

After independence the founder father of the nation, wanted to reform the society and were keen to establish an egalitarian society. But they didn't succeed. Many evils are still practiced on women such as bigamy, dowry demands are still on rise, and women are still harassed for dowry and oral Talaq. Malnutrition and illiteracy are growing at alarming rate, rape and molestation and honor killing etc. have become daily phenomenon, and moreover still she is still treated as commodity.

In spite of having so many enactments dealing with women and judgments of the Apex Court protecting women, the conditions of women has not been improved and she still faces all types of atrocities. The legislature and judiciary somewhat fails to provide respect and dignity to women in society. In this scenario woman empowerment really appears to be a myth, though one may say that women entrepreneurs, scientists, doctors and the like have contributed in nation's development, but still there are many things yet to be done.

²² http://en.wikipedia.org/wiki/women_in_India

It is said that the law without the public opinion is nothing but a bundle of papers. The gap between the laws and

women cannot be bridged by just enacting laws without any public support and opinion.

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15. Globalisation and Green Revolution

Ms. Rupali Babanrao Pawar
Mahila Mahavidyalaya, Karad.

Introduction

India is primarily an agricultural economy. Around 50% of India's work force is involved in agricultural activities that contribute majority to its economy. Agriculture does not just mean growing and selling of crops but also involves poultry, fishing, cattle-rearing and animal husbandry among other similar activities. People in India earn their livelihood by indulging in many of these activities. These activities are vital for our economy.

The industrial sector comes next. Many industries have surfaced in our country ever since the industrial revolution. The industrial sector has especially seen a boom in the last few decades. We have large scale industries such as iron and steel, cement, chemical, sugar and ship building industry that contribute a great deal to the country's economy. We also have small scale industries such as cloth, plastic, jute, paper, food processing and toy industry. Our small scale industries also give a good boost to the economy.

Apart from this, we have service sector which is another contributor to the Indian economy. This sector includes the banking sector, hotel industry, telecom sector, insurance sector, transport sector and many more. Professionals such as engineers, doctors and teachers also come under this sector.

Objectives of the Study

1. To study the concept of Globalization and Green Revolution
2. To study the impact of Globalization on Agriculture Sector

Research Methodology

The data required for this paper is mainly based on Secondary Sources like Internet, Magazines Reference Books, etc.

Green Revolution

During the mid-sixties Indian agricultural scientists developed a number of new high yielding varieties of wheat by processing wheat seeds imported from Mexico. These varieties were having production potentialities of 60-65 quintals per hectare. A similar improvement in

variety of rice was also observed which ensured India's self-dependence in food grains. American scientist Dr. William Gande termed it as "Green Revolution". The credit for it goes to the Nobel Laureate Dr. Norman Borlaug and also to Dr. M.S. Swaminathan.

The Green Revolution was based on new technology, the core of which consists of seeds drawn from researchers in laboratories, inorganic fertilizers like chemical fertilizers, adequate and controlled water supply, pesticides, etc. It has been both qualitative as is resulted in modernization of agriculture and quantitative as it resulted in increase in the production and productivity of Indian Agriculture.

Dr. M. S. Swaminathan gave a call for "Evergreen Revolution" for doubling the present production level of food grains. He stressed on adopting best scientific techniques and promoting organic farming. He also mentioned certain fair pre-requisites for getting success like- i) Promoting soil health, ii) promoting 'lab to land' exhibitions, iii) making rainwater harvesting compulsory and iv) providing credit to farmers on suitable conditions.

Components of Green Revolution

The 12 components of Green Revolution are as follows-

1. High yielding varieties of seeds (HYV)
2. Irrigation – surface and ground
3. Use of fertilizers
4. Use of insecticides and pesticides
5. Command Area Development
6. Land Reforms
7. Consolidation of holding
8. Supply of Agricultural Credit
9. Rural Electrification
10. Rural roads and marketing
11. Farm modernization
12. Agriculture Universities

Impact of Green Revolution

1. Boost to the production of cereals
2. Increase in the production of commercial crops
3. Boost to agricultural production and employment

4. Regional inequalities
5. Unwanted social consequences.
6. Changes in attitudes
7. Employment
8. Forward and backward linkages.
9. Food security.
10. Development of industries.
11. Over all growth of the economy.
12. Prosperity of farmers.

Second Green Revolution for India

While the first Green revolution achieved many successes there were also many flaws in its strategy, which were not envisaged at that time. These flaws include negative impact on environment and health due to excessive use of fertilizers and pesticides, depletion of soil nutrients, depletion of water resources including ground water, higher costs of inputs etc.

Certain other conditions have also emerged after the first Green Revolution which are having a negative impact on Agriculture like, land constraints due to diversion of land to other economic areas, climate change, diversion of crops to bio diesel, fragmentation of land holding making farming unviable for these reasons and to ensure the food security of the country. There is a need for a second Green Revolution in the country which would address all these problems.

Second Green Revolution will consist of a number of different programmes working towards the same goals.

1. Increasing crop yields in Eastern States.
2. Organic farming.
3. Contract farming.
4. Investing in research to drought proof crops as well as to tackle climate change.
5. Investing in supply chain and cold chains.
6. Encouraging private investments through tax law amendments.
7. Use of plant breeding and biotechnology.
8. Rain water harvesting and water shade development.
9. Improving credit availability.
10. Refocusing on land reforms.

11. Improving soil quality and redeeming degraded land.

Evergreen Revolution

The concept was given by renowned agricultural scientist Dr. M. S. Swaminathan. **Evergreen Revolution** emphasizes an organic agriculture and green agriculture with the help of integrated nutrient supply and integrated pest management. The core of the Ever green Revolution is sustainability.

Bringing Green Revolution to Eastern India, initiated in 2010-2011 intends to address the constraints limiting the productivity of Rice based cropping system in Eastern India comprising seven states, viz., Asam, Bihar, Jharkhand, Odisha, Eastern Uttar Pradesh and West Bangal.

Concept of Globalization

"Globalization" represents one of the aspects of the new economic policy launched in the decades of 1980 and 1990s. The new economic policy has also made the economy outwardly attended such that its activities are now to be governed both by the domestic market and the world market, this will mean unification or integration of the domestic economy with the world economy. The measures taken by the Government of India added momentum to this progress.

In the first half of the 20th century, the process of industrialization, urbanization and modernization were considered to be significant while at the fag end of the same century the processes of computerization, liberalization, privatization and globalization became the most fashionable ones. Particularly since 1990s, the issue of "globalization" has become the most crucial one and almost every nation is directly or indirectly influenced by it.

Definition

"Globalization of production refers to the integration of economic activities by units of private capital on a world scale."

Main Reasons that Have Caused Globalization

1. Growth of multinational companies with a global presence in many different economies.
2. Growth of global media
3. Improved transportation, making global travel easier. eg- there has been a rapid growth in Air travel, enabling greater movement of people and goods across the globe.

4. Containerization: From 1970, there was a rapid adoption of the steel transport containers, which reduced the costs of inter-modal transport, making trade cheaper and more efficient.
5. Improved technology which makes it easier to communicate and share information around the world. For eg. Use of Internet.
6. Growth of global trading blocks which have reduced national barriers. For eg. European Union, NAFTA, ASEAN.
7. Reduced tariff barriers have encouraged global trade and this is possible through the support of the 'WTO'.
8. Firms exploiting gains from economies of scale to gain increased specialization. This is an essential feature of new Trade theory.
9. The nature of Global Trade Cycle has led to economic growth. This means countries are increasingly interconnected.
10. Financial system is increasingly global in nature. When US banks suffered losses due to the sub prime mortgage crisis, it affected all major banks in other countries who had bought financial derivatives from US banks and mortgage companies.
11. Due to increased mobility of labour people are more willing to move between different countries in search for work.
12. Global trade remittances now play a large role in transfers from developed countries to developing countries.

Effects of Globalization on Agricultural Sector

1. The study of effects of globalization would be incomplete without considering its impact on the most important sector of the economy. The agricultural sector is known to be the backbone of the Indian economy with an employment of 70% of the population in various agricultural, horticultural and allied activities. Its contribution to the gross domestic product however has been declining steadily over the past decades due to low productivity. Currently it contributes 18% to the GDP and 10% export earnings of India.
2. Indian agriculture has suffered adversely due to the impact of globalization. The agricultural land has been taken or encroached for development of industries because of globalization, the competition in agriculture sector has increased. India has got many

- high earning agricultural products patent approved from 'WTO' (like –basmati rice, turmeric etc) and that's why you need to pay government for their production.
3. FDI was introduced in Industrial and service sector but agriculture sector was kept protected and hence capital formation in agricultural is negligible.
 4. Green revolution was introduced but it was limited only to Punjab and Haryana
 5. Western UP other areas which are dependent on agriculture are still backward and monsoon dependent.
 6. Despite being an important producer of rice, cotton, rubber, tea, coffee, jute and spices our agricultural products are not able to compete with the developed countries because of the highly subsidized agriculture in those countries.
 7. A few economists think that Indian farmers have a bleak future if they continue growing foodgrains on the holdings that grow smaller and smaller as the production rises.
 8. Indian farmers should diversify their cropping pattern from cereals to high value crops. This will increase incomes and reduce environmental degradation simultaneously. Because fruits, medicinal herbs, flowers, vegetable, bio-diesel crops like jatropha and jajoba need much less irrigation than rice or sugarcane. India's diverse climate can be harnessed to grow a wide range of high value crops.
 9. Today, Indian agriculture finds itself at the crossroads. To make agriculture successful and profitable, proper thrust should be given to the improvement of the conditions of marginal and small farmers.

Outcome Derived by the Impact of Globalization

Positive Outcome

- New techniques are adopted in Agricultural sector.
- Increase in productivity in agricultural sector.
- Minimum usage of fertilizer, pesticides and water.
- Establishment of food processing industries helped to increase in employment.
- Fruits, nuts, vegetables which were first imported from foreign countries are now produced at our places and exported which in turn increased foreign exchange.
- Research and Development helped to acquire position in world agriculture market.

- Minimum wastage of grains, fruits, vegetables due to adoption of advanced techniques from developed countries.
- Economic impact of Globalization enabled greater access to technological advancements in agriculture, including high yield varieties, genetically modified crops and micro irrigation techniques.
- Globalization has increased foreign investment in the agricultural sector like contract farming; cold storage and food processing have helped farmers.
- Access to foreign markets has greatly boosted Indian Agricultural Exports.
- Globalization has improved food productivity and production and helped transform rural agrarian societies. It has empowered the farmers to understand reach out and compete in global markets.
- The new technologies especially in irrigation helped in addressing rural water stress and keeping agriculture viable.
- Promotion of Indian produce through GI tags and organic foods.

Negative outcome

- Less manpower in the field
- High cost of products
- Gap between rich and poor farmers has widened.
- Economic impact on globalization of Multinational companies captured the Indian markets making farmers dependent on the expensive high yield seeds and fertilizers.
- The competition from cheaper imports pushed down the prices of crops like cotton, wheat etc. making agriculture unsustainable for many farmers.
- Attraction of global market resulted in farmers shifting from traditional or mixed cropping to unsustainable cropping practices.
- Unsustainable agricultural practices post-globalization and the inability to compete against cheaper imports contributed to distress migration of rural farmers destroying rural agrarian societies and traditional family structures.
- The dependency for seeds of Indian farmers on multinational company's resulted in farmers losing touch with indigenous seeds and farming method.
- Globalization has caused change in food habits with increased consumption of proteins, sugars, fats causing increase in lifestyle diseases.

Conclusion

Globalization aims at integrating national economy with that of the world. Increased free and open International trade, foreign investment, and technology exchange etc. are all integral to the globalized world. Globalization had a significant impact on Indian agriculture in many good and bad ways. Globalization and Green Revolution has brought in enhanced changes like increased agricultural production, increase in employment opportunities, rise in India's export & import, economic growth and development of agricultural sectors.

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II. Sustainable Development: International and National Perspective

Dr. Prafull B. Chavate

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I. Introduction

Today man is conscious that the environmental changes are the inevitable consequences of industrial development, but at the same time the quality of environment cannot be permitted to be damaged by polluting the air, water and land to such an extent that it becomes a health hazard. This has led to considerable increase in environmental concern vis-à-vis development of the nation. The present concept of Sustainable Development has evolved through principles which have been laid at international treaties and conferences. The same have given the specific form and momentum to the concept of sustainable development. India is party to many of such treaties and conventions and having impact on Indian legal system which led to environmental revolution in India. The 42nd Constitutional Amendment Act, 1976 has enhanced the environmental concerns. As a result of Constitutional mandate, much legislation has been enacted for environment protection, which also supports to procure the development. Indian judiciary is also showing concern to resolve the conflict between environment vis-à-vis development to achieve the goal of sustainable development in India. Thus sustainable development having international origin has become imperative goal of the nation. In spite of this India is not able to achieve the goal of Sustainable Development in its spirit. In this backdrop, an attempt has been made by the author in the instant paper, to explain the concept of sustainable development, to take review of International documents and national legislation. Further the pivotal role of the judiciary for the protection of environment and attain the goal of sustainable development in its letter and spirit in India.

II. Sustainable Development – Meaning, Nature

There are over 100 definitions of sustainability and Sustainable Development, but the best known is the World Commission on Environment and Development's. This suggests that development is sustainable where it "meets the needs of the present without compromising the ability of future generations to meet their own needs."

Sustainable Development implies economic growth together with the protection of environmental quality, each reinforcing the other. The essence of this form of development is a stable relationship between human activities and the natural world, which does not diminish the prospects for future generations to enjoy a quality of life at least as good as our own. Many observers believe that participatory democracy, un-dominated by vested interests, is a prerequisite for achieving Sustainable Development.

The guiding rules are that people must share with each other and care for the Earth. Humanity must take no more from nature than nature can replenish. This in turn means adopting lifestyles and development paths that respect and work within nature's limits. It can be done without rejecting the many benefits that modern technology has brought, provided that technology also works within those limits.

Since the Brundtland Report, the concept of Sustainable Development has developed beyond the initial intergenerational framework to focus more on the goal of "socially inclusive and environmentally sustainable economic growth". In 1992, the UN Conference on Environment and Development published the Earth Charter, which outlines the building of a just, sustainable, and peaceful global society in the 21st century. The action plan Agenda 21 for sustainable development identified information, integration, and participation as key building blocks to help countries achieve development that recognizes these interdependent pillars.

III. Sustainable Development – International Perspective

The contemporary concept of Sustainable Development is nourished with various principles promulgated through various treaties and conferences which took place at international level. International concerns as to needs of environmental protection began at international level in early 1960's. The **Maltese Proposal of 1967** contended that present generation should be modest in use of natural resources and the resources should be conserved for the future generations. Thus it made the people aware that the natural resources were common heritage of the mankind and required legal protection. The record available reveals that Intergovernmental Conference of UNESCO on 'Use and Conservation of Biosphere' marked initiative towards ecologically Sustainable Development.

Stockholm Conference on the 'Human Environment' was held in Stockholm, Sweden from June 5-16 in 1972 is the first global action plan for environment which resulted in an ambitious Action Plan of 109 recommendations for Environment Protection, Environment Fund, UNEP and Stockholm Declaration of 26 Principles. The culminating point in regime of Sustainable Development was Rio Conference of 1992 held at *Rio de Janeiro*, Brazil. Its declaration of principles, *Agenda 21*, Statement of Forest Principles, Framework Convention on

Climate Change and Convention on Biodiversity supported principles like Precautionary Principle, Principle of Prevention, Environment Impact Assessment, etc. which gave paradigm shift to the concept of Sustainable Development.

The progress of Rio Conference was evaluated after five years in the year 1997 known as Rio +5, then in 2002 known as Rio +10 and 2012 known as Rio +20. These documents worked on blue print of Rio Conference and *Agenda 21* and thus took the concept of Sustainable Development to new peak. Johannesburg the Plan of Implementation (JPOI), outcome document of Earth Summit +10 renews ethnicity of Sustainable Development and sets out new commitments and priorities for actions on Sustainable Development.

The newly released New York Conference on Sustainable Development, 2015. *Agenda 2030* and the Sustainable Development Goals (SDGs) have included many new aspects sustaining earth's development in environmental framework.

IV. Sustainable Development – National Perspective

Stockholm Conference on the 'Human Environment' was held in Stockholm, Sweden from June 5-16 in 1972 is the first global action plan for environment. The Conference was attended by Smt. Indira Gandhi, the then Prime Minister of India. It was upshot of Stockholm Conference which embarked the need of uniform environmental legislations for protection and safety of the people and preservation of flora and fauna of the country.

India took appropriate steps for the preservation and conservation of the natural resources and mitigation of pollution. Proconvocation of this Conference led to enactment of two major Acts, which are very important tools for Sustaining Development in present day scenario. Water Act, 1974 is the first remarkable attempt of India towards welcome of Stockholm Conference. The Air Act, 1981 was enacted to abate and control air pollution in the country. To fill up the gap between Water Act, 1974 and Air Act, 1981 the umbrella legislation in the form Environment Protection Act was passed in the year 1986 for environment protection. This legislation deals with all the environmental problems which affected the country.

India became one of the first countries to incorporate provisions for improvement of environment in its Constitution. The 42nd Amendment in 1976 inserted Article 48-A in Part IV, Directive Principles of State Policies. At the same time Fundamental duty was entrusted on every citizen to protect and improve the natural environment including forests, lakes, rivers and Wildlife and to have compassion for creatures. Thus the Stockholm Conference was even successful in incorporating its Principles of sustaining the development in Indian Constitution which is Law of the Land.

The Principles of Rio Conference have been central focus while development planning in India; the National Green Tribunal Act, 2010 was also passed in consonance of Rio Conference. India has been immensely benefitted by the sustainable vision by Climate Change regime and Convention on Biodiversity. Ministry of Environment and Forest has been now renamed as Ministry of Environment, Forest and Climate Change. Recently, International Conference on Environment, 2017 reaffirm India's commitment towards environment protection and its achieving the goal of Sustainable Development.

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In recent case **Maharashtra Land Development v. State of Maharashtra and others**, the court opined that, '*Preservation of the eco-system is an immutable duty under the Constitution – a fine balance must be struck between environment and development..... The doctrine of Sustainable Development also forms part of Article 21 of the Constitution*'.

VI. Conclusion

The perusal and analysis of the literature available reveals that, International instruments have ignited the regime of sustaining the development in India. It is also inferred that the modern development in the field of environmental protection has been triggered by the International

documents and specially in India, this process has been initiated. Though the seeds of 'Sustainable Development' can be traced back in ancient history, but official promotion of this concept has been seen in modern time through the International efforts which has direct impact on Indian Constitution and other legislation.

Right to healthy environment and right to Sustainable Development are like lock and key. Sustainable Development is the key to healthy environment. The right to Healthy environment is incomplete without sustainable vision. Thus right to Sustainable Development is now part of Article 21 of the Constitution of India. This has been affirmed by the Indian Judiciary in landmark judgments like *N. D. Jayal v. U.O.I., Maharashtra Land Development... v. State of Maharashtra and others* and like cases.

Along with this there is need to manage all natural resources of the country without exploitation as to developmental needs such as industrialization and urbanization which is essential to achieve Sustainable Development.



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II. Sustainable Development: International and National Perspective

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I. Introduction

Today man is conscious that the environmental changes are the inevitable consequences of industrial development, but at the same time the quality of environment cannot be permitted to be damaged by polluting the air, water and land to such an extent that it becomes a health hazard. This has led to considerable increase in environmental concern vis-à-vis development of the nation. The present concept of Sustainable Development has evolved through principles which have been laid at international treaties and conferences. The same have given the specific form and momentum to the concept of sustainable development. India is party to many of such treaties and conventions and having impact on Indian legal system which led to environmental revolution in India. The 42nd Constitutional Amendment Act, 1976 has enhanced the environmental concerns. As a result of Constitutional mandate, much legislation has been enacted for environment protection, which also supports to procure the development. Indian judiciary is also showing concern to resolve the conflict between environment vis-à-vis development to achieve the goal of sustainable development in India. Thus sustainable development having international origin has become imperative goal of the nation. In spite of this India is not able to achieve the goal of Sustainable Development in its spirit. In this backdrop, an attempt has been made by the author in the instant paper, to explain the concept of sustainable development, to take review of International documents and national legislation. Further the pivotal role of the judiciary for the protection of environment and attain the goal of sustainable development in its letter and spirit in India.

II. Sustainable Development – Meaning, Nature

There are over 100 definitions of sustainability and Sustainable Development, but the best known is the World Commission on Environment and Development's. This suggests that development is sustainable where it "meets the needs of the present without compromising the ability of future generations to meet their own needs."

Sustainable Development implies economic growth together with the protection of environmental quality, each reinforcing the other. The essence of this form of development is a stable relationship between human activities and the natural world, which does not diminish the prospects for future generations to enjoy a quality of life at least as good as our own. Many observers believe that participatory democracy, un-dominated by vested interests, is a prerequisite for achieving Sustainable Development.

The guiding rules are that people must share with each other and care for the Earth. Humanity must take no more from nature than nature can replenish. This in turn means adopting lifestyles and development paths that respect and work within nature's limits. It can be done without rejecting the many benefits that modern technology has brought, provided that technology also works within those limits.

Since the Brundtland Report, the concept of Sustainable Development has developed beyond the initial intergenerational framework to focus more on the goal of "socially inclusive and environmentally sustainable economic growth". In 1992, the UN Conference on Environment and Development published the Earth Charter, which outlines the building of a just, sustainable, and peaceful global society in the 21st century. The action plan Agenda 21 for sustainable development identified information, integration, and participation as key building blocks to help countries achieve development that recognizes these interdependent pillars.

III. Sustainable Development – International Perspective

The contemporary concept of Sustainable Development is nourished with various principles promulgated through various treaties and conferences which took place at international level. International concerns as to needs of environmental protection began at international level in early 1960's. The **Maltese Proposal of 1967** contended that present generation should be modest in use of natural resources and the resources should be conserved for the future generations. Thus it made the people aware that the natural resources were common heritage of the mankind and required legal protection. The record available reveals that Intergovernmental Conference of UNESCO on 'Use and Conservation of Biosphere' marked initiative towards ecologically Sustainable Development.

Stockholm Conference on the 'Human Environment' was held in Stockholm, Sweden from June 5-16 in 1972 is the first global action plan for environment which resulted in an ambitious Action Plan of 109 recommendations for Environment Protection, Environment Fund, UNEP and Stockholm Declaration of 26 Principles. The culminating point in regime of Sustainable Development was Rio Conference of 1992 held at *Rio de Janeiro*, Brazil. Its declaration of principles, *Agenda 21*, Statement of Forest Principles, Framework Convention on

Climate Change and Convention on Biodiversity supported principles like Precautionary Principle, Principle of Prevention, Environment Impact Assessment, etc. which gave paradigm shift to the concept of Sustainable Development.

The progress of Rio Conference was evaluated after five years in the year 1997 known as Rio +5, then in 2002 known as Rio +10 and 2012 known as Rio +20. These documents worked on blue print of Rio Conference and *Agenda 21* and thus took the concept of Sustainable Development to new peak. Johannesburg the Plan of Implementation (JPOI), outcome document of Earth Summit +10 renews ethnicity of Sustainable Development and sets out new commitments and priorities for actions on Sustainable Development.

The newly released New York Conference on Sustainable Development, 2015. *Agenda 2030* and the Sustainable Development Goals (SDGs) have included many new aspects sustaining earth's development in environmental framework.

IV. Sustainable Development – National Perspective

Stockholm Conference on the 'Human Environment' was held in Stockholm, Sweden from June 5-16 in 1972 is the first global action plan for environment. The Conference was attended by Smt. Indira Gandhi, the then Prime Minister of India. It was upshot of Stockholm Conference which embarked the need of uniform environmental legislations for protection and safety of the people and preservation of flora and fauna of the country.

India took appropriate steps for the preservation and conservation of the natural resources and mitigation of pollution. Provocation of this Conference led to enactment of two major Acts, which are very important tools for Sustaining Development in present day scenario. Water Act, 1974 is the first remarkable attempt of India towards welcome of Stockholm Conference. The Air Act, 1981 was enacted to abate and control air pollution in the country. To fill up the gap between Water Act, 1974 and Air Act, 1981 the umbrella legislation in the form Environment Protection Act was passed in the year 1986 for environment protection. This legislation deals with all the environmental problems which affected the country.

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