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Special Issue: Exploring Contours of Human Rights in India

FOREWORD

Nirma University Law Journal has completed five years; a landmark in the journey of exploring changing dynamics of law. In the latter half of the sixth year, the Journal responds to pertinent issue, that is, perspective of Human Rights. This is a thematic issue and it aims to advance deeper understanding and broader thinking on human rights – in form of dilemma, violation, remedial measures, exploration, revelation of newer dimensions and challenges in India. This issue, 'Exploring contours of human rights in India' sightsees multiple, known and unknown dimensions of human rights discourse, weaving inter-disciplinary threads and captures newer forms of challenges.

As we aim to make this journal a beacon of legal education by encouraging synthesis of knowledge and best practices cutting across academic and research fraternity, henceforth, the journal will have one thematic issue and the other as regular in the coming year.

We thank all the contributors for their ingenuity in expressing new ideas and critical thinking. We hope that the journey of legal research with multi-disciplinary content is fruitful for the fraternity and students at large.

Prof. (Dr.) Purvi Pokhariyal
Editor in Chief, Nirma University Law Journal
Director, Institute of Law, Nirma University

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EXPLORING CONTOURS OF HUMAN RIGHTS IN INDIA

A journey of human rights is continuously evolving in its specific and universal contexts. Broadly, four generations of human rights are publicized. Initially, civil and political liberties, also known as subjective rights were recognized as first generation human rights. Later, rights focusing on the economic, social and cultural rights, also known as solidarity rights were accepted as second generation. The third generation of human rights articulated claims and aspirations of 'different' groups / communities which are propagated as collective or group rights. In this set of rights, 'right to be different' or recognition as 'different / distinct' is somewhat central; those who were not covered in the first and second generation human rights, started raising their concerns for ensuring their human rights across the globe, maintaining their niche identity and claims. Globally, third generation rights, such as the right to peace, the rights to a healthy environment, to self-determination, to development, and the right to natural wealth and resource have been adopted. Advances in human rights are not dependent only on States; different civil actors have articulated human right violation as well as advocated promotion of justice in India.

As such all human rights are interrelated, interdependent and indivisible, the asymmetries in these generations of human rights are well known. Human rights activism has highlighted gap between human rights and human rights law as well as aimed to ensure the full legal recognition and actual realization

of human rights. Largely, promulgation of human rights and highlighting violation of human rights in a specific context has shaped up the discourse on human rights. In this context, this issue of the Journal focuses on capturing contours of human rights in India. This Journal Issue attempts to articulate, enunciate, visibalising, recognition and operationalisation of human rights of various kinds and of all three generations.

In India, along with these sets of human rights, newer challenges have been posed. These challenges stress for finer articulation of human rights, as they are cannot be directly linked to any particular type of or belong to any generation of human rights. for instance, identity based violence, communal violence, intolerance culminating into violence, regional disparities on counts of poverty, infrastructure growth, availability of natural resources and administrative mechanism for governance, etc. and state induced problems including internal displacement, ethnic identity separatist groups and their demands, armed forces' powers and injustice and violence are better known violations of human rights. These problems are yet to be effectively respected, protected, promoted and fulfilled by various state agencies of India. The human rights violation in form of torture by police in their custody, especially on under-trials, custodial deaths, discriminatory treatment and persecution to religious minority groups, exclusion of and atrocities on scheduled castes (Dalits) and scheduled tribes (tribals), targeted attacks and hate crime / violence, etc. are well known.

This special issue covers a variety of human rights related matters under considerations. First entry, 'Human rights to do moral wrong?' opens up a dialogue on human rights. This an edited version is based on a transcript of a lecture delivered by Professor Upendra Baxi as a part of Annual Public Lecture series organised by Institute of Law, Nirma University on 26 July, 2014. This piece is a poser which articulates contours of human rights discourse. Baxi discusses 'right' and its various dimensions, distinguishes 'moral human right' and 'legal human right', and role and characteristics of human rights. This speech was concluded with two posers – first, is there a

moral obligation to speak the truth and second, is there a moral obligation not to do a moral wrong.

Uniform Civil Code (UCC) is one of the most debatable issues amongst the various religious communities in India. In the context of first and second generation of human rights, this topic has been in discussion since long time. Varsha Gupta's paper, 'A Dead Letter to Constitution: Addressing Structural Inequalities' focuses on UCC debates. The concept of UCC is pitched in the context of secularism as a step towards national consolidation and a mean to enhance national integration by eliminating contradictions based on religious ideologies so that all communities in India. In this discourse, civil matters like marriage and divorce are talked about; these are currently governed by diverse personal laws in India. This transgresses the need to recognize and develop laws for promoting gender justice and equality amongst all the religions. The lamentable situation is that India being a secular country is lagging behind in according red carpet welcome to Article 44. The paper discusses in detail the Indian Constitution and International provisions which initiate the formation of Uniform Civil Code. Based on data collected by the Law Commission of India regarding the provisions of a Common Civil Cod, this essay addresses itself to one of the anomalous situation that prevails under the present Indian laws. It briefly states the facts of the cases and discusses relevant case laws analyzing the judgments followed by a conclusion in regard to its application to Uniform Civil Code.

Life in prison and rights of prisoners are the topics which have been at the centre of human rights discourse since long time. Shubham Patel's paper, 'New dimensions in sentencing vis-à-vis rights of prisoners' particularly opens up a dialogue on 'right to remission', which is comparatively a newer dimension under the debate on right of prisoners. This paper analyses the scope of the life imprisonment with the right to claim remission based on analysis of the recent case of Union of India v. V. Sriharan. In this case, the Supreme Court passed an order that these sentences are valid, but only the Supreme Court and High Courts would have power to order such terms. This paper seeks to find whether this scheme of sentencing hampers rights of

prisoners or not. The author explores nuances of human rights, which to him, is to be best called as kaleidoscopic in nature, and in case of right to remission, human right overlooks the factor that a person can reform and rehabilitate over time and therefore denying an opportunity or a right of remission, would amount to their infringement.

The police as a law enforcement agency has always been under scrutiny by the human right activists and agencies that promote protection of human rights, and studied by the academics vis-à-vis human rights. The fourth paper, 'Human Rights Vs Police – A Probe from Human Rights Perspective' by Abdul Azeez H M takes stock of the prevalent situation in India, i.e. the extent of the human rights violations by the police, focussing on the reasons for the violations, the adequacies of the existing law to prevent violations, etc. based on data / statistics. The paper also looks at agencies working for promotion of human rights, i.e. role, functioning and performance of the National Human Rights Commission (NHRC).

The acid attack is a newer form of human right violation. The paper, 'Hidden Face Does Not Imply Silence – Acid Attacks as infraction of Human Rights' by Rupali Mohan studies the growing menace of acid attacks and the preventive and remedial measures to curb them based on analysis of the case titled Laxmi v. Union of India (2014). It explores model of rehabilitation, methods of compensation and fulfilment of monetary requirements of the victims, as they are an integral part of civil society.

The sixth paper, 'Basic Income Discourse in India: Articulating Human Rights Perspective' by Rejitha Nair is a policy brief and discussion. It explores newer ideas of 'basic income' and how is it linked to human rights; the concept of human rights that provides grounds to discuss dignity, freedom and equality. The paper looks at existing right's framework, and examines direct state actions and societal structures and discusses whether they permit human dignity to flourish, especially the poor. The UBI (universal basic income) as a poverty alleviation and redistribution method is gaining currency in India as an alternative to the dehumanizing means

tested policies. The paper looks at various government schemes, poverty alleviation programmes of Government of India and discusses different ways of operationalizing UBI.

The book 'Undoing the Demos: Neoliberalism's Stealth Revolution' authored by Wendy Brown (2015) is reviewed by Nitesh Chaudhary. This is an interesting book which talks about Foucault's arguments on neoliberalism and unpacks the twin concepts of 'Homo Politicus' and 'Homo Oeconomicus' and contends that the "political" character of democracy has morphed into "economization of all spheres".

We are thankful to two of our student editors for their support – from launching 'call for papers' to submission of the manuscript to the press; they are – Sparsh Upadhyay and Vasundhara Kanoria. Many thanks to the peer reviewers whom we cannot name and thank individually; their input for revising the articles have been deeply appreciated and their time and efforts spent for reviewing articles are acknowledged with gratitude. We are also thankful to office staff for their support. We thank contributors for making this thematic issue more meaningful with their ideas and rigour of research; large readership will be benefitted with this.

Prof. (Dr.) Varsha Bhagat-Ganguly
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HUMAN RIGHTS TO DO A MORAL WRONG?**

Upendra Baxi*

I stumble on the question because the logically prior question to this question is this: is there a moral 'right' to do a moral 'wrong'? And then you come to the question – is there a human right to do a human wrong? Firstly what the right itself is, is very problematic.

When I was teaching jurisprudence in Delhi, I used to ask my class, 'what is the opposite of the word right'? During our conversation on jurisprudence, I always said to my class that you must hunt in pairs, no word existed singularly; there is always its opposite and if you are in the business of interpretation like the judges or judge of judges, then you realize the truth of this elementary maxim, namely, that 'words hunt in pairs and not singularly'. If you are an Hegelian or Marxian, you would say words hunt in threesome or in triad.[1] You can start with two and move to three and then if you are Mao, try to achieve even more!

*** This is edited version based on a transcript of a lecture delivered by Professor Upendra Baxi as a part of Annual Public Lecture Series organised by Institute of Law, Nirma University on 26 July, 2014. We treat this piece as a poser which articulates contours of human rights discourse. We are thankful to Ms Rejitha Nair for transcription of this lecture and her engagement with this write up until it became print worthy.*

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[1] Freud, Marx and Nietzsche – the masters of suspicion will tell you that words hunt you in three ways, in triad.

So right has at least in my opinion four opposite words. The lawyers usually answer me by saying, the opposite of the word right is duty. So right is defined as the absence of duty. The other people in the class used to say that the opposite of right is wrong, in the sense of reason and rationality and then you are straight in the laps of ethics and meta-ethics[2]. A sense of direction comes sharply when you contrast right with left. A Trotskyite would deny all sense of direction except the left! May I recall the story of a subaltern who was asked to raise his left hand and he raised his right hand and his commandant sharply reprimanded him whereupon the subaltern said, "permission to speak sir". "Permission granted" came the barking reply. The reply of the subaltern is worth noticing. What was the reply? The reply was, "Sir, I have no right hand, this what you call as my right hand is my left hand and this left is my extreme left hand." So the directionality of the story (the left is the only direction or the future is without any directions at all, or the whole concept of directions is either God's will or radically contingent) is what I leave for you to decipher. And the last "right v alright" is a contrast on which everyone stumbled because it is my own coinage. You may have all the rights in the world but you may not be alright. So right v wellbeing; wellbeing is more or less than a matter of right, that is the idea.

In the question 'human rights to do a moral wrong', we need to make sense of the term 'right': in which way you are using the word right in 'human rights' is the first conceptual question. The second conceptual question is, 'Human' in human rights. What is /are the right/rights prefixed by the word human? There are all kinds of legal—statutory, equitable, constitutional—rights which are legal but not all are human rights. What then is the distinction? One response is that all human beings have some human rights: the right not to be owned by other human beings. They are not given by the state but constitute the very humanity of being human. Truly horizontal these rights are—rights that belong to every woman, man, child, and people with different sexual orientation (LGBTQ, third gender), first

[2] It is the science that deals with the narratives of right and wrong.

nation's peoples, and people living with disability—to all those born as humans. But there are 'vertical' rights as well, what political theorist Will Kymlicka terms as 'polyethnic' or 'group differentiated' rights or human rights.

Moral philosophers speak of the moral idea of rights which is different from the legal idea of rights. So when we are talking about moral idea of right, the ethical idea of right and the legal idea, the difference between the moral idea of human rights and the legal idea of human rights has always to be acknowledged. The moral idea says that rights must be parsimoniously used. human rights law is what the guide books (dukkis) would tell you, like law relating to refugees, law relating to migrant workers, laws relating to disabled etc. These are very important laws but then these people (supporters of human rights as moral rights) are parsimonious—rights should be few in number, there can't be so many rights as these groups—sex workers, migrant workers etc. Rights should be basic or core rights that all human beings have by virtue of being humans. What are these? On these several notions are proposed: liberty, equality, difference, fraternity, participation, solidarity, dignity, autonomy, etc.

Typically, those who develop the human rights as moral rights idea tell us that socio-economic rights are not rights in the legal or juridical sense if only because these are not enforceable; you have only right to liberty, equality and if you are John Rawls then may be 'difference principle'. Only these three rights should be enough to understand rest of the rights, as you do not need rest of the rights as written. Whereas international human rights law wants to believe in the moral idea, wants to retain it but it wants to prescribe a vast number of human claims as human rights. So when we say human rights to do a moral wrong, we are talking about which human right? The moral human right or the legal human right?

The third conceptual question is regarding 'moral wrong'. Now there are people who believe that doing right cannot simply be not doing wrong – this would be an oxymoron. So to say that a right must always be right to do that

which is right, and a right can never be a right to do a wrong. So the people see a problem that people assert a right to do a moral wrong. They simply say that by definition rights include doing a right thing. If you believe the notion that you have a right to do a wrong, the conversation ends.

So there is a problem in the formulation itself of the topic. Is there a moral wrong? Can there be a moral wrong? Is there a human rights wrong, different from a moral wrong? Or are we talking about moral right? And what does expression 'to do' mean?

Take Mohandas, when he called for civil disobedience, was he urging moral right to a moral wrong? Civil disobedience was against British and he was asked why you want freedom? Why aazadi? Why swadeshi? Why Self-determination? And he quite memorably said, "I want freedom to commit my own sins". So civil disobedience was a way of committing your own sins. This is what Mohandas preached. Do you have legal right to do a moral wrong? He himself denied it in a famous speech in Ahmedabad in 1922. It is in a collection in Law & Lawyers by Navjeevan Prakashan, wherein Mohandas said to the Judge, in effect: it is a privilege to appear before you, give me the harshest punishment possible for my disobedience. I have done a moral right in preaching civil disobedience but British law regards this as a moral wrong and I violated the law hence I should be punished. So, Mohandas believed like Immanuel Kant in the right to be punished. A moral right to punishment, if the state did not punish you, then you shout out to the state and insist that you punish me. There is a light year of distance, between the present day political generation and Mohandas. They run away from punishment, saying they have done no legal wrong. In fact, legal wrong they have committed is often stamped, fixed, written on their foreheads and even then they escape punishment. So they believe in legal right to do a moral wrong and legal right to do a legal wrong.

What could be a legal right to do a moral wrong? What could be an example of that? Do you have any duty to rescue a stranger from drowning, even when you know swimming? A legal duty to be good Samaritans? The whole

criminal law used to thrive on negligent road accidents. Driver runs away, victim is lying on the road, you are driving, and your concern would be what? "Arre, police ka chakkar kaun katega" (Oh! why and who would go to police). You do not save a life because you don't feel there is a legal duty. No right of the victim is violated if you pass along.

Is making profits a legal wrong? Capitalism can't exist if you don't protect the right to return on capital. Karl Marx has a marvellous notion of justice which simply said – in slave mode of production, to own a slave is no moral wrong, because the whole mode of production is based on slavery... Similarly, in an industrialised mode of production making profits is not a wrong because if you say that raising profits is a moral wrong, then you are contradicting the capitalist mode of production... In a socialist mode of production, to make a profit is to be a capitalist bourgeois, and you will be sent to Siberia because the whole basis of socialism is that the modes of production is state-owned, and there is no private property. So to speak of moral wrong, you have to predetermine two things – (a) the moral wrong can exist, and (b) moral wrong can exist in the face of Karl Marx.

How about development process? When you say something manifestly wrong, for example, Dinkar Mehta in Gujarat wrote novelettes called 'Paltata Gamda' (changing villages), in which, in the first part he said, "I have heard Vinobha Bhave talk about 'sarvodaya'". He asked: What does 'sarvodaya' mean? For example, it can mean that let an ant double its size so let an elephant double its size. An ant will remain ant and elephant will remain elephant. In development also we say, we are developing but this model of development is an altruistic fallacy. What is an altruistic lie? Is it a moral wrong?

Have you watched Kangana Ranaut? I saw her film *Revolver Rani*, in which she is playing a brigand. This brigand movie has a title song in English, which says, "I am not evil, I am brutal. If you doubt it search for me on google and if you don't do that I will eat you like a noodle." This is a brigand's song. Is she committing a moral wrong? She is singing she is not evil but

brutal and threatening to eat me as a noodle. Is she committing a moral wrong in being what she is? Thus is she denying Hannah Arendt's so called right to have rights? Is she violating IPR (Intellectual Property Rights) by saying – "search me on google?" These are very interesting questions.

I would like to say two things in conclusion. First, is there a moral obligation to speak the truth? Second, is there a moral obligation not to do a moral wrong?

There was an epic drama broadcast on one of the television channels called Mahabharata. In this, Yudhishthira was shown as saying, "Ashwathama is killed but I don't know if it is a man or an elephant." However, to Dronacharya, he says "Ashwathama is killed." Did Yudhisthira have a duty to tell the truth even in conflict? Even when you are advised by Krishna to say a lie? Can god ever tell you to do falsehood? But if god tells you to do falsehood, and you utter a falsehood, is it a falsehood? It's a big question. Is deception authorised by a higher moral right and law? Do ends always justify the means? These are deep and troubling questions.

My submission is – theorising moral right to do a moral wrong is difficult. And theorising human rights to do a moral wrong is the most difficult task of them all. But can we run away from that which is difficult and still perform legal theory, or jurisprudence?

I take you all the way to international law and there is something called humanitarian intervention but humanitarian violations cause crisis. What do we mean by 'humanitarian violations'? Is there a duty to intervene always when there is a humanitarian violation? International law is very important because normally this problem is considered by moral philosophers on individual terms. Usually, philosophers consider individual problem and then generalise. It is considered to be standard of ethics. Ethics is in greater difficulties when it comes to collective behaviour. Humanitarian intervention is a collective behaviour. Was invading Afghanistan a moral wrong? Or moral right? Are the coalitions of willing states morally wrong or moral right? Is

Britain and America justified in bombing Iraq in the year 2003? They bombed Iraq by air in 1996-2003. Were they right or were they wrong – when there was no United Nations Security Council resolution authorization? Where the anti-Iraq movement right in saying no invasion of Iraq without Security Council authorization? If United Nations Security Council had spoken in favour of Iraq invasion then what? Is juridifcation of human rights movement, a moral right or is it a moral wrong? How do you speak of drone attacks in Waziristan and Afghanistan? Drones are unmanned computer driven air vehicle which drop bombs on the target, also called by US defence establishment (perhaps unconscious of the irony!) as LAWS (Lethally Automated Weapons System). It is an accurate but lethal description; there is no human agency directly involved in the actual final act of destruction; it truly is posthuman; is it morally right or morally wrong?

I would conclude by raising an overarching question. What does theory mean? A theory in my mind stands for the following things – description of problem, analysis of problem, explanation, evaluation, prediction, and justification or resolution. These constitute theory. How do we theorise 'human rights to do a moral wrong' is a question.

I will wrestle with for the rest of my life and I want a promise from you that you will wrestle with this question beyond my time.[3]

[3] You should read these articles—one by H. Orstein, 'Right to Do a Wrong', (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1978893) and the other by Jeremy Waldron, 'The Right to do Wrong', Ethics, 92: 21-39 (1981). Also see, Jacob Williamson - Against the Right to do Wrong', ww.academia.edu/3678472/Against_the_right_to_do_wrong.

A DEAD LETTER TO CONSTITUTION: ADDRESSING STRUCTURAL INEQUALITIES

Varsha Gupta*

ABSTRACT

Uniform Civil Code (UCC) is one of the most debatable issues amongst the various religious communities in India. The concept of UCC is pitched in the context of secularism as a step towards national consolidation and a mean to enhance national integration by eliminating contradictions based on religious ideologies so that all communities in India. In this discourse, civil matters like marriage and divorce, which are currently governed by diverse personal laws. This transgresses the need to recognize and develop laws for promoting gender justice and equality amongst all the religions. The lamentable situation is that India being a secular country is lagging behind in according red carpet welcome to Article 44. The paper discusses in detail the Indian Constitution and International provisions which initiate the formation of Uniform Civil Code. Based on data collected by the Law Commission of India regarding the provisions of a Common Civil Code, this essay addresses itself to one of the anomalous situation that prevails under the present Indian laws. It briefly states the facts of the cases and discusses relevant case laws analyzing the judgments followed by a conclusion in regard to its application to Uniform Civil Code.

Keywords: *Uniform Civil Code, Indian Constitution, International Provisions, Gender Justice, Secularism, Equality*

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INTRODUCTION

The concept of Uniform Civil Code (UCC) is amongst the most debatable issues today. It is argued that the UCC is a step towards national integration. The citizens today are governed by different personal laws, based on their religion, caste, community, and the Uniform Civil Code envisaged in Article 44 of Part IV of the Constitution includes entire gambit of family laws. In legal terms, the UCC shall include all personal laws of any religious or ethnic communities, which would also include criminal laws and any other customs or more which are practiced by such a community. It remained a dead letter since enactment of Indian Constitution. It is one of the most pertinent topics regarding secularism in India.

Women in India under Hindus, Christians, and Muslims suffer from discrimination on grounds of marriage, divorce, inheritance etc. it is observed that Indians have shown resistance when it comes to adoption of changes in their religious systems. The idea of common civil code comes into the picture with the growing gender discrimination across all the communities in India. Indian customs, cultures supersede all the laws of the country and therefore it becomes very difficult to enact the Uniform Civil Code as a law. The debate on the Uniform Civil Code gained worldwide importance due to the petitions filed against triple talaq. It is not sufficient to inculcate Uniform Civil Code as per the Indian Constitution and provisions of International laws should also be taken into consideration. India having ratified International Convention on Civil and Political rights, 1966, and International Convention on the elimination of all forms of discrimination against Women, 1979 is legally bound to enforce them under national laws. The implementation of a Uniform Civil Code is thus imperative for both, the protection of the oppressed and the promotion of national integrity and unity.

The paper begins with brief explanation of the UCC, followed by debate on the UCC. The paper provides details about the Indian Constitution and International provisions which initiate the formation of Uniform Civil Code.

Based on data collected by the Law Commission of India regarding the provisions of a Common Civil Code, this essay addresses itself to one of the anomalous situation that prevails under the present Indian laws. It briefly states the facts of the cases and discusses relevant case laws analyzing the judgments followed by a conclusion in regard to its application to Uniform Civil Code.

WHAT IS UNIFORM CIVIL CODE?

Over 50 years, we the People of India gave to ourselves this Constitution of India. The Constitution gave us some Fundamental Rights which are enforceable through courts and some principles to be performed by the State which are not enforceable. These principles are known as Directive Principles of State Policy (DPSP). It was imperative for the Constitutional makers that these will be taken care of by the State. Article 44 of the Constitution provides for a Uniform Civil Code throughout the territory of India. It states: "The State shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India". What does this civil code mean here? As such we already had uniform civil laws in form of the Contract Act, Transfer of Property Act, and Civil Procedure Act, etc. So this civil code really referred to personal laws relating to marriage, divorce, succession, and adoption and it is this law that poses a problem because of religious practices and beliefs in the country. The state has been entrusted with this voluminous task. However, no significant step has been taken by the government despite the rise in gender inequalities among different religions.

Article 44 has been the essence of the Constitution in order to govern the nation with the common set of laws in its every facet. Nowhere, being a country of divergent religion, this Article has always been contemplated as a dead letter from its very inception. Now is the time to turn the clock up and view the UCC through its disparate aspects. The Uniform Civil Code if enacted will deal with the personal laws relating to the above matters of all

the religious communities. These laws will enhance fraternity of unity amongst the citizens by providing them with a set of personal laws which incorporates the basic values of humanism[1].

NEED FOR UNIFORM CIVIL CODE

The Principle behind Uniform Civil Code is the modernization of all personal laws and brings uniformity in these laws. Surprisingly, there still seems to be a debate whether the Uniform Civil Code should be there or not. There is a directive in the constitution and that directive being fundamental we have to accept the position as realists and positivists that a Uniform Civil Code is one of the desiderata of the Constitution[2]. The most important question, however, is how can we give enforceability status to this Constitutional mandate? With the increasing discrimination between men and women, it becomes an imperative duty of the state to enact a Uniform Civil Code for all.

There are two primary reasons for the enactment of the UCC: Firstly, a secular country like India needs a common code for all the citizens irrespective of their religious practices. This issue was a key issue debated at the time of enactment of the Constitution. The ideological concept which led to the partition of India was the assertion of the Muslims that they constituted a 'nation' separate from the Hindus. It was quite natural for the leaders of divided India to aspire for the unity of the one nation, namely, the Indian so that the history might not repeat itself. Recently, the subsidy provided to the Muslim community for their Haj pilgrimage is under challenge[3]. Every religion follows its own ideology and the faith in their god. Char Dham Yatra is also a sacrament for the Hindu people and there is no need of discriminating on this ground. That is where the need to enact a common civil code arises. Articles 14 to 18 of the Constitution are violated

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[1] Shabbeer Ahmed, *Uniform Civil Code (Article 44 of the Constitution) A Dead Letter*, 67 THE INDIAN JOURNAL OF POLITICAL SCIENCE 545, 546 (2006).

[2] Krishnayan Sen, *Uniform Civil Code*, 39(37) E.P.W., 2004 at 4196.

[3] Jayanth Jacob, *Haj Subsidy under examination by Government once again*, H.T., Jan 13, 2017.

because of non-implementation of Article 44. Second, for gender justice or gender equality. The rights of women are usually limited under religious law, be it Hindu or Muslim. Many personal laws relating to marriage, inheritance, divorce, succession in all the communities are unjust, especially to women. The need for enactment of the UCC arose due to the recent petitions being filed against triple talaq. The Allahabad High court has already held the triple talaq to be unconstitutional.[4] The decision of the high court still await for the stand taken by Supreme Court on this issue. Since monogamy is the law for Hindus while Muslim law permits to have as many as four wives in India and due to this Hindu man converts to Islam so as to avoid penal consequences. These laws are not only substantially anti-woman, but they portray the female gender in a very degrading and demeaning manner. In India, only Hindus have properly codified laws whereas most of the Muslim laws are one sided and therefore Muslim women suffer from a lot of hindrances.

A very pertinent issue regarding enactment of such laws is what about the customary laws of tribal communities which neither fall under personal laws of the Hindus, Muslims, Christians or Parsis. However, these customary practices are also different even amongst the sub-tribes and different clans. Two important perspectives are there for the tribal women rights i.e. the right to property and practice of polygamy. A recent amendment to Mizo Hnam Dan by Mizoram legislature to permit the fathers to make a written will for disposing off their property in favor of women is a progressive move. In Arunachal Pradesh, Women do not have the right over the immovable property and the eldest son plays a dominant role in respect of such property. As under Muslim law, the practice of polygamy is also prevalent in the tribal communities giving social recognition to wives. Thus we can see how difficult is to make changes to the present legal regime because it is not only with respect to religious communities but also tribal communities of different States. Tribal communities celebrate diversity as a way of their life

[4] Smt. Hina & Others Vs State of U.P. & Others, [WRIT - C No. - 51421 of 2016].

and therefore the move to enact the UCC has to withhold the essence of these communities as well. This can also be connected with reference to the fear in mind of minorities in India. Minority groups are highly endeavoring to prevent the implementation of the UCC and are securing their personal laws. One of the inferences behind this logic is that, they are apprehending the UCC to be Hindu Civil Code because of their majority. However, this is only a delusive statement. Indian State does not favour any religion and is independent of any religion.

Muslim Personal law does not recognize adoption and they are governed by Guardian and Wards Act, 1890. Recently, The Juvenile Justice Act, 2000 as amended in 2006 is an enabling legislation that gives a prospective parent right to adopt a child irrespective of their religion.[5] This is a small step towards ensuring the objectives laid down by Article 44. When Indira Gandhi became Prime Minister it was said that now women have become powerful. It may be true to the extent that we have had many Muslims President and Chief Justices or they have been given privileges. The condition of women can be adjudged by the women living in slums and villages[6]. The need for Uniform Civil Code was realized soon after enactment of the Constitution, but still, no significant changes have been introduced. The Uniform Civil Code is eminently desirable for bringing the modernization and a common system of justice for all.

PROVISIONS OF INDIAN CONSTITUTION AND INTERNATIONAL LAW

The Preamble of the Indian Constitution itself starts with the main objective of bringing equality, fraternity, justice, secularism, and as stated earlier prevalence of different personal laws demolishes the clarity of laws and creates apprehension in the mind of people of different religions which violates the basic feature of the Constitution and thus there is a need of Uniform Civil Code.

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[5] Shabnam Hashmi v. Union of India, (2014) 4 SCC 1: AIR 2014 SC 1281.
[6] V.R. Krishna Iyer, *Unifying Personal Laws*, THE HINDU (July 8, 2003).

The fundamental rights which are considered to be the basic structure of the Constitution are thus violated due to the above reasons. Articles 14 to 18 of Indian Constitution discuss equality as a fundamental right. The prevalence of different personal laws is a hindrance to the enjoyment of so-called fundamental rights. They are governed by different personal laws according to their religions. As per Article 37 of the Constitution, DPSPs are not enforceable through courts but they are nevertheless fundamental in the governance of the country. DPSPs and fundamental rights are ought to be constructed harmoniously so as to give effect to both of them. Directive principles and fundamental rights are complimentary to each other and must be read as an integral whole as directive principles impose an obligation on the state to take positive action to maintain an egalitarian social order.[7]

In the post-constitutional era, an attempt has been made to create an egalitarian society amongst individuals and in order to achieve that purpose, education is one of the most important and effective means.[8] The right to education is now a fundamental right inserted under Article 21-A of the Constitution. This has been added so as not to discriminate people as per Articles 14 and 15 of the Constitution. Then why the government is not taking measures to adopt the Uniform Civil Code as a law? Personal laws prevailing in the society are highly discriminatory on the basis of gender and religions. Dr. Ambedkar explained in the constituent assembly[9] "in fact, the bulk of these different items of civil law have already been codified during the British rule and the only major items still remaining for a uniform code are marriage and divorce and inheritance, succession (adoption, guardianship)". It must be noted that the several enactments made by the parliament since independence were mainly for Hindus and exclude the Muslim who are the major minority communities in India and who are more vociferously objecting to the framing of the Uniform Civil Code relating to matters

[7] Delhi Transport Corporation v. DTC Mazdoor Congress, AIR 1991 SC 101 : 991 SUPP -1 SCC 600 : (1991)ILLJ 395 ; Mohini Jain v. State of Karnataka, AIR 1992 SC 1858 :(1992) 3 SCC 666; Unni krishnan J P v. State of A.P., AIR 1993 SC 2178 :1993 1SC 645.

[8] State of Tamil Nadu v. K. Shyam Sunder, (2011) 8 SCC 737: AIR 2011 SC 3470.

[9] Constitutional Assembly Debates, Vol. VII, p. 550.

discussed above for all the citizens of the country. The most radical argument by the Muslim community is that it is opposed to the *Shariat*. Therefore, even if a common code was desirable, it could not be brought until the Muslim themselves came forward to adopt it.[10] The Supreme Court has regretted that Article 44 has so long remained a dead letter and recommended early legislation to implement it.[11]

As far as International Law provisions are concerned, India having ratified International Convention on Civil and Political rights, 1966, and International Convention on the elimination of all forms of discrimination against Women, 1979 is legally bound to enforce them under National Laws. Despite all this, Women in India continue to suffer from discrimination in the matter of marriage, succession, divorce, maintenance etc. As a step towards recognition of Uniform Civil Code, the personal laws of various communities need to change, not only in accordance with the Indian Constitution but also as per the provisions of the International Law. Prevalence of discrimination against women under various personal laws of different communities in India was openly accepted by India in its periodic report before the United Nations Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) when it admitted, "The personal laws of the major religious communities had traditionally governed marital and family relations, with the Government maintaining a policy of non- interference in such laws in the absence of a demand for change from individual religious communities.[12]" The major case concerning the use of international law for making domestic laws is Vishakha v State of Rajasthan[13], wherein The Sexual Harassment of Women at Workplace Act, 2013 was passed in accordance with the provisions of International

[10] Vol. A, D.D.Basu, *Commentary on the Constitution of India,* 84-85 (9th ed., 2016).

[11] Jordan Dingdeh v. S.S. Chopra, AIR 1985 SC 935: (1985) 3 SCC 62 (para 7); Ahmed v. Shah Banoo, AIR 1985 SC 945: (1985) 2 SCC 556 (para 32).

[12] United Nations, *Report of the Committee on the Elimination of Discrimination Against Women*, Supp. No. 38, A/55/38, 22nd Session 17 Jan-4 Feb 2000 and 23rd Session 12-30 June 2000, General Assembly Official Records, New York, 2000 at 8.

[13] AIR 1997 SC 3011.

Convention on the elimination of all forms of discrimination against Women, 1979.

Now is the time to redeem the pledge of gender equality to the women of the country and achieve the goal enshrined in the Constitution. The author states that the personal laws of the country should conform to equality and should not be arbitrary and unreasonable.

UNIFORM CIVIL CODE: A CALL FROM INDIAN JUDICIARY

There is a lot more to achieve for the enactment of the Uniform Civil Code in the country. Earlier when Article 44 was introduced in the Constitution, an objection was made against this provision in the Constituent Assembly by several Muslim members as they apprehended that their personal rights might be abrogated. However, this objection was met by pointing out that the Uniform Civil Code would promote national unity and that India had achieved uniformity of law in most of the area except few areas of personal law. Reference can also be made to Article 25 in this discussion which guarantees freedom of conscience and profession, practice, and propagation of religion. All the secular activities associated with religious practices are exempted. Thus it can be argued that personal laws pertain to secular activities and therefore fall within the regulatory power of the state. Efforts in this regard are reflected from various pronouncements of Supreme Court. The broad approach of the judiciary can be well appreciated at this Juncture and discussion in the domain of Uniform Civil Code.

In *Ms. Jorden Diengdeh v. S.S. Chopra*[14] the Supreme Court after reviewing the various laws prevailing in the area of marriage in India said, it was time to reform the law relating to marriage, divorce and judicial separation and make a Uniform Civil Code applicable to all people irrespective of religion or caste as at present all these laws are far from being uniform. Court further observed that it's high time that the legislature should intervene in these matters to provide a uniform civil code.

[14] AIR 1985 SC 934, 940: 1985 2 SCC 62.

In Mohd. Ahmed Khan v. Shah Bano Begum[15], the Supreme Court held that "It is also a matter of regret that Article 44 of our Constitution has remained a dead letter." It is for the state which is charged with the duty of securing a Uniform Civil Code for the citizens of this country and unquestionably, it has the legislative competence to do so. The Apex Court stated that a Muslim divorced woman can claim maintenance under Section 125 of Cr. P.C. from her husband who divorced her. Later, on due to pressure from Muslim fundamentalists, the Central Government passed the Muslim women's (Protection of Rights on Divorce) Act, 1986, which denied right of maintenance to Muslim women under section 125 of Cr. P.C.

Sarla Mudgal case is one of the pertinent cases which accentuated upon the need of Uniform Civil Code in India. In Sarla Mudgal v. Union of India[16], a Hindu husband who was married under Hindu Law, embraced Islam and solemnized a second marriage. The question raised was whether the status of second marriage will be valid without dissolving the first marriage. However, the court said that the second marriage will be invalid. Further, SC opined in this particular case that in the Indian Republic there was to be only one nation and therefore no community could claim to be a separate entity on the basis of religion.

In the recent judgment of Kerala High Court, the court stated that it is not a mandate to codify all the laws relating to religious communities[17]*. It further stated the need to bring the amendments in the marriage laws of the country particularly with reference to triple talaq for the enactment of the UCC. It is possible to have a common code at least for marriages in India to bring the women on equal path in respect of right to equality. However, this is again a problematic situation because all the laws of a religion are interconnected in one way or the other and if divorce laws are only made common it would be difficult to hold the essence of any religion and codify a proper UCC.*

[15] (1985) 2 SCC 556 (para. 32) : AIR 1985 SC 945.
[16] 1995 SC 1531: (1995) 3 SCC 635.
[17] NAZEER @ OYOOR NAZEER v. Shemeema, WP(C).No. 37436 of 2003 (F).

The Court also made some pertinent observations in a catena of other cases namely, Madhu Kishwar v. State of Bihar[18]*, Danial Latifi v. Union of India*[19]*, Lily Thomas v. Union of India*[20].Further, in *John Vallamattom v. Union of India*[21]*,* the Supreme Court again reiterated that of a uniform civil code must be framed by the Parliament as it will help in national integration. The case of *Shayara Bano v. Union of India & Ors* seems to be a clarion call for the enactment of the uniform civil code as Article 44 has remained a dead letter for several years and there is still no evidence of any official activity done for the framing of Uniform Civil Code in this country. In this case, Muslim women brought into focus the lack of Uniform Civil Code in India wherein the heroic battle was put up by them against the practice of triple talaq claiming that the personal law superseded their fundamental rights.

We understand the difficulties involved in bringing persons of different faiths and persuasion on a common platform. But a beginning has to be made if the Constitution is to have any meaning. Inevitably, the role of the reformer has to be assumed by the courts because; it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable.[22] But, piecemeal attempts of courts to bridge between personal laws cannot take the place of a Common Civil Code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case.

ANALYSIS OF QUESTIONAIRE CONDUCTED BY LAW COMMISSION

The Chairman of Law Commission Justice (retired) Balbir Singh said that it is the Supreme Court which has raised the issue of UCC time and again holding that Article 44 is not a dead letter.[23] The observations framed by the

[18] AIR 1996 5 SCC 125.
[19] AIR 2001 SC 3958: 2001 7 SCC 740.
[20] AIR 2000 SC 1650: 2000 6 SCC 224.
[21] (2003) 6 SCC 611.
[22] Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945.
[23] Raghav Ohri, *Questionnaire on Uniform Civil Code is an academic task: Panel Chief,* TOI, Oct 19, 2016.

Apex Court in the implementation of UCC are not acknowledged. The Apex Court has only recommended the need of formulating UCC. Lately, a questionnaire has been conducted by the law commission in this regard. The questions covered up everything including the practices of triple talaq, polygamy, polyandry and also whether the Uniform Civil Code should be optional? The objective behind this was to invite suggestions on all possible modes of a Common Civil Code. After going through observations made by the Apex Court it is clear that there has been no codification of how Uniform Civil Code should be? The Apex Court has only recommended the need of creating Uniform Civil Code. This reform taken by the law commission is helpful in codifying the various provisions of Uniform Civil Code. The Muslim Law Board challenged the questionnaire on the ground that India can't impose a single ideology and the questions are against their personal laws. However, this step will be helpful for the legislature in forming a Uniform Civil Code. The issue of forming an optional Uniform Civil Code is highly questionable. A voluntary Uniform Civil Code is not only a paradox, but also contradictory in terms.

Bharatiya Muslim Mahila Andolan is also not in favour of the UCC and they are asking for codification in Sharia law. According to this Andolan, it is not the UCC that will bring gender justice and equality to Muslim women. The UCC will be a clear violation of Article 25; their goal is just to simplify the Sharia law in similar ways like Christian and Parsi minorities laws. The Quran does not sanction the practice of triple talaq and there is a need to codify such laws. This Andolan also opposed the decision of All India Muslim Personal Law Board's (AIMPLB) to boycott Law commission questionnaire on the UCC. They want to fill their responses and make the government understand their needs of disallowing the practices of triple talaq and polygamy. The UCC is of foremost importance but the education of women is also of great concern. The step for the implementation of UCC would have been taken forward earlier also if the women of the nation would have been

educated suitably. Now women have become aware of their rights and thus continuously raising voice to protect them from gender discriminatory laws. Therefore, this questionnaire not only helped in framing the provisions of UCC but also brought in light the objections raised by Muslim women against the formation of the UCC.

ROLE OF SECULARISM IN THE ENACTMENT OF UNIFORM CIVIL CODE

Secularism is the principle of separation of State from religion. Until 1976 secularism was not present in the preamble but was added to it by the 42nd amendment. After the amendment, our Constitution embodies the positive word Secularism, which means that the State shall have an attitude of neutrality and impartiality towards all religions. Irrespective of the strength and diversity of religions in our country the concept of secularism has the same status and report from the State for all the religions. The spirit and core ethos of India have been tolerance towards different religions and synthesis of religion. Secularism is a part of the *Doctrine of Basic Structure*[24] of the Constitution of India. In a catena of cases, namely *Indira v. Rajnarayan*[25] and *SR Bommai v. UOI*[26] and *Bal Patil and Anr. v. Union of India*[27], SC explained the meaning of the word Secularism and observed that secularism means that stall shall have no religion of its own and State has to treat all religions equally.

Though we have accepted 'secularism' as a value under the Constitution but there still remains a question that one needs to ask and which still remains unanswered i.e. the idea of secularism, what it actually means to be a secular society? Secularizing India has to begin with the Uniform Civil Code which ensures an equal right to all citizens without any exceptions and it's not just the Muslim Personal Law but also the Khap Panchayats, and all other socio-

[24] Keshvanand Bharti v. State of Kerela, AIR 1973 SC 1461.
[25] 1975 AIR SC 229.
[26] 1994 AIR SC 1981.
[27] Appeal 4730 of 1999.

legal inequalities that other religions carry. The spine of controversy revolving around Uniform Civil Code is secularism. Uniform Civil Code is not opposed to Secularism in any way and it also does not violate Article 25 and 26 of the Constitution of India. Article 44 of the Indian Constitution also emphasize that there is no necessary connection between religion and personal laws in a civil society. Matters of secular nature like marriage, succession, inheritance, etc. can be regulated by law. The Uniform Civil Code will not result in interference of one's religious beliefs, it emphasizes on having a common for matters related to maintenance, succession, the right to property and inheritance. Thus the whole debate can be summed up by the judgment given by Justice R.M. Sahai in which he said, "Ours is a secular democratic republic. Freedom of religion is the core of our culture. Even the slightest of deviation shakes the social fiber. But religious practices, violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedom are not autonomy but oppression. Therefore, a unified code is imperative, both for the protection of the oppressed and for the promotion of national unity and solidarity."[28]

SUGGESTIONS AND CONCLUSION

The Preamble of the Constitution envisages India as a secular country. The religious freedoms guaranteed to the citizens by Article 25 to 30 are subjected to the limitations given. Religion is about faith whereas law defines the specific rights of an individual. There are many communities prevailing in India which is not even known. The need of the hour is to make uniform laws for everyone so that these backward communities do not suffer. One of the advantages of Uniform Civil Code is a proper notice and registration of marriages. Now a day there is ongoing problems in the divorce cases and that is where the need to make registration of marriages is compulsory. Article 44 is not a question of national integration only but a reminder that all Indian women need this protection of a uniform civil code, and an improvement and acceptance of their rights. All the Personal laws have provisions

[28] *Supra* note 23.

discriminating women and children. These laws have to be changed, not only on the basis of uniformity but on equality and justice to the downtrodden people of the communities.

Despite the progressive judicial pronouncements by the court in favour of giving a constitutional mandate to Article 44, Parliament has done nothing to bring this noble ideal. The recent questionnaire conducted by the law commission has got a large number of responses and therefore proved to be a step forward. This clearly shows that the citizens of the country deserve to be governed by a Common Civil Code. A mandatory Uniform Civil Code shall be created and it should not be optional. It needs hard work. It needs dialogue and public debate and changing the mindset with empathy. Let us prepare a good draft on the basis of the questionnaire conducted and the needs of society. A progressive and broadminded outlook is required among the people of all the religions to understand the essence of such code. For this purpose, education, awareness camps, and programmes should be taken up by the government.

However, everything depends upon the government's urge to implement it. If the government makes it compulsory that there should be a total ban on animal slaughtering, then will it ask Muslims not to do so? Or if the government legalizes cow slaughtering, will it not hurt Hindus? Politicians are contesting elections mainly on the basis of caste and communities and thus have aggravated the feeling of identities. The prevalence of Sati practice in some Rajputs areas is an example of how difficult it is to enact a Uniform Civil Code. So it has to be dealt with carefully. The Provisions of Uniform Civil Code should be such so that they do not affect the sentiments of any community. Nothing can be done overnight. A slow and steady approach is necessary because justice delayed is justice denied but if justice is hurried, justice may be buried. In the event that laws are made oblivious of such social realities, they would get to be distinctly unworkable and counterproductive. If we consider religion as a base for UCC, it is exceptionally hard to remove the feelings and beliefs that are acquired in the

psyches of individuals, be it any religion. We need to enhance confidence in 'Unity in Diversity'. Legislative efforts need to execute the UCC that contains changes required in the present situation while withholding the essence of each religion.

NEW DIMENSIONS IN SENTENCING VIS-À-VIS RIGHTS OF PRISONERS

Shubham Patel* and Shivam Yadav**

ABSTRACT

Every person has a right to be treated with respect and dignity, be that a person in a suit or a person behind the bars. The prisoners usually face stigma – the government's effort is to avoid their contact with the society and takes away the freedom of mobility. This in turn denies a chance of a prisoner to get reformed. In the recent times, there is upsurge in the sentences in which the court orders that the convicted person should spend the whole life or at least a minimum number of years behind the bars and puts those term beyond the scope of remission by the government. The Supreme Court in the recent case of Union of India v. V. Sriharan declared that these sentences are valid, but only the Supreme Court and High Courts would have power to order such terms. This paper analyses the scope of the life imprisonment with the right to claim remission on which such sentences put bars and their coexistence with the rights of the prisoners, and to find whether this scheme of sentencing hampers rights of prisoners or not from human right's perspective, i.e. right of a person to get reformed and rehabilitated.

Keywords*: prisoners, remission, Supreme Court, term of imprisonment, right to rehabilitate*

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INTRODUCTION

> *"What constitutes the law? You will find some text writers telling you that it is something different from what is decided by the courts...that it is a system of reason, that it is a deduction from principles of ethics or admitted axioms or what not, which may or may not coincide with the decisions. But if we take the view of our friend the bad man we shall find that he does not care two straws for the axioms or deductions, but that he does want to know what the...courts are likely to do in fact. I am much of his mind. The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law."* [1]
>
> *- Justice Oliver Wendell Holmes*

The above extract from the *Bad Man's* theory as propounded by Oliver W. Holmes. It portrays the fact that the man who is accused of a certain offence cares less on what the legislations and principles of deduction say about the offence and is concerned more about what the courts would do in his case i.e. would they acquit or otherwise convict him, if convicted what would be the quantum of the punishment he shall have to serve, this doctrine in certain ways points out that the fate of the accused depends upon the ideological opinions of the person who is sitting at the bench and deciding the case.

The main objectives of punishments in any penal system are threefold, to serve as deterrent, punitive or retributive and finally to act as reformative. In the present day scenario most of the punishments are directed towards the reformation of the prisoners or to act as deterrent, with retribution becoming the least likely of the punishments. The scheme of punishments under the Indian Penal Code (I.P.C.) as contained in Chapter III provides for life imprisonment amongst other forms of punishments. The Code of Criminal Procedure (Cr.P.C.) provides for remissions[2] and other executive powers[3]

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[1] Oliver W. Holmes, *The Path of Law*, 110 Harv. L. Rev. 991, (1996).
[2] The Code of Criminal Procedure, § 432 (1973).

which the government are authorized to use, if in their opinion the prisoner merits certain diminutions from the sentence he was to actually serve.

The question as to meaning and scope of the term 'life imprisonment' and the rights of the prisoners have always been put in front of the Supreme Court and it has been conclusively answered in a catena of cases. Though, in recent times a new pattern of sentencing has been introduced in which imprisonment for a certain number of years is put beyond the scope of remission and other powers contained under the Cr.P.C.

Of recent, the issue related to giving such punishments was highlighted in the case of *Union of India v Sriharan*[4]*,* where among the seven issues presented before the court, the very first issue was that whether the punishment of imprisonment of life means imprisonment of the rest of the convict's life[5] or whether he is entitled to claim remission as a right and whether in a very few cases this the punishment of death penalty can be replaced by punishment of imprisonment of life or imprisonment in excess of fourteen years and whether such a sentence can be put beyond remission.[6]

This paper deals with the special kind of punishment enunciated by the Supreme Court in *Swamy Shraddanand v. State of Karnataka*[7]*,* the questions raised about its validity and the answers thereof. The paper also tries to answer the question that whether a prisoner has right to life and personal liberty guaranteed under Article 21 of the Constitution of India or not, if yes then whether this kind of special punishment infringes such rights or not? This paper also analyses the concept of separation of power in light of the decision of the Supreme Court barring the right of executive to grant remission to the prisoners who fall under this special category.

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[3] The Code of Criminal Procedure, § 433 (1973).
[4] *Union of India v. V. Shriharan,* 2015 S.C.C. OnLine S.C. 1267.
[5] The Indian Penal Code, § 53 r/w. § 45 (1860).
[6] Shriharan, *supra note* 4.
[7] *Swamy Shraddananda v. State of Karnataka,* (2008) 13 S.C.C. 767.

LIFE IMPRISONMENT: MEANING AND SCOPE

Austin considered sanction as a necessary ingredient of law and was of the consideration that it was only through the sanctions that the obedience to the law can be achieved. Sanction in terms of Criminal Law is punishment and is nothing but infliction of pain or injury upon the wrong-doer. Hence the consequence of any criminal act is punishment which is inflicted by the authorities.

The I.P.C. in Chapter III deals with the various types of punishments, Section 53 of the I.P.C. provides the exhaustive lists of the possible punishments, whereas Section 53 I.P.C. read with Section 45 of the I.P.C. provides for the punishment of life imprisonment. In the present scheme of things there are more than 50 offences that are capable of attracting life imprisonment as a form of punishment. However, the meaning and length of life imprisonment term is ambiguous and not clear, the Hon'ble Supreme Court, in a catena of cases has dealt with the questions raised about the same. The primary reasons for this question to rise from time to time are the provisions contained in the I.P.C.[8] and the Cr.P.C.[9] empowering the government to pardon or remit sentences.

The Supreme Court in *Gopal Vinayak Godse v. State of Maharashtra* [10] answered the question where it observed that *"A sentence of transportation for life or imprisonment for life must be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life."*

The constitution bench of the Supreme Court in *Maru Ram v. Union of India*[11] has held that remission is not a liberty which one can claim even if person has served 20 years in jail and the meaning life sentence is nothing less than life-long imprisonment. On the very similar lines, in *Mohd. Munna*

[8] The Indian Penal Code, §§ 54, 55, 57, (1860).
[9] The Code of Criminal Procedure, § 432, 433 (1973).
[10] *Gopal Vinayak Godse v. State of Maharashtra,* A.I.R. 1961 S.C. 600.
[11] *Maru Ram v. Union of India,* (1981) 1 S.C.C. 107.

vs. Union of India[12] it was held by the Supreme Court that in a case of life imprisonment there is no provision either in the Cr.P.C. or in the I.P.C. which guarantees the automatic release of the prisoner after 14 or 20 years of serving the sentence without the remission given by the government.

Section 57 of the I.P.C. provides that *"In calculating fractions of terms of punishment, [imprisonment] for life shall be reckoned as equivalent to [imprisonment] for twenty years."*[13] It is submitted that though it can be argued by some as the means that the life imprisonment cannot exceed more than 20 years, however, this is not the case. This provision was inserted for some other purpose and one has to read Section 57 with Section 511 of the I.P.C. which talks about attempt it says that whoever attempt to commit an offence punishable with life imprisonment and for which there is no express provision is made in the IPC shall be punished with one-half of the imprisonment of life. So if life imprisonment would be uncertain then it will be difficult for court to punish for attempt in cases punishable for life imprisonment hence in such cases 20 years should be taken as life imprisonment to calculate the fraction so that a person cannot be punished for more than 10 years in cases of attempt to commit offences punishable with life imprisonment. However, the Supreme Court, almost 36 years ago, in *Dalbir Singh and Others v. State of Punjab*[14], held that -

> *"we may suggest that life imprisonment which strictly means imprisonment for the whole of the man's life, but in practice amounts to incarceration for a period between 10 and 14 years may, at the option of the convicting court, be subject to the condition that the sentence of imprisonment shall last as long as life lasts where there are exceptional indications of murderous recidivism and the community cannot run the risk of the convict being at large."*

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[12] *Mohd. Munna v. Union of India,* (2005) 7 S.C.C. 417.
[13] The Indian Penal Code, § 57, (1860).
[14] *Dalbir Singh and Others v. State of Punjab,* (1979) 3 S.C.C. 745 ¶ 14.

Thus, it can be argued that the ideas of the punishments which are doled out today were in fact brought into existence much earlier.

REMITTANCE AS CONTAINED UNDER Cr.P.C.

Once a person is convicted of the offence he is alleged of, a sentence is imposed by a competent court, and such a person is sent to the jails as a prisoner, the execution of the sentence is upon the government then, which executes so in accordance to the rules framed in that regard.

Section 432 of the Cr.P.C enables the Government to remit wholly or in part the sentence with or without any conditions attached and it applies to any punishment for an offence, and the remission or suspension done under this section does not in any way interfere with the order of conviction passed by the court, but it only affects the execution of the sentence. The effect of the order of remission is that it wipes out the parts of the sentence of imprisonment which has not been served, reducing the sentence to the period which is already undergone by the prisoner, and subsequently leaving the order of conviction and the sentence passed by it untouched.[15]

The powers given to the government in this section are purely discretionary in nature and there is no obligation put upon them to tell the reasons why a person is given remittance, the only need for the government is to apply this power fairly and not arbitrarily. The safeguards to prevent such arbitrary remission are contained in the provisions of Cr.P.C. itself.

PROCEDURAL CHECKS ON ARBITRARY REMISSIONS

The checks are imposed by sub section 2 which says that an application is must to be made by the convict himself or by someone on his behalf and the government cannot take matter *suo moto*, the government can only grant remittance according to the rules in Jail Manuals or statutory rules. It is settled that once such application is made by the prisoner, the 'appropriate

[15] *Sarat Chandra Rabha vs. Khagendranath*, A.I.R. 1961 S.C. 334.

government' then is required to approach the presiding judge of the Court which either made conviction or confirmed the same to give his opinion that whether the application which is made shall be granted remission or shall be refused.[16] The same has been held and followed in several cases.[17]

It is clear that the s*uo moto* remissions cannot be granted as the provision is only an enabling provision and the government can only over-ride the judicial pronouncement if certain conditions are fulfilled.[18] This also eliminates the "discretionary" or collective release of convicts on "festive" occasions since each release requires case to case analysis.[19]

SUBSTANTIVE CHECKS ON ARBITRARY REMISSIONS

A convict of life imprisonment cannot enjoy remission under Sec 432 until he qualifies Sec 433-A, for the power of remission of sentence of life imprisonment of a convict the substantive check is placed by Sec 433-A of the Cr.P.C which provides that for remission in sentence of a capital punishment the convict must serve at least 14 years of imprisonment.

In *Maru Ram*[20] it was said that remissions may benefit the release of the convict when the term is of limited number of years, when the punishment is of life imprisonment then the net number of days of imprisonment is uncertain duration and anything subtracted in uncertain still remains uncertain, the nature of life imprisonment is incarceration until death.

In *Ashok Kumar*[21] case the position was made clearer when it was said that when a person is given life imprisonment the remissions earned by him under remission rules are of limited importance, and do not acquire importance unless the sentence is remitted under Sec 432 of the Cr.P.C,

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[16] 1, Ram Jethmalani & D.S. Chopra, *The Indian Penal Code* 1271, (1st ed. 2015)
[17] *Sangeet v. State of Haryana*, A.I.R. 2013 S.C. 447
[18] 2, Ram Jethmalani & D.S. Chopra, *The Code of Criminal Procedure, 1973,* 2389, (1st ed. 2015).
[19] Sangeet, *supra note* 17.
[20] Maru Ram, *supra note* 11.
[21] *Ashok Kumar alias Golu v. Union of India,* (1991) 3 S.C.C. 498.

which is also subjected under Sec 433-A of the code, or constitutional powers has been exercised under Article 72/161 of the Constitution.

It is a well settled principle in law that in the cases where a convict is sentenced to undergo life imprisonment, he would be in custody for unstipulated period i.e. the time which cannot be determined conclusively. Due to the same reason, the remissions, whatever are earned by or awarded to such a person end up only being notional in nature. In these types of cases, to reduce the period of incarceration, a specific order under Sec 432 of Cr.P.C is needed to be passed by the 'appropriate government', in *State of M.P. v. Ratan Singh*[22] case it was said that in cases where punishment given is life imprisonment, the death of convict cannot be fixed and the remission given under Rules could not be considered as substitute to the sentence of transportation for life/life imprisonment.

THE NEW KIND OF SENTENCING

The very inception of these kind of sentences can be found in the observations and belief of the courts that there are certain cases where the facts of the case are such that the case does not qualifies to fit in the test of the '*rarest of the rare*' doctrine, but also at the same time is, in terms of the seriousness, above the status of life imprisonment and if the convict is awarded with the punishment of life imprisonment only which can be remitted after the passing of 14 year or any other number of years then the ends of justice would not meet.

As discussed earlier, *Dalbir Singh and Others v. State of Punjab*[23] provided the mandate for imposing the sentences which would run for whole life without remission, the first case which followed this way of sentencing was the peculiar case *Subash Chander v. Krishan Lal and Others*[24] where the court held that the appellant who was to serve sentence of life imprisonment should remain in prison for the rest of his life and he would not be entitled to

[22] *State of M.P. vs. Ratan Singh*, (1976) 3 S.C.C. 470.
[23] Dalbir Singh, *supra note* 14.
[24] *Subash Chander v. Krishna Lal and Others,* (2001) 4 S.C.C. 458.

any commutation or premature release. However the judgment is peculiar because in the present case the appellant himself submitted before the court that if he were to be sentenced life imprisonment he should not be released.

The Supreme Court in the case of *Swamy Shraddanand v. State of Karnataka*[25] where while awarding life-long imprisonment to the accused without any remission court reserved its opinion on standardisation of life imprisonment as 14 years imprisonment court said that *"The sentence of imprisonment for a term of 14 years, that goes under the euphemism of life imprisonment is equally, if not more, unacceptable."*

On this issue the court further made it clear that the sentence of life imprisonment, when it is awarded as a substitute for death penalty should be carried out strictly as directed by the Court. It also further laid down the legal basis for putting the punishment of imprisonment for life, awarded as substitute for death penalty, beyond any remission.[26] The Supreme Court pointed out that death penalty would be harsh and the life imprisonment which can be remitted in 14 years would be inadequate and not proportional in the present case and sentenced was awarded with an order that the convict must not be released for rest of his life.

This trend has been followed in several cases where the convicts had to spend minimum required years from their sentences before being considered entitled to receive remission. For instance *Shri Bhagwan v. State of Rajasthan*[27], *Prakash Dhawal Khairnar (Patil) v. State of Maharashtra*[28], *Haru Ghosh v. State of West Bengal*[29].

In *Haru Ghosh vs. State of West Bengal*[30] the Supreme Court was of the opinion that the life imprisonment would not be punishment as he was already under the shadow of one in another case, and that death penalty

[25] Swamy Shraddananda, *supra note* 7.
[26] *Id.*
[27] *Shri Bhagwan v. State of Rajasthan,* (2001) 6 S.C.C. 296.
[28] *Praksh Dhawal Khairnar (Patil) v. State of Maharashtra,* (2002) 2 S.C.C. 35.
[29] *Haru Ghosh v. State of West Bengal,* (2009) 15 S.C.C. 551.
[30] *Id.*

would be harsh, the court in determining that death penalty would be harsh also took the fact that he had two children as a mitigating factor. The court in this case gave a punishment of a minimum thirty five years to the accused.

The Supreme Court again in the case of *Dilip Premnarayan Tiwari vs. State of Maharashtra*[31] while commuting the sentence of death penalty to life imprisonment gave a direction that the two accused should not be released before 25 years and the third one before 20 years.

It is submitted that the latter two cases provide for the punishment in some years which can be said are arbitrarily decided as nowhere in the judgments judges give the reason why the specific time period they have provided is necessary and how in fact the time of 35 years in *Haru Ghosh*[32] case or 25 years in *Dilip P Tiwari*[33]case is going to serve as the time specifically needed to reform such criminals, question arises that how the bench sitting and deciding the case came to the conclusion that 35 years is needed, why not 30 or 40 years instead. There is an element of subjectivity in the manner these cases and number of years is decided. The cases where sentences are for whole life without remission present a different case altogether, as the court decided not to take their life, but the 'life' they so provided also lacked life.

However, a two judge bench in *Sangeet and Anr. v. State of Haryana*[34] opined that the decision of the Supreme Court in *Swamy Shraddanand*[35] case cannot be permitted as the appropriate government cannot be told that it is prohibited from granting remission of a sentence. Though this decision was given while keeping the principle of separation of powers in mind but was done away by constitution bench of Supreme Court in *Union of India v V. Sriharan*[36].

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[31] *Dilip Premnarayan Tiwari v. State of Maharashtra,* A.I.R. 2010 S.C. 361.
[32] Haru Ghosh, *supra note* 29.
[33] Dilip P Tiwari, *supra note* 31.
[34] Sangeet, *supra note* 17.
[35] Swamy Shraddanand, *supra note* 7.
[36] Sriharan, *supra note* 4.

THE JUDGMENT: UNION OF INDIA V. V SHRIHARAN

In 2015 the Supreme Court constituted a constitution bench in *Union of India v V. Sriharan*[37] to answer various questions among which first question was related to the special category of sentence made by the Supreme Court in *Swamy Shraddanand*[38]case the judgment hold much value as two different opinion appeared on the answer of the above mentioned question.

The Supreme Court held that the life imprisonment means imprisonment for whole of the life, and further also said that the special category of punishment which put the bar on the remission can be given. It came up with reasons for giving such kind of special punishment. In this case court made a distinction between the constitutional power of remission and statuary power of remission, it said that "*.....the constitutional power of remission provided under Art. 72 and 161 of the Constitution will always remain untouched, inasmuch as, though the statuary power of remission etc., as compared to constitutional power under Art. 72 and 161 looks similar, they are not the same.*"[39]

On giving special kind of punishment court said that *"...in order to ensure that such punishment to operate without any interruption, the inherent power of the court concerned should empower the court in public interest to make it certain that such punishment imposed will operate as imposed by stating that no remission can nullify such imposition."*[40]

It is also important to note that the Supreme Court also held that this power of giving special kind of punishment should only be exercised by Supreme Court and High Court and not by Sessions Court. For Sessions Court the only option which is open is to give life imprisonment with no specified term and death sentence. The only plausible reason for doing so is that it is not permissible under the statuary law and therefore can only be done by

[37] *Id.*
[38] Swamy Shraddanand, *supra note* 7.
[39] Sriharan, *supra note* 4.
[40] *Id.*

exercising the inherent powers of the Court to do justice. But resorting to the inherent power raises serious doubts as inherent power to do justice can only be used where a statute does not permit a course to be treaded but the Supreme Court itself said that punishment for different specified term is implicit in the punishment of life imprisonment so why take away power from the Session Court but this question was left unanswered by the Supreme Court.

However the judgment was not of the unanimous nature and Uday Umesh Lalit J. wrote the dissenting judgment on the first issue and Abhay Manohar Sapre J. concurred with Lalit J. On the first part of the question that whether imprisonment of life in I.P.C. meant imprisonment of the rest of the life of the convict, minority had concurred with the majority and said that imprisonment of life means imprisonment for the rest of the person's natural life but it dissented on the second part of the question of giving special category of punishment. Minority said that a convict can always apply to claim remission either under Article 72 and Article 161 of the Constitution or under Section 432 Cr.P.C. According to them it was not open for the courts to give any special category of punishment by making it beyond the application of remission. Lalit J. referred to the report of the Committee of Reform on Criminal Justice under the chairmanship of Justice Malimath, which in its report had recommended for the addition of an additional kind of punishment in cases where imprisonment of life is one of the punishments namely, imprisonment of life without commutation or remission.[41] He held that despite the recommendation of the committee the Parliament chosen not to act on it. Further the minority also referred to the judgment of Supreme Court in the case of *Vikram Singh v. Union of India*[42] where the Supreme Court said that prescribing punishment is the function of legislature and not the Courts. Further minority raised an important problem that as per section 433A Cr.P.C. even a person whose death sentence was confirmed by the Supreme Court may avail the benefit of

[41] Sriharan, *supra note* 4 ¶ 315.
[42] *Vikram Singh v. Union of India,* (2015) 9 S.C.C. 502.

remission after serving the statutory minimum 14 years in prison, if his death sentence gets commuted to life by the executive. Therefore, there can actually be a scenario, wherein, a person whose case fell short of rarest of rare will have no option of seeking remission, whereas, the one who was actually given death penalty may be released as per section 432/433A of Cr.P.C. [43]

The minority judgment raises very serious doubts over the Supreme Court's power to create special category of sentences and making it beyond the power of remission.

PRISONERS' RIGHT TO LIFE

Individuals who are in custody, despite the societal perception towards them, are humans and are entitled to as such treatment. A person does not loses his human rights merely because of the reason that he has committed some offence, and he has some dignity which is ought to be protected.[44]

Justice Posner while emphasizing on the treatment of prisoners noted that, while there are two ways to look upon the inmates, "one is to look at them as a separate species, as a type of vermin, devoid of any humanity"[45], but he advised the alternate approach that "We must not exaggerate the distance between 'us,' the lawful ones, the respectable ones, and the prison and jail population; for such exaggerations will make it too easy for us to deny that population the rudiments of human consideration."[46]

In *Shatrughan Chauhan v. Union of India*, Hon'ble Supreme Court while holding that every prisoner has right to life and personal liberty observed that *"... Article 21 inheres a right in every prisoner till his last breath and this Court will protect that right even if the noose is being tied on the condemned prisoner's neck."*[47]

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[43] Sriharan, *supra note* 4 ¶ 328.
[44] R. K. Gupta & Karam Singh, *Human Rights of Prisoners in India,* 2, Imperial Journal of Interdisciplinary Research, (2016).
[45] *Jhonson v. Phelan,* 69 F. 3d. 144, 151 (1995)
[46] *Ibid* at 152
[47] *Shatrughan Chauhan v. Union of India,* (2014) 3 S.C.C. 1 ¶ 26

However, the majority decision of *Union of India v. V. Shriharan*[48] presents a question that whether the special category of sentence, which was held permissible encroaches upon the prisoner's right to life and personal liberty?

In the case of *State of Haryana v. Mahendra Singh*[49] SC said that right to be considered for remission is a legal right keeping in mind the constitutional safeguards of a convict under Article 20 and Article 21 of the Constitution of India. It is submitted that in *Maru Ram*[50] the Supreme Court said that remission is not a liberty which one can claim but here prisoner is not claiming right to get remission instead he is claiming right to be considered for remission. Hence taking this right from a person strikes at the very root of right to life. In *Haru Ghosh*[51] case and in in *Dilip P Tiwari*[52] court provided for 35 years and 25 years of imprisonment without remission. It can be said are arbitrarily decided as nowhere in the judgments judges give the reason why the specific time period they have provided is necessary and how in fact the time of 35 years in or 25 years case is going to serve as the time specifically needed to reform such criminals.

In *Maneka Gandhi v Union of India*[53] the Supreme Court said the law must be just, fair and reasonable in order to restrict the fundamental right. In the present case the principle enunciated by the Supreme Court is full with subjectivity and arbitrariness hence violative of Article 21. The Supreme Court invoked its inherent power to give such kind of sentence but in *V. Sriharan*[54] case Lalit J. while dissenting with this conclusion said that exercise of Article 142 cannot be inconsistent with the fundamental rights further it cannot be even inconsistent with the substantive provisions of the relevant statuary laws.

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[48] Sriharan, *supra note* 4.
[49] *State of Haryana v. Mahendra Singh,* (2007) 13 S.C.C. 606.
[50] Maru Ram, *supra note* 11.
[51] Haru Ghosh, *supra note* 29.
[52] Dilip P Tiwari, *supra note* 31.
[53] *Maenka Gandhi v. Union of India,* A.I.R. 1978 S.C. 597.
[54] Sriharan, *supra note* 4.

Creation of special category of sentence and to put this category beyond remission gives too much power to the judge further there is no mechanism to check that whether a person is reformed after or before the completion of said punishment or not. The main goal of imprisonment as a punishment is reformative rather than retributive. Right to life is made of various things like for an ordinary person it consist of right to shelter, right to livelihood, right to food etc. but for a prisoner it consist of right against delay in deciding mercy petition and right to be considered for remission hence it is an important prop which is holding the right to life together with others and denying this right would violate the prisoner's right to life.

Moreover, the issue of prison problem is not a new scenario in India and there is a widespread concern about the overpopulation of prisons. The average overpopulation of prisons is 114%[55] and in exceptional cases up to more than 200%[56], and such cases are not only going to affect the prisoners but also the undertrial prisoners who by far make more than 50% of the total prison population.[57]

SEPARATION OF POWERS

S P Sathe observes that –

> *"People's understanding of judicial activism depends on their conception of the proper role of a constitutional court in a democracy. Those who conceive the role of a constitutional court narrowly, as restricted to mere application of the pre-existing legal rules to the given situation, tend to equate even a liberal or dynamic*

[55] Prison Statics India, 2015, National Crime Records Bureau, available at http://ncrb.nic.in/StatPublications/PSI/Prison2015/Full/PSI-2015-%2018-11-2016.pdf (accessed on 26 January 2017).

[56] Delhi Prisons Annual Review, 2016, available at http://www.delhi.gov.in/wps/wcm/connect/lib_centraljail/Central+Jail/Home/Prisoner+Profile (accessed on 28 January 2017).

[57] Prison Statics India, 2015, National Crime Records Bureau, available at http://ncrb.nic.in/StatPublications/PSI/Prison2015/Full/PSI-2015-%2018-11-2016.pdf (accessed on 26 January 2017).

> *interpretation of a statute with activism. Those who conceive a wider role for a constitutional court, expecting it to both provide meaning to various open textured expressions in a written constitution and apply new meaning as required by the changing times, usually consider judicial activism not as an aberration, but as a normal judicial function."*[58]

Now even if we consider the second part of this statement, where we conceive a wider role for a constitutional court by expecting it to provide meaning to "open textured expressions" and apply new meaning as required by changing times, it falls short in the present scenario as here court is not giving meaning to any "open textured expression", it is ignoring a legislative mandate and making a judicial legislation. Now court did not bar the application of Article 72 and Article 161 but it barred the application of statutory provisions. But again question arises that why made a distinction between both the provisions when both have the influence of government as president and governor exercise this constitutional power under the aid and advice of council of ministers. In a democracy the job of the Courts are to interpret and apply the law it can even provide meaning to various open textured expressions but it should not make a new law ignoring the very intention of legislature. Parliament purposely ignored the recommendation of Malimath committee report on formation of special category of sentence without remission but court allowed it. In a democracy legislature represents the will of the people and it has been authorized by the people to legislate on their behalf but court ignored this part which raises serious questions.

INTERNATIONAL PERSPECTIVES

If an international perspective is brought in, then it can be very well discovered that the long term of sentences are a very rare phenomenon. Though there have been countries which award exceptionally long years of sentences, the same are very limited in number. There has been a trend,

[58] S.P. Sathe, *"Judicial Activism: The Indian Experience"* 6 Washington University Journal of Law and Policy, 29, (2001).

especially in the USA to sentence the convicts exceptionally long sentences (in terms of 100+ years) and multiple life imprisonments, but those are seen as 'exceptionally bad precedents', are generally criticized and seen as giving the punishment an angle of retribution rather than reformation[59], with an attempt to send out the message that the wrongdoer is getting the maximum what can possibly be done to punish him.[60]

The European scenario is much different and divided in their approaches to dole out the punishments in terms of imprisonments. The European nations in general, with exception of England and Netherlands as the only two nations which have life imprisonment without parole, have abolished the punishment of indefinite life imprisonment and what remains is the limited term of imprisonment which varies on local laws of the countries. The ECHR (European Convention on Human Rights) provides that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment"[61] The European Court of Human Rights held that if the law is such that if the law is such that the offender has no chances of release, whether *de facto* or *de jure* then in such case such a law can be held not in accordance with Article 3.[62]

Since the laws of England provide for indefinite period of imprisonment, the same have been question on the point of validity with respect to Article 3 of the ECHR time and again. England first followed the scheme of provisions where the Home Secretary used to prescribe the minimum terms of imprisonment, but after it was held unlawful[63], Criminal Justice Act, 2013 came into picture whereby all the courts passing mandatory life sentence are

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[59] Prof. Faizan Mustafa, *Lifer without Remission, Another Regressive Verdict,* Live Law (Dec. 30, 2015), available at: http://www.livelaw.in/lifer-without-remission-another-regressive-verdict-2/. (accessed on 15 July 2017).

[60] Owen Bowcott, *Why do US judges give such long prison sentences?*, The Guardian (March 7, 2012), available at: https://www.theguardian.com/law/shortcuts/2012/mar/07/us-judges-long-prison-sentences. (accessed on 15 July 2017).

[61] The European Convention on Human Rights, § 3 (1950).

[62] *Kafkaris v. Cypress,* (2009) 49 E.H.R.R. 35. However in this case the laws of Cypress had both *de jure* and *de facto* measures which provided the offenders a chance of release, hence the laws were held to be consistent with Art. 3.

[63] *Anderson v. Secretary of States,* [2003] 1 A.C. 837.

mandated to provide a minimum which a prisoner has to undergo before claiming parole, the term is calculated using the Schedule 21. The Schedule 21 has divided the three categories which separately put the punishments and the minimum terms which the offender can be given based on their age and seriousness of the offence. However, one of the key features under the law is that the judge is duty bound to provide the reasons for choosing the particular minimum term in the open court.[64]

The ECHR held that in cases when the whole life imprisonment is awarded then such a prisoner is entitled to know that what he must do to be considered for release, and when and under what conditions the review of his sentence would be done. If the domestic laws does not provide the same the incompatibility with Art. 3 arise, as and when such decision is made.[65] This would have rendered the 'whole life order' invalid, but in a later case the Court of Appeals took a look into the same and held that the sentencing under Sec. 269 of the Criminal Justice Act, 2003 was not in violation of Art. 3 of ECHR, 1950 and the judges can continue to pass such orders in exceptional circumstances as the local laws provide for hope and possibility of release in exceptional circumstances.[66]

On a comparison with the present Indian scenario it can be concluded that the aspect of sentencing, at least, in terms of life imprisonment due to the rise in cases of a fixed term without remission, is drifting towards the retributive form of sentencing rather than focusing on the reformative parts. The other difference arises when the aspect of the necessity of providing reasons as to awarding the minimum non pardonable term is considered, the courts of England are bound by the provisions of law to tell the reasons whereas there is no such need in the Indian scenario.

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[64] The Criminal Justice Act, § 270, (2003).
[65] *Vinter v. The United Kingdom,* [2013] All E.R. (D.) 158 (Jul.) ¶ 122.
[66] *R. v. McLaughlin and R. v. Newell,* [2014] E.W.C.A. Crim. 188.

CONCLUSION

In the case of *Divisional Manager Aravali Golf Club v. Chander Hass*[67], the Hon'ble Supreme Court said -

> *"Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like Emperors. There is broad separation of powers under the Constitution and each organ of the State i.e. the legislature, the executive and the judiciary must have respect for the others and not encroach into each other's domain"*

It is the duty of the Courts to decide and sentence an accused, but, this no-where entitles courts to encroach upon the matter which is given to some other organ of the state by the virtue of legislation. The entire idea of punishment in modern times is the reformation of the convicted person so as from being an anti-social element the person can again go and join he society, but if the case are considered where some fixed number of sentences were given, there is no probable justification that sheds light that why such time is needed and how after spending this much time in the captivity the person would get reformed. Further how it can be possible that Sessions Courts are allowed to give the punishment of death penalty while they are barred from giving punishment falling between life imprisonment and death penalty. Also the concern of the minority judgement in *V. Sriharan*[68] is well founded as there can actually be a scenario, wherein, a person whose case fell short of rarest of rare will have no option of seeking remission, whereas, the one who was actually given death penalty may be released as per section 432/433A of Cr.P.C. The decision of the Supreme Court raises various questions which need to be answered as the right to life and every chance which enables the person to gain back his liberty, in a lawful manner, should be respected and sought to be protected, even if that is of a prisoner and to

[67] *Divisional Manager Aravali Golf Club v. Chander Hass,* (2008) 1 S.C.C. 683 ¶ 20.
[68] Sriharan, *supra note* 7.

lock away the prisoner for rest of his life, overlooking his capacity to redemption and rehabilitate, and taking away the hopes of release is violation of his rights and dignity.

As submitted above, the need for reasons, that why a particular number of years are kept as mandatory imprisonment is of grave importance, the same is followed by nations where the of minimum time of imprisonment before one can claim pardon are provided, and the absence of the same makes the process all the more subjective and thus worrisome. *"The State must ensure that a person is detained under conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention."*[69] The above observation sums up the duty of the state in terms on how even the convicts are to be treated and this is what all the civilized states should aspire to follow on.

[69] *Kudla v. Poland,* (2002) 35 E.H.R.R. 198.

HUMAN RIGHTS VS POLICE – A PROBE FROM HUMAN RIGHTS PERSPECTIVE

ABDUL AZEEZ H*

ABSTRACT

The relevance and significance of human rights are unquestionable as they are essential for a meaningful life. The State is bound to safeguard the human rights; and the most significant, State machinery for the protection of the human rights is the Police. However, many a times, the protectors turn out to be violators and there are a large number of human rights violations by the police are reported. The term 'police' have not been defined – in the Criminal Procedure Code, in the Indian Police Act, or in any State laws including the Kerala Police Act. This paper attempts to assess the extent of the human rights violations by the police, focussing on the reasons for the violations, the adequacies of the existing law to prevent violations, etc. The paper presents data of India and Kerala state. The paper also looks at agencies working for promotion of human rights, i.e. role, functioning and performance of the National Human Rights Commission (NHRC).

Keywords: *Police, Human Rights, Violations, Custodial torture, Unlawful arrest/detention*

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INTRODUCTION

Human rights are significant for everyone as a meaningful life is not possible without them. It has emerged as solemn legal premise after the Second World War. There are many laws to protect the human rights due to its significance both nationally and internationally. And there are machineries for implementing the observance of human rights and Police is one such machinery. Police is entrusted with the duty of protecting the life, liberty and security of persons in a State. However the protectors, many a times, turn out to be violators. There are a large number of human rights violations by the police though the existing law attempts to prevent the violations of human rights by the police. The lack of proper implementation of the existing law intensifies the problem. The monitoring and implementing of the law is most urgent in this regard for an effective enjoyment of human rights.

This article attempts to study the extent of the human rights violation by the police. It also focuses on the reasons for the violations, the adequacies of the existing law to prevent violations, nature of violations done by police, etc. The study shows that the police in India have not relieved from the clutches of the colonial British brutality even after almost seventy years of freedom from British rule. They continue to use the same old methods of investigation and interrogation procedures for the detection and prevention of crimes. Consequently, the Indian police are known for their human rights violations than for their protection. The extent of violation of human rights by the police are seen in a wide spectrum of areas which includes custodial death, torture, unlawful arrest, illegal detention, false implication, failure in taking action, *etc.*

HUMAN RIGHTS: MEANING AND EXTENT

The concept of human rights is as old as the coming into existence of human beings on earth. These rights are inherent in every person by virtue of his birth. However, these rights were referred to as natural rights until recently.

In the eighteenth and nineteenth centuries in Europe, several philosophers such as Thomas Paine,[1] John Stuart Mill[2] and Henry David Thoreau[3] proposed the concept of "natural rights", the rights belonging to a person by nature by virtue of being born as a human being. The concept of human rights emerged as a distinct branch after the Second World War. The Encyclopedia Britannica defines the term "human rights" as "rights that belong to an individual as a consequence of being human."[4] Oxford Advance Learners dictionary defines it as "one of the basic rights that everyone has to be treated fairly and not in a cruel way, especially by their government".[5] Amnesty International defines human rights as "basic rights and freedoms that all people are entitled to regardless of nationality, sex, national or ethnic origin, race, religion, language, or other status".[6]

The concept of human rights can be traced from Western Philosophy to Stoic natural law doctrines.[7] Human rights can generally be defined as those fundamental and natural rights that are attached with human beings and are essential to consider a Man as a human being. They are not the creation of any State or law. They are inherent in every Man by virtue of being human and are ascribed naturally by virtue of being born as a Man.[8] It is equal in every human being. The Universal Declaration of Human Rights 1948 declares that "all human beings are born free and equal in dignity and rights."[9]

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[1] Thomas Pine, *Rights of Man,* Reprint (1792), p.25; In part 4 of 16 entitled "Being an Answer to Mr. Burke's Attack on the French Revolution" Pine claims ". ....that all men are born equal, and with equal natural right, in the same manner as if posterity had been continued by creation instead of generation.... Natural rights are those which appertain to man in right of his existence".

[2] John Stuart Mill, *Essays on Liberty*,Reprint (1973), pp.15-17, John Stuart Mill though not directly using the term "natural rights", but he claims that a set of rights that must be protected by society as they are natural or god-given and also ultimate utility of individuals.

[3] Henry David Thoreau, *On the duty of Civil Disobedience,* Reprint (1842), p.14.

[4] Britannica Ready Reference Encyclopedia, Vol.5 (2005), pp.82-83.

[5] Oxford Advanced Learners Dictionary, (2010).

[6] Amnesty International USA, *Basics of Human Rights, available at*: http://www.amnestyusa.org/research/human-rights-basics (accessed on 22 May 2011).

[7] Stoics is a group of philosophers founded in Athens by Zeno of *Citium* in early 3rd century and existed until 529 AD when it was closed down by order of the Emperor Justinian I.

[8] Brian Orend, *Human rights: concept and context (*2002), p.38.

[9] Universal Declaration of Human Rights, Art. 1.

Human rights are universal across all nations. They are based upon the belief that each individual should be treated with dignity and respect to which, as human being, they are entitled. Human rights are part of what each person needs to be human. The Section 2 (d) of the Protection of Human Rights Act, 1993 defines "human rights" as "the right relating to life, liberty, equality and dignity of individuals guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India." But, before the 2006 Amendment to the Protection Human Rights Act, Section 2(c) provided that "international covenants" included only "the International Covenant on Civil and Political Rights" and "the International Covenant on Economic, Social and Cultural Rights".[10] This definition before 2006 Amendment was very restrictive one. This lacuna has been resolved by the 2006 Amendment which now includes all convention in which India is a party. Thus, the human rights are the most fundamental of all rights enjoyed by human beings and are essential for the up keep of the dignity as human being.

Human rights, defined in Constitutions and legislations are the attempt to express how people's humanity should be respected by those with power over them, particularly the Governments and their law enforcement agencies like police.[11]

HUMAN RIGHTS VS POLICE

The term "police" have neither been defined in the Criminal Procedure Code nor in the Indian Police Act nor in any State laws including the Kerala Police Act. The Kerala Police Act, 2011 only states that there shall be a police force for the Kerala State.[12] Black's Law Dictionary defines "police" as (1) "the governmental department charged with the preservation of public order, the promotion of public safety, and the prevention and detection of crime" and (2) "the officers or members of this department."[13] The police force as an

[10] Adopted by the General Assembly resolution 2200A (XXI) of the 16th December, 1966.
[11] Gopal Bhargava, *Meaning and Source of Human Rights* (2003), p.15.
[12] Kerala Police Act 2011, S. 14.
[13] The Black's Law Dictionary, (8th Ed. 1999).

organized body came into being in England in the 1820s when Sir Robert Peel established London's first municipal force.[14] Before that, policing had either been done by volunteers or by soldiers in the military service.[15] The UN Code of Conduct for Law Enforcement Officials[16] defines "law enforcement official" as including all officials whether they are elected or appointed who exercise police powers, especially the powers of arrest or detention[17] and also include military personnel who exercise police powers whether they are clothed with police uniform or not, and personnel of State security forces whether they are named as police or not.[18] This definition seems to be wider in as much as it takes within its sweep all those who are exercising police powers. As per this definition the criteria to determine whether a personnel is a law enforcement official or not is to look for the nature of the power that is exercised by the personnel. Thus, the term "Police" can, simply, be defined as any person or body of persons created by the authority of the State, obligated and empowered to maintain law and order, prevention and investigation of crimes.

The important function of the State in modern times is the protection of life, liberty and property of its citizens by maintaining law and order in the State. The police force plays a vital role in protecting society through the administration of criminal justice by preventing and detecting crimes. While ensuring safety and security of the people they ensure that no member of the society is put in peril and no person's human rights and dignity are curtailed. It is a difficult task for the police to find out the culprit and set justice in motion to punish the delinquent without tampering the interest and dignity of human beings and the rights appended therewith. Unfortunately rule of law comes to an end when the police who are the authority to protect the common man turn out to be the violators of their human rights. But it is to be stated that there is no exaggeration to say that generally, the police in

[14] David H. Bayley, *Police for the Future* (1994), p. 27.
[15] *Id.*, p. 27.
[16] The Code of Conduct for Law Enforcement Officials was adopted by the General Assembly by Resolution 34/169 of 17 December 1979.
[17] *See* The UN Code of Conduct for Law Enforcement Officials, Commentary (a) to Art. 1.
[18] *Id.*, Art. 1, Commentary (b).

India do not hesitate to violate human rights to any extent. Police investigation, interrogation, arrest and detention have always been controversial for the non-compliance of the procedural requirement. This resulted in making the accused and other persons in difficulty by violating their human rights and dignity. Police commit large number of human rights violations irrespective of all the measures taken to protect the human rights of the people. There is no exaggeration in submitting that the police quite often violate the human rights of people in India. The magnitude and dimension of violation of human rights by the police in India are so unbearable that a common man or woman, whether as victim or witness would seldom approach the police for redressal of their grievance without the aid of a politician or a lawyer or a bureaucrat. The police in India are more known for their violations human rights than their protection. The main aim of this research study is to know the extent of human rights violations by the police generally and to be more specific those violations in Kerala.

COMPLAINTS AGAINST POLICE

It is pathetic to state that the majority of the complaints received by the National Human Rights Commission are against police personnel.[19] The Commission recommends to take stern action against erring police personnel. For this study purpose the complaints against police are broadly classified into two heads depending on the seriousness of offence committed, namely, (i) custodial death/rape cases and (ii) torture/illegal arrest/unlawful detention and other cases.

CUSTODIAL DEATH/RAPE CASES

The National Human Rights Commission has been taking serious measures against custodial violence in the cases of deaths or rapes by police ever since its commencement of functioning. Immediately after the establishment, one of the significant steps that was taken by the Commission was directing all

[19] Joshi, GP, Police Accountability in India, Commonwealth Human Rights Initiative, New Delhi, available at: www.humanrightsinitiative.org/.../police/.../police_accountability_in_india.pdf*accessed on May 14, 2010).*

the States and the Union Territories require District Magistrates and Superintendents of Police to report directly to the Commission any instance of death or rape in police custody within twenty four hours of its occurrence.[20] It was also made clear by the Commission that failure to send such reports would lead to a presumption that an effort was being made to suppress the facts.[21]

Another significant step that has been taken by Commission is in relation to post mortem. Since there is no credible and reliable witnesses or evidences in custodial death cases, the only important evidence is post mortem report. As the officials involved in the custodial death crime are police/jailors, there are all possibilities of manipulation in such post mortem reports either by influence or by coercion of surgeons conducting the post mortem. Understanding such manipulations, the Commission had recommended to the State Governments to video-film all post-mortem examinations and to send the cassettes to the Commission.[22] Thus, the Commission made solemn designs to make the higher officials of the Government responsible for the acts of death in custody.

There were 2,222 complaints of deaths in police custody received by the National Human Rights Commission from 1 September 1993 to 31 March 2008 and all these deaths were reported within 24 hours to the Commission. Out of the above 2,222 deaths reported, 1,485 deaths in police custody were turned out to be deaths due to natural causes but 158 deaths were due to police brutality. The Commission recommended for interim relief, prosecution and departmental action against defaulting personnel in these 158 cases.[23] During 1 April 2007 and 31 March 2008, the Commission received 188 cases of death in police custody.[24] The Table 1 below shows the number of complaints of deaths in police custody received by the National

[20] Letter No. 66/SG/NHRC/93, dated 14th December 1993, National Human Rights Commission, Annual Report 1993-94 (1994), Annexure IV.
[21] *Ibid.*
[22] National Human Rights Commission, Annual Report 1997-98 (1998), p. 53.
[23] National Human Rights Commission, Annual Reports from 1993-94 to 2007-08 (2008).
[24] National Human Rights Commission, Annual Report 2007-08 (2008), p.175.

Human Rights Commission from all over India and from Kerala during the period from 2001-02 to 2007-08.

Table 1: Number of Complaints of deaths in Police Custody from 1 April 2001 till 31 March 2008

Custodial Death/ Rape	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08
Complaints received on All India	165	183	162	136	139	119	188
Complaints received from Kerala	4	4	4	6	5	3	6

Source: NHRC, Annual Reports 2001-02 to 2007-08

In police custody, number of deaths rose up to 188 than the number of 119 in the previous year 2006-07s. This shows there was a steep increase of 63 per cent. This is astonishing that irrespective of the stringent measures that are being taken by the Commission, there takes place a number of incidents of custodial deaths. The national average[25] of number of complaints of deaths in police custody is thirty one during the period from 2001-02 to 2007-08. However, the number of complaints received from Kerala State by the National Human Rights Commission during the same period is thirty two only (Table 1). This indicates that the number of complaints from Kerala State is above the national average. Surely, it is pain staking to note that Kerala, the most literate state in India, is also perpetrating the deaths in police custody.

[25] Total number of complaints of deaths during 2001-02 to 2007-08 i.e., 1092 divided by 35 (28 States and seven union territories).

TORTURE/UNLAWFUL ARREST/DETENTION AND OTHER CASES

Besides causing death or rape in custody, the police generally indulge in torture, unlawful arrest, illegal detention, false implication etc. In relation to prevention of torture in custody, the National Human Rights Commission took major efforts to eradicate such practices in India. The major initiation by the National Human Rights Commission was to make India sign the UN Convention against Torture. The Commission wrote a number of letters to this effect to the Prime Minister of India and, as a result, on 14 October, 1997 the Government of India signed the Convention against Torture.[26] But, unfortunately, India has not ratified the convention yet. However, there is a move for the ratification of the Convention by the Government of India in this regard. As part of it, the Prevention of Torture Bill, 2010 has been passed by the *Lok Sabha* and is now pending before the *Rajya Sabha* for approval. The bill provides up to 10 years imprisonment for public servants responsible for torturing any person.[27] It is submitted that the Bill will act as a deterrent for the police and other public servants indulging in custodial violence. The National Human Rights Commission played a vital role in bringing the bill into the Parliament.

The Commission categorizes complaints against police into eight categories, *namely*, Custodial Violence, Illegal Arrest, Unlawful detention, False implication, Failure in taking action, Fake encounter, Disappearances and Other Police Excesses. The Table 2 below provides the number of complaints registered against police before the National Human rights Commission during the period from 2002-03 to 2007-08:

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[26] National Human Rights Commission, Annual Report, 1994-95 (1994), para 4.27; However, India has not ratified the Convention; *See also* The UN General Assembly Res. A/53/150, 17 August 1998.

[27] PTI, "Bill for Prevention of Torture in Introduced in LS", The Hindu, April 26, 2010; The Bill was passed by the Lok Sabha on 6 May 2010.

Table 2: Number of complaints against police registered before the National Human Rights Commission from April 1, 2002 to March 31, 2008.[28]

Sl. No.	Category of complaints	*2001-02*	*2002-03*	*2003-04*	*2004-05*	*2005-06*	*2006-07*	*2007-08*
1	**Custodial Violence**	160	706	1	16	7	4	2
2	**Illegal Arrest**	476	612	188	210	183	155	318
3	**Unlawful detention**	1496	2983	472	876	741	605	675
4	**False implication**	1768	2783	420	1213	606	489	254
5	**Failure in taking action**	6143	9978	1766	6833	3397	2682	1589
6	**Alleged Fake encounters**	0	118	34	84	45	89	57
7	**Alleged disappearances**	80	263	5	24	19	15	32
8	**Other Alleged Police Excesses**	9638	9622	2344	6488	4248	3740	4248
	TOTAL	19764	27065	5230	15744	9246	7779	9246

Source: NHRC, Annual Reports 2001-02 to 2007-08

The Table 2 above shows that there is gradual decrease in the number of complaints before the National Human Rights Commission against police excesses during the period 2001-02 to 2007-08, except during 2002-03 where there was the highest number of complaints and during 2003-04 here there was the lowest. In 2001-02, the number of complaints admitted was 19,764 and in 2007-08 the number was 5,550. There is a steep decrease in the number of cases registered against police in the case of torture, unlawful arrest, illegal detention, *etc.* It is significant to note that in the case of death in police custody, there was considerable decrease during the period from 2001-02 to 2006-07, where as in the case of torture, unlawful arrest, illegal

[28] Source of data: National Human Rights Commission, Annual Reports 2001-02 to 2007-08.

detention, *etc.,* there is steep decrease during the same period. It is submitted that decrease in the number of cases of torture, unlawful arrest, illegal detention, *etc.,* may be due to the reason that police personnel are becoming cautious about the consequences of the matter if it reaches to the National Human Rights Commission. Earlier, complaints against the police could have been manipulated with the help of political influence or abuse of power, but now, the National Human Rights Commission is entirely a different body, devoid of political pressure. The policy of the National Human Rights Commission is very vivid and it calls for "*stringent action against those who are responsible for perpetrating inhuman treatment and torture*" to persons while in custody.[29]

HUMAN RIGHTS VIOLATIONS IN KERALA

A number of violations of human rights by the police have been reported from Kerala to both National and State Human Rights Commissions. The following study throws light to the extent of violations in Kerala National Human Rights Commissions. Complaints from Kerala to the National Human Rights Commission can broadly be divided into two depending on the serious nature of the violations committed by the police, *namely,* complaints of death in police custody and other complaints such as torture, unlawful arrest, illegal detention, etc. Only those regarding death while in custody are discussed below.

The National Human Rights Commission while assessing the number of death in police custody in 1999 stated that the number of deaths in police custody during 1998-99 had shown a decline in States, with the exception of Kerala, Gujarat, Meghalaya, Rajasthan, West Bengal and Delhi.[30] This shows the situation of custodial death in Kerala during the period 1998-99 than its

[29] Naresh Mahipal, The Protection of Human Rights Act 1993 (No. X of 1994), Expert Column (2009), *available at*: http://expertscolumn.com/content/protection-human-rights-act-1993-no-x-1994 (accessed on 14 January, 2011).

[30] National Human Rights Commission, Annual Report, 1998-99 (1999), para.3. 18; However, there was reported a marginal increase in Andhra Pradesh, Arunachal Pradesh, Assam, Karnataka, Madhya Pradesh, Maharashtra, Punjab, Tamil Nadu and Pondicherry.

previous years. In one instance, the National Human Rights Commission has taken cognizance in the case of death of a person immediately after the release from the police custody. In this case, the Police in Wynad district of Kerala had taken Mr. Hussain on suspicion that he was a gambler, and had beaten him so brutally that his spinal cord broke. Later he was released, but died when he was under treatment in a hospital.[31] On the complaint of a resident of the locality, the National Human Rights Commission recommended the State Government to pay a sum of Rupees Two lakhs to the next of kin of Hussain as immediate interim compensation. The Commission also directed the State Government to institute criminal action against the concerned police officials for the murder of Hussain, and also to expedite the departmental proceedings against them. The National Human Rights Commission stated that the Government was at liberty to deduct the amount of Rupees Two lakhs from the salary of the guilty police officials. The Kerala Government complied with National Human Rights Commission's recommendation.

The National Human Rights Commission took *suo moto* cognizance of an instance of police brutality where a college lecturer was beaten mercilessly by the police as he had dared to question the fare demanded by the driver of an "Auto Rickshaw".[32] When the lecturer became unconscious, his legs and hands were tied and he was shifted to a mental hospital, and a case was made out that he was a violent mental patient. The Commission issued notices to the Chief Secretary and Director of General of Police, Government of Kerala. The Government had suspended two Sub-Inspectors of Police, one Assistant Sub-Inspectors, one Head Constable, three Police Constables and an enquiry was ordered against them.

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[31] Case No. 64/11/1999-2000, National Human Rights Commission, Annual Report, 1999-2000 (2000), para.7 (B).

[32] Case No.166/11/98-99, National Human Rights Commission, Annual Report 1998-99 (1999), para 7; The action was taken by the National Human Rights Commission on the basis of a report published in the Hindustan Times on 3 September 1998, under the heading "Police Brutality Again in Kerala".

Again, the National Human Rights Commission took *suo moto* cognizance of a case where some tribal youths, mostly students, were picked up by the police when they were agitating against the opening of liquor shops in *Appappara* and were treated in a very harsh manner, and made them to strip off.[33] Upon the recommendation of the National Human Rights Commission, the Kerala Government had sanctioned payment of compensation of Rs 10,000 to each of seven boys who were stripped off and forced to spend two nights in the police lock-up at *Tirunelli* in *Wayanad* District in Kerala. Necessary action has also been initiated by the State Government for recovering, through departmental proceedings, the total compensation amount of Rs. 70,000 from the delinquent police officers.

The Christian Cultural Forum, Kollam made a complaint to National Human Rights Commission alleging that police officials of *Agali* in *Attappaddi* in Palakkad district in Kerala arrested three *Adivasis*, Manikandan, Parameswaran and Kuppamma on 25.5.1997 and kept them in illegal custody for 23 days.[34] During detention, one of the detenueKuppamma, an *Adivasi* woman was beaten black and blue by the police and chilly powder was stuffed into her vagina. According to the complainant, the Circle Inspector of Police had falsely implicated around 100 *Adivasis* in a fabricated case and as a result *Adivasis* had left their houses. In response to the notice issued by the Commission, the Superintendent of Police, Palakkad reported that an enquiry into the matter was conducted by the Superintendent of Police, Crime Branch/CID and it was found that police at *Agali* Police Station detained two boys, namely, Manikandan and Parameshwaran illegally on 27-5-97 till 17 June 1997, without any complaint having been registered against them; that the Circle Inspector, Assistant Sub- Inspector and two Police Constables who were involved in the incident had been suspended and criminal cases were instituted against them; and

[33] National Human Rights Commission, Annual Report 1995-96 (1996), para 9.20; the action was taken by the National Human Rights Commission on the basis of a press reports which stated that the case of stripping of teenagers by police.

[34] Case No. 208/11/97-98, National Human Rights Commission, Annual Report 2004-05 (2005), p.37.

that Kupamma, the mother of Parmeshwaran did not make any allegations of torture, when she was produced before the Court in a criminal case. In response to the show cause as to the payment of interim relief issued by the Commission, the State Government informed the Commission that the State was not in a position to make any payment till disposal of criminal cases pending before the Court, since the alleged delinquent officers are liable to pay compensation, if any, awarded by the Court. But the Commission informed that the proceedings u/s 18(3) of Protection of Human Rights Act,1993 is independent and the pendency of criminal case is no impediment to the award of immediate interim relief and recommended that a sum of Rs. 10,000/- to each of the victims as immediate interim relief. Pursuant to the directions of the Commission, the Government of Kerala paid the interim relief to the victims.

It is submitted that the Commission by not accepting the contention of the Government of Kerala that the interim relief cannot be paid due to the pendency of the case before the court by the Government, laid a stern footing that interim reliefs as per Protection of Human Rights Act is independent of Court proceedings or the outcome of the Court Proceedings. This way, the Commission has widened the scope of application of its authority to recommend the interim relief irrespective of the court proceedings or prosecution or other disciplinary action.

CONCLUSION

The study shows that there are human rights violations by the police frequently and its impact too is very wide. Torture, unlawful arrest, illegal detention, false implication, *etc.*, are the chief areas of human rights violations committed by the police. Among these, torture is the most aggravated form of violation of human rights committed by the police. It varies from simple beating to causing death in custody. Corruption, political nexus or personal bias in particular cases under investigation may also cause violations of human rights by the police. They also employ torture on individuals who stand against the police officer's abuse of power.

The complaints against police to the National Human Rights Commissions, as per table 1, clearly indicate that custodial death/rape cases are taking place in Kerala, the most literate State in India. The table 2 above further shows that torture/illegal arrest/unlawful detention and other harassments are frequently being committed by the police. However, the role played by National as well as State Human Rights Commissions in protecting and upholding the human rights through the timely intervention by way of stern and appropriate recommendations to the concerned Governments against erring police personnel is noteworthy. It is significant to note that Commission directed all the States and the Union Territories to report directly to the Commission any instance of death or rape in police custody within twenty four hours of its occurrence, if not it will be taken as suppression of the facts. Another reformatory step to wash out possibilities of manipulation in post mortem reports was the recommendation to the State Governments to video-film all post-mortem examinations and to send the cassettes to the Commission without delay.

Thus, it is seen that the extent of violation of human rights by the police covers a wide spectrum of areas like custodial death, torture, unlawful arrest, illegal detention, false implication, failure in taking action, etc. Defining the word 'torture by police' in the Indian Penal Code and prescribing severe punishment for committing it can minimise its occurrence. There is always lack of independent witnesses in matters like custodial torture and harassment. This aggravates the situation. In short, the human right violation by the police is evident which is yet to be controlled through more efficient ways.

The age old methods of investigation and interrogation procedures for the detection and prevention of crimes lead to the violations rather than for their protection. Custodial death, rape, torture, unlawful arrest, illegal detention, false implication, failure in taking action, etc. are examples for these kinds of atrocities by the police. Corruption, political nexus or personal bias in particular cases under investigation may also cause violations of human

rights by the police. At times, the police may use torture on individuals who stand against the police officer's abuse of power. There is always lack of independent witnesses in custodial torture which aggravates the situation. In short, the human right violation by the police is evident which is yet to be controlled through efficient ways.

HIDDEN FACE DOES NOT IMPLY SILENCE[**] – ACID ATTACKS AS INFRACTION OF HUMAN RIGHTS

Roopali Mohan*

ABSTRACT

According to Albert Einstein, the history is abound by the struggle for human rights in which a final victory can never be won and to tire in that struggle would mean the ruin of the society.[1] In Southern Asia and particularly in India, the jealousy and vengeance arising out of refusal to marry, denial of dowry and disputes pertaining to land and inheritances often result into acid attacks.[2] Such attacks amount to the violation of their human rights. This paper analyses the case titled Laxmi v. Union of India[3] and emphasizes on the growing menace of acid attacks and the preventive and remedial measures to curb them. It is also suggested that as an integral part of civil society, there must be fulfilment of monetary requirements of the victims along with effective rehabilitation which can be achieved with a compensation scheme. A suggestion model has been propounded which suggests as to statutory recognition of basic human rights of victims of acid attacks.

Keywords: acid attacks, victim, rehabilitation of victim, human right violation

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*** Rama Lakshmi, Acid attack victim: 'I lost my childhood that day, THE SYDNEY MORNING HERALD (Aug. 13, 2013), http://www.smh.com.au/world/acid-attack-victim-i-lost-my-childhood-thatday-20130813-2ru2h.html. Laxmi Aggarwal, the victim of Acid Attack stated, "I now realise that hiding my face is the same as staying silent, especially when everybody around me is speaking up."*

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INTRODUCTION

According to the United Nations Organization, human rights can be defined as those rights which are inherent to all human beings irrespective of their nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. Every human being is equally entitled to the human rights without discrimination and they are often guaranteed by law. These rights are all interrelated, interdependent, indivisible, universal and inalienable.[4]

It has been observed that the instruments which recognize and promote human rights would extensively provide for the rights for the accused under the concept of criminal justice but they seldom mention victims of crimes. It cannot be denied that the victims are witnesses to a crime against the state which, in reality, are committed against them. After all, victims are humans too who seek recognition of the crime committed against their person or property.[5] Plus, it is also established that the human rights law requires the state to put in place effective criminal law sanctions which should be backed up by equally effective law enforcement machinery.[6]

When we speak of the offence of attacks by acid, such attacks are a peril because of the obvious physical desecration. Acid attack, especially on women, has been seen at an alarming growth rate in India. Acid attack which is also known as *'vitriolage'* is often referred to as a crime fueled by jealousy and revenge.[7] Psychologically, the victims suffer torture and feel worthless.

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[1] ALICE CALAPRICE et al, AN EINSTEIN ENCYCLOPEDIA, IDEAS AND OPINIONS 232 (2015).

[2] Mamta Patel, *A Desire to Disfigure: Acid Attack in India,* 7(2) INTERNATIONAL JOURNAL OF CRIMINOLOGY AND SOCIOLOGICAL THEORY 1, 1 (2014).

[3] (2014) 4 S.C.C. 427 (India).

[4] *What are human rights?*, The Office of the United Nations High Commissioner for Human Rights (OHCHR), http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx.

[5] Jo-Anne Wemmers, *Victims' rights are human rights: The importance of recognizing victims as persons*, Jun. 2012, at 71, 74, http://www.doiserbia.nb.rs/img/doi/1450-6637/2012/1450-66371202071W.pdf. (accessed on July 15, 2017)

[6] Sir Keir Starmer QC, Human Rights, Victims and the Prosecution of Crime in the 21st Century, [2014] Crim. L.R., Issue 11, 2014, at 777, 781.

[7] Naeem Khan @ Guddu v. State, Oct. 07, 2013 (High Court of Delhi, India).

They may also be embarrassed to walk out of their houses and lead an ordinary life and may end up struggling for survival. Considering the female victims in particular, a woman is compelled to pay the price through the permanent damage just because she turns down a proposal for marriage which is one of the most common causes of acid attacks. Some other instances include refusal to give divorce to the husband,[8] refusal to leave the employment,[9] a revenge against a neighbour,[10] cheating,[11] mistake as to the identity of the target[12] by the offender is even more forbidding. Recently, the Supreme Court of India, while dealing with a matter of eve-teasing, observed,

> *"One is compelled to think and constrained to deliberate why the women in this country cannot be allowed to live in peace and lead a life that is empowered with a dignity and freedom. It has to be kept in mind that she has a right to life and entitled to love according to her choice. She has an individual choice which has been legally recognized. It has to be socially respected. No one can compel a woman to love. She has the absolute right to reject."*[13]

Acids not only damage the skin or destroy the important body parts but can also cause permanent blindness which may also hamper the investigation of the case because of the difficulty that a victim may face to identify the culprit. The High Court of Delhi has opined,

> "*It is a dismal truth that acid attacks are quite common in our country, no wonder that any man or woman with malicious intent to take revenge, disfigure and harm the person, commits such a sick act. It causes excruciating pain and terror. The victims are left mutilated and scarred for the rest of their lives, and a few relent.*"[14]

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[8] Ravinder Singh v. State of Haryana, A.I.R. 1975 S.C. 856 (India). 2012 SCC OnLine Del 2392.
[9] Jugal Kishore v. State, Govt. of NCT of Delhi, Apr. 27, 2012 (High Court of Delhi, India).
[10] Baljeet Kumar v. State, ILR (2009) Supp. 7 Delhi 413 (India). 2009 SCC OnLine Del 2286.
[11] D.Grahalakshmi v. State By Inspector Of Police, Oct. 12, 2007 (Madras High Court, India).
[12] Simran @ Meena Khan v. State, May 27, 2016 (High Court of Delhi, India). 2016 SCC On Line Del 3325.
[13] Pawan Kumar v. State of H.P., Apr. 28, 2017 (Supreme Court, India). 2017 SCC OnLine SC 509.
[14] Jitender Singh v. State, 2012 (1) JCC 7 (India). 2014 SCC OnLineDel 1398.

EXISTING LEGAL PROVISIONS IN FAVOUR OF THE VICTIMS

Existing legal provisions in the favour of the victims of acid attacks can be seen with Human Rights perspective and Penal provisions aimed to punish the offenders of Acid Attacks.

These provisions can further be classified under international and national laws:

i. International protection to the victims

The Universal Declaration of Human Rights states that everyone has the right to life, liberty and security of person.[15] Without any prejudice to the generality of the aforesaid right, in November 1985, the United Nations adopted Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power which defines victim as, *"persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States…"* [16] The Declaration recognizes that the victims should be treated with compassion[17] and shall be entitled to obtain redress by expeditious, fair, inexpensive and accessible procedures.[18] It also provides that the victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means[19] and emphasizes on the need for the police, justice, health, social service and other personnel concerned to be sensitive to the needs of the victims.[20] The rights which are firmly established by the existing human right treaties are *lex lata* and these rights should be enforced and safeguarded by the States and the victims who

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[15] U.D.H.R., Article 3.
[16] U.N. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Article 1.
[17] *Id.,* Article 4.
[18] *Id.,* Article 5.
[19] *Id.,* Article 14.
[20] *Id.,* Article 16.

are natural persons are entitled to these rights because international treaties on human rights recognize human rights for 'everyone'.[21]

ii. Constitutional recognition of human rights of individuals including victims of crimes

Article 21 of the Constitution of India recognizes the right to live with human dignity within the ambit of right to life. Such fundamental and human rights extend to the victims of acid attacks. The Constitution also provides for Directive Principles of State Policies which are not enforceable by any court, but they are fundamental in the governance of the country and it is the duty of the State to apply these principles in making laws.[22] Article 38 encourages promotion of the welfare of the people by a social order in which social, economic and political justice shall inform all the institutions of the national life. Article 41 directs the State to make effective provision for securing the right to work, education and public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. At present times, the political theory which emphasizes on the obligation of government under Part IV of the Constitution to provide medical care, old age pension, etc. extends to human rights and simultaneously imposes an affirmative obligation to promote equality and liberty.[23]

Penal Provisions against the offence of Acid Attack

Prior to the new law on acid attacks, the cases were decided under sections 320,[24] 322,[25] 325[26] and 326[27] of the Indian Penal Code, 1860.[28] The case of the victim who was the petitioner, was decided in the light of section 307[29] of the Indian Penal Code. The Law Commission of India observed that these

[21] Carlos Fernández de Casadevante Romani, *International Law of Victims*, 14 MAX PLANCK YEARBOOK OF UNITED NATIONS LAW, 2010, at 219, 271.
[22] The Constitution of India, Article 37.
[23] State of Kerala & Anr. v. N.M. Thomas & Ors., [1976] 1 S.C.R. 906 (India).
[24] Grievous hurt.
[25] Voluntarily causing grievous hurt.
[26] Punishment for voluntarily causing grievous hurt.
[27] Voluntarily causing grievous hurt by dangerous weapons or means.
[28] Rajaram v. State Of M.P., 1994 Supp. (2) S.C.C. 153 (India). The accused were held liable for acid attack under Sec. 326 of IPC.

provisions were highly insufficient to curb the peril of acid attacks.[30]

On 4th December 2012, the Criminal Law (Amendment) Bill, 2012 was introduced in Lok Sabha with dual objectives i.e. firstly, to provide harsher and rigorous punishments for crimes against women and secondly, to provide for such procedures in trials that are victim friendly for speedy justice. After *Nirbhaya* rape case[31], Justice *J. S. Verma* Committee was set up to make recommendations for changes in the existing penal laws. As far as acid attacks were concerned, these amendments sought to make specific provisions for punishment for the offences including attempt of causing grievous hurt by acid attack and compensation payable to the victim by the State in addition to the fine along with immediate first aid and medical treatment.[32] As a result, sections 326A[33] and 326B[34] were inserted in the Indian Penal Code by the Criminal Law (Amendment) Act, 2013.

Section 326A reads as follows –

> *Voluntary causing grievous hurt by use of acid, etc.- Whoever causes permanent or partial damage or deformity to, or bums or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine;*

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[29] Attempt to murder.

[30] 226th Report of the Law Commission of India, *The Inclusion of Acid Attacks as Specific Offences in the Indian Penal Code and a law for Compensation for Victims of Crime*, 42 (2009).

[31] On 16th December 2012, a 23 years old physiotherapy student was brutally gang raped in Delhi, eventually resulting in her death.

[32] Statement of Objects and Reasons, The Criminal Law (Amendment) Bill (introduced in Lok Sabha on December 4, 2012).

[33] Voluntarily causing grievous hurt by use of acid, etc.

[34] Voluntarily throwing or attempting to throw acid.

> *Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim;*
>
> *Provided further that any fine imposed under this section shall be paid to the victim.*

Section 326B reads as follows –

> *Voluntarily throwing or attempt to throw acid.- Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or bums or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.*

The case revisited

In 2005, *Laxmi* was only 16 when she was attacked by acid by a man whose proposal for marriage was turned down by her while she was waiting for a bus at a bus stop in Khan Market, New Delhi. He attacked her in collusion with their common female friend and destroyed her face. The two accused, *Guddu* and *Rakhi* were sentenced to 10 and 7 years of imprisonment respectively.[35]

Despite her plight, *Laxmi* chose to begin a revolution in India to end acid attacks. She started an online petition which gathered more than 28,000 signatures and became a combatant against acid attacks.[36] She took her cause to the Supreme Court of India and sought regulations for the sale of acid and provision for compensation for treatment and rehabilitation of the

[35] Saif Ahmad Khan, *We are not victims, but fighters: acid attack survivor Laxmi speaks,* OPEN INDIA (Nov. 5, 2014) https://www.opendemocracy.net/openindia/saif-ahmad-khan/we-are-not-victims-but-fighters-acid-attack-survivor-laxmi-speaks accessed on July 15, 2017.

[36] R. Nithya, *Acid Attacks on Women: New Rules to Regulate Acid Sales*, NEWSCLICK (July 25, 2013) http://newsclick.in/india/acid-attacks-women-new-rules-regulate-acid-sales accessed on July 15, 2017.

victims of acid attack.[37] This compelled the Supreme Court and the Central and State legislatures to regulate the sale of acid immediately as an aftermath of the petition named *Laxmi v. Union of India*.[38]

Analysis

The major reason for acid attack incidents is the easy availability of acid in retail. Neither the Central Government nor the State governments could address the issue and the matter had been pending before the Supreme Court for seven years.[39] In the instant case, in the light of the Model Rules along with affidavits filed by Union of India, State governments and Union Territories, the Supreme Court gave directions by dealing with following aspects-

i. Regulation of sale of acids

- Prohibition of sale of acids over the counter unless the seller maintains the record of sale.
- Sellers to sell acid only to the buyers who have a photo ID with his address, issued by government, has a reason to purchase the acid and unless the buyer is above 18 years of age.
- Imposition of fine up to Rs. 50, 000 for the undeclared stock of acid and confiscation of the stock by Sub-Divisional Magistrate.
- Imposition of fine up to Rs. 50, 000 on any person who violates these directions.

ii. Compensation payable to acid attack victims by payment of compensation of at least Rs. 3 lakhs having regard to the series of plastic surgeries and other treatments.

iii. Measures for treatment and rehabilitation of the victims

[37] Office of Global Women's Issues, *Bios of 2014 Award Winners*, U.S. DEPARTMENT OF STATE (Mar. 3, 2014) http://www.state.gov/s/gwi/programs/iwoc/2014/bio/index.htm.
[38] (2014) 4 S.C.C. 427 (India).
[39] Laxmi v. Union of India, Apr. 16, 2013 (Supreme Court, India).

- Payment of Rs. 1 Lakhs out of the compensation of Rs. 3 lakhs to be paid to the victim within 15 days from the date of incident for immediate treatment and related expenses.

- Payment of remaining two-third amount within two months thereafter.

It must be noted that even before the Supreme Court gave the abovementioned directions, the Women and Child Development Department of Maharashtra Government had introduced 'Manodhairya Scheme for Rape victims, Children who are victims of Sexual Offences and Acid Attack Victims (Women and Children)' in 2013 which recognized the need of bringing out the victims of Acid Attacks from the psychological shock they suffer. The scheme mentions a financial assistance of Rs. 2 Lakhs and Rs. 3 Lakhs in special cases. It also places importance on the rehabilitation of the victims by way of medical and legal support and counselling and education.[40] Similarly, Haryana Government has also formulated a scheme for Relief and Rehabilitation of Women Acid Victims under which the assistance is provided to the victims of acid attack who are residents of Haryana. This scheme provides for an amount of Rs.25,000 which is to be provided to the victim by the concerned Deputy Commissioner/SDM as an ad-hoc relief. A further provision as to a lump sum of Rs. 5 Lakhs is specified to be given to the legal heirs of the victim on his/her death.[41]

FORESEEABLE UPSHOTS

It was for the first time in India that the Supreme Court endeavored to lay down uniform and comprehensive directions and regulations against acid attacks which are a grave human rights violation. It is equally relevant to note that the probability of the victim getting a job which involves physical exertion of energy is very low. The victims also go through the social stigma and the pain and are neglected by the society. This is not it. Furthermore, the

[40] Women and Child Development Department, Government of Maharashtra.
[41] Women and Child Development Department, Haryana Government, Jan. 09, 2013.

general reaction of loathing which the victim would have to encounter and the humiliation that the victim would have to face throughout her life cannot be equated in the monetary value of the compensation. Due to the physical injuries, a victim cannot lead a normal life, let alone dreaming of marriage prospects.[42]

Despite stringent punishment for the offense of acid attack and the regulation of the sale of acid, the acid attacks are still being reported. The Capital of India alone witnessed 25 cases in 2015.[43] The success of the directions was dependent upon their implementation.

The sellers are required to seek the reason for purchase of the acid by the buyer. This direction is very vague because the Court did not establish any standard for the sellers to comprehend as to the genuine requirement of acid by the buyer. Honesty cannot be expected from a person with a criminal intent. Also, in a country where unorganized sector is dominant, it may not be possible to keep an eye on each and every retailer. On the corollary, in the light of existing and improving socio-economic condition of people, a fine of just half a lakh on the seller cannot serve as a deterrent to curb the acid sales.

As far as compensation is concerned, Rs.3 lakhs may not be an adequate compensation to persons who are severely affected physically and are compelled to live a life of a loner due to the social boycott that the victims are subjected to. Moreover, certain chemicals have 'necrotic action' on skin thereby making it difficult to heal. This requires excision of the burnt area preceding the plastic surgery for sufficient repair.[44] This may cost a considerable amount of money to the victims. Economically, they do not have good employment opportunities and that single attack extirpates their entire lives. It is highly unreasonable to equate the plight of the victims with just Rs. 3,00,000/-.

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[42] Jithendra Begra v. State, Mar. 23, 2016 (Madras High Court, India). 2016 SCC OnLine Mad 13289.

[43] Salina Wilson, *We Must Compensate Acid Attack Survivors, But What Else Should We Do?*, YOUTH KI AWAAZ (Nov. 30, 2015) http://www.youthkiawaaz.com/2015/11/compensation-for-acid-attack-survivors-india/ accessed on July 15, 2017.

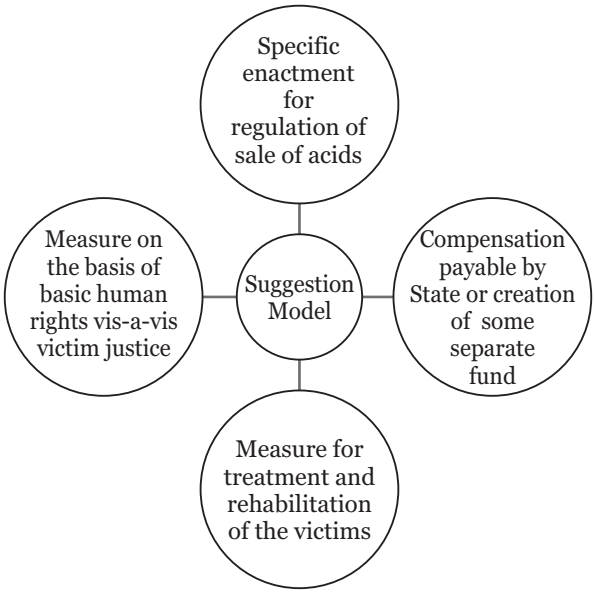
[44] P.C. DIKSHIT, HWX COX MEDICAL JURISPRUDENCE AND TOXICOLOGY 548 (7th ed. 2002).

In addition, the measures for the medical attention and treatment can only be implemented when the incidents are properly reported and victims are helped by the people around to facilitate them with the treatment. Most of the people are not willing to help the victims out of the fear that they may be subjected to harassment by the investigation agency. Even after the necessary treatment is undertaken, psychologically there still remains a vacuum in the mind of the victim and she or he may take substantial time to recover emotionally apart from external healing. The Supreme Court did mention about rehabilitation but failed to elaborate and consider the life after the incident and treatment of the victim in depth and the possible assistance that a victim shall be entitled to receive. It is to be noted that victimology and justice for victims is not just a legal problem but a sociological, psychological and financial issue which can be tackled with a multi-disciplinary approach.[45]

SUGGESTIVE PROPOSITION

It is already established that the directives given by the Supreme Court can result into enactment of legislation by Parliament.[46] The Supreme Court did not deal with the issue of acid attack in its entirety. It is to be noted that sections 326A and 326B state that acid attack includes '*voluntary causing or attempt to cause permanent or partial damage or deformity to, or bum or maim or disfigure or disable, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person*.' These sections are wide enough to involve almost all kinds of injuries that acid attacks may cause. However, the Court should have considered other aspects which are as follows and can be subsequently adopted in a legislation for prevention of acid attacks-

[45] N.V. PARANJAPE, CRIMINOLOGY & PENOLOGY WITH VICTIMOLOGY 750 (16th ed. 2014).
[46] Vibhuti Patel, *A brief history of the battle against sexual harassment at the workplace,* INFOCHANGE (Nov. 1, 2005) http://infochangeindia.org/index.php?option=com_content&view=article&id=160:a-brief-history-of-the-battle-against-sexual-harassment-at-the-workplace&catid=192:analysis&Itemid=32 accessed on November 2, 2016.



1. The need for a specific enactment for regulation of sale of acids which should provide for:

- Imprisonment to a person, including the seller, who sends or delivers or causes such sending or receiving by any person acidic substances or any other dangerous or noxious thing with the intention to cause harm to the other person[47] along with the prescribed fine.

- Penal actions against the sub-divisional magistrates who do not perform their obligation of monitoring the sale of acids.[48]

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[47] Offences against the Persons Act, 1861 §29 (U.K.). This section states that whosoever shall unlawfully and maliciously cause any gunpowder or other explosive substance to explode, or send or deliver to or cause to be taken or received by any person any explosive substance or any other dangerous or noxious thing, or put or lay at any place, or cast or throw at or upon or otherwise apply to any person, any corrosive fluid or any destructive or explosive substance, with intent in any of the cases aforesaid to burn, maim, disfigure, or disable any person, or to do some grievous bodily harm to any person, shall, whether any bodily injury be effected or not, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or to be imprisoned.

[48] Monalisa, *Acid attacks: mere legislation won't do,* LIVE MINT (Jan. 9, 2015, 12.47 AM) http://www.livemint.com/Politics/BzQrdMe4shXyRSwhWriXxJ/Acid-attacks-mere-legislation-wont-do.html accessed on July 15, 2017.

- Penal actions against Investigation Officer for 'deliberate malfeasance' in the course of investigation of the case.[49]

- Imprisonment or fine or both for the buyer of acid who does not produce or produces forged or fabricated photo ID with his address issued by government at the time of purchase of acid.

- Establishment of 'Acid Regulation Committees' at two levels i.e. at district level and at state level, to regulate the production, sale, distribution, import and storage of Acids. The committees at the District level will regulate the production, sale, distribution, import and storage of Acids in their respective districts and the committees at the State Level will supervise and control the conduct of the district level committees.

2. Compensation payable to acid attack victims by State or creation of some separate fund in that regard.

Section 357A of the Code of Criminal Procedure, 1973 mandates every State Government to prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation in co-ordination with the Central Government. This compensation has to be in addition to the payment of fine to the victim under section 326A of IPC.[50] This section states that the compensation payable by the State Government under section 357A shall be in addition to the payment of fine to the victim under section 326A or section 376D of the Indian Penal Code.

In *Delhi Domestic Working Women's Forum* v. *Union of India*[51], the Supreme Court gave regard to the Directive Principles contained under Article 38(1) of the Indian Constitution and directed to set up Criminal

[49] The Acid and Burn Crime Bill, 2014 §15 (Pakistan).
[50] Code of Criminal Procedure, 1973, No.2, Acts of Parliament, 1974 §357B (India).
[51] (1995) 1 S.C.C. 14 (India).

Injuries Compensation Board.

It is pertinent to note that the power of Courts to award compensation is not ancillary or incidental to other sentences but rather it is a constructive approach to crimes. The aim of this power is intended to reassure the victim that he or she is not forgotten in the criminal justice system. Awarding compensation is a measure to respond to the crime as well as to reconcile the victim with the offender. It is, indeed, a step forward in our criminal justice system.[52]

It is high time that a 'Compensation Board for Acid Attacks Victims' be set up in India which would function centrally and allocate the resources to various state governments and union territories based on the cases reported. The allocation of compensation can be case-specific based on sound discretion of the authority determining the amount of compensation.

3. Measures for treatment and rehabilitation of the victims.

National Commission for Women urged for the establishment of National Acid Attack Victim's Assistance Board.[53] This Board would, among other functions, ensure medical treatment, psychological counselling, provide for rehabilitation schemes for the victim and her dependents such as employment, education, rehabilitation and housing and create awareness for the cause.[54] However, the definition of victim included only women and children and failed to consider the fact that anyone can be a prey of acid attacks irrespective of the gender. The Supreme Court did not consider this facet. In addition to above, a 'Welfare Committee for Acid Attacks Victims' can also be established to make the victims financially independent by education and skill development of the uneducated victims and employment opportunities for the educated victims. This is akin to the idea of self-help

[52] Hari Singh v. Sukhbir Singh and Ors., (1988) 4 S.C.C. 551 (India).
[53] Draft bill of Prevention of offences (by Acids) Act, 2008 § 4.
[54] *Id.* § 8.

groups. They should also be assisted to avail the services of various Legal Aid clinics across the Country.

4. Apart from the directives of the Supreme Court, the following measures on the basis of basic human rights vis-à-vis victim justice must acquire statutory recognition –

i. Right to medical treatment – Every victim must be entitled to first aid and the treatment of the burns. The medical practitioner refusing the treatment or the hospital denying the admission of the victim for treatment of an acid attack shall in the case of the medical practitioner, be imprisoned for at least six months or suspension of the license to practice for at least six months and shall also be liable to fine and in case of the hospital, the hospital shall be liable to an exemplary amount of fine. These fines shall be deposited with Compensation Board for Acid Attacks Victims.

ii. Right to be informed and first aid – Various awareness campaigns must be organized relating to the first aid treatment which can be provided to the victim either by self or by any person near to the victim as soon as the incident takes place to mitigate the potential damage to the skin. Such assistance may include pouring water on the burnt area and removing the damaged clothing, jewelry or any other accessory to prevent further infection on the burns and wounds.

iii. Right to legal remedies – Special courts/tribunals must be established to deal with cases of Acid Attacks with time bound procedures.

iv. Right to speedy investigation – A deadline must be set up of not more than 60 days for the investigation authorities to complete and conclude the investigations.

v. Right to just and fair procedure – The law punishing the offence of acid attack must depart from the general rule of 'presumption of innocence until proven guilty' and must place the *prima facie* burden

of proof on the accused to prove that he has not committed the alleged act. The legislature must also consider the imposition of Death Penalty if the acid attack is followed by the death of the victim or abetment to commit suicide.

vi. Right to protection from harassment, intimidation and threats - Compulsory police protection to the victim and the witnesses.

vii. Right to restitution from the offender – Section 326A provides for imposition of fine on the offender which shall be just and reasonable to meet the medical expenses of the treatment of the victim and the fine shall be paid to the victim. What is 'just and reasonable' has been left open for the judicial authorities to determine. This provision should provide for a fine of at least Rs. 10 lakhs and this amount shall be revised from time to time having regard to the existing norms of medical treatment and the expenditure thereof.

viii. Right to compensation – Apart from placing the responsibility on the government to provide compensation and bear medical expenses, if the government is not in a position to compensate the victims, a mandate on the big companies with sound financial status should also be imposed as a part of their Corporate Social Responsibility initiatives to provide financial support to the government in rehabilitation. Such companies can also provide job opportunities to the victims.

ix. Right to livelihood – The victims must be encouraged to organize themselves into self-help groups in which the victims from an economically weaker section of the country can make some financial contribution to the common fund of the group and undertake entrepreneurship which will make them self-reliant and improve their standard of living and status in the society. 'Welfare Committee for Acid Attacks Victims' which is suggested above must serve this purpose. In addition, the member victims can support and empower each other emotionally and mentally.

CONCLUSION

Recently, in *Parivartan Kendra* v. *Union of India and others*,[55] the Supreme Court directed all the States and Union Territories to consider the plight of victims of acid attacks and take appropriate steps with regard to inclusion of their names under the disability list so that they can avail the benefits of reservation in the matters of Public Employment. This is yet another great step by the Supreme Court to address this concern.

It can be concluded that the measure of punishment in a given case must depend on several factors such as the atrocity and gravity of the crime, the conduct of the criminal and the defenceless and unprotected state of the victim. The sentencing for imposition of punishment should be justified as per the society's cry for justice against the criminals such that it reflects public abhorrence of the crime. The courts must, thus, establish a balance of interest in the light of the human rights of the criminals with the rights of the victims of the crime and the society at large.[56] The Supreme Court, indeed, delved into the issue of acid attack commendably but a little extensive guidelines could surpass the existing norms for improvement in the situation having due regard to the human rights of the victims.

[55] (2016) 3 S.C.C. 571 (India).
[56] Dhananjoy Chatterjee v. State of West Bengal, (1994) 2 S.C.C. 220 (India).

POLICY BRIEF

BASIC INCOME DISCOURSE IN INDIA FROM HUMAN RIGHTS PERSPECTIVE

Rejitha Nair*

The fundamental premise of the international human rights movement is that all human beings possess an "inherent dignity" by virtue of their capacity for reason and conscience. In a rights framework, direct state actions and societal structures are evaluated on the basis of whether they permit that dignity to flourish. Apart from the material lack and want of food, livelihoods, assets, money, housing and shelter, poverty is also described as the everyday indignities that poor has to go through which include pain, discomfort, exhaustion, discrimination, exclusion, rejection, isolation, loneliness, voicelessness, stigmatisation, vulnerability, disrespect, worry, fear, low self-esteem, powerlessness, helplessness, humiliation, shame etc. These are the issues that really concern the poor. A discussion on human indignity, hence, is more important than the deliberation on determining the situation of the poverty itself. Poverty is said to be a hindrance to human dignity because it constitutes a denial of the basic human rights of an individual. The Office of High Commissioner for Human Rights (OHCHR) has declared that "*poverty is the principal cause of human rights violations in the world. It prevents people from assuming not only their duties as individuals, but also their collective duties as citizens, parents, workers and electors.*" [1]

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[1] OHCHR briefing note on Promoting Respect for rights and dignity a briefing note, *Retrieved* from *http://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCIQFjAA&url=http%3A%2F%2Fwww.usbig.net%2Fpapers%2F125-Yamamori-capability.pdf&ei=RayZU4yvF8rjkwWhtoHwBw&usg=AFQjCNEAXcMPivEeWksHrFj9sB5t2SB4kg&bvm=bv.68911936,d.dGI* on accessed 12 March, 2017.

The discourse we use to describe and discuss a phenomenon such as poverty reflects our understanding of the phenomenon, which in turn frames the possibilities for policies and strategies that respond to it. Thus, when poverty is viewed in terms of a 'poverty of character' as a condition stemming from the deficiencies of the poor themselves, responses to poverty tend to emphasize the instilment of discipline and values and the need to distinguish the poor who are "deserving" of charity from those who are not.[2] When poverty is viewed in terms of a 'poverty of resources' as an issue of economic efficiency and productivity- responses tend to focus on economic expansion policies and any concern for the impoverished concentrates on enabling them to become productive contributors to society.[3] In contrast to these there is a third view on poverty which is gaining momentum in various parts of the world and this is a rights based approach to poverty which looks at extreme poverty and income inequalities as 'poverty of social justice'.[4] In this poverty is seen from the lens of indignity, "capabilities deprivation" or denial of opportunity to develop. If we view poverty as a poverty of social justice we will look at the issue poverty as not mere economic poverty but depravation of development opportunity and attack on human dignity. however, In India, poverty is still perceived only in terms of deprivation of food and decent income.[5] The families are means tested on this premise, and target groups are identified. The effect of such a system is that we are investing most of our resources in identifying the target group, arriving at a reasonably means test and then devising strategies to provide them basic necessity like food[6] (which is ensured for everyone within the group) and income (which is usually linked with work[7]).

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[2] Yamin, A E. *Reflections on defining, understanding, and measuring poverty in terms of violations of economic and social rights under international Law*, 4Geo.J. on Fighting Poverty 273 1996-1997. p 274.

[3] *ibid.*

[4] *ibid.*

[5] Dandekar, V.M and Rath, N. *Poverty in india,* Economic and Political Weekly, Vol 4, No.2 (Jan, 02,1971) pp 25-48. *Also see,* Dandekar, V M, 'On measurement of poverty'*, Economic and Political Weekly* Vol. 16, No. 30 (Jul. 25, 1981), pp. 1241-1250. Hirway, I. 'Identification of BPL households for poverty alleviation programmes', *Economic and political weekly*, Vol 38, No. 45 (Nov.08, 2003).

[6] *Refer*, National Food Security Act 2013.

[7] *Refer*, Mahatma Gandhi National Rural Employment Guarantee Act 2005 (MGNREGA)

It is in this backdrop that Universal Basic Income (UBI) as a poverty alleviation and redistribution method is gaining currency in India as an alternative to the dehumanizing means tested policies. UBI is premised on the idea that a just society needs to guarantee to each individual a minimum income which they can count on, and which provides the necessary material foundation for life with access to basic goods and dignity. The Basic Income Earth Network (BIEN) which is a network of scholars, from across the globe, working on basic income, defines basic income as *"…. a periodic cash payment unconditionally delivered to all on an individual basis, without means-test or work requirement"*.[8]

Recently, in a surprising move the government of India has included a chapter on Universal Basic Income (UBI) in the recent Economic Survey of India (2016-17)[9]. It is surprising considering the fact that there has been no formal, wide ranging discussion or widespread movements on basic income in India. The idea of basic income has lately gained mileage in many western countries like Switzerland, Finland, Canada were it has been widely discussed and debated in both academic and activist channels. Though Basic Income (BI) is relatively new to India but the idea, as such, has been around for at least 500 years. Its ideological foundations can be traced back to philosophers Thomas More[10] and Johannes Ludovicus Vives[11] in the 16th Century and later Thomas Paine's and Thomas Spence's works in the 18th Century.[12] Basic income garnered much public attention in the 20th century

[8] *What is basic Income?* (n.d.). Retrieved from BIEN: http://basicincome.org/basic-income/ on 30th April, 2017.

[9] *Economic Survey of India (2016-17),* (Retrieved from http://indiabudget.nic.in/es2016-17/echapter.pdf (accessed on 3 May, 2017).

[10] More, T (1516/1967*), Utopia*, trans Dolan, J.P, in Greene, J.J. and Dolan, JP (eds)., *The Essential Thomas More*, New York: New American Library.

[11] Vives, J.L. (1526) *De Subventione Pauperum, Sive de humanis necessitatibus*, trans. by Tobriner, A.: *On the Assistance to the Poor*. Toronto & London: University of Toronto Press ("Renaissance Society of America Reprints"), 1998.

[12] Paine, T., (1797*), Agrarian Justice*, in Foner E., (ed), *Thomas Paine Collected Writings*, The Library of America, New York. Paine, T., (1791), *Rights of Man*, in Foner E., (ed), *Thomas Paine Collected Writings*, The Library of America, New York. Spence, T., (1797), *The Rights of Infants*, London, partially reprinted (without the appendix) in Dickinson, H.T. (ed) (1982), The Political Works of Thomas Spence, Avero, Newcastle Upon Tyne. *Also refer*, Marangos, J. (2014, January 1). *Thomas Paine & Thomas Spence On Basic Income Guarantee.(*Retrieved from archive.org: https://archive.org/details/pdfy-SlWpT2LvO8ECqYRY (accessed on 3 May, 2017).

when the first technical article on the concept was published by the Nobel Prize-winning economist James Tobin in in 1968.[13] The concept of UBI has been gaining political ground in Europe since the late 1970s and to this day features prominently in the manifestos of Several Political parties.[14] It had also featured in presidential campaign of George McGovern' in 1972 in the USA.[15]

The justification of basic income doesn't stem from the idea of welfare state alone; there are other justifications such as 'claim'[16] under doctrine of 'public trust'. Under this doctrine, basic income is paid as a share in profits gained from exploitation of common property resources. Alaska adopted a scheme akin to basic income in 1999, distributing to all its residents an equal share of a portion of its oil revenues. [17] And, closer home, in the State of Goa, the Goanchi Mati Movement has proposed funding of a citizens dividend from recognizing common ownership on mines in goa and distributing the profits from mining activities in the form of dividend to people of goa.[18]

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[13] Steensland, B. (2000). *The failed welfare revolution*. Princeton University Press, pp. 70–78.

[14] Benoît Hamon of Socialist Party (PS) candidate for the 2017 French presidential election had outlined a three stages basic income plan which he proposed to implement if he was elected President. *See* Williamson, L. (2017, January 24). *France's Benoit Hamon rouses Socialists with basic income plan*.Retrieved from BBC NEWS: http://www.bbc.com/news/world-europe-38723219,on 18 March, 2017). In 2016, Shadow Chancellor John McDonnell said that a basic income policy was under consideration by the Labour Party, See, Sheffield, H. (2016, 17 February). *Labour Party considering universal basic income policy, shadow chancellor John McDonnell says*. (Retrieved from Independent : http://www.independent.co.uk/news/business/news/universal-basic-income-policy-under-consideration-by-uk-labour-party-shadow-chancellor-john-a6878856.html accessed on 18 March 2017). In Germany the Pirate Party decided to advocate for a basic income alongside minimum wages in 2011. See, Vanderborght, Y. (2011, December 4). *GERMANY: Pirate Party endorses Basic Income in its national campaign*. (Retrieved from BIEN: http://basicincome.org/news/2011/12/germany-pirate-party-endorses-basic-income-in-its-national-campaign/ (accessed on 18 March, 2017).

[15] *Supra. n.* 13

[16] In Hohfeldian Analytical System "A claim right is a right which entails responsibilities, duties, or obligations on other parties regarding the right-holder." It is not qualified by any conditions to be fulfilled by the right holder. If a person has a 'claim right 'he can insist upon its realization by the duty holder without shame or embarrassment or without feeling obliged or indebted on its realization.

[17] Groh, C. (2012). in Widerquist, K and Howard, M. (Eds.), *Alaska's Permanent Fund Dividend Examining Its Suitability as a Model*. Palgrave Macmillan US.

[18] *Refer The Goanchi Mati Movement*. (n.d.).Retrieved from Goanchi Mati, available at http://goenchimati.org/, accessed on 3 May, 2017.

Across different countries and scholastic discourse, some common ground has been found in defining the concept of 'basic income'. It is said to be 'basic' in the sense that it provides "something on which a person can safely count, a material foundation on which a life can firmly rest".[19] In this context, UBI is not necessarily large enough to satisfy all basic needs. Therefore, most supporters of UBI do not advocate basic income as a replacement for all existing conditional transfers. There are five essentials of UBI. First, it is a periodic payment made on a regular intervals as opposed to a one-off grant. Second, payment is to be in cash and not in kind or in form of food stamps, vouchers etc. One of the rationale against food vouchers is that cash gives people autonomy to choose how and on what they want to spend the cash on. Third, UBI is to be given on an Individual basis and not as a payment to a household. Fourth, it is universally[20] paid to all without means testing and finally it is given unconditionally, without any requirement of work or willingness to work or any other conditions.[21]

ECONOMIC SURVEY OF INDIA AND UBI IN INDIA

The key ideas underlining UBI in the Economic Survey of India (2016-17) are Universality, Unconditionally and Agency; and its key benefits as highlighted – *"securing social justice by way of poverty and vulnerability reduction, gaining administrative efficiency and better targeting."*[22] The supporters of

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[19] Parijs, P.V. (2002).*A Basic Income for all.* in Cohen, J and Rogers, J *(eds), whats wrong with a free lunch?*. Beacon Press, Boston: Massachusetts. p.10.

[20] 'Universality' is the most debated part of UBI. The major debates around 'deserving v undeserving' and 'citizens v migrants' are directed towards this very essential of universality. Economic Survey of India (2016-17) explains Universality as *"it requires that every person should have a right to a basic income to cover their needs, just by virtue of being citizen."[Refer Supra N. 1, p. 189]* However economist and basic income forerunner like Guy standing do not restrict it to just Citizens and have explained universality in his latest book as *"Universal here means that basic income would be paid to everyone usually resident in a given community, province or country. The basic income would not, strictly speaking, be a citizenship income, as it is sometimes referred to, because non-resident citizens would not qualify. Conversely, in – migrants could be required to be legal residents (or, in the case of foreigners, have achieved permanent residence status) before qualifying to receive the basic income. This is political matter to be decided by democratic means."* [*Refer*, Standing, G.(2017). *Basic Income: and how we can make it happen*. Pelican Books -Penguin. p. 5.

[21] *Supra n.* 10. p 5.

[22] *Supra n.9.*

basic income in India argue on following grounds, addressing needs of different stakeholders:

1. At present, redistribution of wealth or income is primarily in the form of reservation. However, Prof Bardhan argues that *"...our political process is such that the reservation policy is high jacked by the dominant caste. Universal redistribution offered by basic income is better than group specific redistribution."*[23]

2. Since late 1990s, increases in 'productivity' have been decoupled from increase in 'wages' and 'employment'. Though there is an increase in the country's GDP but the trickling down effect is almost nil. This means that though the country is getting richer and companies are getting more productive, not many jobs are created nor there is an increase in wages. This process throws more and more people into abject poverty.[24]

3. The discourse on Basic Income breaks away the debate from 'deserving' and 'undeserving' poor. It advocates for a system of redistribution of income that ensures freedom from poverty and a certain kind of lifetime equality of minimal opportunity, i.e. the opportunity to withdraw from the labour force to engage in non-remunerated activity. It is said to ensure full citizenship to all by allowing people freedom to pursue their idea of a 'good life', there may also be an increase in Gross National Happiness.[25]

4. India is a country where women's participation is really low in labour force. Julieta Elgarte argues that *"...by decoupling benefit entitlement from paid work, a basic income is effectively able to provide life-long income security to homemakers and part-time or*

[23] Pranab Bardhan, speech delivered on 'The Political Economy of Basic Income' at the National Conference on Basic Income organized by India Network for Basic Income (INBI) and Self Employed Women's Association (SEWA) Bharat YOUTUBE (April 9, 2017). *https://www.youtube.com/watch?v=bTKveEHPTcI (accessed on 15 July, 2017).*

intermittent workers, thus meeting women's distinctive needs regarding income security." Elgarte believes that basic income could play a supportive role in the transition towards a society where the gendered divisions of labour could be abolished and full justice for women attained, by protecting homemakers without trapping them into the household, yet at the same time facilitating all couples to share paid and unpaid (care) work more equally by allowing them to interrupt their paid work or to work part-time without making the household income fall below a decent minimum.[26]

5. It has also been argued in scholastic writings on UBI that It can act as an escape ladder for people engaged in certain occupations Like Manual Scavenging, that are looked down upon by our society.[27] Cash in hand will empower people to break caste barrier and move to other occupation or independent businesses. [28] However, this argument may be true to some extend but seems like underestimating/ oversimplifying the caste issue in India.

6. Many claim that redistribution of income by means of subsidies and targeted social security schemes is time consuming, administratively cumbersome and mostly ineffective. Therefore it is argued and promoted that direct cash transfers in the form of a basic income saves

[24] Freeland, C. The rise of new global super rich, Talk delivered in TED conference June 2013, Retrieved from://www.ted.com/talks/chrystia_freeland_the_rise_of_the_new_global_super_rich.html, February 10, 2017 (accessed on 15 July, 2017).

[25] Van Parijs, P. (1992). Competing justification for basic income. In P. Parijs, *Arguing for basic income* (pp. 23-25). London: Verso. Also refer, Van Parijs, P. "Why Surfers Should be Fed: The Liberal Case for an Unconditional Basic Income". *Philosophy & Public Affairs*, vol. 20, no. 2, 1991, pp. 101–131. *JSTOR*, www.jstor.org/stable/2265291 (accessed on 15 July, 2017).

[26] Elgarte, J (2008) *Basic Income and the Gendered Division of Labour*, Basic Income Studies 3 (3), pp. 1–8. feminists should prioritise the state's provisioning of merit goods above a basic income, and that we can't have both. Bergmann, B. R. (2004) *A Swedish-Style Welfare State or Basic Income: Which Should Have Priority?* Politics and Society 32 (1), pp. 107–118. Also refer, Standing, Guy (2017). *Basic Income: and how we can make it happen*. Pelican Books - Penguin. pp168-169.

[27] *Supra n. 23*

[28] Davala, S.et al (2015). *Basic Income: A transformative policy for India*. Delhi: Bloomsbury .p 149. Also see, *Supra n* 23.

cost and minimises inclusion and exclusion errors that are rampant in benefit transfers. According to the Economic Survey, there are around 950 central / centrally sponsored schemes and state schemes.[29] 50% resources of central / centrally sponsored schemes is absorbed by 11 largest schemes and rest 50% goes to hundreds of other small schemes. It is also known that most schemes are thinly funded, tardily implemented, poorly targeted with high leakages.[30] Barring PDS (Public Distribution System) food & NREGA (National Rural Employment Guarantee Act) their impact on poverty reduction is considered to be marginal. Adding to this is the inability of poor states to provide counter-part funds for schemes like – Mid Day Meal, Sarva Shiksha Abhiyan, The National Rural Employment Guarantee Act, Indira Aavas Yojana, Swacch Bharat Mission, due to lack of resources.[31]

7. There are also the problems of lesser allocation and misallocation of funds for poorer districts which is stated as reason to replace the existing redistribution system with UBI.[32]

WAYS OF OPERATIONALISING UBI

There are three prominent schemes proposed for delivering basic income in India. Two of them are proposed by eminent economists Prof. Pranab Bardhan, Berkley University and Prof. Vijay Joshi, Oxford University and the

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[29] *Refer*, Supra n.10. p 21. Standing, Guy.(2017). *Basic Income: and how we can make it happen*. Pelican Books -Penguin. pp 221-223. Bardhan, P. How India can do UBI: Universal Basic Income is a practical solution to poverty and inequality. *Retrived* from Blogs:Times of India, *http://blogs.timesofindia.indiatimes.com/toi-edit-page/how-india-can-do-ubi-universal-basic-income-is-a-practical-solution-to-poverty-and-inequality/* (accessed on 2 April, 2017).

[30] Supra n.9 p 22.

[31] Economic Survey: Universal Basic Income (UBI) Scheme an alternative to plethora of State subsidies for poverty alleviation; JAM and Center State cost sharing prerequisite for a successful UBI , Press release by Minstry of Finance (31 January, 2017), *retrieved* from Public Information Bureau: *http://pib.nic.in/newsite/PrintRelease.aspx?relid=157804* on 1 February 2017. *Also refer*, Baijayant J Panda, speech delivered on Basic Income in India at the National Conference on Basic Income organized by India Network for Basic Income (INBI) and Self Employed Women's Association (SEWA) Bharat on 29-30 March, 2017, Retrieved from YOUTUBE (April 9, 2017) https://www.youtube.com/watch?v=xzBzYH4KGCo (accessed on 15 July, 2017).

[32] *Supra n* 9 p. 177

recent one is proposed in the Economic Survey. It is presumed that if these schemes are implemented, they would make basic income a reality for India. These schemes have their merits as well as challenges.

Prof. Bardhan's Scheme is the most ambitious out of the three proposed schemes. He proposes that a UBI of Rs. 10,000 per year could be provided to $3/4^{th}$ of the individuals living Below Tendulkar Poverty Line identified in 2014-15 without more taxation or cutting food subsidy, MNREGA, or education and health spending. He proposes to cut the non-merit subsidies which he assumes is 2/3rd of the existing subsidies and yields about 9% GDP.[33] He also suggests minimizing the tax holidays and exemptions largely granted to firms or companies which figures as "revenues foregone" in the Central budget. According to him, if the government cuts this expenditure by half, it would add another 2.5% of GDP available for funding UBI.[34] He proposes new avenues of taxations such as taxation of wealth inherited, taxation on long term capital gain in equity market and tax on agricultural income.[35] The tax on real estate is also abysmally low which according to him could be increased. In his calculations, India can make room for more than 10% of the GDP to fund UBI without increasing the income tax.[36] Bardhan thus promotes larger amount of Rs 10,000 per year as basic Income; he believes that it will persuade the small farmers to give up fertilizers subsidies.[37]

The next scheme is proposed by Vijay Joshi and is the least ambitious of the schemes. He proposes an income of around Rs 3,500 per capita per year at

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[33] Bardhan, P. *Could a Basic Income Help Poor Countries? Retrieved* from, project-syndicate*: https://www.project-syndicate.org/commentary/developing-country-basic-income-by-pranab-bardhan-2016-06* on 8 April, 2017. Also refer, Bardhan, P. *Basic income in a poor country*, *Retrieved* from : Ideasforindia: *http://www.ideasforindia.in/article.aspx?article_id=1694* (accessed on April 9, 2017).

[34] Bardhan, P. *Subsidies must give way to a universal basic income. Retrieved* from Livemint: http://www.livemint.com/Politics/TOnQO3E1fNCO5lkHXgr19N/Subsidies-must-give-way-to-a-universal-basic-income-Pranab.html (accessed on April 9, 2017).

[35] *Supra n* 23.

[36] *ibid.*

[37] *ibid.*

2014-15 prices.[38] This proposition is as such independent of a pilot project implemented by Self Employed Women's Association (SEWA) Madhya Pradesh, however, basic income amount that he suggest is at par with it.[39] He believes that this amount of UBI would bring everyone below Tendulkar poverty line and works out to 3.5% of GDP. This proposal is actually 1/3rd of the requirement Bardhan's schemes. For financing the scheme, Joshi quotes a study (2015) by National Institute of Public Finance and Policy, which has shown fiscal savings from eliminating 'non-merit' subsidies to be around 8 per cent of GDP.[40] He suggests elimination of these 'non- merit' subsidies, but retaining MGNREGA for its impact on political participation. Like Bardhan's proposed scheme, Joshi also suggests raising revenues from taxing agricultural income and slashing down the 'revenue forgone'. Joshi also advocates for raising revenues by pursuing vigorous privatization and PSUs (Public sector undertaking) equity sales. In case the government adopts the proposed scheme, as per his estimates, 10% of the GDP will be available for social spending; out of which 3.5% could be spent on providing a basic income.[41]

The third is the economic survey's scheme. It estimates a 'Quasi-UBI'[42] at Rs. 7,620 per capita per year to push people above Tendulkar poverty line. The quasi-UBI of Rs. 7,620 for 75% of the population would cost 4.9% of GDP. For financing this it is proposed to cut central govt. expenditure on middle class subsidies (1% GDP), other non-food subsidies (1% GDP), top 10 centrally sponsored schemes (1.4% GDP), other 940 schemes (2.3% GDP),

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[38] Joshi, V. (2016) *India's long road: the search for prosperity*. Penguin Random House India: Gurgaon. p. 210.

[39] Refer, *A little more: How much it is. Piloting Basic Income Transfers in Madhya Pradesh India,* Report published by SEWA Bharat and UNICEF, January 2014.

[40] *Supra n.*36. pp 208-214.

[41] Joshi V*, Universal Basic Income is worth fighting for, even against the long odds in its implementation, Retrieved* from Economic Times*: http://blogs.economictimes.indiatimes.com/et-commentary/universal-basic-income-is-worth-fighting-for-even-against-the-long-odds-in-its-implementation/ accessed on April 10, 2017.*

[42] *Universal Basic Income: A Conversation With and Within the Mahatma*, Chapter 9, Economic Survey of India (2016-17), (Retrieved from http://indiabudget.nic.in/es2016-17/echapter.pdf pp 172-212 (accessed on 3 May, 2017).

totalling around 5.5% GDP.[43] However economic survey lacks clarity on whether this approach entail cutting out all central & centrally sponsored schemes including PDS, MNREGA, education, health, infrastructure, etc. or partly finance it by reducing state govt. subsidies.

AREAS OF CONCERN

One of the major concerns which has been a recurring in scholarly discourse post the economic survey report is disconnect between theory of universal basic income and the UBI proposed by the survey.[44] The proposed 'quasi UBI' is suspected by some to be plan for getting rid of existing social security schemes and pay them back as UBI rather than redistribution the way UBI is being discussed in Finland, Switzerland and Canada.[45]

Many scholars believe that the proposal is merely repackaging direct benefit transfers as UBI or 'Quasi UBI'. There needs to be a deeper study on the core ideological foundations of UBI and not short change them in the haste of implementation. The UBI purists advocate for a 'universal' basic Income, quasi UBI actually seems like an oxymoron; defeating the very purpose of UBI. The Universality is central to UBI, basic income as discussed in the beginning of this article, is an income given to all Irrespective of their economic status; it is primarily to do away with inclusion and exclusion errors that are rampant in targeting. Moreover, as discussed before poverty should not be characterised by lack of material resource alone, it should also take into account the everyday indignities that poor has to go through; whatever schemes we propose we have to evaluate it on the impact it has on dignity of an individual. A targeted UBI would have a blunted effect on this count.

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[43] *ibid*. p 190.

[44] Sampat, K and Mishra, V. *There's Nothing Universal or Basic about Universal Basic Income in India*. retrieved from THE WIRE: https://thewire.in/105967/universal-basic-income-budget/, accessed on 6 February, 2017.

[45] Shekhar Shah, Speech on *Direct Benefit Transfer Rediness of the states*. at the National Conference on Basic Income organized by India Network for Basic Income (INBI) and Self Employed Women's Association (SEWA) Bharat YOUTUBE (April 9, 2017) https://www.youtube.com/watch?v=BDePTTNnGjM accessed on July 15, 2017.

As far as financing UBI is concerned experts have many diverse reactions, which is pulling the debate in different directions. One group completely rules out any form of curtailment in existing benefits and accepts UBI only as an 'add on' scheme.[46] Alternative view is that existing programs like kerosene subsidies, Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) & social sector schemes are socially unproductive and should be cut to finance an efficient UBI.[47] And then there is a third group which is trying to find a middle ground, dividing subsidies into merit and non-merit subsidies and suggesting that UBI does not require cutting merit subsidies (merit transfers like MGNREGA or education, health and other social sector programme) but non merit subsidies should go.[48] However even within this group there is disagreement between merit and non-merit subsidies. There is considerable disagreement amongst scholars as to whether publically delivered private goods like PDS, Fuel subsidies, Education, healthcare fall under merit or non-merit?[49]

Moreover, an effective UBI implementation warrants certain prerequisites, foremost among them is effective functioning of Jan Dhan, Aadhaar and Mobile (JAM) infrastructure.. In the whole debate surrounding UBI and JAM one can see a tendency of the government to underplay the evidences pointing towards risks underlying its implementation. For eg economic survey puts forward quasi UBI as one pill for all ills of social policy

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[46] Khera, R. 'A Phased Approach Will Make a 'Basic Income' Affordable for India'. *Retrieved* from THE WIRE: *https://thewire.in/88350/basic-income-phased-approach/* on 6 February, 2017. Venu, M.K. 'Universal Basic Income Can Be Hugely Disruptive If Not Handled Properly.' Retrieved from THE WIRE: *https://thewire.in/101387/universal-basic-income-can-hugely-disruptive-not-handled-properly/* accessed on 21 January, 2017. *Also refer, Supra n* 41&42

[47] Supra note 9. p195. Sharma, Y. 'UBI an alternative to subsidies for poverty alleviation, a powerful idea whose time has come: Economic', *Retrieved* from Economic Times: *http://economictimes.indiatimes.com/news/economy/policy/ubi-an-alternative-to-subsidies-for-poverty-alleviation-economic-survey/articleshow/56891029.cms* on 1 February, 2017.

[48] Subramanian, A. 'UBI can work only if welfare schemes are phased out: Arvind Subramanian'. *Retrieved* from Business- Standard: *http://www.business-standard.com/article/economy-policy/ubi-can-work-only-if-welfare-schemes-are-phased-out-arvind-subramanian-117041900545_1.html* accessed on 19 April, 2017.

[49] Karthik Muralidharan speech on *cash transfers in India- Basic Framework* at the National Conference on Basic Income organized by India Network for Basic Income (INBI) and Self Employed Women's Association (SEWA) Bharat YOUTUBE (April 9, 2017) *https://www.youtube.com/watch?v=Pw_J1_8YDzY* accessed on July 15, 2017.

implementation, without taking into consideration studies by the likes of Prof James Manor and Dr. Reetika Khera who have reported MGNREGA as almost leak proof after digitalization of work records[50] and implicit transfers from the PDS being responsible for reduction in one-fifth of the poverty gap in 2009.[51] Also, the government's complete disregard to the concerns relating to data security and privacy is challenged by many.[52] There is no robust study on data duplication in AADHAR and the exclusion errors. The National Research Council of the United States (NRC) report *"... human recognition systems are inherently probabilistic and hence inherently fallible. The chance of error can be made small but not eliminated..... Assessing the validity of the match results, even given this inherent uncertainty, "requires knowledge of the population of users who are presenting to the system — specifically, what proportions of those users should and should not match. Even very small probabilities of misrecognitions — the failure to recognise an enrolled individual or the recognition of one individual as another — can become operationally significant when an application is scaled to handle millions of recognition attempts. Thus, well-articulated processes for verification, mitigation of undesired outcomes, and remediation (for misrecognitions) are needed, and presumptions and burdens of proof should be designed conservatively, with due attention to the system's inevitable uncertainties."*[53]

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[50] Jenkins, R and Manor, J. (2017). *Politics and the Right to Work: India's Mahatma Gandhi National Rural Employment Guarantee Act*. Orient BlackSwan: India.

[51] Khera, R. 'Evidence no bar Discussion on Universal Basic Income shows an ignorance of inconvenient facts in our experience with direct benefit transfer and Aadhaar', *Retrieved* from Indian Express: http://indianexpress.com/article/opinion/columns/evidence-no-bar-universal-basic-income-ministry-of-finance-aadhaar-4599789/ accessed on 5 April, 2017.

[52] Ramanathan, U. 'A shaky Aadhaar Supreme Court must urgently hear and settle issues of privacy and exclusion raised in the context of the UID project'. *Retrieved* from Indian Express: http://indianexpress.com/article/opinion/columns/aadhar-card-uid-supreme-court-a-shaky-aadhaar-4591671/ on 1 April, 2017. Usha Ramanthan has written extensively on AADHAR, most of her writings can be referred at Scroll.in. *Also refer, Supra n.* 50

[53] *Biometric Recognition: Challenges and Opportunities*. (2010) Study report by National Research Council of the National Academes. United States. p 183. *Also See*, Ramachandran, R. How reliable is UID? Frontline Volume 28, issue 24: Nov 19- Dec 02 2011. Retrieved from http://www.frontline.in/static/html/fl2824/stories/20111202282402500.htm accessed on 14 March, 2017.

There is no denying that if we want cash transfer in the last mile we should have infrastructure enabling it. However we must also keep in mind that the JAM trilogy is for delivery and not for targeting. Even if we make JAM infrastructure more robust we would still have to deal with the question of targeting error as targeting would still have to be done manually.

Further, our experiments with Direct Benefit Transfers (DBT) has also had mixed result so far. The Chandigardh, Puducherri and Dadra-Nagar Haveli DBT experiments highlights certain central issues in cash transfers through AADHAR. Chandigarh experiment drew lot of negative reaction and was mired by administrative problems where as in Puducherry it was working comparatively better. What made difference in these two states was the level of state preparedness. In Chandigarh the enrolment under National Food Security Act (NFSA) was problematic. The enrolment drive saw only 56,689 applicants which was 25,000 lesser number of applicants than under old TPDS.[54] After rejecting for duplication only 55,917 were actually enrolled which led to panic enrolment when the pilot was announced.[55] All 93 ration shops were shut from 1st September 2016 and benefits were to be directly remitted in bank accounts seeding with AADHAR. However it created problems as it left 25000 non enrolled people without rations or cash. Transfers in AADHAR seeded accounts also created confusions amongst people as the account they filled up in the DBT form were different from the account seeded with AADHAR leading to confusion and panic amongst people.[56] In contrast Puducherry saw 5.90 lakh of 6.34 lakh allotment of beneficiaries enrolled by the start of DBT. People were more educated and

[54] Total 81,123 ration cards under TPDS.

[55] Parthasarathy, S. 'Modi's DBT Review 1: Chandigarh Stumbles But Project Needs Support'.Retrieved from Swarajya: *https://swarajyamag.com/economy/arbitrary-inclusions-and-exclusions-make-it-arough-ride-for-cash-transfers-pilot-in-chandigarh* on 10 April, 2017. Also see, Parthasarathy Seetha speech on "\'Reaching the recipient: anecdotes from the field' at the National Conference on Basic Income organized by India Network for Basic Income (INBI) and Self Employed Women's Association (SEWA) Bharat YOUTUBE (April 9, 2017). https://www.youtube.com/watch?v=RnafUZY96vQ&t=0s accessed on July 15, 2017.

[56] Parthasarathy, S. 'DBT In Food: Puducherry Residents Give Guarded Welcome' *Retrieved* from Swarajya: *https://swarajyamag.com/economy/dbt-in-food-puducherry-residents-give-guardedwelcome* on 10 April, 2017. Parthasarathy, S. 'DBT in Food: Quality of Grain, Quantity of Cash is the Key' *Retrieved* from Swarajya: *https://swarajyamag.com/economy/dbt-in-food-quality-of-grain-quantity-of-cash-isthe-key-part-ii*on accessed on 10 April, 2017.

aware as PDS beneficiary list was fully digitised and Biometric POS was already being used in the region. Also ration shops remained open as to disperse 10Kg of rice which is given to BPL families by the government of Puducherry. Coexistence of the ration shop along with DBT was a major reason for success and increased preference of cash over kind in the region.

Hence the study makes it quite clear that a UBI without state preparedness and general awareness and supplemented with administrative laxity may do more harm than good. If we want basic income in India, we would have to undertake number of pilot studies with diverse methodology across various States, this will help us judge the desirability of UBI scheme and fine tune it. Presently the states do not have clear motivation to go for pilots. Fiscal sharing between centre and State of the administrative cost saved by UBI/DBT could possibly motivate the States to invest in pilot projects. The more we know about state motivation and the ground situation we would be able to 'de-risk' the implementation of the scheme. UBI is just a means to an end and not an end in itself. The means should not be thrust upon people just because we can effectively execute it. There no denying the fact that the kind of insecure economy that we are facing today, demands dialogues on new forms of social security. UBI is a good scheme but it is still just another scheme. Any government scheme should follow the process of how much money do we have? How much money is spent on existing schemes? Is the existing scheme working? Why should we dismantle it? This kind of analytics driven, framework is necessary when we are looking at UBI. Any policy shift should not be driven only by cost saving concerns; beneficiary should be the focus.

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BOOK REVIEW

WENDY BROWN, UNDOING THE DEMOS: NEOLIBERALISM'S STEALTH REVOLUTION (NEW YORK, ZONE BOOKS, 2015)

PP. 296, ISBN: 978-1-935408-53-6 (hardcover)

Nitesh Chaudhary*

Philosophers, down the ages, have shown remarkable reluctance to engage with their contemporary milieu. The archetypal philosopher, Plato, had his gaze turned toward the essence and form. For philosophy, it has been an unending search for Truth, Beauty, and Being. It was only with Immanuel Kant that the question of present, nowness gets its first serious theoretical surgeon. Kant analyzed his present and wrote a brilliant essay entitled "What is Enlightenment?" Pace, Michel Foucault it was the first time that a philosopher thought it worthy to study, analyze, dissect and put his hand on the pulse of the contemporary life. One of the most intractable problem in dealing with 'the present' is that not only all of us, including the thinker, are shaped by it, the curvature of the present eludes our system building impulse. Any position, argument can only hope to capture some part of it and thereby the whole enterprise of critically evaluating the present remains a difficult, if not impossible task. However, there is no way we can go to the past nor fast forward into future. We are ensconced in the present. The present is here and now and we have to generate the health report of the present. Our present age is the age of Neoliberalism. But what is this beast and how do we respond to it? Wendy Brown has assumed the role of theoretical surgeon and has used her formidable knowledge of modern philosophy to dissect, deconstruct and analyze the phenomena of

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neoliberalism for us. *Undoing the Demos* lays bare the pathologies of our contemporary society and polis. According to her, neoliberalism "cauterizes" democracy's radical expressions and gives birth to a mutant called "*Homo Oeconomicus*". This text draws from Michel Foucault's *The Birth of Biopolitics*, lectures delivered at College de France in 1978-79 and uses it as a scaffolding to construct a theoretical position, while at the same also shows the limitations of Foucault's theoretical edifice and argues that *Demos* is in grave danger and we have to respond to it.

Undoing the Demos has total six chapters. The first part "Neoliberal Reason and Political Life" deals with the de-democratizing process, analyzes Foucault's arguments on neoliberalism and unpacks the twin concepts of 'Homo Politicus' and 'Homo Oeconomicus'. The second part titled "Disseminating Neoliberal Reason" deals with the concrete manifestations of neoliberalism in the context of USA and its ramifications. *Undoing the Demos* is a difficult text to review. Wendy Brown's terse prose, her impeccable familiarity about the theme and her arguments/ counterarguments are a brilliant piece of theoretical writing and engagement. This is one of those texts which should be read *very* slowly and savored. Each line is worth reading and helps us to come to grip with our troubled reality. Nevertheless, I will try to briefly present some of her ideas.

Chapter One "Undoing Democracy: Neoliberalism's Remaking of State and Subject" deals with how within the neoliberal regime democracy is a big loser. She contends that the "political" character of democracy has morphed into "economization of all spheres". According to her the central concern of polis is no longer justice but human capital. She writes, "What happens to rule by and for the people when neoliberal reason configures both soul and city as a contemporary firms, rather than as polities? What happens to the constituent elements of democracy – its culture, subjects, principles, and institutions – when neoliberal rationality saturates political life?"[p 27] This chapter presents the disturbing picture of how our ideas, institutions, and behaviors have been infected with the logic of "crass and unethical commercialization" and its dangers. She discusses the central features of

neoliberalism and its cognate Homo Oeconomicus and its deleterious effect on issues of liberty and democratic principles.

Chapter Two "Foucault's *Birth of Biopolitics* Lectures: Charting Neoliberal Political Rationality" is a brilliant expose of Foucault's 1978-79 College de France lectures on neoliberal rationality. She writes, "Neoliberalism is not about the state leaving the economy alone. Rather, neoliberalism activates the state on behalf of the economy, *not* to undertake economic functions or to intervene in economic *effects,* but rather to facilitate economic competition and growth and to economize the social, or, as Foucault puts it, to "regulate society by market""[p 62]. According to Wendy Brown the 'Age of Financialization' has hollowed democracy from within and offers twelve point arguments to show its pernicious effects on democracy.

Chapter Three "Revising Foucault: *Homo Politicus* and *Homo Oeconomicus*" offers genealogical account of Homo Oeconomicus. Homo Oeconomicus has many *avatars* and Wendy Brown deals with how its spectral presence has damaged society and Polity. Her thesis is that we have to re-instate Homo Politicus, otherwise the polity will lose its soul. She offers an incisive intellectual history and importance of Homo Politicus through the writings of Aristotle, Adam Smith, Locke, Rousseau, Hegel, Bentham, and Mill. She reads these diverse thinkers through the thematic lens of Homo Politicus and contends that for any society to function justly, political has to have supremacy vis-à-vis the economic. She also comments upon the neglected and problematic place of gender within the neoliberal framework and argues that all women get raw deal in this scenario. To quote her, "When *homo oeconomicus* becomes normative across all spheres, and responsibilization and appreciation of human capital become *the* governing truth of public life, social life, work life, welfare, education, and the family, there are two possibilities for those positioned as women in the sexual division of labor that neoliberal orders continue to depend upon and reproduce. Either women align their own conduct with this truth, becoming *homo oeconomicus,* in which case the world becomes uninhabitable, or women's activities and bearing as *femina domestica* remain unavowed glue for a

world whose governing principle cannot hold it together, in which case women occupy their old place as unacknowledged props and supplements to masculinist liberal subjects. As provisioners of care for others in households, neighborhoods, schools, and workplaces, women disproportionately remain the invisible infrastructure for all developing, mature, and worn-out human capital- children, adults, disabled, and elderly. Generally uncoerced, yet essential, this provision and responsibility get theoretically and ideologically tucked into what are assumed as preferences issuing naturally from sexual difference, especially from women's distinct contribution to biological reproduction. It is formulated, in short, as an effect of nature, not of power" [pp. 104-105].

Chapter Four "Political Rationality and Governance" discusses neoliberal paradigm as political rationality and the role of economic rationality as the governing political principle. She argues about 'Devolution and Responsibilization' and 'Bench marking' and 'Best practices'. According to her the ubiquitous use of the term 'governance' in the contemporary time has become, "lingua franca of both the political and business establishments" [p. 131].

Chapter Five "Law and Legal Reason" is a rich and nuanced analysis of legal case, *Citizens United v. Federal Election Commission*. In this case the Supreme Court of America, "ruled against government bans on corporate contribution to super PACS, political action committees formed to support a candidate outside the auspices of her or his campaign. Calling such bans an abridgement of free speech and giving corporations the standing of persons with an unqualified right to political speech, the ruling permits corporate money to overwhelm the election process" [p. 152]. According to Wendy Brown the *Citizens United* decision has opened up Pandora's Box for the future of popular democracy and sovereignty. There is real and imminent danger that unlimited and unaccountable corporate funding would undermine the very foundation of democracy and tilt it in the favour of influential minority with big funding. She criticizes the Supreme Court decision by arguing, "In one of the most analytically astute critical

commentaries on *Citizens United,* legal scholar Timothy Kuhner terms the decision "neoliberal jurisprudence" insofar as it applies neoclassical economic theory to the political sphere, analogizes that sphere to the market, and ultimately undoes what he calls the boundary between democracy and capitalism" [p. 155]. According to her, Justice Kennedy committed the error of thinking when he decided that free speech is akin to capital. Wendy Brown writes, "*Citizens United* advances neoliberal rationality's signature economization of law and politics" [p. 156].

Chapter Six "Educating Human Capital" deals with how higher education system has been infected with the logic of market and the degeneration of education as an investment for better future gains. It also discusses about the downfall of liberal arts education and how education itself has been transformed into a good whose value is in getting better paying jobs. She takes a dig at 'the neoliberalized academy' and writes, "This professionalization aims at making young scholars not into teachers and thinkers, but into human capitals who learn to attract investors by networking long before they "go on the market," who "workshop" their papers, "shop" their book manuscripts, game their Google Scholar counts and "impact factors," and above all, follow the money and the rankings" [p. 195].

Thus, *Undoing the Demos* raises many difficult and pertinent questions about our current political set up and its deformed value system. The core argument of this text is that institutionalization of neoliberal rationality in all spheres of life: political, social, legal, and educational constitute a grave danger for our democratic institutions and ethos. The argument that market freedom is panacea of all ills has been shown to be untenable and leading us into the vortex of abyss. This text opens up new vistas for thinking and perhaps resisting and re-claiming our collective *self* and Polity.

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