Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue II, December 2023
DOI: 10.13140/RG.2.2.29972.10880
www.kanpurhistorians.org

NESAMONY'S ROLE IN THE KANYAKUMARI RESCUE STRUGGLE

A. SIVA
Ph.D. Scholar (Full-Time)
P.G and Research Department of History
Periyar Arts College Cuddalore
Tamil Nadu, India

Abstract:

Marshall Nesamony carried Travancore Tamil Nadu Congress across the subjugated people of Tamil speaking regions like kalkulam, Vilavancode, Peermade, Devikulam and Chittoor Taluks. He was undoubtedly the monarch of the Tamils and was called thereafter by the people "Kumari Thanthai" which means father of kanyakumari. He had under the umbrella of his party conducted welfare activities for the Tamils. Fazal Ali Commission had recommended merger of Thovalai, Agastheeswaram, Kalkulam and Vilavancode with Madras State. The joint Committee which was appointed to give a final shape to the state boundaries suggested that only eastern portion of shenkottai should be merged with madras. This was the ultimate decision and it was published on 16 January 1956.

Tendency to connect

In 1954 general elections were held for the Travancore-Cochin Legislative Assembly of the United Provinces. Pandit Jawaharlal Nehru and K. Kamaraj campaigned for Kerala State Congress candidates. Travancore Tamil Nadu Congress won twelve of the fourteen seats contested. As no party had an absolute majority in the Legislative Assembly, the Praja Socialist Party, supported by the State Congress, formed a cabinet on 16 March 1954 with Thanupillai elected as Chief Minister.[1]

The return of Pattom A. Thanupillai signalled the adverse political conditions for the Tamils. In South Travancore he used the police to support Nair landlords against Tamil tenants. He promoted the government-aided

[1] *The Travancore Government Gazetteer Extraordinary,* Volume V, No.13,Trivandrum, 17 March 1954, 1-3.

Malayali settlement scheme in Devikulam and Peermedu taluks and tried to drive out the Tamils from those areas with Malayali influence. Tamils feared being relegated to a minority in their own territories. The situation worsened as the police forces sided with the landlords.[2]

Its conflict with the Tamil-controlled South Indian Plantation Workers Union created a precarious situation for the existence of the Tamil population. Tamils had to complete many important issues like integration of taluks with Greater Tamil Nadu, Vilaturai Lift Irrigation Project, Siddar Pattanamkal drainage works.[3]

So they organized meetings in important places of South Travancore and discussed the burning issues with the people. A series of meetings were organized at Nagercoil, Kulithurai, Iranial, Mangarai, Vadaseri and Mylaudi. On June 16, 1954, a meeting was convened at Nagercoil where the leaders warned the government to start the Pattanamkal and Vilaturai lift irrigation projects and the Neyyar Left Canal without delay and that any further delay would lead to a strike.[4]

Travancore wanted to put an end to the anti-Tamil attitude of the Tamil Nadu Congress government. Therefore, 4 members of the Travancore Tamil Nadu Congress, Travancore-Kochi assembly members visited the above 2 taluks and after inspecting the situation, complained about the police encroachment in those taluks and submitted a petition to the Chief Minister. They demanded that the atrocities be stopped and that they be given due protection from police action. Despite the chief minister's promise to look into the matter, the situation worsened. To end police atrocities at places like Devikulam and Peermedu, the Travancore Tamil Nadu Congress met on June 19, 1954 and declared June 30 as "Anti-Devikulam Day" or "Repression Day".[5]

Devikulam Day

But the Devikulam Sub-Divisional Magistrate on June 29, 1954, issued an order prohibiting meetings and processions in the taluks for a period of one month. However, led by Nesamony, Abdul Razak and Chidambaranathan Nadar (former minister) defied the ban on July 4, 1954 all of them were arrested at Devikulam on Sunday and sentenced to six weeks' imprisonment.[6]

Instead of neutralizing the protest, government actions acted as catalysts. According to the government's evil plan, TTNC leader Nesamony and others were released from the Central Jail three days before 11 August 1954. Meanwhile, a request came from Indian Prime Minister Jawaharlal

---

[2] K. Rajayyan, *History of Tamil Nadu 1565-1982*, (Madurai: Raj Publication, 1982)394.

[3] *Dinamalar*, 1 November 1956.

[4] *Dinamalar*, 9 June 1954.

[5] *Dinamalar*, 1 November 1956.

[6] *R.Dis. 15634/1954,* Confidential Section, Trivandrum, 5 July 1954.

Nehru. They demanded TTNC leader Nesamony to drop the satyagraha plan. He said that neither the Centre nor the state government can do anything before the report of the State Reorganization Commission is submitted. He expressed his displeasure over TTNC's proposed satyagraha. The day of the proposed release arrived. A public meeting was held in Nagercoil under the leadership of Nesamony. On that day, public meetings, processions and satyagrahas were held peacefully in Kuliturai and the surrounding areas of Travancore Tamil Nadu, but there was tension and loss of life due to police brutality.

The Liberation Day programs began on 11 August 1954 with a public meeting at Gandhi Ground, Marthandam. 16 volunteers were selected to picket the First Class Magistrate Court, Kuliturai. The selected volunteers were garlanded and taken in a procession.

The procession, which initially had about 5000 participants, doubled to 10,000 as it neared the pit at around 11.30 am. When they reached the gate of the Magistrate's Court, the people who came in the procession raised slogans such as "Abolition of the title rule", "A united Tamil Nadu will be formed", "Until then the struggle will continue", "The struggle will begin". The police, without giving any warning, suddenly resorted to batons to disperse the mob and arrested several people. Hundreds were injured. The mob at the Magistrate's Court split into two and one mob went to Kuliturai Bus Station. Then the students of Marthandam English High School came down from the school premises and went in a procession. The police resorted to batons and arrested two of the students, claiming that the students attacked by pelting stones. Thus the situation worsened in Marthandam due to the wrong attitude of the police department.

The next day Chief Minister Pattom Thanupillai visited the shooting locations. He congratulated the police department for a job well done. He was accompanied by 1600 armed reserve policemen when he came to visit. After the visit he returned to the capital leaving the reserve police to identify the Nadars and torture them. The Reserve Police Force stationed at important centres in South Travancore started harassing the Nadar community. They identified and ransacked isolated houses, entered market areas and brutalized Nadars irrespective of gender and age.[7]

The suppression of peaceful protests has come under bitter criticism everywhere. Irritated by Pattam Thanu Pillai's vindictiveness, Ramaswami Pillai, a key legislator of Pattam Thanu Pillai's own Praja Socialist Party, resigned in disgust. On 17 August 1954, the All India General Secretary of the Praja Socialist Party, Ram Manohar Lohia, demanded the resignation of Pattam Thanu Pillai for his misrule.[8]

---

[7] D. Peter, *Liberation of the Oppressed a Continuous Struggle* (Nagercoil: Kanyakumari Institute of Development Studies,2009) 114-117.

[8] *File No.31146/1954*, Confidential Section 4-4-1956.

Meanwhile, A. Nesamony met Prime Minister Jawaharlal Nehru on 21 November 1954, explaining the atrocities of the Travancore-Cochin government and emphasizing the need to merge the nine Tamil-speaking taluks of South Travancore-Cochin with the Madras state. Considering the widespread criticism and demand, the Travancore-Cochin government appointed a commission of inquiry headed by Justice K. Sankaran of the Travancore-Cochin High Court to inquire into the police firing.[9]

In February 1955, Ramaswami Pillai of the Praja Socialist Party moved a no-confidence motion against Pattom Thanupillai's cabinet. The resolution was passed in the assembly. Panampilli Govinda Menon formed the Cabinet on 11 February 1955.[10] Nesamony pointed out the growth of political consciousness among the people and the growing importance of regional languages to draw the attention of the State Reconstruction Commission to provide justice to the Tamils of Travancore-Cochin state. The demand for the formation of states on the basis of language also gradually arose.[11]

On June 17, 1948, the President of the Constituent Assembly appointed the Linguistic Provinces Commission consisting of S.K. Dar, a retired judge of the Allahabad High Court as Chairman and Dr. Pananlal, a retired I.C.S. officer and Jegath Narayan Lal, a member of the Constituent Assembly as Members. It was also known as Dar Commission after the name of its Chairman.[12] The Commission submitted its report on 10 December 1948. It recommended that provinces should not be created on linguistic basis but on administrative convenience. The formation of provinces on an exclusively or mainly linguistic consideration was not in the larger interests of the Indian nation and should not be taken inhand.[13]

Dhar Commission

The report of the Dar Commission created a stir in the country, especially in Travancore-Cochin State. The Indian National Congress felt it prudent to respect the public's feelings by creating another Committee to consider the question of the linguistic provinces.[14] The members of the Committee were Jawaharlal Nehru, Vallabhai Patel, and Pattabhi Sitaramayya, which was popularly known as the J.V.P. Committee from the initials of its members. It submitted its report to the Congress Working

---

[9] *File No.D.Dis.27744/1954*, Confidential Section 9-11-1955 & Government ofTravancore-Cochin Proceedings Order 4 – 19088/54, Confidential Sectiondated 25-9-1954.

[10] *Viduthalai*, 11 February 1955.

[11] *File No.D.Dis.412/54*, Confidential Section 16-1-1954 No.53/63/53 – PublicGovernment of India, Ministry of Home Affairs, New Delhi, 29 December1953.

[12] *The Hindu*, 15 April 1948.

[13] Constituent Assembly of India, *Report of the Linguistic ProvincesCommission*, Para, 152.

[14] *The Hindu*, 30 December 1948.

Committee in April 1949. It recommended the postponement of the linguistic provinces by a few more years.[15]

On 22 December 1953, Prime Minister Jawaharlal Nehru made a statement in Parliament to the effect that a Commission would be appointed to examine the question of the reorganisation of the States of the Indian Union.[16] Justice Fazal Ali was appointed as Chairman, and Pandit H.N. Kunzru and Sardar K.M. Panikkar who was then Ambassador of India in Egypt, were the other members.[17] According to the terms of reference, the Fazal Ali Commission was at liberty to devise its own procedure for collecting information and for ascertaining public opinions.

The Commission after giving due consideration to the procedure that would be most suitable for the expedient execution of the task entrusted to them, decided to dispense with a questionnaire. They issued a Press note on February 23, 1954 inviting the members of the public as well as the public associations interested in the problems of reorganization of States to put their views and suggestions before the Commission by submitting written memorandums in matters on which they felt they could assist them. The Commission expected that wherever concrete suggestions were made, they should be supported by historical and statistical data and if any proposal regarding the formation of any new State or States were made, it would, if possible, be accompanied by one or more maps, as the case might be.[18]

When the States Reorganisation Commission came to Trivandrum, A. Nesamony and some prominent members of the Travancore Tamil Nadu Congress met the States Reorganisation Commission and submitted a memorandum. The important factors put forward in the memorandum were the geographical and linguistic affinities of this region with that of the Madras State. They explained the relevance of the merger of Thovalai, Agasteeswaram, Kalkulam, Vilavancode, Neyyatinkara, Devikulam, Peermedu, Shenkottai and Chittoor taluks, which they specified as Tamil areas of Travancore-Cochin State and claimed their merger with the Madras State.[19]

The Tamil-speaking taluks of Travancore-Cochin State have a history behind them, and there were certain circumstances which were adverse to the political and administrative stability of the region.[20] Taluks and make recommendations accordingly. As a result of seeking the census report of Tamil speaking taluks of Travancore-Cochin state, the State

[15]*Report of the Linguistic Provinces Committee*, Jaipur Congress, New Delhi,1949, 14-15.

[16]*File No.53/69/1953*, Government of India, Ministry of Home Affairs, 29December 1953, 1.

[17]*The Hindu*, 23 December 1953.

[18]*Press Note on States Reorganisation Commission,* Government of India,Ministry of Home Affairs, 1.

[19]*Memorandum of Travancore Tamil Nadu Congress, Volume XI,* Travancore.

[20]*The Travancore Archaeological Series*, Vol.II, Part III, Trivandrum, 134.

Reorganization Commission concluded that the percentage of Tamil speaking population in the four southern taluks of Dovalai, Agastheeswaram, Kalkulam and Vilavancode. It was over seventy-nine percentage and the will of the people of the region was clearly and positively expressed. Sengottai Taluk was a part of Tirunelveli District of Madras State and the percentage of Tamil speaking population in this taluk is ninety three. Physically and geographically it belongs to Tirunelveli district in Madras state and should be annexed. The State Reorganization Commission opined that the mere fact that a particular language group has a substantial majority in certain areas should not be the only determining factor.[21]

The Commission recommended the transfer of the four southern taluks – Thovalai, Agasteeswaram, Kalkulam and Vilavancode and half of the Shencotta taluk to merge with TamilNadu.[22] The remaining four taluks, which the Travancore Tamil Nadu Congress wanted to be merged with Tamil Nadu, were allowed to remain with the Travancore-Cochin State. The claims of the Tamils over the taluks of Devikulam and Peermedu were ignored by the Commission as these taluks were of great economic importance to the Travancore-Cochin State. These two taluks produced the major portion of the 'dollar earning crops' in the State mainly tea, cardamom and rubber, hence these taluks were called "dollar earners". A. Nesamony disapproved the States Reorganisation Commission's recommendation which related to Devikulam, Peermedu, Neyyatinkara and Chittoor and explained that the main aim was to dislodge the Tamils from those taluks. As to the second reason, the rivers referred to by the States Reorganisation Commission were only mountain streams, which were augmented by the flows from the forests of adjoining taluks.[23]

The States Reorganisation Bill was discussed in the Parliament on December 19, 1955. A. Nesamony made a vehement speech in the Parliament during the discussion insisting that Devikulam, Peermedu, Neyyatinkara, Chittoor and part of Shenkottai to be merged with the Madras State.[24]But all these were in vain hartals and demonstrations were held on February 7, 1956 throughout the Tamil areas. Meanwhile, the advocates of Aikya Kerala argued that the Tamil taluks were part and parcel of Kerala geographically, culturally and economically. They further pointed out that the Western Ghats divided Travancore-Cochin State from the Madras State. This argument was inconsistent with their claims for Shencottai which admittedly lay beyond the Ghats.[25] It should be noted that Western Ghats

[21]*Report of the State Reorganisation Commission,* 83.
[22]*Kumarikadal,* Tamil Weekly, 1956.
[23]*Text of Nesamony's speech in Parliament* 14 and 15 December 1955, NewDelhi, 84.
[24]*The Hindu*, 22 November 1955.
[25] *Travancore Tamil Nadu Congress Memorandum, 14 April 1954 to the StatesReorganisation Commission, 5-6.*

were in no way an impediment for their merger of these areas with adjacent Madras State.[26] The leaders and the activists of the Travancore Tamil Nadu Congress now felt that they had achieved a part of their aim. They knew that, fighting for Devikulam, Peermedu, Neyyatinkara and Chittoor would not be possible in the present context and accepted the decision as a partial success.

District was born

The Indian Parliament, based on the recommendations of the States Reorganisation Commission based the States Reorganisation Act in March 1956. Accordingly the four taluks of Thovalai, Agasteeswaram, Kalkulam and Vilavancode were merged with the Madras State and constituted them into Kanyakumari District with Nagercoil as itHeadquarter. K. Kamaraj, the then Chief Minister of the Madras State inaugurated it at a public meeting in Nagercoil on November 1, 1956.

[26]*Chellawamy's Memorandum to National Congress,* 1954, 4.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue II, December 2023
DOI:10.13140/RG.2.2.29972.10880
www.kanpurhistorians.org

THE PROTECTION OF WOMEN IN INTERNATIONAL HUMANITARIAN LAW

PREM NATH TRIVEDI
Associate Professor
Department of Law
V.S.S.D. College, Kanpur India

Abstract:

Since the number of women who actually participated in war was insignificant until the outbreak of World War 1, the need for special protection for them was not felt prior to that time. This does not imply however that women had previously lacked any protection. From the birth of international humanitarian law, they had had the same general legal protection as men. If they were wounded, women were protected by the provisions of the 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field; if they became prisoners of war, they benefited from the Regulations annexed to the Hague Conventions of 1899 and 1907 on the Laws and Customs of War on Land.

From 1929 onward, women have enjoyed special protection under international humanitarian law. In that year, the Powers which adopted the Geneva Convention relative to the Treatment of Prisoners of War sought to take into account a new phenomenon: the participation of a relatively large number of women in the war of 1914-1918. This international legal instrument contained two provisions of particular interest: "Women shall be treated with all consideration due to their sex" (Art. 3). "Differences of treatment between prisoners are permissible only if such differences are based on the military rank, the state of physical or mental health, the professional abilities, or the sex of those who benefit from them" (Art. 4).

Introduction:

In World War II, women participated in hostilities in greater numbers, although they did not commonly bear arms. In addition, there were many more

civilian victims than in the earlier conflict. Of the 50 million persons killed, it was estimated that 26 million were in the armed forces while 24 million were civilians, including many women. The adoption of new legal instruments taking such factors into account was essential. The "Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War", convoked by the Swiss Federal Council, depository of the Geneva Conventions, met from April to August 1949 in Geneva and drew up four Conventions which were adopted on 12 August of that year. The Third Convention, relative to the treatment of prisoners of war, and the Fourth Convention, relative to the protection of civilian persons in time of war, contain some thirty articles of special concern to women. These will be studied in detail in the next chapter.

In armed conflicts which have taken place since the adoption of the four Geneva Conventions of 1949, statistics indicate, more men and more women died than during World War II. The proportion of civilians among the dead, in some instances, was as high as 90%. These terrible totals were primarily a result of new means and methods of warfare with indiscriminate effects. In addition, new types of conflict developed between regular armies and guerrilla forces. In such conflicts, it is difficult to distinguish combatants from civilians, which renders civilians more vulnerable. In view of this new situation, the Conventions had to be supplemented. The ICRC took the initiative and at the conclusion of the "Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law" (1974-1977), the Additional Protocols were adopted in 1977. These supplemented the Conventions and thus offered better legal protection, primarily to the civilian population and thus to women. In addition, the rules governing non-international armed conflicts, contained in Article 3 common to all four Conventio ns, were developed and expanded in Protocol II, applicable in these situations. The provisions in these two instruments which give particular protection to women are examined in the following pages of this paper.

THE PROTECTION OF WOMEN IN THE GENEVA CONVENTIONS AND THEIR ADDITIONAL PROTOCOLS

The Conventions and Protocols protect women both as members of the civilian population not taking part in hostilities and also as combatants, fallen into the hands of the enemy. We shall examine the various aspects of this protection in the following paragraphs, giving particular emphasis to differentiated treatment accorded to women in the light of the following principles.

I. Principles

International humanitarian law gives expression in law to the fundamental principle of the equality of men and women, specifying this principle in clauses forbidding discrimination. Articles 12 of the First and Second Conventions, 16 of the Third Convention, 27 of the Fourth Convention and Article 75 of Additional Protocol I and Article 4 of Additional Protocol II (referred to below as C.I, C.II, C.III, C.IV, P.I and P.II) provide for treatment

"without any adverse distinction founded on sex... " It is also specified that women "shall in all cases benefit by treatment as favorable as that granted to men" (Article 14, C. III). This means that women are entitled to all the rights and freedoms specified by the Conventions. Accordingly, any discriminatory measure which does not result from the application of the Conventions is prohibited. However, the prohibition of discrimination is not a prohibition of differentiation. It is for this reason that distinctions are prohibited only to the extent that they are unfavourable. Equality could easily be transformed into injustice if it were to be applied to situations which are inherently unequal and without taking into account circumstances relating to the state of health, the age and the sex of protected persons.

The principle of equal treatment is extended by the further principle that "women shall be treated with all the regard due to their sex" (Article 12, C.I and C.II, Article 14, C.III). This particular regard is not legally defined, but regardless of the status accorded to women, it covers certain concepts such as physiological specificity, honour and modesty, pregnancy and childbirth.

International humanitarian law makes particular reservations concerning the female sex in various cases, either in general terms (" without prejudice to the provisions relating to their sex...") or in more specific terms (separate dormitories, separate places of detention). One should not deduce from this that the principle of differentiated treatment is not applicable in cases where it is not specifically mentioned (protection against insults and public curiosity, questioning, searches, food, clothing, intellectual, educational and recreational pursuits, sports and games, labour, conditions for transfer, prisoners' representatives, identification). An express reference tends to strengthen the scope of the principle, rather than to limit its application, and differentiated treatment is accorded to women even if it is not explicitly mentioned.

It would also be wrong to draw conclusions about a lack of special protection through the following examples. With respect to the labour of prisoners of war, the principle of special treatment for women is referred to (Article 49, C. III), while it is not in the case of women internees (Article 95, C. IV). As to the searching of prisoners of war, differentiated treatment is not specifically mentioned (Article 18, C. III), whereas it is in the case of a woman internee (Article 96, C. IV). At the time of capture, a prisoner of war must be searched immediately, for obvious reasons of security. It is not always possible under these conditions to have a woman available to make the search, whereas in the slower procedure of civilian internment this can be arranged. With respect to work by civilian internees, this is optional and there is thus no need to refer to the principle of differentiated treatment.

II. PROTECTION OF WOMEN AS MEMBERS OF THE CIVILIAN POPULATION

Like all civilians, women are protected both against abusive treatment by the Party to the conflict in whose power she finds herself and against effects of

hostilities: "A civilian is any person who does not belong to the armed forces" (Article 50, P. 1).

A. Protection against abuses by the Party to the conflict into whose power women have fallen

In an international armed conflict, women are among the persons protected by the Fourth Geneva Convention relative to the protection of civilian persons in time of war. Under these conditions, they benefit from all the provisions which state the basic principle of humane treatment, including respect of life and physical and moral integrity, particularly forbidding coercion, corporal punishment, torture, collective penalties, reprisals, pillage and the taking of hostages. Furthermore, in the event of infractions committed in relation to the conflict, women have the right to trial by an independent and impartial court established by law respecting the generally recognized principles of judicial procedure.

In addition to the general protection from which all civilians benefit, "women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution or any form of indecent assault" (Art. 27, para 2, C. IV; Art. 75 and 76, P.I). This provision was introduced to denounce certain practices which occurred, for example, during the last World War, when innumerable women of all ages, and even children, were subjected to outrages of the worst kind: rape committed in occupied territories, brutal treatment of every sort, mutilations, etc. In areas where troops were stationed or through which they passed, thousands of women were made to enter brothels against their will... Acts against which women are protected by Art. 27, para 2, C. IV are and remain prohibited in all places and in all circumstances, and women, whatever their nationality, race, religions beliefs, age, marital status or social condition have an absolute right to respect for their honour and their modesty, in short, for their dignity as women.

The origin of Art. 76, P. 1, entitled " Protection of women " , is the resolution of the United Nations Economic and Social Council of April 1970 on " the protection of women and children in time of emergency, war, struggle for peace, national liberation and independence " which invites the U.N. Secretary-General to give special attention to this problem.

This provision represents an advance for international humanitarian law as compared to Art. 27, para 2, C. IV, since it widens the circle of beneficiaries and also constitutes a substantial extension of the International Covenant on Civil and Political Rights which does not contain particular provisions protecting women. In other words, the new rule refers to all women in the territories of the Parties to the conflict. While protection covers nationals of States which are not Parties to the Conventions and those of neutral and co-belligerent States, it does not extend to nationals of a Party to the conflict who are victims of offences against their honour committed on the territory of that Party under circumstances which have no relation to the armed conflict.

In a non-international armed conflict, women are protected by the fundamental guarantees governing the treatment of persons not taking part in hostilities which are contained in Article 3, common to all four Conventions. However, this article does not provide special protection for women. Protocol II completes and develops this provision. Its Article 4 expressly forbids "outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault".

a. Respect for preferential treatment of women

In an international armed conflict, the situation of aliens in the territory of a Party to the conflict continues to be regulated, in principle, by provisions concerning aliens in time of peace. However, the state of war creates a situation which will inevitably have repercussions on the standing of aliens and does not always permit their previous status to be wholly maintained. Protected persons are compelled to submit to various restrictions which, under these conditions, affect the population as a whole. Even in case of war, however, the special benefits accorded to pregnant women and mothers of children under the age of 7 years by national laws should be respected.

Countries at war generally take some measures for the benefit of persons whose weakness in one respect or another warrants special care. These measures are varied in scope and application: they may cover the granting of supplementary ration cards, facilities for medical and hospital treatment, special welfare treatment, exemption from certain forms of work, protective measures against the effects of war, evacuation, transfer to a neutral country, etc. "Pregnant women and mothers of children under seven years shall benefit by any preferential treatment to the same extent as the nationals of the State concerned" (Art. 38, C. IV). Likewise, "The Occupying Power shall not hinder the application of any preferential measures... which may have been adopted prior to the occupation in favour of children under fifteen years, expectant mothers, and mothers of children under seven years" (Art. 50, C. IV).

b. Interned women

i. General

A Party to an international armed conflict is authorized by international law to take strict control measures over protected persons, on the condition that its security renders these measures absolutely necessary. A belligerent, for example, may intern people if it has serious and legitimate reason to think that they are members of organizations whose object is to cause disturbances, or that they may seriously prejudice its security by other means, such as sabotage or espionage. In addition, an Occupying Power may charge protected persons with infractions of penal laws which it has promulgated for its own protection. Like other protected persons, women may be interned or charged for carrying out acts endangering the security of the Occupying Power. Special provisions are made in international humanitarian law for the benefit of women in such situations.

Under the terms of Protocol I, "Women whose liberty has been restricted for reasons related to the armed conflict shall be held in quarters

separated from men's quarters. They shall be under the immediate supervision of women. Nevertheless, in cases where families are detained or interned, they shall, whenever possible, be held in the same place and accommodated as family units" (Art. 75, para 5).

The Fourth Convention states, "Whenever it is necessary, as an exceptional and temporary measure, to accommodate women internees who are not members of a family unit in the same place of internment as men, the provision of separate sleeping quarters and sanitary conveniences for the use of such women internees shall be obligatory" (Art. 85). This paragraph is a case of a particular application of the general principle laid down in Article 27, paragraph 2, concerning the respect due to women's honour. For the same reasons, "A woman internee shall not be searched except by a woman" (Art. 97, para 4).

Protocol I provides a further guarantee for the benefit of interned women: "They shall be under the immediate supervision of women" (Art. 75, para 5). With respect to disciplinary penalties, the Fourth Convention also refers to the principle of differentiated treatment, in general terms. "Account shall be taken of the internees age, sex and state of health" (Art. 119). Women accused of offences and those serving sentences "shall be confined in separate quarters and shall be under the direct supervision of women" (Arts. 76 and 124, C. IV and Art. 75, para 5, P.I).

There is nothing to prevent the Detaining Power arranging for women a system of disciplinary detention less harsh than that for men and in less uncomfortable premises. Such a distinction between the sexes is not regarded as contrary to the general principle of international humanitarian law forbidding all discrimination. In non-international armed conflicts, Protocol Il provides similar rules. It specifies that women who are arrested, detained or interned "shall be held in quarters separated from those of men and shall be under the immediate supervision of women except when members of a family are accommodated together" (Art. 5, para 2a). In the event that it is not possible to provide separate quarters it is essential in any event to provide separate sleeping places and conveniences. It should be noted that the foregoing provisions refer both to civilians deprived of their freedom and to captured combatants.

ii. Pregnant women and maternity cases

In an international armed conflict, these women benefit from supplementary protection. Protocol I specifies that "pregnant women and mothers having dependent infants who are arrested, detained or interned for reasons related to the armed conflict, shall have their cases considered with the utmost priority" (Art. 76, para 2). This is intended to make sure that pregnant women are released as rapidly as possible.

In 1949, a similar provision was included in the Fourth Convention urging the Parties "to conclude agreements during the course of hostilities for the release, the repatriation, the return to places of residence or the accommodation in a neutral country of interned pregnant women" (Art. 132,

C. IV). This Article does not specify an obligation to reach such agreements but it does constitute an urgent recommendation based on experience. During World War II, numerous repatriations of internees took place by the belligerents. In this connections emphasis should be laid on the role which can be played by the Protecting Power or by the ICRC in suggesting and inspiring such agreements. The Protecting Power is well placed, especially when it acts simultaneously on behalf of both parties, to understand the deplorable seriousness of certain situations. The argument of reciprocity can be invoked to further, and sometimes even almost to compel, the conclusion of special agreements concerning, for instance, exchanges of internees. Naturally, the International Committee of the Red Cross can also play a role in this. It goes without saying that the ICRC can and does on occasion play a similar role.
This category of women also benefits from other forms of differentiated treatment.

The Fourth Convention provides that "expectant and nursing mothers in occupied territories shall be given additional food, in proportion to their physiological needs" (Art. 89). This clause was designed to avoid deficiency diseases which would be particularly regrettable among these women, as they would affect future generations. Since internment is not a punishment but a precautionary measure adopted in the interest of the Detaining Power, it cannot be allowed to cause serious prejudice to the persons subjected to it. Thus, "maternity cases must be admitted to any institution where adequate treatment can be given and shall receive care not inferior to that provided for the general population" (Art. 91).
"Maternity cases must not be transferred if the journey might be seriously detrimental to them, unless their safety imperatively so demands" (Art. 127). As we see, it is the safety of the internee which is decisive, not the military situation. The latter concept, which existed in the 1929 Convention with respect to sick and wounded prisoners of war, was too often interpreted as granting permission to the Detaining State to transfer them when it appeared that military operations might enable them to escape from its power.
iii. Mothers of young children

Protocol I, as in the case of expectant or nursing mothers, asserts that "mothers having dependent infants who are arrested, detained or interned for reasons related to the armed conflict shall have their cases considered with the utmost priority" (Art. 76, para 2). The term "mothers having dependent infants " has a wider meaning than "nursing mothers", the wording which had been previously proposed. The authors of the Protocols were unable to agree on the age when children cease to be dependent on their mothers. Since various provisions in the Fourth Convention refer to mothers of children under the age of 7 years (preferential treatment in Art. 50 and safety zones in Art. 14), we can consider 7 years to be the age below which the application of Art. 76, para 2 of Protocol I is imperative.
As in the case of pregnant women and maternity cases, the Fourth Convention provides that the Parties to the conflict shall endeavour during the course of

hostilities to conclude agreements for the release, the repatriation, the return to places of residence or the accommodation in a neutral country of interned mothers of young children (A rt. 132).

c. Women and the death penalty

Nothing is said about this subject in the Conventions. Protocol I makes up for this deficiency, drawing inspiration from the International Covenant on Civil and Political Rights which entered into effect on 23 March 1976. Its Art. 6, para 5, provides that a death penalty must not be executed on pregnant women. It was not possible however for the authors of the Protocols to prohibit absolutely in the event of an international armed conflict, the pronouncement of the death penalty on pregnant women and the mothers of young children. Such a prohibition would run counter to specific provisions in the national legislation of a number of countries. Nevertheless, international humanitarian law recommends that such pronouncements be avoided to the utmost possible extent. With regard to the actual execution of the sentence, it was relatively easy for the authors to agree to forbid the execution of pregnant women. The fact is that many national legal codes which still provide for the death penalty also recognize this restriction. The barbarous practice of postponing an execution until the birth of the child has been abandoned almost universally, both in law and in fact. "To the maximum extent feasible, the Parties to the conflict shall endeavour to avoid the Pronouncement of the death penalty on pregnant women or mothers having dependent infants, for an offence related to the armed conflict. The death penalty for such offences shall not be executed on such women" (Art. 76, para 3, P.I).

In non-international armed conflicts, Protocol II also makes up for the previous absence of such a protective clause. The Protocol goes even farther than the International Covenant on Civil and Political Rights. It specifies that "the death penalty shall not be carried out on mothers of young children " (Art. 6, para 4, P. II).

B. Protection of women against the effects of hostilities

In an international armed conflict, women as members of the civilian population benefit from rules in international humanitarian law which impose limits on the conduct of hostilities. These rules, whose sources go back to the Hague Conventions of 1899 and 1907 and which have to a great extent become a part of customary law, are specifically reaffirmed and developed in Protocol I. They provide notably that the Parties to a conflict "shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives" (Art. 48, P. 1).

In relation to non-international armed conflict, the essential elements of these provisions are also set forth, in simplified form. Article 13 of Protocol II stipulates that "the civilian population as such, as well as individual civilians, shall not be the object of attack."

a. Pregnant women or maternity cases - In an international armed conflict, this category of women benefits from special protection. Protocol I stipulates that

"maternity cases and pregnant women, who refrain from any act of hostility, shall enjoy the same general protection as that accorded to the sick and wounded" (Art. 8).

Such women are not necessarily in need of medical care but their condition is such that they may need such care rapidly.

The principle of assimilating pregnant women or maternity cases to the sick and wounded was already implicit in the Fourth Convention, which states, "The wounded and sick, as well as the infirm and expectant mothers, shall be the object of particular protection and respect" (Art. 16). It adds, "The parties to the conflict shall endeavour to conclude local agreements for removal from besieged or encircled areas of wounded, sick, infirm, and aged persons, children and maternity cases... " (Art. 17).

Conclusion:

If women in real life are not always protected as they should be, it is not due to the lack of a legal basis. Despite adoption of the Fourth Geneva Convention and the two Additional Protocols, women as members of the civilian population continue to be the first victims of indiscriminate attacks against civilians, since the men are usually engaged in the fighting. Article 27 of the Fourth Convention, which provides special protection for women against any attacks on their honour and in particular against rape, enforced prostitution or any form of indecent assault, did not prevent the rape of countless women in the conflict in Bangladesh in 1971, for example .43 This was one of the reasons why the authors of Protocol I considered it necessary to repeat in Article 76, para 1, the contents of the earlier article. The same rule is found again in Protocol Il. Although these new provisions have been adopted, crimes against honour continue to be committed, with women as the principal victims. We need only think of the tragedy of the "boat people", even though this is outside the specific framework of armed conflicts. With particular regard to women deprived of their freedom, the ICRC has found that women are in the greatest danger of such assaults at the time of their arrest or capture and during the interrogation which follows, assaults ranging from the threat of rape to obtain "confessions" to the act itself.

References:

1. The Fist Geneva Convention of 1864 has undergone three revisions, 1906, 1929 and 1949. The Second Geneva Convention took the place of the Tenth Hague Convention. The Fourth Convention was new and supplemented Sections II and III of the Hague Regulations.
2. Commentary Fourth Convention , Art. 85, p. 388.
3. Commentary on the Two 1977 Protocols... , Art. 76, pp. 472-473.
4. Commentary Fourth Convention , Art. 23, p. 180.
5. Frauen ans Gewehr, by Renate Janssen, Köln, 1980, pp. 11-19.
6. Basic rules of the Geneva Conventions and their additional Protocols , ICRC, Geneva, 1983, pp. 21-22.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue II, December 2023
DOI:10.13140/RG.2.2.29972.10880
www.kanpurhistorians.org

ROLE OF BAIL IN CRIMINAL JUSTICE SYSTEM FOR UNDERTRIAL PRISONERS: AN ANALYSIS OF HUMAN RIGHTS PERSPECTIVE

DR. PANKAJ KUMAR RAWAT
Resource Person
Department of Law, SLS
B.B.A.U. Lucknow India
NITESH KUMAR CHATURVEDI
Research Scholar
Department of Law, SLS
B.B.A.U. Lucknow India

Abstract:

In the criminal jurisprudence, object of arrest & detention of the accused of crime, primarily to secure his appearance at the time of trail and to ensure that in case he found guilty he is available to receive the sentence. If his presence at the trial could be reasonably ensured otherwise than by his arrest & detention, it would be unjust and unfair to deprive the accused of personal liberty during the pending of criminal proceeding against him. The Law relating bails under criminal jurisprudence has two conflicting demands first an accused, who have a charge to committed a crime and second the fundamental features of the Criminal Justice System is presumption of innocence means that an accused of crime is innocent until he has proven guilty.

[1] The central meaning of the right to life and personal liberty is found in the freedom from arbitrary detention. Accompanying these rights, Constitution of India also has accompanying provisions that regulate or prohibit the detention. For example, Article 22 of the Constitution of India, which prescribes the procedures for preventive detention immediately, follows the provision of Article 21 of the Constitution of India, which guarantees the

---

[1] R.V. Kelkar's, *Criminal Procedure* 282 (Eastern Book Company Lucknow 5th Edn. 2008).

right to life and personal liberty of a person. In the case[2] Supreme Court of India laid down the principle which is 'bail is a rule, jail is an exception. In this judgment Justice V.R. Krishna Iyer laid down this doctrine for safeguarding a fundamental right under the Article 21 of Constitution of India, which is guarantying the right to life and personal liberty of the person.

Introduction:

Bail can be defined as a security for the appearance of the accused person on giving of which he is released on during the pending trial or investigation.[3] Bail can be simply defined as the security given for the due appearance of a prisoner in order to obtain his release from imprisonment. Bail is a provisional release of an accused person, who is in jail on the basis of a FIR[4]/Complaint[5] in particular offence, but the charge of offence has not been proven against him. Person released on bail has a better chance to prepare or present his case than one remanded in the custody, and if public interest is to be promoted, mechanical detention should be demoted.

In the case of *Moti Ram* v. *State of M.P*[6] Supreme Court of India, held that the term bail covers both release on one's on bond with or without sureties. It is also pronounce that court through this legal principal 'bail is rule, jail is an exception' which is adopted in the case of Balchand ensure that a person is not detained unless he is guilty of a crime, because it is a established principal under the criminal justice system is-'a person is not guilty until proven'.

Bail is granted under Code of Criminal Procedure, 1973

Black Law Dictionary defines the term 'bail' as-"to procure the release of a person from legal custody, by undertaking that he shall appear at the time and place designated and submit him to the jurisdiction and judgment of the court."[7] There is no any definition of term 'bail' in Criminal Procedure Code, 1973 but the word bail has been used several times in Code of Criminal Procedure, 1973, Section 2(a) of the Code defines Bailable and Non-Bailable offences.[8] Bail is the one of the most vital concept in criminal justice system of India in consonance with the fundamental rights which is enshrined in Part III of the Constitution of India. Chapter XXXIII of the Code of Criminal Procedure from Section 436 to 450 deals with the provision

---

[2] *State of Rajasthan* v. *Balchand* , AIR 1977 SC 2447.

[3] *Govind Prasad* v. *State of West Bengal,* 1975 Cr LJ 1249.

[4] FIR means First Information Report and Section 154 of the Code of Criminal Procedure, 1973 provides the provision related to the Information in Cognizable Cases.

[5] Code of Criminal Procedure 1973 Section 2(d).

[6](1978) 4 SCC 47.

[7] Black Law Dictionary, 4th Edition Page 177.

[8] Code of Criminal Procedure, 1973, Section 2 (a) "bailable offence" means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence;

related to the bail and bail bond. Before understanding the concept of bail it is necessary to understand different kinds of offences. These types of offences categorically defined in the Code of Criminal Procedure such as Bailable offence, Non-bailable offence, cognizable offence and non-cognizable offence.

According to Section 2(a) of the Code of Criminal Procedure- "Bailable offence means an offence which is shown as Bailable in the First Schedule, or which is made Bailable by any other law for the time being in force; and Non-bailable offence means any other offence." According to Section 2(c) of the Code of Criminal Procedure–"Cognizable offence means an offence for which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant." And code also define the term non-cognizable offence as an offence for which, a police officer has no authority to arrest without warrant.[9]

According to Section 167(2) of the Code, Magistrate shall authorize the detention of the accused person in custody for a total period exceeding-

I. Ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;
II. Sixty days, where the investigation relates to any other offence, and, on the expiry of the above time period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail.

Every person released under this sub-Section shall be deemed to be so released under the provisions of Chapter XXXIII.

Grant of Bail

Bail can be granted by an officer in charge of the police station, Magistrate, Session and HighCourt.

I. An officer-in-charge of the police station has been given the power to release a person accused of Bailable offence and some of the Non-bailable offence (other than offence punishable with death and life imprisonment) only. Power can only be exercised only during first 24 hours from the time of arrest.
II. Magistrate is empowered to release the person accused of all bailable offences and most of the Non-bailable offences once the arrested person is produced before him. Magistrate has wider power than officer-in-charge of the police station.
III. Session Court and High Courts are empowered to release the person accused of any offence whether punishable with death sentence or life imprisonment.

Constitutional Protection to the Undertrial Prisoners

[9] Code of Criminal Procedure 1973, Section 2(l).

Justice N.V. Rammanna expressed his view on the condition of the undertrial prisoners in the inaugural session of the 18th All India Legal Services Authority; this was organized by the National Legal Service Authority at Jaipur, Rajasthan on dated July 16, 2022. In this meet, Justice Rammana pointed out that no modern democracy can be dissociated with the observance of the 'Rule of Law' the key question is can the rule of law persist without the idea of equality? The idea of modern & democratic India was built around the promise of providing Justice: Social, Economic & Political. So as a democratic nation, we have supreme law of land and through the help of Article 39-A & Article 21of the Constitution of India, Government of India or State Governments uphold & protect the rights of the undertrials prisoners.

Justice Rammana pointed out that out of 6.10 Lakh prisoners in the country nearly 80 percent undertrial prisoners are there in 1378 prisons in the country. They are one of the most vulnerable Sections of our society. Further he pointed out that in the Criminal Justice System, the process 'is a punishment'. Further Chief Justice N.V. Rammana described 'Jails as black boxes' and said that prisons have a different impact on different categories of prisoners particularly those belonging to marginalized communities in Indian society. We need a holistic plan of action to increase the efficiency of the administration of the Criminal Justice system in India.

Article 39-A has been read with Article 21 and thus free legal assistance at State cost has been raised to the status of a fundamental right of a accused person of an offence which may involve jeopardy to his life or personal liberty. Court has also expressed his view that-"it would make a mockery of legal aid if it were to be left to a poor, ignorant and illiterate accused person to ask for free legal aid". Apex Court also observed that-"legal assistance to a poor or indigent accused who is arrested and put in jeopardy of his life or personal liberty is a constitutional imperative mandated not only by Article 39-A[10] but also by Article 14[11] & 21[12] of the Constitution".

In the case of *Motiram* v. *State of Madhya Pradesh*[13], Supreme Court of India observed that-"root cause for long pre-trial incarceration to be the present day unsatisfactory and irrational rules for bail which insist merely on financial security from the accused and their sureties".

---

[10] Constitution of India, 1950 article 39-A. Equal justice and free legal aid.—The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

[11] Constitution of India, 1950 article 14. Equality before law—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

[12] Constitution of India, 1950 article 21: Protection of life and personal liberty— No person shall be deprived of his life or personal liberty except according to procedure established by law.

[13]AIR 1978 SC 1594.

In the case of *Babu Singh* v. *State of Utter Pradesh*[14], Supreme Court observed that-"system of bail in India as 'antiquated'. It is oppressive and weighted against the poor. Improvement of the system is very necessary as the court insists in this case. Further Court also emphasized that- "…. the issue is one of liberty, justice, public safety and burden on the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitive judicial process.

In the case of *Babubhai Udesinh Parmar* v. *State of Gujarat*[15], Court has stated that under the Article 39-A of the Constitution, the State Government undoubtedly has an obligation to set up a comprehensive and effective legal aid programme in order to ensure that the operation of the legal system promotes justice on the basis of equality.[16]

Key issue related to Bail of Undertrial Prisoners in India

Reality of the Indian prisons is actually a picture of jails, which are overflowed with the undertrials & convicted prisoners. Data shows that most of the inmates of the jails are from the marginalized or poor family background. Numbers of the inmates of them continue to languish in Indian prisons despite of the landmarks verdict, which was passed by Apex Court of India & various High Courts of the States. The number of undertrial prisoners[17] in the nation's prisons continues to be roughly 65 percent of the total prison population, despite initiatives like setting up fast track courts, providing infrastructure grants under the modernization of the prison scheme, digitalizing court records, and writing to State governments to monitor the release of undertrial prisoners on personal bond.

Key issue to deal with the issue of undertrial prisoners:

A. The first is the unavailability of high-quality legal aid services for the prisoners who awaiting trial and they cannot be afford to hire competent attorneys to represent them in court of law.
B. The financial bail system that is in place in our nation is the second factor influencing the situation. In the case of cash bail, this implies that the accused must post the bail money in the court until the conclusion of the trial or, in the event that the accused flees, provide a surety who can vouch for his ability to pay the bail sum indicated in the bail order. This suggests that a person will be imprisoned until the completion of the trial if they are destitute and unable to post cash bail or provide a guarantee.
C. The length of time it takes to finish the trial process is the third problem at hand. The extremely low Judges population ratio in India is in turn connected to this in a number of different ways.

---

[14] AIR 1978 SC 527.
[15] (2006)12 SCC 268.
[16] M.P. Jain, *Indian Constitutional Law* 1506 (Lexis Nexis Gurgaon 6th Edition, Reprint 2013)
[17] Hereinafter UTPs.

According to recent statistics, Indian Courts are now hearing 4 crore 60 lakh cases. Nearly 1.4 billion people call India home, and there are 21 Judges for every million people compared to the 35 to 50 Judges for every million people in most developed nations. Fast track courts were an ad hoc attempt to increase the judge-population ratio by establishing additional temporary courts to hear cases at the session's court level. As a result of this innovation, the number of fast track courts has significantly decreased over the past ten years, but at the expense of what some claim is justice per se.

This has been reaffirmed by the Supreme Court in numerous landmark decisions and has been confirmed by the revision to the Code of Criminal Procedure, 1973, under Sections 436 and 436-A. Personal Recognizance Bonds are intended for such undertrial proceedings. Section 436 of the Code of criminal procedure amended in 2005. Section 436 of the Code of Criminal Procedure, 1973 said that the trial court must release an undertrial arrested for minor offences on a Personal Recognizance Bond if they have been detained for longer than a week following the issuance of their bail order.

Union Legislature amend the Code of Criminal Procedure, 1973 and introduced a Section in Cr.PC, which was Section 436-A. According to Section 436-A of the Code of Criminal Procedure, the trial Court must release an individual on a Personal Recognizance Bond for serious offences if they have served more than 50 % of the maximum sentence that can be imposed on them under the charged Section.

Systemic amendment such as the addition of Section 436-A of the Code of Criminal Procedure 1973 have also not contributed significantly due to the non-implementation of the provisions, as noted by the Supreme Court in *Bhim Singh* v. *Union of India.*[18] While recognizing the problems with implementation of Section 436-A, the Court directed the jurisdictional magistrate/chief-judicial magistrate/sessions Judge to hold one sitting per week in each Jail/Prison for two months to identify undertrials eligible for bail under Section 436-A and to pass an appropriate order with respect to Section 436-A in the jail itself. This was yet another one-time solution to a problem that is endemic to the system.

Once again in 2016, in *Inhuman Conditions in 1382 Prisons, re*[19] the Social Justice Bench of the Supreme Court of India prescribed comprehensive guidelines to improve the condition of overcrowded under-trials & convicted prisoners in prisons. Court directed to the Union Government & State Governments to take steps for the effective implementation of Section 436 of the Code of Criminal Procedure. Bench of Justice M.B. Lokur & Justice U.U. Lalit observed that-"*poverty can't be a ground for keeping in custody an accused who is unable to furnish the bail bond" on account of his poverty, as*

[18] (2015) 13 SCC 603.
[19] (2016) 3 SCC 700.

it noted that a large number of persons were languishing in the jail as they could not furnish bail bonds after the grant of bail."

Bench was also asked National Legal Services Authority (NALSA) to issue directions to State Legal Services Authorities to look into matters of UTPs still in prison due to inability to furnish bail. Describing as 'very high' that the 67% of the jail inmates were undertrial, the court referring to the Union Home Ministry's affidavit said that as on December 31, 2013 there were 2,78,000 persons in the jails across the country.

The court also said that prisoners accused of compoundable offences too should be taken up by the State Legal Service Authorities and the under trial prisoners who have completed half of the sentence that they would undergo if convicted of the offences they have been charged with should be considered by a committee for release in accordance with Section 436-A of the Code of Criminal Procedure. The court said that the Committee comprising the district judge, district magistrate and district superintendent of police will hold its meeting on June 30, 2015, to review all such cases. The court further said that in case a person is accused of more than one crime, then to meet the requirement of Section 436-A of Cr.PC the charge that involves less punishment should be considered for examining the question of releasing him from the custody.

Table-1

Bail granted to the UTPs

Year	Total inmates in Jails during the year	Total UTPs in jails during the Year	Bail granted to UTPs during this year	Percentage	Bail granted under Section 436-A of Cr.P.C.
2017	16,55,658	14,45,023	13,15,239	91.02	1074
2018	18,47,258	15,35,871	14,27,942	92.97	1072
2019	19,02,209	15,98,218	14,99,028	93.80	635
2020	16,31,110	12,91,504	12,32,469	95.40	442
2021	18,06,823	14,68,627	13,95,635	95.0	591

Statistics of Undertrial Prisoners in Indian Jail

Equality is one of the magnificent corner-stones of Indian democracy. Equality before law is a necessary corollary of Rule of Law which pervades the Indian Constitution.[20] The moral imperative of equality is prominent in contemporary society. The fate of the citizens and the importance of the law are both influenced by the unequal conditions of existence, such as caste and property. During the year of 2020, 371848 UTPs are in prisons, in which most of being poor and indigent. They have to languish in prison awaiting their trial because they cannot be affording counsel for legal proceeding due to financial insecurity.

[20] M.P. Jain, *Indian Constitutional Law* 928 (LexisNexis Gurgaon, 6th Edition Reprint 2013).

Data from National Crime Record Bureau, observation of judgment & frank admission of the Supreme Court seems to suggest that legal aid for the poor is still a distant dream. Prisoners are in various jails languishing for year's jail before a Legal Aid Counsel is appointed. When they appointed the UTPs do not trust their efficacy. The ceremonial and cursory visits by legal aid counsels and magistrate to prisons are not able to address this massive problem. UTPs are routinely allotted legal aid counsel at the time of first production before the magistrate but the information does not reach them. The standing legal aid counsels are supposed to represent them when they are produced before the magistrate. In most of the cases, the legal aid counsels neither contact the prisoners nor their family members.[21]

In 2020, the total number of Prisons at all India level has decreased from 1351 to 1306. It means that 3.3% decreased are record from 2019 to 2020 at national level in the sense of Prisons. 1306 prisons at all India consist with 565 Sub-Jails, 413 District Jails, 145 Central Jails, 88 Open Jails, 29 Women Jails, 19 Borstal Schools and 3 other than the above Jails.[22] During the year of 2020, overall 16,31,110 inmates were admitted in prisons all over the country, which shows that the admission of the inmates has declined 14.3 % from last year.[23] In 2020, genuine capability of the prisons, which was available for the prisoners, has been increased from 400934 to 414033. Actual scenario is different from capacity of the prisons, which denotes in above graph.

Table-2

Total number of Prisons & Prisoner at the end of the Year

Year	No. of Prison	No. of Convicts	No. of Undertrial Prisoners	No. of Detenues	other Inmates	Total No. of Prisoners	Actual capacity of Prisons	Occupancy Rate of Prisons
2017	1361	139149	308718	2136	693	450696	391574	115.1 %
2018	1341	139656	324141	2384	621	466802	397138	117.5 %
2019	1351	144567	332916	3223	681	481387	400934	120.1 %
2020	1306	112589	371848	3590	484	488511	414033	118 %
2021	1319	122852	427165	3470	547	554034	425609	130.2

According to data of Prison Statistics, I am finding out that numbers of the UTPs are much more than to the convicts. Statistically its shows that three fourth of total number of the prisoners are undertrial prisoners. During the year of 2020, overall 371848 UTPs were admitted in Prisons all over the country, which shows that the admission of the under trial prisoners has increased 11.7 % from last year. 3,71,848 UTPs have only 10 inmates are civil. It shows that 371838 UTPs have criminal along with other charges.

[21] Murali Karnam and Trijeeb Nanda, Condition of undertrials in India Volume LI *EPW* 13.

[22] In 2019, the total number of 1351 Prisons are available at all India level, which consist with 617 Sub-Jails, 410 District Jails, 144 Central Jails, 86 Open Jails, 41 Special Jails, 31 Women Jails 19 Borstal Schools and 2 other than the above Jails.

[23] In the year of 2019, total numbers are inmates admitted in Prisons are 1902209.

Literacy profile of the UTPs has been given in details in Table-2 of this article, by which shows that the condition of UTPs are basically worst due to educational standard of the prisoners. If you are not aware for your rights than remedy should not be easily taken by the undertrials and if you also want to remedy to the court then pay to his/her counsel for the protection at legal grounds.

Table-3
Literacy profile of the UTPs

Year	Illiterate	Below Class 10th	Above 10th & below Graduate	Graduate	Post-Graduate	Holding tech Degree or Diploma	Total number of Undertrial Prisoners
2017	95443	121340	63291	19658	5543	3443	308718
2018	95853	127796	69628	21222	5517	3521	323537
2019	94533	134749	70738	21042	5546	3879	330487
2020	100297	151386	85071	23771	6436	4887	371848
2021	107946	168420	104958	32912	7605	5324	427165

- In 2018 & 2019 West-Bengal state does not provide the data

Caste-wise profiles of the UTPs has been given in details in Table-3 of this research article, by which shows the condition of undertrial are basically worst due to Caste-system of the prisoners. Caste plays the major role in Indian society. Due to the caste many issue are raised in the life of person of the society like education, income, status & dignity full life. Children are not properly nourished & nurtured in the society due to major issue of caste & income, which affect the mental status of child. Other issue are also involves in to the ambit of crime, which is directly or indirectly affected to poor person of the society.

Table-4
Caste-wise profile of the UTPs

Years	SC	ST	OBC	Others	Total Number of UTPs
2017	61744	33390	97113	116471	289800
2018	61744	33390	97113	116471	308718
2019	67050	35102	107477	87010	323537
2020	77716	39031	127736	101194	371848
2021	90037	42211	151287	111878	427165

Conclusion and suggestion

Bail is granted to prevent confinement of innocent persons. Principle underlying release of person on bail is that accused is presumed to be innocent until proven guilty. Dr. D. Y. Chandrachud speaking at the felicitation function organized by the Bar Council of India on November 19, 2022, at that time he had categorically stated that- "the way we look at the district judiciary affects deeply our own personal liberty as citizens. If the Judges of the district courts do not have the confidence in their own abilities,

in their own respect in the hierarchical system, how would we expect a District Judge to grant bail in an important case", while the matter bail is an issue of personal liberty and a basic human right of an arrested person.

Conclusion:

For effective implementation of Bail system it is necessary to bring certain necessary changes regarding bail.

1. Guideline must be made regarding the amount which the person has to pay to be released on bail. Amount imposed by the judges are sometimes too excessive and absence of guideline in this respect just justify it.
2. Special provision regarding economic offences must be incorporated in the Code of Criminal Procedure, 1973.
3. Fast track courts must be established to dispose the bail applications.
4. Data regarding habitual offenders and first time offenders must be made, first time offenders should be granted bail in less serious offence as they have a chance to improve themselves.
5. Consistency between the Bailable and Non-Bailable offences must be made. For example- Section 494 of the Indian Penal Code is a Bailable offence punishable with imprisonment for 7 years whereas Section 498-A, subjecting a married woman to cruelty is a Non-Bailable offence punishable with imprisonment for 3 years. It clearly shows that classification between Bailable and Non-Bailable offence is inconsistent.
6. A lack foresight in legislating can directly result in the clogging of courts. For example, the introduction of Bihar Prohibition and Excise Act, 2016 resulted that the judicature of Patna High Court being clogged with bail applications, because of this condition normal bail application takes on concern of the Judges of High Court time taking then the bail applications are disposed within one year.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue II, December 2023
DOI:10.13140/RG.2.2.29972.10880
www.kanpurhistorians.org

ONLINE LEARNING AND ICT TOOLS

DR. PREETY AGARWAL
Associate Professor
Department of Teacher Education
D.A.V. PG College
Muzaffarnagar U.P. India

Abstract:
In the time of lockdown and social distancing, when schools and colleges are switching to digital classrooms, the Ministry of Human Resources and Development (MHRD) has released an official notice, asking students to utilize their time productively by engaging in the online learning. In view of the Covid-19 outbreak all across the world, everyone is taking all precautionary and preventive measures to combat this pandemic. We are following the norms of social distancing and keeping ourselves in the confines of our homes or offices. All schools, universities, workplaces have been shut down to contain the spread of this novel virus. It was expected that the shutdown would impact the learning process to a great extent. But it is actually not the case. All thanks to technology. Various Digital platforms and ICT initiatives are accessed by teachers, students, researchers and corporate officials round the clock. These tools enable constant learning and offer several benefits such as flexibility, comfort, and interactive user interface.In the context of this, UGC with the help of ICT has arranged and shared several online links which can be accessed by students, faculties, academicians and researchers for audio, video and text content.

Key words*:* ICT tools, technology, online classes,learning

Introduction:

The Covid-19 lockdown, which has spawned an unprecedented dependence on technology to keep operations running across different sectors, and its potential long-term impact, has become a subject of research back home too. Students can be in constant touch with their faculties with the help of online classes conducted through Skype, Zoom, google hangouts, google classroom etc. Students and academicians can make maximum usage of this lockdown period to enroll into numerous courses which are available online

like Swayam, Coursera, edX and many more. Students can access the detailed notes, content and free books through various online platforms. It is also a wonderful opportunity for every academician and researcher to create their own OERs (Open Educational Recourses) which not only serves the purpose of students for education but also serves as a catalyst in enhancing professional self-image. Digital initiatives help every academician to see themselves as not only teachers but creators of knowledge.

In spite most teachers learning to teach online these days there are still ways in which you will be able to take advantages of how technology at home can help.It is a little different to the use of technology in the classroom; however, the concepts are still the same. No school student in Wuhan missed classes as they were conducted 76 days online (The Pioneer Editorial 14.04.2020). This statement sounds simple but reveals a great advancement of technology application in education by China. In the most adverse time also, the education system continued as usual, there by injected confidence among students and parents. This will immensely help in controlling panic in the society during the pandemic.

In India too, many institutions have kept their teaching online and stood firm behind the students and their future. They are making all round efforts to continue the academic year through adoption of ICT. The HVB Global Academy of Mumbai drafted an online lessons policy which outlines rules to be followed by the students, teachers and parents during the classes. This is limited to the elite private academic institutions. Even a Government College located in a rural area of Burdwan under the Burdwan University started floated live e-classes for the students to help complete the syllabus. They launched a fresh website dedicated to accommodate live online classes. They also used the apps like WebEx used by the IITs for live coaching classes. The IGNOU Bhubaneswar regional office successfully conducted online classes and induction programmes through ZOOM app during the lockdown period.

The use of technology in education can be broadly classified into four categories. The first one is the teacher preparation and their CPD (Continuous Professional Development). It is necessary for the teachers to receive adequate training in how to leverage technology to improve educational outcomes. The second important area where technology can have big impact is in the class room processes of teaching, learning and evaluation. The third area is the use of technology to improve access to education for disadvantaged groups including differently-abled students, girls and women and students living in remote areas. The fourth area is the planning, administration and management of the whole education system of the country.The irony is that there are several ICT initiatives of MHRD, UGC, Information and Library Network (INFLIBNET) and Consortium for Educational Communication (CEC)in the form of digital platforms which can be accessed by the students, teachers, and researchers for broadening their knowledge horizons. The most useful ITC initiatives are SWAYAM on line courses, UG/PG MOOCs, e-PG Pathshala, e-content courseware in UG subjects, SWAYAMPRABHA DTH Channels,

CEC-UGC You Tube Channel, National Digital Library, Shodhganga and eShodh-Sindhu which offer access to 15,000 core and peer reviewed journals. The MHRD and the UGC are trying to make them popular but many of the teaching fraternity are not aware of these things, forget about the students. Our Educational Satellite launched in 2004 with a life span of seven years came to an end with barely ten per cent of its capacity used. If the teachers are aware of these technologies and use them for enhancing the knowledge of their students, the fear of losing the academic years will never arise.

Recently, the MHRD initiated a campaign 'Bharat Padhe Online' inviting suggestions and sharing of ideas from academic fraternity including students and teachers to boost e-learning and online education in India. The suggestions and ideas can be given either twitter #BharatPadheOnline and tagging @HRD Ministry and @DrRPNishank or by sending through email at bharatpadheonline.mhrd@gmail.com This is time all the educationists, academicians, planners and other administrators to share their ideas to strengthen our online education initiatives.There is every need to adopt the technology as nobody knows how long the lockdown will continue and we cannot sit idle waiting for its lifting. The health of the students is as important as their education and the right use of ICT can take care of both. With the need to contain the virus, many countries are implementing measures to reduce gatherings of large crowds. Our schools are not immune to these actions, or to the spread of the virus. Many countries have now implemented measures in their education systems – from banning gatherings to the temporary closing of schools.At the same time, one more important question is: can students actually benefit from technology at home? Here we clearly have an equity issue. While financially well-off families can afford computers and multiple devices, students from struggling families can hardly afford simple devices and may likely not have the internet at home.

In terms of internet connectivity at school, most countries in the Europe and Central Asia region have the basic capabilities that enable schools to deliver instruction using technology. Only a few countries lack this capacity. What is happening on the other end of the internet cable? In many countries in the region we see that home connectivity has become widespread and home internet connections may enable students to connect to different type of learning resources. As many countries have been implementing computer equipment programs in the region over the last few decades, they are better positioned in terms of technological equipment in schools. For example, as per our assessment of the IT equipment and internet connectivity in schools, 50% of them have basic resources to ensure the minimum ability to deliver content.At the same time, another 20% are in a position to provide good computers and networking with decent internet connectivity and robust security. Yet, with all this progress in a majority of countries, one-third is in the unenvious position of not being fully equipped nor fully connected to the internet.Let's look at educational content. Two-thirds of school systems do not use digital content in education. Another 20% of countries use some digital

learning resources in teaching, but only in some schools. A mere 10 percent of countries have more robust digital learning capabilities with some of the educational content available outside of school. No country, according to our assessment, has universal curriculum-linked resources for teaching and learning, regardless of place and time.

Distance education capabilities are also limited. By our estimation, in 70 percent of countries in the region, we see zero to minimal distance education capabilities. The other 30 percent have better capabilities, but none have integrated curriculum widely delivered with a blended mode. We need to think about the state of distance education. Traditionally, distance education was conducted by paper mail through the post office. This is not the case today. Yet, we do not see tremendous progress in terms of its use. It is very likely that the traditional school education just does not need distance technology.At the same time, countries that lack access to good teaching in remote areas try to use this capability for education improvement, both by using the older and proven technologies such as radio and television broadcasting, and leveraging the potential of ICT. This is where teacher training with digital technologies and applications becomes important.Media, and especially social media, can also be used to educate students about the virus itself and to teach basic hygiene. In Vietnam, for example, a cartoon musical video about hand washing and other precautionary measures to protect from the virus has gone viral.As the region's current education systems are designed for face-to-face teaching and learning, the lock-down and school closures may be accommodated if they happen in short periods of time. However, if the situation continues to last for months, it may need a dramatic change in delivery.

So, what could countries focus on? Here are a few ideas:

1. Target programs to include the most vulnerable children with equipment and connectivity.
2. Improve connectivity for schools that need it most.
3. Improve financing of digital curriculum and materials (digital libraries, lessons, learning items, etc.)
4. Improve telecommunication capabilities for schools to be able to deliver education online.

A time of crisis is also an opportunity for all education systems to look into the future, adjust to possible threats, and build their capacity. We believe that the Europe and Central Asia region has enormous potential for this to happen, regardless of COVID-19.

Reasons to Offer Online Classes

1. Offer highly effective learning environments
2. Offer complementary interactive reinforcements that allow students to study 24/7 and work at their own pace
3. Offer flexible scheduling
4. Available in any location, with an internet connection; students can attend using their devices (e.g., computers, tablets, etc.)

5. use of instructor time (e.g., no time-consuming trips to companies)
6. Direct teacher feedback
7. Real-time student monitoring and corresponding reports
8. Allow franchises to share schedules and classes online (to increase class attendance)

Strategies to use Technology at home effectively

It is hard to come by any student who doesn't have an email address these days – personal or school! Email can be used to teach literacy skills as the language we use is different at times. You can ask students to email your work as well (we'll cover this more in the next point). This type of technology at home is effective in education because it is asynchronous, interactive, worldwide at no extra cost and you can send large amounts of information.

Get students to save and send their work to you at different stages of the process

This is a great idea to enable you to keep track of student learning progression while they learn from home. You can't monitor their computer work as you would typically do, however, if you do need to monitor their learning progression then it is a good idea to get them to save their work during different intervals of the ICT activity. It could be for their project or assessment. Instruct them to Save As every time and make sure that they use a different name at every phase of their work. For example, Mat1, Mat2, Mat 3…etc, Final Mat. Formative assessment strategies such as this work very well.

Use video to either film the entire lesson or parts of the lesson

I remember several years ago about the maths teacher Eddie Woo who started a YouTube channel for his students who were away or sick and who could not attend his lessons. If you have the tools available it does not seem like a bad idea and once you get it set up at the start it should run like clockwork. With most or all students in lockdown in their homes now for a while, you don't have to stress about potentially capturing them on screen. Although it is good idea to check with senior management for to occur. Filming the entire lesson on video and then emailing it to students will work.

Use online collaborative tools

Your school may already have online collaborative tools available for your students to use so it may be a good idea to utilize these at this stage. If this isn't the case, then you still facilitate a collaborative learning environment by using the collaborative features in MS Word and email. Just also by searching for online tools like this you will come across a couple of options.

Set students a task to create a web page

A web page is a type of word document so you could mix it up bit and get them to design and create a web page of their experiences during this time. You don't need to go looking around for the web developers too. Did you know that MS Word allows you to create a simple web page? The whole class can create a page of their own experiences and then link them all together for a class Lockdown Experience. This provides a lot of educational value as it all

lies with being able to produce web pages and publishing material online. Something we are ALL coming to terms with. For you as the teacher, it is the power to combine text, images, video and audio in a non-linear sequence under the control of the user. This can either be you using it interactively with them or a single student working independently.

Teach Information literacy skills during activities

Let's face it! Most of us are all spending more time online. This is a great opportunity to exploit the circumstances and during activities set students task to evaluate websites for information – it could be their own interest – and teach valuable information literacy skills to give them the skills they need to sort and analyze the vast amount of information on the net.

Virtual learning environments

You may not have the option of the VR glasses, other options such as Google Earth is good as well. They have a lot of potential for e-assessment these days. These are web based systems that provides tools for teachers and students to help manage learning. It assists teachers to structure the curriculum over a period of time. It can also provide email tools such as bulletin boards and conferences which support directing, guiding, facilitating and responding to students both individually and in groups.

We are uncompromising in our goal to ensure our new customers are provided with services, and our existing customers remain fully operational. We are also steadfast in ensuring the safety of our team and that of our customers.this end we have implemented all the policies as directed by our government and institutions such as the World Health Organization. Including, but not limited to, the following:

- Utilizing all the technology at our disposal to ensure the efficient operation of our organization, uninterrupted communication both internally and with our valued stakeholders.
- Ensuring ongoing levels of hygiene throughout our operation.
- Educating our field personnel, enforcing required personal hygiene practices, and equipping them with the protective gear (masks, gloves and hand sanitizer). These practices ensure the safety of our customers and employees when conducting on-site technical work.

Conclusion:

The adoption and use of ICTs in education have a positive impact on teaching, learning, and research. ICT can affect the delivery of education and enable wider access to the same. In addition, it will increase flexibility so that learners can access the education regardless of time and geographical barriers. It can influence the way students are taught and how they learn. It would provide the rich environment and motivation for teaching learning process which seems to have a profound impact on the process of learning in education by offering new possibilities for learners and teachers. These possibilities can have an impact on student performance and achievement. Similarly wider availability of best practices and best course material in education, which can be shared by means of ICT, can foster better teaching

and improved academic achievement of students.The overall literature suggests that successful ICT integration in education. It is a challenge. Cyber security remains a concern with extra use of online education, telemedicine and e-commerce. We would soon witness a transformation in the way Law is interpreted," said Pavan Duggal, Cyber Law expert and senior Supreme Court lawyer.

References:

1. Al-Ansari, H. (2006). Internet use by the faculty members of Kuwait University. *The Electronic Library* **Vol.**24, No. (6), Pp; 791-803
2. Bhattacharya, I. & Sharma, K. (2007), 'India in the knowledge economy – an electronic paradigm', *International Journal of Educational Management***Vol**. 21 No. 6, Pp. 543- 568
3. Sanyal, B. C. (2001), 'New functions of higher education and ICT to achieve education for all', Paper prepared for the Expert Roundtable on University and Technology-for- Literacy and Education Partnership in Developing Countries, *International Institute for Educational Planning*, UNESCO, September 10 to 12, Paris.
4. Sharma, R. (2003), 'Barriers in Using Technology for Education in Developing Countries', IEEE0-7803-7724-9103.Singapore schools', *Computers & Education* **Vol** .41, No.(1),Pp; 49--63.
5. UNESCO (2002) Information and Communication Technology in Education–*A Curriculum for Schools and Programme for Teacher Development*. Paris: UNESCO.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue II, December 2023
DOI:10.13140/RG.2.2.29972.10880
www.kanpurhistorians.org

MOTHER TONGUE A CARRIER, NOT A BARRIER TO EDUCATION: IMPORTANCE OF EDUCATIONAL TRANSACTIONS IN MOTHER TONGUE DURING EARLY YEARS

SADHNA JAIN
Professor of Human Development and Family Empowerment
Aditi Mahavidyalaya
University of Delhi, Delhi

Abstract:
Mother tongue is a sound that a newborn baby hears for the very first time in his mother's voice. This is because the mother used to talk to her baby in her womb, hence the term mother tongue. Mother tongue is the basic language that is first introduced by parents to their children through daily interactions. In India, the mother tongue tends to be identified as the vernacular or local language. This comes as a result of ethnic diversity.Mother tongue may not necessarily include his/her parents' language, but in most cases, it is the language of the parents. Communication is highly powerful when instructions, messages, non-verbal gestures, concepts, and the intended contents are well understood by the learners, however, when the teacher begins to speak in a language that is not heard and not comprehended by the children who are in early years of growth and developmentcreates confusion, disinterest, and tumult in the young brain. This may further lead to distrust, non-confidence, and unwillingness in the child to learn and enjoy what is transacted in nonformal and formal centers of learning. This paper emphasizes the critical importance and relevance of the mother tongue as the medium of communication for laying a solid foundation for education particularly, the early years of care and educationie the children who are at play school, pre-primary and primary levels of education ladder which will have a far-reaching tremendous fatal impact on the later years of education and their retention in the institutes of learning.

Keywords: Mother tongue, Early Child Care and Education, local language, dialect

Mother tongue is normally the language that the child speaks at home with their family. Mother tongue in education implies when a school or educational institution uses and accommodates the language a child is most familiar with (their mother tongue) into the classroom interactions along with the other language (such as English).

Neighbourhood, school, and parents are three important foundations to shape young children. Thereof the use of the local language as a mother tongue will be strongly influenced by the language used by the parents at home, the language the children obtained from the environment, and the role of school in accommodating differences in the children's ethnic and cultural background.

Some children whose parents are from different cultures where different languages serve as their mother tongue or those children who grow up in a mixed-race parent household or those who have immigrated and living in a country other than their own where the language of communication is different from theirs, already know two or more languages by the time they reach school age, which in education terms means that their mother tongue is the language most spoken by the members of the family at home.With increased inter-state and inter-country migrations and the growing demandfor international schools, the number of children familiar with a language other than their mother tongue is increasing day by day. Research shows that children learn better when taught in their mother tongue, however, it is not always possible. Efforts should be made to incorporate children's mother tongue in interactions at the school level to make pre-schoolers at ease in the school. India is a great nation; not only in terms of abundant natural resources but also in its very unique and diverse cultures. The diversity of customs, languages, and dialects affects the diversity of the mother tongues in India.

The total number of languages spoken in India is around 448. Out of these 15% are at the verge of dying. This is a serious issue.When a language dies, it is not just the death of a language, it is a loss ofunique pieces of its collective experience, of human knowledge, wisdom, traditions, andand culture to the world. One often loses local knowledgeabout plants and animals and their various uses, the conservation of the environment, dietary and healing practices, patterns of weather, and longer-term climate change and protection and preservation techniques, etc.These losses can never be replaced.

Importance of Early Childhood Education in the Mother Tongue

From a global perspective, early childhood is the most important developmental phase in a human's life when a child's brain grows fastest in comparison to other body organs and when the foundations forholistic development that encompasses – physical, motor, cognitive, linguistic, socio-emotional, etc – are laid in a nurturing and stimulating environment.

Early childhood education refers to the education that is given in an educational institution/center tochildren who are in the age range of 3-6 years.

It is given in a non-formal manner prior to their entry into formal systems of education ie getting admission into Primary School. India's National Policy on Education, 2020 has taken its cognizance.Pre-School education also includes education received at anganwadis, ashram shalas (tribal areas), nurseries, and kindergarten or play schools. The aim of early childhood education is to lay solid foundations for the optimal development of the child and also to prepare the child for primary school and also to enhance retention at school and reduce school dropouts.Early Child Care and Education (ECCE) strive to develop the child as being "physically healthy, mentally alert, emotionally secure, socially competent, and ready to learn".

ECCE programs, if embedded in local culture and delivered in the mother tongue, can strongly promote the intergenerational transmission of knowledge and have a positive impact on a person's cultural identity and self-esteem and therefore on her/his future participation in national /global development.

Good quality ECCE programs result in cost-effectiveness and increased efficiency of the education system, with children substantially ready for school, with solid pre-reading and pre-writing skills (pre-literacy) and pre-number (pre-numeracy skills) and socio-emotional competencies and therefore less prone to repeat, drop out, and fail in an educational system becausethe readiness of a child to respond to academic transactions in the form of activities, dialogues, interactions, etc depends on the skills young children acquire before they enter the formal school.

Every year, The United Nations Educational, Scientific and Cultural Organization (UNESCO) celebrates February 21 is celebrated as International Mother Language Day for about two decades to promote multilingualism and preserve linguistic diversity. UNESCO is emphasizing policymakers to impart education, especially in the early years, in the child's mother language.

The only means of acquiring education is learning through communication using one or more languages. A child's comprehension of vocabulary for a language develops much faster than the production of vocabulary ie production of words. A child is already communicating with the world around him through his orienting and signalingbehaviors, and non-verbal cuesmuch before s(he) utters the first meaningful word and when a child learns to read and write, he has already embarked on the part of literacy.

The mother tongue is the most basic and viable cementing force of unity and integration of cultures and capacities especially, at the early stage of a child's life. Early childhood education through the mother tongue will provide a smooth transition from home to school. It helps to preserve the culture and makes learning joyful and permanent which in turn transforms the learner into an immersive learner. It is apparent that lessons may be understood better if delivered in the mother tongue which the pupils are familiar with.

The basic educational theory states that learners must begin learning from where they "are" (the "known") – in their home language – and not in a language that they do not know. It is therefore essential that the mother tongue should only be used in ECCE programs and then continue as the dominant

language of instruction and literacy at least during primary schooling before the second language maybecome the principal language of instruction

Research studies have proved that when a child speaks in the mother tongue and someone responds in the same language, it's not just the brain and the tongue at play, it's also the heart. When such a connection is formed, it builds confidence in the child to express herself/ himself freely. Following are the arguments in the favour of the use of the mother tongue in the early years of education:

(1) It **produces** better learning outcomes for children and greater efficiency of the education system – higher enrolment and achievement (in all disciplines) and reduce repetition and drop-out rates, especially for children of minority/marginalized groups who are often overlooked or neglectedin schools and from achieving the learningoutcomes (Collier and Thomas, 2004)

(2) It **motivates** parents to participate in their children's education. Parent-child interactions related to school curriculum increase as the parent can assist with homework.

(3) Use of the mother tongue in classrooms as a medium of instruction and communication enables learners (especially girls) to gain fluency and confidence in speaking, reading, and writing their mother tongue first and then transcribe the same to the national language .

(4) Productionof instructional aids in home languages**leads** to the incorporation of local knowledge into the classroom; and

(5) It promotes national unity and integration into the nation's social, cultural, and economic life as no one is left behind in the development.

(6) Use of mother tongue helps ensure full participation in educational programs whether curricular or co-curricular and improves student learning outcomes not only in the mother tongue but also in other subjects, and the national language. The children from the disadvantaged group do not feel rejected or neglected.

(7) Education in the mother tongue, removes school fear and hesitancy in attending school. Children when taught in their mother tongue will not be afraid to express themselves because of their confidence in the native language and hence would look forward to school activities.

(8) Delivery of teaching-learning experience in the mother tongue will make the lesson interesting, friendly, and familiarThus, for both cultural and educational reasons, and as a child's right, early childhood education, and initial literacy and numeracy experiences should be provided in a child's mother tongue.

(9) Mother tongue makes it easier for children to pick up and learn other languages as they are better able to transfer their insights to the learning of other languages.

(10) Mother tongue develops a child's personal, social and cultural identity. The child remains connected with his/her identity while living with people of diverse backgrounds

As we become global citizens, learning our mother tongue will help us retain our socio-cultural identity. In fact, many argue that the role of the mother language is even more significant today to preserve one's cultural identity when people are migrating and living in other parts of the world that are culturally different. Knowing and conversing in the mother tongue is a sign of respect for the culture you belong to.

Challenges in using Mother Tongue in ECCE

The emphasis of the National Policy on Education that the mother tongue should be the medium of instruction for pre-primary schools is confronted with many challenges. Some of the challenges areas follows:

1. The language of the colonial time i.e.,English still dominates. The people still consider it as the gateway to success

2.There is a dearth of instructional material and aids and funding forthe teaching of the local languages. A large amount of money is required to produce mother tongue materials and to train teachers to use (and sometimes even to speak) minority languages.

3.There isa lack of orthography (alphabets/scripts) in many locallanguages. Some local languages are “undeveloped”, and one may find it difficult to express complicated ideas and concepts. Most dialects unlike full-fledged languages such as English lack orthography. Hence, these are not written or read. As a consequence of it, children’s chances of learning them are restricted to what they can hear from their parents and other close persons who speak that dialect.

4.Many times indigenous and ethnic communities perceive and believe that mastery of the national language and/or English as the language of success than the usage of their own language in education. One needs to curb the indifference and sometimes even oppositionof indigenous and ethnic communities.

It is pertinent to develop national policies/policy frameworks, strategies, and action plans for the promotion of the mother tongue in ECCE and other basic education programmes. Following are a few suggested measures to ensure to use mother tongue predominantly in ECCE at both the (central government) macro-level and the (community) micro-level.

This might involve:

1. **Develop policies** that strengthen the usage of mother tongues in multicultural classrooms in early education and focus on early cognitive and linguistic development, especially of linguistic minorities/indigenous peoples.
2. **Reform the teacher education system** to ensure the availability of trained ECCE facilitators and kindergarten and early grade teachers who are dextrous in usingtheir mother tongue in initial education and then build a successful bridge to mastery of the national language. Such teachers can work in more than one school through the formation cluster of nearby schools.
3. **Promote**good quality ECCE programs in rural and remote areas where people belonging to ethnic minorities live. The accessible and affordable ECCE centers should use the mother tongue as the language of

communication. These should be fully gluedwith strong family and community engagement and culturally relevant materials and pedagogies.
The most disadvantaged children (over 250 million worldwide under 5 years of age) need and benefit the most from ECCE programs of good quality. This includes girls, children of migrants, and those affected by conflict, disaster, and abuse, children living in extreme poverty and in rural and remote areas, children in poor health, malnourished, and with disabilities and delays, and children of linguistic/ethnic minorities. We need to ponder why the children living in difficult circumstances/disadvantaged children least participate in ECCE programs and why is so little effort has been made to proactively look for these children and ensure that they are enrolled and succeed in ECCE programmes and pre-primary levels of education at least.

4. **Translate and develop** instructional materials into local dialects and languages. One way of developing these instructional materials relatively quickly and inexpensively is by involving linguists and community members. The development of simple early reading materials in the mother tongue would promote pre-literacy and numeracy skills in early learners. The schools maycontinue learning throughthe mother tongue in the early grades of primary school. Itrequires the identification of authorsto write appropriate materials in the mother tongue, publishing and disseminatingthe materials to mother tongue-based early learning programs.Some local languages may be underdeveloped. Languages naturally grow and develop, and new vocabulary can be developed to express these ideas and concepts.

5. **Promote advocacy within local communities** in regard to the need for both ECCE inthe mother tongue. Not all parentsare convinced of the need for ECCE for their children. The indigenous and local people may consider ECCE programmes too expensive and too far away from their place of residence. They may consider their home environment as a substitute for an ECCE center or for mother tongue-based education. They may argue that their children speak the mother tongue at home so there is no need to provide it at school. They may be of the opinion thatit is better to master the language that is equated with visible success from early years onwards in order to become more successful in school and in later life.

6. **Periodic reforms** in the curriculum are needed to include indigenous knowledge of culture, art, folklore, dance, stories, etc. Programs promoting the same should be generously funded. Experts from indigenous groups should be periodically invited to share their knowledge.The school, family, and community should walk together holding each other's hand

7. **Identification and support** to train and certify the members of indigenous and ethnic minority groups as preschool and early grade facilitators and teachers whoreturn to their communities to work as early grade teachers/facilitators.The government needs to prioritize the recruitment and training of indigenous teachers.

Since learning through the mother tongue/ home language is the most effective strategy for the child, the following strategies can be used to encourage the child's love for their mother tongue at home:

1. Converse with the children in the mother tongue as far as possible

Speaking of the mother tongue should not be restricted in the home. Encourage the children to converse in their mother tongue with others too outside the home. When they hear the conversations of the other members of the family in their mother tongue with others around them, besides just family, they would feel more confident and prouder about knowing their mother tongue and develop a love for it. Parents should allow their children to express themselves in the way they feel most comfortable.

2. Introduce thenative culture along with the language

This can be a very challenging task, especially for those who are living in nuclear families and in metropolitan cities. Usually, it is the grandparents who transfer their native culture and the mother tongue through folklore, stories, use of native language in day-to-day language, preparation of traditional dishes, etc to the grandchildren and other people. There are a few simple ways to introduce the culture to the children through the mother tongue. These are:

I. Narrate folk tales in the mother tongue
II. Listen to folk songs, and sing and dance together.
III. Take out old childhood pictures of the family of both parents and share stories about them in the mother tongue.
IV. Tell the names of the items available at home, in the grocery shops, or elsewhere in the mother tongue.
V. Play outdoor and indoor cultural childhood games with the children to introduce the child to various action verbs and special vocabulary.
VI. Usethe mother tongue as the means of communication to plan and celebrate festivals and special functions at home. Celebrate festivals and perform rituals specific to the culture one belongs to. Try to live/ behave like the native people of that particular culture do. Wear the clothes they wear, and cook and eat the local food. The childrenpick up not only the nuances of their mother tongue but also the uniqueness of their culture.

References:

1. Kumar, S. K. (2022). *Why It's Important For Your Child To Learn The Mother Tongue and tips to promote its use*.
2. Murphy, E. (2011). *Welcoming Linguistic Diversity in Early Childhood Classrooms*. Multilingual Matters.
3. Sapientia Foundation Journal of Education, Sciences and Gender Studies (SFJESGS), Vol.3 No.1 March, 2021; pg. 21 – 29 ISSN: 2734-2522 (Print); ISSN: 2734-2514 (Online)
4. Savage, C. (2022), *Importance of mother tongue in education*. Independent Education Today.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue II, December 2023
DOI:10.13140/RG.2.2.29972.10880
www.kanpurhistorians.org

POLITICAL CULTURE IN INDIA: AN ANALYSIS

DR. ARCHANA SINGH
Assistant Professor of Political Science
Maharaj Balwant Singh PG College,
Gangapur, Varanasi India

Abstract:
The concept of political culture has become popular after the behavioural revolution in Political Science. It is a product of interdisciplinary approach combining three disciplines namely, political science, psychology and sociology. A mond and Verb a had defined culture as 'psychological orientation towards social objects'. Culture gives meaning, coherence and intelligibility to man's being as a whole. Seen from these angles political culture means attitudes, values and orientation of a people towards politics. As politics is a human activity people's orientation is of great importance. Politics is necessitated by the society and this society influences politics. Hence to understand this politics and society nexus it is necessary to analyze the political attitudes and orientation of the people.

The beliefs, emotions and values relating to the political Issues and political systems which a people cherish make their political culture. Political culture is based on an Individual's rational thought process but it penetrates deeper and touches even his unconscious and sub-conscious mind. An individual's political culture expressed through political behaviour shows rational as well as emotional reactions.

Introduction:

Political issues. Political values, political information, interest in political activities and expectations from the political systems-all these are components of political cultures. Political cultures has been defined as 'the pattern of Individual attitudes and orientations towards politics among the members of a political system.

According to Beer and Ulam, *"Certain aspects of general culture of society and especially concerned with how government conducted and what it shall try to do. This sector of culture we call political culture."* Political

culture thus provide foundation stone on which the entire political structure is based. As such political culture is something which is passed from one generation to another. A people inherit a particular political culture though new additions are made. In a transitional society the changes introduced outbalance the previous culture. It is this political culture that contributed to the making of what a traditional political scientist would call national character.

Political culture is a psychological as well as sociological concept in additional to being a political concept. As it is concerned with the individual's attitudes and expectations and willingness to participate in politics it has to penetrate individual's mind. Political orientations are formed in conscious as well as sub-conscious mind and are influenced by new ideas and experiences. This makes it a psychological concept. At the same time political culture is a sociological concept as it involves individuals in isolation, but as members of society and focuses on common habits and political attitudes shared by the whole society.

The determinants of political culture

A political culture is a product of many inter-related factors. Geographical, historical and socio-economic factors play a vital role in forming the political culture.

Historical factors

Political stability, continuity and discontinuity of political system depend on its historical experiences. The continuity of the British political system has built up a political culture that is peculiarly British. The British conservative national temperament has allowed modern changes but retained the age old practices. The gradual change to modernity has not disturbed the political life. There was no need for a violent upheaval. on the other hand France provides the examples of a society where the revolution of 1789 violently overthrew the political structure which set down a pattern of violent up rise and even nineteenth and twentieth century witnessed the same conflicting and antagonistic tendencies in solving national problems. The colony countries present a different picture. The colonies have been influenced by the political culture of the masters and modelled their own political structures in the post independence age on the pattern of their masters. For example India was a British colony and post-independence Indian political structures were modelled on the British Parliamentary type.

Geographical Factors

Geography of a country very much determines the political culture. The British Geography of an insularity protected the country from foreign invasion. Protection from foreign invasion resulted in an uninterrupted political evolution. The British people were the exclusive inhabitants of British. No other foreign race came to inhabit and mix. The result is a homogeneous political culture whereas America provided limitless frontiers to the foreigners. America's geography provided ample opportunities to foreigners who preferred to settle down in America making it a melting pot of

different ethnic cultures. The political culture reflected the political values of egalitarian independence. India is another example of a country with open frontiers the assimilation of various ethnic cultures are present because of the independence they have. Freedom and assimilation have produced a peculiar Indian political culture based on equality despite of differences.

Socio-economic factors:

The socio economic conditions to some extent determine the political culture of a society. A highly industrialised society is bound to avail greater opportunities of transport etc. to its members. Improved communications and transport facilities cultivate greater interest in politics resulting in growth of participatory political culture. For example the American society where the participation of the people is higher than in other democracies. Or the example of India where with the growing economic development people are getting better communication facilities and are gradually taking greater interest in politics than in the fifties or in the sixties.

In addition to these factors there are some unspecified factors which influence the political beliefs, values and participations of the people. Rapid influxes of immigrants, defeat in war, economic depression or failure of political system to provide a stable government to the people may lead to changes in the political culture of the people. Political culture is not stable but a dynamic concept. It changes gradually but there can be a sudden change on necessity.

ALMOND'S CONCEPT OF POLITICAL CULTURE

Gabriel Almond has used the concept of political culture for his morphological analysis of the political system. He regarded it "A valuable conceptual tool by which we can bridge the 'micro-macro gap in theory." The study of individual in this political context has to be combined with the study of political system as a whole. The concept of political culture visualises individual appropriately in this social context. The formal structures of the political organisations are much informal undercurrents. The various social ties do influence the decision making process. It is here the study of political culture help us.

According to Almond and Powell "Political culture is the pattern of individual attitudes and orientations towards politics among the members of political systems." Truly speaking, Political culture includes not only attitudes to politics, political values, ideologies, national character and cultural ethos, but also the style, manner and substantive form of politics. In the words of Sydney Verba, "Political culture consists of system of empirical beliefs, expressive symbols, and values which define the situation in which political action takes place." Broadly understood as individual attitude and orientations to political involves (a) Cognitive orientation-recognition of political objects and beliefs (b) affective orientation-involving feeling of attachment, involvement or rejection, (c) Evaluative orientation-involving application of judgment and opinions of political objectives and events.

The degree of information and knowledge of how the political system operates or what are the major national problems and policy of government make the cognitive orientation of political culture of an individual. It also includes his understanding of political issues. The emotional side of the individual, as to how much affected he feels by political activities or how much involved he is in his political system or how much feelings he has for his political system make the affective orientation of an individual's political culture. He may feel rejected by the system and may alienate himself from the political system. This is the affective aspect of political culture. Finally he may try to evaluate his political system on moral grounds. He may condemn the unethical practice of corruption in his own system. This is his evaluative dimension of political culture.

Almond starts with two basic assumptions. First is, that, the political structures and the political culture are interrelated. The political system which operates in an environments both input structures and output structures. The members of a society may play a passive part or active part can be measured by their involvement in the input side or output side. Thus political structures and political culture are affected by one another. The higher the level of political awareness the higher the rate of participation. The lower the level of political awareness the lesser participation which in turn again affect the government decision.

Almond's second assumption is that a political system operates within the framework of attitudes of the people towards political activity. This orientation to political action is political culture. Almond has presented a classification of political cultures on the basis of subject and participants. It is three fold classification comprising of Parochial, Subject and Participant political culture.

Parochial : is it found in simple traditional societies where there is very low level of specialisation. Undifferentiated role structures characterise such society. Such societies lack political consciousness despite social consciousness.

Subject : is it found in colonial societies. People are basically concerned with output aspect. People are either very loyal to and feel pride in culture of their coloniser or hostile and revengeful to their masters. African and Asian societies are examples of it whereas Almond has laid emphasis on blind followers. In Pre independent India intense hatred and hostility was against British.

Participant : it is found in highly developed societies. It involves active participation of people in input and output side. People are usually well informed and emotionally in political activities. Public opinion is highly valued and expressed vigorously.

However the aforementioned types were discussed by Almond as unmixed but by the course of political development it emerged as mixed political culture type. Different societies all over the globe reflect different political cultures. Some are homogeneous and some are heterogeneous, some

manifest authoritarian attitude in their political culture whereas many show liberal trends in their political culture. Enough variation in degree and maturity is experienced.

Now casting a glance on Indian political culture in this context we fell it has adapted western liberal democratic culture since independence. Modernisation in agriculture and industry is the focus planning. Indian society is pluralistic. It is inhabited by people of different race and religion. Secularism is the cardinal virtue of the society binding people of various sects and creeds in to one without segregating them on the ground of race religion, gender or caste. Indian democracy is based on universal adult franchise. Democratic decentralisation roped centre and villages into one fold. From panchayats to parliament the democratic institution are functioning. Village panchayats were organised and mass political participation grew in extent. Myron Weiner in his study on Indian political culture observed that 'the introduction or western democratic institutions in Indian has created two kinds of political culture in India-Elite political culture and Mass political culture. Elite culture is promoted by elitist class represented by Indian political leaders, bureaucrats and majority of English speaking Intelligentsia. Mass political culture is traditional and more popular with rural and urban class. It is active at local level.

Weiner held that Elites directed policies were responsible for spreading of mass political culture. The focus of government of India on economic front with inculcation of Gandhian principles leading to decentralisation of power enhanced the political participation of masses.

Weiner was also aware of the negative traits of mass political culture which was characterized by the evils of casteism, communalism and provincialism. To Weiner the big hiatus between mass and elite culture is dangerous for democratic political system.

Though Weiner made a serious study yet it is no possible to agree with the thesis he presented. He has pointed out that India had developed an elite culture. Every political system is governed by the elite and if his line of analysis is followed we will find elite culture in every political system. The elite, both ruling and not ruling have the same predominating tendency in every society. In India the national freedom struggle too had the elite at its leadership. It is natural that post-Independence India witnessed an eagerness on the part of the ruling elite to modernise India. Though the elite In India remained at the top they never lost sight of the grassroots masses. They continuously attempted to bring modernisation and development, the point already noted by Weiner.

The other point that the elite-directed measures resulted in a mass political culture which was in total contradiction of the elite culture is a point difficult to grasp. India during the fifties and sixties was economically so backward that the poor people could hardly afford was the only political party to win largest no of seats in parliament and state assembly. Had result of popular participation on the input side. During the seventies and late eighties

there was improvement in economic level and also in popular participation in politics. Though there is an increase in people's participation In politics there is no reason to think that there exist a contradiction between the mass and the elite.

The mass representing the rural traditional, communal, casteist, linguist India and the elite representing modern, western, urban, developed, educated India. The narrowness of caste politics and communalism as well as traditional conservatism are equally present in the elites as well as in the masses. Similarly education, modern attitudes, secularism, faith in democracy and decentralisation are equally present both in the urban elites as well as in the rural mass.

India is a developing state and as such the political culture of an average Indian shows a moderate level. He is aware of the political issues. He spends some time on collection political information which he gets rather easily as a result of media explosion through T.V.. Radio, newspaper etc. Even if he is not educated he can understand the political issues and what is more important he feels very much involved in politics. Since independence the level of political consciousness has gone higher. He participates in politics, use his franchise, gives his opinion, criticised the shortcomings of the government and is not at all apathetic. In the nineties the advent economic liberalisation and massive expansion of mass media with globalisation the Indian political culture became participatory political culture. The twentieth century witnessed widespread expansion of Internet and its frequent use. The mobile penetration ensured frequent interaction among socially and politically conscious people. It revolutionised the whole outlook. Recent electoral data testifies the higher voting turnouts during polls. It speaks volumes about participating political culture. It is true that there are some negative drawbacks like casteism, nepotism etc. but the common people have become tremendously alert. 73 years of independence has led India to achieve high level of political culture.

References:

1. Almond and Powell: Comparative Politics, p.50.
2. Beer and Ulam : Patterns of Government, Random House, New York, 1962, p.32.
3. Alan R Ball: Modern Politics and Government, Mac Millan,2nd Ed.,1994
4. Almond and Powell, op.cit, p.51.
5. Sydeny verba : comparative politics, in Pye and Verba, p. 63.
6. S.P. Verma : Modern Political Theory, Vikas Pub. House, Delhi, 1975, p. 293.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue II, December 2023
DOI:10.13140/RG.2.2.29972.10880
www.kanpurhistorians.org

WISH I WAS THERE…
TALE OF A CEREMONIAL FAN FOR THE OSHUN FROM A WORLD WHERE ARTEFACTS HAVE A VOICE

NIHARIKA DWIVEDI
Student TBS, New Delhi

History is a prism. The centre of the prism bestows the objective truth and factual information written based on the traces of history. While, perspectives surround the prism at each corner. Every historical debate that the modern world today grapples with must enter this prism. One such debate is that of the restitution of African Museum Collections to their original beholders.

(Fig 1.1 Ceremonial Fan for Oshun. Nigeria, Yoruba. Early 20th century. Constructed of cloth, beads and cowrie shells.)

About a century ago, I was designed, fabricated and created with the most precious cowrie shells, holed then strung, of all vibrant and striking colours; red, white, yellow, blue, brown and their vivid shades…stitched and sewed handwoven the *itagbe* [1] cloth to alternating patterns of the chequered and striped. Wrapped in an

intricate manner, I have elaborate tasselled fringed abstract shapes that are layered on top of each other. The colourful glass beads weaved together, intricately, from my stitched border hanging down. Ornamented with objects that behold cultural significance such as cowrie shells, beads, I, as a sacred Yoruba textile, am able to reflect the variety of religious experiences and events of the Yoruba people. Four individual panels sewn together along my selvage to recast my identity to an apparent artefact…truly? Object? Or rather a ceremonial fan for the Oshun that had immense significance in the Yoruba religion and kingdom.
Religious groups in the modern-day Nigerian state differentiate themselves and visually emphasise their beliefs through their choices of production behaviour, material, colours and motifs in the construction of ritual textiles like me.
Yoruba Religious Textiles: Essays in honour of Cornelius Adepegba[2] reveals a number of common dialectic juxtapositions in the creation of religious and ritual textiles in Yoruba culture. One of them is the differentiation between the aesthetic of fanciness and an aesthetic of plainness to honour deities with clothes layered in colours of contrast. The journal also comments on the potency of an artefact like me to absorb religious power and how the creation of ceremonial textiles is a form of religious practice in the Yoruba cultural heritage. Each of my lappets are layered with meaning. These layers built over time make me a living archive that millions of individuals and families from all across the world come to view by means of a glass ledge. However, am I *just an object* to *view*? *Observe*? *Analyse*? The iconography that academic scholars like to denote white glass beads as represent the eyes of my goddess Oshun in the Yoruba religion symbolising the power of healing that the goddess possessed(s). The colourful beads, more than just iconography, are medicines that act upon worldly and otherworldly forces, mediating the forces in the Yoruba cosmos for the embellishment of ritual and ceremonial objects. They adorn my body as a sign of preciousness, auspiciousness and good financial and spiritual fortune. The beaded panels on my side celebrate the spiritual forces in the lives of the Yoruba people. Historians may refer to these as a testament to the aesthetic principle of aesthetic fanciness instead of aesthetic plainness that the Yoruban textiles abided by, but, does my aesthetic matter foremost? Not my significance? Not my journey witnessing the looting, barbarity and bloodshed perpetrated by the British - seeing my goddess Oshun dehumanised and today being caged in this alluring glass prison? Am I no longer what I was born as? Am I sacred, still?

---

[1] Itagbe is composed of hand-woven cloth which is decorated using weft bands and thread to form tassels. Originally made by by the Yoruban culture.
[2] Edited by Elisha P.Renne and Babatunde Agbaje-William and reviewed by Norma H. Wolf. Available on Jstor. Published in 2006. See bibliography.

(Fig 1.2: Artwork of Goddess Oshun. Created by Claudia Olivos in 1995. See Bibliography) While I am rooted in a specific place - from the Oyo state of the ancient, non-existent, Yoruba kingdom (present day, the remains of the kingdom are found in the north of Lagos, in southwestern Nigeria) but am also global in nature as a consequence of the translate slave trade and the dispersion of the Yoruba culture. This consequence resulted in goddess Oshun becoming a salient figure outside of Africa where she is known by other names such as Oxum in Brazil and Ochun in Cuba. Yoruba worshippers of a particular god or deity might wear beads of special clothing to show their devotion. Oshun: a supernatural spirit and goddess in the Yoruba religion. Presiding over fertility, love and water, she is patroness of the Osun River and is honoured at the Osun-Osogbo Festival. Portrayed as the protector, saviour and nurturer of humanity, I, as a ceremonial fan, am able to commemorate goddess Osun's blessings to the Yoruban people. I am often placed beside the idol or photograph of goddess Osun as a symbolic representation.

In order to tackle the epistemic challenge surrounding me, the curators here, at the De Young museum conducted a certain degree of provenance research[3] wherein they carefully studied me in terms of my labels, inscriptions, modification and I remember them also using different and divergent sources to gather all they could about me. While they still, at intervals, come here to study and observe me, I heard them being able to decode that I was *gifted* by a patron of African arts and curator of the San Francisco Museum of Modern Art, known as Anne Mero Adelmann in 1991 to De Young.

I wish to be there…with my people, in my homeland…

The Yoruba were the first Africans to come in contact with Europeans in the modern-day state of Nigeria. Several civil wars which were fought within the Yoruba kingdom between various states like the Oyo or Ondo, as a result of the abolition of slavery in indigenous African in which the Yoruba people exerted greater agency and actively participated. The abolition of slavery and ceasement of the Yoruba wars eventually led to the takeover of the coastal region where the Yoruba resided by the British Empire in the 1860s. With the brief nature of British colonial rule in the Yoruba kingdom, the British empire emphasised on the extraction of indigenous material culture, economic exploitation and profit from the kingdom and humanitarian and religious

---

[3] Provenance is the record of ownership of a work of art, used as a guide to authenticity, quality and circumstances of its acquisition (licit or illicit).

motives. Ethnographic museums[4] across Europe and North America, till date, bestow propaganda and historically and politically appropriated agendas that exhibit artefacts like me as supposed *'trophies'* as an symbolic indication to the objects that they (the British Empire in my case) won in the African continent by the wholesale plundering of items and exploitation of resources and indigenous people. Symbolic indications like these also lead to the development of narratives that the knowledge of my Yoruba kingdom, culture, community[5] is (was) a political purchase and allows these supposed universal museums to pretend that this violence was a doing of the past…

This also stimulates the *Cabinet of Curiosities Mentality* that the former European imperial powers have intended and attempted to sustain for years. Cabinet of Curiosities were known as *'wonder rooms'* with collections of extraordinary objects looted from the African kingdoms to categorise and tell stories about the wonders and oddities of the African continent mostly in European museums. Ironically, many of you reading my chronicle today must have seen me from the same lens when visiting the museum. Let me voice your thoughts, today: An odd object from the land of the savage - Yoruba kingdom. Possibly, why I needed to write today after years of silence and quietude. Perhaps, you are told to believe that art from Africa is often primitive, barbaric and wild. Coloniality of universalism[6], ever heard of it?

Caging me in a so-called ethnographic collection is an approach to control the representation of the Yoruba society, often essentializing them, as well as creating a crystallisation of categories that was often produced by colonialism upon the Yoruban and African people and cultures. This elucidates upon Conscious Construction[7] and Edward Said's critical academic theory about Orientalism[8] that the West commonly contemptuously depicts and portrays the

---

[4] The concept of ethnographic museums arose by the treasury of royal courts of the European imperial powers as a need to vaunt the natural, ethnographic, scientific and historical objects of interest looted from the African kingdoms – to signify how the imperial powers commanded global trade and were sophisticated.

[5] Read: Ethnography - According to the Cambridge Dictionary, ethnography is the scientific description of the cultures of individual peoples and societies.

[6] Coloniality of Universalism is a significant concept of EuroCentrism that dictates how anything natural, true, universal is situated in Europe and North America, conceptually and corporeally.

[7] Based on ethnography and epistemology, conscious construction is the representation of a particular society or community that suits one's own interest or purpose.

[8] According to Edward Said, Orientalism is a 'created body of theory and practice' which constructs images of the East directed toward those in the West. Representations of the East as exotic, feminine, weak and vulnerable reflect and define how the West views itself as rational, masculine and powerful.

East. Colonialism was a geopolitical process that was not just the conceptual perpetuation of a racially supreme ideology but also the physical enslavement and exploitation of an entire continent, its resources and its people. My restitution can most certainly neutralise, if not reverse, the travails of colonialism and imperialism perpetrated by the British Empire in the early 20th century. A symbolic representation of what many denote as restorative justice. Slaves exports under the British naval patrols attested to the success of Yoruba commercial organisation. Seventeenth and eighteenth centuries witnessed a bulk of slaves sold by the Yoruba state and then exported to the west by the British Royal Navy and the Empire, of course. According to Geroge Robertson[9], a British trader, the Yoruba kingdom was a desirable place for European trade as it affiliated easy and quick movement of goods, including people, from hinterland and outlet to the sea in the region. With the trade of the Yoruba people, *Henriquetta*[10] produced about £80,000 for her owner in the 1860s and this profit compensated for the loss of 3 British navy vessels destroyed earlier. Britain's parliamentary papers in 1842 notes how, 'trade in resources whether for consumption or aesthetics has been gradually growing up and gaining upon the Slave Trade in proportion as the enterprise of the British merchant.'

Upon resistance to slave trade, in the early 1900s, British soldiers attackted the Ijebu state of my Yoruba kingdom and looted the kingdom's artefacts as punishment for blocking the trade. I was one of the many artefacts that were looted in this instance of violence. The burn marks from the blaze of that violence are still clearly visible on my edges, just below the stringed and intertwined glass beads. A heinous doing that still awakes my memory of being stuffed into a wooden receptacle, torn apart from the corners, shipped across oceans and sold for a value unknown. Was I to be commodified? Was my goddess Oshun who is (was), perhaps, instilled within me to be commodified and sold?

Along with the physical memorialization of colonialism, the British empire ensured to prolong their fetishizing civilising mission of the supposed primitive African people, especially the Yoruba people through a systematic process of conversion propagated by the Christian missionaries[11]. Contact with British Christian missionaries, in particular, created a complex balance of power where the missionaries acted as key abolitionist figures in their campaign to abolish slave trade. The notion of slave trade, inherently, opposed

[9] The Yoruba and the Atlantic trade, 1670-1830 by Peter Morton-Williams in the Journal of the Historical Society of Nigeria published in 1964. See Bibliography.

[10] HMS Black Joke was built in Baltimore, England in 1824 and then captured by the British Royal Navy in the 1850s and purchased into service. Also known as Henriquetta.

[11] From Iconoclasm to Preservation: Missionary Ethnography and Belgian Colonial Science by WFP Burton (pp 155-186)

the philosophy of the gospel, strengthening the missionary societies, exposing Africa to Christian evangelism and distancing them of their indigenous religion and material culture. Early Christian missionaries began reaching out to the Yoruba people by translating the Bible into the Yoruba language. The Yorubas were extremely religious and frequently could be witnessed celebrating rituals and worshipping their god and idols. SG Pinnock, author of the book the Romance of Missions in Nigeria mentions, *'Religion with the Yoruba people is an obsession. It is easier to quantify the objects of their worship rather than the theology of their beliefs.'* Goddess Oshun is one of them. Classic Yoruba art was, unequivocally, linked to traditional Yoruba religion, particularly the worship of the Oshun, and to the royal palaces, of kings and the location of many shrines. My creation is a testimony to this very belief. While, the missionaries in the Yoruba kingdom introduced western education, new skills and crafts and general western exposure that the people benefitted from on a daily basis, the missionaries are also accountable for importing and imposing a culture - a way of thinking and living that was at odds with the traditional Yoruba way. In this crusade to preach the Gospel, convert non believers to Christianity, missionaries expounded a form of Christianity that involved the renunciation of the old 'pagan' ways wherein the Yoruban converts were encouraged to reject ancestral religion, eschew divination, cease participation in sacred festivals. Many missionaries requested the new converts to bring their sculptures, termed fetishes for burning. As stated in the foreword to a catalogue of the Society of African Missions, *"It must be admitted that until the end of the 19th century many Christian missionaries regarded the Yoruba people and culture among which they worked as inferior to those of the West. The artefacts such as sculptures of the deities, masks, statuettes of the kings - of these peoples that had any connection with the so-called pagan religious practices were often collected and burnt."* While some were burned, many were exported to Europe and North America where even the present-day ethnographic museums received gifts from these missionaries.

Since the Christian missionaries left no stone unturned to annihilate and destroy the cultural significance of the Yoruba kingdom, my repatriation to my homeland will most certainly remind the descendants of the Yoruban people about their heritage and ethnic significance – and evoke them of the cultural, artistic and indigenous destruction and iconoclasm that the colonial past perpetuated. For the descendants to realise that I represent their culture. Their society. Their civilization. For the modern day generation of African youth, today, that longs and yearns to possess an opportunity to experience their history, apprehend artefacts to unwind the cultural significance of their roots and realise their (personal) connection to these artefacts. The Yoruban youth of modern-day Nigeria is within a position of shame for existing and are inheritors of a history transmitted via fragments and memory. Do they not deserve to know about their culture and heritage?

Artefacts like me hold symbolic historical and cultural roots in their creations and must be repatriated in order to honour those roots and people who have evolved from them. According to the Cambridge Dictionary, Repatriation is the act of returning someone or something to its country of origin, allegiance or citizenship. It is the independent nations' right to have control over their own artefacts and how they take care of them. It is a portion of those countries' heritage and culture which is stolen - it is morally unjust to steal or harbour me and thus former imperial powers *must* not unfairly and unlawfully reap the financial and social benefits resulting from the artefacts. While it is the return of a 'different same', it will lead to the reconstruction of memories and self reinvention of forming a connection between me, as an object of immense cultural prominence, to the current African (Yoruban) society. Envisioning a viable future requires clearing away the painful legacies of the colonial past and doing away with a sense of indebtedness. If this can be accompanied by the return of an emblematic object, the memory work can function as an operator for the reconstruction of identity of the present-day Yoruban subjects and communities. Reappropriation through my restitution vis-a-vis the past is necessary for a possible cure.

The idea of a museum itself is rooted in colonial ideology. Despite being denoted as a universal and global museum, my current location of the De Young Museum is situated in San Francisco, indicating that it is not accessible for my ethical owners, the descendants of the Yoruba people or the citizens of present day state Nigeria to be able to see me - their own creation and culture. Why must I not, then, be repatriated to where I belong?

(Fig 1.3: Representative Image of the DeYoung Museum. Only for elaboration purposes)

The entirety of the concept of restitution is complex - at many stages. And, it can be viewed from multifarious perspectives. One of them is the ethical and philosophical considerations. Primarily the metaphysical challenge - on whether or not cultural groups possess continuity over time. Can the analogous entity of the Yoruba kingdom or religion be identified in 2023 to the 19th century. As most scholars believe, establishing cultural continuity is abstruse which therefore acts as a major obstacle in the restitution of artefacts back to their homeland; the ceremonial fan for the Oshun being no exception. Another obstacle to the restitution is in terms of the identification of the legitimate descendants of historical injustices.

While Bernard Boxill's[12] Harm[13] and Inheritance argument[14] may be of use however, to what extent, can such arguments be agreed to and practically observed or evaluated. Hypothetically, if the ceremonial fan for the Oshun is to be restituted, to whom must it be legally constituted to? To the descendants of the Yoruban people who were dehumanized during the Atlantic Slave Trade or the Yoruba kingdom or Nigerian state government (local or national)?

The primary purpose of a universal and ethnographic museum like ours, the De Young, is to preserve and conserve art and objects that are salient to national and universal cultural heritage; to connect our visitors with local and global art and deepen their engagement with the art and ideas of today. Apart from this, the De Young Museum believes in the promotion of forms of knowledge and curiosity about the past by the systematic display of objects and art. De Young has dedicated an entire section to solely observe and commemorate African art in its gallery with the works of celebrated artists like Lhola Amira and Kehinde Wiley displayed. The ceremonial fan for the Oshun of the Yoruba kingdom *'properly resides'* and *'is preserved'* in the African art gallery at the museum with the utmost protection, care and safety. With specialised training, our conservators and curators collaborate across departments to address issues of exhibition design, storage, lighting, climate control and others. Currently, the ceremonial fan for the Oshun is preserved safely and protected through glass shields at all sides. The department of textile conservation and its curators regularly attain the maintenance requirements of the object in terms of preserving the intertwined beads and the stitched *itagbe* cloth panels on all sides.

We do not trust the contemporary state of Nigeria in order to return the ceremonial fan for the Oshun to, given that the object is an extremely delicate piece of textile. The individual or the community to which the object must be restituted to will be uncertain in its treatment to the object provided the care that it demands. Despite achieving and attributing liberation and freedom, the De Young questions whether the African states and nations bestow the capability and competence to preserve and conserve their own culture, given that they grapple with socio-economic and political challenges to the present; such as food crisis, ethnic conflicts, economic instability that breeds political

[12]Boxill is an American philosopher and distinguished professor of ethics and philosophy.

[13]Harm argument as proposed by philosopher Bernard Boxill suggests that the historic injustice of slavery triggers a sequence of injustice that continues to do harm to the descendants of the enslaved people today. The unjust acquisition of artefacts not only harmed their owners at a time but also initiated a chain of events that harms people in the present.

[14] Inheritance argument also proposed by Boxill indicates that victims of historical injustice were owed reparation that they did not receive and the right to be compensated that they did not receive and the right to be compensated is inherited by their descendants.

instability (dictatorial regimes and diminishing democracy)? Must they be able to preserve their culture and heritage as represented by treasures like the ceremonial fan for the Oshun under such circumstances? Does the Federal Republic of Nigeria bestow the potentiality, economically and socially, to build and develop a museum in Nigeria that is able to provide facilities comparable to that of the De Young for the returned cultural treasures? The restitution may also cause the individual or the community repatriated to- to conjecture their ownership of the property and may indulge in instances of loaning the object to other ethnographic universal museums in the western hemisphere of the globe.

Furthermore, we would also like to inform you about the principle of inalienability of the public domain, a legal principle which denotes the absolute restriction on transferring the ownership of a cultural good held in a public institution. Thus, the deaccessioning or formal removal of an object from a museum collection is legally unattainable. DeYoung is the legal owner of the discussed object and shall continue to remain so. While the absence of an international law that governs cases as such, countries do possess national laws around repatriation of art and historical objects. However, in such a case, the constitution of the United States of America bestows two acts with regards to the case of restitution of cultural heritage. The Emergence Protection for Iraq Cultural Antiquities Act of 2004 and the HEAR Act of 2016. Although, none of the two must be applied to the claims for restitution of African art. Even under the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict[15], the claims for restitution of the ceremonial fan for the Oshun bestow no legal grounds since there is an absence of legal force to bind and it is solely observed as a convention by the member states. Nor must the UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property [16] (signed by many member states), be petitioned as the convention deals with the illicit ownership of cultural property after 1970.

(Fig 1.4: Burnt marks at the edges of the textile) The burnt marks indicate that the religious textile is currently spiritually inactive and therefore its repatriation or restitution to the ethical owners (the Yoruban people) may result in a complicated affair wherein the individual or community refuses to accept the ceremonial fan since it is spiritually inactive and is now an artwork. Spiritual deactivation plays a salient role in restitution. As shared by Natasha

[15]The first international treaty that focuses solely on the protection of cultural property in an armed conflict.

[16]An international treaty to combat the illegal trade in cultural items.

Becker[17] in an interview, a very similar case occurred with a curator at the Brooklyn Museum, an art museum in Brooklyn, New York where through extensive and intensive provenance research, the curator was able to track down the original owner of an Egungun[18] (then stored at the Brooklyn museum) in present day Lagos, Nigeria. However, the owner refused to accept the Egungun back claiming that it was now *'a commodity'* and had been *'spiritually deactivated'*.

Museums are a universally accepted concept. Art belongs to all humanity, retains universal ownership and therefore the right to view art exists for all. Museums serve the people of every nation and are salient agents in the development of culture by fostering knowledge and promoting the process of reinterpretation. As stated in the declaration on the Importance and Value of Universal Museums, *'the universal admiration for ancient civilizations would not be so deeply established today were it not for the influence exercised by the artefacts of these cultures, widely available to an international public in major museums.'* We have cared for these African artworks and artefacts and by extension part of the heritage of the nations which house them.

The De Young Museum acknowledges that the ceremonial fan for the Oshun is a treasure taken without consent but is of immense importance to the Yoruba culture and heritage and so is to the museum.

The De Young claims that the African artefacts and artworks are safeguarded and reside in suitably. However, if the conditions and circumstances are to be viewed under which the African art is kept specifically, it must be noticed that the African art is dimly lit that causes the viewers to struggle to make out details in the gallery. The intended purpose for the creation of such an atmosphere is to denote how African art is, perhaps, the *'exotic other'* only to *create a sense of mystery* and propagate the idea of the primitive status of African art and culture in comparison to European to American culture, rooted in colonial ideology. The notion of an universal museum is paradoxical in its nature wherein African art is stigmatised in all forms and manners that can be done and once that is executed, the museum appreciates African culture and heritage, stemming from the actions and approaches of former European imperial and colonial powers. As appropriately portrayed in the 1970 film You Hide Me[19], the paradox of fetishizing and then admiring African culture or

---

[17]Natasha Becker is independent curator and writer of contemporary art based in New York. Currently, she is a curator of the African Art Gallery at the De Young Museum, San Francisco. She was emailed by the student for a questionnaire.

[18] Egungun is a costume that encompasses many different types of masquerades that honour ancestors at various ceremonies and celebrations in Yoruba culture.

[19]You Hide Me was a short documentary film made in 1970, directed by Ghanaian filmmaker Nii Kwate Owoo about the valuable African artefacts in the British Museum and make his case for their restitution.

destroying and then celebrating African art exists. Contending that the museum is universal, one must question the De Young on how it is an universal institution when it is located in one of the most prominent cities of North America, limiting the access of citizens of African states and nations to visit the museum and discern their ethnic heritage and their *'art'*.
The spiritual deactivation that the ceremonial fan endures today is caused by the apparent commodification that the museum allowed to occur upon the ceremonial fan and the cultural contexts and circumstances that led to such a sacred and personal object as such to be exported and sold in an art market globally. According to the book, Fabric of Immorality[20], it is necessary to improve the care of a particular religious textile, for example, the ceremonial fan for Oshun, and ensure that its care is aligned with its cultural context. Care is an intrinsic ethic of curation. However, the DeYoung Museum failed to sustain the spiritual and ethnic importance of the ceremonial fan - a testament to the notion of *commodifying* African religious and sacred objects that many of such universal museums aim to propagate.
Moreover, in its response statement the De Young Museum mentioned how the right to view art belongs to all humanity and is thereby a universal right. However, it is salient to understand and comprehend the crux of the issue. The fact that the ceremonial fan for the Oshun is being addressed as 'art' is complicated in itself. The ceremonial fan has been detached from the original context which is certainly what ethnographic universal museums in Europe and North America execute. These museums convert objects of religious and cultural and ethnic significance into commodities that can be 'observed', 'exported' and 'sold', annihilating the cultural patrimony of the ancient African kingdoms.

As provenance suggests, the burn marks at my edges suggest that I, in all likelihood, am spiritually inactive. However, it is the hour of need to respect my original intended uses and acknowledge my enduring spiritual power. I have tangible qualities and potencies that the current curators and stewards of the DeYoung Museum, here in San Francisco, can never fully comprehend. I have endured a long journey from being created and designed by my Yoruban people for the goddess Oshun to being shipped to Britain and then adorning Adelmann's home for a few years and now in the De Young. No wonder what my trajectory of the future holds! But, I must say that restitution and repatriation is also about looking to the future. Thereby, I, as the ceremonial fan for the Oshun, proclaim that it is time to put me back to where I belong…

[20] Fabric of Immorality: Ancestral Power, Performance and Agency in Egungun Artistry is a book on Egungun masking and curation by Bolaji Campbell. Published in 2020.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue II, December 2023
DOI:10.13140/RG.2.2.29972.10880
www.kanpurhistorians.org

CHILD CARE HOMES IN INDIA: A CRITICAL APPRAISAL OF VIOLATION OF HUMAN RIGHTS

DR. MUJIBUR REHMAN
Assistant Professor, Department of Law
BBAU, Lucknow India
RAM CHANDRA MEENA
Research Scholar, Department of Law, SLS
BBAU, Lucknow India

Abstract

Almost in all countries of the world the children are considered not only a valuable asset but future of the country. The future and stability of society depends upon the quality of children upbringing in a loving and caring family and they require special attention of wellbeing, health, care, nutrition and shelter and protection against all sorts of neglect and exploitation. Due to various factors children are forced to live and grow up in Child Care Institutions and Homes. The living conditions in child care homes are very pathetic and generally compromised on living space, sanitation and hygiene, food, education, sports, privacy and entertainment facilities. Moreover, their human rights are violated on many counts. They are compelled to work in inhumane conditions, and they are victims of child trafficking and child labour, child abuse in porn industries, etc. In India the Juvenile Justice Act, POCSO Act, and Integrated Child Protection Schemes, and the Child Rights Act are the prime legislations which provide guidelines to observing the admittance, care and social reintegration of children in need of care and protection and those in conflict with law. Child Care Homes are best option for victimised, orphaned and single parent children across the nation, trafficking, force to work in porn industries etc. In few CCHs care taker itself has become a predator and they continuously exploited the children by the sexual abuse. The present study is a humble attempt to evaluate the pathetic living condition in child care institutions and to ensure the responsibility of government to protect the minimum human rights of the children in the light of the Constitutional mandate and human rights welfare policies for children.

Key Words: Child Care Home, Violation, Human Rights,

Introduction

According to the Census of 2011 [1] India has roughly 29% children of its total population (1.21 billion). By different policies and programmes, the Government of India has a huge responsibility to ensure care, protection and development of the children. Children are considered future of any country. They have basic minimum rights of life. health care, nurturing, love and affection, shelter and protection from neglect, exploitation, abuse and injustice not only by their parents but also by the State machinery in case of orphan, abandoned, surrendered child or child in conflict with law. Children requires a special attention from state machinery therefore, Constitution of India, different legislations, national policies at national level and different conventions and recommendations, declarations at international level have tried their best to provide the protection, welfare and overall development of the children in every respect so that they can avail their minimum basic human rights and be protected from exploitation and abusive behavior of fellow children and staff members in different child care institutions and care homes of India. Keeping in view the above facts the present paper is humble attempt by applying doctrinal research methods and on the basis of the existing data published by different governmental agencies and literatures to analyses the problems related to the violation of the human rights in child care homes in Indian and suggest the some measures to minimize the different types of human rights violations in an effective and efficient manner in child care institutions.

Constitutional Framework of Child rights

The Fundamental Rights and Directive Principles of State Policies, these two together constitute the conscience of the Constitution and represent the basic rights inherent in every human being including the children incarcerated in child care institutions in India. The various Constitutional provisions confer powers and impose duties on the State to ensure and promote the welfare of the people and that all the needs are met and that their basic human rights are fully protected in an fully effective manner. [2] Numbers of Articles of Constitution of India provides the welfare of the children such as principles of equality and non-discrimination enshrined under Articles 14 and 15, free and compulsory educational provisions enshrined under Articles 21-A, 45 and 51A(K), the right against exploitations such as child labour, hazardous employment in any factory or mine, beggar or other similar forms of forced labour and against moral and material abandonment enshrined under Articles 23, 24, 39(f) and the provisions of special care under Articles 46 and 47 of the

---

[1] Census of India, 2011.
[2] J.S. Verma, *The New Universe of Human Rights* 47-64 (Universal Law Publishing Co. Pvt., Ltd, New Delhi. edn. 2004).

Constitution[3]. These Articles deals with the right against exploitation and seek to prevent exploitation of the weaker sections especially the children of the society by unscrupulous individuals or by the State. To ensure compliance with the objectives of the Articles is not the responsibility only of the state but the enlightened citizens are expected to create an all-round awareness among the weaker sections, factory owners and others. The citizens of India respect constitutional values and desist from employing children in hazardous jobs, ensure human conditions in their institutions. In fact these various Articles enshrined under Part III and IV of the Constitution are meant to secure a new social and economic order imbued with justice to all. [4]

National Perspective of Child rights

Every child who is under eighteen years of age or is in conflict with law is in need of care and protection as per the provision of The Juvenile justice (Care and Protection of Children) Act, 2015. The Juvenile Justice Act envisages three types of Juvenile Homes where the juvenile in conflict with law may be housed (lodged) during the police enquiry and adjudication proceedings against him or after his misconduct (offence) are proved. Observation Home where to house juvenile during the pendency of police enquiry, Special Home where to house juveniles who are found guilty of offence and who are to be detained under any of the abovementioned dispositional order, and Place of Safety, where to house juveniles who are more than 16 years of age serving detention order. [5] Every Children's Home or Child Care Institution or Observation home and Special Home are under special duties to ensure and fulfilled the basic rights and needs of the children kept in these institutions and homes.[6] The above said Act also provides the constitution of Juvenile Justice Board for the inquiry ad hearing in the case of juvenile in conflict with law as well as qualifications for appointment , removal etc of the members of the Board. The working provisions of the Juvenile Justice Board are contained under section 7 of the act.

The provisions relating to the child in need of care and protection are contained in chapter VI of the JJ Act, comprising 11 sections in total. A child in need of care and protection as defined in section 2(14) of the Act means a child who is found without any home or settled place of abode and without means of subsistence or who is neglected by his parent or guardian or does not have parent and no one is willing to take care of him or who is likely to be

---

[3] J. N. Pandey , *Constitutional Law of India* Part III & IV (Central Law Agency, Allahabad, 58th edn., 2021).

[4] Shubhash C. Kashyap, *Citizens and the Constitution* 106-123 (Publications Divisions Ministry of Information and Broadcasting Government of India New Delhi 3rd edn. 2018)

[5] Sections 47, 48,and 49 of the Juvenile Justice (Care and Protection of Children) Act, 2015

[6] N. V. Paranjape, Criminology *& Penology* 901-951(Central Law Publication, 18th edn., 2021).

grossly abused, tortured or exploited or who is found vulnerable and is likely to induced in drug abuse or trafficking or who is a victim of any armed conflict, civil. Commotion or natural calamity.

International Perspective of Child Rights

Children welfare provisions are also provided at international level in various Declarations and Covenants. The first most was the Declaration of The rights of the Child, 1924 (DRC-1924) adopted by the League of Nations on 26th September, 1924, commonly known as 'Declaration of Geneva' for overall normal development both materially and spiritually. After this Universal Declaration of Human Rights, 1948 (UDHR-1948) was adopted by the General Assembly of the United Nations for all human beings without distinction of any kind.[7] In 1959 The Declaration of the Rights of the Child was drafted by the United Nations Commission on Human Rights and adopted by the General Assembly on 20th November 1959. The year 1966 was a great witnessed[8] for adopting two most important covenant relating to the children welfare at international level namely International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR-1966) and International Covenant on Civil and Political Rights, 1966 (ICCPR-1966) these two covenants provides the measures of protection which is required to a minor from his family, society and the state. India is also a signatory to the UN Convention on Rights of the Child The Convention on the Rights of the Child,1989 (CRC-1989) is considered most widely ratified human rights treaty in the history at international level for providing clearly the goals of achieving the civil, political, economic, social and cultural rights of the children. The provisions of the convention mainly emphasizes on right to survival, right to protection right to development, right to participation and overall welfare of the children. The World Summit for Children held on 30th September, 1990 at United Nations Headquarters was the first major global action for the implementation of the Convention on the Rights of the Child. The Global Movement for Children, 2002(GMC-2002) was launched by the united Nations Children's Fund (UNICEF) was really a uniting efforts to build a world fit for children and accountable governments.

Child Care Homes

The different categories of children who generally residing in CCIs/homes are orphan, abandoned, surrendered, sexually abused, victims of child pornography, trafficked for domestic work, / trafficked for commercial sexual exploitation, children affected by HIV/AIDS, children affected by natural or manmade disasters and conflict, or homeless runaway, missing, mentally and physically challenged children.[9] To provide safety, security and shelter to

[7] S.K. Chatterjee, *Offences Against Children and Juvenile Offence* 54-83 (Central Law Publication, 2nd edn., 2016).

[8] *Supra* note 2 at 208-210.

[9] The Juvenile Justice (Care and Protection of Children) Act, 2015.

these children, the child care homes CCIs[10] are best possible resort where dignity and well-being of the children are ensured in best child friendly manners as per the prescribed standards of care. As per the report of Ministry of Women and Child Development, Government of India, there were in total numbers of 9589 child care institutions / homes, majority of them about 91% were run and managed by Non-Governmental Organizations and only 9% were Government supported homes. These includes registered or unregistered CCIs/homes under the Juvenile Justice Act 2015, about 32% (3071) CCIs/homes were registered under the JJ Act; 15% (1487) had applied for registration; 16.5% (1585) were registered under any other scheme; while 33% were registered CCIs/homes. The nation wide figure of various categories of CCIs/ homes are 66.4% (6368) Children Homes, 3.9% (373) Shelter homes, 3.5%(336) Specialised Adoption Agency, 2.9% (278) Observation homes, 0.5% (52) Special Homes, 1% (185) Swadhaar Homes, 1% (110) Ujjawala , 1% (8) Place of safety. The remaining 19.5% (1869) are other homes which include all those CCIs/homes which should have been registered under JJ Act, however, are unregistered and functioning as registered under Orphanage and Charitable Institutions Act, or Women and Child Licensing Act or Cottage Homes. The highest numbers of CCIs/homes are in Tamil Nadu followed by Maharashtra and Kerala, It seems by the report that the Children Homes area higher in numbers than the Shelter and Observation Homes. The ratio of Children versus Homes strengthens the idea that there is a need for rationalization of CCIs/homes that requires deeper analyses and systematic planning.

Human Rights Violations & Child Care Homes

The basic aims and objectives of CCIs/homes are to improve the lifestyle of children by providing the minimum bare necessities like food, shelter, cloth and education. The basic facilities which the children in CCIs/homes are deserved like proper nutrition and diet including the special meals, clean and sufficient water, hygienic conditions of CCIs/homes, and atmosphere free from all kinds of torture and maltreatment, separate residential facility including sleeping, proper health assessment and regular check-ups, educational facilities based on age groups and special measures with special need. By analyzing the report of the Ministry it is found that there were no adequately and satisfactorily services were provided in different CCIs/home and they did not follow the child protection policies properly. In most of CCIs/homes the infrastructural facilities such as dormitory, counseling room, sick room, bath rooms/ bathing areas and toilet/ latrines for boys and girls separately are lacking. Many of them (Umeed Aman Ghar, a home for boys, and Khushi Rainbow Home, a residence for girls) were covered with tin shed, which were not in line with safety and security measures, neither they were ventilated, cleaned or sanitized regularly, It also seen that CCIs/homes were

[10] Sectopm 2 (21) The Juvenile Justice (Care and Protection of Children) Act, 2015

not following the rules provided for the segregation of the children and minor were mingling with the elder ones, police verification were also not done for the staff members, neither the qualification of the teaching was in consonance with the norms. The privacy and safety of children are major cause of concern in these places of CCIs/homes. The protective philosophy relating to children has been reiterated by the judiciary in various cases.[11] Often most of the children become victims of discrimination, exploitation, especially the sexual abuse/ sexually[12] harassed behaviours and child pornography by fellow children or staff members and generally there is no reporting of these serious offences under POCSO Act, The children who have been victims of sexual abuse undergo immense trauma and thereby develop a host of psychological and emotional disorders as an aftermath of the abuse.[13] Many of the children and adolescents did not know how to deal with these abusive experiences or effects and therefore they require proper care and counseling.

Trafficking of children for domestic work, labour or commercial sexual exploitation is other major human rights violations committed in different CCIs/homes.[14] It is seen that in comparison to boys, large numbers of girls are trafficked for domestic help. Most of the children rescued from domestic work, labour and commercial sexual exploitation residing in CCIs/homes are seen in the States of Andhra Pradesh, Karnataka, Maharshtra and Telangana.

Many children were involved in different CCIs/homes in the household responsibilities like cooking , cleaning, cutting vegetables, dusting and caring for the younger ones and also working on artificial jewellery , bag making, electric work like printing, welding, fashion designing etc, these work not suitable to their age groups.

However to provide the skill development and source of income the various work are allocated to the children suitable according to their age groups in different CCIs/homes along with the extra academic support through volunteers and tutors to improve their educational performance. The various extra-curricular activities were also provided to enhance the overall development of the children by singing, dancing, music, self defence art, sports, yoga, art and craft. The different courses such as embroidery, craftwork tailoring, graphic designing, English spoken course, computer education, flower making can provide considerable income generation opportunities.

Conclusion & Suggestions

Every child who is residing in CCIs/homes are deserved for minimum basic facilities , proper nutrition, separate residential facility including sleeping, proper health assessment and regular check-ups, educational facilities based on age groups as well as atmosphere free from all kinds of torture and

---

[11] Ved Kumari, *The Juvenile Justice System in India* 171 (Oxford University Press, 2nd edn., 2004).

[12] *Sanjay Suri* v. *Delhi Administration*, AIR 1986 SC 414.

[13] *Sheela Barse* v. *Secretary, Children's Aid Society*, AIR 1989 SC 1278.

[14] *Supra* Note 8.

maltreatment. The violations of human rights of the children in CCI/homes creates a spectra of problems ranging from nutrition to mental harassment which can be curbed through few suggestions-

- All the CCI/homes working in the country should be registered and be supervised by the government agency and the recruitment of the staff should be according to provision of the JJ Act, 2000 and POCSO Act.
- There should be regular visit/ inspection of CCI/homes by the government agency/ judicial officer to get the real picture of working and exploitation in the CCI/homes.
- A holistic approach towards child care policies be adopted in all CCI/homes of India.
- To reduce the dependency on CCI/homes by implementation of fundamental programming to uphold the basic rights of children, especially those in vulnerable circumstances at the community level.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue II, December 2023
DOI:10.13140/RG.2.2.29972.10880
www.kanpurhistorians.org

THE 'NIRGUNA-SAGUNA' THEORY AND RELATED ISSUES: A REASSESSMENT

DR. ADITI GOVIL
Associate Professor,
Department of History
University of Delhi

Abstract
In this article, I have questioned the usage and application of the terms Nirguna, Saguna, sakar, nirakar as used in Hindu texts and have compared the same as applied to the so-called Bhakti movements by the scholars since last two centuries. Other related concepts like personal and impersonal God, relevance of monotheism and exclusivity of the three *margas*- Jnana marga, karma marga and Bhakti marga have been assessed in the light of Hindu scriptures.
Keywords: Nirguna, Saguna, Nirakar, Sakar, Hinduism, Hindu Philosophy, personal God, impersonal God, Jnana Marg, Bhakti Marg, Karma Marg, Bhakti movements

The scholarly investigation of Hinduism as a modern academic discipline began to take shape since the early nineteenth century during the colonial period, when the very word 'Hinduism' was coined and introduced. At the same time, as its history was being written, the study of Bhakti movements (in the early medieval and medieval period), as a specific phenomenon also began. And, as Krishna Sharma alleged, it began with a colonial approach under the influence of European orientalists. [1] There is a deep and undeniable connection between the language and specific concepts of a belief-system. Great harm is done when the concepts are wrongly translated, interpreted and understood. Flawed understanding of the basics of a belief-system leads to false conceptions and consequent wrong interpretation of any related phenomena. One such concept which became a hallmark of the academic work on Bhakti movements since colonial period

[1] Krishna Sharma, *Bhakti and the Bhakti Movement: A New Perspective*, (Delhi, 2015) (Reprint), p. ix.

was the Nirguna-Saguna model. And although it was first popularised by Hindi scholars- Ramchandra Shukla, P.D. Barthwal and Parashuram Chaturvedi,[2] the significant influence of theistic Western Christian paradigms into the reading of both bhakti movements, and Hinduism at large, either by Europeans or by Indians cannot be denied.[3] This division was impressed further by Schomer, McLeod, Hawley and Lorenzen.[4]

Of late, however, there has been an emphasis on understanding the Hindu concepts in its own context and history. Still, these concepts have been discussed so far in a manner that does not seem to be in sync with the actual connotations of those terms as given in Hindu scriptures. Also, in a major way, these issues have also impacted the understanding of Hindu philosophy. One such issue, as mentioned above, is the conceptualization and interpretation of the terms Nirguna and Saguna, both in terms of nature of Godhead and in context of Bhakti saints' orientation. Nirguna God, for example, was classified as meaning nirakar (formless), without qualities, impersonal and Nirguna bhaktas as radical versus the Saguna God who was defined as sakar (with form), with qualities, personal, and Saguna bhaktas as traditional and orthodox.[5] This formulation, which is only partially correct, led to a host of other problematic conceptualizations.

The portrayal of Saguna and Nirguna as separate and mutually exclusive categories in colonial and even contemporary writings on Hinduism and related themes has had important ramifications. The definition of both these words which has hitherto been in currency is generic and only a partial explanation of these words. To understand the correct and complete meaning of these terms, we must analyse at least some of the texts from the ocean of Hindu scriptures where these terms are mentioned. *Gunas (satva*, *rajas and tamas*) in Hinduism, is a multi-dimensional concept. In this paper, we are concerned with only that aspect of the theory of *gunas* which relates to the nature of Godhead in Hinduism, with special reference to its usage and application in the delineation of the so-called Bhakti movements. Let us first discuss the meaning of Nirguna and Saguna in the context of nature of Godhead. Rajeev Malhotra defines the terms saguna and Nirguna in his

[2] Ramachandra Shukla, *Hindi Sahitya Ka Itihas*, originally published in 1926, Varanasi, Nagari Pracharini Sabha, (reprint, 1952), pp. 59-71; P.D. Barthwal, *The Nirguna School of Hindi Poetry*, first edn., 1936, (reprint, Delhi, 1978); Parashuram Chaturvedi, *Uttari Bharat Ki Sant Parampara*, first edn., Allahabad, 1952, (3rd edn., Allahabad, 1972); S. Radhakrishnan, *Indian Philosophy*, Vol.I, (London, 1923).

[3] Grierson, G.A., *Modern Hinduism and its Debt to the Nestorians*,' Yearbook of the Royal Asiatic Society, 1907; Grierson, G.A., *Bhakti Marga*, in James Hastings, *Encylopaedia of Religion and Ethics*, (Edinburgh, 1909), vol.2; H. Dwivedi, *Hindi Sahitya ki Bhumika*, (reprint. Delhi, 2017).

[4] Karine Schomer and W.H. McLeod, eds., *The Saints: Studies in Devotional Tradition of India*, (Delhi, 1987); David. N.Lorenzen, (ed.), *Bhakti Religion in North India: Community Identity and Political Action*, (Delhi, 1996)

[5] Krishna Sharma, *Bhaki and the Bhakti Movement*, *op.cit.*, p.1, 24.

important book, *Sanskrit Non-translatables*. He describes Saguna as Brahman having *guna* and Nirguna as free from limitations of finite existence, devoid of material form, beyond *Prakriti* (which has all three *gunas-Sattva, Rajas and Tamas*). He also notes that the same Brahman is both Saguna and Nirguna. The term nirguna is not even mentioned in Shruti literature. It first occurs in Mahabharata (Shantiparv), Geeta 13/14. Adi Shankaracharya used it for the one 'released from Gunas', which implies that no deity is inherently nirguna. By nirguna, Ramanuja meant same as 'that saguna only which has no *gunas*.'

The concept of divine energies being either *Saguna* or *Nirguna* is problematic also because Hindu Gods and Goddesses may be both Saguna and Nirguna at the same time. In Brahmasutra bhashyam (III.ii.14), Adi Shankaracharya wrote that 'Brahman in itself is devoid of attributes, devoid of any form (*Arupavadevahitat-pradhanatvat*). [6] In some passages of the Upanishads, attributes are ascribed to Brahman. But this ascription is for the sake of *upasana*. Just as light which has no form appears to be endowed with different forms because of the objects which it illumines, Brahman which has no attributes appears as if endowed with attributes on account of the limiting adjuncts. Brahman is the non-dual pure consciousness but it appears as many, like one sun gets reflected diversely in the different vessels containing water. Brahmavaivarta Purana describes Nirguna as He who does not involve himself and does not remain with Shakti. But since as a creator, He has to remain dependent on Shakti, He has to take form.[7] In another passage, it is written that one who has taken shelter under Maya is Saguna and the one who is devoid of Maya is Nirguna. However, God appears as either *according to His will* (emphasis added).

Saguna means having one or more *gunas* (that is *Sattva, rajas or tamas*) and Nirguna means having absorbed all three *gunas* and therefore being above all three *gunas*. Sometimes, a *devi* may have one *guna*, or two or may be all three *gunas* combinedly. For example, in *Lalitashasranama, Kamdhenu Tantra, Mahanirvana Tantra*, MahaSaraswati denotes *Sattva*, Mahalakshmi represents *Rajas* and Mahakali (or Kalika-a form of Kali) represents *Tamas*.[8] Sometimes a *devi* may have one or more *gunas*, but with one of the *gunas* as main. Kamala, e.g., is also called *Triguna* (that is having all three *gunas*) and also is *Tamogunapradhana*. Kali's bleeding head shows outflow of *rajoguna*, her red tongue also depicts *rajoguna* and her sharp fangs have *sattvik* shakti. *Kamada tantra, Mahanirvana Tantra* (verse 6) describe Kali as Nirguna, formless *Brahman*. According to *Mahanirvana Tantra*, black colour of Kali shows

---

[6] *Brahmasutra bhashyam*, The Works of Sri Sankaracharya, (Sri Vani Vilas Press, Sri Rangam, 1910), vol. III. Verse 14, p. 584.

[7] *Brahmavaivarta Purana*, tr. S.L. Nagar, ed. Acharya Ramesh Chaturvedi, (Delhi, 2005), p. 682.

[8] David Kinsley, *The Ten Mahavidyas: Tantric Visions of the Divine Feminine*, (Delhi, 2023), p. 42. (hereafter *The Ten Mahavidyas*).

Nirguna nature of Kali. Even she is worshipped through three ways-*Satvik, Rajasik, Tamsik.*

Gods and goddesses otherwise thought of as *Sakar* and (hence) Saguna have been described as being *Nirakar* and Nirguna at the same time, as two sides of the same coin. In *Brahmavaivarta Purana*, for example, Shiv is depicted as both *gunayukta* and *gunateet*.[9] In *Devi Bhagwat Purana*, Kali calls herself Brahmarup and is depicted as both Saguna and Nirguna.[10] In Brahmavaivarta Purana, Brahma prays to Kali and calls her Nirguna.[11] Durga and Radha and Krishna have also been described as Nirguna. Tulsidas, in Ramcharitmanas, described Ram as both Nirakar and Sakar.[12] Krishna in Bhagwadgeeta calls himself- '*Nanyam Gunebhyah kartaram'* i.e. beyond three Gunas.[13] Krishna describes *parambrahma* as '*Nirgunam gunabhoktra cha*'- i.e. beyond senses, beyond gunas and still having gunas. He also says that flowers etc. offered to me are accepted by me 'in Saguna form'. Grierson described saguna worship centered on Puranic avatars and Nirguna bhakti centered on yogic meditation and Brahman. But we cannot describe the Vedic Brahman as Nirguna and Puranic Gods and Vishnu's incarnations as Saguna, when the same Saguna Gods are also described as Nirguna, and this distinction seems so futile with relation to the nature of Godhead in Hinduism. Its connection with saakar and nirakar is also only partially correct and does not hold any importance in Hindu philosophy. Tulsidas, in Ramcharitmanas, refers to Ram as both sakar and Nirakar (Balkaand, 118). He correlates between Nirguna and Saguna.[14] *Siddhasiddhantapaddhati*, a Nath Yogi text, described Shiv as *nirakar*.[15] *Siddh siddhant Paddhati* describes formless '*parameshwara*' as a light. But does not call it *Nirguna*. In *Lalitashasranama*, one of the Mahavidyas, Tripursundari, who is depicted as having a body i.e. *Sakar*, is shown identical with Brahman, who is *Nirakar*. *Mahaniravana Tantra* describes the 'form' of Kali (verse: 141) and at the same time also calls her '*arupa'* (verse: 140). According to Brihadaranyaka Upanishad (2.3.1), God is both formless and has form (*dvai vav brahmano Rupey, Murtam chaiv, amurtam cha*).[16] Ishopanishad also say the same.[17] According to Chaitanya, God is both supreme person and all pervading Brahman, like the Sun has form and rays are formless. Krishna describes *parambrahma* as having eyes, ears, feet, hands everywhere and

---

[9] *Brahmavaivarta Purana*, *op. cit*., p. 605.

[10] *Devi Bhagwat Purana*, Pratham Skandha, (Gita Press, Gorakhpur), p. 16.

[11] *Brahmavaivarta Purana*, *op. cit*. p. 103-4.

[12] Tulsidas, *Ramacharitamanasa*, tr. by R.C. Prasad (Delhi, Motilal Banarsidas, 1990), *Balkand*, verses 117-118, p. 86.

[13] *Shrimad Bhagwad Geeta*, (Gita Press, Gorakhpur, samvat 2073), 14.19, p.117.

[14] Krishna Sharma, *Bhaki and the Bhakti Movement*, *op.cit*. , p. 10.

[15] Shivgoraksh mahayogi Gorakhnath, *Siddhasiddhantapaddhati*, (Gorakhpur, n.d.), p.106.

[16] *The Brihadaranyaka Upanishad*, with the commentary of Shankaracharya, tr. Swami Madhavanand, (Calcutta, 1950), 2.3.1., p. 329.

[17] *Shri Ishopanishad*, tr. Swami Prabhupada, (Japan, 1972), verse 5, 16, pp. 28, 82.

hence who pervades the world.[18] God is therefore, both Sakar and Nirakar. Chaitanya here echoes the Ishopnishad-*Pushannekarshe yama surya Prajapatya vyooh rashmin samooh, tejo yat te rupam kalyanatamam tat te pashyami yoasavasau purushah sohamasmi* that is, 'please remove the effulgence of your transcendental rays, so that I can see your form of bliss'.[19] Krishna says in Bhagwad Geeta- '*Brahmano hi Pratishthaham*' that is, I am the source of Brahman.[20] He defined Saguna as *sakar* and nirguna as *nirakar*, but says that worshippers of both come to me only. As is evident here, the distinction between *sakar* and *nirakar* is of no consequence in Hinduism. The word nirakar, as we have seen, is only a partial explanation of the term 'Nirguna' and similarly, the word sakar is also only a partial explanation of the term 'Saguna.'

Another related question is whether being a Nirguna or a Saguna devotee matter to those branded as Bhakti saints? It is important to understand here that these debates were not contemporary ones. These issues have been written in the manner in which they have been understood since previous two centuries. To begin with, Tulsidas called the *avataran* (act of taking avatar) of Ram as a *leela* of all pervading Brahma or Vishnu and calls Nirguna and Saguna as two forms (*swarup*) of Brahma. He described them both as equally indescribable and matchless. He reiterates that there is no difference between Nirguna and Saguna as Nirguna only becomes Saguna. He says *Naam* as bigger than both Nirguna and Saguna which he calls *apratyaksha* (unseen) and *pratyaksha* (seen) respectively. He subjects Ram -as both Nirguna and Saguna- to *Naam* repeatedly. And while he has been categorised as a Saguna bhakt, he expresses desire to see the Nirguna Brahma. He explicitly says that there is no difference between Nirguna and Saguna.[21] For Kabir, controversies over Saguna and Nirguna are irrelevant.[22] Gorakhnath mentioned nirguna and saguna as two types of *Dhyana,* in which they occur in sequence, as stages- saguna dhyana leading to *dhyana* stage (which is second last stage in both ashtanga yoga and *hathyoga*), while nirguna dhyana leading to Samadhi, which is last and final stage of self realization. They are obviously not exclusive of each other.[23] For Lal Ded, this difference between Nirguna and saguna was of no significance. This was also because in Kashmir Shaivism, which is a monistic thought, God is both Nirguna and Saguna at the same time.[24]

---

[18] *Shrimad Bhagwad Geeta*, *op.cit.,* 13. 13, p. 276.
[19] *Shri Ishopanishad* , *op.cit.,* verse 16, p. 82.
[20] *Shrimad Bhagwad Geeta*, *op.cit.,* 14.27.
[21] Tulsidas, *Ramacharitamanasa*, *op. cit.,* Balkand, verses: 2.20, 23, 23.1, pp. 19, 21.
[22] Krishna Sharma, *Bhaki and the Bhakti Movement*, *op.cit.* , p. 22.
[23] *Siddha Sidhhanta Paddhati, op. cit.*, p. 87.
[24] David N.Lorenzen, ed; Religious Movements in South Asia 600-1800, Delhi: Oxford University Press, 2004, p. 137.

Another important dimension of this debate is that Nirguna bhakti was emphatically and repeatedly connected with radical thought and Saguna bhakti with an orthodox approach, so much so that it dominates our current understanding of Bhakti movements even today. Mid twentieth scholars like P.D. Barthwal, Parasuram Chaturvedi and Hazariprasad Dwivedi focus on radical aspects of sant movement and on its break with 'more traditional' saguna bhakti.[25] This division converged on the point of 'monotheism' which was thought to be a common point in context of both saguna and nirguna God. Kabir also talked of various Gods, albeit as one and Nanak too talked of unity of god, which is monism, not monotheism. Kashmir Shaivism is also monistic.[26] Krishna said in Bhagwadgeeta that those who worship others, worship me only.[27] Monotheism as a concept is neither important, nor relevant to Hinduism. Nirguna bhakta as radical and saguna bhakta as orthodox is a generic categorization, which is also not largely correct. Saints of South India – Andal, Appar, Sambandar, Karaikkal Ammaiyar, Akka Mahadevi etc., were clearly devoted to Sakaar forms of Vishnu or Shiva, but most rose against social conventions, and did not bother about the nature of God being Nirguna or Saguna.[28] In Maharashtra, the shrine of Vithoba (a form of God Vishnu) at Pandharpur became the seat of the Warkari sect in 13th century. Its social base was wide and included different social groups. Most of its prominent sants - Namdev, Eknath, Tukaram, Jnaneshwar, Bahinabai, Muktabai, Janabai etc. were anti-ritual and anti-caste. And these saints do not fall into the category of so-called Nirguna saints. In Rajasthan, Meera flouted caste and gender norms, wifely subjugation, norms of family honour, and *pativrata* duties and had a non-confirmist life which is also evident in her *padas,* though she is kept in saguna category.[29]

The faultlines between Nirguna and saguna, once set, also complicated the concept of *margas* to moksha. Jnana yoga, Karma yoga and Bhakti yoga have been described as *margas* to moksha-the ultimate goal of a Hindu life. Bhakti yoga, as explained in modern historiography, harped on total love, devotion and surrender towards a 'personal' deity, 'as a mark of theism, or more properly, of monotheism', was especially attached with saguna bhakti, exclusive of the jnana yoga'.[30] Accordingly, the Vedic 'Brahman' was categorized as Nirguna and Puranic Gods as Saguna. The latter was then conveniently connected with the concept of a 'personal' god and this was

[25] David N.Lorenzen, ed., *Religious Movements in South Asia 600-1800, op. cit.,* p. 35; H. Dwivedi, *Kabir's Place in Indian Religious Practice*, *ibid.,* p. 281.
[26] B.N. Pandit, *Aspects of Kashmir Shaivism*, (Kashmir, 1977, first ed.) p. 102.
[27] *Shrimad Bhagwad Geeta*, *op.cit.,* 9.23, p.182.
[28] Vijaya Ramaswamy, *Walking Naked: Women, Society, Spirituality in South India*, (IIAS, Shimla, 2007), pp. 131, 135.
[29] Parita Mukta, *Upholding the Common Life: The Community of Mirabai*, (Delhi, 1994), p. 19.
[30] Krishna Sharma, *Bhaki and the Bhakti Movement*, *op.cit*., p.4,10, See also, J.L. Brockington, The Sacred Thread: A Short History of Hinduism, (Delhi, 1992), p.54.

joined intricately with the Bhakti *marga*. Krishna Sharma criticised this connection, but then also put bhakti with a 'personal, saguna' deity in contrast with jnana-marg with an impersonal 'Nirguna Brahman' herself.[31] She still defined Chaitanya's bhakti as 'an intense, emotional attachment for a 'personal' deity as Saguna one, antagonistic to Nirguna bhakti like that of Kabir and Nanak and Adi Shankaracharya's jnana-marg of Nirguna Brahman as 'impersonal.' Grierson saw bhakti as a 'transformation' in Hindu religion that made it 'no longer a thing of knowledge but of emotion'.[32] Many scholars associated the *margas* with caste. M.G.S. Narayanan, to take one example, associates the *margas* with caste hierarchy. He wrote that in north, Brahman intellectual monopolists had already accepted the path of philosophical awareness (which he equates with jnana marga), almost exclusively for themselves, Karma marga was for all castes and path of bhakti was for those who sought liberation from social restrictions.[33] He treats them as separate and exclusive paths.

In Hindu philosophy, however, their meanings are different and these are complementary to each other, not exclusive of each other.[34] Krishna in Geeta-defines *Jnana* as understanding Prakriti and Purusha , spiritual knowledge. Adi Shankaracharya, though called a Jnana yogi, also advocated bhakti marga for spiritual upliftment. Ramanuja saw Bhakti yoga as representing final stage in attaining divine grace with karma yoga and jnana-yoga as prior stages.[35] Most so-called Bhakti saints showed ample awareness of Hindu scriptures and philosophy. And none talks about them as exclusive. For Ramchandra Shukla (*Bhakti ka vikaas,* 1932-33), bhakti is the road, in which all other roads ought to converge.'[36] These *margas* are not practiced separately. One could only choose his or her 'inclination' towards a particular path but could not exclude other paths entirely for a complete spiritual experience, either simultaneously or as stages.

Yet another area, where this concept of Nirguna and saguna was wrongly applied is where scholars have accepted the concepts of personal and impersonal as belonging to Saguna and Nirguna categories respectively. Even Krishna Sharma accepted this terminology, though she acknowledged that 'Bhakti by itself does not have concept of God-personal or impersonal, and that clear-cut demarcations between personal and impersonal have no relevance in Hinduism'.[37] The concept of a *personal* Saguna God as being

---

[31] Krishna Sharma, *Bhaki and the Bhakti Movement*, *op.cit*., p.xii, 4, 9.

[32] Grierson, G.A., *Modern Hinduism and its Debt to the Nestorians, op.cit.,* p. 314.

[33] M.G.S. Narayanan and Kesavan Veluthat, *Bhakti Movement in South India*, in D. N. Jha, *The Feudal Order: State, Society and Ideology in Early Medieval India*, (Delhi, 2000), p. 391.

[34] *Shrimad Bhagwad Geeta*, *op.cit.,* p. 71.

[35] David N. Lorenzen, ed., *Religious Movements in South Asia 600-1800,* p. 25.

[36] Ramchandra Shukla, *Surdas*, 2nd edition, posthumously edited by Vishvanath Prasad Mishra (n.d.), p. 35.

[37] Krishna Sharma, *Bhaki and the Bhakti Movement*, *op.cit*. , p. ix-x, 6.

essential to theism is just not relevant to Hinduism where the same deities are described as both Saguna and Nirguna. There is constant evidence of Nirguna-Saguna bhakti in Hinduism, and hence, there is no incompatibility of bhakti and impersonal God. In the case of Mahavidyas, it was believed that even if a devotee made a personal rapport with one Goddess, blessings of one brings blessings of all Goddesses.[38] The discussion on a personal God is not, in any way, relevant to understand either the philosophy of Hinduism or of the Bhakti saints. The idea of a personal God is an Abrahamic concept. In Hinduism, where the same God is both Saguna and Nirguna, sakar and nirakar; where one God has many incarnations and even that incarnation has many forms, it is a rather bizarre concept to apply. No wonder then that this concept was also brought into discussion in the colonial period anachronistically. Krishna Sharma rejects the argument of Tarachand and Yusuf Hussain that Bhakti saints had impact of idea of a personal God in Islam.[39]

To conclude, the terminology used in delineating concepts of Hinduism over the past two centuries, particularly in the context of Bhakti movement, is either partially wrong or irrelevant, or even sends Hindu concepts- of whichever sect within, in the wrong direction. Terms which do not subscribe to the inherent concepts of Hinduism and have been sparingly applied hitherto, therefore, need to be revised. As we have seen, the terms –Nirguna and Saguna, Sakar and Nirakar have been blown out of proportion and have been grossly misinterpreted without even reading the Hindu scriptures to see what they actually mean. On the other hand, concepts which are totally absent in Hinduism, such as monotheism, debate between personal and impersonal, have been introduced to either enhance the radical nature of Bhakti movements, and/or perhaps for the want of better terms. In this process, the concepts of Hinduism have been twisted, damaged and even invented. These need to be revised so that the basics of Hindu philosophy are not compromised and also, importantly, any related phenonmena, as Bhakti movements, in our case, are correctly interpreted and understood.

[38] David Kinsley, *The Ten Mahavidyas*, p.17.

[39] Krishna Sharma, *Bhaki and the Bhakti Movement*, p.25-26.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue II, December 2023
DOI:10.13140/RG.2.2.29972.10880
www.kanpurhistorians.org

RISING CYBERCRIMES AGAINST WOMEN IN INDIA: A LEGAL PERSPECTIVE

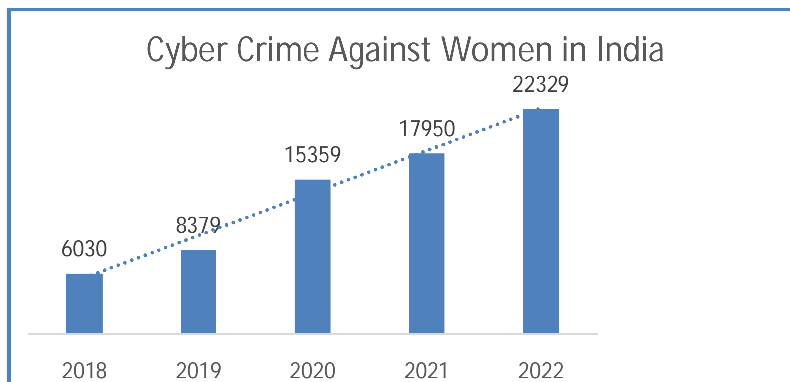
NANDITA RANJAN
Research Scholar of Law
Maharaj Vinayak Global University
Jaipur India

Abstract:
In the digital era, information and communication technology is helping billions to bridge the gap between people. But we do not realize that the gap is becoming so thin that every person is becoming capable of stepping into another's shoes, infringing on their privacy, and even lowering the dignity of another. In such a case, women are most affected. Though they fall prey to various other offenses, "Violence online" affects them traumatically. This paper provides a study on cybercrime against women and the laws governing them in INDIA. The advancements in technology are intended to provide better living, but the same technology is being misused in various walks of life without any physical bounds. When this became a burning issue in India, various provisions were established in Penal provisions, the Information Technology Act, of 2000, and Privacy laws seeking protection for the victims. However, these laws fail to meet the growing cybercrime rate. In a country like India, where society looks down upon women, the laws prevailing do not sufficiently recognize these online crimes. This paper provides a descriptive case study in India to introspect the gaps between cybercrime against women and laws relating to the same. This paper aims to bring out the various types of cybercrimes and the reasons for the commissioning of these crimes are researched.

Introduction:
Digital India is the gist of many innovations and technological growth. More than half the population is in the routine of using a computer, the internet, and other devices that are most commonly used are social media sites such as Facebook, chat rooms, Instagram, Skype, WhatsApp, Dating sites, etc. On one side of the coin, digitalization has strengthened the system of India in all terms

such as education, economy, governance, etc., but on the other side, it has brought cyber-crimes also in India at very large numbers.,Cybercrime first started with hackers trying to break into computer networks. Some did it just for the thrill of accessing high-level security networks, but others sought to gain sensitive, classified material. Eventually, criminals started to infect computer systems with computer viruses, which led to breakdowns on personal and business computers.Cybercrimes which is a new age crime involving electronicmediums for committing crimes have drastically increased over the past few years primarily whose maximum victims fall into the category of women followed by children. Due to a large number of user bases, it is easier to commit cybercrimes and also at the same time difficult on the part of the investigating bodies to find the offender. The intermediaries' roles and the awareness of common people regarding cybercrimes and measures to be taken if you are victimized is questionable in India which is far behind on digital literacy among the public. This paper analyzes thoroughly the cybercrimes committed against women in India. It discusses the legal framework of analyses using figures from the National Crime Records Bureau. The researchers have also examined the reasons why cybercrimes against India are increasing. At last the measures being taken by the Government are briefly discussed along with the preventive steps that can be taken at the individual level by women and females to avoid being victimized bycybercrimes.

Nowadays cybercrime against women is a very serious issue. Every second, one woman in India gets trapped to be a victim of cybercrimes and the online podiums are now the new platform where a woman's privacy, dignity, and security are more and more being challenged every moment. According to the National Crime Records Bureau (NCRB) annual report, cybercrimes against women in India rose by 24.4% in 2022 compared to the previous year.In Delhi, cybercrime cases tripled over the last three years, with most cases related to publication and transmission of content depicting obscenity or sexually explicit material. Cybercrime against women in India reported 17,950 instances in 2021 compared to 15,359 in 2020, an increase of 16.8%.



Technology is the resource used by some criminals who target to defame women by sending obscene e-mail, and WhatsApp messages, stalking women by using websites, and chat rooms, and worst of all developing pornographic videos, mostly created without their consent, spoofing e-mails, morphing of images for pornographic content by using various software's available online.
Indian women are not able to report cybercrimes immediately as they are not aware as to where to report such crimes or they are not serious about reporting the same due to social embarrassment they don't want to face. In cybercrimes against women, the effect is more mental than physical while the focus of the laws ensuring women's security is more on physical than mental harm. In this one can say that the mindset of women especially needs to broaden and they must be the whip to curb down by taking derring-do against such criminals that is to go ahead and lodge an immediate complaint. Most of the problems can be solved if women report the crime immediately and warn the abuser about taking strong legal action. Some of the major well-known cybercrimes have put thousands of women into various health issues such as depression, and hypertension and women suffer from anxiety, heart disease, diabetes, and thyroid ailments due to harassment. Major Cybercrimes are as under:
Cyberstalking; - It is one of the most popular crimes in the digital world. An individual may stalk or harass an individual, group, or organization through the internet. A cyberstalker may follow a person's movements across the Internet by posting messages to threaten the victim on the bulletin board accessed by him, entering the chatrooms used by the victim, or by continuously sending emails, or instant messaging to the victim.
10 The perpetrators are involved in cyberstalking for sexually harassing the victim, the perpetrator being obsessed by the victim's love, taking revenge for some past insult by the victim, or due to a feeling of grudge towards the victim. A stalker may harass his targets via private emails or by sending messages publicly. Women especially of the age group of 16 to 35 become the victims for most of the cyberstalking cases.
Harassment through e-mails; - Harassment through e-mails is not a new concept. It is very similar to harassing through letters. Harassment includes blackmailing, threatening, bullying, and even cheating via email. E-harassment is similar to letter harassment but creates problems quite often when posted from fake IDs.
Cyber Defamation; - It is one of the most popular crimes in the digital world. An individual may stalk or harass an individual, group, or organization through the internet. A cyberstalker may follow a person's movements across the Internet by posting messages to threaten the victim on the bulletin board accessed by him, entering the chatrooms used by the victim or continuously sending emails, or instant messaging to the victim.
10 The perpetrators involved in cyberstalking for sexually harassing the victim, the perpetrator being obsessed withthe victim's love, taking revenge for some past insult by the victim, or due to a feeling of grudge towards the victim. A stalker may harass his targets via private emails or by sending

messages publicly. Women especially of the age group of 16 to 35 become the victims for most of the cyberstalking cases.

E-Mailspoofing; - Email spoofing refers to mails that tend to appear from one source but, it come from another source. It leads to monetary damages. It is the falsification of an email sender address with the goal that the message seems to have originated

Phishing; -Phishing is the demonstration of sending an email to a client erroneously professing to be a real endeavor trying to trick the client into giving up private data that will be utilized for fraud. The email guides the client to visit a site where they are approached to refresh individual data, for example, passwords and MasterCard details, government-managed savings, and ledger numbers that the real association now has. The webpage is a counterfeit and set up just to take the client's data. By spamming enormous gatherings of individuals, the phisher relied on the email being perused by a level of individuals who had recorded credit card numbers legitimately.

Morphing; -11 It's an activity to edit the original picture to misuse it. Preparators download women's pictures from social media i.e.Facebook, Instagram,etc., or some other resources & use the morphed photos to create fake profiles on social networking sites or any pornographic sites which also becomes the case of cheating by personation

Trolling; - Trolls spread conflict on the Internet, and criminalsstartquarreling or upsetting victims by posting inflammatory or off-topic messages in an online community to provoke victims into an emotional, upsetting response. Trolls are professional abusers who, by creating and using fake IDs on social media, create a cold-war atmosphere in cyberspace and are not even easy to trace

Cyber Pornography; -13It can be defined as obscene material designed, published, or distributed using cyberspace as a medium. In India, if an individual watches pornography, it is not a crime, but if he creates and distributes such content, then it would be a crime. However, child pornography is not legal in any form and is prohibited globally. Cyber Pornography is the other threat to female netizens.

REASONS FOR THE GROWTH OF CYBERCRIME AGAINST WOMEN IN INDIA

The main reason for the growth of cybercrime against women is that itstranscendental having no boundaries, its dynamic nature, easy access & anonymity due to which perpetrators take advantage. Even if the place from which the crime has taken place is detected, it sometimes becomes very difficult for the police to catch hold of the perpetrators. While there are many other reasons for the rise of cybercrime against women which have been discussed as under-

***Social and cultural factors*:**

Societal norms and cultural stigmas surrounding issues like relationships, sexuality, and personal privacy contributes to the vulnerability of women. Fear of social judgment prevents victims from reporting incidents or seeking

help.Most of the cybercrimes remain unreported due to the hesitancy and shyness of the victim and her fear of defamation of the family's name. Many times, she considers that she is accountable for the crime done to her. The women are more vulnerable to the danger of cybercrime as the perpetrator's identity remains anonymous and he may constantly threaten and blackmail the victim with different names and identities.

THE LEGAL FRAMEWORK FOR THE PREVENTION OF CYBER CRIME AGAINST WOMEN

The internet mainly has two unique characteristics. Firstly, it transcends physical/geographical barriers, and hence, the abuser may be acting from any part of the world. Secondly, the internet extends anonymity to the users' Essentially; two major laws in India addresscyber-crimes against women to a large extent- The Indian Penal Code and the Information Technology Act. The IPC is a general criminal law of the land, which defines a large number of offences, and prescribes punishment for the same. Unlike the IPC, the IT Act is a Specific Law dealing with the many aspects of the use of information technology, including the commission of crimes Under the Information and Technology Act, 2000, stalkers and cybercriminals can be booked under several sections for breaching privacy:

Section 66A: Sending offensive messages through communication service, causing annoyance, etc., through electronic communication or sending an email to mislead or deceive the recipient about the origin of such messages (commonly known as IP or email spoofing) are all covered here. Punishment for these acts is imprisonment for up to three years or a fine. xv

Section 66B: Dishonestly receiving stolen computer resources or communication devices with punishment up to three years or one lakh rupees as a fine or both.xvi

Section 66C: Electronic signature or other identity theft like using others' password or electronic signature etc.

Section 66D: Cheating by a person on using a computer resource or a communication device shall be punished with imprisonment of either description for a term which extends to three years and shall also be liable to a fine which may extend to one lakh rupee.

Section 66E: Privacy violation – Publishing or transmitting private area of any person without his or her consent etc. Punishment is three years imprisonment or two lakh rupees fine or both.

Section 66F: Cyber terrorism – Intent to threaten the unity, integrity, security, or sovereignty of the nation and deny access to any person authorized to access the computer resource or attempting to penetrate or access a computer resource without authorization.

Section 67 deals with publishing or transmitting obscene material in electronic form. The earlier section in ITA was later widened as per ITA Act, 2008 in which child pornography and retention of records by intermediaries were all included.

Section 72: Punishment for breaching privacy and confidentiality diaries were all included.
Section 354D: This section deals with stalking. It defines a stalker as a man who follows a woman tries to contact such woman monitors every activity undertaken by the woman while using digital media.

JUDICIAL DECISION

1. Suhas Katti case

This was the first case in India where a conviction was handed down in connection with the posting of obscene messages on the internet under the controversial section 67 of the Information Technology Act 2000. The case was filed in February 2004 and In a short span of about seven months from the filing of the FIR, the Chennai Cyber Crime Cell achieved the conviction. In the case, a woman complained to the police about a man who was sending her obscene, defamatory and annoying messages in a Yahoo message group. The accused also forwarded emails received in a fake account opened by him in the victim's name. The victim also received phone calls by people who believed she was soliciting sex work.

After the victim made the complaint in February 2004, the police traced the accused, who was the victim's friend, to Mumbai and arrested him. The police found the accused was interested in marrying the victim but she turned him down and married someone else instead. The marriage, however, ended in divorce, which is when the accused started contacting the victim again but she rejected him again. The accused then started harassing the victim online. On March 24, 2004, a chargesheet was filed under section 67 of the IT Act 2000, 469 and 509 IPC before the metropolitan magistrate in Egmore, Chennai. The defense argued that the offending emails were sent either by the victim's husband or by herself to implicate the accused. On November 5, 2004, the magistrate found the accused guilty of offences under sections 469, 509 IPC, and 67 of the IT Act 2000. He was sentenced to rigorous imprisonment for 2 years under 469 IPC and to pay a fine of Rs.500/-, one-year simple imprisonment and Rs 500 fine under 509 IPC, and two years imprisonment with a fine of Rs 4,000 under section 67 of IT Act 2000.

2. Manish Kathuria case

This case is the reason for the amendment of 2008 to IT Act.7 It involved the stalking of a woman named Ritu Kohli. Kathuria followed Kohli on a chat website, abused her by using obscene language and then disseminated her telephone number to various people. Later, he began to use Kohli‟s identity to chat on the website "www.mirc.com". As a result she started receiving almost forty obscene telephone calls at odd hours of the night over three consecutive days. This situation forced her to report the matter to the Delhi Police. As soon as the complaint was made, Delhi Police traced the IP addresses and arrested Kathuria under Section 509 of the IPC. This case made Indian legislators‟ to wake up and Section 66-A was introduced in 2008. As a result, now cases are being reported under this section as opposed to Section 509 of the IPC.

3. Karan Girotra case

This case dealt with a woman, Shivani Saxena, whose marriage could not be consummated; as a result she filed for divorce by mutual consent. In the midst, she came across with Karan Girotra while chatting on the internet, who told her that he loves her and wanted to marry her. On the pretext of introducing her to his family, Girotra invited Saxena over to his house, drugged her and assaulted her sexually. He continued to assure her that he would marry her and began to send her obscene pictures in the night. He also threatened to circulate the objectionable pictures if she did not marry him. As a result, an engagement ceremony was performed between the two after which he continued to assault her and eventually break off his engagement. As a result, Saxena filed a complaint under Section 66-A of the IT Act. Though the court rejected the plea of anticipatory bail on the ground that nude and obscene pictures of Saxena were circulated by Girotra, an act which requires serious custodial interrogation, nonetheless it made some scathing remarks. According to the court Saxena had failed to disclose her previous marriage to Girotra. The court also noted that there was a delay in lodging the FIR by Saxena. What is more shocking is that the court held that Saxena had consented to the sexual intercourse and had decided to file a complaint only when Girotra refused to marry her. This case highlights the attitude of the Indian judiciary towards cases involving cyberstalking. It is appalling that factors as redundant as delay in filing the FIR have a huge bearing on the outcome of the case. It is for this reason that more stringent legislation is the need of the hour.

Vinupriya case

In this case, the victim was 21 years old, and finished her B.Sc. in chemistry. On June 23, 2016, when the first morphed photograph appeared, she informed her parents and they lodged a complaintwith the Cyber Crime Cell. The police, either lacking the investigative skills to trace the origin of the morphed photograph or simply displaying a lack of interest, told Vinupriya"s father that it would nab the culprit in two weeks. Two weeks? Seriously? Do these officers of Cyber Crime Cell understand the trauma which Vinupriya and her family would have gone through? That is not all. One of the officers allegedly asked for a mobile phone if the father wanted the investigation to be done. On June 26, another obscene photograph was posted on Facebook, leaving Vinupriya traumatized. The investigating officer had already assumed that she must have sent those pictures to someone and now they were being posted, perhaps by a jilted lover. Due to this trauma, she hanged herself on June 27.10 The second photograph that had appeared on June 26 disappeared within a few hours of news of Vinupriya"s death becoming public. It is proof that the pervert was lurking somewhere close by or was part of Vinupriya"s friend circle.

Sharmistha Mukherjee case

Sharmistha Mukherjee was allegedly harassed by a man, who posted sexually explicit messages on her Facebook page. She lodged a complaint with the Cyber Crime unit of Delhi Police. Police said the lewd messages were sent to the complainant through Facebook Messenger. The profile of the sender

mentions him as a resident of Nauhati in Hooghly, West Bengal. She also tagged the man who has now deleted his profile from Facebook. "This pervert Partha Mandal who is sending me dirty sexual messages. My 1st reaction was to ignore and block him. But then I thought the silence would encourage him to find other victims. Just blocking and reporting is not enough. I strongly feel such people should be publicly exposed and humiliated. I"m posting screenshots of his profile and messages he sent me. I"m also tagging him. Please share this post and tag this rat as a message that these pervert acts will not be taken lightly," she wrote.

Conclusion:

Cybercrime against women is increasing at a very fast rate new offences like trolling and gender bullying are emerging as new fields of cybercrime. But the IT Act 2000 does not include such crimes and the process of investigation is not appropriate. The actdoes not provide any remedy to cyber tolling and gender bullying which is one of the lacunae of the act.There is a need to create separate cells for the investigation. Special training must be given be the officers to deal with the cybercrimes against women. The judicial system of the country should try to tackle the problem of cybercrimes against women effectively. In conclusion, while a crime-freesociety is unachievable and simply a pipe dream, there should nonetheless be a constant endeavor to implement laws that keep criminality to a minimum. Legislation must go above and beyond to ward off impostors because criminality related to electronic law-breaking is bound to rise, especially in a world that depends more and more on technology. Technology isusually a two-edged sword that can be used for good as well as for bad intentions.Several laws have been passed by the legal system to address cybercrime against women to ensure that technology advances healthily and is used for legal and ethical economic growth rather than illegal activities, rules and legislation should work continuously to achieve this.

References:

1. Information Technology (Amendment)Act, 2008 enforceable from 5 Feb 2009
2. Manish Kathuria and Ors. v. State of Punjab.
3. Shah, P. (2012). Cyber Stalking and Legal Enforcement of the Laws in India.
4. Karan Girotra v. State, Bail Appn. 977/2011

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue II, December 2023
DOI:10.13140/RG.2.2.29972.10880
www.kanpurhistorians.org

DECODING ELECTORAL BONDS: THREAT TO DEMOCRACY

DR. MRITYUNJAY KUMAR RAI
Assistant Professor of Law
M.B.S. PG College
Gangapur (Raja Talab), Varanasi

Introduction:

The history of corporate funding of political parties and related election expenditures can be traced back to the beginning of the freedom movement in the early 20th century. The Birla family was one of the most generous donors to the Indian National Congress, and the business community as a whole was able to secure some leverage over the Congress government's policy on economic regulation after independence. Individual donations and membership dues have traditionally been the primary sources of funding for political parties in India.

Understanding electoral bonds

The electoral bond is a strange beast. It is a bond that carries no interest, but is comparable to a junk bond. It combines the promise of high returns to the investor in the immediate term with high risk, but the risk inherent in this instrument is borne by the society. According to Electoral Bond Scheme, 2018, electoral bond is defined as per Sec. 2(a) “electoral bond” means a bond issued in the nature of promissory note which shall be a bearer banking instrument and shall not carry the name of the buyer or payee. Buyer or payee could be an individual, a Hindu undivided family; a company; a firm; an association of persons or a body of individuals, whether incorporated or not; every artificial judicial person, not falling within any of the preceding sub-clauses; and any agency, office or branch owned or controlled by such person.Simply put, electoral bonds are an instrument through which anyone can donate money to political parties. The donor can then give this bond to the party or parties of their choice. The political parties can choose to encash such bonds within 15 days of receiving them and fund their electoral expenses. On the face of it, the process ensures that the name of the donor remains anonymous. The central idea behind the electoral bonds scheme was to bring about transparency in

electoral funding in India. The bulk of the funds raised by the political parties come from donors who have good reasons to avoid any public scrutiny of their munificence. The political establishment, on its part, abhors the prospect of an uncomfortable examination of the linkages between their governments' policies and decisions, and the interests of their major donors.[1]

The role of money in politics has been extensively researched about and the results of various such researches, either conducted independently or being sponsored by different international organisations have pointed out the colossal role that money plays in the formulation of popular opinion in favour or against an issue or a candidate contesting an election. It is seen that the candidates or political parties that have access to more money and muscle power are often able to turn around the result of an election in their favour. Money is a means for the purchase of muscle power, weapons, liquor, and gifts which is often used to unduly influence the voter remains an area of concern for election regulators. Hence, electoral reforms across different jurisdictions around the world have concentrated upon the need for effectuating certain limitations on the funding which can be accepted by the political parties or their candidates, and attention is placed upon ensuring transparency and accountability in the contributions which are so received by them. The reasoning for regulating political contributions has been argued upon differently by various commentators but the essence of the said argumentation can be summarised in a three-fold manner, first, the translation of electoral advantage due to financial predominance.[2]

EARLIER POSITION

The Representation of the People Act (RPA) of 1951 was the law that initially established a limit on how much can be spent on election campaigns. The Wanchoo Direct Taxes Enquiry Committee in 1971 and the Santhanam Committee on Prevention of Corruption in 1964 both made emphatic mentions of the presence of black money infiltrating the political system at a time when modern democratic institutions in India were still developing. This move was most likely due to the increasing influence of the Swantantra Party, which was the main beneficiary due to advocacy of "free market economy." In 1968, the Prime Minister of India, Indira Gandhi, banned corporate donations to political parties. This was seen as the first major step in curbing the influence of black money in election processes. The ban was followed by the introduction of no alternative mechanism for political funding, such as the option of state funding. Due to the lack of an adequate and legal source of funds, this further complicated the involvement of illegal funds in electoral campaigns. In 1974

[1] Kamal Kant Jaswal, Electoral Bonds The Illusion of Transparency, lIV(21) *Economic & Political Weekly* 32-36 (2019).

[2] Ishu Gupta and Trisha Singh Naulakha. Demystifying the Electoral Bond Scheme Political Contributions and quest for Transparency, 3(4) *International Journal of Law Management & Humanities* 1375-1397 (2020.)

the Supreme Court in its judgment[3] held that, "part spending on behalf of a candidate should be included in calculating that candidates election expenses''. In relation to this judgement, the RPA was modified in 1975 so that "party and supporter expenditures not authorised by the candidate did not count toward the calculation of candidate's election expenses." This amendment was made in light of the fact that "party and supporter expenditures not authorised by the candidate were not counted." Then, in l985, the electoral process completed a full cycle when an amendment was made to the Company Act, which once again made it possible for corporations to donate money to political parties.

In 1990, the Dinesh Goswami Committee on Electoral Reforms recommended partial state funding of elections. This would include funding for things like rental fees for microphones, additional copies of electoral rolls, fuel for vehicles used in campaigns, and so on. These recommendations left some questions unanswered like political parties campaign expenditures. The main feature of the RPA amendment bill that was passed in l996 by the government was shortening the campaign period from 21 days down to l4 days in order to reduce the amount of money that was spent on campaigns. In l998, the Indrajit Gupta Committee on State Funding of Elections advocated for free TV and radio broadcasting of state-owned media in addition to partial state funding. This recommendation was made. The Gupta Committee also suggested that political parties should be denied state funding if they failed to keep audited financial records and income tax returns and submit them when requested. According to this recommendation, all political parties that are granted financial assistance from the state for their electoral campaigns will be required to submit detailed accounting information to the Election Commission in a format that has been established by the Election Commission. Since the 2009 LokSabha election, the threat posed by electoral funding by big corporate houses has increased considerably. In exchange for the financial assistance, the government was subjected to an excessive amount of pressure to satisfy the economic and policy-related goals of the donors.

ELECTION FUNDING REFORM

The logic behind the reforms in the electoral process with special emphasis on financing in elections has been at the fore of Indian electoral reforms too. The Law Commission of India in its 255th Report on Electoral Reforms (hereinafter, "LCI Report") emphasised the need for creating channels for ensuring transparency and accountability in electoral donations which are received by the parties and their candidates.[4] Pursuant to the concerns regarding transparency in political funding and promoting the usage of non-cash instruments for the making contributions to the political parties, the Union Government came up with the certain Amendments to the Representation of People Act, 1951, the Reserve Bank of India Act, 1934, the

[3] *KanwarLal* v. *Amar Nath Chawla*, [1975] 2 SCR 259

[4] Law Commission of India, Electoral Reforms: Report No. 255, (2015)

Companies Act, 2013 and the Income Tax Act, 1961, thereby, empowering the Union Government to notify a scheme for the introduction of Electoral Bonds in the country, through the Finance Act, 2017.

ELECTORAL BOND SCHEME AND LEGAL LACUNAE

The Union Government presented the Scheme with an underlying objective claimed to repress the perils of corrupt money and to narrow down the opaque nature of the electoral funding within the Indian legal framework. The Scheme, which was notified on January 2, 2018, allows individuals (who are citizens of India) and domestic companies to donate these bonds — issued in multiples of Rs 1,000, Rs 10,000, Rs 1 lakh, Rs 10 lakh, and Rs 1 crore — to political parties of their choice, which have to redeem them within 15 days. A person being an individual can buy bonds, either singly or jointly with other individuals. No limit exists on the number of electoral bonds that a person (including corporate entities) can purchase. The amount of bonds not encashed within the validity period of fifteen days shall be deposited by the authorised bank to the Prime Minister Relief Fund (PMRF). So far, 146 bonds amounting to a total of Rs 20.2835 cr (0.275%) were deposited in the PMRF. Thus, 99.725% of the bonds purchased during the seventeen phases were encashed by the political parties within the validity period. Only those political parties which fulfill the following criteria are eligible to receive electoral bonds – (i) registered under section 29A of the Representation of the People Act, 1951 and (ii) secured not less than one per cent of the votes polled in the last general election to the House of the People or the Legislative Assembly, as the case may be. In accordance with the Electoral Bond Scheme, 2018, the section 29C of The Representation of the People Act, 1951 has been amended to remove the obligation of political parties to keep a record of the identity of donors who give any sum of money through Electoral Bonds or report the same to the Election Commission of India (ECI) annually.

(A) The anonymity surrounding the contributions received under the Scheme

The RPA prescribes that every political party is required to prepare a report concerning all the contributions exceeding the limit of INR 20,000/- received by such political party within a particular financial year. Furthermore, sub-section 3 of Section 29C of the RPA, 1951, makes it compulsory for every single party to submit such aforesaid Report of Contribution to the ECI before furnishing its returns of Income Tax per Section 139 of Income Tax Act. Failure to fulfil such a condition denies the respective political parties from availing the advantage of exemption of tax under the Income Tax Act. However, the amendment carried out in Section 29C of the RPA, vide Section 137 of the Finance Act 2017, inserted a proviso clause to sub-section 1 of Section 29C which provided that the political donations received through Electoral Bonds are out of the scope of declarations under the Annual Contribution Report as per the mandate of Section 29C of the RPA. The significant implication of the said amendment on the transparency of the electoral funding is that the political parties submitting the Contribution

Declaration Reports to the Election Commission do not have to mention the names and other details of the ones contributing through Electoral Bonds. Accordingly, the political parties are free to not file yearly contribution reports in instances wherein contribution is received by way of electoral bonds.

(B) The income of the political parties

Section 11[5] of the Finance Act 2017, effectively amended section 13A of the Income Tax Act, 1961 which provides tax exemption to political partied different heads of income, including the contributions, received employing political contribution. As per Section 13A, any income received by a political party which is derived through voluntary contribution will constitute part of the total income of such political party subject to the following conditions, first, that a record of such contribution exceeding INR 20,000/- is maintained by the political party in its books of account to facilitate the Income Tax Officer to deduce such income, second, that the accounts of such political party are audited by an accountant as per Explanation under subsection (2) of section 288, and third, that a report is furnished by such political party under subsection (3) of section 29C of the RPA. The amendment in the proviso clause (b) of Section 13A of Income Tax, 1961, has excluded the contributions received through electoral bonds from being reported to the Income Tax Department. That is to say, political parties are under no obligation to maintain records of donations taken using Electoral Bonds to get benefit under Section 13A, and if no records are essentially maintained by political parties, no questions can be raised to the Income Tax Department regarding such contribution. This implies that the political parties will have to declare donations exceeding INR 2000/- to obtain tax exemption. However, no such amendment was made in this respect to the corresponding provision under section 29C of the RPA.

(C) Uncapped Corporate donations

To give effect to the Scheme, the amendment to section 182 of Companies Act, 2013 through section 154[6] of the Finance Act, 2017, waived off the limits stipulated under the proviso clause of section 182(1) which prescribed that the corporate donations to political parties within a financial year cannot be more than 7.5% of a company's average net profits in the past three consecutive financial years.[7] The statutory cap of 7.5% served as an essential check on the unreasonable and illegal corporate donations. Further, the requirement for the companies to donate out of the net profits of three preceding financial years ensured that the companies which are contributing to the political parties are bona fide profit-making companies. A noteworthy ramification of the aforesaid amendments is that they allow companies to make unlimited corporate donations which would enable the companies to unduly influence the ruling political parties by giving them huge contributions.

---

5 Finance Act, No. 7 of 2017, INDIA CODE, § 11.
6 Finance Act, No. 7 of 2017, INDIA CODE, § 154.
7 The Companies Act, No. 18 of 2013, INDIA CODE, § 182

(E) Eligibility for encashment of Electoral Bonds

The Scheme prescribes the eligibility criteria of the political parties to encash Electoral Bond under sub-clauses (3) and (4) of clause 3 of the scheme. Under clause 3(3) of the Scheme,[8] only those political parties are permitted to take Electoral Bonds which are registered as per Section 29A of the RP Act, 1951 and have obtained at least 1% of the total votes in the previous general elections to the LokSabha or the State Legislative Assembly.[9]However, the concerned provision failed to take into account the independent candidates contesting elections, the political parties which did not participate in the previous general election, newly constituted political parties which will face a major setback in raising funds under the provisions of the scheme, and any other political party which fails to secure 1% of total votes polled in the previous general elections. Additionally, clauses 3(4)[10] and 12(1) of the Scheme further prescribes for a requirement that the eligible political parties can encash the Electoral Bonds only by depositing the said bonds in their respective bank accounts designated by the authorized bank.On a closer view of the aforesaid provisions, it can be inferred that where contributions taken by way of Electoral Bonds are not declared under sections 29C of RPA and 13A of the Income Tax Act[11], on inspection of the Contribution Reports and books of account of a political party, it is now difficult to ascertain as to whether or not a political party has received any contribution in contravention of eligibility criteria for encashment of bonds under clauses 3 of the Scheme.

(F) Relabelling of Foreign Money

India has rightly been wary of foreign influence in its democratic processes. Section 29B of the RPA bars political partiesfrom accepting contributions fromany foreign source as defined in the ForeignContribution (Regulation) Act, 2010(FCRA). Companies incorporated outsideIndia and their Indian subsidiaries camewithin the mischief of the 1976 act.Despite this prohibition, both the IndianNational Congress (INC) and theBJP received donations from two Indiansubsidiaries of the United Kingdom-basedVedanta Resources between 2004 and2012. The Delhi High Court, adjudicatingthe matter in a PIL fi led by ADR, heldthat the contributions in question werefrom foreign sources, irrespective of thefact that an Indian national held a majorityof the shares of Vedanta Resources.[12]

Legality of Electoral Bonds

The Supreme Court has belatedly taken up for consideration a PIL fi led by ADR and Common Cause [WP(C) 880/2017] to challenge the constitutionality of the amendments made in the legal framework by the Finance Act of 2017. The petition posits that these amendments infringe the citizen's fundamental "Right to Know" under Article 19(1)(a), and are not saved by any of the

8 Electoral Bond Scheme 2018, cl 3(3)

9 RPA, § 29A.

10 Electoral Bond Scheme 2018, cl. 3(4).

11 ITA, § 13A

12 *Association for Democratic Reforms and Anr*v. *Union of India and Ors*2014

reasonable restrictions under Article 19(2). The vires of the amendment to FCRA 2010 effected through the Finance Act, 2016 have also been challenged. The gravamen of the petition is that the impugned amendments jeopardise the country's autonomy, militate against transparency, incentivise corrupt practices, and render the nexus between politics and big business more opaque. The instrument of electoral bonds enables special interest groups, corporate lobbyists and foreign entities to secure a stranglehold on the electoral process and influence the country's governance to the detriment of the masses.

On February 15, in what one can call a watershed moment, the Supreme Court of Indian struck down the Electoral Bonds Scheme of 2017, holding the same to be unconstitutional. While pronouncing the unanimous verdict of the five-bench constitutional bench, Chief Justice of India DY Chandrachud held that anonymous electoral bonds are violative of the right to information under Article 19(1)(a) of the Constitution.

The constitution bench, also comprising Justices Sanjiv Khanna, BR Gavai, JB Pardiwala and ManojMisra, had dealt with two major issues in the said case- whether the non-disclosure of information on voluntary contributions to political parties in accordance to the electoral bond scheme and the amendments to Section 29C of Representation of the People Act, Section 183(3) of the Companies Act, Section 13A(b) of the Income Tax Act should be held violative of the right to information under Article 19(1)(a) of the Constitution, and second, whether unlimited corporate funding to political parties as envisaged by the amendment to Section 182(1) of the Companies Act violates the principle of free and fair elections.

On February 15, in what one can call a watershed moment, the Supreme Court of Indian struck down the Electoral Bonds Scheme of 2017, holding the same to be unconstitutional. While pronouncing the unanimous verdict of the five-bench constitutional bench, Chief Justice of India DY Chandrachud held that anonymous electoral bonds are violative of the right to information under Article 19(1)(a) of the Constitution.The constitution bench, also comprising Justices Sanjiv Khanna, BR Gavai, JB Pardiwala and ManojMisra, had dealt with two major issues in the said case- whether the non-disclosure of information on voluntary contributions to political parties in accordance to the electoral bond scheme and the amendments to Section 29C of Representation of the People Act, Section 183(3) of the Companies Act, Section 13A(b) of the Income Tax Act should be held violative of the right to information under Article 19(1)(a) of the Constitution, and second, whether unlimited corporate funding to political parties as envisaged by the amendment to Section 182(1) of the Companies Act violates the principle of free and fair elections. Observing the scheme to be unconstitutional, the bench also quashed the amendments made to the Income Tax Act and the Representation of People Act which had made the donations anonymous. In furtherance to this, the bench observed that the amendment to Section 182 of Companies Act

becomes otiose in view of the unconstitutionality of the electoral bonds scheme.

Conclusion:

India still has a long way to go in its pursuit of financial electoral reforms, but measures like the government's Electoral Bonds Scheme are archaic and undo most, if not all, of the progress made in this regard. In order for the public to act as a watchdog and obtain information on political finance, this is crucial from a democratic point of view. The basic idea of a "informed electorate" is broken by the lack of this knowledge. This was emphasized by the court's ruling that individuals have a right to know who donates to which political parties because those organizations operate in the public eye. Big capital and politics are closely related since corporate donors provide all of the funding for India's costly elections. The most important institutional development to date to solidify this connection is electoral bonds. The Supreme Court needed six years to determine that the plan was, in fact, illegal. All of the current recognized concerns were stated in earlier petitions, but the court declined to put the plan on hold, stating that the discussion surrounding it created "weighty issues" that need more time for consideration. For those who have been outspoken in their criticism of the ruling dispensation's corporate ties, as well as for democracy and transparency, this historic rulingone of the most important in recent Indian political historyis a huge win. It demonstrates that "votes over notes"the power of the people over that of moneyis paramount.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue II, December 2023
DOI:10.13140/RG.2.2.29972.10880
www.kanpurhistorians.org

REPRESENTATION OF *VEDANTA* IN *DABISTAN-I MAZAHIB*

REYAZ AHMAD KHAN
Associate Professor
Department of History
Aligarh Muslim University
Aligarh, India

India is land religious philosophies and among them *Vedanta* is one of the prominent philosophy, based on pantheism. One of the great exponents of *Vedanta* Philosophy was Shankaracharya. During 16th and 17th centuries numbers of texts were written in Persian, which contain account of *Vedanta*. *Dabistan-iMazahib*, 17th century work narrates basic tenants of various religions and their divines including *Vedanta* . The Philosophy of *Vedanta* was also keenly noticed by Akbar and Jahangir. Jahangir was so much impressed by the Philosophy of *Vedanta* that once he remarked that the science of *Vedanta* is the science of *Tasawwuf*.

Key Words: *Vedanta, Tasawwuf, Mihrab, Sanyasi, Baitullah, Talims, Gyan, Trimurti, Maya, Mukti, Om, Hom, Tauhid.*

The study of religions and religious philosophies forms an essential aspect of understanding the socio-cultural moorings of a time period. It becomes more relevant in the context of the Indian subcontinent, which has multiple religious ideologies and diverse philosophies. The region has been a breeding ground for numerous religions like Buddhism, Jainism, Sanatana Dharma, Sikhism, and Islam, among others. Numerous philosophers and scholars had postulated ideas and beliefs from time immemorial, which had been captured in the contemporary literature. The religio-cultural diversity of the Indian subcontinent has been reflected in these texts that highlight various aspects of these religious philosophies. One such religious philosophy popular in the

region is the philosophy of *Vedanta*. It is associated with an 8th century philosopher named Shankaracharya. The exposition of *Vedanta* is considered as the greatest achievement of his life. Since his time, the *Vedanta* has been regarded as one of the principal religious philosophies of India. The science of *Vedanta* has consistently received the attention of scholars [1].It is often claimed that it presents the true nature of Hinduism before the world.

Several texts written during the medieval period provide an account of *Vedantic* philosophy. It is well known that the Mughal rulers were interested in native culture and tradition. In order to gain a better understanding of their subjects, they took a keen interest in native socio-religious traditions. In fact, they encouraged their nobility and officers deputed in a specific region to learn about local traditions and customs in order to administer efficiently. There are numerous examples of Mughal rulers delving deeply into the logic behind a particular ritual or tradition. The *Vedantic* philosophy was one such school of thought that received royal attention. The Mughal emperor Jahangir (r. 1605-1627) was very much influenced by the science of *Vedanta*. In his memoir, he writes that the science of *Vedanta* is the science of *Tasawwuf*[2]. One of the reasons behind Jahangir’s keen interest in *Vedantic* philosophy was his association with a *Sanyasi* named Jadrup. Jadrup was a resident of Ujjain but had retired into the desert and was engaged in the worship of god. After his stay in Ujjain, Jahangir went to visit this *sanyasi* and in due course of time he met him several times. That he revered the sanyasi is evident from the fact that the emperor did not send for him but himself went to meet him, and covered the last part of the journey on foot[3].

Another aspect which highlights Jahangir’s leaning towards Jadrup, and his religious thoughts, is his minute observation with regard to the *sanyasi*. His memoir gives a vivid description of these meetings. Jahangir gives a description of his abode, which was dug into a hill whose entrance was in the shape of a *mihrab*. A detailed measurement of this place is also given in Jahangir’s memoir. His observations about Jadrupis equally detailed. He

---

[1] Radhakrishnan S. (1923), *India Philosophy*,Delhi; Chandradhar Sharma(Reprint 2000), *A Critical Survey of Indian Philosophy*, Motilal Banarsidas Pulishers Delhi; Ayyar K.A.K.(1965), *Vedanta or Science of Reality, Holensarsipur*; R.P.Bahadur(1983), The Wisdom of Vedanta, New Delhi;Sir Charles Eliot(1921) *, Hinduism and Buddhism.*

[2]Jahangir(1863-64), *TuzukiJahangir*i, edited by Sir Saiyid Ahmad ,Ghazipur and Aligarh , p.176; Abul Fazl also discusses the Philosophy of *Vedanta* but he does not mention the stages of consciousness and kinds of liberation, See Ain-i Akbari, translated by H.S.Jarrett, Low Price Publications, Reprinted 2011, pp.172-79.

[3]*Tuzuk-iJahangiri*, p 175;Also see ShirinMoosvi (2002), Mughal Encounters with Vedanta; Recovering the Biography of Jadrup, social scientist , volume 30 no. 718PP-1323.

mentions that the *sanyasi* had a weak personality and he passed his time in solitude. He just had a piece of rag at the front and back and he never lights a fire. He bathes twice daily in a water body near his place and visits Ujjain on a daily basis, to the house of three brahmin families. He takes five mouthfuls of food from them as alms, which he swallows without chewing in order to avoid the enjoyment of its flavour. Jahangir met him thrice in Ujjain[4], first during his eleventh regnal year (1617) and twice during his thirteenth regnal year (1619). Jadrup moved to Mathura in 1620, where Jahangir again met him twice in the same year. Jahangir was highly impressed with the knowledge and philosophical ideas of Jadrup, which were mainly based on the divine books (*Vedas*). Jahangir writes that he gained much from these meetings with Jadrup and his heart felt heavy at the time of parting[5]. Jadrup enjoyed a privileged position in the Mughal circle is an established fact and a possible explanation for this could be found in the fact that he was the first man, who brought the *Vedanta* to the notice of the Mughal court. Apart from the memoirs of Jahangir, another text that gives an account of Jahangir's encounter with a *Vedantist* is *Dabistan-i-Mazahib*[6].It was written in the mid 17th century, it is among the most detailed works on religious ideas and thoughts of the period.
Dabistan, whose authorship is unknown, examines and compares nearly all of South Asia's contemporary religions and sects. There are a total of twelve sections (called *talims*) in the text, and each one deals with a different faith or philosophy. Each major world religion is covered in depth, including but not limited to Zoroastrianism, Hinduism, Buddhism, Judaism, Christianity, Islam, Sufism, and others. Part of the book is dedicated to Akbar's *Din-i-Ilahi*. It also includes one of the earliest accounts of Sikhism's history. As such, this book is a valuable resource for learning about the religions of today's South Asia. The author of *Dabistan* also records a detailed description of *Vedanta* philosophy doctrine. He discussed well-known *Vedantists* of the time. He travelled extensively throughout the region, including Kashmir, Afghanistan, Gujrat, Malwa, and Punjab, and he met several *Vedantists*. In this paper, an attempt is

---

[4]*TuzukiJahangiri*, PP.176-177
[5]*TuzukiJahangiri,* PP.178
[6]According to Irfan Habib, the author of *Dabistan* is identified by different names- Mobad, Mohsin Fani, KaikhusrauIsfandiyar and ZulfiqarBeg. The author of *Dabistan* was born at Patna around 1617, In 1624 he arrived Agra, hereafter he roamed in north and north western region. For more detail see Irfan Habib, A Fragmentary Exploration of an Indian text on religion and sects – Notes on the earlier version of *Dabistan- iMazahib*, Proceeding of Indian History Congress, 2000-2001, pp. 474-91;M. Athar Ali, Pursuing an elusive Seeker of Universal truth: The Identity and Environment of the Author of *Dabistan-iMazahib*, Studies in Polity, Ideas, Society and Culture, OUP-2000,PP.216-28; SudevSheth, Manuscript Variation of *Dabistan-iMazahib* and Writing Histories of Religion in Mughal India , A Journal of the Schoenberg Institute for Manuscript Studies,Vol.1,2019.

made to conduct a critical analysis of *Vedanta* science. It is also attempted to shed light on the lives, philosophy, and practices of some great *Vedantists*, such as Shankaracharya, Raina Gyani, Shankar Bhatta, Mahtab Raina, Har Rampuri, Suthra Faqir, and PratapmalChaddhaAkamnath Yogi.

The science of *Vedanta* is one of the oldest Indian schools of philosophy. *Dabistan* mentions that the followers of this science were pious and knowledgeable[7]. While narrating the fundamental doctrine of *Vedantic* science, the author says that the realization about the existence of the Supreme God depends upon knowledge *(gyan)*. The characteristic features of the supreme reality are free from any imperfection. He is fully aware of the veiled and unveiled things. His existence is reflected everywhere and in everything. He is the supreme soul and most holy spirit. That's why he is called the *Parmatma* (the absolute God). He is omnipresent and omniscient. The *Vedas* (the revealed books) mention that every creation has a creator. God is the supreme creator of the universe who created everything that exist and He resides in every entity. But man doesn't realize this unity due to ignorance. He sees the existence of distinct objects. This illusion is called *maya* or *makrullah*. Like an actor, God appear in different forms from time to time. He appeared in the form of Brahma, Vishnu, and Mahesh[8]. The author of *Dabistan* designated this reality as *AqnumSalasah* (*Trimurti)*. The author further adds that God produced the world after demonstrating it in three different forms. To elucidate the relation between God and man the author compares it with the relation between river and water and spark and fire. It means the two are inseparable. Owing to this phenomenon the soul is referred to as *Jivatma*. However, while discussing the soul, the text argue that it appears as being distinct from the body due to man's selfishness. The soul is held captive in the body due to man's unending desires. The interaction of body and soul has also been discussed in the text.
Dabistan describes the three states of consciousness of the individual soul. It highlights the advanced state of *Vedantic* philosophy in which it captures the essence of human life. The first state is *jagritawastha* (the state of waking). This is the state when the individual is conscious about his surroundings. This state is that of self-consciousness that comes from knowing the subject and experiencing the inevitable fruits of its activities, such as hunger and thirst. In other words, the soul is aware of the things happening around him and he is aware of its influence on him. After the fulfilment of desires, the individual soul experiences comfort and pleasure, and in the case that the desires are not fulfilled, the individual soul feels pain. The individual soul is aware of the daily world. The second state of the individual soul's consciousness is called *svapnaawastha* (the state of dream). In this state the individual soul is in intermediate state- neither awake nor fully asleep. It is a state filled with

[7]*Dabistan* P.165
[8]*Dabistan* PP.165-166

illusion (*maya*). When, in his dreams, an individual soul acquires material objects such as gold and silver, it experiences pleasure but, after waking up, he finds nothing and thus realized that the happiness was not true. The third state of consciousness is designated as *susuptaawastha* (the state of dormancy or deep sleep). Again, in this state, the individual soul is a conscious subject but liberated from all bonding which could result in pleasure or pain[9]. He is unaware of his surroundings, thus can't feel anything.

It has been argued in the text that in all the three states, the individual soul is being held captive inside the body. Its liberation depends on individual actions (*karma*). By dint of good *karma* (action), the soul acquires a blissful state and is liberated from the state of illusion. He reaches the state of *maarifatIlahi* (reach close to God). Scholars referred to the medium through which the soul breaks the chain of illusion as *gyan* (knowledge). The person who acquires this knowledge thus becomes *gyani*. After acquiring true knowledge the soul becomes conscious of its true identity in the same way as a person wakes up from his dream[10]. The author of *Dabistan* further writes that the individuals with true knowledge (*gyani*) consider liberating from illusion as similar to mistaking rope for snake in darkness[11] .In the same way, a person with *gyan* considers the existence of the world to be a *maya* or illusion. Whatever appears around him seemed reality to him due to his ignorance. The only reality in this universe is the *Brahma* (the Ultimate being or the Creator). The soul which realizes this ultimate reality is in the state of *turyaawastha*[12]. This is the state of pure consciousness. *Turya* state is the state of liberation where one experiences the absence of duality. Finally, after getting rid of the material world, a *gyani* (soul with true knowledge) achieves the state of *mukti*[13](liberation).

According to the Vedanta philosophy, one can achieve liberation through *gyan* (knowledge). Thus, the followers of this philosophy were called *gyanis*. The author of *Dabistan* is quite detailed in the description of the state of liberation. He records five kinds of liberation and also explains each kind. First is *salokya* (living in the same *loka,)* an ascetic who, after attaining the state of liberation, resides in the space of divines such as the city of Brahma, the city of Vishnu, and the city of Mahadev. The second kind of liberation is known as *samisaplim(samipya*) which means to be a personal associate of the Supreme God. It reflects a souls nearness to the deity. In this form of liberation, a devotee acquires the features of the divine and are influenced by their company. The third kind of liberation is *saroopem or sarupya* . It means that except few features meant exclusively for the Supreme God, the soul acquires the same bodily features as those of the Supreme God. It also endows the soul

---

[9]*Dabistan*, p. 166
[10]*Dabistan*, p. 166.
[11]*Dabistan*, pp. 166-67.
[12]*Dabistan*, p. 167.
[13]*Dabistan* , p. 167.

the ability to acquire the form of a divine whom he desires. The fourth form of *mukti* is s*ayugem or sayujya*, i.e. the merging of one's existence with Brahma. It means the soul becomes the part of Brahma and loses its distinct identity. The text gives a very good example of this type of spiritual merger and compares it with the mixing of water with water which instantly becomes one. The fifth form of *mukti* is *Jivatma*, which refers to achieving liberation during one's lifetime. The individual soul of an ascetic assumes the form of *Parmatma's* ultimate reality. This type of *mukti* is designated as *kewalem* (Ultimate liberation)[14].

The Hindu sages and scholars had explained the basic characteristic features of the philosophy of *Vedanta*. The author of *Dabistan* gives a description of such explanations in the text which throw light on various nuances of *Vedanta*. The text mentions about the advice of Vashist (a Vedic sage who is referred to as the first sage of *Vedanta* philosophy by Shankaracharya) to Ramachandra which is called *Yogavashist*. The other similar mention is about the advice of Krishna to Arjun which is called *Katha*[15]. Further, *Dabistan* mentions about Shankaracharya, whom it considers as the most learned and distinguished divine, who had written several books on the aspect of *Vedanta*[16]. It highlights that the followers of this school of philosophy believe that the world and other creations are merely an illusion; they have no existence. The sole reality is *Parmatma* (ultimate reality). They are also convinced that heaven, hell, wealth, pain, and pleasure are just dreams[17].

Apart from the detailed description of the ideas and belief system of *Vedanta*, the author of *Dabistan* also gives a narration of some the contemporary *Gyanis*. These references further highlights various aspects of the philosophy of *Vedanta*. One such reference is about Rayarup.

He was a learned Raja who authored several books. *Dabistan* mentions an interesting account of a conversation between the *gyani* and the author of *Dabistan* himself. Questioning the *Vedantic* theory of reality and illusion, the author of *Dabistan* asks the *gyani* why is it so that a person who dreams of getting injured finds no sign of injury when he wakes up, however, if he had an erotic dream he wakes up with a dirty attire. The semen in his attire is a reality of the deed which was a part of his dream. How could this phenomenon be explained? The *gyani* replied that the condition that the person with such dream perceives after waking up is also an illusion[18].

In another exposition of the philosophy, the text describes that according to the *gyanis*, Brahma, Vishnu and Mahesh are in fact the three different qualities of the Supreme God. Brahma is the creator, Vishnu is the preserver, and

---

[14]*Dabistan* , p. 167.

[15] *Dabistan*, p.167

[16] *Dabistan*, p. 167, Also see Natalia Isayeva(1993), *Shankara and Indian Philosophy,* State University of New York Press.

[17] *Dabistan*, p.167

[18] *Dabistan*, p.168

Mahesh is the destroyer. These are the qualities of also found in man's mind (*manas*). These qualities also represent the internal senses of a man. Apart from that, the *gyanis* do not believe in the existence of internal senses in men. These qualities of a man could be understood by the example of a mind visualizing any city. At this juncture, the mind is behaving like Brahma, the creator because his imagination is creating the city in his mind. As long as the mind maintains the imagination of the city, it is reflecting the qualities of Vishnu, the protector. After that, whenever the mind desires to abandon it, it becomes Mahesh. In further explanation of the metaphysics of *Vedanta,* the text mentions that the sole purpose of devotion is to realize that the world is an illusion (*maya*) without any real existence. The only existing reality is the Ultimate being or the Supreme God. If a person experiences the absolute reality through his intelligence or teaching by a teacher or through study of books, he does not require any further devotion or worship to achieve salvation[19]. He had already received the state of liberation or *mukti*.

One of the enlightening descriptions with regard to *Vedantic* philosophy mentioned in *Dabistan* is regarding the *mantra* (hymn), *OM*. In a *yajna* (vedic ritual), ghee is poured in the *havan* (fire altar) while the *mantra* (*OM*) is chanted. The purpose of this ritual is to get the blessing of God through offering. The other description is regarding the ritual of *dandawat or pranayama*. It has important significance among the Hindus as their religious rites. *Dandawat* is performed by prostrating the body on the ground before God. The compiler of the *Dabistan* mentions an incident about Bharathari, an accomplished *Gyan*i, and *Yogi* of his age[20]. This account highlights the logic behind the rituals followed by the believers of the philosophy. Someone asked the *gyani* that when does he recites mantra? He answered, he did that with every breath. He was then asked that whether he chants the mantra, *OM*? He answered positively, and said he chants it whenever he ate. The third question put before him was regarding the practice of *dandawat*[21]. He replied that he practiced *dandawat* when he slept. At this point, the author of *Dabistan* quotes a *hadith* (sayings of prophet[PBUH]) that the sleep of an *aalim* is better than the worship of the ignorant.

As already mentioned before, Jahangir compares the science of *Vedanta* with *Tasawwuf*. *Dabistan* mentions a difference of opinion between the philosophy of *wahadatulwujud*(unity of being) and that of *Vedanta* in relation to God and man. The former basically emphasize on the fact that God is *hamawooast*, meaning He (God) is present in everything. However, according to *Veadantists*, the most appropriate expression in this regard is *hamamanam* (God Himself is everything). It is further mentioned in the text that the followers of *Vedantic* philosophy are learned and are strict in their adherence

---

[19] *Dabistan*, p. 169

[20] Bharathari , a king of Ujjain, many folk stories are attributed to him in north India,

[21] *Dabistan*, p.170

to the basic tenets of the philosophy. They are aware about the incidents happening around them and the consequences of those incidents. The author of *Dabistan* narrates an incident in this regard. Once some hypocrites and rivals of the *Vedantic* philosophy hatched a conspiracy against Shankaracharya. They decided to move an elephant toward him. If he does not leave the spot, considering the elephant as mere illusion, it means he is honest towards what he preached. But if he leaves the spot, and runs away, it would mean that he is a liar. Seeing the elephant towards him, Shankaracharya disappeared from the scene. When those hypocrites asked about the cause of the flight, he replied that neither the elephant nor his flight nor he himself was a reality. These are all your illusions[22].

Dabistan provides an interesting narration of a *Vedantist* whose name was Mehar Chand. He joined the group of the devotees of Akamnath *Yogi* and reached the state of liberation. The text narrates an incident related to Akamnath which highlights the belief system of *Vedanta*. Once he was summoned to the court of Jahangir. In the court, a person was reading a book before the emperor. Emperor Jahangir asked the reader to hand the book to Akamnath for recitation. Jahangir told him that the book contained his own sayings. However, Akamnath returned the text back to the reader claiming that all the objects existing in the world is created by God and is a part of Him. Therefore, the book which the emperor claimed to contain his sayings also a part of God as it was being read through the reader's mouth which was created by God. There is an another such episode in which the *Vedantist* emphasized on the philosophy of non- duality. *Dabistan* mentions that once Akamnath went on pilgrimage to *Kabah*. After reaching there, he asked a person where is *Kabah*? He repeated his question again when the doors of *Kabah*, also referred as *Baitullah* (house of God), was opened. But he did not get any reply. At this point he shouted that since the owner of the house was not present, so, he could not stay there anymore. Finally, he asked why were the idols removed from *Kabah*? A person present there replied that idols were the creation of man, hence they didn't have merit to be worshipped. On this reply Akamnath argued that *Kabah* was also a human creation, so how could it be worshipped[23]? The point he was making is that all the worldly things are *maya* (illusion). The only reality is the existence of the Ultimate being i.e. God. This forms the central teaching of the *Vedantic* philosophy.

In another detailed narration about a contemporary *gyani, Dabistan* mentions about *gyani* Raina. In 1639 AD, the writer of the *Dabistan* arrived in Kashmir and met *gyani* Raina. The author had an interaction with the *gyani*. He had a large number of disciples. When he was asked about his disciples, he replied

---

[22] *Dabistan*, p.170

[23] *Dabistan,* pp. 175-76; But *Tuizuk-iJahangir* does not refer the conversation between Jahangir and Akamnath

that they are those who have surrendered before the will of God and that they does not understand anything except God[24].

In the Kashmiri language, *gyani* was called *Korukoria. Gyani* Raina was the son of Shiv Raina. Shiv Raina was an expert in performing *jasdam*. One day he visited Naushaharah (Kashmir) where he announced that next day his soul would depart from the body. The next day people assembled there, and all arrangements were made to burn the body. Shiv Raina reached the spot and sat on the pyre in the state of *Padmasana.* In a short while, his soul departed from the body. After that, his body was cremated[25]. *Dabistan* mentions that like his father, *gyani* Raina was also a master of *jasdam*. He also mastered breath controlling. He could stop his breath for a long time. He had developed expertise in the study of Hindu scriptures. He became a great scholar and free-minded person. The loss and gain of wealth had no sign of sorrow or happiness on his face. He loved to have the company of *darwesh*. He always talked about *tauhid* (oneness of God)[26].

The author of *Dabistan* also describes the practice of organizing *Hom* (ritual of sacrifice) in the region of Kashmir. In this custom, a goat was sacrificed, and some hymns were recited. *Gyani* Raina, while describing the philosophy of *Vedanta* through the practice of *Hom*, says that to a raw mind it may appear that the fire is burning the animal. But actually the fire is the medium through which the duality of being is burnt and not the goat. In the same way, he gives similar explanations for different rituals of Hindu faith. One day Gangu, Raina's nephew, was crying. The author of *Dabistan* asked him that the previous day he was saying that the world was merely an imagination then why the child was crying. He replied that if the world had no existence, then the cry of the child also has no existence.

The author of *Dabistan* also met some eminent disciples of *Gyani* Raina such as Shankarbhatta, Ganeshbhatta, Sudarshan Kaul, Aadab Bhatta, and Mahtab Raina. It is full of such descriptions elucidating the interactions with them. These interactions are quite insightful in the understanding of the core concepts of *Vedantic* philosophy. The text refers to an exciting encounter between Shankar Bhatta and a goldsmith. The goldsmith asked Shankar Bhatta that why he indulged in idol worship although he is agnostic. Shankar Bhatta asked why did you involve in metal work. The goldsmith answered that it is his profession and the medium of earning to get his livelihood. After listening to this, Shankar Bhatta replied in the same manner and said that this is also his profession; this was also a business[27]. Once the author of *Dabistan* visited the residence of *Gyani* Raina and had a conversation with his followers. He was astonished to see the discipline that was maintained there. He further adds that

---

[24] *Dabistan*, pp. 171

[25] *Dabistan*,p.170.

[26] *Dabistan*, p.171

[27] *Dabistan*, p.172

he had spent his entire life in the service of liberal men but never witnessed such a nonconformist assembly[28].

Dabistan mentions about another *gyani* named Har Rampuri Sanyasi. He was an agnostic. He shaved his head on the river bank of Bahisht. Shri Kant Bhatta Pandit advised him to shave his head at any pilgrim spot. He replied that the holiest place is where a person experiences extreme joy. He used to spend the entire night at the *marghat* (crematorium). In 1642 AD, he visited Kishtewar and stayed at *choughan*, where dead bodies were cremated[29]. Maha Singh, the son of Raja Bahadur Singh of Kishtewar, became the disciple of Har Rampur Sanyasi. In 1642 A.D., a battle was contested between Raja of Kishtewar and rebellious forces, and in the meantime, Har Rampuri climbed on a peak and gazed at the battle scene. Hearing the sound of *naqqarah* and bravery, he started dancing and reached a state of ecstasy but unfortunately, his foot slipped, and he fell, and finally, he died there[30].

The compiler of *Dabistan* gives a narration of Suthra Faqir. He hailed from Nagarkot. One day he put a secretarial mark on his forehead and a *junnar* (sacred thread) around his neck. He used to consume beef. He was forcefully put before *qazi* by some member of the Hindu community. The *qazi* asked him if he was Hindu and then why he ate the flesh of a cow; if he were a Muslim, then *junnar* is not permitted in the Muslim community. Suthra Faqir replied that none of his actions are religious as none of the material used by him belong to any particular religious sect. The sectarian mark on the forehead are saffron and sandal. The *junnar* is made up of thread. The cow eats grass, and bread is made of wheat and prepared in a *tandoor* of soil and water. So, he further argued that, if a person paid heed to the reality of these articles, he would find the presence of four elements, i.e., air, soil, water, and fire. These articles are neither Hindu nor Muslim[31].

PratapmalChaddha, born at Sialkot, belonged to the Khatri caste and was a prominent *gyani* of the first half of the 17th century. He always accompanied the learned persons. The author of *Dabistan* narrates that Pratapmal deeply respected all religions. In his view, all religions had the same goal, i.e., to realize the actual existence of God, but the paths were different. That is because God took different forms. *Dabistan* narrates an interesting account. Once Pratapmal visited Dwarah, a disciple of Guru Har Gobind (sixth Guru of *Nanakpanthi*), and became his devotee due to personal reasons. *Dabistan* informs that according to a Sikh religious rite, his feet were washed by Pratapmal and that water was distributed among the devotees of *Nanakpanthi* to drink. At last, there was a heated argument between Pratapmal and Dwarah on the rite. Pratapmal said that he had just been admitted to Sikhism and there

[28] *Dabistan*, p. 172
[29] *Dabistan*, pp. 172-73
[30] *Dabistan* , p. 173
[31] *Dabistan* , p.173

was conflict in the beginning itself. Pratapmal said that a member of the Jat community always washed his feet[32].
Dabistan also points out to a custom among the followers of *Nanakpanthi*. Whenever a person desired to obtain something, he offered gifts to his spiritual guide. Accordingly, Pratapmal presented a gift to Masmi Kabuli, who was the disciple of Guru Hargobind. After that, he requested and asked all the followers of *Nanakpanthis* to pray in his favor to fulfill his wishes. Kabuli asked if he wished to meet Hargobind. Pratapmal answered No. His desire was more significant than that; he wanted to call dancers, singers, and musicians from Peshawar to Kabul to witness their performance[33]. The author of *Dabistan* also describes about Banwali, son of HiramanKayasth, who was also a *gyani*. From his early life, he used to attend the *Majlis* (assembly) of *Darwesh*. In 1634 he joined the company of Mullashah Badakshi[34]. He never became adherent of any one religion. He visited both temples as well as mosques. The compiler of *Dabistan* had a close association with Banwali.
Thus, it can be concluded that the philosophy of *Vedanta* subscribed to the oneness of God. It recognizes Him to be the only ultimate reality. The other objects present in the universe are mere illusions. This forms the crux of *Vedanta* Philosophy. The text of *Dabistan* aptly highlights the core concepts of the *Vedantic* philosophy. Through its account of different saints (*gyanis*), the text reveals its various nuances. It has been highlighted that the followers of the sect believed in human brotherhood, peace, and harmony with all creations in the universe. They regarded not only all human beings but also all objects in the universe as His creation, encompassing everything with His presence. On this account, the ways of worship and reverence may be different, but eventually, all paths lead to the only reality that is omniscient and omnipotent.
.

[32] *Dabistan*, p. 174
[33] *Dabistan* , p. 174
[34] Mullashah was a famous sufi of Qadriya order. He was a prominent disciple of Mian Mir. Mullashah was the spiritual guide of Dara Shukoh and Jahanara, the eldest son and eldest daughter of emperor Shahjahan respectively. See *Sakinatul auliya* by Dara Shukoh and Risal-iSahibiya by Jahanara; Qanungo(1952), *Dara Shukoh*; Supriya Gandhi(2019), *The Emperor Who Never Was*: *Dara Shukoh in Mughal India*, Publisher: Harvard University Press.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue II, December 2023
DOI:10.13140/RG.2.2.29972.10880
www.kanpurhistorians.org

APPRECIATION OF ELECTRONIC EVIDENCE IN INDIA

DR. NAWAL KISHOR MISHRA
Assistant Professor, Faculty of Law
Banaras Hindu University
Varanasi India
ADITYA KUMAR
Research Scholar, Faculty of Law
Banaras Hindu University
Varanasi India

Abstract:
As information technology increases in India, electronic evidence becomes more significant in the legal system. Although the Indian Evidence Act,1872 does not clearly define electronic evidence, the Information Technology Act,2000 includes provisions related to electronic records. This article aims to clarify the meaning of electronic evidence and outline the various provisions for accepting it in court. It also explains the conditions that must be met for an electronic record to be admissible and explores the importance of the certificate issued under section 65B of the Indian Evidence Act,1872. Finally, the article provides insights into relevant Supreme Court judgments.

Keywords:certificate, computer, computer output, data, document, electronic evidence, electronic record, etc.

Introduction:

In legal proceedings, electronic evidence has becomecrucial. The use of technology in India has presented opportunities and challenges for the legal system. Electronic data is routinely created and stored in devices such as computers, smartphones, and tablets, which has led to an increase in the use of electronic evidence in India. This type of evidence can prove or disprove various facts, including a contract's existence, the date and time of a

transaction, or an individual's location at a specific time. The Indian Evidence Act, 1872, and the Information Technology Act, 2000, govern the law relating to electronic evidence in India. The Information Technology Act, 2000, was created to fulfil its obligation under the United Nations Commission on International Trade Law (UNCITRAL).[1] The Indian Evidence Act, 1872 was amended by the Information Technology Act, 2000 to include provisions for electronic evidence.

MEANING OF ELECTRONIC EVIDENCE

Electronic evidence is not defined under the Indian Evidence Act, 1872 or the Information Technology Act,2000.According to Scientific Working Groups on Digital Evidence and Imaging Technology, Digital Evidence means "*information of probative value that is stored or transmitted in binary form.*"[2] According to the International Organisation on Computer Evidence, digital evidence means "*information stored or transmitted in binary form that may be relied on in court.*"[3] According to Eoghan Casey, *digital evidence means "any data stored or transmitted using a computer that support or refute a theory of how an offense occurred or that address critical elements of the offense such as intent or alibi."*[4]

According to Burkhard Schafer and Stephen Mason, "electronic evidence means data (comprising the output of analogue devices or data in digital form) that is manipulated, stored or communicated by any manufactured device, computer or computer system or transmitted over a communication system, that has the potential to make the factual account of either party more probable or less probable than it would be without the evidence. This definition has three elements. First, the reference to 'data' includes all forms of evidence created, manipulated or stored in a device that can, in its widest meaning, be considered a computer. Second, the definition includes the various devices by which data can be stored or transmitted, including analogue devices that produce an output. Third, the definition restricts the data to information that is relevant to the process by which a

---

[1] Justice Kurian Joseph, *Admissibility of Electronic Evidence*, 5 SCC (J).

[2] Scientific Working Groups on Digital Evidence and Imaging Technology, 'Best practices for digital evidence laboratory programs glossary: version 2.7'

[3] International Organisation on Computer Evidence, G8 proposed principles for the procedures relating to digital evidence (IOCE 2000). This definition has been adopted by the US Department of Justice Office of Justice Programs, National Institute of Justice, in Electronic Crime Scene Investigation: A Guide for First Responders (US Department of Justice 2001) and Forensic Examination of Digital Evidence: A Guide for law enforcement (US Department of Justice 2004)

[4] Eoghan Casey, Digital Evidence and Computer Crime (3rd edn, Academic Press 2011) 7

dispute, whatever the nature of the disagreement, is decided by an adjudicator, whatever the form and level the adjudication takes."[5]

In simple terms, electronic evidence is evidence to prove an electronic record. Section 3 of the Indian Evidence Act, 1872 defines 'evidence' as*"means and includes all documents, including electronic records, produced for the inspection of court"*. When determining 'evidence', it's important to note that the term 'document' also encompasses electronic records. So, any electronic record that can be used to prove or disprove a fact in a legal proceeding can be considered as electronic evidence. This includes any emails, digital images, audio or video recordings, social media posts, and other electronically stored information relevant to the case.

The term 'electronic record' is defined under Section 2 (t) of the Information Technology Act, 2000 as "*data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer-generated microfiche."*Microfilm is a physical storage method that uses analogue technology to archive and preserve various data types, including documents and images. This process involves capturing smaller images of documents and recording them onto a film roll. Microfilm is preferred for its durability and long lifespan, making it an ideal option for long-term data preservation. However, it requires specific tools and equipment to read and scan. Microfiche is another similar method, but it involves storing multiple pages of information on one sheet of film, usually in a grid pattern.On the other hand, computer-generated microfiche refers to microfiche that has been created using computer-generated images or data. It's a compact and efficient way to store vast information in a small physical space. Now, the question arises: What is data?

The term 'data' means "arepresentation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer."[6]Data is a term that refers to raw facts, figures, or information presented in various forms, such as text, numbers, dates, and more. Data can be manipulated, analysed, or processed by computers or electronic devices when stored in digital format. It can include text documents, databases, sensor readings, financial transactions, etc.

The term 'computer' means any electronic, magnetic, optical or other high-speed data processing device or system that performs logical, arithmetic,

[5] Burkhard Schafer and Stephen Mason, The Characteristics of electronic evidence in digital format, in electronic evidence, Edited by Stephen Mason, LexisNexis, 2013.

[6] Section 2(o) of the Information Technology Act,2000

and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or computer network. The term 'computer network'the inter-connection of one or more computers or computer systems or communication device through– (i) the use of satellite, microwave, terrestrial line, wire, wireless or other communication media; and (ii) terminals or a complex consisting of two or more interconnected computers or communication device whether or not the inter-connection is continuously maintained.[7] The term 'computer system' means a device or collection of devices, including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, which contain computer programmes, electronic instructions, input data and output data, that performs logic, arithmetic, data storage and retrieval, communication control and other functions.[8]

ADMISSIBILITY OF ELECTRONIC RECORD

The Indian Evidence Act, 1872 was amended by the Information Technology Act, 2000 to include sections 65Aand 65B, which provide special provisions for the admissibility of electronic recordsin court.Before this amendment, proving electronic records in court required primary evidence[9]and secondary evidence[10]. However, these provisions need to be revised to handle the complexities of electronic evidence.

Section 65A of the Indian Evidence Act, 1872 has special provisions for evidence relating to electronic records. It states that the contents of electronic records may be proved in accordance with the provisions of section 65B. This means there is discretion in appreciating electronic records under this section or any other sectionfrom 62 to 65. Despite adding sections 65A & 65B in the Evidence Act, electronic evidence can still be admissible under sections 62 to 65 in different cases, as the Supreme Court decides.[11].

Section 65B of the Indian Evidence Act,1872 make a provision for the admissibility of electronic records that reads as –" *(1)Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without*

---

[7]section 2 (j) of Information Technology Act,2000

[8]section 2 (l) of Information Technology Act,2000

[9] under Section 62 of the Indian Evidence Act

[10] under Section 63 of the same Act

[11]state (NCT of Delhi) v. Navjot Sandhu (2005) 11 SCC 600

further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible."

Having reviewed Section 65B(1), "*Notwithstanding anything contained in this Act*", which explicitly states that the provisions of this Act do not apply to this section, it can be deduced that electronic records can only be proved under Section 65B of Evidence Act.Further reading of section 65B (1), i.e.,"*any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document*."

We find that 'any information contained in an electronic record' is primary evidence and admissible in a court without further proof or production of the original. An electronic record printed on paper, stored, recorded or copied in optical or magnetic media produced by a computer is secondary evidence. It is deemed to be a document if the condition mentioned under section 65B (2) is satisfied and shall also be admissible in any proceeding without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible. Section 3 of the Information Technology Act,2000, provides for the authentication of electronic records. It says that any subscriber may authenticate an electronic record by affixing their digital signature, and the authentication of the electronic record shall be effectedby the use of asymmetric crypto system and hash function, which envelope and transform the initial electronic record into another electronic record.

Section 65B (2) [12] provides the condition for the admissibility of electronic records. It reads as the conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: –– (a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer; (b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities; (c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

[12] Of Indian Evidence Act,1872

In order for computer-generated output to be considered valid evidence, it must meet certain requirements. The first condition for accepting computer output as evidence is that the computer must have produced the information during a time when it was regularly used to store or process information for activities that were consistently carried out by the individual who had lawful control over the computer.

The second requirement states that while the computer was being used to store or process information, data of the same kind as that found in the electronic record or data from which the electronic record's information is derived should have been continuously fed into the computeras part of the usual activities.

The third condition specifies that during the significant part of the mentioned period when the computer was in use, it should have been functioning correctly. If there were any periods during which the computer was not operating properly or was out of operation, those issues should not have had an adverse impact on the electronic record or its accuracy.

The fourth condition states that the information in the electronic record must either directly reproduce or be derived from the information routinely input into the computer as part of the standard activities.This condition ensures the authenticity and reliability of the information contained in the electronic record.

PRODUCTION OF CERTIFICATE

Section 65B[13] Provides a provision that to make electronic records admissible, there is a need to produce a certificate under section 65B (4). Section 65B (4) reads as "in any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,(a) identifying the electronic record containing the statement and describing the manner in which it was produced; (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer; (c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it."

Under section 65B (4), a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities issues a certificate doing any of the following things. Firstly, the person issuing a certificate must identify the electronic record

[13] Of Indian Evidence Act,1872

containing the statement and describe how it was produced. Secondly, he must give such particulars of a device in a certificate producing electronic records. Thirdly, he certifies that the condition mentioned under section 65B (2) is fulfilled. That person also signs such a certificate.
In the case of *state (NCT of Delhi) v. Navjot Sandhu*[14], the court held that if the requirements of certification under section 65B (4) were not complied with, it would not be a bar for the production of secondary electronic evidence if the evidence is otherwise admissible under the provision of sections 63 and 65 of the Indian evidence act,1872. This judgement makes an incorrect interpretation of section 65B as this section starts with 'Notwithstanding anything contained in this Act makes it clear that any other provision of this Act does not apply to Section65B
To remove the difficulties that arise due to the above case, the Supreme Court in *Anvar P. V. v. P. K. Basheer*[15] held that Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record, wholly governed by sections 65A and 65B.[16]Thus, the judgement mandated submitting a 65B certificate for the admissibility of an electronic record and overruled the verdict of Navjot Sandhu's case.[17]
In *Vikram Singh and ors v. State of Punjab and ors.*[18]The apex court held that when the primary evidence of electronic record is produced, a certificate under section 65B is unnecessary. In the case of *Shafhi Mohammad v. the state of Himachal Pradesh*[19]The Supreme Court held that the legal position on the admissibility of electronic evidence, especially by a party who does not have a device from which the document is produced, such party cannot be required to produce a certificate under Section 65B(4) of the Evidence Act.
But due to the conflicting judgement of *Anwar P V's* case and *Shafhi Mohammad's* case, the Supreme Court clarified the issue of certificate under section 65B in *Arjun PanditraoKhotkar v. Kailash KushanraoGorantyal and Ors*[20] held that "The non-obstante clause in sub-section (1) makes it clear that when it comes to the information contained in an electronic record, admissibility and proof thereof must follow the drill of Section 65B, which is a special provision in this behalf - Sections 62 to 65 being irrelevant for this purpose. However, Section 65B(1) differentiates between the "original" document - which would be the original "electronic record" contained in the "computer" in which the original information is first storedand the computer

---

[14] (2005) 11 SCC 600
[15] (2014) 1 SCC 473
[16]Joseph, *supra* note 1.
[17] YUVRAJ P NARVANKAR, ELECTRONIC EVIDENCE IN THE COURTROOM - A LAWYER'S MANUAL (2022 Ed.).
[18] (2017) 8 SCC 518
[19] (2018) 2 SCC 801.
[20] 2020 SCC Online SC 571

output containing such information, which then may be treated as evidence of the contents of the "original" document. All this shows that Section 65B differentiates between the original information in the "computer" itself and copies made from there – primary and secondary evidence.

The requisite certificate in sub-section (4) is unnecessary if the original document is produced. This can be done by the owner of a laptop computer, a computer tablet or even a mobile phone by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where "the computer", as defined, happens to be a part of a "computer system" or "computer network" (as defined in the Information Technology Act, 2000) and it becomes impossible to bring such network or system to the court physically, then the only means of proving information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4).

Thus, it is clear that Shafhi Mohammad's case that such a certificate cannot be secured by persons not possessing an electronic device is wholly incorrect. An application can always be made to a Judge to produce such a certificate from the requisite person under Section 65B(4) in cases such person refuses to give it. Resultantly, following the law incorrectly laid down in *Shafhi Mohammed's* case is overruled.

In afact-circumstance where the requisite certificate has been applied for from the person or the authority concerned, and the person or authority either refuses to give such certificate or does not reply to such demand, the party asking for such certificate can apply to the court for its production under the provisions of the Evidence Act, CPC or CrPC. Once such application is made to the court, and the court then orders or directs that the requisite certificate be produced by a person to whom it sends a summons to produce such certificate, the party asking for the certificate has done all that he can possibly do to obtain the requisite certificate.

Conclusion:

The use of electronic evidence is crucial in legal proceedings in India.The Indian Evidence Act includes provisions for electronic records through the Information Technology Act of 2000, which added sections 65A and 65B to accept electronic evidence in Indian legal proceedings. Although not explicitly defined, electronic evidencerefers to documents that prove electronic records. Initially, there needed to be more clarity regarding the admissibility of electronic records, and some Supreme Court judgments were wrongly decided. In *state (NCT of Delhi) v. Navjot Sandhu*[21], The Supreme Court did not recognise the relevance of Sections 65A and 65B in admitting electronic evidence. Instead, evidence is accepted under Sections 63 and 65 of

[21] (2005) 11 SCC 600

the Evidence Act as secondaryevidence. This decision has been in place for over nine years andbased on a flawed interpretation of the law. Specifically, the principle of Generaliaspecialibus non-derogant (which states that a special law takes precedence over a general law) must be applied. In in *Anvar P. V. v. P. K. Basheer*[22]the Supreme Court held that electronic records are admissible only under Sections 65A and 65B of the Evidence Act. There was subsequent controversy regarding the certificate. In*Shafhi Mohammad v. the state of Himachal Pradesh*[23]the Supreme Court held that the certificate requirements under section 65B(4) are not always mandatory. Confusion due to Anvar P. V's case and *Shafhi Mohammad*'s case,in *Arjun PanditraoKhotkar v. Kailash KushanraoGorantyal and Ors*[24]Supreme Court held that,the law established in the *Shafhi Mohammad* case is incorrect. If the original document is presented, a certificate is not necessary to prove electronic records. However, a certificate is mandatory if the original document is unavailable. Ifa party cannot obtain a certificate, they can apply to a court for one, and the court can summon the certificate from the relevant person. It is crucial to understand the legal framework, definitions, admissibility requirements, and the significance of Section 65B certificates to ensure the validity and admissibility of electronic records in court. The recent Supreme Court ruling has clarified this matter and strengthened the legal foundation for handling electronic evidence in Indian judiciary.

[22] (2014) 1 SCC 473
[23] (2018) 2 SCC 801.
[24] 2020 SCC Online SC 571

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue II, December 2023
DOI:10.13140/RG.2.2.29972.10880
www.kanpurhistorians.org

CONSTITUTIONAL SAFEGUARDS FOR UNORGANIZED LABOUR

DR. SATYENDRA KUMAR
Assistant Professor
Department of Law
T.D. PG College, Jaunpur India
DR. PRADEEP KUMAR
Associate Professor
Department of Law
Babashaheb Bhimrao Ambedkar University
Lucknow India

Abstract:

We are living in a democratic society in which all equal before the eyes of law whether he is rich or poor,hence every civilized and law abiding person wants to live with honour and dignity in the society, he lives in. For this purpose, it is necessary that one should be treated like a human being by his fellow beings. The condition of the unorganized labour is very poor and they face many difficulties in the society. Efforts made from time to time by way of statutory provisions otherwise to make a person to lead a decent life. The awareness amongst unorganized labourers regarding the Constitutional safeguards provided to them should be developed through literacy camp in unorganized sectors. The mass media, various of communication, NGOs and other voluntary organizations, educational media and special governmental machinery should be effectively used in this regard. The constitutional goal of "right to work", i.e. right to employment which is one of the important problems which is being faced by unorganized labourers should be achieved to benefit the unorganized labourers. Our country has the characteristics of a feudal society; therefore, if we want the upliftment of unorganized labourers then we have to rethink about the pattern of agriculture to be followed.

Keywords: Unorganized, Labourers, Constitution, International, Equlity,

Introduction:

The preamble to the constitution of India in consonance with the constitution of I.L.O. declares, “Justice, social, economic and political; as the first among the other objectives of constituting India into a sovereign, socialist, secular, democratic republic”.[25] The Directive Principles of State Policy promised every one, “the right to an adequate means of livelihood,[26] living wage, a decent standard of life. It also declares that the operation of economic system must not, “result in the concentration of wealth and means of production to the common detriment.”[27] In an agrarian country like India, the main item of material resources is no doubt agriculture.[28]

Democracy would indeed be hollow if it fails to generate the spirit of brotherhood among all the people-feeling that they are all children of the soil and the same motherland. It becomes all the more essential in a country like India composed of many races, religious, languages and of culture.[29] Article 1 of the Declaration of Human Rights adopted by the U.N.O, embodies this noble and human principle that “all the human beings are born free and in equal dignity and rights, they are endowed with reason and conscience arid should act towards one another in a spirit of brotherhood.” It is this concept of brotherhood of man which is contained in the Preamble of the Constitution and is given practical shape by beholding untouchabilityunder Article 17 and abolition of titles under Article 18 and many other social evils which swayed the social arena of India society.[30]

“Liberty, Equality and Fraternity” which the Constitution seeks to secure for the people of India are to serve the primary objective of ensuring social, economic and political justice. Justice is the harmonious blending of selfish nature of man and the good of the society. The attainment of the collective good as distinguished from individual good is the main aim of rendering justice. Combine the ideals of political, social, economic democracy with that of equality and fraternity in die Preamble, Gandhi described as “The India of My Dream”, namely- “an India, in which the poorest shall feel that it is their country in whose making they have an effective voice, an India in which all communities shall live in perfect harmony.[31]

In modern society, so many legislations have been enacted to protect the interest of down trodden and to avoid their exploitations. In order to make the India as a welfare society and to provide justice-social, economic and political to all its citizens, the framers of our constitution made various constitutional safeguards, so that the weaker sections or unorganized labourer

[25]Preamble to the Constitution of India, 1950.
[26]The Indian Constitution.1950, Art. 41.
[27]The Indian Constitution.1950,Art.39 (b).
[28] M.K. Srivastava. Agriculture Labour and the Law. 1993. p. 4.
[29]D.D. Basu, Introduction to the Constitution of India, p. 23 (3rd ed. 1954).
[30]*Buckingham &Carantic Co. Ltd.* v. *Venkatian*, AIR 1964 SC 1272.
[31] M.K. Gandhi, India of My Dreams, pp. 9-10.

may not be exploited by the haves of our society. In order to achieve the object enshrined in the preamble of our constitution, various fundamental rights and directive principles were made in the interest of unorganized labourers. In the year 1918 a conference was held at Bewrnewhich resolved that to ensure an end to all exploitation peace terms should safeguard the working class of all countries from the attacks of international capitalist competition and assure it a minimum guarantee of moral and material order as regards labour legislation, trade unions rights, migration, social insurance, hours of work, and industrial hygiene and safety.[32]

International Labour Organisation and the Rights of Unorganised Labourers:

Unorganisedlabourers were also protected before the enactment of our constitution. In this direction I.L.O. has played a vital role. The ideals and the purposes of which were set forth in the Preamble to the Part XIII of the Treaty of Versailles, 1919.

Versailles Treaty, 1919, Part XIII (Labour) Section I

Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can established only if it is based upon Social Justice;

"And whereas conditions of labour exist involving such in justice, hardship and privation to large number of people as to produce unrest so great that the peace and harmony of the world are imperiled, and improvement of those conditions is generally required as for example, by the regulation of the force of work including the establishment of a maximum working day and week, the regulation of labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association the organisation of vocational and technical education and other measure.

Whereas the failure of any nation to adopt human conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries".

Forced Labour Convention, 1930

According to I.L.O.[33] the General Conference of the International LabourOrganisation, was convened at Geneva by the Governing Body **of**the International Labour**office on**10th June, 1930 to adopt certain proposals with regard to forced **or**compulsory labour, which was included **in** the first item **on**the agenda **of**the Session and having determined that these proposals shall

[32] Mahesh Chandra, Industrial Jurisprudence.1976, p. 77.
[33] Forced Labour Convention, 1930.

take form of an International Convention. This convention came into force with effect from 1st May, 1932. This convention says that:

1. Each member of the International LabourOrganisation which ratifies this Convention undertakes to suppress the use **of**forced or compulsory labour in all its forms within the shortest possible period.
2. **With a**view **to**this complete suppression, recourse to force **or**compulsory labour may **be had,**during the transitional period, for public purpose only and as an exceptional measure.
3. At the expiration of the period of five years after the coming into force of the Convention, and when the Governing Body of the International Labour Office prepares the report provided for in Article 31 below, the said Governing Body shall consider the possibility of the suppression of forced to compulsory labour in all its forms without a further transitional period and the desirability of placing this question on the agenda of Conference.[34]

The normal working hours of any person from whom forced or compulsory labour is exacted shall be the as those prevailing in the case of voluntary labour, and the hours worked in excess of the normal working hours shall be remunerated at the rate prevailing in the case of overtime for voluntary labour.

A weekly day of rest shall be granted to all persons from whom forced or compulsory labour of any kind isexacted and this day shall coincide as far as possible with the day fixed by tradition or custom in the territories or regions concerned.[35]

Any laws of regulations relating to workmen's compensation for accidents or sickness arising out of the employment of the worker and any laws or regulations providing compensation for the dependents of deceased or incapacitated workers which are or shall be in force in **the**territory concern, shall be equally applicable to persons from whom forced or compulsory labour is exacted and **at**voluntary workers.

Itfurther provides that it shall be an obligation on **any** authority employing any worker on forced or compulsory labour to ensure the subsistence of any such **worker**who by accident or sickness arising out of his employment, is rendered wholly or partially incapable of **providing** for himself, and to take measures to ensure **the**maintenance of any person actually dependent upon **such a worker in the**event of **his**incapacity or decease **arising out** of**his**employment.

Universal Declaration of Human Rights, 1948 and unorganized labour:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another

[34]Forced Labour Convention, 1930Art. 1.

[35]Forced Labour Convention, 1930Art. 13.

in a spirit of brotherhood.[36] No one shall be held in slavery or servitude, slavery and slave trade shall be prohibited in all their forms.[37]

According to Article 24, every workman has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. It is pertinent to mention the Article 25 of the declaration according to which every workman has the right to a standard of living adequate for the health and well-being of himself and his family including food, clothing, housing medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Motherhood and childhood are entitled to care and assistance.

These human rights and fundamental freedoms of workers propounded and codified by the I.L.O. and later declared by the United Nations in its Universal Declaration of Human Rights have now come to be incorporated by almost all nations into their positive laws. In this way, what had been for decades an ideal or mere dream has ultimately earned the recognition and protection of positive law and matured into legal rights of the workers which are recognized, protected and enforced by the force of law. Broadly speaking, the industrial workers all over the world now possess definite and basic rights in the matter of the service and just and humane conditions of work, fringe benefits and strike. These are considered inalienable, inviolable and fundamental rights of the workers.[38]

The European Convention of Human Rights, 1956

This convention directly or indirectly protects the interest of unorganized labourers by prohibiting compulsory labour. According to it:

i. No one shall be held in slavery or servitude;
ii. No one shall be required to perform forced or compulsory labour;
iii. For the purpose of this Article the term “forced” or “compulsory labour” shall not include:
    a. any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention during conditional release from such detention;
    b. any service of a military character;
    c. any service rendered in case of emergency or calamity threatening the life or well-being of the community; and
    d. Any work or service which forms part of normal civicobligations.[39]

The Constitution of India, 1950

[36]Universal Declaration of Human Rights, 1948 Art. 1.
[37]Universal Declaration of Human Rights, 1948Art. 4.
[38] Mahesh Chandra, Industrial Jurisprudence, 1976, p. 82.
[39]European Convention of Human Rights of Article 4, 1956.

Our Constitution of India protects the unorganized labourers in one way or the other so it is pertinent to give some relevant provisions relating to unorganized labourers as under

i. The Preamble of our constitution says that We, The people of India, having solemnly resolved to constitute India into of Sovereign Socialist Secular Democratic Republic and to secure all its citizens.
ii. Justice, social economic and political;
iii. Liberty of thought, expression, belief, faith and worship;
iv. Equality of status and of opportunity: and to Promote among them all;
v. Fraternity assuring the dishonesty of the individual and the unity of the Nation;

Rights of Unorganized Labourers against Exploitation:

Article 23 of the Constitution prohibits traffic human being and beggar and other similar forms of forced labour. The second part of this Article declares that any contravention of this provision shall be an offence punishable in accordance with law. Clause (2) however permits the State to impose compulsory services for public purposes provided that in making so it shall not make any discrimination on grounds only or religion, race, caste or class or any of them.

Traffic in human being means selling and buying men and women like goods and includes immoral traffic in women and children for immoral or other purposes.[40]Though slavery is not expressly mentioned in Article 23 it is included in the expression 'traffic in human being.'[41]Under Article 35 of the Constitution Parliament is authorized to make laws for punishing acts prohibited by this Article. In pursuance of this Article Parliament has passed the Suppression of Immoral Traffic in Women and Girls Act, 1956[42] for punishing acts which result in traffic in human beings.

Article 23 protects the individual not only against the State but also against private citizens. It imposes a positive obligation on the State to take steps to abolish evils of "traffic in human beings" and other similar forms of forced labour wherever they are found and prohibits the system of 'bonded labour' because it is a form of force labour within the meaning of this Article. It is to be noted the protection of this Article is available to both citizens as well as non-citizens.

Beggar and "other forms of forced labour" are prohibited by this Article. "Beggar" means involuntary work without payment. This is prohibited by this clause is the making of a person to render service where he was lawfully entitled not to work or to receive remuneration of the services rendered by him. This clause therefore does not prohibit forced labour as a punishment for criminal offence. The protection is not confined to beggar only

[40]*Raj Bahadur* v. *Legal Remembrances*, A.I.R. 1953 Cal. 522.
[41]*DubarGoala* v. *Union of India*A.I.R. 1956.
[42]The Immoral Traffic (Prevention) Act, 1956.

but also to “other forms of forced labour”. It means to compel a person to work against his will.

Our Supreme Court of India amplified the scope of Article 23 in detail in *Asiad Workers case*[43] and observed that the scope of Article 23 is wide and unlimited and strikes at “traffic in human beings” and beggar and other forms of “forced labour” wherever they are found. It is not merely “beggar” which is prohibited by Article 23 but also all other forms of forced labour. “Beggar is a form of forced labour under which a person is compelled to work without receiving any remuneration. This Article strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and contrary to basic human values. The practice of forced labour is condemned in almost every international instrument dealing with human rights. Every form of forced labour “beggar” or other forms is prohibited by Article 23 and it makes no differences whether the person who is forced to give his labour or service to another is paid remuneration or not. Even if remuneration is paid, labour or services supplied by a person would be hit by this Article, if it is forced labour, e.g. Labour supplied not willingly but as a result of force or compulsion.

This Article strikes at every form of forced labour even if it has its origin in a contract voluntarily entered into by the person obligated to provide labour or service. If a person has contracted with another to perform service and there is a consideration for such service in the shape of liquidation of debt or even remuneration he cannot be forced by compulsion of law, or otherwise to continue to perform such service as it would amount to provide labour or service against his will even though it be under a contract of service. The word ‘force’ must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternative to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage.

In *BandhuaMuktiMorcha* v. *Union of India*,[44] the Supreme Court held that when an action is initiated in the court through public interest litigation alleging the existence of bonded labour system exists and as well as to take appropriate steps to eradicate that system. This is constitutional obligation of the government under Article 23 which prohibit forced labour I any form. Article 23 has abolished the system of bonded labour but unfortunately no serious effort was made to give effect to this Article. It was only in 1976 that Parliament enacted the bonded labour System with a view to preventing the economic and physical exploitation of the weaker sections of the people.

---

[43] A.I.R 1982 S.C. 1943.

[44] A.I.R. 1984 SC 802.

The Court further held in *DubarGoala* v. *Union of India*[45] that the petitioners, who were licensed partners at Howrah Railway Station, voluntarily entered into an agreement to do 2 hours extra work for the railway administration. They were paid some remuneration for two hours labour. They challenged the validity of this agreement and asked the Court to restrain the railway administration from compelling the porters to perform beggar or forced labour. The Calcutta High Court held that "the petitioners could not be said to be doing beggar or forced labour within the meaning of Article 23." The very idea that the petitioners had voluntarily agreed to do extra work by entering into a contract to that effect repels the idea of their work being a forced labour. There was no element of force or illegality in the system of license or in realizing the fees for such licenses. The Railway authorities had the power to regulate the use of station. The petitioners were paid some remuneration for their two hours labour. Further, they get the benefit of a reduced license fee, and in addition they were livelihood. In the circumstances the extra work done by them was not forced labour within the meaning of Article 23(1).

The 13th Amendment to the Constitution of America contains a similar provision. It says that "neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly coming shall exist within the United States or any place subject to their jurisdiction." Americans had to fight a civil war to eradicate this evil of slavery from their country.

(a) Compulsory Service for Public Purposes:

Clause (2) of Article 23 contains an exception on the above general rule. Under this clause the state is empowered to impose compulsory service for public purposes. But in imposing such compulsory service the state cannot make any discrimination on ground only of religion, race, caste, or class or any of the. For example compulsory military service or social services can be imposed because they are neither beggar nor traffic in beings.

(b) Prohibition of Employment of Children in Factories etc.

Article 24 of the Constitution prohibits employment children below 14 years of age in factories and hazardous employment. The provision is certainly in the interest of public health and safety of life of children. Children are assets of the nation. That is why Article 39 the Constitution imposes upon the State an obligation to ensure that the health and strength of workers, men 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.

In People's *Union for Democratic Rights* v. *Union of* India[46] it was contended that the Employment of Children Act. 1938 was not applicable in

[45]A.I.R. 1952 Cal. 496.
[46]A.I.R. 1983 SC 1473.

case of employment of children in the construction work of *Asiad Projects* in Delhi since construction industry was not a process specified in the schedule to the Children Act. The Court rejected this contention and held that the construction work is hazardous employment and therefore no child should be employed in Construction Industries which is not specified in the schedule.[47] Expressing concern about the 'sad and deplorable conditions', Bhagwati, J., advised the State Governments to take immediate steps for inclusion of construction work in the schedule to the Act and to ensure that the constitutional mandate of Article 24 is not violated in any part of the country. The Court has reiterated the principle that the construction work is a hazardous employment and children below 14 cannot be employed in this work.[48]

Conclusion:

The existing legislations and development schemes have been by and large, proved to be ineffective to improve the socio-economic conditions of Schedule Castes, Scheduled Tribes and Backward Class agricultural labourers. More stringent measures are needed to eradicate social inequality of Harijans. The economic inequality should be reduced by providing resources of employment generation and prohibition of economic exploitation. Recently, the Parliament has taken a welcome step by providing constitutional status to commission or Scheduled castes and scheduled Tribes by 68th Constitution Amendment Bill.

The woman's maternity function which has been accorded recognition by the Constitution under Article 42 and for which social security is provided under the Employees State Insurance Act, 1948 and the Maternity Benefit Act, 1961 should be made available to the women workers of unorganized industries. The Government should make necessary amendments before extending them to unorganized sector and ensure effective implementation.

From the foregoing analysis it is very much clear that the object of the preamble of our constitution to some extent has been achieved but much more is still to be achieved. Political influences and economic and social exploitations of the have-nots by the haves of our society still exist; the standards of living and wages of unorganized labourers or the weaker section of the society are yet to be raised. Inspite of various constitutional safeguards provided to the down-trodden, the problem of unemployment is still in rampant in our country which is yet eradicated. But with all this the efforts of our Governments of the Union and of States can ignored in this direction. Our governments are really very encouraging and substantial in the implementation of certain constitutional safeguards tor unorganized labourers.

---

[47] Employment of Children Act, 1938.

[48] *Salal Hydro Project* v. *Jammu and Kashmir A.I.R.* 1984 SC 177.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue II, December 2023
DOI:10.13140/RG.2.2.29972.10880
www.kanpurhistorians.org

ELECTRONIC WASTE MANAGEMENT IN INDIA: REGULATORY REGIME AND JUDICIAL RESPONSE

ANIS AHMAD
Associate Professor of Law, SLS
Babasaheb Bhimrao Ambedkar University
Lucknow U.P. India

Abstract
The problem of electronic waste (e-waste) is posing a new kind of environmental challenge for 21st Century for policy makers and enforcement agency. The rapid growth of the electronic and IT industry, present consumer culture, massive consumption of electronic products have led to hazardous effect onenvironmentandhuman health. Developing countrieslike India alsoconfronted with the above menace related to the generation and management of E-waste which are either internally generated or imported illegally. However, the regulatory mechanism related to E-waste management rules in India had been developed very late only in 2006 and amended in 2011,2016 and 2022to minimise the detrimental consequences on human healthand environment.The present paper is humble attempt to analysis the existing legislative developments and juristic observation of the courts in order to achieving environmentally sound management of e-wasteforachieving the sustainable development goals.

Introduction

The rapid growth of information technologyand a high rate ofinnovations in theelectronics industry that brings a kind of revolutionary changes and made unprecedented impact on modern human society.Today, everyone is taken for granted digital lifestyle in every walk of life. But at the same time, it brings various new challenges for planners and policy makers for the management of e-waste.The fastest growing hazardous wastes such as E-waste in contemporary Indian scenario, which includes various form of electrical and electronic items such as, televisions,machines washing, computers and

printers, refrigerators mobiles, i-pods, etc., most of them contains toxic materials like cadmium,mercury,lead,brominatedflame retardants.[1]

Further, thecurrent trends in consumption and production processes are unsustainable and pose a serious adverse impact onhuman health and environment.[2] According to the Global e-waste Monitor Report in July 01, 2020, global generation of e-waste was estimated to be 53.6 million tons per year. Asia was found to be the largest producer of e-waste with a generation rate of 24.9 million tons per year which amounts to a per capita generation rate of 5.6 kg/person-year.[3] The current Indian scenario of E-waste management is different from the worldwide. India is the third biggest producer of E-waste in the world. More than 95 per cent of this waste is handled by the informal sector, which only adds to the problem.[4] Accordingto a Central Pollution Control Board AnnualReport, in financial year 2019-2020, India generated 1,014,961.2 tonnes of e-waste for 21 types of EEE.

Of late, the MoEF&C Government of India in exercise of powers under Sections 3, 6 and 25 of the *Environment (Protection) Act*, 1986 had started to draft the *Waste Electronic and Electrical Equipment Rules*, 2006 as a corollary to the *Hazardous Waste Management and Handling Rules,* 1989 from time to time till 2022 to regulate the problem of e-wastemanagement. The sustainable use of natural resources, minimization of waste, development of cleaner products and environmentally sustainable recycling and disposal of waste are some of the issues which need to be addressed by all concerned while ensuring the balance between the economic growth and sustainable development.Keeping in view the above facts the present paper going to analyse the legislative developments and the role of Indian Judiciary related to e-wastemanagement in order to fulfil the sustainable developmentsfor realisingenvironment and health sustainability in the near future.

Concept and Meaning of E-waste

E-waste is a popular, informal name for electronic products nearing the end of their "useful life." It broadly covers waste from all electronic and electrical appliances and comprises of items such as computers,refrigerators,televisions, digital music players, mobile phones washing machines, and many other household consumer items. Many of these products can berecycled, reused, or refurbished.[5]

---

[1]Toxic Link Research Report: What India Knows About the E-Waste, 5 (2016).

[2]RajyaSabha Secretariat, Report by research unit on E waste in India, 19 (New Delhi, 2011).

[3]Vanessa Forti, Cornelis P. Balde, et.al., The Global E-waste Monitor 2020 Quantities, flows, and the circular economy potential 104-114(United Nations University, 2020).

[4]Anshula Agarwal, Sreya Bajaj, Rahul Kumar Jha et, 'Dealing with the Discarded: E-waste Management in India' *Down To Earth* (2021).

[5]H.Y. Kang and J.M. Schocnung, "Electronic waste: A review of US infrastructure and technology Options" 45 RCR 368 (2005).

According to Culver J. defined as[6]

> "Electronic waste comprises of wastes generated from used electronic devices and household appliances which are not fit for their original intended use and are destined for recycling recovery, or disposal."

International Conventions

There have been several legal developments at the international level since the1970s to bring about a proper system for regulation of hazardous substance. There are several international legal instruments developed for international co-operation in the field of hazardous substance.[7] All these international instruments focus on sustainable development and other environmental problems. But only in 1989 the Basel Conventionis the most comprehensive global environmental agreement on hazardous and other wastes.[8]The Basel Convention on the control of hazardous wastes was held at Basel (Switzerland) on 22nd March, 1989 and came into force in 1992; the United Nations Environmental Programme (UNEP) sponsored a working group of legal and technical experts to prepare a global convention on the control of transboundary movement of hazardous wastes and to reduce the movement of waste from industrialized countries are left or eliminated in the state of the recipient of waste, mainly developing countries.[9] The principle that waste should be disposed of in the state, which was the source of much waste as possible, and if there is a movement of the crossing is possible without adverse impact on human health and environment.[10]

After that the Bamako Convention on the Ban of the African Importation and Control of Transboundary Movements of Hazardous Waste was negotiated in January 1991, and came into force in 1998 by the twelve nations of the Organization for African Unity.[11]This convention consists of 30 Articles and 5 Annexures. The Convention aims to protect human health and the environment from the hazards of hazardous waste by minimizing their generation in terms of hazardous quantity and potential. All contracting parties are required to prohibit the importation of all hazardous waste from non-contracting parties into Africa for any reason.The provisions of the Bamako Convention state that the disposal of radioactive waste, industrial waste, sewage and sewage sludge is prohibited. The Bamako Convention requires the

---

[6]RakeshJohri (ed.*), E Waste: Implications, regulations, and management in India, and current global best practices*46(Teri, Delhi,2009).

[7]V.Umakanth, "Regulation of Hazardous Substances, Law and Policy"4 *JILI* 510 (1995).

[8]Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989.

[9]Nivedita Chaudhary,"Electronic Waste in India: A Study of Penal Issues" 2 ILI Law Review (2018).

[10]DejoOlowu, E-Wastes in Developing Countries -Legal and Policy Responses, 8/1 LEADJ 59 (2012),

[11] Bamako Convention. 1991.

contracting parties to monitor their respective waterways to ensure that no dumpingoccurs.[12]

The Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters adopted on 25th June in 1998. It consist of 22 Articles and two Annexure. The main objective of the Convention is as follows:

> "In order to contribute to the protectionof right of every person of present and future generations to live in an environment adequate to his or her health and wellbeing, each party shall guarantee the rights of access to information, public participation in decision making, and access to justice in environmental matters in accordance with the provisions of this convention."[13]

The Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movementand Management of Hazardous Wastes within the South Pacific Region popularly known as Waigani Convention which signed in 1995 and entered into force in 2001.The Convention is designed to:

> "reduce or eliminate transboundary movements of hazardous and radioactive wastes into and within the Pacific Forum region; minimize the production of hazardous and toxic wastes in the Pacific Forum region; ensure that disposal of wastes is done in an environmentally sound manner and as close to the source as possible; and assist Pacific island countries that are Parties to the Convention in the environmentally sound management of hazardous and other wastes they generate."[14]

The Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Chemicals and Pesticides in International Trade which was adopted in September,1998. Itconsists of 30 Articles and 7 Annexure.[15]The objective of this Convention is to:

> "promote shared responsibility and cooperative efforts amongParties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use, by facilitating information exchange about their characteristics, by providing for a national decision-making process on their import and export and by disseminating these decisions to parties."[16]

National Regulatory Framework

As far as the national legal framework related to environmental issues that were focus on specific type of pollution in the beginning.It was only in 1986of

---

[12]Bamako Convention. Art.2.

[13]Aarhus Convention, Art. 1.

[14]Waigani Convention, 1995.

[15]Rotterdam Convention, 1998.

[16]Rotterdam Convention, Art.1.

the *Environment (Protection) Act,* was enacted by the Government of India due to the Bhopal gas catastrophe to arrest the environmental problems. Over the past few years,the government has made a number of rules and regulation for better management of hazardous wastes. Further, in exercise of powers conferred under Sections 3, 6 and 25 of the *Environment (Protection) Act*, 1986had *codified Hazardous Waste (Management and Handling) Rules,* 1989 and *Hazardous Waste (Storage Export and Import) Rules*, 1989 to regulate the dangerous dimensions of hazardous waste in India.The growing problem of e-waste was taken into consideration by the MoEFonly in 2006in pursuance of this the has started to draft the *Waste Electronic and Electrical Equipment Rules*, in 2006 as a corollary to the Hazardous Waste Management and Handling Rules, 1989. After that the*E-Waste (Management and Handling) Rules, 2011,* putting the onus of re-cycling of electronic wastes (E-waste) on the producers, the Ministry of Environment and Forest has for the first time notified E-waste management rules. This rule would recognize the producers' liability for recycling and reducing E-waste in the country. The rule came into force from May1, 2012.[17]

Again, it was amended in 2015 and finallythe *E-Waste (Management) Rules,* 2016 were passed[18]and came into force 1 October, 2016.[19]

In the recent past, the Government of India further amended the *E-Waste (Management) Rules*, *2022*and it came into force on 1st April, 2023.[20]The rules consist of 8 Chapters and 25 Sections and5 Schedules respectively.This rule added various new and effective provisions.In this rules the concept of Extended Producer Responsibility (EPR) is also retained.[21]Further this rule imposes specific responsibilities have been assigned to manufacturers, manufacturers, distributors,collection centers,refurbisher, consumers or bulk consumers, recyclers and the state government. The Rules also provides provisions related to the procedure for the storage of e-waste. The Rules also contain provisions related to management solar photo-voltaic modules or panels or cells. Modalities of the extended producers responsibility Regime also finds place in the said Rules.

In addition, this amendment also gives power to the Central Pollution Control Board to lay down guidelines for imposition and collection of environmental compensation on any entity in case of violation of any of the provision of these rules and guidelines.

Role of Judiciary and National Green Tribunal

[17]E-waste (Management and Handling) Rules, 2011.

[18]Anis Ahmad, "E-Waste (Management) Rules, 2016: Some Reflections" 22 *Lex Terra* 09 (2016).

[19]S.C.Shastri, Environmental Law, 223 (Eastern Book Company, Lucknow 6thedn. 2018).

[20]E-Waste (Management) Rules, 2022.

[21]E-Waste (Management) Rules, 2022. Chapter II.

The evolution and development of environmental jurisprudence in India has been the product of judicial creativity and innovation since 1980.[22] The constitutionally institutionalized judicial process by introducing the concept of Public Interest Litigation (PIL) has been effectively invoked and utilized by the Constitutional Courts such as the Supreme Court and High Courts in environmental matters.[23]Since the judiciary in a large number of cases, have been called upon not only to enforce the fundamental right to clean environment but also to give effect to the relevant international environmentalprinciplessuch asprecautionary principle, polluter pays principle, the doctrine of public trust,and sustainable development was the adopted by the apex court in post 1992 cases laws. The contemporary judicial trend is the study of cases decided by the Supreme Court and as well as the National Green Tribunal after its inception in 2010 expanded upon and deepened the impact of these changes through their decisions.

In*Municipal Council Ratlam* v. *Vardhichand*,[24]for the first time, the Supreme Court treated an environmental problem differently from an ordinary complaint or public nuisance.

In *B. L Wadhera* v. *Union of India,*[25] The Court observed that:

> "Historic city of Delhi, the Capital of India is one of the most polluted cities in the world. The authorities responsible for pollution control and environment protection have not been able to provide clean and healthy environment to the resident of Delhi. Apart from air and water pollution, the City is virtually an open dustbin. Garbage strewn all over Delhi is a common sight."

The Court also issued directions to the Delhi Municipal Corporation and other authorities to perform their statutoryduties.

In *K.K.* v. *State of Punjab and Others*[26] The National Green Tribunal directed that:

> "to shift/remove the garbage dumping ground situated in between the residential area and adjacent to Government School. To say that the E waste material is being dumped in the open area, reference was made to the photographs placed on record".

Again in*Toxic link* v. *Union of India& Others*[27]*,*the National Green Tribunal held that:

---

[22] Charu Sharma, "Human Rights and Environmental Wrongs: Integrating the Right to Environmental and Developmental Justice in the Indian Constitution" in C. Raj Kumar, K. Chocklingam et.al.(eds), Human Rights , Justice, And Constitutional Empowerment 313 (Oxford University Press, New Delhi, Second Edition, 2011).

[23]Divan Shyam, Armin Rosencranz., Environmental Law and Policy in India: Cases, Materials and Statutes 49 (Oxford University Press, New Delhi, 2nd Edition, 2001).

[24]AIR 1980 SC 1622.

[25]A.I.R 1996 SC 2969

[26] CWP No. 19627 of 2012.

[27]Case no. 183/2014(CZ), National Green Tribunal) Final judgement, 06 Apr. 2014.

"All stakeholders, particularly, the local authorities upon whom burden lies to ensure proper collection, segregation, transportation and disposal of solid waste should act in complete coordination and coherence to ensure that the country tackles this menace of E-wastemanagement, objectively, effectively and ensures that there is no pollution of the environment and consequent adverse impacts on public health."

In *Mr.Asim Sarode* v. *Maharashtra Pollution Control Board*[28]The National Green Tribunal held that:

"Unauthorized and unscientific burning of wire which emits smoke containing toxic gases and pollutants affecting the environment and human life."

In*NagrikUpbhokta and Ors.*v. *State of M.P.* In this case the brief fact was that the Petitioner has raised the issue of ill effects of Electrical and Electronic waste in three states such as Madhya Pradesh,Rajasthan and Chhattisgarh were involved. It was the contention of the Applicant that after the notification of the *E-waste (Management & Handling) Rules,* 2011under the Environment Protection Act, 1986 by the Ministry of Environment and Forests, Government of India no concrete steps have been taken by the authorities concerned to implement the Rules of 2011 leading to environmental degradation. After going through the whole case the National Green Tribunal has given certain directions to:

" to comply with the requirement of the rule 4 in respect of the items listed in Schedule I of the Rules of 2011related to collection of E-waste, enforcing and implementation of EPR."

The bench also directed that:

"The guidelines issued by the CPCB, for the implementation of E-waste Rules 2011 providing for the role of State Pollution Control Boards shall be adhered to."

The Tribunal further directed that the State Pollution Control Boards shall issue notice to all stakeholders i.e. Producer, Bulk Consumer, Dismantler, Recycler for getting themselves registered as required under the Rules of 2011 and for submitting necessary information by way of complying with the requirement under the Rules for getting the registration done. The application for registration shall be submitted by the Producer, Dismantler and Recycler within 45 days of the receipt of notice from State Pollution Control Board. The Notice shall be issued by the State Pollution Control Boards of all the 3 states within 2 weeks of the receipt of this judgment. Failure to comply with aforesaid direction for submitting the application shall entail the consequence as provided under the Rules."

In*SourendraNathDutt* v. *Sony India (Kolkata Branch)*[29]

[28]Aplication No. 43/ 2013, National Green Tribunal) Final judgement, 06 Sep. 2014.

"The external damage caused to the electronic goods by rat cannot be an issue which the manufacturer is responsible for. In fact, change or replacement of the goods on expiry of warranty is also an unreasonable claim. The Respondent proposal for replacement of the same at a discounted rate, put forward under letter dated 08/02/2016 does not seem to be unreasonable one in the above perspective which the Appellant/Complainant did not accept."

In*Almtra H. Patel* v.*Union of India*[30]

"The National Green Tribunal that the direct all the municipal corporation, Delhi municipal council and Delhi cantonment board to place before us their action plan regarding collection, segregation, and handling of waste and its management timelines corresponding to each of the stages there in. As regard Hazardous E-waste it needs to be noticed that presently, there is no disposal facility therefore in existence within NCT Delhi."

Conclusion:

In conclusion we can say that the problem of e-waste is growing very rapidly at international and national level. Most of the e-waste is recycled in India in unorganized and informal sector, which engage significant numbers of manpower.The potential hazards of e-wastestill not taken seriously by the law enforcement agencieslike pollution control boards to deal in an effective and sound manner.In India, there is poor public awareness with regard to the disposal of electronic wastes and bereft of policies to handle the challenges brings by e-waste. During the past few decades,the government made various regulatory mechanisms related to e-waste management to combat this enviro-health menace. Despite the fact that the Indian judiciary and national green tribunal were always very serious in environmental matters and passed appropriate order for theprotection and improvement of the environment in order to realise sustainable development goals.

[29]Complaint Case No. CC/70/2016 of District Kolkata-II(Central) Final judgement, 05 Jun 2018.

[30]Aplication No. 428 of 2017, National Green Tribunal,) Final judgement, 03 Feb. 2018.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue II, December 2023
DOI:10.13140/RG.2.2.29972.10880
www.kanpurhistorians.org

PORTRAYAL OF RUSKIN BOND'S LOVE AND ECOLOGICAL CONCERNS IN *THE ROOM ON THE ROOF*

DR. DHARMENDRA SINGH
Assistant Professor
Department of Humanities
Deenbandhu Chhotu Ram University of
Science & Technology Murthal Haryana India

Abstract: In today's fast-paced and materialistic world, the cherished memories of our childhood days have faded away. Our minds are occupied by technology, and we have become engrossed in the job market, much like a tree overshadowing the woods. As a result, we are unable to spare even a little time to appreciate the enchanting elegance of nature that surrounds us. Ironically, some people compensate for this disconnection by using nature wallpapers on their computers, attempting to bring a semblance of nature into their virtual lives. However, amidst this disconnection from nature, our planet, Mother Earth is facing severe ecological imbalances. The alarming consequences of deforestation, pollution, and other injustices inflicted upon nature have become apparent. Fortunately, a few environmentalists are ready to lead a revolution, fighting against these destructive practices. Notably, even literary writers have joined the cause, recognizing the importance of raising awareness about environmental concerns through their works. Literature, being a mirror of society, holds significant power in conveying the urgency and importance of environmental awareness. Through their writings, authors inspire readers to rediscover their love for nature and recognize the pressing issues of our time. They create narratives that reflect the current state of our environment, serving as a call to action for individuals from all walks of life. Ruskin Bond, one of the most prominent literary figures, holds a deep admiration for nature in his writings. Through his words, he invites readers to rekindle their love for the natural world and cultivate a sense of appreciation for its beauty. The works of Bond can be scrutinized through the lens of ecologists as well as common

people. He provides a gateway for people to understand the importance of ecology, encouraging them to take part in preserving and nurturing our environment. This research paper is an effort to analyse Ruskin Bond's adoration and environmental concerns.

Keywords: Nature, Literature, Human, Realism, Adoration, Environment.

Introduction: Ruskin Bond, an eminent Indian writer known for his deep affinity for nature, vividly illustrates the harmonious bond that exists between the natural world and humanity in his works. He was born in Kasauli on 19th May 1934. Bond's writings reflect his scholarly exploration of the habitat and emphasize moral, emotional, and ethical bonds between individuals and their surroundings. The setting of Bond's works, particularly the hills of Mussoorie and Dehradun, serves as a backdrop that mirrors his unwavering dedication to the power of nature. This influence on his writing primarily comes from his childhood. Which was spent by him in the lap of nature in places like Dehradun and Mussoorie as he himself says, "I write a lot since I have been living here in the hills for many years. I write a lot about nature. I am very close to nature so I write about mountains and people who live in the hills of Himalaya. Most of my books are set in a small town like Dehradun, Mussoorie, or a small village" (Mirza and Bond, 152). To him, nature and these places aren't external stimuli but rather an inherent part of him. According to him, these are healers that filled his lonely childhood with joy opening his heart to beauty and love. His exposure to the natural world gave him the ability to turn inward and enjoy his time with nature. That is why he believes nature to be a worthy companion and often represents it through his compositions. Throughout his compositions, Bond emphasizes the importance of cultivating a love for nature, encompassing hills, mountains, trees, and living beings. In essence, he delves into the notion of ecology, emphasizing the interactions between plants, animals, and people, and highlights the human responsibilities towards the environment. His closeness with nature is also evident in an interview given by him to *The Times of India*, in which he says, "I am very close to nature, I believe in the sanctity of nature — birds, trees, flowers, streams — anything that grows. I am not one to sit with legs crossed every morning to meditate. I look at a flower and contemplate. The natural world is what made us" (De, Shobhaa *Times of India* 29 May 2023). This notion is vividly seen through Bond's short stories and novels. Bond derives immense enjoyment from travelling through landscapes, cherishing every moment spent in the embrace of nature. As a passionate devotee of Mother Nature, he infuses his writings with a profound appreciation for the environment. This is also reflected in Ruskin's work. In his work, "How far is the river?" He says:

> "There were no men, and no sign of man's influence—only trees and rocks and grass and small flowers—and silence...The silence was impressive and a little frightening. There was no movement, except for the bending of grass beneath my feet, and the circling of a hawk against the blind blue of the sky. Then, as I rounded a sharp bend, I

> heard the sound of water. I gasped with surprise and happiness and began to run. I slipped and stumbled, but I kept on running until I was able to plunge into the snow-cold mountain water. And the water was blue and white and wonderful" (Bond).

These kinds of adoration are not a new phenomenon in Bond's work. Bond's first novella published in 1956 entitled, *The Room on the Roof* exemplifies this perfectly. The novel which was favourably received by critics due to its heart-warming characters and nature earned Bond the famous John Llewellyn Rhys Memorial Prize in 1957 (which recognises remarkable achievements by young writers in the United Kingdom). This novella is a perfect example of Bond's love for nature, his deep admiration for its beauty, and his relationship with the natural world. His keen observations of nature permeate his works, underscoring his deep connection with the natural world. In the story, Bond commences the novel with a vivid description of nature:

"The light spring rain rode on the wind, into the trees, down the road; it brought an exhilarating freshness to the air, a smell of earth, a scent of flowers; it brought a smile to the eyes of the boy on the road. The long road wound round the hills rose and fell and twisted down to Dehra; the road came from the mountains and passed through the jungle and valley and, after passing through Dehra, ended somewhere in the bazaar" (Bond 1).

Feathered friends and wildflowers inspire Bond, refreshing his creative thinking. The sound of drops of rain falling on the ground, birdsong, babbling streams, rustling leaves, and gentle breezes grant him blissful moments in nature's embrace. In the story when Rusty and Somi ride their bicycles in their first meeting, Bond describes how "the cycle moved smoothly over the wet road, making a soft, swishing sound" (Bond 4). Bond's figures, often drawn from Indian society, closely interact with nature. They observe the sunrise, the morning dew, the shifting clouds, the melodious twittering of birds, and the enchanting aromas of the natural world, allowing them to momentarily forget their troubles.

Within the story, Rusty serves as the embodiment of Bond's own excitement and emotions immersed in the natural surroundings. Passionate descriptions of scenery provide insight into Rusty's state of mind. When Rusty's guardian, Mr. Harrison, plans to leave for Delhi, Rusty yearns for a sense of freedom. He longs to "explore, get lost, and wander afar; even if it were only to find new places, to dream in" (Bond 14). In challenging situations, Rusty finds solace in the soothing thoughts of nature. After being beaten by Mr. Harrison for venturing to the bazaar without permission, Rusty's attention is captivated by the bustling sounds and noise of the marketplace.

Ruskin Bond's adoration for nature is evident throughout his novel. He beautifully describes the different climates of the day and their impact on the characters' mindsets. The cold morning described by Bond is sharp and fresh, with a quietness that is disrupted by lifting the mist from the valley, the sun

moving over the hills, and clearing the bloodshot from the sky. The floor is damp with rain, symbolizing the tears and emotions of the characters as Bond writes, "It is a cold morning, sharp and fresh. It was quiet until the sun come shooting over the hills, lifting the mist from the valley and clearing the bloodshot from the sky. The ground was wet with dew" (Bond 16).

As the day progresses, Bond portrays the warm and lazy afternoon, which is unusually calm for spring. The characters yearn to admire nature but often neglect or forget it amidst their mundane routines. This juxtaposition highlights the disconnect between humans and the natural world, emphasizing the characters' longing for a deeper connection with nature he himself says, "The afternoon was warm and lazy, unusually so for spring; very quiet, as though, resisting in the interval between the spring and the coming summer" (Bond 29). Ruskin Bond strives to create a harmonious connection between humans and the environment. He believes by admiring and worshipping nature, individuals can enrich their harmony with the natural world. Bond's central characters often exhibit a deep affection for countryside life and hold nature in high regard. Through numerous categories of literature such as novellas, novels, poems, and short stories, Bond depicts the intertwined lives and experiences of humans and nature. His works encompass a range of emotions and perspectives, ugly, showcasing the enjoyable, graceful, and hostile aspects of life.

In the story, even when the beloved is nearby, the protagonist Rusty never fails to appreciate the charm of the landscape from the room window. His gaze out into the natural world signifies his connection to something larger than himself. Through the window, Rusty and Meena observe the Flame of the Forest, its red-hot flowers standing out against the sky. The sight of pink bougainvillaea creeping into the villa further solidifies Rusty's decision to keep the window open, symbolizing his openness to the world and his unwillingness to shut out the beauty of nature.

Ruskin Bond's writings reflect his deep admiration for nature and his belief in the inherent goodness of humanity. He paints a vivid picture of the natural world and its impact on human experiences, encouraging readers to appreciate and cherish the splendours of the environment. Bond's works serve as a reminder of the importance of nurturing our connection with nature and finding solace, inspiration, and joy in its embrace.

Ruskin Bond's works consistently emphasize the dynamic relationship between children and nature. Bond's adoration for nature stems from his imaginative connection with the natural world. He keenly observes and notes the various elements of nature, animate and inanimate, visible and hidden, which captivates his readers with their vivid realism. His portrayal of nature flows like a fine fountain, offering a sense of freedom from the monotonous routines and daily struggles of life.

Bond's description of the squirrel's actions, as it brushes its nose and runs up a banyan tree, illustrates his attention to detail and his ability to

transport readers into the natural environment. Rusty, the protagonist, becomes immersed in the lazy drone of bees, the squeaking of squirrels, and the constant chatter of birds. While these descriptions may depict familiar sights and sounds, Bond elevates them with his exquisite language, making them even more enchanting than the actual experience. His writing style resembles that of a travelogue, inviting readers to escape into the beauty of his descriptions. Against the backdrop of nature, Bond creates believable characters whose lives and everyday problems are intricately connected to their environment. The distress and worries of Rusty, for example, are often depicted through the setting of the scene. Despite his admiration for nature, Rusty experiences loneliness and destitution, yet he maintains an optimistic outlook for the future.

Bond suggests that if people develop a love for nature, their mundane daily lives can transform into evergreen plants, continuously blooming with flowers. He describes the blossoming of dawn through Rusty's perspective, as objects gradually take shape in the darkness, and the lifting of the veil reveals a streaked crimson sky over the treetops. This gradual transition signifies the potential for clarity and distinction in life, similar to how nature becomes ready for the sun's warm light to permeate through the window (Bond 90). Bond encourages readers to open the windows of their perception and embrace the joys and ecstasies of nature while they still last. He along with this also presents an irony of life to us. In his other work, *Whistling in the Dark*, he says, "It was several days before I could walk to the top of the hill, to that lonely tranquil resting place under the deodars. It seemed to me ironic that those who had the best view of the glistening snow-capped peaks were all buried several feet underground" (Bond 63). Implying that, one should absorb the beauty of nature, while they can because, in the end, we'll all be just a memory in someone else's mind.

Bond's vivid descriptions and lyrical prose transport readers into a realm where the wonders of nature become sources of inspiration and transformation. Nature is his muse, his motivation, and his peace. In a world that is filled with all kinds of mechanical mundaneness and technological chaos, he chooses peace in animals, vegetation, and other aspects of nature. He says, "if you like people and find them interesting, you won't run out of stories. If you like birds and animals and flowers and trees and the world around you, you won't run out of ideas. Stories and ideas for them are swirling around you if you keep your eyes and ears open (*Times of India*)". Through his writings, Ruskin Bond inspires a deep appreciation for the natural world. He portrays the inseparable bond between humans, particularly children, and nature, highlighting its ability to bring solace, beauty, and optimism into their lives.

Conclusion: Ruskin Bond's writings beautifully reflect his adoration for nature and his belief in the inherent goodness of humanity. He says, "It has always been my observation that I have written better when I am in the lap of

nature. People have been my stories, animals have been my stories and when I run out of people and animals, I make stories out of ghosts. But there is an element of nature all through" (Beg, *The Indian Wire*, 19 May 2021). Through his works, he establishes a harmonious relationship between man and nature, emphasizing the importance of cultivating a love for the environment. Bond's descriptions of the natural world are vivid and captivating, transporting readers into serene landscapes and immersing them in the sights, sounds, and scents of nature. His characters, like Rusty in *The Room on the Roof*, find solace, inspiration, and joy in their connection with the natural world. Bond's writings serve as a reminder of the beauty and significance of nature, encouraging readers to appreciate and cherish the wonders of the environment. By infusing his works with a profound appreciation for nature, Bond fosters a deeper understanding of the human responsibility toward preserving and nurturing the natural world. Through his passionate and descriptive prose, he invites readers to open their hearts and minds to the splendours of nature and find solace, inspiration, and a sense of belonging within its embrace.

References:

1. Bond, Ruskin. The Room on the Roof. Penguin Books, 1956.
   ... Our Trees Still Grow in Dehra: Stories. Penguin Books, 1991.
   ... When All Wars Are Done, a Butterfly Will Still Be Beautiful: Ruskin Bond Times of India.
   ... Collected Short Stories. Penguin Random House India, 2016.
2. Beg, Alaina Ali, et al. "Ruskin Bond and His Love for Nature Is Exemplary for Future Nature Guardians". The Indian Wire, 19 May 2021.
3. De, Shobhaa. times of india. India times.com
4. Micro Review: "All-Time Favourites for Children" by Ruskin Bond Will Tug at Your Heartstrings - Times of India.
5. Mirza, Shabir Hussain, and Ruskin Bond. "Shabir Hussain Mirza in Conversation with Ruskin Bond." Indian Literature, vol. 48, no. 5 (223), pp. 152–60. 2004.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue II, December 2023
DOI:10.13140/RG.2.2.29972.10880
www.kanpurhistorians.org

NAGARATHTHAR AND NARTHAMALAI- A STUDY

M. JEYAPATHI
Ph.D Scholar,
PG & Research Department of History
Kalaignar Karunanidhi
Government Arts College for women (A)
Pudukkottai India
Dr. M. GAYATHRI DEVI
Research Supervisor
PG & Research Department of History
Kalaignar Karunanidhi
Government Arts College for women (A)
Pudukkottai India

Pudukkottai district had an earliest Tamil Brahmi record located at Eladipattam in Siththannavasal attests the contact between Karnataka and Pudukkottai region. In this record the term “Erumi Nadu” denotes the Karnataka State of those days. Various trade contacts between Karnataka and Tamil Nadu are well traced by the availability of Roman coins and other historical records.

The first evidence about the trading community in Pudukkottai area can be had from an inscription at Thirukkogarnam temple. An individual Varaguna Athiaraiyan alias Nakkan Chetti, a merchant has donated 15 Kalanju of gold for lighting a perpetual lamp at Gokarneswara temple during the 17th regnal year of Varaguna I (785 CE). According to the present state of our knowledge this is the first evidence regarding a Chetti merchant who was individually engaging in Trade activities. Munisandai Ainurruvar inscription might have been referred to a collective body of such individual merchants who later on associated themselves as a guild in the name of Ainurruvar.

“Ainurruvar”trade guild was started during 8th CCE at Ayhole in Karnataka State by five hundred Mahajanas. The first reference for the

Ainurruvar in Tamil nadu can be had from Munisandai, in Pudukkottai district. During the 20th regnal year of Parantaka Chola I (927 CE) Some Ainurruvar people are mentioned in a record.[1] Here after there are so many records regarding Ainurruvar and other trade guild inscriptions found all over in Tamilnadu.

Likewise another guild "Manigramam" is also mentioned at Kodumbalur records in Pudukkottai region. Pumbuhar Manigramam and Kodumbalur Manigramam groups are found many of the early records of Tamilnadu. So by these Munisanthai and Kodumbalur evidences it is ascertained that trade activities are very hectic in the early Chola period and after.

In this context Narthamalai (Nagaraththarmalai) had served a busy commercial center during this period. This paper deals about the importance of Nagaraththarmalai and its trade connections in various periods and the historical monuments of this place.

Nagaram :- A well developed settlement of merchant is called as Nagaram or managaram. In Chola records Mamallapuram and Kanchipuram are called as Nagaram and managaram respectively. Nagaram, the term refers to not only a big locality but also its administrative body. This body " Nagaram" strives for the welfare of its members named 'Nagaraththar'. In Pudukkottai district the hill where they settled in a great number is named as Nagaraththarmalai but now it is corrupted as Narththamalai. This hill is located at the 19th Kilometer from Pudukkottai on Trichy main road. It has 9 constituents namely Melamalai, Kottaimalai, Kadambarmalai, Paraiyarmalai, Uvachchan malai, Aluruttimalai, Pommadimalai, Manmalai and ponmalai.[2]

According to Perungalur Sthalapurana, since the sage Naratha stayed here once, it was named as Naratharmalai then it was corrupted as Narththamalai. But one should left this theory as a mythological statement but the actual name bears the association of Nagaraththar community with this hilly region.

The first two stone records found engraved in this hill furnish the name of the hill.[3] The first record reveals that one Kumuzhi (Sluice –water body) was built by an individual Mallan Viduman.[4] No date and king's name is found in this record. But based on the Paleography this record can be dated to 9th CCE. The next record furnishes the 7th regnal year of Nirupathunga Pallava and reveals that one Videl Viduku Mutharaiya a chieftain and sub-ordinate of the Pallava king had carved the Cave temple Sri koil. [5]

Malai Kadampur:- Rajaraja - I inscription dated his 22 regnal year (1007) refers to this place as Malaikadampur.[6] But his 28th year record mentions the name of the village as 'Telenga Kulakala Puram'.[7] Here the term Puram, is a suffix usually denotes a trade centre. 'Telunga Kulakala' was an epithet of Rajaraja – I, which means one who was the Yamah of Telunga Kula people (Andra region people may be western Chalukyas). Only this record mentions the merchants as Telunga Kulakala Purathu Nagaraththom. This inscription mentions that this Nagarathar had appointed drummers for beating drums during the pujas of Melaikadambar Mahadeva temple and donated

lands for their temple services. From this one can assure that only during the early part of the eleventh Century (1013 CE) alone Nagarathar people were occupied this hill.

The name TelungaKulakala Puram was existed upto Rajendra I and Rajathiraja I periods. During this time it was a part of Annavayil Kurram in Konadu unit whichwas under Keralanthaka Valanadu, a larger division.

The later Pandya records mentions as ‘Nagaram Telunga Kulakala purathu Nagarathom’ [8] In this record the donors and the signatories are having the tittle Chetti. So, it is clear hat only after the later Pandya period, because of the thick population of chettis, this hill was named as Nagaraththarmalai.

Charitable activities of Nagarathar in Narthamalai:-

Number of stone records are found here which reveal various charitable activities undertaken by the nagarathar people from Rajaraja –I period to the end of later Pandya period. During Rajaraja - I period, some drummers were appointed for beating drum at Melaikadambar temple and they were given wetlands and a lake Arankaneri for their services by the Nagarththar.[9]

During the 5th regnal year of Rajendra Chola I, lands were donated as archanaboga to the residents of different communities and some chettis at the villages Kilthayanallur and Kunrathur.[10] The names of the Chettis who got the lands are as follow:-

1. Local merchant Buttan Thiruvan Amthan.
2. Veyya Kutti piranthakan.
3. Muththan Devan.
4. Chetti Kunran.
5. Rajendra Chola Brahma Chetti.
6. Gangai Gonda Chola Anukka Selai Chetti.
7. Rajathiraja Selai Chetti.
8. Kadaram Konda Chola Selai Chetti.
9. Rajaraja Damma Chetti.
10. Rajendra Chola Dhamma Chetti.

These Chettis and other people had got house sites.

During the Rajendra Chola II period, one merchant from Chola kerala puram in Mizhalai nadu Which was a part of Rajendra singa Valanadu has donated 5 pots of holy water (Thirumanjanam) for the sacred bath of the God. Melaikadambar on three Santhipoojas daily.[11] During the same period the Nagaraththar had donated rice for the food offering to the Goddess of Thirumalai Kadambar temple. Daily 4 measures (Nali) of rice was given to the whole year (360 days).[12]

Kulothunga Chola III Inscription belong to the 27th regnal year (1205 CE) Nagarathar had sold the devadana lands of Kailasanathar temple for the value of 130 ½ old salakaicoin to one merchant of Parambur Kadambar Sengudiyan Gangatharan of the same Nagaratharmalai merchant.[13] In this inscription an important point can be seen that certain lands already donated as Pallichandam (ic) donated land for Jain temple was relieved from that temple.

According to this record, it is confirmed that once there was a Jain temple also at Narththamalai. It was called as Samanar Kudagu.

During 1215 CE, the Nagarathar of this hill had sold certain devadana lands of this temples for 68000 Kasu to two merchants viz, Kadambar Periyan alias Dhanabalan of Kadambur and Udhaiyan Periyan alias Periyadevan of Paluvur.[14]

The above mentioned two merchants who got lands from the Nagaraththar malai had accepted to pay 30 Kalam (Measure) of paddy each for every year for the food offerings of two temples viz, Nataraja of Thirumalai kadambar temple and Thiru Anaikavudaiyar temple respectively. The total 60 kalam paddy will be measured by a leaner measure Thirusulakkal by name (Trident marked measure). During the failure of the crop the supply of paddy will be reduced according to the yield of the land of that particular season. This document was written by an accountant Maruthur Udaiyan Periyan Manakka Jothi as per the instruction of the Nagaraththar. By this arrangement one can assume this nagaram was administrated by a systematic setup.

During Maravarman Sundara Pandyan period (1225 CE), the Nagaraththar had donated as tax free one ma extent of land to Thirumalaikadambar temple. From this land 10 Kalam of paddy was levied to the temple during the full crop season and pathakku measure of paddy was levied during the failure of crop.[15]

Thirukamakkottamudaiya Nachchiyar (Uma) idol was installed at Thirumalai kadambar temple by one Periya Devan Uthaiyan during the 12th regnal year (1218 CE) of Maravarman Sundara pandya -I. For this image he had built a separate stone shrine also.[16] More over six ma kani extent of land was given for the expenses of sacred dress for which 60 kalam paddy per year was levied from this land. All the taxes of this land were given to Nagaram. Dr.Thirumalai Nambi has opined that all the lands at Nagaratharmalai were under the control of Nagaraththar and all the land transactions were under the purview of Nagaram. [17]

At Narththamalai, one separate Vishnu temple was constructed by the Nagaraththar and named it as Pathinen bhumi Vinnakara Emperuman. Two of his consorts are also housed with Vishnu God. More over 5 Ma ¾ and 3 Kani measure of land was also donated to this Vishnu temple as Thiruvidaiyattam for the expenses of sacred food offering to the god and goddesses. For these 57 Kalam of paddy was supplied per year.[18] The donation given by the Nagarathar to Vijayalaya Cholisvaram temple is also registered here but due to damage of the record full details are not traceable .[19]

One more Siva temple in the name of Nagarisvaram has been constructed in this hill by the Nagarathar. It also might have been constructed during Maravarman Sundara Pandyas period. Three ma extent of land located in three different places were given to one Senkuli Aludaiyan alias Irunithi Kuberan of Veliarrur for which he had to pay 24 kalam paddy every year for

Nagarisvaram temple. This paddy might be reduced during the failure of crop.[20]

The signatories of this document are all chettis who were engaged in a particular trade. They are, Irasa Gambira Uththama Chola Silai Chetti, Alagiya Chola Silai Setti, Jayankonda Chola Silai Chetti, Anukka Silai Chetti, Kulothunga Chola Silai Chetti, etc. Thirukkamakottamudaiya Nachchiyar temple was built during the 12th year of Maravarma Sundara Pandyan. After three years (15th year) one ma and half measure of land was given to Periyan Uthiyan alias Periya devan and again he gave it as Thirunamaththukkani for the same temple.

Narththamalai and Merchant guilds

Disai Ayiraththu Aynurruvar and Peru Niraviyar were the two merchant guilds are mentioned in one of the inscriptions at Narththamalai. An interesting information is mentioned in an inscription found at Narththamalai dated to 1055 -56 Rajendra II period .[21] Since the inscription is partly damaged the full details of the record is not known. According to this record a girl from a chetti family had committed suicide by consuming poison because the obstacles made by some people in her marriage ritual (may be tying mangala sutra and Santhi muhurtham). Two individuals Thillai Kuththan and another one were against the wishes of that Chetti girl. They had arranged another girl daughter of one Raman for that marriage purpose. On knowing that the previous girl had consumed poison and died. Disai Ayiraththu Aynurruvar and Peru Niraviyar who came to know the incident as an act of expiation of this sin had established a temple for the deity Sanku Parameswari. In addition to that the guild people made arrangement for lighting on three santhis at the Mahadevar temple of this village.

This incident explains some kind of marriage ritual prevailed on those days in chetti families. These types of inscriptions are already noticed at Karur and Bahur (Pondicheri) which may be studied comparatively to know the details of marriage rituals on those days.

Conclusion:- From the fore going materials one can conclude that number of small hills are collectively named as Nagaraththar malai because of the hectic business activities of Nagaram community. Nagaraththar had built one Vishnu temple Patinen Bhumi Vinnagaram and a Siva temple Nagarisvaram. This Narththamalai has changed as Telunga Kulakala Puram by the epithet of Rajaraja- I during the days of Rajaraja. But it was again changed as Kulothunga Chola Pattinam during the period of Kulothunga Chola I. Disai Ayiraththu Aynurruvar and Peru Niraviyar lived here had played a great role in the life of Narththamalai. Thus the study of Narththamalai reveals various interesting social and economical activities at this area of history.

References:-

1. Inscription of Pudukkottai State, No.61.
2. K.R.Venkattarama Iyyar, A Manual of Pudukkottai State, Commissioner of Museum, Vol-II, Part-II, 2002., P.No.1070.

3. Inscription of Pudukkottai State, Nos, 11&19.
4. Inscription of Pudukkottai State, No.11.
5 .Inscription of Pudukkottai State, No.19.
6. Inscription of Pudukkottai State, No.86.
7. Inscription of Pudukkottai State, No.112.
8. Inscription of Pudukkottai State, No.279.
9. Inscription of Pudukkottai State, No.91.
10. Inscription of Pudukkottai State, No.61.
11. Inscription of Pudukkottai State, No.113.
12. Inscription of Pudukkottai State, No.114.
13. Inscription of Pudukkottai State, No.158.
14. Inscription of Pudukkottai State, No.170.
15. Inscription of Pudukkottai State, No.271.
16. Inscription of Pudukkottai State, No.279.
17. R.Thirumalai Nambi., studies in the history of Ancient Townships of Pudukkottai, State Archaeology Department., Chennai, 1981, P.No.4.
18. Inscription of Pudukkottai State, No.281.
19. Inscription of Pudukkottai State, No.282.
20. Inscription of Pudukkottai State, No.283.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue II, December 2023
DOI:10.13140/RG.2.2.29972.10880
www.kanpurhistorians.org

NAVIGATING PERIPHERIES OF MEDIA: INDIA'S LEGAL FRAMEWORK FOR SPEECH AND EXPRESSION

SHIVAM TRIPATHI
Dharmashastra National Law University,
Jabalpur, M.P, India

Abstract

This abstract delves into the historical and legal context of media freedom in India, particularly in the pre-independence era. It highlights the intricate relationship between politics and the media and the evolving legal framework that governs freedom of speech and expression. The discourse on media freedom in India dates back to the pre-independence period and continues to be a relevant and contentious issue. This abstract explores key facets of this journey. It begins by discussing the challenges faced by media outlets, including censorship and bans imposed by the colonial administration. These actions were often justified on grounds of maintaining public order and protecting the interests of the British Raj. The media's role as a crucial tool for public education and awareness during the struggle for independence is acknowledged. Moving forward, the abstract touches upon the complexities of balancing media rights with national security interests. It emphasizes that while freedom of expression is fundamental, it is not absolute, especially when it comes into conflict with matters of national importance and public order. The abstract also highlights the significance of dissent and silent forms of protest within the context of freedom of expression. It suggests that the right to silent dissent, even during symbols of national identity like the national anthem, is an essential aspect of freedom of speech and expression.Furthermore, it underscores the media's constant struggle against governmental interventions and regulations. Such interventions, whether in the form of page limits for newspapers or pricing controls, are seen as potential hindrances to free expression and economic viability in the media industry.

In conclusion, this abstract underscore the enduring challenges and debates surrounding media freedom in India. It recognizes the evolving legal framework that seeks to strike a balance between media rights and broader national interests. It also highlights the continued importance of the media as a pillar of democracy and a vehicle for public education and awareness.

Keywords: Media freedom, Freedom of speech and expression, colonial administration, Political agenda and Silent protest

Introduction

During the early 18th and 19th centuries, India lacked well-known journalists, but a new era of journalism was ushered in by a few Kolkata merchants. James Silk Buckingham kickstarted this movement with the launch of the "Calcutta Chronicle". He not only introduced the practice of real journalism but also shed light on the local and regional issues plaguing the people. This period was marked by the prevalence of inhumane practices, including Sati Pratha and child killings, perpetrated by Brahmins who considered themselves the supreme class of society. Buckingham led a journalistic movement against these practices.

Raja Ram Mohan Roy, a renowned Bengali social reformer, joined the cause by establishing the Bengali newspaper "Sambad Kaumudi" in 1822, along with a Persian newspaper called "Mirat-UI Akbar." The momentum continued with the launch of "Bombay Samchar" by the visionary journalist Fardaonji Murzban in 1838, and "The Bombay Times and Journal of Commerce" in 1857.
[1] This year marked the emergence of journalism in India, coinciding with the enactment of the Vernacular Press Act, which aimed to distinguish Indian journalism from arbitrary British control.

In 1861, Robert Knight published the first edition of the "Times of India," marking the beginning of media involvement in politics, as the newspaper consistently supported British interests. In 1868, two social reformers, Sishir Kumar Ghosh and Motilal Ghosh, initiated the "Amrit Bazar Patrika," which received substantial contributions from notable figures like C.Y Chintamani, C. Kellar, and Ferozeshah.

In 1878, "The Hindu" was established in English, primarily distributed in Kerala and Tamil Nadu. Now, let's shift our focus to the post-Independence period and the growth of newspapers during that time. In the early 1940s, the Press Trust of India was founded, altering the working dynamics of many journalists. Most newspapers during this period came under Indian ownership.

By the 1970s, Indian newspaper houses were officially recognized as industries, ushering in a period of technological advancements and prosperity in the newspaper business. This encapsulates the foundational history of the

---

[1]Dahiya, S. (2021). Mapping Media Metamorphosis: From Humble Beginnings to Powerful Empires. In Indian Media Giants: Unveiling the Business Dynamics of Print Legacies (Ed.). Oxford Academic.

press, known as media during that era. We have now covered the concept of media and its rudimentary historical backdrop.[2]

Now, let's delve into the realm of media politics. It all began during the time of India's first Prime Minister, Jawaharlal Nehru, often referred to as "Pandit" due to his Kashmiri Pandit heritage. Critics of Nehru argue that the legacy of suppressing freedom of speech and expression can be traced back to his tenure. This issue has deep-seated roots within our legal and governmental systems, planted by Nehru himself through the introduction of the first amendment, which curtailed press freedom.

In 1949, two crucial court judgments were pronounced, leading to severe opposition attacks on Nehru. The first case, the Ramesh Thapar Case[3], involved the Madras government declaring the communist party illegal and banning the magazine "Crossroads" containing leftist content. The court ruled that the Indian constitutional scheme did not support such a ban on the grounds of public order and safety, as the exceptions were more specific and had to pose a genuine threat to the state's security.

The second case related to an order issued by the Chief Commissioner of Delhi, requesting the RSS mouthpiece, "Organizer," to submit all communal materials related to Pakistan for security reasons. The contradiction arose due to Nehru's government amending the Indian constitution to insert the words "public order and relations with foreign states" into Article 19(2).[4] This sparked a parliamentary debate, with opposition members accusing Nehru of intolerance towards dissenting voices.[5]

A Time Magazine report dated May 28, 1951, noted that Nehru criticized a section of the Indian press for engaging in vulgarity, indecency, and falsehood, which he believed was poisoning the minds of the younger generation. He proposed an amendment to India's constitution that would impose strict restrictions on freedom of speech and expression. Nehru sought the power to control the press and punish individuals and newspapers for contempt of court, defamation, and incitement to commit offenses. He attributed this measure to concerns about communist and Hindu extremist activities. Time Magazine wasn't the only publication voicing these concerns; others, such as Atom, Current, Bombay weeklies, Struggle, and Blitz, consistently criticized Nehru's domestic and foreign policies and their implementation.

In the past, there have been cases like ADM Jabalpur vs. Shivkant Shukla[6], which dealt with the unlawful detention of individuals during a state of emergency when fundamental rights were suspended. The court ruled against such detentions, and both the judicial system and the media criticized the

[2] Nair, T. S. (2003). Growth and Structural Transformation of Newspaper Industry in India: An Empirical Investigation. Economic and Political Weekly, 38, 4182.

[3] *Thappar, R. v. State of Madras, AIR 1950 SC 124.*

[4] Constitution of India. Article 19(2).

[5] Liang, L. (2011). Reasonable Restrictions and Unreasonable Speech. Agenda, 22, 15.

[6] *Additional District Magistrate, Jabalpur v. Shivkant Shukla, AIR 1976 SC 1207.*

arbitrary actions of Indira Gandhi. The Supreme Court declared these actions illegal.
During this period, newspapers like The Indian Express and others were reluctant to challenge government censorship orders due to fear. For instance, Vinod Mehta's magazine, Debonair, was subjected to scrutiny by the censorship board. The authorities on that occasion famously said, 'Porn is fine, but not politics.'
After the emergency, the Press Council of India was established with the purpose of improving the press, safeguarding press freedom, and maintaining journalistic standards. This era highlighted Indira Gandhi's attempts to suppress freedom of speech and expression.
When Rajiv Gandhi became the Prime Minister, he also tried to curtail freedom of speech and expression. His infamous Defamation Bill aimed to censor the press but faced strong opposition and was eventually withdrawn. He also attempted to censor individuals' mail through the postal bill, which sought to intercept letters. Fortunately, this draconian law was prevented from becoming a reality thanks to the intervention of President Zail Singh.Rajiv Gandhi's government also banned Salman Rushdie's writings, drawing condemnation from the international community. In the era of Sonia and Rahul Gandhi, Article 66-A of the IT Act[7], introduced during Manmohan Singh's government, was struck down by the Supreme Court.[8] This law, similar to the 1951 Nehruvian law, had raised concerns.
On October 11, 2011, the Government of India notified four sets of rules[9] under the IT Act, 2000:

1. Content that is grossly offensive or has menacing character.
2. False information intended to cause annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or persistent harassment through electronic means.
3. Electronic mail or messages meant to cause annoyance, inconvenience, deception, or mislead the recipient about their origin.

Section 66-A of the Information Technology Act, defines 'grossly offensive' and 'menacing' as subjective and complex matters. It also covers offences such as criminal intimidation, ill-will, insult, annoyance, and hatred between

[7]Information Technology Act, 2000, Act 21 of 2000, Section 66 A.
[8]*Shreya Singhal v. Union of India, AIR 2015 SC 1523.*
[9]Government of India. (2011). Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011. Ministry of Communications and Information Technology. Government of India. (2011). The Information Technology (Intermediaries Guidelines) Rules, 2011. Ministry of Communications and Information Technology. Government of India. (2011). The Information Technology (Guidelines for Cyber Cafe) Rules, 2011. Ministry of Communications and Information Technology. Government of India. (2011). The Information Technology (Electronic Service Delivery) Rules, 2011. Ministry of Communications and Information Technology.

groups, which are already addressed in the Indian Penal Code.[10] However, it's worth noting that the prescribed punishments for 'annoying' and 'criminal intimidation' are identical.

Let's step back in time and explore some historical cases that have had an impact on media politics. One of the most contentious issues in India's history is the Kashmir problem, which continues to pose significant challenges for the Indian government, particularly in the face of terrorism from Pakistan. At the heart of the Kashmir issue lies the influence of certain communal forces. It's essential to recognize that even from the early days, figures like Ali Jinnah consistently advocated for the acquisition of Kashmir. However, Kashmir has been an integral part of India since its inception, as evidenced by the Instrument of Accession signed by Maharaja Hari Singh. This document explicitly states Maharaja Hari Singh's agreement to transfer Kashmir to India and was signed in the presence of then-Prime Minister Ram Chandra Kaka. The complexities surrounding this issue are vast and require extensive discussion. However, it's worth considering how the media has tackled the challenge of addressing Kashmir and countering the influence of extremist ideologies. India has always been a democratic nation, but it's important to note that some countries have shaped themselves based on their religious beliefs.

Ancient India

The concept of freedom of speech and expression has deep roots in India, dating back to ancient times, a notion that would later be recognized in the Western world. Our ancient scriptures, such as the Vedas, contain hymns that touch upon fundamental rights, including the right to express oneself. Hinduism, at its core, is about the pursuit of truth, and it encourages open debates and expressions of ideas. It promotes the quest for truth without confining individuals to a single belief system. In the Hindu tradition, there has always been an emphasis on intellectual honesty and open dialogue. Numerous ancient scriptures and stories within Hindu culture underscore the importance of freedom of expression. Various philosophical schools of thought have thrived in Hindu culture, emphasizing that dissenting viewpoints have always had a place in our society.

Medieval India

During the Medieval period, often referred to as the Muslim Era, the freedom of expression for Hindus faced suppression under the rule of Muslim monarchs. Hindu individuals were coerced into adopting the culture and religious practices of the ruling Muslim authorities. It was only during the reigns of Akbar and later his son Jahangir that Hindus were granted the freedom to express themselves and practice their faith.

British Rule in India

[10] Indian Penal Code, 1860 (Act 45 of 1860).

The era of British colonial rule in India saw a significant curtailment of freedom of expression for Indians. Various forms of media, including newspapers, dramas, and speeches, faced censorship and bans when criticizing the actions of the British Empire. Many freedom fighters were arrested under charges of making seditious speeches. While India struggled to uphold freedom of expression under British colonialism, other countries outside India were making strides in promoting this freedom.

In 1766, Sweden became the first country to abolish restrictions on freedom of expression, followed by Denmark and Norway. Following the American Revolution, the United States incorporated the First Amendment into its Constitution in 1791, providing one of the strongest protections for free speech in any constitution worldwide. However, like in any modern democratic state, freedom of speech in the United States is not absolute and is subject to limitations. "The U.S. Supreme Court has played a significant role in refining the concept of freedom of speech through various landmark rulings, distinguishing between protected and unprotected expressions. The First Amendment to the United States Constitution was ratified on December 15, 1791, as part of the Bill of Rights."

During the same period when the United States adopted the First Amendment, India was fighting for independence from British colonial rule. This freedom struggle was fueled by the demands for liberty, dignity, and equality for all. The suffering of Indians under British rule inspired freedom fighters to strive for and defend their liberties and freedoms. Many influential figures of that era contributed to the freedom struggle through their teachings, sparking significant societal change. An exemplary figure is Dayanand Saraswati, the founder of Arya Samaj, who fearlessly challenged orthodox societal norms and advocated for women's education. Another trailblazer was Savitribai Phule, who, during British rule, led the charge for women's education and established the first school for girls.

The Indian National Congress articulated the fundamental human rights of the people, including freedom of speech and expression, in the Constitution of India Bill of 1895. These rights, along with equality and free education, were advocated for. Under the leadership of Pt. Motilal Nehru, a committee was formed to recommend 19 essential rights, including freedom of speech and expression, for inclusion in the Indian Constitution. Ten of these rights were subsequently incorporated into the Indian Constitution. In 1946, Jawaharlal Nehru presented an objective resolution that included many of the human rights now enshrined in our Constitution. The Indian Constitution, after extensive deliberations in the Constituent Assembly, eventually included fundamental rights, including freedom of speech and expression.

On December 10, 1948, while the Indian Constitution was being drafted, the United Nations General Assembly adopted the Universal Declaration of Human Rights—a milestone in the history of human rights. Article 19 of the

Indian Constitution protects "Freedom of Opinion and Expression. Freedom of speech, defined as the right to express oneself without government interference, is a cherished democratic principle practiced by modern democracies worldwide."

Distorted Historical Narratives

Throughout history, certain political leaders, historians, and writers have embarked on a persistent endeavour to manipulate and distort historical accounts, often driven by political motivations. Their aim has been to craft false narratives that evoke sympathy and support across generations.

Since gaining independence, India has witnessed numerous instances of historical distortion at the hands of politicians, writers, and journalists who have elevated their leaders to near-divine status in the eyes of the common people. One such example lies in the ancient Sindhu civilization, renowned as one of the world's oldest civilizations, with a predominantly Hindu population. However, this civilization suffered during the Parsi invasions, resulting in the acquisition, destruction, or appropriation of temples, architectural wonders, ancient statues, and other cultural artifacts.

In the realm of education, the history taught by teachers often conceals or distorts crucial facts. This is particularly evident when students predominantly encounter narratives centered on Mughal and contemporary rulers, with other historical periods receiving scant attention. While the Mughal Empire is undoubtedly significant, it is just one chapter in India's rich historical tapestry.

Neglected Historical Figures and Dynasties

Several historical figures and empires, often sidelined in mainstream education,[11] merit recognition:

1. The Vijay Nagara Empire (1336-1646 CE): Spanning over 300 years, the Vijaya Nagara Empire outlasted the Mughal Empire (which lasted around 170 years) and encompassed the southern Indian peninsula. Unfortunately, this empire's prominence remains obscured in South Indian history books. Remarkably, it was ruled by the likes of Krishna Devaraya, a ruler whose name is unfamiliar to most students.
2. The Maratha Empire: Concurrent with the Mughal Empire, the Maratha Empire, established under Chhatrapati Shivaji Maharaj, extended from western to eastern India, covering regions such as Cuttack in the east and Karnataka in the south. Regrettably, this empire's historical contributions often go unnoticed in school curricula. The Marathas, who fought against the Mughals before the British era, have made significant contributions to India's history, with Queen of Jhansi being one prominent example.
3. The Ahom Empire of Assam: The Ahom Empire, with its six-century reign, remains largely absent from history books. This empire, rooted

[11] The Times of India. (2021, December 01). Need Content on Many More Historical Figures, Indian Dynasties.

in the Assamese community, played a pivotal role in resisting both Mughal and British rulers, yet its significance is often overlooked by the media.

4. Chola Dynasty: The Chola dynasty, thriving from the 300s BCE to 1279 CE, stands as one of mankind's great and extensive dynasties. Its dominion stretched from southern India to northern India, encompassing Burma (now Myanmar), large parts of Malaysia, Thailand, and Indonesia. Known for its emphasis on education, literacy, and innovation, the Chola dynasty has left a lasting legacy. Rajaraja Chola, one of its notable rulers, stands as a testament to their glorious era.
5. Gupta Empire: Often referred to as India's golden age, the Gupta Empire flourished in arts, music, literature, and mathematics. Unfortunately, school curricula tend to underrepresent this significant period in India's history.
6. Mauryan Empire: King Ashoka, a revered figure not only in India but also globally, is a subject of fascination for historians. Ashoka was not just a capable ruler; he was also a philosopher, administrator, and military strategist. His reign, alongside figures like Bindusara and Chanakya, shaped India's governance, legal systems, and economic structures. Regrettably, the profound influence of these leaders has at times been obscured by politicians with selfish motives. In conclusion, India's history boasts a diverse tapestry of dynasties and historical figures, each contributing to its rich heritage. Acknowledging and understanding this multifaceted history can provide a more comprehensive perspective on India's past and present. Nevertheless, the distortion or politicization of historical narratives for personal gain remains a concern that merits attention.

Historical Evolution of Media Laws in India

Throughout India's history, various acts and regulations have shaped the media landscape, influencing the freedom of speech and expression. Let's explore the sequence of significant media acts[12] that have played a pivotal role in this evolution:

1. First Press Regulation Act (1779): Introduced by Lord Wellesley on May 13, 1779, this act mandated that the names and addresses of printers be printed on publications. It was later abolished during Warren Hastings' tenure.
2. Gagging Act (1857-1858): Enacted in 1857 and abolished in June 1858, this act required mandatory licensing for owning or operating a printing press. It granted the government substantial control over the press and the power to suppress publications opposing the government.

[12]Sharma, S. (2021). History of Media Law in India. Black N' White Journal.

3. Vernacular Press Act (1878): Enacted on March 1, 1878, this stringent act empowered district magistrates and police commissioners to maintain law and public order. They could demand security from newspaper publishers, and the government could confiscate printing machines and materials if publications were deemed seditious.
4. Indian Press Act (1910-1914): This act led to numerous cases involving search, seizure, and confiscation of publications. It required press owners to provide security deposits, which could be forfeited if they published content against the government. It also empowered the police to conduct searches and seizures.
5. Official Secrets Act (1923): This act consolidates laws related to official secrets and deals with offenses such as unauthorized entry into restricted areas, creating or possessing secret documents, and sharing information that could compromise public security. Violation of this act may result in imprisonment for up to 14 years.
6. The Press & Registration of Books Act (1867): Enacted to assess the status of publications in India, this act mandated that press owners print the names and addresses of owners, editors, and printers on all copies. Failure to comply was considered an offense against the government.
7. Sea Customs Act (1878): This act aimed to prevent the import of obscene books and publications, prohibiting the entry of such material by sea or land.
8. Contempt of Court Act (1952, 1971, 1976): This act outlines the reasonable restrictions of Article 19(2) related to contempt of court. It was initially enacted in 1952, followed by subsequent amendments.
9. Young Person's (Harmful Publication) Act (1956): Enacted to curb publications glorifying crime and containing violent stories.
10. Parliamentary Proceedings (Protection of Publication Act, 1956): This act aimed to protect reports of parliamentary functions, speeches, documents, and expressions from legal liability unless they were proven to be untrue and published maliciously.
11. Delivery of Books and Newspapers (Public Liabilities) Act (1954): Enacted to ensure the delivery of newspapers to libraries immediately upon publication, free of cost, as notified by the central government.
12. Copyright Act (1957): Section 52 of this act addresses freedom of speech and expression by allowing fair use, fair quotations, and bona fide abridgements that do not constitute copyright infringement.
13. Defence of India Act (1962): This act granted the parliament the authority to make laws related to freedom of speech during emergencies. Such laws could not be challenged on the grounds of legislative incompetence as long as the emergency persisted.

14. Press Council of India Act (1970, revised in 1978): Enacted to protect freedom of the press and ensure the proper maintenance, development, and improvement of news agencies and newspapers. The Press Council serves as a court of honor rather than a court of law.
15. Police (Incitement to Disaffection) Act (1954): This act aimed to penalize police officers for breaches of discipline and withholding their services.
16. Drugs and Magic Remedies (Objectionable Advertisement) Act (1954): Enacted to control false advertising of drugs and prohibit the advertisement of certain drugs.

These acts have contributed to the evolving legal framework governing media and freedom of speech and expression in India. Several important court cases have further shaped the interpretation and application of these laws.

Landmark Freedom of Expression Cases in India

One significant case in Indian legal history is Ramesh Thapar Vs State of Madras. In this case, the Madras government banned the English magazine “Cross Roads,” published by Mr. Ramesh Thapar. The government alleged that the magazine contained content detrimental to public order as per the Madras Maintenance of Public Order Act, 1949 (Madras Act XIII) of 1949. The Madras government imposed a ban on the entry and circulation of the publication under Section 9(1-A) of the law. Ramesh Thapar had strongly criticized Prime Minister Nehru's policies in the magazine. Justice Patanjali Sashtri, in his judgment, emphasized the value of democratic institutions and the role of freedom of the press in maintaining a free political environment. He argued that a free press is vital for public education and fostering a popular government, allowing citizens to access the truth about society.

Another notable case is Prabha Dutt vs Union of India.[13] Prabha Dutt, a renowned journalist and the mother of Barkha Dutt, sought to interview two dangerous criminals, Ranga and Billa, who had kidnapped Geeta and Sanjay Chopra in 1978. However, the jail superintendent denied her request, leading her to approach the Supreme Court. The court ruled that Article 19(1)(a) of the Indian Constitution, which protects freedom of speech and expression, does not grant an absolute right to the press or unrestricted access to information. While the press has the right to gather and disseminate information, it should not endanger the sovereignty, integrity of the nation, public order, security, health, or morality. In this case, the petitioner's claim was rejected by the Supreme Court, and the President also declined the petition.

The Freedom of Silence Case involves three children belonging to the Jehovah's Witnesses who stood silently during the national anthem at their school. Although they refused to sing the anthem, they stood respectfully as it was played by the authorities. The school expelled them, citing a violation of the Prevention of Insults to National Honour Act, 1971. However, the

[13] *Prabha Dutt* v. *Union of India*, (1982) 1 SCC 1.

Supreme Court later ruled that silent standing does not constitute an insult to national honour, and expelling the children violated their fundamental rights under Article 19(1)(a), which includes the right to remain silent as a part of freedom of speech and expression.

In Bennet Coleman and Co. v. Union of India,[14] the court held that the government does not have the authority to dictate the number of pages of newspapers, as it would infringe upon the freedom of speech and expression protected under Article 19(1)(a). The petitioner argued that if they wanted to maintain a consistent size for their newspaper, they would be charged more. The court determined that such interference would have a twofold effect, impacting economic viability and restricting freedom of speech and expression.

A similar case is Sakal Patrika v. Union of India,[15] In this case, the petitioner challenged the government's attempt to control the pricing and page limits of newspapers through the Newspaper Act of 1956 and the Daily Newspaper Order. The court ruled that the government's efforts to regulate pages by tying them to pricing or linking them to advertisements constituted a violation of Article 19(1)(a). The petitioner's argument that maintaining a consistent newspaper size would lead to higher charges was upheld by the court, emphasizing that such interference infringed upon the petitioner's fundamental freedom.

Understanding Freedom of Speech and Expression in Media

Article 19(1) of the Indian Constitution guarantees the freedom of speech and expression to its citizens. Simultaneously, Section 3 of the Right to Information Act[16] delineates the right to information for all citizens. This freedom of speech and expression encompasses not only the right to articulate one's thoughts but also the right to refrain from speaking involuntarily or under duress. It implies that no one should be coerced into delivering a speech against their will, nor should anyone be compelled to halt their expression, either by individuals or institutions. In essence, it upholds the principle that one individual or entity should not curtail another's right to speak freely. Despite being the world's largest democracy, India has witnessed numerous cases and judicial decisions that underscore an ongoing struggle between the government and its citizens, even as of mid-2019.[17]

Conclusion:

In conclusion, the mentioned cases from Indian legal history highlight the intricate interplay between the fundamental right to freedom of speech and

[14]*Bennett Coleman* v. *Union of India*, (1972) 2 SCC 788.
[15]*Sakal Papers* v. *Union of India*, (1962] 3 SCR 842.
[16]Right to Information Act, 2005 (Act 22 of 2005), Section 3.
[17]Neelamalar, M. (2010). Media Law and Ethics (1st ed.). PHI Learning Private Limited.

expression and the imperative of maintaining public order and national interests. These judgments underscore the pivotal role of a free press in a democratic society, serving as a watchdog and facilitating informed public discourse. The Ramesh Thapar case exemplifies the necessity for government restrictions on publications to adhere to legal boundaries and not infringe upon legitimate criticism and dissent. In Prabha Dutt vs Union of India, the court affirmed that while the press has the right to access information, it must exercise this right responsibly, without compromising national interests.

The Freedom of Silence Case underscored the importance of recognizing the right to remain silent as an integral aspect of freedom of speech and expression. Lastly, the Bennet Coleman and Sakal Patrika cases reinforced that government intervention in newspaper page limits and pricing encroaches upon the fundamental freedom of the press. In light of these cases, it becomes evident that India's ongoing journey to strike a balance between safeguarding individual liberties and upholding societal interests requires careful consideration and respect for the principles of democracy. To ensure a thriving democracy, it is crucial to protect and celebrate the role of a free and responsible media.

Recommendations

1. Clear Guidelines: The government should establish clear and transparent guidelines for restrictions on publications, ensuring that they conform to constitutional principles and international human rights standards.
2. Media Literacy: Promoting media literacy among the public can enhance critical thinking and help individuals differentiate between credible journalism and misinformation, reducing the need for undue restrictions.
3. Regular Review: Laws and regulations governing media freedom should be periodically reviewed to align with evolving societal needs while safeguarding democratic principles.
4. International Collaboration: Collaborating with international bodies and organizations can help India learn from global best practices in balancing freedom of speech with national interests.
5. Protection of Journalists: Ensuring the safety and protection of journalists, particularly those reporting in sensitive areas, is essential to maintain a vibrant and independent media.

By adhering to these recommendations and respecting the precedents set by these landmark cases, India can continue its path towards fostering a robust democracy where the freedom of speech and expression thrives alongside the preservation of public order and national interests.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue II, December 2023
DOI:10.13140/RG.2.2.29972.10880
www.kanpurhistorians.org

SOCIETAL SIGNIFICANCE OF VEDIC MATHEMATICS IN THE CONTEMPORARY ERA

JYOTI JHA
Research Scholar, Department of Education
Mahatma Gandhi KashiVidyapith, Varanasi
DR. RAHUL GUPTA
Associate Professor of Sociology
Mahatma Gandhi KashiVidyapith,Varanasi

Abstract

Vedic Mathematics is an ancient system based on 16 formulas (sutras), offering simple and easy methods for quick mental calculations. Numerous researchers have explored its applications in engineering, astronomy, and mathematics. The beauty of Vedic mathematics lies in its ability to facilitate faster and precise mental calculations using the 16 sutras and 13 up-sutras. These techniques empower individuals to tackle complex equations in addition, division, multiplication, algebra, trigonometry, squares, square roots, cubes, and cube roots through mental calculations alone. In today's fast-paced and ever-changing era, Vedic mathematics plays a crucial role, especially in competitive exams like UPSC, GPSC, CET, GATE, JEE, and others, where it significantly reduces the time needed to solve challenging mathematical problems. This paper delves into the societal significance of Vedic Mathematics in the contemporary era, exploring the potential impact of integrating Vedic mathematical principles into education and daily life. Rooted in ancient Indian traditions, Vedic Mathematics offers a unique approach to problem-solving, aiming to enhance critical thinking skills and foster a holistic understanding of mathematics. The research examines the historical roots and fundamental principles of Vedic Mathematics, highlighting its flexibility and applicability to the natural workings of the mind. The focus is on the societal benefits, particularly the potential improvement of critical thinking and problem-solving abilities, as well as its role in addressing current educational challenges. Challenges and

opportunities related to the integration of Vedic Mathematics into curricula and overcoming societal skepticism are also discussed. The paper concludes by emphasizing the potential of Vedic Mathematics to contribute to a more mathematically literate and analytically adept society in the contemporary context.

Introduction

Vedic Mathematics is said to be an ancient system of calculation that ShriBharati Krishna TirthajiMaharaj claimed to have "rediscovered" from the Vedas between 1911 and 1918. According to Tirthaji, this system relies on sixteen sutras or word formulae, with "Urdhvatiryak" being one of them. These formulae are believed to reflect the natural way the mind works and are thought to be helpful in guiding students to the right solution methods. However, it's worth noting that none of these sutras have been found in Vedic literature, and

their methods don't align with known mathematical knowledge from the Vedic era. In modern times, many students are using Vedic Maths to prepare for competitive exams.Using thisVedic method, complex problems can be easily solved. Compared to general mathematics, Vedic mathematics offers students an edge they might not get from general mathematics.In fact, Vedic Maths is so versatile that even NASA has applied certain concepts from Vedic Mathematics to artificial intelligence. Today, Vedic Maths is being taught in schools, and a special emphasis is placed on those students that wish to learn more about the subject. Vedicmaths is innovative and makes maths more natural. It is similar to the acceptance of yoga for physical well-being and meditation for inner well-being. It has been proven that by using Vedic maths classesin daily life, students tend to become more active, productive, interactive, and even faster in their regular studies or education. India has been a goldmine of intelligence since ancient times. However, the importance and worth of some ancient values, including Vedic maths, in India are being realized now. Being a colonial country, it took time to gain its due value and importance but now, the whole world recognizes and appreciates this system and intelligence. In today’s time of online maths classes, this has been accelerated even more. Recently, it has been noted that many schools have also started to introduce a few Vedic maths techniques or even short Vedic maths courses on their learning management system for schools to help students teach some useful techniques and aid in developing a stronger mental power. The present time is ever-changing and fast-growing. In this era, the use of Vedic maths is highly relevant and can help students preparing for higher-level exams to solve problems faster by only using their mental power. For example, it is much easier and faster to find squares, square roots, cubes, and cube roots in complex mathematical equations with Vedic maths techniques. It is also possible to quickly apply division, multiplication, addition, and subtraction operations on big numbers and get accurate results in just seconds.

Surprisingly, all this can be done by just using their mental power and no calculator. It can be introduced in various modules through LMS education and taught through the LMS Blackboard. Sometimes, practiced Vedic mathematicians do not even require a pen and paper and derive the correct answer to a long, complex equation in just a minute or two. This is truly intriguing and surprising at the same time. Therefore, people in the modern era developed an interest and curiosity in learning the Vedic maths techniques and teaching them in their daily lives. Vedic Mathematics is a system of mathematical principles and techniques purported to simplify complex mathematical operations. Prime Minister NarendraModihas shown interest in promoting Vedic formulas on a global scale. Schools have embraced Vedic mathematics and yoga in their curriculum, gaining acceptance from students, parents, and teachers alike.

Vedic Mathematics:

Vedic mathematics was rediscovered from Vedas in between 1911 and 1918 by Sri Bharathi Krishna tirthagi. He is better known asbygurudeva or jagadguruji. The reconstruction of 16 sutras mainly gathered from the AtharvaVeda. Vedic mathematics sutras are also applicable even in astrology. Mathematics can also be used to check out the answer whether it is correct or not. The term "Vedas" is a Sanskrit word means divinely revealed and it is the store house of all knowledge. It is not only related to spiritual matters but also to humanity. The sutras in the Vedic mathematics are designed in a way that naturally how human mind will work. Vedic mathematics is a kind of magic. Vedic mathematical technique will reduce the time, area and power consumption. This mathematics is unique and makes it easy and enjoyable for learning. The nine important features of Vedic mathematics are coherence, flexibility and it improves mental power creatively. It is applicable for everyone, and it increases the mental eligibility, efficient and fast. Vedic are the ancient record of human experience and knowledge, and it was written about 5000 years ago. By using this technique, it will increase the step up to 15 times faster than the actualtechnique. The main beauty of Vedic mathematics is to reduce complex calculations into simple ones. MAC, ALU are some of the basic applications of the Vedic mathematics sutras. In these sutras urdhva-triyagbhyam is best for the multiplication because it is applicable to all cases, and it consumes less power and works at high speed. Generally Vedic mathematics sutras consume less power, silicon area and it is high speed when comparing to various other multipliers.

The Sixteen sutras and up-sutras "13" are as follows:

1. Ekadhikena purvena
2. Ekanyunena purvena
3. Anurupye sunayamanyat
4. Chalana kalanabhyam
5. Sankalana vyavakalanabhyam

6. Gunak samuccayah
7. Sesanyankena caramena
8. Puranapuranabhyam
9. Gunitasamuccayah
10. Urdhvatiryakbhyam
11. Yavadunam
12. Vyastisamastih
13. Sopantyadvayamantyam
14. Sunyam samyasamuccaye
15. Nikhilam navatascaramam dasatah
16. Paravartyayojayet

The fourteen sub –sutras are:

1. Anurupyena
2. Sisyate sesasmjnah
3. Adyamadyenantyamantyena
4. Kevalaih saptakam gunyat
5. Vestanam
6. Yavadunam tavadunam
7. Yavadunam tavadunikrtya varganca yojayet
8. Antyayordasake pi
9. Antyayoreva
10. Samuccayagunitah
11. Lopanasthapanabhyam
12. Vilokanam
13. Gunitasmuccayah samuccayagunitah

These sutras are used in solving complex computations and executing them manually. The algorithms and principles given in Urdhvatiryakbhyam sutra is used for vertical and crosswise multiplication. Vedic multiplier is based upon this sutra. Array multiplication is its primary source. In the design and implementation of Triyakbhyam were done and the speed was compared with Nikhilam sutra, squaring and cubing algorithm.

Societal Benefits of Incorporating Vedic Mathematics

Vedic Mathematics into education and daily practices can yield several societal benefits, influencing individuals and communities in diverse ways. Here are some of the key societal benefits:

Global Competitiveness and Cultural Preservation: In a globalized world where competitiveness is a key factor, individuals with enhanced mathematical skills derived from Vedic Mathematics may have a comparative advantage. The ability to solve problems quickly and efficiently is a valuable asset in various academic and professional pursuits. Incorporating Vedic Mathematics into education helps preserve and promote cultural heritage. By acknowledging the ancient roots of these mathematical principles, societies can celebrate their historical contributions to mathematical knowledge.

Universal applicability And Boosts Confidence: Vedic math's techniques can be used to solve problems in various fields, including science, engineering, and finance. The system can be applied to solve problems in arithmetic, algebra, geometry, and trigonometry. The universal applicability of Vedic math makes it a valuable skill to have in various aspects of life. Vedicmath provides a structured approach to solving mathematical problems. As you master the techniques, you gain confidence in your ability to solve problems quickly and accurately. This can help to develop a positive attitude towards math, reducing math anxiety and fear of numbers.

Enhanced Critical Thinking Skills and Improved Problem-Solving Abilities: Vedic Mathematics encourages multiple approaches to problem-solving, fostering critical thinking skills. The diverse methods provided by Vedic Mathematics promptindividuals to analyze problems from various perspectives, contributing to a more comprehensive understanding of mathematical concepts. The alternative techniques offered by Vedic Mathematics equip individuals with a versatile set of problem-solving tools. This adaptability enhances their ability to approach and solve problems creatively, promoting a practical and solution-oriented mindset.

Increased Mathematical Fluency and Practical Applicability: By introducing efficient and unconventional methods, Vedic Mathematics can contribute to increased mathematical fluency. Individuals who engage with Vedic Mathematics may find themselves more comfortable and adept at handling mathematical concepts, leading to a more mathematically literate society. Vedic Mathematics emphasizes real-world applications, demonstrating the practical utility of mathematical concepts. This can bridge the gap between theoretical knowledge and its practical use, making mathematics more relevant and applicable in everyday life.

Cognitive Development and Enhanced Critical Thinking: The holistic approach of Vedic Mathematics engages both hemispheres of the brain. This engagement is believed to enhance cognitive development, potentially leading to improved memory, concentration, and overall mental acuity. One of the primary societal benefits lies in the potential enhancement of critical thinking skills. The diverse approaches provided by Vedic Mathematics encourage individuals to think creatively and analytically, fostering a deeper understanding of mathematical concepts

Increased Interest in Mathematics: The unconventional and engaging nature of Vedic Mathematics may spark increased interest in the subject. Students who find traditional mathematical approaches challenging may discover a renewed enthusiasm for learning through the application of Vedic techniques. By presenting alternative methods for mathematical operations, Vedic Mathematics equips individuals with a toolbox of problem-solving techniques. This can be particularly valuable in real-world scenarios where innovative solutions are often required.

Role in Education

The role of Vedic Mathematics in education within the context of societal significance in the contemporary era is multifaceted, encompassing various aspects that can positively impact individuals and communities. Here are key points regarding the role of Vedic Mathematics in education:

Curriculum Integration and Addressing Educational Challenges: This section explores the potential integration of Vedic Mathematics into educational curricula. Assessing how schools and institutions can adapt their teaching methods to incorporate these techniques can provide insights into the societal impact of Vedic Mathematics. Considering contemporary educational challenges, such as student engagement and performance disparities, this paper discusses how Vedic Mathematics might offer solutions and contribute to more effective learning outcomes.

Alternative Teaching Methodology and Enhanced Student Engagement: Vedic Mathematics introduces alternative methods of teaching and learning, offering students diverse approaches to solving mathematical problems. This can cater to different learning styles and preferences, promoting inclusivity in education. The unconventional and engaging nature of Vedic Mathematics techniques can capture students' interest and curiosity.

Increased engagement fosters a more positive learning environment, potentially reducing apathytoward mathematics.

Cognitive Development and Development of Critical Thinking Skills: Engaging with Vedic Mathematics is believed to stimulate both hemispheres of the brain, contributing to cognitive development. This holistic approach may enhance memory, concentration, and overall cognitive abilities among students. Vedic Mathematics emphasizes logical reasoning and critical thinking. Integrating these techniques into the curriculum encourages students to analyze problems from different angles, fostering the development of higher-order thinking skills.

Cross-Curricular Integration and Adaptation to Technological Advances: The principles of Vedic Mathematics can be integrated across various subjects, promoting a holistic approach to education. This cross-curricular integration can enhance interdisciplinary connections and demonstrate the interconnectedness of different fields of study. The adaptability of Vedic Mathematics principles to technological tools and applications can align with modern educational trends. Integrating these techniques into digital platforms and educational technology can enhance accessibility and reach a wider audience.

Addressing Educational Disparitiesand Teacher Professional Development: Vedic Mathematics offers an alternative path for students who may struggle with traditional mathematical approaches. By providing additional tools and methods, it can contribute to narrowing educational disparities and promoting more equitable learning outcomes. Integrating Vedic

Mathematics into education requires teacher training and professional development. This process not only equips educators with additional tools but also fosters a continuous learning mindset, potentially improving overall teaching practices.

Applications in Contemporary Education

Speed and Accuracy: The Vedic Mathematics techniques, when mastered, can significantly enhance the speed and accuracy with which mathematical problems are solved. This is particularly valuable in competitive exams and real-world applications. By using Vedic math, the problems are solved mentally with the use of a few or some of steps which increase accuracy and reduce mistakes. Through the application of the sutras, it ensures both speed and accuracy and enhances computational skills. It is strictly based on rational and logical reasoning.

Simplifies complex calculations and increases mental agility: Vedic math simplifies complex mathematical problems by breaking them down into smaller, more manageable steps. The sutras help to identify the patterns and relationships between numbers and guide the problem-solving process, making it easier to approach complicated calculations. The techniques of Vedic math can help to solve problems that would otherwise seem too difficult or time-consuming. Vedic math exercises can help improve the mental agility, concentration, and memory of the students. The techniques require mental calculations, which can help to enhance the brain's ability to think creatively and logically. This can help you solve problems quickly and with more confidence.

Fun, engaging and Develops Creativity &Improves Concentration: Vedic maths can be a fun and engaging way to learn mathematics. Its visual and interactive approach can help make maths less intimidating and more accessible to students of all ages. The sutras can be used to perform mental calculations and provide a sense of achievement when the problems are solved accurately every time with amazing speed. It stimulates a student's imagination and drives them to use their abilities to find a unique solution to a problem. It helps pupils apply the sutras, which improves intuition. In the development of mathematical notions, intuition plays a significant role.

Vedic Mathematics in Contemporary Era

Vedic Mathematics is a very natural and easy way of doing math. You can learn it quickly with just a little effort. It uses shortcuts that make calculations faster. With Vedic Mathematics, you can solve problems in just a few seconds, making you well-prepared and confident for competitive exams like those for banks or the SSC.It's like a set of tricks and techniques to do math in a simpler and quicker way. Even in the 21st century, people all around the world are still interested in and researching Vedic Mathematics. Some smart people are finding new ways to use these tricks for things like Calculus and Geometry problems. Many students, especially those preparing for competitive exams,

are using Vedic Mathematics because it helps solve complicated problems easily. It gives students an extra advantage that regular math might not provide. Even NASA scientists have used some ideas from Vedic Mathematics in artificial intelligence because it's so versatile. In the contemporary era, the application of Vedic Mathematics holds significant societal relevance, offering a unique perspective on mathematical education and problem-solving. Rooted in ancient Indian traditions, Vedic Mathematics is gaining attention for its potential contributions to contemporary society. The practicality of Vedic Mathematics extends beyond the classroom, finding relevance in everyday life and professional settings. Its efficiency in mental calculations equip individuals with valuable skills applicable in diverse fields, such as finance, engineering, and technology, enhancing overall societal numeracy.

The contemporary educational landscape faces challenges related to student engagement, performance gaps, and the need for effective teaching methodologies. Vedic Mathematics offers an alternative path to address these challenges by presenting mathematical concepts in a way that resonates with diverse learning styles, potentially reducing educational disparities. Embracing Vedic Mathematics also plays a role in cultural preservation. By recognizing and incorporating ancient mathematical principles into modern education, societies can bridge the gap between traditional knowledge and contemporary learning. It is not merely a set of rules; it is a system that encourages lifelong learning. Continuous engagement with its principles promotes ongoing cognitive development. This aspect is crucial in a society where adaptability and continuous learning are essential for personal and professional growth. So, Vedic Mathematics is considered a gift from the Vedas to all of humanity.

References:

1. Dani, S. G. (2001). VedicMaths: Facts and Myths. *One India One People*, 4, 20–21.
2. Joshi, D.(2017). Vedic Mathematics in Modern Era.*International Journal of Research in all Subjects in Multi Languages,*5(6).
3. Khare, H. C. (2006).*Issues in Vedic Mathematics: Proceedings of the National Workshop on Vedic Mathematics,* New Delhi: MotilalBanarsidass.
4. Rani,S.(2015). Paramount Value of Vedic Mathematics in Modern Era.*International Journal of Creative Research Thoughts (IJCRT)* ,4(3).
5. Tekriwal,G.(2015). *Maths Sutra: The Art of Vedic Speed Calculation*.Penguin Books India, Gurugram.
6. Tirthaji, S.B. (1965). *Vedic Mathematics*, Motilal Banarasidas, New Delhi.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue II, December 2023
DOI:10.13140/RG.2.2.29972.10880
www.kanpurhistorians.org

CONSTITUTIONAL SAFEGUARDS FOR UNORGANIZED LABOUR

DR. SATYENDRA KUMAR
Assistant Professor
Department of Law
T.D. PG College, Jaunpur India
DR. PRADEEP KUMAR
Associate Professor
Department of Law
Babashaheb Bhimrao Ambedkar University
Lucknow India

Abstract:
We are living in a democratic society in which all equal before the eyes of law whether he is rich or poor,hence every civilized and law abiding person wants to live with honour and dignity in the society, he lives in. For this purpose, it is necessary that one should be treated like a human being by his fellow beings. The condition of the unorganized labour is very poor and they face many difficulties in the society. Efforts made from time to time by way of statutory provisions otherwise to make a person to lead a decent life. The awareness amongst unorganized labourers regarding the Constitutional safeguards provided to them should be developed through literacy camp in unorganized sectors. The mass media, various of communication, NGOs and other voluntary organizations, educational media and special governmental machinery should be effectively used in this regard. The constitutional goal of "right to work", i.e. right to employment which is one of the important problems which is being faced by unorganized labourers should be achieved to benefit the unorganized labourers. Our country has the characteristics of a feudal society; therefore, if we want the upliftment of unorganized labourers then we have to rethink about the pattern of agriculture to be followed.
Keywords: Unorganized, Labourers, Constitution, International, Equlity,
Introduction:

The preamble to the constitution of India in consonance with the constitution of I.L.O. declares, "Justice, social, economic and political; as the first among the other objectives of constituting India into a sovereign, socialist, secular, democratic republic".
[1] The Directive Principles of State Policy promised every one, "the right to an adequate means of livelihood,[2] living wage, a decent standard of life. It also declares that the operation of economic system must not, "result in the concentration of wealth and means of production to the common detriment."[3] In an agrarian country like India, the main item of material resources is no doubt agriculture.[4]

Democracy would indeed be hollow if it fails to generate the spirit of brotherhood among all the people-feeling that they are all children of the soil and the same motherland. It becomes all the more essential in a country like India composed of many races, religious, languages and of culture.[5] Article 1 of the Declaration of Human Rights adopted by the U.N.O, embodies this noble and human principle that "all the human beings are born free and in equal dignity and rights, they are endowed with reason and conscience arid should act towards one another in a spirit of brotherhood." It is this concept of brotherhood of man which is contained in the Preamble of the Constitution and is given practical shape by beholding untouchabilityunder Article 17 and abolition of titles under Article 18 and many other social evils which swayed the social arena of India society.[6]

"Liberty, Equality and Fraternity" which the Constitution seeks to secure for the people of India are to serve the primary objective of ensuring social, economic and political justice. Justice is the harmonious blending of selfish nature of man and the good of the society. The attainment of the collective good as distinguished from individual good is the main aim of rendering justice. Combine the ideals of political, social, economic democracy with that of equality and fraternity in die Preamble, Gandhi described as "The India of My Dream", namely- "an India, in which the poorest shall feel that it is their country in whose making they have an effective voice, an India in which all communities shall live in perfect harmony.[7]

In modern society, so many legislations have been enacted to protect the interest of down trodden and to avoid their exploitations. In order to make the India as a welfare society and to provide justice-social, economic and political to all its citizens, the framers of our constitution made various constitutional

---

[1]Preamble to the Constitution of India, 1950.
[2]The Indian Constitution.1950, Art. 41.
[3]The Indian Constitution.1950,Art.39 (b).
[4] M.K. Srivastava. Agriculture Labour and the Law. 1993. p. 4.
[5]D.D. Basu, Introduction to the Constitution of India, p. 23 (3rd ed. 1954).
[6]*Buckingham &Carantic Co. Ltd.* v. *Venkatian*, AIR 1964 SC 1272.
[7] M.K. Gandhi, India of My Dreams, pp. 9-10.

safeguards, so that the weaker sections or unorganized labourer may not be exploited by the haves of our society. In order to achieve the object enshrined in the preamble of our constitution, various fundamental rights and directive principles were made in the interest of unorganized labourers. In the year 1918 a conference was held at Bewrnewhich resolved that to ensure an end to all exploitation peace terms should safeguard the working class of all countries from the attacks of international capitalist competition and assure it a minimum guarantee of moral and material order as regards labour legislation, trade unions rights, migration, social insurance, hours of work, and industrial hygiene and safety.[8]

International Labour Organisation and the Rights of Unorganised Labourers:
Unorganisedlabourers were also protected before the enactment of our constitution. In this direction I.L.O. has played a vital role. The ideals and the purposes of which were set forth in the Preamble to the Part XIII of the Treaty of Versailles, 1919.

Versailles Treaty, 1919, Part XIII (Labour) Section I

Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can established only if it is based upon Social Justice;

"And whereas conditions of labour exist involving such in justice, hardship and privation to large number of people as to produce unrest so great that the peace and harmony of the world are imperiled, and improvement of those conditions is generally required as for example, by the regulation of the force of work including the establishment of a maximum working day and week, the regulation of labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association the organisation of vocational and technical education and other measure.

Whereas the failure of any nation to adopt human conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries".

Forced Labour Convention, 1930

According to I.L.O. [9] the General Conference of the International LabourOrganisation, was convened at Geneva by the Governing Body **of**the International Labour**office on**10th June, 1930 to adopt certain proposals with regard to forced **or**compulsory labour, which was included **in** the first item **on**the agenda **of**the Session and having determined that these proposals shall

[8] Mahesh Chandra, Industrial Jurisprudence.1976, p. 77.
[9] Forced Labour Convention, 1930.

take form of an International Convention. This convention came into force with effect from 1st May, 1932. This convention says that:
Each member of the International LabourOrganisation which ratifies this Convention undertakes to suppress the use **of**forced or compulsory labour in all its forms within the shortest possible period.
With aview **to**this complete suppression, recourse to force **or**compulsory labour may **be had,**during the transitional period, for public purpose only and as an exceptional measure.
At the expiration of the period of five years after the coming into force of the Convention, and when the Governing Body of the International Labour Office prepares the report provided for in Article 31 below, the said Governing Body shall consider the possibility of the suppression of forced to compulsory labour in all its forms without a further transitional period and the desirability of placing this question on the agenda of Conference.[10]
The normal working hours of any person from whom forced or compulsory labour is exacted shall **be** the as those prevailing in the case of voluntary labour, and the hours worked in excess of the normal working hours shall be remunerated at the rate prevailing in the case of overtime for voluntary labour.
A weekly day of rest shall be granted to all persons from whom forced or compulsory labour of any kind isexacted and this day shall coincide as far as possible with the day fixed by tradition or custom in the territories or regions concerned.[11]
Any laws of regulations relating to workmen's compensation for accidents or sickness arising out of the employment of the worker and any laws or regulations providing compensation for the dependents of deceased or incapacitated workers which are or shall be in force in the territory concern, shall be equally applicable to persons from whom forced or compulsory labour is exacted and at voluntary workers.
It further provides that it shall be an obligation on any authority employing any worker on forced or compulsory labour to ensure the subsistence of any such worker who by accident or sickness arising out of his employment, is rendered wholly or partially incapable of providing for himself, and to take measures to ensure the maintenance of any person actually dependent upon such a worker in th**e** event of his incapacity or decease arising out of his employment.
Universal Declaration of Human Rights, 1948 and unorganized labour:
All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a

[10]Forced Labour Convention, 1930Art. 1.
[11]Forced Labour Convention, 1930Art. 13.

spirit of brotherhood.[12] No one shall be held in slavery or servitude, slavery and slave trade shall be prohibited in all their forms.[13]

According to Article 24, every workman has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. It is pertinent to mention the Article 25 of the declaration according to which every workman has the right to a standard of living adequate for the health and well-being of himself and his family including food, clothing, housing medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Motherhood and childhood are entitled to care and assistance.

These human rights and fundamental freedoms of workers propounded and codified by the I.L.O. and later declared by the United Nations in its Universal Declaration of Human Rights have now come to be incorporated by almost all nations into their positive laws. In this way, what had been for decades an ideal or mere dream has ultimately earned the recognition and protection of positive law and matured into legal rights of the workers which are recognized, protected and enforced by the force of law. Broadly speaking, the industrial workers all over the world now possess definite and basic rights in the matter of the service and just and humane conditions of work, fringe benefits and strike. These are considered inalienable, inviolable and fundamental rights of the workers.[14]

The European Convention of Human Rights, 1956

This convention directly or indirectly protects the interest of unorganized labourers by prohibiting compulsory labour. According to it:

No one shall be held in slavery or servitude;

No one shall be required to perform forced or compulsory labour;

For the purpose of this Article the term “forced” or “compulsory labour” shall not include:

any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention during conditional release from such detention;

any service of a military character;

any service rendered in case of emergency or calamity threatening the life or well-being of the community; and

Any work or service which forms part of normal civicobligations.[15]

The Constitution of India, 1950

---

[12]Universal Declaration of Human Rights, 1948 Art. 1.

[13]Universal Declaration of Human Rights, 1948Art. 4.

[14] Mahesh Chandra, Industrial Jurisprudence, 1976, p. 82.

[15]European Convention of Human Rights of Article 4, 1956.

Our Constitution of India protects the unorganized labourers in one way or the other so it is pertinent to give some relevant provisions relating to unorganized labourers as under

The Preamble of our constitution says that We, The people of India, having solemnly resolved to constitute India into of Sovereign Socialist Secular Democratic Republic and to secure all its citizens.

Justice, social economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity: and to Promote among them all;

Fraternity assuring the dishonesty of the individual and the unity of the Nation;

Rights of Unorganized Labourers against Exploitation:

Article 23 of the Constitution prohibits traffic human being and beggar and other similar forms of forced labour. The second part of this Article declares that any contravention of this provision shall be an offence punishable in accordance with law. Clause (2) however permits the State to impose compulsory services for public purposes provided that in making so it shall not make any discrimination on grounds only or religion, race, caste or class or any of them.

Traffic in human being means selling and buying men and women like goods and includes immoral traffic in women and children for immoral or other purposes.[16] Though slavery is not expressly mentioned in Article 23 it is included in the expression 'traffic in human being.'[17] Under Article 35 of the Constitution Parliament is authorized to make laws for punishing acts prohibited by this Article. In pursuance of this Article Parliament has passed the Suppression of Immoral Traffic in Women and Girls Act, 1956[18] for punishing acts which result in traffic in human beings.

Article 23 protects the individual not only against the State but also against private citizens. It imposes a positive obligation on the State to take steps to abolish evils of "traffic in human beings" and other similar forms of forced labour wherever they are found and prohibits the system of 'bonded labour' because it is a form of force labour within the meaning of this Article. It is to be noted the protection of this Article is available to both citizens as well as non-citizens.

Beggar and "other forms of forced labour" are prohibited by this Article. "Beggar" means involuntary work without payment. This is prohibited by this clause is the making of a person to render service where he was lawfully entitled not to work or to receive remuneration of the services rendered by him. This clause therefore does not prohibit forced labour as a punishment for criminal offence. The protection is not confined to beggar only but also to

[16] *Raj Bahadur* v. *Legal Remembrances*, A.I.R. 1953 Cal. 522.
[17] *DubarGoala* v. *Union of India*A.I.R. 1956.
[18] The Immoral Traffic (Prevention) Act, 1956.

"other forms of forced labour". It means to compel a person to work against his will.

Our Supreme Court of India amplified the scope of Article 23 in detail in *Asiad Workers case*[19]and observed that the scope of Article 23 is wide and unlimited and strikes at "traffic in human beings" and beggar and other forms of "forced labour" wherever they are found. It is not merely "beggar" which is prohibited by Article 23 but also all other forms of forced labour. "Beggar is a form of forced labour under which a person is compelled to work without receiving any remuneration. This Article strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and contrary to basic human values. The practice of forced labour is condemned in almost every international instrument dealing with human rights. Every form of forced labour "beggar" or other forms is prohibited by Article 23 and it makes no differences whether the person who is forced to give his labour or service to another is paid remuneration or not. Even if remuneration is paid, labour or services supplied by a person would be hit by this Article, if it is forced labour, e.g. Labour supplied not willingly but as a result of force or compulsion.

This Article strikes at every form of forced labour even if it has its origin in a contract voluntarily entered into by the person obligated to provide labour or service. If a person has contracted with another to perform service and there is a consideration for such service in the shape of liquidation of debt or even remuneration he cannot be forced by compulsion of law, or otherwise to continue to perform such service as it would amount to provide labour or service against his will even though it be under a contract of service. The word 'force' must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternative to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage.

In *BandhuaMuktiMorcha* v. *Union of India*,[20] the Supreme Court held that when an action is initiated in the court through public interest litigation alleging the existence of bonded labour system exists and as well as to take appropriate steps to eradicate that system. This is constitutional obligation of the government under Article 23 which prohibit forced labour I any form. Article 23 has abolished the system of bonded labour but unfortunately no serious effort was made to give effect to this Article. It was only in 1976 that Parliament enacted the bonded labour System with a view to preventing the economic and physical exploitation of the weaker sections of the people.

[19]A.I.R 1982 S.C. 1943.

[20]A.I.R. 1984 SC 802.

The Court further held in *DubarGoala* v. *Union of India*[21]that the petitioners, who were licensed partners at Howrah Railway Station, voluntarily entered into an agreement to do 2 hours extra work for the railway administration. They were paid some remuneration for two hours labour. They challenged the validity of this agreement and asked the Court to restrain the railway administration from compelling the porters to perform beggar or forced labour. The Calcutta High Court held that "the petitioners could not be said to be doing beggar or forced labour within the meaning of Article 23." The very idea that the petitioners had voluntarily agreed to do extra work by entering into a contract to that effect repels the idea of their work being a forced labour. There was no element of force or illegality in the system of license or in realizing the fees for such licenses. The Railway authorities had the power to regulate the use of station. The petitioners were paid some remuneration for their two hours labour. Further, they get the benefit of a reduced license fee, and in addition they were livelihood. In the circumstances the extra work done by them was not forced labour within the meaning of Article 23(1).
The 13th Amendment to the Constitution of America contains a similar provision. It says that "neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly coming shall exist within the United States or any place subject to their jurisdiction." Americans had to fight a civil war to eradicate this evil of slavery from their country.
Compulsory Service for Public Purposes:
Clause (2) of Article 23 contains an exception on the above general rule. Under this clause the state is empowered to impose compulsory service for public purposes. But in imposing such compulsory service the state cannot make any discrimination on ground only of religion, race, caste, or class or any of the. For example compulsory military service or social services can be imposed because they are neither beggar nor traffic in beings.
Prohibition of Employment of Children in Factories etc.
Article 24 of the Constitution prohibits employment children below 14 years of age in factories and hazardous employment. The provision is certainly in the interest of public health and safety of life of children. Children are assets of the nation. That is why Article 39 the Constitution imposes upon the State an obligation to ensure that the health and strength of workers, men 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.
In People's *Union for Democratic Rights* v. *Union of* India[22] it was contended that the Employment of Children Act. 1938 was not applicable in case of employment of children in the construction work of *Asiad Projects* in Delhi since construction industry was not a process specified in the schedule to the

[21]A.I.R. 1952 Cal. 496.
[22]A.I.R. 1983 SC 1473.

Children Act. The Court rejected this contention and held that the construction work is hazardous employment and therefore no child should be employed in Construction Industries which is not specified in the schedule.[23] Expressing concern about the 'sad and deplorable conditions', Bhagwati, J., advised the State Governments to take immediate steps for inclusion of construction work in the schedule to the Act and to ensure that the constitutional mandate of Article 24 is not violated in any part of the country. The Court has reiterated the principle that the construction work is a hazardous employment and children below 14 cannot be employed in this work.[24]

Conclusion:

The existing legislations and development schemes have been by and large, proved to be ineffective to improve the socio-economic conditions of Schedule Castes, Scheduled Tribes and Backward Class agricultural labourers. More stringent measures are needed to eradicate social inequality of Harijans. The economic inequality should be reduced by providing resources of employment generation and prohibition of economic exploitation. Recently, the Parliament has taken a welcome step by providing constitutional status to commission or Scheduled castes and scheduled Tribes by 68th Constitution Amendment Bill.

The woman's maternity function which has been accorded recognition by the Constitution under Article 42 and for which social security is provided under the Employees State Insurance Act, 1948 and the Maternity Benefit Act, 1961 should be made available to the women workers of unorganized industries. The Government should make necessary amendments before extending them to unorganized sector and ensure effective implementation.

From the foregoing analysis it is very much clear that the object of the preamble of our constitution to some extent has been achieved but much more is still to be achieved. Political influences and economic and social exploitations of the have-nots by the haves of our society still exist; the standards of living and wages of unorganized labourers or the weaker section of the society are yet to be raised. Inspite of various constitutional safeguards provided to the down-trodden, the problem of unemployment is still in rampant in our country which is yet eradicated. But with all this the efforts of our Governments of the Union and of States can ignored in this direction. Our governments are really very encouraging and substantial in the implementation of certain constitutional safeguards tor unorganized labourers.

---

[23]Employment of Children Act, 1938.

[24]*Salal Hydro Project* v. *Jammu and Kashmir A.I.R.* 1984 SC 177.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue II, December 2023
DOI:10.13140/RG.2.2.29972.10880
www.kanpurhistorians.org

THE KEBA: A SELF-GOVERNING INSTITUTION OF THE GALO TRIBE OF ARUNACHAL PRADESH

BABA NYICYOR
Research Scholar, Department of Law
School for Legal Studies
Babasaheb Bhimrao Ambedkar Central University
Lucknow India
PEKTER KARLO
Research Scholar, Department of Management
Rajiv Gandhi University Rono Hills, Doimukh

Abstract

The picturesque hilly terrain of the state of Arunachal Pradesh is the homeland of a mosaic of tribes, in every tribal society, there is a socio-political organization or dispute resolution mechanism which is analogous to the adversarial courts. The Keba of the Galo tribe is one of such indigenous traditional village council systems, through which law and order are maintained, cohesion and unity are preserved, and economic, social, and religious activities are directed and supervised. Unlike courts, the Galo Keba is a non-adversarial justice delivery system having believes in amicable settlement of disputes outside the courts. The present paper's author shall attempt to provide an exposition about the working of Keba and try to reflect some views that testify to the relevance of the Keba system in the present times.

Keywords:*Keba, Galo, Non-Adversarial, Amicable Settlement, Local Self-Government.*

Introduction

Arunachal Pradesh, the 24th state of the Indian sub-continent is a homeland of twenty-six Indo-Mongoloid tribes, each having several sub-tribes used to concentrate in the scattered villages with diverse cultures, traditions, faith, customs, and different social and economic status. In every tribal society, there is a socio-political organization that is responsible for maintaining law and

order, peace and harmony, solution of disputes as per indigenous customary laws of the society,and looking after welfare and development activities of the areas. The state experiences different indigenous tribal customary law which is analogous to the adversarial courts of India. The machinery available for the enforcement of customary laws varies from one tribal group to another. The *Keba* of the Galo Tribe is one of such traditional village council systems that looks after the administration of justice and affairs of the day-to-day life of Galo inhabited areas.

The existence of customary laws can be found in many societies till now which are carrying strong historical precedents. The very fact is that much of history has given more importance to determining rules of conduct than written constitutions or legislation. Customary Laws are a branch of constitutional law largely and properly developed outside the framework of our written constitution.It is constitutional law in that it involves the allocation among various institutions of legal power, that is the authority to enact rules and to reach decisions that will be regarded as properly binding on those affected by them.

Most of the tribes in the state of Arunachal Pradesh ethnically belong to the same stock tracing their descent from a common ancestor *"Abo-Tani."* Racially they belong to the Tibeto-Chinese family of Mongloid origin. The name of some of the major tribes residing in Arunachal Pradesh is *Galo, Monpa, Miji, Nyishi, Apatani, Sherdukpen, Tagin, Adi, Memba, Khamtis, Singhpo, Tangsa, Idu-Mishmi, Nockte, Wancho, etc.*

Originally, as we have seen, there was no formal chieftainship or headman ship in the village. An individual might be listened to, consulted, and even obeyed if he had earned respect and trust to that extent. But it was ultimately the community itself and the customary laws that were the final authority. As the administration appeared the motion persisted and the influential persons in the village were spotted and treated as chiefs. They were called *Gam or Gaon Bura,* and the administrative support symbolized in the red coat of authority was conferred on them.

The Galo villages until today are independent units having their self-administration system. The system of self-government in conformity with the customary norms, values, and laws of the Galo at the village level is managed by a council of elders called *Keba*. *Keba* is an indigenous legal institution at the village level and the pivot of all legal affairs. This local self-government has been recognized as village authority under section 5 of the Assam Frontier (Administration of Justice) Regulation Act, 1945. The Galo has maintained their identity by preserving and practicing their custom and laws through the existence of a traditional village council as a cognate tribal community since time immemorial.

Meaning and Background of Customary Law

The idea of “Customary Law” that is under consideration concerns the laws, practices, and customs of indigenous peoples and local communities. Customary law is intrinsic to the life and customs of indigenous peoples and local communities. What has the status of “Custom” and what amounts to “Customary Law” as such will depend very much on how indigenous peoples and local communities themselves perceive these questions and how they function as indigenous local communities.

Galo Women of Masi village under Lower Siang Dist. of Arunachal Pradesh performing ‘Popiir’ in Mopin festival

According to Osborne's concise law dictionarycustom is a rule of conduct obligatory on those within its scope, established by long usage. Valid custom must be of immemorial, antiquity, certain and reasonable, obligatory, not repugnant to statute law, though it may derogate from the common law.” [1]

According to William Blackstone, customary law must meet the following criteria; immemorially, continuity, peacefulness, reasonableness, and certainty[2].

In its broader sense law is simply any recurring mode of interaction among individuals and groups, accompanied by the explicit acknowledgment by these groups and individuals that such patterns of interaction produce reciprocal expectations of conduct that ought to be satisfied. This is generally called “Customary Law.”

The Galo and Customary Law

Arunachal Pradesh the law of dawn-lit mountain, is inhabited by the world’s second-largest variety of ethnic groups and sub-groups, numbering over a hundred and speaking an equal number of languages over dialects. It is scattered over an area of 83743 sq. km throughout hilly terrain and rugged and typical mountainous topography which makes it the largest among the 8 states of North-East India. but it has a sparse population of about 13,82,611

[1] Percy George Osborn & Sheila Bone, Osborn’s Concise Law Dictionary, Ninth Edition (Sweet Maxwell, 2001).

[2] William Blackstone, commentaries on the laws of England, First Edition 1765-69; on the explanation on this book, David Callies, “How custom become law in England” ibid, pp. 158-213.

according to the 2011 census scattered 26 towns and 3863 villages, influenced bymodernity appears less imperative among them.

Naturally, the time-tested institutions evolved in need to serve the dire demands of exigencies arising out of different situations confronting the various aspects of the life of the people. Therefore, it became imperative on the part of the social scientist to identify and investigate the traditional village councils and village authorities to make a proper study of the systems, status, position, power, and function that have been proven to be of vital importance in the socio-cultural fabric of the Tribal People.

The Galo are a Central-Eastern Himalayan Tribe, who are progenies of *Abo-Tani* and speak Galo the Galo language. The Galo people primarily inhabit Lower Siang, Leparada, and West Siang districts of modern-day Arunachal Pradesh, but they are also found in East Siang, Upper Subansiri, as well as some pockets in Itanagar. The Galo has been listed as a Scheduled Tribe under the name of "Gallong" since 1950[3].

The Galo are great lovers and believers of their traditions, customs, and usages. The customary legal system is one such institution. They have their own democratic constituted village council called *"KEBA"* to solve "*Yachu-Yalu*" (disputes). This *Keba* has succeeded in maintaining peace and stability. It included in Galo society a spirit of solidarity based on tradition, language, culture, and habit. According to the mythological literature, the institution of Galo has existed since the very origin of society[4]. *Keba* are the representatives of the clans, who in their plurality constitute a kind of village government. Generally, the *Keba* are the men of character and ability, wealth and status, or high social standing. They are usually proficient in customs traditions, customary laws, and oratorical skills. One of the major functions of *Keba* is politico-judicial; besides socio-religious ones. It is the *Keba* who upholds peace, harmony, and social solidarity, expressing the collective will of the community. They might allow minor disputes to run their course but ultimately it is they who restore the communal harmony.

1. **The Keba (Village Council)**

Among the Galo & Adi tribes, the *Keba &Kebang* is a popular word and practice. It is a tribal council which is a collective body, constituted of the responsible members of an Adi and Galo village or area, organized into a democratic form for a common purpose in that society. It is a local self-government administering overall affairs under its own jurisdiction or administrative areas.

The *Keba* as a democratic institution is as real as the terminology of democracy stands for. The Galo are traditional, republican democratic in spirit, and socialist in aspiration. This is reflected through the constitution and practices of the *Keba*. The *Keba* is formed naturally. The village elders

[3] (Amendment to the constitution (ST), Order, 1950, Part-XVIII.

[4]B.B. Pandey-Indigenous Leadership, Its Nature and Mechanism.' The Arunachal News-1977.

automatically become village *Keba*. No one has any kind of inducement for them to become *Keba*. The duties of *Keba Abo* are to manage their day-to-day affairs for the well-being of the entire village. The village of *Keba* is the basis of the institution of the *Keba* system. No election, selection appointment, or confrontation was held for *Keba Abo*. They cannot be dismissed, disposed of,or succeeded. Nobody knows which day one becomes *Keba* or deputy or ceased to be one. They come and go naturally.[5] All male members of the village attend the *Keba* works. But judicially, *Keba* is the court of tribal justice. In judicial *Keba* number of the *Keba* members is limited. Any interested member of that village can attend and listen to the discussion over any case but all are not the real members in the decision making. The real members of the judicial *Keba* are the *Gams*i.e., headmen of the village who have the power of the decision making. It is the body for the decision-making and is the council of the local court. The members of the *Keba* are the judicial administrations of their administrative areas. This body frames the customary rules of the concerned areas; tries cases and settles these per their framed traditional law. It maintains law and order in their respective societies.

The *Keba* or traditional tribal council has been organized into four sub-councils or sub-*Keba*to facilitate coordination. All sub-councils decide the cases at their levels. We can take the family as the smallest unit of this *Keba* organization. Family feuds are settled by its heads within the circle or the same may be taken to the clansmen of that family. In case the head of the family and the clansmen fail to settle, it is brought before the *Dolu Keba* or village council. The village council is the authority to investigate the matters of the families and different clans of the village. The village council has been empowered to try and settle civil and criminal cases within its jurisdiction and its council exercises powers over all judicial affairs of its limited area. This *Dolu Keba* tries and settle the local cases according to its traditional codes of conduct. Cases not settled at this level are brought to the *Banggo Keba* which is (above the village council). The *Banggo Keba* covers an area of six or more villages and the headmen of these villages are the members of the *Keba.* This council settles cases not decided by *Dolu Keba* of its area. On failure to settle cases of the *Banggo Keba,* it may be brought before *Area Keba,* which is superior to *Banggo Keba.* The area of the *Area Keba* can extend to (fifty or sixty villages) of a particular geographical region. The selected or unselected

[5]B.B. Pandey-Indigenous Leadership, Its Nature and Mechanism'. The Arunachal News-1977.

headmen of that area are the members of the *Area Keba.* In case it fails to settle a dispute, the matter is shifted to the *Bogum-Boka Keba* which is the (supreme traditional council). The jurisdiction of this supreme council covers the entire Adi & Galo community or district with the *Gams* under its jurisdiction as the members of the *Bogum-Boka Keba*. It is the highest traditional council meets for economic social and political affairs of respective territories.

On the other side, the modern setup of various administrative units and the posting of civil officers brought another new way of judicial procedure to present tribal life. Under the principle of this administration, local disputes not settled by the village council or *Area Keba* are brought to the magisterial civil authority of their administrative areas. These complicated cases are tried and settled in the joined assembly of political interpreters of this civil administrator as well as the headmen under their jurisdiction. Such cases are being settled on the principles of custom and usage of the local people in the name of the civil administrators. In case this civil administrator finds the case too complicated, it may be sent to the higher authority for instance the District Magistrate. The District Magistrate then may settle under the civil law or he may send that case to the *Galo Keba* to decide it according to the traditional code of conduct of those local people. If the *Galo Keba* finds it difficult to settle or if it is surrendered, the same is settled by the court of district magistrate according to the country's law.

Thus, the new ideas and practices of the modern administration have brought a new way of settling cases to the Galo/AdiSociety[6]. Under this present system of administration, complicated cases of the Galo/AdiTribe can be settled traditionally or constitutionally by any of the four means: -

i. Bogum Boka Keba (supreme traditional council)
ii. Oath and Ordeal
iii. Galo Keba (office of DC)
iv. District Court

i. **Bogum Boka Keba** is the highest traditional political organization of Galo which exercises supreme authority over all sub-councils or sub-keba. There is no case that this council cannot settle. Judicially, the murder case of the trial is sometimes brought before it and this is settled according to the verdicts of council members. Generally, most of the local cases are settled by its subordinate council and the *Galo Keba* of the Deputy Commissioner, and hence, the cases settled by this council are very few. This council settles only that one which has not been settled by its subordinate councils therefore, this council of the entire

[6] N. Mitkong, Customary Laws of The Adis Of Arunachal Pradesh 13 (Directorate of Research, Govt. of Arunachal Pradesh, Itanagar 1st edn., 2019).

Galo community may be taken as a supreme traditional court of Galo Customary Law.[7]

ii. **Oath and Ordeal** are the primitive and traditional devices of case judgment and decision-making. In case both parties are not ready to abide by the decision arrived at by the *Keba* or both are firm in settling the case through supernatural means, they may be permitted to take recourse to ordeal and oath. The ordeal is administered in a rite that is related to that case only. The complainant and the accused are sworn in a public gathering in the name of God uttering 'oh god! Kindly show the guilt to all. That one, who faces the expected adverse within the prescribed time is proved to be the wrong-doer. A judicial procedure is initiated against that guilty person. Sometimes, the supernatural punishment is itself the settlement of that case. This practice is still in vogue though the civil administration tries to discard such primitive practice.

iii. **Galo Keba** of the office of the Deputy Commissioner of the concerned area is an organization consisting of six or more senior political interpreters assisted by additional staff and supervised by the political Assistant of the political branch. This through a government organization has attained supremacy over traditional judicial matters. The nature of the duty of this *Keba* personnel is judicial. This *Keba* receives suits, and trials and settles local cases by the traditional law in the name of the Deputy Commissioner/ District magistrate. It is the court of justice for Galo Customary Law and the members of the *Keba* are the judges of Galo traditional law.The cases, not settled in *DoluKeba, Banggo Keba, and Area Keba,* are brought before this court of *Galo Keba*. It is the popular practice that such cases are settled in the joint sitting of the members of those traditional councils. Local cases filed directly to the civil administrator or complicated cases left for the decision of an administrator are also transferred to this *Galo Keba* for settlement according to the traditional law of the local people. Sometimes the cases, not settled in this *Galo Keba* are passed to the District Magistrate. Such cases are again returned to this same *Keba* for re-discussion for settlement according to local law. The *Keba* re-discusses accordingly and its verdicts are binding on both the parties. It is, therefore, the *Galo Keba* of Deputy Commissioner that receives cases from the public as well as from the civil authority. This jury, an important organ of the local judicial system, is the High Court of Justice of Galo territory. On the other hand, it does not settle all cases independently. In criminal cases, it seeks the assembly. The way of its decision-making is neither based exactly on the principles of the

[7]N.Mitkong, Aspects of Customary Laws of Arunachal Pradesh(Edited by Dr.P.C. Dutta & DR. D.K. Duarah) ch.11 p 90-92 (first edition 1990).

traditional law of the olden days nor touches the exact ideas of country law. It seems that this jury has become the bridge over the gulf between the National law and Galo customary law by discarding the primitive ideas and savages' practices and modifying the principles of customary codes of conduct.

iv. **District Court** is the chief judiciary of the district; it deals with all the judicial matters under its jurisdiction and settles cases under the principles of National law or the Indian penal code. The local cases not settled in the Traditional *Keba* are ultimately brought before this court of District Magistrate. This court accepts only those cases which cannot be settled by the Traditional *Keba*

Hence, there is a distinct boundary between the civil judicial authority which settles by the principles of the Indian penal code, and the traditional *Keba* which deals with the cases according to the
ethical principles of concerned tribes. Though the magistrate is the supreme judicial authority in the district, it does not interfere with the *Keba* in dealing with the local disputes and their settlement if it works under certain conditions.

The author with family members while taking group photograph session after amicable settlement of Keba decision.

The village headmen/ traditional *Keba* have been empowered to try and hear any type of cases under their jurisdiction. Most of the cases, therefore, were settled by the traditional court of the council and by *Galo Keba* of the Deputy Commissioner. Only a few local cases are sent to the district court the verdict on which the *Galo Keba* is not acceptable to one of the parties or both of which the *Keba* does not feel competent to deal with due to the complicatedness of the case.

In short, the Traditional court is partially independent as it has the power to dispute any local case under its jurisdiction, and on the other side, the *Keba* is subordinate to the Civil Authority/ District Magistrate as it is under the supervision of this authority. The *Keba* also fear the magistrate's interference if the *Keba* are not competent to dispute cases within certain limitations. The *Galo Keba* ages has the practice of mediation and conciliation providing a platform for disputing parties to have an amicable settlement. The

supporting provision of the Civil Procedure Code, 1908 section 89(1) reads as follows:

“Where it appears to the court that there exists an element of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observation of the parties, the court may reformulate the terms of a possible settlement and refer the same- (a) arbitration, (b) conciliation (c) judicial settlement including through Lok Adalat; or (d) Mediation.”

In the context of the above-mentioned provision under section 89(1) read with the corresponding Rules viz- Order 10 Rules 1-A. 1-B and 1-C of the civil procedure code, the courts in the state always have an option for an amicable solution outside court settlement[8]. Customary rights were recognized as early as 1872 when the Indian Evidence Act was enacted. Section 13 of the Act deals with the facts relevant to the proof of customary law. The Indian Forest Act 1927, under sections 12 to 16 recognizes the right to pasture and forest produce at the stage of settling rights before a given area of forest is classified as a reserve forest. These rights are, no doubt customary. But these rights were seldom transformed into customary rights in the field. The constitution of India, under Article 13, treats customary law along with other branches of civil law. A custom or usages if proved would be law in force under this article. These customary rights having the force of law can be taken judicial notice by courts under section 57 of the Indian Evidence Act, 1872.

Punishment System in Keba

Gandhiji said, “Hate the sin, but not the sinner.” The entire theory is dependent upon this principle. In *Sunil Batra vs administration of Delhi,*[9]the Supreme Court opined, “The object of punishment is to correct the wrongdoer and not wrecking vengeance on him”Modern penology recognizes that punishment is no longer regarded as retributive or deterrent, but it is regarded as “reformative or rehabilitative.”

There are several treatments and medicines for every disease. Likewise, criminal behaviour is also a disease. First, it shall have to be cured. As no man is born a criminal in society's circumstances and several reasons a person becomes a criminal no one wilfully becomes a criminal. For this treatment Government should formulate effective procedures and policies like the traditional customary practices of the Galo Tribes in Arunachal Pradesh.

The *Keba* that is the village council of the Galo Tribe regarded punishment as an evil attached to a command. Punishment is, therefore, a coercive factor. It is a stick by which you enforce the law. Punishment is as

[8] JumriKoyu and Pradeep Singh, “The KEBANG: A Self-Governing Indigenous Institution of the Adi Tribe of Arunachal Pradesh” *Indian Journal of Law and Justice* Vol. 11. 2, Sept-2020. 267-85.
[9] Air 1980 SC 1579.

necessary to the law as the law is necessary for society. However, the highest level of civility and socio-legal advancement will be said to have been achieved when a society has laws without sanction, and yet such laws are obeyed. Punishment is a negative that seeks to restore the moral balance, and to that extent, it is an ethical necessity. Traditional Customary Law of Galo Society believes that to be a punishment it must be seen and felt to be negative. When this purpose is not achieved, punishment loses its purpose and effectiveness. It has to be understood that not all punishment is done by way of legislative enactments. Some of the most powerful deterrents are moral and social sanctions. The Galo Tribal Village Council system aims to bring about a change in the personality and character of the offender, to make him a useful member of society. The basic principles emphasize on renewal of the criminal and the beginning of a new life for him.

In principle, Galo justice does not recognize any distinction or discrimination in its dispensation towards any member of the society. Everyone, irrespective of wealth, position, or one's command over traditional knowledge, is equal in the eyes of their law, and no one is considered above it. The meetings of the council are invariably held in the village Dere (ahouse of gathering) these are done orally as they have no script.

The village council, being the supreme authority in the village, used to try all types of cases-civil and criminal. The proceedings are conducted by the elders. One of the elders outlined in the brief history of the cases. The first opportunity is always given to the complainant till he puts a stop to it. The next to speak is the defendant whohas the equal opportunity to put forth his points in his defence. Both parties are allowed to speak till they are satisfied. Witnesses, if any are called from both sides.

Evidence is taken for identification of a person who has committed the crime. Four kinds of evidence are taken viz.

a. The direct evidence.
b. Circumstantial evidence.
c. The evidence is based on the result of omens and divinations.
d. Evidence-based on the result of an oath or an ordeal.

After the evidence is taken the elders come out with their opinions separately and examine the persons involved in the case and the witness. The decision or verdict is then pronounced in front of everybody present.Once the person is convicted of a crime, he is treated according to the customary law irrespective of any status. While deciding the case the council members on their part, see that justice is done to both parties. But sometimes happened that the members of the council come under the influence of a particular because of their wealth or position in society and decide the case in its favour. In the past, there was no other way than to accept the verdict, whatsoever. But with the introduction of modern administration, people have acquired the right to appeal against the decision of the council. Appeal made to the circle officer or

the EAC who is the judicial magistrate. An appeal is also made in the higher courts of law.

Punishment and penalty vary depending upon the motive of the culprit. They no longer believe in the maxim "eye for an eye, tooth for a tooth." Compensation for any loss of life or property is made through the imposition of fines on the offender equivalent to the loss or damages or harm suffered by the person.

Conclusion:

It is known to all that Arunachal Pradesh is inhabited by many tribal groups of socio-cultural diversities. The various customary laws of the people of Arunachal Pradesh also differ in degree, strength, and applicability. On many points, the customary law does not entirely agree with the codified laws for which cases are required to be settled by the various. For the smooth function of the legal system and to meet the end of equality and justice it is therefore essential to think over the question of codification of the customary laws and to find out possibilities of their applicability in the terms of the Indian penal code and other laws.

Each tribal group of Arunachal Pradesh has its indigenous system of investigation of crime and dispensing of justice. Although the conditions available in sophisticated societies under the modern legal system to investigate crime do not exist among the various tribal societies of Arunachal Pradesh, the indigenous methods adopted by the people are no less ineffective in this regard. One thing special to the societies of Arunachal Pradesh is that irrespective of the nature and seriousness of the offence the kinsmen were always supposed to stand by the accused and help him in whatever manner possible. They would raise a contribution for compensation, call upon the sun and moon to vindicate the innocence of the accused and so. Secondly, no stigma is attached to an offender after paying compensation and celebrating of restoration of the peace ceremony. To minimize the burden of courts and to encourage the effective exercise of judicial power by the councils, the Government should authorize the council to try all suits of the civil nature of the parties, where both are indigenous to Arunachal Pradesh and traditionally settle them by their people.

In comparison with the trial procedure between the customary law of Arunachal Pradesh and Indian penal statute, there is a wide difference as the process of administration of law and justice through the village council is simple, and the speed of justice is the key feature of the system. What this administrator had started a hundred years ago holds the truth even today. While the operation and proceeding of the village councils and its award of justice based on customary laws are simple and swift, the same concerning the civil courts of law is cumbersome, time, and bewildering to the tribal people.

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue II, December 2023
DOI:10.13140/RG.2.2.29972.10880
www.kanpurhistorians.org

CREATION OF *UTTARADHYAYANASUTRA*: A HISTORICAL ACCOUNT OF JAIN *AGAMA* TEXTS

PURUSHOTTAM SINGH
Professor and Principal
Maharaj Balwant Singh P.G. College
Gangapur Varanasi India

Abstract:
Uttaradhyayanasutra is not a work written by any one person at one time, rather it is a compilation. The studies and prose parts presenting pure theoretical topics appear to be somewhat later. The remaining parts are relatively more ancient. In these too, amendments and changes have been taking place from time to time. This is confirmed by the three Vachanas i.e.,conferences held according to the Shvetambara tradition for the compilation of the Agamas. About 160 years after the Nirvana of Lord Mahavira (527 BC), during the reign of Chandragupta Maurya, there was a severe famine in Magadha due to which many sages went towards the sea coast under the leadership of Bhadrabahu. The remaining ones stayed there with Sthulabhadra (HeroicNirvana Samvat 219). After the famine was over, a conference of Jain monks was held in Pataliputra under the leadership of Sthulbhadra and the oral texts were compiled. No one except Bhadrabahu remembered the twelfth part Drishtivaad. Therefore, it could not be compiled later and gradually it disappeared. After this (827 or 840 years after Mahavir Nirvana, AD 300-313) the second conference was called in Mathura under the leadership of Arya Skandil. Whatever was remembered in this conference was compiled. Around the same time, another conference was held in Valabhi (Saurashtra) under the leadership of Nagarjunasuri. After this, both the Jain monks could not meet each other due to which differences of opinion remained. About 980-993 years after Mahavir Nirvana, a third conference was held in Valbhi itself under the leadership of Devardhigani Kshamashraman.

This can also be called the fourth conference. In this conference the proceedings were compiled and transcribed. All the present available Agama texts were written in this reading.

Key words: Nirvana, Agamas, *Uttaradhyayanasutra*

Introduction:

According to oral tradition, it is natural that changes and amendments have been made in the Agamas from time to time due to forgetfulness and efforts have been made to strengthen them by calling conferences. In this way, between the fifth century BC and the fifth century AD, that is, between the thousand years, many amendments and changes took place in them due to which the Jain Agama texts could not be preserved in their complete original form. Then it is not possible that this did not happen in the subsequent study. Due to the different names of the studies of Uttaradhyayana appearing in the Samvayang written under the chairmanship of Devardhigani, it is clear that some amendments have definitely taken place in the *Uttaradhyayana Sutra* even after Devardhigani's reading. Variation in text, repetition of topic etc. are some of the common elements which confirm its modification and change. It is satisfactory that despite these changes, the originality of *Uttaradhyayanasutra* was not destroyed much.

The first reference to Acharya Bhadrabahu is found in the commentary literature available on Uttaradhyayana Sutra. Its composition period is proved to be between Vikram Samvat 500-600. This makes it clear that before this time Uttaradhyayana Sutra had reached its complete state. Its respectful mention in the Digambara tradition also makes it clear that it had gained recognition before the separation of Sangha, otherwise it would not have been mentioned there. Probably, since the composition of Dashavaikalik was based on the parts of Uttaradhyayanasutra and after the composition of Dashavaikalik, there is mention of Uttaradhyayanasutra being read after Dashavaikalik. It should have been composed before the composition of Dashavaikalik. The period of Shayyambhavasuri, the author of Dashavaikalik, is considered to be fifteen years after Mahavir Nirvana. From the similar evidence mentioned in the last story of Uttaradhyayanasutra and at other places, it appears that its preacher is Mahavira in person who, at the last moment of his attainment of Nirvana, gave sermons in the form of answers to questions without asking and after this he attained Parinirvana. They went. Probably that is why Charpentier accepts it as the words of Mahavira in the introduction to Uttaradhyayana Sutra.

In this way, the antiquity of Uttaradhyayanasutra reaches the period of Nirvana of Mahavira, but there are references to the contrary also. For example, in the fifty-fifth Samvaya of the Samvayang Sutra, after mentioning the studies of 55 Punyaphalvipaka and 55 Papaphalvipaka, the Parinirvana of Mahavira has been mentioned. But in the twenty-sixth Samvaya, where the names of the studies of Uttaradhyayana have been enumerated, there is no

such mention. Apart from this, It is reflected from the text mentioned in Kalpa Sutra that at the time of His Parinirvana, after stating 55 Punyaphal Vipak and 55 Papaphal Vipak, he also narrated 36 studies without being asked. From this mention of Kalpa Sutra, it is clear from the Karika and Samvayang mentioned in the text. Coordination takes place. At one place in the book, there is another similar story where the Kshatriya sage says to Sanjay Muni that Lord Mahavir, the truthful and courageous son of Gyan, full of knowledge and character, attained Parinirvana by revealing this element. This is proved by these mentions. That is the last sermon of Mahavira in Uttaradhyayan.

From the observation of Uttaradhyayanasutra it seems that some parts have been added to it later which are definitely up to the third Valabhi Vachana. From the subject matter of Uttaradhyayanasutra mentioned in Digambara texts, except the second study, most of the remaining parts appear to be after Sanghabheda. At least this much is clear that Uttaradhyaya has not remained in its unchanged form. Quoting two verses of Uttaradhyayana Sutra from Aparajitasuri's Sanskrit commentary on Bhagwati worship, Kailash Chandra Joshi in his Jain literature It is written in the history that this verse is not found in the present Uttaradhyayanasutra, hence it appears that even after Valbhi's request, there has been a change in Uttaradhyayanasutra. Despite this, there is not much lack of originality because both those verses are still present with general changes in the present Uttaradhyayana Sutra.

If we seriously observe the contents of Uttaradhyayan, we will find that there are some elements in it on the basis of which some parts can be said to have been composed much after Mahavir Nirvana -

1. The mention of Drishti Vada, separate from the eleven Angas, in the Anga texts proves that Drishti Vada had disappeared by that time. It cannot be said that such a statement has been made to reveal the importance of visionism because Acharanga is considered to be of utmost importance. Apart from this, in the thirty-first study where the sadhu has been asked to be diligent in the study of some scriptures, visionism has not been included in it.
2. In the characteristic of sutraruchi-samyakdarshan, there is mention of Anga and Angbahya texts and in the characteristic of abhigam-ruchi samyakdarshan, there is mention of 'dispersive' texts. It is clear from this that by that time, Anga, Angbahya and dispersive texts must have been composed. .
3. In the thirty-first study called Charanavidhi, the Sadhu has been instructed to be diligent in the study of these body texts like Sutrakritanga, Gyanatasutra and Prakalpa (including Acharanga-Nishith) and Dashadi (Dashasruta, Kalpa and Vyavar) body texts. It is clear from this that then By now these texts had been proven because of their importance otherwise the sage would not have been said to be diligent about them.
4. At most of the places in the book, by pronouncing the authenticity of the words quoted in the book in the form 'God has said this', 'Kapil Rishi has said this' etc., it is clear that this book is not directly dedicated to Mahavir, but is

meant to be written by Mahavir. It's Praneet and the words are from someone else. Apart from this, the fact that the Anga texts are considered to have been composed by the main disciples of Mahavira and the Angabahya by his later disciples also proves that Uttaradhyayana Sutra is literally composed not by Mahavira but by his disciples.

5. There is a clear indication of Sanghabheda from the dialogue related to Sachelaktva (Santoratta) and Achelaktva of Keshi Gautam-Samvaad.

6. Such brief and refined definitions of theoretical subjects like substance, quality, synonym etc. prove that they were introduced in the period of philosophical revolution because such brief definitions are not available in the Agamas but mostly only descriptive meanings are found.

7. The frequent use of Uttaradhyayanasutra in the plural shows that it is not a single object but a compilation of many studies. After observing all these facts, it becomes clear that the present Uttaradhyayana Sutra is not the creation of any one period or any one person, rather it is a compilation book which was not composed in any fixed time but in different periods of time. The changes and modifications etc. found in it seem to be from the period of Mahavir Nirvana to the time of Third Valabhi reading i.e. from Mahavir Nirvana to about 1000 years i.e. from fifth century BC to fifth century AD or even some time after this because Third There is some difference in the names of the currently available Uttaradhyayana Sutras from the names of 36 studies of Uttaradhyayana Sutra which are mentioned in the Samavayanga Sutra which was transcribed at the time of reading. Although this difference is negligible, it gives a clear glimpse of the change and modification of Uttaradhyayana Sutra.

Niryuktikar of the sixth century, while not accepting the Prakrit text as a Kartika, in his lecture on the last saga of Uttaradhyayanasutra, describes it as a sermon at the time of Lord Mahavira's parinirvana. In fact, the above statement of Niryuktikaar is just an interpretation of Prakrit verse. It is possible that this verse may have been added later to reveal the importance of Uttaradhyayanasutra and Niryuktikaar may have followed the earlier tradition. By observing certain gathas at the end of the thirty-sixth study and comparing the last gatha of the thirty-sixth study with the twenty-fourth gatha of the eighteenth study, the above statement is confirmed.

It is also clear from the fact that it is an integral part of Uttaradhyayan that it was composed neither by Lord Mahavir nor by his main disciples (Gandharas), but by the later scholars. That is why Brihadruttikar interprets the word ‘Jin’ as ‘Shrutjin’ or ‘Shrutkevali’.

It is clear from the above discussion that Uttaradhyayana Sutra is not a representation of Lord Mahavir. Apart from this, its initial form had been determined before the composition of Dashavaikalik (Veer-Nirvana 1st century, 452-429 BC) because after the composition of Dashavaikalik, the order of study tradition of Uttaradhyayana Sutra changed from second to third. In this way The beginning period of the composition of Uttaradhyayana Sutra

is determined to be the beginning of the 1st century of Veer-Nirvana. Since changes are available in Uttaradhyayana Sutra till the time of reading of Devardhigani (Veer-Nirvana 980-993) and some time after that, its final form is 1000 years after Veer-Nirvana. Its love for studies based on dialogues, stories and sermons appears to be older than theoretical studies.

After considering all these things properly, we come to the conclusion that in the available Uttaradhyayana Sutra, some ideology is present from the Nirvana of Lord Mahavira till about 1000 years, hence Uttaradhyayana Sutra. It is not the creation of any one person, of any particular period, but is a compilation book compiled in different periods. All the scholars like Charpentier, Winternitz etc. generally agree with this opinion.

The justification for the name Uttaradhyayanasutra

Since the word 'Uttar' is antecedent and the meaning of the word 'Uttar' used in Uttarkand, Uttarramcharit etc. is posterior, the meaning of the word 'Uttar' used in Uttaradhyayan Sutra seems appropriate. Pashchabhavi means a later creation or something that should be studied later. Here the second meaning is more meaningful because it is to be studied later on the basis of Shwetambara texts like Uttaradhyayana Niryukti etc. and Digambara texts like Gomtasara Jivakanda etc. The word Adhyayan used in Uttaradhyayansutra also seems to have the same meaning because the word Adhyayan has not been used in any other Agama text.

Language style and importance of Uttaradhyayanasutra

Uttaradhyayanasutra has an important place from the point of view of language style. In the view of linguists, the language of Uttaradhyayanasutra is very ancient. Acharya Tulsi has called the language of Uttaradhyayana Sutra as Ardhamagadhi influenced by Maharashtrian. In view of the antiquity of the language and subject matter, Uttaradhyayana Sutra is counted at the third place after the language of Acharanga and Sutrakritanga in all the Anga and Angabahya Agama literature. Language- From the point of view of style, it also has literary qualities. It cannot be called merely dull and dry literature. Although there are many repetitions in the book and there is monotony in the theoretical studies, yet in comparison to other Agama texts, its language style is literary, simple, natural, didactic, full of illustrations and metaphors and well-spoken. There is no doubt that if the theoretical i.e. descriptive matters are separated from Uttaradhyayana Sutra, then it can be a purely religious poetic book. Despite being didactic and repetitive, its literary importance does not diminish because its effectiveness is visible due to the heart-touching use of narratives and dialogues along with metaphors, parables etc.

Generally, popular examples have been mostly used to make the subject understandable. Just as the leaves of a tree turn yellow and fall down due to the onslaught of night and day, similarly human life is also changeable and perishable. Therefore, O Gautama! Don't be careless even for a moment.59 There is a sermon here and the subject has also been made clear through a

simple example. Such illustrations leave an indelible impression on the hearts of listeners and readers.

symbolic metaphor

Symbolic metaphors have been used in the spiritual explanation of religion. Such as the topic of initiation in Indra-Nami dialogue, the topic of religious discrimination in Keshi-Gautam dialogue, the topic of yagya in Harikeshi study etc.

subhashit

Since Uttaradhyayanasutra is a religious text, naturally Subhashits have been used in it. With the use of similes and symbolic metaphors, the glimpse of well-spoken people becomes more visible.

Since common people are more inclined towards sensual pleasures and it is the initial period of propagation of religion, it is natural for there to be repetition in the explanation of the subject matter. Somewhere in one stage, somewhere in two stages, somewhere in three stages and at some places the entire saga is repeated as it is. This repetition of words and meaning is not blameworthy because this type of style is used to explain the subject in the Vedas and It has also been used extensively in Buddhist Tripitaka texts.

dialogue

Religious and philosophical topics have been explained through stories and dialogues in the studies listed in the fiction department. Like the resolution of the conflict arising at the time of Pravrajya in the dialogue between Indra and Nami, the spiritual explanation of Yagya in the dialogue between Harikeshi and Brahmins, the presentation of the conduct of a saint in the dialogue with Mrigaputra and his parents. There are many other similar communication sites which are very timely and effective. Such as the dialogue on orphanhood between Anathi Muni and King Shrenik, the dialogue on the existence of the soul between Bhrigupurohit and his sons, the dialogue on initiation between Bhrigupurohit and his wife, the dialogue on initiation between King Ishukar and his wife Kamalavati. Dialogue on the duty of the king, spiritual dialogue between Keshi and Gautam. Due to all these facts, scholars like Winternitsa, Kanji Bhai Patel etc. accept Uttaradhyayana Sutra as Shraman religious poetry. Apart from this, famous scholars like Yacobi, Charpentier etc. have compared Uttaradhyayana Sutra with non-Jain texts like Dhammapada, Suttanipata, Jataka, Mahabharata etc. It is also compared with Jain Agama texts like Acharanga, Sutrakritanga, Dashavaikalik etc. In this way, Uttaradhyayana Sutra proves to be ancient and important not only compared to Angabahya texts but also compared to Angbahya texts like Samvayang etc. In Niryukti of the last verse of the twenty-sixth study of Uttaradhyayana Sutra, Acharya Bhadrabahu has expressed its importance and described it as containing Jina-inspired and infinite esoteric meanings. This statement of Niryuktikar gives an idea of both the importance and antiquity of Uttaradhyayana Sutra. Its special mention in the Digambara tradition and its

abundant commentary literature reveal its importance and antiquity as well as its popularity. In this way, we can say that Uttaradhyayana Sutra, despite being an external text, is equally important as the internal texts. Is complete.
As scholars have said that literature is the mirror of the society, from this point of view, adequate description of the contemporary society and culture etc. is also found in Uttaradhyayana Sutra. Despite Uttaradhyayanasutra being a didactic, religious and philosophical text, it does not lack the common qualities of religious poetry. It has become interesting due to the use of various types of dialogues, symbols, similes, epithets etc. That is why Uttaradhyayana Sutra is as respected in Jain society as Bhagavad Gita of Hindus and Dhammapada of Buddhists.

Commentary-Literature on Uttaradhyayanasutra

Like the eight stories written on the Buddhist text Pali-Tripitak, many commentaries and literature on Jain Agama literature were also written over time. Due to the importance and popularity of Uttaradhyayanasutra, relatively more explanatory literature is available on it. Due to its interesting plot, interesting dialogues and interesting composition style, it has been most popular in Anga and Angabahya texts. As a result, over time, most of the commentaries on Uttaradhyayana Sutra were written. Some major commentaries are as follows-
Jinadasgani Mahattar (sixth century) composed the first powder on Uttaradhyayana Sutra and its Niryukta. In this, along with the original text, the meaning of Niryukti has also been clarified. This is a prose composition mixed with Prakrit and Sanskrit language. Strange etymologies of many words are also found in it.66 It is of utmost importance from the point of view of philology. The description of the last eighteen studies in this Churni is very brief. It also gives a glimpse of the then society and culture.
Shishyahita-Tika or Brihadvrtti (Paiya-Tika)
The author of Shishyahita-Tika or Brihadvruti (Paiya-Tika) is Vadivetala Shantisuri (d. 1040). This is a commentary written in Sanskrit prose on Uttaradhyayana and its Niryukta. This is also important from many points of view.67 This is the most important among Sanskrit commentaries. Prakrit stories have also been given in between.
pleasure-vaccination or instinct
On the basis of Shantisuri's Shishyahita-Tika, Brihadgachhiya Shri Nemichandracharya (V.S. 1129) has composed Sukhbodh-Tika in Sanskrit prose on the original text. In this, the stories of Niryukti have also been quoted at appropriate places. Before initiation, you were called Devendragani. This is a very useful commentary for studying the original sutra text in Sanskrit.68
Apart from these, over time, many other scholars have written many explanatory commentaries on Uttaradhyayana Sutra which are as follows-
Avachuri of Gyansagarsuri (V.S. 1441), disciple of Tapagchacharya Devsundarsuri, commentary by Mahimaratna's disciple Vinahansa (V.S. 1567-

51), commentary by Kirtivallabhagani (V.S. 1552), disciple of Siddhantasuri, commentary by Kamalsanyama Upadhyay (V.S. 1554), disciple of Khartargachhiya Jinbhadrasuri, Taporatnavachak (1550), Deepika-Tika of Merutungsuri's disciple Manikyashekarsuri, Maheshwarsuri's disciple Ajitdevsuri (1929), Gunasekhar's Churni, Lakshmivallabh's Deepika (18th century), Bhavavijaygani's Vritti, Harshanandangani (1711). Tika, Makarand Tika of Dharmamandir Upadhyaya (V.S. 1750), Deepika-Tika by Udaysagar (V.S. 1546), Deepika by Harshkul (V. 1600), Tika by Amardevsuri, Vritti by Shantibhadracharya, Tika by Munichandrasuri, Avachuri by Gyansheelgani etc. 69 These commentaries Most of them are unpublished. Here, in the last few years, some commentaries have been published with English, Hindi and Gujarati translations etc. Due to the popularity and importance of the book Uttaradhyayana Sutra, various versions of it have been published at present and it is hoped that they will continue to be published in the future also. Charpentier's revised original text with English introduction and commentary, Yacobi's English translation in Sacred Books of the East, Part 45, R.D. Wadekar and N.V. Vaidya's revised original text, Bhogilal Sandesara's Gujarati translation with original, Atmaramji's original with original. Hindi translation, Acharya Tulsi's original along with Hindi translation etc. important editions of Uttaradhyaya are currently available.

Thus, keeping in view the above long list, it can be easily inferred that due to the importance and popularity of Uttaradhyayana Sutra, a huge amount of explanatory commentary literature has been created on it and will continue to be so in the future.

References:

1. Dashavaikalik, Bhag 2, page 221, note 29; Page 352 Comment 78.
2. Samwayang, Samway 36.
3. Nandisutra 43.
4. Uttarajjayanam Uttarpadaani Vannei. -Dhawala, page 97.
5. Uttarani Ahijjanti, Uttarajjhayanam Padam Jinindehin.-Angapannatti 3.25.26.
6. Introduction of Dasvealiyam Teh Uttarajjayanam, Acharya Tulsi; of Uttaradhyayanasutra
7. Bhumika, poet Amarmuni ji.
8. Uttaradhyayanachurni, page 9.
9. Uttaradhyayanasutra, 31.16-18.
10. Dashashrutskandhaniryukti ; Panchakalpabhashya, 23 Churni.
11. Antrakrit first class; Antakritdasha, 4 class.
12. Uttaradhyayanasutra, 28.23.
13. Dhawala letter, 545 handwritten copies.
14. Tattvarthvartika, 1.20, page 78.
15. Kalpasutra 146, page 210, Devendra Muni

Kanpur Philosophers, ISSN 2348-8301
International Journal of humanities, Law and Social Sciences
Published by New Archaeological & Genological Society
Kanpur India

Vol. X, Issue II, December 2023
DOI: 10.13140/RG.2.2.29972.10880
www.kanpurhistorians.org

K.M. PANIKKAR'S 'ASIA AND WESTERN DOMINANCE': PRECURSOR TO DE-COLONIAL STUDIES

DR. GOPAKUMARAN NAIR. N
Associate Professor
Department of History
Government Arts College
Thiruvananthapuram India

Abstract:

"The Vascoda Gama, epoch of Asian history," by K.M. Panikkar, examines the impact of colonialism on Asia from 1948 to 1945. He contends that Western Europe's dominance resulted from maritime power and the imposition of a commercial economy. Panikkar's work delves into trade, religion, colonialism, and anti-colonialism, highlighting colonialism's arrogance and India's Dark Age. He advocates for the decolonization of consciousness, which entails rediscovering and reinventing ourselves in opposition to western discursive projects such as modernity, scientific revolution, liberal democracy, and material prosperity. He claims that Western research on colonised people is based on empiricism and positivism, with no regard for historical context.

Introduction:

K.M. Panikkar attempts a survey of what the subtitle calls "the Vascoda Gama, epoch of Asian of history' from 1948 to 1945. It is a historical interpretation of the nature and effects of colonialism. The thesis, he expounds in this book is that "the dominance of Maritime power over land masses of Asia; the imposition of a commercial economy over communities whose economic life in the past had been based not on international trade; but mainly on agricultural production and internal trade. He further argues that the domination of the Western Europe is due to their mastery of the seas.

The book seeks to address the 450 years of world history during which Asia was dominated by Europe.

In his trail – blazing book, K.M. Panikkar masterfully blends history and qualities to deliver a narrative that both enthralls and informs. He proves himself to be that rare historian with a journalist's ear for prose. The book deftly combined historical causes and contemporary dilemmas. Trade, religion, colonialism and anti-colonialism – all make this a compelling work of insight and analyst. The book, in a nutshell, captures the quality of learning that K.M.Panikkar embodies and represents.

This book is an importance engagement with the Asia's varied history with colonialism. He exposed the arrogance that characterized colonialism. He says in order to assert its civilizing mission; it spoke of the Dark Age prevailing in India.

What is decolonization of consciousness?

To encounter colonial inventions we need to rediscover and reinvent ourselves against discursive project of the west: modernity, scientific revolution, liberal democracy, material prosperity. We need to place our remarkable achievement of our ancestors from music to trade, from philosophy to literature. We should our country men that west's material success was not necessarily because of their inherent merit, but – colonial plunder and profit. Another strong dichotomy they expanded is development versus underdevelopment. It is exceedingly difficult to unlearn the history we have been bombarded during the colonial and even the post colonial period.

Here comes the role of history as a powerful pedagogical, political and cultural toot to straight it out. History which is both awareness and critical imagination can make us overcome the stigma by realizing the strength and potential. In this sense revising history and the knowledge it dispenses can democratize and decolonize the consciousness of the colonized.

Decolonizing Methodologies

It intends to challenge the dominant western frame works of knowledge. Even today the dominant norms of the term research are inextricably linked to western knowledge. The system and framework of how the European research was carried out, classified, and presented back to the west, and then, through the eyes of the west, back to the colonized, is a process that Edward Said has called *Orientalism*.

What is the alternative? It requires a new frame work and approach which leads to historical and critical analysts of the role of research in the colonized countries so that it provides alternatives as to how we see knowledge and its social construction, as well as methodologies and the politics of research.

Reclaiming native or indigenous history is a critical and essential part of decolonization. It is in no way the total rejection of the western theory or knowledge. Taking cue of our indigenous concern and world view, it seeks to understand theory and research from indigenous perspective.

The decolonization experiment is an attempt to encounter the legacy of colonialism and imperialism which brought about a complete disorder to colonized peoples, disconnecting them from their histories, their landcapes, their language, their social religious and their own ways of thinking (Smith, 1999, p. 28)

K.M.Panikkar attempted the work at a time most Indian historians immersed in pre-colonial history, and somebody put it politically convenient, and works of European scholars continued to exist as the sole reference point. K.M. Panikkar questioned the Universalist assumptions of European scholarship and the hegemonic appropriation of the transformative vocabulary it propagated.

Western research on colonized people has had at its foundations the "theory of knowledge known of empiricism and the scientific paradigm of positivism" derived from it. The research founded upon western philosophy and use of western epistemology, comes with a cultural orientation, a set of values, different conceptualizations of such things as space and time, different and competing theories of knowledge, highly specialized forms of language, and structures of power that represent the western world view. Reductionist methods are employed, models are developed, and evaluations are made according to the criteria determined by the researcher. Hence the urgent need to rectify this form of cultural and epistemological colonization.

West considers just like natural resources the production of knowledge as commodity to be exploited.

They came, saw, named and claimed. All accounts of the historical events are seen through western eyes and that the 'Master narrative' is therefore established from their perspective.

Colonial legally has been neatly carried over. The people still live with colonized minds.

Orientalism

Said's central concern in '**Orientalism**' is the multiple relationships between the out of writing and cultural politics, language, power. The attempts to show how western journalists, fiction writers, and scholars helped to build up a prevalent and hostile image of the Eastern culture as inferior, stagnant and degenerate form part of the project . He also attempts to show the culture to which these representations permeate the western culture. The west exploited these representations to justify their imperialist policies.

Those critics of colonial ideology, argued that how history, as it is taught / was taught at schools, silences and degrades the cultural / religious experience of the natives. The given or transported knowledge from the west in the form of various forces sought to inculcate a particular value system

which promoted rather driven the native learners/ people to accept the backwardness and the superstitiousness of his society and culture. They were made to accept the superiority of the western culture. Hence it can be argued, colonialism was not merely a military enterprise and financial expropriation but it was a cultural and epistemological project too. Colonialism is all about power. It priviledges the colonizer, and enables them (colonizer) to suppress the colonized. And the violence the colonized suffer is not just physical; but moral, cultural, and symbolic. The colonized are democratized that in turn results in losing faith in them. They think that they are inferior. All the good qualities; strength, education, and civilization, associate with the colonizer. The colonial education is the ideological apparatus of this scheme of things.

They slowly realized the falsehood implicit in the idea of Dark Age. Because they found that they did have a profound tradition of education and learning. Even the studies conducted by the British scholars like William Adam revealed the existence of widespread culture of learning.

Colonialism not only plundered the wealth of eastern countries and subjected their people to political consequences. Western colonialism not only located not the centre of all discourses in Europe from where the colonies, their people and their histories were viewed, it also colonized the imagination of the people of the colonies. It robbed the values, cultures and languages of the people of Africa and Asia of their authenticity and autonomy. The ruling minorities in these countries have been the instruments of perpetuating this colonization even after those countries achieved political independence.

Ngugi wa Thiongo called for “moving the centre” not only from European to your own living area in the East but more importantly from the vantage point of the ruling minority to the “creative base among the people”.

“Decolonising imagination’ alerts us to realizing the dimensions of the programme of liberation. Seizure of political power is only a precondition of liberation but only a part of the agenda. Generation of economic resources to support political self governance is an essential condition. But even that is not enough. Until cultural liberation is achieved to enable one’s language, values and arts to flourish so that every cultural group is treated with respect and equal status, liberation of a nationality has not achieved its critical minimum. Western Colonialism had created a million of miniature colonialisms at various levels and these were justified in post-colonial states in terms of modernization, national integration and recently In terms of promoting citizenship and civil society. Against that, decolonization of imagination would involve enabling the smaller groups and regions to seek political, economic and cultural self determination.

Decolonising Methodology

Most social reform leaders of India were influenced by Western ideas while they were striving for the reawakening of the country. They all fought against

the superstitions and backwardness. Except Gandhi, all others had a superficial encounter with tradition as well as modernity. It was Lohia who continued Gandhi's creative engagement with tradition and modernity. Lohia instead of invoking the richness of the past identified himself with the whole of Indian society.

What astonished me was his prodigious reading and immense scholarship, collective and interpretative ability.

In November 1953, his celebrated work Asia and Western Dominance was released in London. Nehru called it "a first rate performance that fills a very definite gap" and he made it "an essential reading for anyone connected with politics in India and more especially, for our foreign service people". Captain H. Liddell Hart rated it "amongst the very few books of this generation" and as a "tremendous achievement." It remains a remarkable contribution by a non-practising historian to Indian historiography. Witness his concluding remarks,

> The is a view generally held by many European writers that the changes brought about in Asia by the contact with Europe are superficial and will, with the disappearance of European political authority, cease to count as time goes on ... It should however be emphasized that the in-creasing acceptance of new ideas, though generated by contact with the West and of late greatly influenced by the October Revolution and the prestige of communist thought, does not involve a break in the continuity of the great Asian civilizations ... The new Asian states therefore can no longer revert to a policy of isolation or pretend ignorance of the existence of other countries. China, India and Indonesia, apart of course from Japan, have therefore no mean roles to fill in the politics of the present day world. That arises directly from the transformation caused by Europe's former empires over the East ... The influence of Europe on the Asian countries which have been in contact with them has been primarily due to the resistance that European authority generated, and the necessity to ac-quire skills and techniques in order to fight Europe with its own weapons. That influence had to be fairly widespread and had to extend to different aspects of life before it could become effective. A conscious attempt to westernize the East was never a part of the programme of European nations and consequently the influence which has been assimilated may be more permanent and may indeed bear fruit even after many centuries.

Again, Panikkar refers to the impact of Asia on the West,

> The effects of Asian contacts on Europe though considerably less cannot be considered insignificant. The growth of capitalism in the seventeenth, eighteenth and nineteenth centuries, in itself a profound and revolutionary change, is intimately connected with the expansion

of European trade and business into Asia. The political development of leading Western European nations during this period was also related to their exploitation of their Asian possessions and the wealth they derived from the trade with and government of their Eastern dependencies. Their material life,as reflected in clothing, food, beverages, etc. also bears permanentmarks of their Eastern contacts. We have already dealt briefly with the penetration of cultural, artistic and philosophical influences, though their effect cannot still be estimated. Unlike the Rococo movement of the eighteenth century, the spiritual and cultural reactions of the nineteenth and the twentieth centuries are deeper and have not yet fully come to the surface. The influence of Chinese literature and of the Indian philosophical thought, to mention only two trends which have become important in recent years, cannot be evaluated for many years to come. Yet it is true, as T. S. Eliot has stated that most modern poets in Europe have in some measure been influenced by the literature of China. Equally the number of translations of the Bhagvad Gita and the Upanishads, which have been appearing every year, meant not for Orientalists and scholars but for the educated public, and the revival of interest in the religious experience of India, are sufficient to prove that a penetration of European thought by Oriental influences is now taking place which future historians may consider to be of some significance. Also archaeology has seriously affected the faith which was so firmly held in the past that everything of value developed on the shores of the Mediterranean."

Panikkar has thus referred to this publication:

November 1953 was a landmark in my life. The book Asia and Western Dominance which I wrote in Peking after twenty-five years' preparatory work was published that month in London. It created a flutter among historians and statesmen. The Manchester Guardian welcomed it in a highly appreciative leading article. *The Times* not only gave it a good review but referred to it in a leading article. E. M. Forster, Dorothy Woodman and Woodrow Wyatt were among the many who reviewed it for British papers. There can be few later books on Asia without some reference to it. I had sent a copy immediately on publication to Nehru. Within two weeks he had read it and sent me a laudatory note. But he did not stop with this. In his fortnightly letter to Chief Ministers and ambassadors he made a detailed reference to the book and its thesis. The book has gone through several editions in Britain and America and has also been translated into many European languages.

In addition to its success in re-evaluating the influence of Europe on Asia and thus helping to correct a chapter of recent history the book

brought me ... to ... the select band of historians they (UNESCO) had chosen to write a Scientific and Cultural History of Mankind."

In his stint at Egypt lasting seventeen months only he countered the Pakistani propaganda in the Middle East that India was an enemy of Islam that Muslims were being oppressed in India and that Kashmir was being forcibly kept down in the Indian union. He supported the Arab cause in their disputes with Britain at a time when Pakistan, a Muslim country, sided with the British

Panikkar took the academic world by storm when his Asia and Western Dominance came out in 1953. It is one of his controversial but significant contributions to the store-house of history. It also enabled the writer to reach the zenith of his publicity and fame. As such, it requires a careful consideration by the students of the history of Asia. It is actually a critical survey of the European contact with the Asian States between 1498 and1945-a Period which he describes as the Vasco da Gama epoch of Asian history, Panikkar Started with two fundamental theses:(i) The control of the sea made it possible for the European nations ta spread the tentacles of their economic and political influence over the Asian states: and (ii) therewas a feeling of European solidarity as against the Asians. The European control of the Atlantic led to the mastery of the Indian ocean and ultimately of the Pacific. In the words of Panikkar, the "blockade of Asia by the European sea powers is the first feature that gives the da Gama epochits unity"

Panikkar's hypothesis is that European expansion had an unbroken religious urge representing the effort of Western people to bring home to the masses of Asia their view of the values of life. In particular, the missionary activities of the protestant sects, which, he says, constituted European relations with Asia from the end of the eighteenth century, were connected with Western supremacy and synchronized with it. Thus, according to Panikkar, in China's case, Christianity was reduced to the position of a diplomatic interest of the western powers in their aggression against that country.

The book offers a strong indictment of Western conduct in Asia, with countless illustrations of the viciousness, arrogance, blindness, ignorance and inhumanity of the many Europeans who secretly left unquestioned the assumptions of their own political, cultural and social superiority. In general, the Westerners remained totally oblivious to the fact that their conduct was always being critically judged by the victims who seemed so lethargic and helpless, that the politics of the different Asian peoples were often dominated by an animosity towards the superior Westerner. They desired to protect indigenous institutions against their alien subversion, and that a long accumulation of well-remembered grievances motivated Asians at the close of the epoch (colonial era).

This book provides the impression that Asians are highly conscious that only the resurgence of their own power forced the Westerners to withdraw from their lands, that they clearly remember the decades of humiliation and

subjection, and the end of the Vasco de Gama epoch has inaugurated other historical epoch (decolonizing) in which quite different characteristics will find expression.(Decolonising project- both political and cultural)
K.M Panikkar says the grammar of English language has transformed the poetry and prose of the diverse vernacular toughness of the Indian people to bring a Western mentality into their very spirits, minds and souls.

Conclusion:

K.M. Panikkar's book "The Vascoda Gama, epoch of Asian history" explores the impact of colonialism on Asia from 1948 to 1945. He argues that the dominance of maritime power and the commercial economy led to Western Europe's domination. Panikkar criticizes the arrogance of colonialism and the Dark Age in India. He proposes the decolonization of consciousness, which involves rediscovering and reinventing ourselves against Western projects. He questions the universalist assumptions of European scholarship and the hegemonic appropriation of transformative vocabulary in pre-colonial history.