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INFLUENCE OF SOCIAL MEDIA IN EVOLUTION OF PARTICIPATORY DEMOCRACY IN INDIA

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Social media is most excellently understood as a collection of various kinds of online content, which share participation, openness, conversation and connectedness among the individuals and communities. With positive awakening and recognition of rights, freedoms and liberty of the individuals, most of the nations underwent the political transformation into democratically ruled governments. The emergence of new forms of social media during the first decade of the 21st century has transformed the ways in which many people communicate and share information.

Social Media offers an array of opportunities for the political actors, political institutions and the public to interact with one another. Early conceptions of digital democracy as a virtual public sphere or civic commons have been substituted by a new technological optimism for democratic regeneration based upon the collaborative networking characteristics of social media. The social media are elementary elements through which institutions and citizens connect in democratic processes and public deed all over world. Indeed, social media, and the World Wide Web more commonly, have democratised access to participation in political action, providing ever-greater numbers of individuals with opportunities to become involved in civic empowerment and participatory democracy. New technologies have lowered barriers to participation and cultivated political ties ahead of the traditional barriers of time and place. On the other hand, the Social Media

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has authorized citizens a superior degree of selection over their information consumption and social ties, potentially leading to "cyber-Balkanization," or the creation of separate, mutually hostile online social spaces within a society. *Social Media and Democracy* focuses on the responsibility of social media in precipitating civic engagement and on their potential to augment participatory democracy.

This paper basically focuses on the approach of an evolved phenomenon "participatory democracy" due to influence of social media in light of the political transformation in many nations. It also traces out the innovations evolved in democracy and recognition of the freedom of expression of collective masses thorough media and internet. A more vigilant approach is suggested for the prospective of social media to assist more participative democracy while acknowledging its disruptive value for challenging traditional interests and modes of communicative power.

INTRODUCTION

Modern existence has seen growing concentration to the concern of new media technologies and development. Wireless communication and the gradual diffusion of greater broadband capacity, highly developed mobile technologies and the communications and information-processing authority of the Internet is being disseminated to all realms of social life, just as the electric grid and electric engine disseminated force in industrial society. It has definitely been acknowledged that social media is playing a more and more significant and noteworthy role in social, economic and political development. The direct or indirect consequences of this escalating significance are now deliberated at high-level political meetings and between heads of state. In other words, the concern of social media and its position in social development in general is no longer merely a question that refers to one territory or associated to a particular sphere, but it has become present in different spheres as a powerful factor of change transforming into new mass self-communication. Viewed on a global level, the issue of, and application of new media have escalating significance due to newest revolutions in planet. As social and political unrest continues in some countries, new media may become a commanding instrument for attainment of particular goals.

Public opinion had the form of common sense. It was diffused through people in the form of prejudices, but even in this turbidity it reflected "the genuine needs and correct tendencies of common life.[1] It was shaped in discussion after the public, through debate, learning and information, had been put in a position to arrive at a considered opinion.

Due to the parliamentary democracy which emerged to some extent due to the public sphere, the public opinion reigned but did not govern. With the help of parliamentary discussion, public opinion makes its desires known to the government, and the government makes its policies known to public opinion.[2]

However, eventually, Habermas tracked the decay of the public sphere as an institution with industrialization and the rise of the mass popular media. As he puts it:

"...the mass media have on the one hand attained an incomparably greater range and effectiveness — the sphere of the public realm itself has expanded correspondingly. On the other hand people have been moved ever further out of this sphere. The more people's effectiveness in terms of publicity increased, the more they became accessible to the pressure of certain private interests, whether individual or collective. Whereas formerly the press was able to limit itself to the transmission and amplification of the rational/critical debate of private people assembled into a public, now conversely this debate gets shaped by the mass media to begin with."[3]

OBJECTIVES OF THE STUDY

1. To analyze growth of the social media in the digital world.
2. To analyze the impact of the growing social media on the democratic government.
3. To analyze evolution of participatory democracy as result of the growth of social media.

RESEARCH METHODOLOGY

This study basically follows doctrinal research method in the compilation, organization, interpretation and systematization of secondary source material. The approach of the study is historic, descriptive and analytical. The data collected, organized and systematized from the secondary data resources. We have collected the data from different websites and also websites of Indian government.

PURPOSE AND LIMITATIONS OF THE STUDY

This paper is an attempt to trace the impact of the modernly evolved concepts like social media on the political systems of the nations. Basically

the impact on the participatory democracy. It also involves the critical analysis through case studies.

However every study has its limitations. This topic being so extensive relating to almost every individual of the world, it would be too unmanageable to study each and every factor related to it. Similarly all the very basic concepts and reasons are not described and discussed in detail. For this purpose only prominent reasons of study have been analyzed to sort out the areas.

GROWTH OF SOCIAL MEDIA AND CONCEPT OF PARTICIPATORY DEMOCRACY

"New media" intermittently renovate the nature of communication with broad consequences for civic and political engagement.

Some basic features of the current media transformation are widely understood:

1. New technology and connected practices, facilitate networked, many-to-many, and mobile communications;
2. Online networks support both structured interactions among people and more open-ended participation in a range of activities;
3. Traditional barriers to cultural production and transmission are now much lower;
4. These changes are playing a critical role throughout the world, in developing as well as post-industrial societies, in democracies and in more autocratic regimes.

The ubiquitous increase of new media has facilitated cultural changes but also changes in political expectations and practices. Of the many political activities that are moving online, some are principally significant for reshaping the scenery of political life. The norms and practices that could be identified as shifting the political background under the label "participatory politics."

The conceptualization of politics extends beyond the electoral focus that often dominates literature about political participation and includes a broad array of activities undertaken by individuals and groups to influence how the public sets agendas and addresses issues of public concern. We include electoral activities (such as voting or campaign work), activism (protest, boycotting, and petitions), civic activities (charity or community service), and lifestyle politics (vegetarianism, awareness raising, and boycotting) in our definition.[4]

This broad definition is necessary for a few reasons.

- First, it acknowledges that several of the struggles to shift public attention to new issues or frames and to challenge the balance of power in public life take place outside of traditional institutions of civic and political life.[5]
- Second, this broad definition permits appreciation of the political consequences of phenomena at the crossroads of culture and politics. Legal and institutional structures are vital for considerate political affairs, but their operations are inhibited and shaped by the surrounding socio-cultural context, whether one labels that context as "civil society" or the "public sphere".[6]
- Finally, a broad definition of politics is to identify changes in where and how people work both to define issues of public concern and to exercise power in relation to them. The shift entails a association away from civic and political engagement that turns around issues and activities defined and structured by elites and state institutions and toward a range of more direct forms of lifestyle and expressive politics.[7]

Research on learning and participatory culture has highlighted four core sets of practice within the current digital media-scape. Young people are using media to:

- **Socialize** (by blogging, podcasting, or forwarding links).
- **Collaborate** (by working together with others to fabricate and share information via projects, such as Wikipedia).
- **Construct** (by producing and exchanging media via platforms like YouTube and Flickr).
- **Connect** (through social media, such as Facebook or Twitter, or through online communities, such as game clans or fandom's).

To conceptualize participatory politics as interactive, peer-based acts through which individuals and groups seek to exert both voice and influence on issues of public concern through the following types of activities:

- **Exploration.** Members of a population enthusiastically track information about issues of public concern. Participants seek out, collect, and analyze information from a wide collection of sources. They also often confirm the authenticity of information that is circulated by elite institutions, such as newspapers and political candidates.

- **Conversation and feedback.** There is a elevated scale of dialogue among society members, as well as a practice of weighing in on issues of public concern and on the decisions of civic and political leaders. This might include voicing one's standpoint at a meeting, discussing politics with others, commenting on blogs, or engaging in other digital or face-to-face efforts to interrelate with or provide feedback to leaders.
- **Transmission.** In participatory politics, the flow of information is shaped by many in the broader community rather than by a small group of elites. This might include sharing information about an issue at a meeting of a religious or community organization to which one belongs or posting or forwarding links or content that have civic or political intent or impact.
- **Fabrication.** Members not only socialize information but also create original content (such as a blog or video that has political intent or impact) that allows them to advance their perspectives.
- **Recruitment.** Members of a community rally others to help achieve civic or political goals. This might comprise working to recruit others for a grassroots effort within one's community, or reaching out to those in one's social network and beyond on behalf of a political cause.

This set of practices embraces the association from agenda-setting to opinion formation and action taking which are at the core of all political life, but they comprise participatory versions of each of those rudimentary steps. Those who engage in agenda-setting, opinion formation, and action-taking through methods like the ones described above contribute in "participatory politics." The more that people connect in participatory politics, the more we should expect to see a cultural shift in expectations about how to approach politics and about what is possible through politics.

PARTICIPATORY POLITICS IN THE DIGITAL AGE

With the resources of "participatory politics" gradually more available, we see growing opportunities for youth-and for civic actors generally- to exert agency in the public sphere, both as individuals and within communities of tradition. By circulating content, they can influence what others are exposed to. When people are particularly concerned, outraged, or committed, they can observe on broadcast content, write and distribute statements, or remix content to make a point. Drawing on social and often digital networks, youth, as individuals or as combined communities, can also expand their

admittance to audiences and opportunities for mobilization with less reliance on elite-driven institutions such as political parties or major interest groups and organizations. That said, participatory politics can, of course, commence new hierarchies and leverage other types of elite-driven institutions (for example, venture capital-backed companies), and so dynamics of exclusion as well as expansion are key to understanding emerging modes of citizen engagement.

CRITICAL IMPLICATIONS FOR EXPANDING ROLE OF PARTICIPATORY POLITICS

Changing interaction of Citizens to Institutions and Elites

In institutional, or, elite-driven politics, extremely planned group actors—political parties, news organizations, social movement organizations, national civic organizations, lobbyists, and special interest groups—drive national conversations about which issues deserve concentration; they also organize the options for action and mobilize citizens. Even activities conventionally designated as "extra systemic" politics— protests, boycotts, and petitions—depend on social movement organizations and dedicated leaders if they are to gain traction.

Participatory Culture and Prospective Pathways to Participatory Politics

The practices of participatory politics propose new routes to manipulate in the political realm, predominantly for those outside of conservative elite groups. They also offer new pathways into political participation, thereby requiring us to re-conceptualize the developmental pathways into civic and political engagement available to young people. This involves re-examining the kinds of socializing experiences that are likely to lead youth (and others) to commit to civic and political engagement, clarifying the literacy that are necessary for success at participatory politics, and identifying the types of support that will be necessary for engagement of this kind.

Renegotiating the Restrictions of the Social, Cultural, and Political Realms

The fact that appointment in participatory culture appears to provide a pathway into engagement in participatory politics underscores how significant it is to employ definitions of "politics" that are broad enough to

capture the points where culture and politics intersect. Practices emerging in the cultural realm may well evolve to play an important role in the political realm. As types of activity and practice move from one domain to another, we also see transformations in the relationship of political activity to social and cultural spheres.

RISKS ASSOCIATED WITH NEW MEDIA

1. First, there is a risk relating to the practice of examination.
2. Second, there are risks relating to dialogue and feedback, transmission, and fabrication. For example, the need for short powerful, spreadable messages may encourage simplification of complex and nuanced issues.
3. Third, there is a risk related to recruitment itself, namely that, in the context of an increased reliance on expressive politics, political actors will cease to develop full understandings of the differences between voice and influence, perhaps contenting themselves with expression itself when they might also have achieved influence if they had focused on more traditional modes of political involvement.

POLITICAL PARTIES PUBLIC POLICY AND PARTICIPATORY DEMOCRACY

Worldwide political parties are changing towards more participatory models of policy development. Participatory models of policy development are those in which a broad population, such as party officials, members, supporters and even external groups, have influence in policies proposed and advocated by a particular party. These can comprise a ample array of topics, from the national budget and economic development to education and health care; from infrastructure and transportation to childcare and parental leave; from private sector development and jobs programs to even a party's core values and beliefs.

WHY CONSULT ON POLICY?

Political parties accept inclusive models of policy development for a diversity of reasons. Some parties cite values or ideologically based reasons for including members and citizens in policy-making. Others are more sensible, pointing to the fact that consultation often delivers stronger, more relevant policy options. Policies on health care, for example, which have canvassed the opinions of experts and practitioners in medical

services, alongwith those of health care consumers, are more likely to be pragmatic, meaningful, and able to be implemented.

- Consultations reinforce the skills of the party's legislators and officials to deal with chief policy issues and legislative matters. Consultations on policy can be good preparation ground for a party's members of parliament on how to work with the legislative process.
- Democratic and participatory internal processes make stronger political parties, more capable of dealing with concession, debate, and coalition-building. Consultation processes also help to construct stronger relationships between parties and their members and/or supporters.
- Policy development creates opportunities for political parties to include women, minority communities, young people and under-represented social and economic groups in decision-making.

CHALLENGES TO POLICY CONSULTATION

Political practitioners looking to implement consultative policy development processes should be conscious of the following challenges:

- Inclusive policy development processes take time, which must be planned for. Some policy issues move so rapidly they do not permit for a deliberate consultation process to take place, so not every decision can be taken using broad consultation.
- In addition to being participatory, consultative policy-making can also be combative as different stakeholders within the party contend for supremacy on policy outcomes. This is a natural tension which must be expected and managed.
- Overly academic or cumbersome consultation processes can lead to 'consultation fatigue' in which stakeholders are fewer enthusiastic to contribute because the work is too burdensome and boring, or is not rewarding.
- The outcome of consultation processes can occasionally be unclear when stakeholders have no firm view on a policy, widely disparate views, or insufficient information.

OVERVIEW OF PARTICIPATORY POLICY DEVELOPMENT

There is a diversity of options for how a political party addresses policy development in its official rules, which characteristically take the form of statutes, bylaws or a constitution.

From there, party statutes tend to take an approach in which one of the following structures dominates policy development, which can very loosely be described as offering a low, medium or higher degree of detail on the process.

1. Statutes designate who has the authority to be concerned in policy and to what degree, but do not outline a specific process (lower detail).
2. Statutes institute specific bodies with the accountability and authority for policy-making and a general sequence for the process (medium detail).
3. Statutes characterize a general process by which policy is made and allocate a specific role for each stakeholder, including the national party leadership, any policy-making body, local party branches and individual members (higher detail).

SOCIAL MEDIA: POLITICAL IMPLICATIONS FOR PARTICIPATORY DEMOCRACY

Social media are fetching ever more admired among politicians and their organizations as a means to broadcast political messages, learn about the welfare and requirements of constituents and the broader public, raise funds, and build networks of support. These activities over and over again take place on confidentially run social networking sites that allow political figures and institutions to communicate with the public in unmediated, high-profile fora.

Social media are also used as campaign tools. For example, in 2009, the US presidency campaign Obama for America (OFA) drew on a database of approximately 13 million email addresses, an active community blog, and a digital network of volunteers to raise money, encourage voter turnout and support a grassroots approach to election campaigning.[8]

Social media are being used by citizens to connect with the public, influence decision-makers and hold legislatures and governments to account. Social media are used to educate the public about the work and values of parliaments, with the aspire of reinforcing public trust and interest in parliamentary governance. Parliaments also employ social media to engage citizens in public policy debates. For example, the UK Parliament is experimenting with online consultations that allow the public to share their responses to specific questions on a topic under examination by a select committee. Participants can view and counter to the contributions of other participants if they wish, allowing for citizen-to-citizen as well as citizen-to-representative exchange.

POTENTIAL BENEFITS OF THE POLITICAL USES OF SOCIAL MEDIA

It is hard to draw firm conclusions at this early stage about the impact of social media on political processes and representative democracy. Nonetheless, a numeral of potential benefits and risks has been credited to the political applications of these communications technologies.

SOCIAL MEDIA MAY FOSTER GREATER PLURALISM IN POLITICAL DISCOURSE

Social media offer anyone with Internet access an opportunity to disseminate their ideas; some argue that they promote pluralism in political debate. By this view, social media ensure that mainstream media sources no longer monopolize information channels. In turn, new issues and ideas that might otherwise be ignored by the mainstream media can receive public attention.[9]

However, given their varying levels of expertise, individual users have unequal access to the full potential of social media as a publishing platform. For example, users with online marketing skills, access to Web analytics software, and technical knowledge can ensure that search engines direct Internet users to particular websites instead of others.[10]

Similarly, established political parties and organizations have the resources to maintain a professional, well-executed online presence. Some argue that imbalances in online resources may simply replicate existing imbalances in more traditional communications resources, further entrenching the difficulty experienced by poorly funded political actors when they attempt to participate effectively in public discourse.[11]

Social Media May Facilitate Citizens to Become More Effectual Political Actors

Some people dispute that social media remove barriers to collective action and empower citizens to influence and monitor the work of policy-makers by offering a low-cost and, in some cases, more individual and convincing means of raising funds, spreading information and recruiting supporters from a broad range of backgrounds. In addition, some note that, by enabling people to connect across long distances, new information and communication technologies, including social media, have been instrumental in the growth of transnational political movements.

Media May Fabricate Trust in Public Institutions

Social media permit citizens to interrelate with public institutions in an informal and interactive manner, some dispute that social media are personalizing politics and bolstering the public's faith in governing institutions. This point of view is supported by a US study of online town hall meetings, which found that personal online communication with members of Congress had a significant and positive influence on constituents' opinions of their representatives. Moreover, such communication enhanced the likelihood that a personality would become more politically engaged and that he or she would vote for the candidate. Similarly, others argue that these kinds of online exchanges may remedy the perception that public institutions are "overly rigid, unresponsive, and out of step with contemporary society."[12]

The term "digital divide" is used to refer to the role that differences in access to and knowledge of Internet technologies play in determining one's likelihood of participating in online politics.

Social Media May Assist Legislators to Improved Represent Citizens, And Governments to Better Serve the Public's Needs

Social media recommend low-cost and user-friendly means of conducting an ongoing discussion between citizens and their representative figures and institutions, some argue that social media will grant decision-makers a more complicated understanding of the public's interests and needs. Proponents of this view suggest that this improved understanding will lead to higher quality policies and programs.

However, as renowned earlier, those who at present contribute in social media-based political exchanges may not be delegate of the general population. As such, the needs and interests they express may not serve as an accurate gauge of public opinion. In addition, as some argue, these new communications technologies will not necessarily alter who is represented or the means and frequency of representation in governing institutions and policy processes.[13]

Social Media May Connect Youth in The Democratic Process

Young people in Canada demonstrate low levels of trust and interest in political institutions and representatives, and are less likely to vote and join political parties than previous cohorts of young Canadians. Because young people are avid users of social media, these technologies are often discussed as one possible means by which young people may become more engaged in the democratic process. Proponents of this argument also note

that young people expect immediacy and interactivity when communicating, an assumption that might be better accommodated by social media tools than by the complex, bureaucratic communication channels of many governing institutions.[14]

POTENTIAL RISKS OF THE POLITICAL USES OF SOCIAL MEDIA

Social Media May Make out Further Complicated to Control: An Individual's or Institution's Public Image

Social media proffer users numerous opportunities to arrive at a large audience with criticisms of political figures and institutions. Because so many different social media outlets exist, it can be difficult to identify and address attacks on one's reputation that are published via these channels.

A recent Supreme Court of Canada decision suggests that defamation law must account for comments published on social media platforms. In *Grant* v. *Torstar Corp*, the Court ruled that:

"The traditional media are rapidly being complemented by new ways of communicating on matters of public interest, many of them online, which do not involve journalists. These new disseminators of news and information should, absent good reasons for exclusion, be subject to the same laws as established media outlets. I agree "*that the new defence is available to anyone who publishes material of public interest in any medium."*

Even so, it can prove complicated to prosecute individuals for making insulting statements online, since many people use social media without revealing their identities. Although no such legislation exists in Canada, recently an Australian court ruled that those who publish observations on an election on social networking sites are required to reveal their postal codes and actual names. Such legislation may make it easier for defamation law to be applied to social media users.

Social Media May Present Opportunities for "Synthetic Lobbying"

Some fear that well-crafted and executed social media campaigns led by special interest groups can control online exchanges with political figures and institutions to the point where decision-makers are misled about the actual extent to which ideas shared via these campaigns are representative of a widely held point of view. Such advocacy tactics are often referred to

as "synthetic lobbying." That said, synthetic lobbying occurs even without social media. For example, coordinated letter-writing campaigns have long been a constituent of politics and the policy process, and policy-makers have developed mechanisms of identify and addressing these organized campaigns to ensure that they do not gain an perverse influence over the policy process.

Political Institutions may not have the Essential Resources to use Social Media Efficiently

Some argue that the use of social media hassle unnecessary time and resources. Others argue that, just as social media were adopted swiftly in the marketing world because of their low cost, so too can they be used by public figures and institutions without significant expenditures of time and money. A number of practices may make it easier for political figures and institutions to meet the expectation that their social media accounts remain regularly updated.[15]

The use of Social Media by Public Institutions May Lead to A "Surveillance State"

By monitoring the information shared by citizens on social media sites, policy-makers and representatives can gain a better understanding of citizens' interests and needs. For example, in the United Kingdom, the Cabinet Office monitors popular social networking sites to learn about citizens' opinions on public services. Social media monitoring is also being used to help states tackle organized crime and terrorist networks. Whatever the potential benefits, some express concern that this type of monitoring will lead to a "surveillance state" in which the data shared by citizens via social media - including sexual orientation, religious belief, political affiliation and other sensitive information – is monitored and used in ways that breach privacy rights. In addition, some fear that the political institutions collecting this data may not be capable of storing it securely.[16]

CASE STUDY

Social Media and Democracy: Facebook as a Tool for the Establishment of Democracy in Egypt

Modern years have seen escalating concentration being rewarded to the concern of new media technologies and development. Wireless communication and the gradual dissemination of greater broadband capability, highly developed mobile technologies and the communications and information-processing power of the Internet is being disseminated to

all realms of social life, just as the electric grid and electric engine distributed energy in industrial society. There has definitely been acknowledgment that social media is playing a more and more significant and noteworthy role in social, economic and political development. The direct or indirect consequences of this growing significance are now deliberated at high-level political meetings and between heads of state. In other words, the concern of social media and its function in social development in general is no longer simply a question that refers to one territory or related to a particular sphere, but it has become present in different spheres as a powerful factor of change transforming into new mass self-communication.[17] As social and political unrest continues in some nation, new media may become a influential tool for accomplishment particular goals.

At the time when press and media emerged and gained its potency as influential tool for prominence public opinion that in its turn enabled persons to manipulate the state power somehow, people regularly realized the power of information. And the stronger the traditional media got, as a way to express public opinion, the more controllable it got. However, as almost always, the craftier one think he is, the more complicated a conflicting side gets. Media is no exemption. Trying to get a way to raise their voice, people start seeking alternative channels for transmitting information. That's what happened in Egypt in 2011.

The Egyptian revolution was solitary of the radical changes that happened during the Arab Spring – a sequence of revolutions in Arab states in 2010–2011. Today the notion of Arab spring is familiar to many and while some start to forget those events, their consequences are still developing. The Arab spring started with Tunisian unrest that began on December 17, 2010 after Mohammed Bouazizi, a 26-year-old fruit and vegetable seller, set himself on fire after police confiscated his cart because he did not have a permit. After he died from his injuries, protests quickly spread nationwide making people more and more decisive in demanding the current government to resign elect a new one and solve long lasting problems of high unemployment, corruption and food crisis as well as lack of freedom of speech.[18]

In Egypt, 82-year old President Hosni Mubarak had done enough, during his 30 years term, to lose public support and caused a enormous wave of unrest that quickly spread all over the country and resulted in turning the main square in the capital into the battlefield.[19] For almost 60 years, Egyptians have celebrated Revolution Day on July 23, to honour the day in 1952 when Gamal Abdel Nasser and the Free Officers overthrew the

monarchy to institute a republic. Starting from 2012, the nation celebrates Revolution Day on January 25 – the first day of the mass protests that forced Hosni Mubarak, the country's president for 30 years, from power. 30 years of one man rule, wide spread corruption, patronage, nepotism, economic reforms that did not benefit most Egyptians, but that nonetheless contrasted sharply with the almost complete absence of political change. Thus, for decades Egypt has been hiding major problems that caused poverty, high prices, social exclusion, elite enrichment, unemployment and corruption in the country. The underlying reasons were always there until a catalyst, the Tunisian revolution, triggered the Egyptians.[20]

Beginning in the mid-1970s, in an effort to bolster his legitimacy both at home and abroad, then Egyptian President Anwar al-Sadat began to liberalize the political system. He allowed opposition parties to gain some representation in the country's elected assemblies. As long as the ruling political party maintained its two-thirds majority and its control over the real levers of power, the Egyptian opposition could competition elections and maintain a limited presence in parliament. When Mubarak came to power, he sustained to follow the same formula with few adjustments. However, over the last five years, the Mubarak regime began to infringe this implicit agreement, by imposing renewed constraints on the ability of political parties to organize and contest elections. Moreover, the state heavily manipulated the 2010 parliamentary elections in favour of the NDP, successfully denying all opposition groups any representation in the parliament. Needless to say that papers and TV channels were under strict manager of the government. All these events regularly but surely led the country to the revolution. After the state's harsh prosecution of Islamists in the 1990s, youth activists began to express their grievance through a new production of protests open to members of all ideological backgrounds. One such movement was Kefaya, which has attracted legions of previously apolitical youth.[21] In 2008, youth activists from Kefaya formed the April 6 Movement in solidarity with textile workers who were planning a strike for that date. The movement attracted 70.000 members on Facebook, making it the largest movement in Egypt of all time.[22] Members of both the April 6 Movement and Kefaya were behind the creation another popular Facebook group, one supporting Mohamed El Baradei, the former head of the International Atomic Energy Agency (IAEA). But possibly the most important Facebook group arose in June 2010, when the activists associated with El Baradei campaign created a Facebook page called "We are all Khaled Said" in memory of a young man who was beaten to death by police officers

in Alexandria. It is quite clear that before the revolution, Facebook was quite popular and powerful channel for information in Egypt. Perceptibly, for unknown reasons it was underestimated by Mubarak's government, since there was no attempt to ban or hack any Facebook group. By the end of 2010, Egypt's youth activists had succeeded in bypassing many of the long standing constraints on political life in the country. All they needed to see their mission to the end was a final, triggering event – and that was gathering momentum some 1300 miles away in Tunisia.[23]

Thus, following the Tunisian revolution, a revolution in Egypt began. According to Habeeb, Egypt's underlying social, demographic and economic problems, combined with a political system which endorsed little room for legitimate opposition, created conditions that proved ripe for unrest. Rumours that elderly President Mubarak was laying the ground for his son, Gamal, to succeed him became a further source of frustration and resentment. With the rapid overthrow of Tunisia's President Ben Ali in January 2011 serving as an incredible inspiration, Egyptian activists — mostly young, urban, and college educated — launched a non-violent protest movement that grew rapidly. From the very beginning of the revolution there was nothing related to unrest shown on TV and in newspapers? Quite rationally people turned to social media, to Facebook in particular, exchanging with the information of protest organisation. Quickly the anti-Mubarak protestors numbered in their millions and the Egyptian military, the back bone of the regime's political power since the 1952 revolution and an institution whose principal concern is security and order, refused to act against the protesters. Faced with this opposition from his erstwhile colleagues, Mubarak begrudgingly resigned.[24] With the presidential elections held on 23-24 May, with a runoff in June, one may assume that revolution in 2011 leads to overthrowing of the authoritarian regime at minimum and heading towards more democratic.[25]

In Egypt while traditional media was blocked completely by the state, Facebook was almost the only place where people could share the news and ideas. The fact that the system was really a mean for transmitting information alternatively to traditional media is also reinforced by the desperate desire of the government to block it. The state was not even scared to lose lots of money due to almost complete internet shut down in the country.

Another feature of Facebook, debate in the hypothetical framework, was its ability to unite. Public sphere, according to Habermas, was a constructive place, where people can together achieve common goals. Coming

from different social classes, different regions of the country and with different backgrounds, people sharing the individual view of the events were united and acted together. Facebook allowed people to organise. Therefore, Facebook can assist at least overthrowing of the non-democratic government and quite probable setting a democratic regime. Of course, the role of other media in Egypt was also important.

CONCLUSION

Participatory politics in the digital age generate a lot of potential for civic and political contribution in the public sphere. They facilitate persons to tap enormous stores of information, believe diverse views, converse with potentially huge audiences, organize others, and work collaboratively for social change, all exterior of official civic and political organizations. As Light's chronological examination suggests the power of any generation's "new media" for assisting youth civic and political rendezvous may be due more to its status as new, unfettered, and low cost. As we see major institutions (media companies, political parties, corporations) figuring out how to harness and make use of modern technology as well as escalating battles over possession and parameter of the Internet, we see potential for this communication technology to come under tighter control. Against this backdrop, the need to intensify our theoretical and experimental considerate of the changes now occurring is all the more pressing. In Barber's words, "the pleasures of participation, the fellowship of civic association, and the autonomy, self-governance, and enlarging mutuality of continuous political activity."

SCOPE OF FURTHER ANALYSIS

The paper is based on the secondary data, so the sources of data were basically secondary resources. Hence, if there is further scope of research then different methods for collecting data like Interview method, Survey, Questionnaire methods etc can be employed and primary data can be collected.

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LEGAL PROVISIONS FOR THE PROTECTION OF SCHEDULED CASTES AND SCHEDULED TRIBES: AN ANALYSIS

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INTRODUCTION

Scheduled Castes and Scheduled Tribes have been, for centuries, the most neglected, marginalized and exploited people. The Scheduled Castes and Scheduled Tribes, the so called untouchables had emerged out of the rigid caste classification that characterized the India society. In India, the Scheduled Castes members are also referred to as "Dalits".[1] According to the Hindus religious belief, "All human-beings are not born equal". This automatically creates caste-based discrimination. As a result the Scheduled Castes and Scheduled Tribes are open to various forms of atrocities committed against them. The members of Scheduled Castes and Scheduled Tribes were considered as lesser human-beings and therefore were denied the right to be human. They were the recipients of severe social disabilities, slavery and indignities. The Hindu hierarchical society is dominated by purity-pollution, ranking the Brahmins on top and untouchables at the bottom. This system was based on exploitation and discrimination.[2] The higher caste the higher was its class, power and position in society. The root cause of the discrimination against Scheduled Caste and Scheduled Tribes is the rigid caste system.

EVOLUTION OF CASTE SYSTEM

One of the important problems in the India since several centuries is the problem of injustice. The concept of "injustice" and "inequality" can be

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traced back to the Vedic period. In this period, there were two Varnas namely Arya Varna and Dasa Varna. But the society was divided into three orders: Brahma (priests), Kshatra (warriors) and Vis (common people).[3] There was no mentioning of the fourth order, that is, shudra, though there was a reference to group despised by the Aryans, like Ayogya, Chandala and Nishad, etc., in the Rig Veda written in about 4000 B.C.[4] But, during the closing period of the Vedic age, the Varna (the classes or caste) and Ashrama (the four orders or stages of life) were the dominant features of the society. Grihya-sutra and Dharma-sutras were compiled during the first part of the period when the rules of castes and orders, domestic rites, ceremonies, general behavior and customs were in prevalence.

The Stratification of the society was made on functional basis. Out of four classifications, the first was accorded to Brahmans. He occupied the highest offices of the state and the society by his character, knowledge and intelligence.[5] Highest dignity and status was also accorded to him because he was well versed in worshipping of Gods. So far as the Shudras was concerned, 'service' was his portion in life. He was not eligible for sacraments and was not allowed to hear sacred texts. But he was allowed to perform the rites of marriage, cooking of daily food in the grihya fires and funeral ceremonies (shraddha). In Manu-smriti, Shudras had few privileges and many obligations or duties. The discriminating laws against them and their social disabilities were an inheritance of the past. The jataka stories also describes how the chandalas were treated as despised outcastes doomed to live outside the city or village and their sight was considered as impure. Due to these disabilities, the caste system was emerged with its much rigidity, which is attributed to the writings of the Manu. The time of Manu Dharma Shastra is again somewhat hazy, but nevertheless, these writings testify the crystallization of caste from the open class to a closed system.[6] The four-fold Varna division Brahmanas, Kshatriya, Vaishya and Shudra still remained the broad categories of classification. Birth becomes the basis of one's statutes in society. Consequently, occupation, food, ritual status, choice of mate, social and physical distance between different castes become well defined.[7] Anybody who transgresses these rules become an outcaste. These 'outcastes' were later on reduced to the statues of Untouchables or the 'panchamas' who constituted the fifth Varan.[8]

UNTOUCHABILITY IN HISTORY

It may be noted that, in the Vajasaneyi Samhita, composed around the tenth century BC, the words chandala and paulkasa can be found.

However,there was an indication to suggest that they were untouchables. In the Chhandogya Upanishad it was stated that, persons whose action were low, will quickly attain an evil birth, the birth of dog, or a hog or a chandala. The origin of the chandala was sought to be explained for the first time in the Gautama Dharma Sutra.[9] There, the chandala was described as the offspring of a male Shudra and Brahmin women and the worst of pratiloma castes as dharmahina or devoid of religion. Apastamba Dharma Sutra prescribed that after touching a chandala one should plunge into water, on talking to him one should converse with a Brahmana, and on seeing him one should look at luminaries of the sky such as the sun, moon and stars. The Sutras were composed around the sixth century B.C. In the Manu smriti that was composed sometime between the second century B.C and the second century A.D, it was ruled that the chandalas and the shvapakas should live outside the village.[10] In the Parashara Smriti it has been opined that if a chandala or a dog touches a twice borne person while talking his food, the rest of food should be abandond. If a Brahmin drinks water from a well touched by a chandala, Parashara stated, that he should take barely water prepared in the urine of a cow for three days. There were elaborate instructions in the Parashara Smriti on what should be done in the event of pollution of a house by the entry of a chandala. The house would have to be washed with water mixed with cow dung; the earthenware should be thrown away; family members and servants of the house should bathe thrice a day and take curd with cow urine for three days; barely water with cow urine for the next three days, milk with cow urine for next three days, then he should take all these things for one day each. Scholars have presented diverse analyses of the emergence of untouchability in the region. J.H Hutton, the eminent anthropologist, located the origin of caste in the taboos and division of labour in the pre-Aryan tribes of India as well as in their efforts at self-preservation in the face of invasion.[11] Untouchability according to him was the result of ritual impurity. To put it in his religious and a matter of social custom. There can be little doubt that the idea of untouchability originates in taboo".[12] Another noted anthropologist, Christopher von Furer-Haimendorf, presented an altogether different angle. He located untouchability in terms of urban development and the rise of unclean and ritually impure occupations. Emerging in the urban and semi-urban settlements, according to him, the practice spread to the villages. The institution of untouchability and tradition bound caste system divided the Hindus, wrapped their thinking and eroded the structure of community. Caste discrimination, untouchability and narrow mindedness gave birth to revenge, resentment and antagonism against dalits.

CONSTITUTIONAL AND LEGAL PROVISIONS RELATING TO "ABOLITION OF "UNTOUCHABILITY"

The Caste Disabilities Removal Act, 1850

Legal ban against caste discrimination was first introduced by the British in 1850 under the Caste Disabilities Removal Act, 1850. Basically this Act was made for extending the principle of section 9, Regulation VII, 1832 of the Bengal Code throughout India. Special Protection was then given to lower caste under this Act; it was provided that no person shall be deprived of any right or property by reason of his renouncing or being excluded from the communion of religion or deprivation of Caste.[13]

Constitutional Provisions

The Scheduled caste and some of the Scheduled tribes has been victim of social discrimination and subject to several disabilities and restrictions in their social existence imposed by dominant upper class especially in rural areas. Discrimination and denial of access to public facilities and religious places to 'untouchables' had been a historical phenomenon and it become necessary at the time of the framing of the Constitution to outlaw these despicable practices. Following are some of the Fundamental Rights guaranteed under the constitution of India for the abolition of 'Untouchability' and to remove all disabilities, which existed in the Hindu social order:

- Article 15(1) prohibits the state from discriminating against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them. This right is available to the citizens against the state only.
- The Constitution of India thus provides, that no citizen would be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels and places of public entertainment, use of wells, tanks, bathing gnats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of general public.[14] Article 15(4), states that nothing in this Article or in clause 2 of Article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.
- Similarly, Article 16(1) promotes equality of opportunity for all citizens in matter relating to public employment or appointment to any office

under the state and Article 16(2) prohibit any discrimination on grounds only of religion, race and caste, in respect of employment or office under the state.

- Article 17 abolishes untouchability. It forbids its practice in any form. It makes it clear that enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with law. The term "untouchability" has not been defined in the constitution of India or the Untouchability Offences Act, 1955. According to the Mysore High Court the term "untouchability" should not be taken in its literal sense. It should be understood the practice as it has developed historically in India in the context of the caste system. In the case of *People's Union for Democratic Rights* v. *Union of India,*[15] the Supreme Court has made it clear that the fundamental right guaranteed by Article 17 is available against private individuals also. It is the duty of the state to see that it is not violated.
- Besides, Article 23(1) prohibits traffic in human beings and forced labour and thus aims at recognition and restoration of the dignity of man. It does not specifically mention Scheduled Castes and Scheduled Tribes but since the majority of bounded labour belongs to Scheduled Castes and Scheduled Tribes, this Article has a special significance for Scheduled Castes and Scheduled Tribes. In pursuance of this Article there is the Bonded Labour System (Abolition) Act, 1976[16] and there is a centrally sponsored scheme for identification, liberation and rehabilitation of bonded labour.
- Article 25(1) guarantees the rights to religion to all persons, which includes the right to "freedom of conscience and right freely to profess, practice and propagate religion". But on the ground of religious freedom, no individually can lawfully defend 'untouchability'. Article 25(2) removes the general obstacle which otherwise would have been so in providing social welfare and reform or the throwing open of Hindu religious institutions of public character to all classes and sections of Hindus. A Scheduled Caste Hindu has the right to worship in any temple in the same manner and to the same extent as any other non-Scheduled Caste Hindu. The High Court of Rajasthan made this point clear in the following case; *Surya Narayan Chaudhury* v. *State of Rajasthan,*[17] in this case, the Scheduled Castes and Scheduled Tribes were denied entry to the Nathdwara Hindu Temple despite of Article 25(2) of the constitution.

The writ petition was filed in the High Court of Rajasthan under Article 226 of the constitution. It was held in this case, that such a practice violets the right to equality guaranteed to Harijans by Articles 14, 15 and 17 of the Constitution. The state government must ensure discontinuance of this practice forthwith, if the same is still continuing.

- Article 29(2) states that, "No citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of state funds on grounds of religion, race caste, language or any of them.
- Under Article 32, any citizen whose fundamental right including the right against untouchability under Article 17 is violated can move the Supreme Court directly by writ proceedings for the enforcement of the rights conferred by the Constitution.

THE UNTOUCHABILITY (OFFENCES) ACT, 1955.

Although 'Untouchability' was abolished and its practice in any form was forbidden under Article 17 of the Constitution, yet for nearly six years there was no law to punish the offenders. In the year 1955, the parliament passed the 'Untouchability Offences Act 1955' to make the practice of 'Untouchability' a cognizable offence and to punish the practice of 'Untouchability' and enforcement of any disability arising out of this social evil. This Act comes into operation in 1956 December. The Act provides the inadequate punishments for offences arising out of 'Untouchability', i.e., imprisonment up to six months, fine up to ₹ 500 or both. The Act also provides other punishments like cancellation or suspension of licenses and suspension of government grants. In case an offence committed in relation to a member of Scheduled Caste, it could be presumed that it was committed on the ground of 'Untouchability' unless the contrary was proved. Besides, the offences committed under the Act are made cognizable and compoundable.[18] Consequently, the Government of India appointed a committee under the chairmanship of Sri L. Elaya Perumal in April 1965 to examine, inter alia, the problems of Untouchability vis-à-vis the working of the Act, and to make recommendations to remove many loopholes in the Act. The committee submitted its recommendations providing the penal provisions more rigid to punish those offenders. The committee also pointed out that there was inadequacy of the copies of the Act available in district offices and some cases were deliberately delayed to make Scheduled Castes and Scheduled Tribes to suffer and subject them to various hardships. On

the basis of its recommendations, the Act was amended and renamed as '**Protection of Civil Rights Act, 1976,** following are the major offences and punishments contemplated under the Act:

(a) Enforcing of religious disabilities: Preventing any person from entering any place of public worship or from offering prayers or using the waters (on the ground of Untouchability) is punishable with imprisonment from one month to six months and fine between 100 to 500 rupees.[19]

(b) Enforcing social disabilities: Enforcing disability [on the ground of untouchability] with regard to access to shop, hotel or places of public entertainment or the use of articles kept therein for public use or the access or use of any public conveyance, public residential premises and public conveniences etc., is punishable with same terms of imprisonment and fine as above. Enforcing any disability includes any discrimination on the ground of untouchability.[20]

(c) Refusing to admit personals to hospital: Refusal of public hospital facilities and discrimination after admission [on the ground of untouchability] are also punishable with the same punishment as above.[21]

(d) Refusing to sell goods or render services: if, on the ground of untouchability, any one refuses to sell any goods or refuses to render services available to other person in the ordinary course of businesses are also offences punishable under the Act.[22]

Section 7 of the Act provides punishment for the list of offences arising out of 'untouchability'. Unlawful compulsory labour is made punishable under section 7A of the Act. Section 8 makes a provision for the cancellation or suspension of licenses of a convicted person in a certain cases. Abetting of any offence under this Act is punishable. Section 15 of the Act provides that all the offences under this Act are cognizable and triable summarily. Both Article 17 of the Constitution and the Act place the word "Untouchability" in the inverted commas. Accordingly it has been analyzed that the subject matter of Article 17 is not untouchability in its literal or grammatical sense, but the practice as it developed historically in India and the word untouchability is used in that sense in the Act.[23] The Supreme Court played a significant role in interpreting the provisions of The Protection of Civil Rights Act, 1955. It was held by the Supreme Court in *State of Karnataka* v. *Appa Basu Ingale and others,*[24] that the Protection of Civil Rights Act is not a penal law simplicitor but bear behind it monstrous untouchability

relentlessly practiced for centuries dehumanizing the Scheduled Castes, Constitution's animation to have it eradicated and to assimilate one fifth of nation's population in the main stream of national life.

THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is based on hard crime model for prevention of atrocities on the Scheduled Castes and Scheduled Tribes. It was noticed that despite of various measures to improve the socio-economic conditions of Scheduled Castes and Scheduled Tribes they remained vulnerable. They are denied number of civil rights; they are subject to various offences, indignities, humiliation and harassment. Present Act comes under the definition of Hard Crime Model, because so many new features were incorporated in the Act certain behavior which were not offences up to the passing of this enactment, were made offences with severe punishment. Even the officials, who are entrusted to enforce the provisions of the Act could be punished under the Act, if he is adjudged negligent in performing his duties. Provisions were also made for enhancement of punishment for some offences. Following are the atrocities,[25] committed by a person who does not belong to Scheduled Caste and Scheduled Tribes, considered as punishable offences under Schedule Castes and Scheduled Tribes[prevention of Atrocities] Act, 1989;

1. Forcing a member of Scheduled Castes and Scheduled Tribes to drink or eat obnoxious substance or dumping waste in the premises or neighborhood with intention to cause insult or annoyance to him and forcibly removing clothes or parading naked a member of Scheduled Caste and Scheduled Tribe.
2. Forcing or compelling a Scheduled Caste and Scheduled Tribes to do beggar [forced labour] or bonded labour, wrongful occupation or cultivation of land belonging to Scheduled Castes and Scheduled Tribes, wrongful dispossession from land or interference with the enjoyment of rights over any land, premises or water and forcible causing of a Scheduled Caste and Scheduled Tribes to leave his house or village.
3. Preventing a Scheduled Caste and Scheduled Tribe person from voting forcing him/her to vote for a particular candidate or vote in a manner prohibited by law.

4. Instituting a false suit or criminal proceeding against a Scheduled Caste and Scheduled Tribe person.
5. Giving false information to any public servant and thereby compelling him to use his power to cause injury, harm or harassment to a Scheduled Caste and Scheduled Tribe Person.
6. Insulting or intimidating a Scheduled Caste and Scheduled Tribes persons in public with the intention of humiliating that person.
7. Dishonoring or outraging the modesty of any women belonging to a Scheduled Caste and Scheduled Tribes.
8. Polluting the water of a spring or reservoir ordinarily used by members of Scheduled Castes and Scheduled Tribes so as to make it unfit for use.
9. Using dominant position to sexually exploit a women belonging to Scheduled Caste and Scheduled Tribes.
10. Denying a Scheduled Caste and Scheduled Tribes person a customary right of passage to public resort or preventing him/her from using public places accessible to others.

Following are the Punishments Prescribed under the Act:[26]

1. Giving or fabricating False Evidence: Giving or fabricating false evidence intending or knowing it to be likely to lead to conviction of a Scheduled Caste and Schedule Tribe person is an offence of atrocity. If such conviction of Scheduled Castes and Schedule Tribes for a capital offence is made then, such person responsible for false evidence are liable to be punished with life imprisonment and with fine, if the person thus convicted is an innocent member of Scheduled Caste and Scheduled Tribe, then the persons who gives or fabricates the false evidence can be punished with death. If the false evidence is given or falsely made up against a Scheduled Caste and Scheduled Tribe person and thereby he is convicted for an offence other than capital offence and punishable with more than seven years of imprisonment, then the person who gave the false evidence can be punished with imprisonment of minimum of six months and maximum of seven years or more and with fine.
2. Mischief by fire to property, house or temple of Scheduled Castes and Scheduled Tribes: Committing mischief by fire with intention or knowledge to cause damage to property belonging to Scheduled Castes and Scheduled Tribes is punishable with imprisonment

between six months and seven years and with fine. If any place of worship or residence or place for keeping the property of a member of scheduled castes and scheduled tribes is destroyed by committing mischief by fire any explosive substance, the person causing the destruction can be punished with imprisonment for life and with fine.

3. Committing serious crimes on account of the victim being a Scheduled Caste and Scheduled Tribe: If a non-Scheduled Caste and Scheduled Tribe person commits any offence under the Indian Penal Code punishable with imprisonment for ten years or more against any Scheduled Caste and Scheduled Tribe person or his/her property, he can be punished with imprisonment for life and fine.
4. Causing disappearance of evidence against offenders guilty of atrocities: A person having the knowledge that an offence under the Indian Penal Code has been committed against a Scheduled Castes/ Scheduled Tribes person or his/her property and intentionally removes all the evidence to protect the offender from legal punishments or gives false information against the offence or the offender, can be punished with imprisonment provided for that offence.

Public servants guilty of atrocities: If a public servant commits any of the above offences, he shall be punishable with imprisonment ranging between one year and the maximum provided for that offence.

If a person is convicted more than once for committing offences under this Act, he can be punished with minimum of one year imprisonment.[27] The Act also provides for the forfeiture of property, movable or immovable, used for the commission of the offence. Besides, during the pendency of the trail, the court can order attachment of property which, on conviction, can be forfeited to the extent it is required for the purpose of realization of any fine imposed.[28] The Act also provides that, the state government with the concurrence of the Chief Justice of High Court can specify a Court of sessions to be a Special Court to try the offences under this Act.[29] The most controversial provision under the Act was section 18 which provides that section 438 of the Criminal Procedure Code not to apply to persons committing an offence under the Act. The first case in which the constitutional validity of the Act was challenged is *Jai Singh and other* v. *Union of India and others,*[30] in this case the Rajasthan High Court held the Act as valid and constitutional. But the Madhya Pradesh High Court did not agree with his view and contrary held in *Dr. Ram Krishnan Balothia v. Union of India and others,*[31] that section 18 of the Act is violative of Article 14 and 21 of the constitution as the provisions of this section did not

confirm to the norms of justice and fair play. In appeal the Supreme Court in case of *State of M.P and others* v. *Ram Krishan Balothia*[32] overruled the above decision and held that the court agreed with the view taken by full bench of Rajasthan High Court in *Jai Singh's case*[33] and held that looking to the historical background relating to the practice of 'Untouchability' and the social attitude which lead to the commission of such offences against Scheduled Castes and Scheduled Tribes there is justification for an apprehension that if benefit of anticipatory bail is made available to the person who are alleged to have committed such offences there is every likelihood of their misusing their liberty while on anticipatory bail to terrorize their victims and to prevent a proper investigation. It is in this context section 18 had been incorporated in the Act and it cannot be considered in any manner as violative of Article 14 and 21 of the Constitution.

The Lok Sabha passed the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2014 on Tuesday, replacing the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance, 2014. The Bill aims to prohibit the commission of certain offences against members of the Scheduled Castes and Scheduled Tribes (SCs and STs) and establishes special courts for the trial of such offences and rehabilitation of victims. Following are the actions to be treated as offences:[34]

- The Act outlines actions (by non SCs and STs) against Scheduled castes or Scheduled Tribes to be treated as offences. The Bill amends certain existing categories and adds new categories of actions to be treated as offences.
- Forcing a Scheduled Castes or Scheduled Tribe individual to vote or not vote for a particular candidate in a manner that is against the law is an offence under the Act. The Bill adds that impeding certain activities related to voting will also be considered an offence. Wrongfully occupying land belonging to Scheduled Castes or Scheduled Tribes is an offence under the Act. The Bill defines 'wrongful' in this context, which was not done under the Act.
- Assaulting or sexual exploiting a Scheduled Castes or Scheduled Tribes woman is an offence under the Act. The Bill adds that: (a) intentionally touching a Scheduled Castes or Scheduled Tribes woman in a sexual manner without her consent, or (b) using words, acts or gestures of a sexual nature, or (c) dedicating a Scheduled Castes or Scheduled Tribes women as a deadest to a temple, or

any similar practice will also be considered an offence. Consent is defined as a voluntary agreement through verbal or non-verbal communication.

- New offences added under the Bill include: (a) garlanding with footwear, (b) compelling to dispose or carry human or animal carcasses, or do manual scavenging, (c) abusing Scheduled Castes or Scheduled Tribes by caste name in public, (d) attempting to promote feelings of ill-will against Scheduled Castes or Scheduled Tribes or disrespecting any deceased person held in high esteem, and (e) imposing or threatening a social or economic boycott.
- Preventing Scheduled Castes or Scheduled Tribes from undertaking the following activities will be considered an offence: (a) using common property resources, (c) entering any place of worship that is open to the public and (d) entering an education or health institutions.
- Role of public servants: The Act specifies that a non Scheduled Caste or Scheduled Tribe public servant who neglects his duties relating to Scheduled Castes or Scheduled Tribes shall be punishable with imprisonment for a term of six months to one year. The Bill specifies these duties, including: (a) registering a complaint or FIR, (b) reading out information given orally, before taking the signature of the informant and giving a copy of this information to the informant, etc.
- Role of courts: Under the Act, a Court of Sessions at the district level is deemed a Special Court to provide speedy trials for offences. A Special Public Prosecutor is appointed to conduct cases in this court.
- The Bill substitutes this provision and specifies that an Exclusive Special Court must be established at the district level to try offences under the Bill. In districts with fewer cases, a Special Court may be established to try offences. An adequate number of courts must be established to ensure that cases are disposed of within two months. Appeals of these courts shall lie with the high court, and must be disposed of within three months. A Public Prosecutor and Exclusive Public Prosecutor shall be appointed for every Special Court and Exclusive Special Court respectively.
- Rights of victims and witnesses: The Bill adds a chapter on the rights of victims and witness. It shall be the duty of the state to make arrangements for the protection of victims, their dependents and witnesses. The state government shall specify a scheme to ensure the implementation of rights of victims and witnesses.

- The courts established under the Bill may take measures such as: (a) concealing the names of witnesses, (b) taking immediate action in respect of any complaint relating to harassment of a victim, informant or witness, etc. Any such complaint shall be tried separately from the main case and be concluded within two months.

CONCLUSION

From the above discussion, it is evident that, the problem of 'Untouchability' in the Hindu social order is ancient problem where the depressed classes including the Scheduled Castes and Scheduled Tribes [Untouchables] were subjected to many discriminatory and degrading practices. The social practice of 'Untouchability' spread so much so that disintegration started within the Hindu social order where the untouchables started converting to various religions. At this point of time, many social, reformers like Raja Ram Mohan Roy, Swami Vivekananda, Mahatma Gandhi and Ambedkar thought that, the Hindu social order could be saved only by providing some safety and security to the untouchables in the Hindu social order. Therefore they contended that, untouchable should be provided with liberties, freedom and right to enter public places 'including temple entry', which was denied to them since several centuries. At the time of drafting the constitution for free India, they deliberately included several fundamental rights like 'Right to Equality, Freedom, Abolition of Untouchability, and Right to life' and many other provisions of social welfare to all the people of India including scheduled castes and scheduled tribes. With the view to enforce the provision of 'Abolition of Untouchability' parliament enacted number of legislations i.e., 'Untouchability Offences Act, 1955, Protection of Civil Rights Act, 1976 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989. The above legislations will certainly help the Scheduled Castes and Scheduled Tribes to attain equality, to achieve social and economic justice, if they are properly implemented. Now the status of Hindu Scheduled Castes and Scheduled Tribes in the Hindu Society is far better than it was in the earlier days i.e., prior to the Constitution of India came into being.

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PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES (PROHIBITION OF SEX- SELECTION) ACT, 2003 – A CRITICAL ANALYSIS

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INTRODUCTION

A child in the womb of mother, untouched by any kind of hardships is perhaps at the safest place in this world but sadly even this place is not safe for millions of unborn girls. The hateful crime of female foeticide stops such girls to even take their first breath in this world. Female foeticide means aborting or eliminating the female foetus in the womb of the mother through medical means.[1] It is the barbaric practice whereby newly born female infants were killed with prenatal connivance.

India is one of the countries where the female foeticide and infanticide are on the rise. With the advancement in medical technology, female infanticide has evolved into female foeticide which is the pre-birth elimination of female embryos/ foeticide. Sex-selection has resulted in a continuous and alarming decline in Sex Ratio. A declining Sex Ratio results in increasing incidences of sexual and gender violence against women, upsets the delicate equanimity of nature and threatens our every existence.[2]

EFFECTS OF FEMALE FOETICIDE

The pre-natal diagnostic techniques though useful for the detection of genetic or chromosomal disorders etc. are used on large scale to detect the sex of the foetus and to terminate the pregnancy,

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if the unborn child is found to be female. These techniques are discriminatory to the female sex and not conducive to the dignity of women. Female foeticide has led to skewed sex ratio in the country. Moreover multiple pregnancies and multiple abortions in want of a male child lead to severe health and psychological consequences in many women.

THE ACT

Legislature has recognized the problem of female foeticide and passed the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 which came into force on Jan. 1, 1996. The Act has been renamed as the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 by Amendment Act, 14 of 2003. This change was necessitated due to certain inadequacies and practical difficulties in the administration of the first mentioned Act which came to the notice of the government. Moreover other than terminating the pregnancy of unborn child if found to be female, techniques were also being developed to select the sex of child before conception and the proliferation of such techniques could have been a catastrophe in the form of severe imbalance in male-female ratio. The legislature hence intervened to uphold the welfare of the society, especially of the women and children. The amended Act bans the use of both sex selection techniques prior to conception as well as the misuse of pre natal diagnostic techniques for sex selective abortions and to regulate such techniques with a view to ensuring their scientific use for which they are intended.[3]

GREY AREAS UNDER PC AND PNDT ACT

Although India has a strong law in the form of PC and PNDT Act, to curb sex selection, lacunas and loopholes in the PC and PNDT Act and ineffective implementation of the law permits frequent misuse of medical technologies for sex-selection. Effective implementation of the PC and PNDT Act is hampered by practical difficulties and societal apathy.

- As evident in the matter of sex-selection, both the service-seeker and service-provider are perpetrators while the female foetus is the only victim. Conviction is rare as there is non-reporting of crime and absence of evidence or witness.[4]
- PC and PNDT Act do not intend to restrict the medical professionals but only to regulate them. Ultrasound machines are needed to watch natural growth and development of foetus and also health of mother.

But if those machines are used for detecting sex of foetus followed by abortion then it is not the defect of machines but those men who are operating the machines.[5] So it is the medical fraternity who are more to be blame than common man as these diagnostic techniques can be operated by them alone. But unfortunately, government is putting the onus of pregnant women rather than focusing on medical practitioner, the major culprits. For instance, on April news report titled "Pregnant women beware, Big Brother's watching", quotes Director (Health) Dr. D.P.S. Sandhu saying that all pregnant women in Punjab who already have two daughters will be placed under observation. If such a woman undergoes an abortion, she will have to satisfy the health authorities about the reasons for this. Women's health activists are up in arms about this, terming it a violation of fundamental reproductive rights and access to abortion.[6]

- Sex selective abortion enjoys a social sanction and is not perceived as a crime but as a method of ensuring the birth of sons. Further, it becomes difficult to distinguish cases of female foeticide and MTP.
- There are shortcomings also in the receipt of quarterly reports from States and Union Territories. Duly completed forms containing details of pregnancy – related tests conducted by sonography clinics are either not sent by the stipulated time or never submitted at all. The panel, which is supposed to scrutinize the forms, fails to meet regularly. Much time is wasted upon regulation of clinics and routine administrative works while clinic records are not strictly and regularly monitored.
- It is impossible to regulate all private clinics that offer facilities for pre-conception and pre-natal diagnostic techniques/test/procedures or to monitor the whereabouts of mobile ultrasound machines. Fake addresses of patients and/or wrong reasons for doing sonography are recorded.[7]
- Further the involvement of the police only contributes to corruption, since the persons running the ultrasound centres get prior information and either wind up operations or run away from the scene. In fact, the police need not enter the picture at all, since the PNDT Act provides for an "Appropriate Authority" to implement the law. Faulty interpretations of the law add to biased implementation.[8]
- Issuance of summons and search warrants, and punishment for violating the provisions of the PC and PNDT Act are rare. For

instance, under the Act, the 13 Court cases were launched in 2006. However the number came down to six in 2007 and again in 2008, it was six, whereas in the first eight months of the current year it came down to two.[9] Regarding convictions just 13 cases of conviction under the PNDT Act were reported in 2010 exposing the complete failure of all state governments in effective implementation of the law to prevent the killing of unborn daughters while also bringing related schemes under the scanner.[10] According to the provisional figures of census 2011 a total of 805 cases have been filed in court against doctors till March 31, 2011 ever since the revised PC and PNDT Act came into force. Only 55 convictions have been recorded since then. The rest of the cases are either in progress or dropped for "poor investigation and insufficient evidence against the accused."[11]

- Further the drugs Mifepristone and Misoprostol are widely used as medical termination of pregnancy pills. But these drugs are available with chemists over the counter. Drugs, which are so potent and which can be so easily utilized for killing the female foetus, must only be available through a written prescription of a registered medical termination of pregnancy, under the MTP Act, 1971.
- Then there is technological aspect. The record of ultrasounds conducted can be easily deleted from the ultrasound machine or they may not be saved at all by the person conducting the ultrasound.[12]
- Moreover the issue of sale of ultrasound machines will also come up for debate considering the fact that despite regulated sale based on the conditions, such machines are being installed with impunity.[13]
- The PNDT Act is more likely to be misused for knowing the sex of the foetuswith the advent of 3-D and 4-D ultrasound techniques these days. These 3-D and 4-D ultrasound scans, which are readily available at diagnostic centres across the country, enable a pregnant woman and her relative/attendant to see the sex of a foetus on the screen. Thus, the PNDT Act, which prohibits sex-determination tests, has been rendered practically useless, with 3-D and 4-D ultrasound scans.[14]
- By protecting the pregnant women under Section 23(4) of the PC and PNDT Act, the law takes a lenient view of her fault in her failure to fight against sex selection.
- Moreover, Section 23(4) of the PC & PNDT Act is gender discriminatory on the ground that it punishes men for the crime of sex selection while leaving the pregnant women unpunished, although she may have willingly participated in the crime of sex selection.[15]

JUDICIAL RESPONSE

In landmark case, *Centre for Enquiry into health & Allied Themes (CEHAT) v. Union of India,*[16] the Supreme Court of India issued a direction to Central Govt. to create public awareness in sex detection and female foeticide, to implement provisions and rules of PNDT Act, 1994 with all vigour and zeal. The court also directed Central Supervisory Board (CSB) to meet once in six months. Central Supervisory Board shall issue directions to States and Union territories to furnish quarterly returns and shall also review, monitor and examine the implementation of the law. The Court observed in *Chetna, Legal Advisory WCD Society v. Union of India,*[17] case that if need be, the National Human Rights Commission can also be approached in this matter to solicit the assistance of the Commission in proper implementation of National Programme for Eradication of Female Foeticide and Infanticide and its improvement wherever necessary. In another *Centre for Enquiry into Health & Allied Themes (CEHAT) v. Union of India*[18] case, again direction was issued by the Supreme Court of India to State Governments to further survey so that unregistered clinics do not operate in any part of the country. The Act largely non- implemented as petition filed by CEHAT[19] and other organizations and no appropriate steps were taken by the Central Government for proper implementation of this law after enactment.

SUGGESTIONS

- Government can play very important role in the eradication of the practice of female foeticide, as one of the reason for the bias against the girl child is chiefly economic, the solution too will have be economic. The government should give incentives for having a girl child through free education, extra ration, more so tax concession for the parents of girl children. This is perhaps the most effective way rather than the sting operations. Furthermore, the countries like India where both theproblem of increasing population and female foeticide are there the best solution is that the single girl child should be made a separate category just like other reservations like in the case of SC's and ST's.
- Schemes like '*beti bachao- beti padhao'* should be adopted in true spirit.
- All future laws must be transparent and have a built-in checks and mechanism to curb female foeticide, while accommodating late abortions of grossly deformed foetuses.
- There is a need to change the mind-set of the people to make them aware that today women are exposed to new ideas about their

personality, roles and rights. They are trying their best to cope with these roles and expectations.

- The Dowry Prohibition Act should be implemented in its true spirit. Swift and stringent police and legal action should be taken in case of dowry harassment.
- Law is to be framed which allows a girl to use her maiden name.
- There should be a legislation which assures social security for elderly people so that there should not be any kind of dependenceon their sons for financial support.
- The use of technology which makes it possible for couples to determine the sex of the foetus and thereby to terminate the pregnancy should be prohibited by domestic law.
- The State regulations like keeping record of all abortions and send returns every month under the PNDT Act, 1994 should be done away with. Similarly, the requirement of registration for the purposes of termination of pregnancy under the PNDT Act, 1994 should also be removed. It is pertinent to mention here that private sector is a major source of providing health services in India and excessive regulation will induce them not to get their clinics registered and therefore, either the abortion is done through the back door for a hefty amount or the same is refused. This deprives the females of availing the best of facilities in the private sector.
- The licence of the medical practitioner who performs this illegal practice should be cancelled on the first offence and the authorities should not wait for the subsequent offence as it is against medical ethics.
- The extant of laws on female foeticide should be strengthened without affecting women's rights over reproduction in any manner and the considerations of population control. Norms and standards should be framed which allow women free access to pre-conception and pre-natal sex-determination for medical reasons.[20]

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AN INSIGHT INTO CRIMINALIZATION OF POLITICS IN INDIA

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"*It is a fact in present politics that the bigger a 'Goonda' is, the greater is considered to be his usefulness and value during the course of elections*"

At present we very often come across the reality of criminalization of politics. The meaning of the term is not new to educated people and newspaper readers. For academic purposes a definition is to be given here. When politics or political power is used by self interest, seeking persons for pecuniary gains or various other advantages such as to get special position in administration or to rise to the higher stage of administration which is normally not feasible.

According to Association for Democratic Reforms (ADR), 162 of 543 MPs elected in the 2009 elections had criminal charges against them. This means that 30% of our MPs had cases pending against them in courts of law. In March 2014, the Supreme Court passed a landmark judgment asking for speedy trials of charge sheeted politicians in government. Although the Constitution had provisions for disqualification of convicted politicians, cases would lie pending for long years with politicians still in power. This protected especially those charged with serious crimes such as murder and rape.[1]

A preliminary analysis of the candidate data compiled by the Association for Democratic Reforms (ADR) for the Lok Sabha and Assembly elections gives an idea of the degree to which criminalisation has seeped into Indian politics. This article examines the self-sworn affidavits submitted to the Election Commission of India by over 10,700 candidates who contested the Lok Sabha 2004 and 2009 elections and also takes a preliminary look

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at the number of criminal candidates that are contesting for the current Lok Sabha election. The analysis done by ADR from these affidavits has been further used and analysed to understand the patterns of criminalisation in our political system. With the 16th Lok Sabha election in progress, it becomes pertinent to reflect on these figures and their implications for the democratic processes in the country. From ADR's compilation of data on 5,380 candidates contested the Lok Sabha election 2014, 17 per cent have declared criminal charges in the affidavits submitted to the Election Commission; 10 per cent have declared serious criminal charges such as murder and rape charges. Aam Aadmi Party (AAP) candidate S.P. Udayakumar, Kanyakumari constituency, Tamil Nadu, faces the highest number of criminal cases – 382 including 19 charges related to Attempt to Murder (IPC section 307) and 16 charges related to sedition (IPC section 124A). He is closely followed by M. Pushparayan, also an AAP candidate, Thoothukudi constituency, Tamil Nadu, with 380 criminal cases.[2]

Criminalisation of politics means to use politics or political power for nefarious gains. To gain something not legal or normal has been called crime. Here the word crime is used in politics in special sense. For example an officer in administration wants to be promoted to higher post. But this is not his due. He uses politics or political power to achieve this. The person succeeds. But the matter does not stop here. The person who helped to get undue privilege will again use this person tor the achievement of his purposes which are, in normal course, not due. This is the policy of give-and-take and this happens behind the curtain.

In the present Politics Criminals enter in to it to become politicians and then patronize other criminals. The dire consequence of this unholy alliance between criminals and politicians is that at every level from bottom, Panch at panchayat level to Chief Minister or Ministers at State and Central Level, criminals are being elected and appointed to the positions of power.

THE REASONS OF THE CRIMINALIZATION OF THE POLITICS

1. The criminals enter into the politics to gain influence and ensure that cases against they are dropped or not proceeded with. They are able to make it big in the political arena because of their financial clout. Political parties tap criminals for funds and in return provide them with political patronage and protection.
2. The components of criminalisation of politics are Muscle Powers, Gangsters and Money Power. The Elections of every level whether Parliament, State Legislature, Municipal or Panchayti Raj are

very expensive and it is widely accepted fact that huge election expenditure is the root cause of criminalisation of politics.

3. In every election all parties without exception put up candidates with a criminal background. Even though some of us whine about the decision taken by the parties, the general trend is that these candidates are elected to office. By acting in such a manner we fail to realize that the greatest power that democracy arms the people is to vote incompetent people out of power.

   Independence has taken place through a two-stage process. The first stage was the corrupting of the institutions and the second stage was the institutionalization of corruption. As we look at the corruption scene today, we find that we have reached this stage because the corrupting of the institutions in turn has finally led to the institutionalization of corruption. The failure to deal with corruption has bred contempt for the law. When there is contempt for the law and this is combined with the criminalization of politics, corruption flourishes. India is ranked 66 out of 85 in the Corruption Perception Index 1998 by the German non-government organization Transparency International based in Berlin. This means that 65 countries were perceived to be less corrupt than India and 19 were perceived to be more corrupt.

4. Criminalization is a fact of Indian electoral politics today. The voters, political parties and the law and order machinery of the state are all equally responsible for this. There is very little faith in India in the efficacy of the democratic process in actually delivering good governance. This extends to accepting criminalization of politics as a fact of life. Toothless laws against convicted criminals standing for elections further encourage this process. Under current law, only people who have been convicted at least on two counts be debarred from becoming candidates. This leaves the field open for charge sheeted criminals, many of whom are habitual offenders or history-sheeters. It is mystifying indeed why a person should be convicted on two counts to be disqualified from fighting elections. The real problem lies in the definitions. Thus, unless a person has been convicted, he is not a criminal. Mere charge-sheets and pending cases do not suffice as bars to being nominated to fight an election. So the law has to be changed accordingly.

VARIOUS PROVISIONS UNDER INDIAN LAW

Criminalization in Indian politics is closely related to the legislators, though other subsidiary causes are there. Therefore some provisions have been enshrined in the constitution to prevent legislators having criminal background from taking entry into the legislatures. Both in Article 102(1) (e) and 191(1)(e) it is mentioned that "if he is so disqualified by or under any law made by parliament. Chapter IX A of IPC deals with offences relating to elections. It comprises of nine sections. It defines and provides punishment for offences, such as bribery, undue influence and personation at elections etc. Sec. 171 G provides the punishment of fine for false statement in connection with elections and for illegal payment in connection with an election. Sec 171 H provides the punishment of fine upto ₹ 500. According to Sec 171 E, if there is failure to keep election accounts, the offender shall be punished with fine not exceeding ₹ 500. Thus, in India Penal Code, provisions have been made to check election evils but nominal punishments have been provided and interest is not taken in prosecution of election offenders. On the other hand, these provisions have failed to check criminalization of politics because of a faulty provision i.e. Ss. 8 (4) of the People's Representation Act, 1951.

The People's Representation Act, 1951 has prescribed many important steps to check criminalization in Indian politics. Sub-section (3) of Section 8 of this Act provides that a person convicted of an offence, mentioned in sub section (1)(2) of the same Act, shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release. However, sub-section (4) of section 8 provides that "Notwithstanding anything in Sec. 8, sub-section (*1*), sub-section (*2*) or sub-section (*3*) a disqualification under either subsection shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court". Thus, this sub-section provided the corrupt and tainted politician ample scope to continue in active politics both inside and outside of the legislatures. This revamped a pernicious effect on political sphere and increased criminalization in politics.

JUDICIAL APPROACH TO CHECK CRIMINALIZATION IN INDIAN POLITICS

Before raising question about the validity of sub-section 4 of section 8 of Representation People's Act 1951 the judiciary has been continuously striving to prevent criminality and unethical activities practiced by legislators interpreting various laws of the country mentioned in sub-section 1 and 2 of Representation People's Act, 1951. But, the situation had become worse. On 28th August 1997, the Election Commissioner G.V.G. Krishnamurti startled the nation by revealing an abnormal statistics, showing politicization of criminals. Thus lok sabha passed a resolution of 31st August 1997 saying inter alia that, "more especially, all political parties shall undertake all such steps as will attain the objective of ridding of our polity of criminalization or its influence". But it remained a pious resolution. On May 2, 2002, the Supreme Court gave a historic ruling following public interest litigation by an NGO. In the light of ruling of the Supreme Court, the Election Commission issued directive requiring the candidates seeking elections, to file affidavit indicating their criminal records, educational qualifications and assets and liabilities. This was implemented during the Lok Sabha election held in April - May 2004, but oddly enough, it has not been possible to prevent persons with criminal records from entering Lok Sabha *(Minch, 2013)*.[3]

After many efforts, the boldness of judiciary on punishing corrupt politicians and bureaucrats in the hawala racket is perceived to be ushering a new and healthy bloom in Indian democracy. Justice Kuldip Singh's judgment was significance in which the former Petroleum Minister, Capt. Satish Sharma was prosecuted against allotting petrol pumps and gas agencies to his near and dears under the discretionary quota.

In the mean time judiciary has been facing much trouble so far the provisions of R P Act, 1951 to keep clean the legislatures. In *Sarat Chandra v. Khagendra Nath,*[4] the appellant's nomination paper for election to the Assam Legislative Assembly was rejected by the Returning Officer on the ground of disqualification under S. 7(b) of the Representation of the People Act, 195 in that he had been convicted and sentenced to three years' rigorous imprisonment under s. 4(b) of the Explosive Substances Act (VI of 1908) and five years had not expired after his release. The appellant had applied to the Election Commission for removing the said disqualification but it had refused to do so. The appellant's sentence was, however, remitted by the Government of Assam under S. 401 of the Code of Criminal Procedure and the period for which he was actually in jail was

less than two years. The Election Tribunal held that the nomination paper had been improperly rejected and set aside the election but the High Court taking a contrary view, dismissed the election petition. Held, that the High Court was right in holding that the appellant was disqualified under S. 7(b) of the Representation of the People Act and that his nomination paper had been rightly rejected. That section speaks of a conviction and sentence by a Court and an order of remission of the sentence under S. 401 of the Code of Criminal Procedure, unlike the grant of a free pardon, cannot wipe out either the conviction or the sentence. Such order is an executive order that merely affects the execution of the sentence and does not stand on the same footing as an order of Court, either in appeal or in revision, reducing the sentence passed by the Trial Court.

For actual disqualification, what is necessary is the actual sentence by the court. It is not within the power of the appellate court to suspend the sentence; it can only suspend the execution of the sentence pending the appeal. The suspension of the execution of the sentence (imprisonment of not less than two year) does not remove the disqualification, when a lower court convicts an accused and sentences decided in *B.R. Kapur v. State of Tamil Nadu.*[5] Brief facts of this case were that election to the legislative assembly in the state of Tamil Nadu was held in 2001. AIDMK secured a landslide majority and consequently choose their leader J. Jayalalitha as the Chief Ministerial candidate. She however, had been denied permission to contest the elections. The election commission rejected her nomination papers on account of her disqualification under the provisions of Representation of People's Act, 1951. Her convictions were under appeal and the high Court, on an application, suspended the sentence of imprisonment, ordering her bail. Being, elected as the leader of majority party in the assembly now Governor appointed her as the Chief Minister. The Supreme Court set aside the decision of High Court and held that a person who is convicted for a criminal offence and is sentenced to imprisonment for a period of not less than 2 years cannot be appointed as the Chief Minister of a state under Article 164(1) read with (4) and cannot continue to function as such. Hence the appointment of Jayalalitha as the Chief Minister of Tamil Nadu was not legal and valid and that she cannot continue to function as the same. In *Raj Deb v. Gangadhar Mohapatra,*[6] a candidate professed that he was Chalant Vishnu and representative of Lord Jagannath himself and if any one who did not vote for him would be sinner against the Lord and the Hindu religion. It was held that this kind of propaganda would amount to an offence under S. 171 F (punishment for S.171C) read with S 171C (undue influence at an election).

However, there has been controversy with regard to the beginning of disqualification on the ground of conviction. A person convicted for an offence is disqualified for being a candidate in an election. S. 8 of the R.P. Act sets different standards for different offences. According to S. 8(3) a person convicted of any offence and sentenced to imprisonment for not less than two years (other than the offences referred to in S. 8(1) and (2)) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

The court also considered the question of the effect of acquittal by the appellate court on disqualification. It may be recalled that the Supreme Court in *Vidyacharan Shukla v. Purushottam Lal*[7] had taken a strange view. V.C. Shukla was convicted and sentenced to imprisonment exceeding two years by the Sessions Court on the date of filing nomination but the returning officer unlawfully accepted his nomination paper. He also won the election although conviction and sentence both were effective. The defeated candidate filed an election petition and by the time when it came before the High Court, the M.P. High Court allowed the criminal appeal of Shukla setting aside the conviction and sentence. While deciding the election petition in favour of the returned candidate, the court referred to *Mannilal v. Parmailal* (The Court also overruled *Mannilal v. Parmai Lal*[8] and held that the acquittal had the effect of retrospectively wiping out the disqualification as completely and effectively as if it had never existed. However, Vidyacharan Shukla which had the effect of validating the unlawful action of the returning officer and encouraging criminalization of politics was overruled by Prabhakaran. The Supreme Court observed:

> Whether a candidate is qualified or not qualified or disqualified for being chosen to fill the seat has to be determined by reference to the date for the scrutiny of nomination. The returning officer cannot postpone his decision nor make it conditional upon what may happen subsequent to that date. It is submitted that the view taken in the instant case is correct and would be helpful in checking the criminalization of politics.

In *K. Prabhakaran v. P. Jayarajah,*[9] the Court considered a different issue based on purposive interpretation of Sec 8(3) of R.P. Act, 1951. It considered the question whether for attracting disqualification under S. 8(3) the sentence of imprisonment for not less than two years must be in respect of a single offence or the aggregate period of two years of imprisonment for different offences. The respondent was found guilty of offences and sentenced to undergo imprisonment. For any offence, he

was not awarded imprisonment for a period exceeding two years but the sentences were directed to run consecutively and in this way the total period of imprisonment came to two years and five months. On appeal, the session court directed the execution of the sentence of imprisonment to be suspended and the respondent be released on bail during the hearing of the bail. During this period, he filed his nomination paper for contesting election from a legislative assembly seat. During the scrutiny, the appellant objected on the ground that the respondent was convicted and sentenced to imprisonment for a period exceeding two years. The objection was overruled and nomination was accepted by returning officer on the ground that although respondent was convicted of many offences but he was not sentenced to for any offence for a period not less than two years (i.e. for every case he has been sentenced below two years). The High Court also took the similar view but the Supreme Court by majority took the different view. Chief Justice R.C. Lohati speaking for the majority held that the use of the adjective "any" with "offence" did not mean that the sentence of imprisonment for not less than two years must be in respect of a single offence. The court emphasized that the purpose of enacting S. 8(3) was to prevent criminalization of politics. By adopting purposive interpretation of S. 8(3), the Court ruled that its applicability would be decided on the basis of the total term of imprisonment for which the person has been sentenced.

Sec. 8(4) of the RP Act accords benefit to a sitting Member of Parliament or legislative assembly if convicted for criminal offence. According to it, in respect of such member, no disqualification shall take effect until three months have elapsed from the date of conviction or if within that period appeal or application for revision is brought in respect of conviction or sentence until that appeal or application is disposed of by the court. The controversial issue is whether the benefit of this provision continues even after the dissolution of the house. There have been instances where the members taking advantage of this provision contested the subsequent election in spite of the faction by the court during the tenure of the house. The Supreme Court considered this unethical aspect also in Prabhakaran case. The court considered the structural position of S. 8(4) and justifications for its retention. It held that "Sub Section 4 would cease to apply no sooner the house is dissolved or the person has ceased to be a member of that house". Thus, it is another effort of the Court to strictly check the criminalization of politics in which showing the irritation of court towards the tainted politician chief Justice R.C. Lohati on behalf the court speaking for the majority observed, those who break the law should not make the law. Generally speaking the purpose sought to be achieved

by enacting disqualification on conviction for certain offences is to prevent persons with criminal background from entering into politics and the house a powerful wing of governance. Persons with criminal background do pollute the process of election as they do not have many a holds barred and have no reservation from indulging into criminality to win success at an election.

Lily Thomas and Lok Prahari v. Union of India, 2013[10]

However, two public interest Litigations were filed by Lily Thomas and an NGO Lok Prahari in 2005 questioning the validity of section 8(4) of Representation of People's Act, since it provides special safeguard to the sitting MPs and MLAs who have been convicted of an offence and whether section 8(4) of the Representation of People's Act is Ultra Vires to the constitution.

The Hon'ble Court after going through the arguments put forward by both the parties held that once a sitting member becomes disqualified by or under any law made by parliament under article 102(1)(e) and 191(1)(e) of the constitution, his seat will become vacant immediately by virtue of article 101(3)(a) and 190(3)(a) of the constitution. It further held that the parliament cannot make a provision as in section 8(4) of the Act to defer the date of disqualification on which the disqualification of a sitting member will have effect.

Further, the court relied on the constitutional Bench's decision in *Election Commission of India v. Saka Venkata Rao*, wherein it was held that there has to be same set of disqualification for election as well as for continuing as member. Thus, parliament does not have power to make different laws for a person to be disqualified for being chosen as a member and for a person to be disqualified to continue as member as it made by creating section 8(4) of the Act.

For aforesaid two reasons the Hon'ble Supreme Court held that parliament has exceeded its power conferred by the constitution enacting sub- section 4 of section 8 of the Act and accordingly it is ultra vires the constitution.

However, the Hon'ble court further held that this judgment of the court will be prospective in nature. Sitting members who have already been convicted under section 8(1),(2)and (3) of the Act and have filed appeals or revisions in higher courts before the pronouncement of this judgment, would not come under the purview of this declaration since it will be against the principles of natural justice.

ANALYSIS OF THE JUDGMENT

There is no doubt that such verdict will help in reducing the scourge of criminalization of politics but it also leaves open a number of loopholes for dubious politicians. Given the present state of judicial system, conviction by a trial court is often set aside by a higher court on appeal. If a member is disqualified in some case and gets an acquittal later by a higher court, there will be no scope for redressal. Hence, it can lead to filing of fraudulent cases particularly when election would be round the corner.

This judgment will impact law makers who are facing charges but have not been convicted. And going by the conviction rate of Indian courts , they have little to worry about in the near future. Immediate disqualification of convicted elected representatives may lead to politically susceptible government. Not long ago, a government lost power at the Centre by just one vote. However, the real significance of this ruling would be that it will act as a deterrent for political parties which have been giving tickets to tainted candidates. This verdict would also bring in equality between an ordinary individual and elected member who so far enjoyed an additional layer of protection from disqualification under section 8(4) of the Act. Under these circumstances in the current state, this landmark ruling is like a judicial revolution rather than being mere tokenism. Again, recently on 10th March 2014 Supreme Court provided another remarkable decision on a PIL filed by Public Interest Foundation directing the subordinate courts to dispose of the cases U/s 8(1)(2)(3) within one year from the date of charge sheet filed by the investigating agency. If any case requires more than this period, subordinate court must bring the matter before concerned High Court. And if it feels the cause is reasonable, it may give a suitable time limit to declare the judgment of the case. Hence, it is realized that judiciary is trying its best to check the criminalization in Indian politics.

MEASURES TO CONTROL THE CRIMINALIZATION IN POLITICS

The Election Commission must take adequate measures to break the nexus between the criminals and the politicians. The forms prescribed by the Election Commission for candidates disclosing their convictions, cases pending in courts and so on in their nomination papers is a step in the right direction if it applied properly. Too much should not be expected, however, from these disclosures. They would only inform people of the candidate's history and qualifications, but not prohibit them from casting their votes, regardless, in favour of a criminal.

For the past several general elections there has existed a gulf between the Election Commission and the voter. Common people hardly come to know the rules made by the commission. Bridging this gap is essential not only for rooting out undesirable elements from politics but also for the survival of our democratic polity. This is an incremental process, the rate of success of which is directly proportional to the increase in literacy rate in India. The electorates have made certain wrong choices in the past, but in the future national interest should guide them in making intelligent choices.

The role of Supreme Court also becomes very important here. The Apex Court as custodian of constitution should take all necessary steps to strengthen democracy in the country. The legislature and executive have been complaining about the Supreme Court's intervention on their domain, but it becomes imperative in such kind of unwanted situation. The Supreme Court of India upheld a PIL which made it mandatory for everyone seeking public office to disclose their criminal, financial and educational history. It was a way to ensure that the voters knew the important details about their "honourable" leaders, and steamed them were indeed.

Section 8 of the Representation of the People Act, 1951, states that politicians and electoral candidates convicted for a crime shall be disqualified from the date of conviction till six years after their release. However, subsection 4 of Section 8 says that if the convicted person is already an MP or MLA, he or she will not be disqualified until three months from the date of conviction. Therefore, if an appeal is filed within these three months, the hearing could be delayed for years. The politician would thus be in power till the court disposes off the case.

In 2005, lawyer Lily Thomas[11] and former IAS officer S.N. Shukla filed a public interest litigation asking the court to set aside Section 8 (4) of the Representation of the People Act because it allowed sitting MPs and MLAs to continue to be elected representatives even when convicted in a court of law. The petition appealed that this special protection was unconstitutional and hence should be struck down. This means that any convicted MP or MLA would be immediately disqualified and the seat made vacant.

The Supreme Court ordered[12] that upon conviction, charge sheeted MPs and MLAs would be disqualified with immediate effect from holding membership of the House without being given three months to appeal. However, the Court exempted those who had already filed appeals in various High Courts or the Supreme Court. With the striking down of Section 8 (4), Rajya Sabha member Rasheed Masood and Lok Sabha member Lalu Prasad Yadav were disqualified from their seats after their conviction by a trial court.

The Central Government tried to nullify this Supreme Court judgment by passing a bill to amend the relevant sections of the Representation of the People Act, 1951. Since the monsoon session of Parliament ended without the bill being taken up, the Cabinet approved an ordinance to implement the same. The ordinance was subsequently withdrawn by the government after criticism from within the ruling party itself.

In a response to a public interest litigation filed by Public Interest Foundation, the Supreme Court asked the Law Commission of India to submit a report on the framing of false charges and submission of false affidavits. The Law Commission recommended the disqualification of politicians from contesting elections charged with an offence punishable by imprisonment of five years or more. It also said that for cases against sitting MPs and MLAs, trials must be expedited through day-to-day hearings and completed within one year.

The Supreme Court partially accepted the recommendations of the Law Commission and passed an order directing that trials against sitting MPs and MLAs must be concluded within a year of charges being framed and that they should be conducted on a day-to-day basis. The Court also said that if a lower court is unable to complete the trial within a year, it will have to submit an explanation in writing and seek an extension from the Chief Justice of the concerned High Court.

The 2014 Supreme Court order offers a ray of hope because if politicians with criminal records are elected in the forthcoming general elections, they could be disqualified as early as May 2015 if convicted.

The Right to Information Act, 2005 is a historical Act that makes Government officials liable for punishment if they fail to respond to people within a stipulated time frame. Many public servants are leading luxurious lifestyles, beyond the legal sources of their income. Many public servants are filing false affidavits about their annual income, wealth details to Election Commission of India/Vigilance Commission/other authorities, as the case may be. These authorities are not properly verifying these affidavits. Many scams, scandals are coming to light day in and day out, politicians are accusing each other of involvement in scams. Whereas, the said authorities are keeping mum, as if those affidavits filed by tainted public servants are true. The tainted public servants are not even providing full, right information to public as per RTI Act, lest the truth come out.

In this context The Supreme Court held that the right to information and the right to know antecedents, including the criminal past, or assets of

candidates is a fundamental right under Article 19(1) (a) of the Constitution and that the information is fundamental for survival of democracy.

CONCLUSION

There is clearly no love lost between the Supreme Court and politicians. In today's time where scams like 2G Spectrum Scam, Coal Scam, Commonwealth Game Scam and the Railway Scam have hurt the current government immensely. It is the same scenario with opposition parties, which in their ruling state are culprits of the same kind of scandals and corruption. The very essence of democracy that politicians of yesteryears, like Gandhi, Nehru and Patel stood for to serve the country's people and provide them clean, healthy and corrupt free governance has long been relegated to the trashcan. There are two kinds of corruption; one when people don't observe the laws and the other when they are corrupt by the law. People's expectation of the legislators has changed. They prefer a power broker to an honest politician. Leaders do not come out of blue. In fact, it is said that people get the government they deserve. Thus by 2012 India has ranked 94th out of 176 countries in Transparency Internationals Corruption Perceptions Index. Thus people are at both ends like constructing as well as destroying the nation. If they prefer power broker they will simply axe their own legs. A small number of good people may have a little chance to save this country from devastation. When democracy becomes corrupt the best gravitates to the bottom, the worst floats to the top and the vile is replaced by viler. Time is running out and unless something is done to stem the rot, the entire system will collapse. So people's participation to prevent tainted and corrupt politician out of political system is also highly essential. So the people should wake up at once and force the political parties to mend their ways. In this regard the judiciary has been a platform of confidence for people. The judiciary has to be more watchful by taking some more steps for present days to decriminalize the system.

In a democratic country, all the powers lie in the hands of the voters that is the general public. An awakening among the general mass can only show the right place to such criminal politicians.

It is not appropriate to blame the politicians alone. It is the public that is responsible to a great extent in making the politicians corrupt, criminals, unethical and goons. If the people use their right to vote in favour of a gentleman and honest leaders, and devote sometime to make him winner, an example can be set and corrupt and goons would have to think twice to fight election but it is not the case. The situation is entirely different. Whosoever can spend more money in an election, whosoever can use more muscle power in an election, has more chances of victory.

In such a situation, why a politician would not like to earn more to remain in power or to win next election. The tolerance limit of Indian public is

indeed very high.

The reality is this that still we could not be able to design a mechanism in a real sense to stop the criminals from entering in politics and from escaping the Conviction. The vibrant examples are Tamilnadu Chief Minister Jayalita who recently got bail from the charges of corruption by the Apex Court, A. Raja and Kanimojhi have already been granted bail in 2G Scam too. But a ray of hope has seem by the conviction of Mohammed Shahbuddin in 2004 Siwan Double Murder case. We hope still many more criminal will be strictly prosecuted and successfully convicted in near future.

It is not to conclude that all the politicians are criminal, corrupt and unethical. The hope lies with only such honest, dedicated and devoted politicians who have sacrificed a lot for the welfare of this nation. It is high time that we enforce a code of conduct to the stem the rot and this exercise must begin right now. A transparency in the working is very urgently needed. Responsible opposition and the media can play very important roles in exposing the unethical and immoral corrupt politicians. The people are also becoming aware that unless they use their right to vote in favour of a better leader, the future of the nation is in dark, and they themselves have to suffer because of their own wrong judgments. Let us hope the people of the country will use their vote in the coming elections in favour of dedicated, sincere and honest leaders for the good of themselves and for the welfare of this great nation.

In this context some suggestions may be given as follows:

(a) The Section 8(4) of Representation of People's Act, 1951 defies the ideas of equality enshrined in article 14 of the constitution. While the Representation of People's Act, 1951 debars candidates convicted of serious offences from contesting elections for six years after their release from prison, Section 8(4) of the same Act makes an exception for sitting legislators. This grants an unfair advantage by allowing convicted legislators to contest elections, while at the same time, denying the rights to those who are convicted but do not hold office. Thus, in keeping with the spirit of equality in the Indian constitution, and to check the perverse trend of increasing criminalization of politics, this section must be repealed.

(b) There should be appointment of Public Prosecutors, Additional Public Prosecutors, Assistant Public Prosecutors and other legal luminaries for court matters through fair and open competition having no political colour. Their work efficiency should be assessed yearly and if requires, their job may be revised on the basis of this yearly assessment. They shall not be engaged in any paid employment during the term of the office. So, their efficiency and integrity may be increased.

(c) Expeditious trial through special courts with fast track mode to dispose these cases within 90 days may be established. For this; the rule of adjournment must be strictly followed. The high court or the Supreme Court should have power to transfer cases from one fast track court to another. Special provision may be made to protect the witnesses of these cases. Again, the investigating agencies should be activated and sensitized to speedily comply with the courts requirements.

(d) There should be workshop, training, and sensitization program for judges, advocates and other clerical staffs to enhance the efficiency of the court work. Especially, the advocates are to be sensitized not to be soft towards hardcore, tainted, corrupt politician cum criminal during the trial. These evil elements don't have accountability towards the society. Even, it is seen that criminal clients have attempted to kill the members of their engaged advocates and looted their houses on being unsuccessful in their cases. The enormous problem of the nexus between criminals and politicians cannot be ignored any longer. The submission of affidavit may have some deterrent effect, but seems as it will also result is a futile exercise as in India; votes are being cast on the basis of caste, creed and region. The poor illiterate people of this country still vote to their caste man or to the man of fellow religion ship, or to the fellow who belongs to the region. Moral values and ethics have long been vanished from the political arena of our country, but we cannot have such an indifferent attitude. We shall have to find a solution to eradicate the menace for which we are ourselves also responsible to a great extent.

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THE ROLE OF POLICE IN THE ADMINISTRATION OF CRIMINAL JUSTICE: UNDER BRITISH CROWN TO DEMOCRATIC INDIA

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INTRODUCTION

"Injustice anywhere is a threat to justice everywhere"

– Martin Luther King

"In modern times a State is adjudged, evaluated and known by the just governance and the effectively of its system to deliver justice. As Justice J.S. Verma had rightly remarked that, "Human dignity is the quintessence of human rights",[1] it is first and foremost duty of the State to render respect to the dignity of every individual by protecting, preserving and promoting human rights. For this, apart from the constitutional provisions and democratic set up, what the State needs to do is to provide its people with an efficient Criminal Justice System. The Criminal Justice Administration includes three basic organs, the Police, the Court and the Prison.

Policing is one of the most important of the functions undertaken by the every sovereign government. For the state machinery, police is an inevitable organ which would ensure maintenance of law and order, and also the first link in the criminal justice system. On the other hand, for common man, police force is a symbol of brute force of authority and at the same time, the protector from crime. Police men get a corporate identity

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from the uniform they wear; the common man identifies, distinguishes and awes him on account of the same uniform. The police systems across the world have developed on a socio cultural background, and for this reason alone huge differences exist between these police systems. From the singular coordinated centralised system of police in Saudi Arabia organised under the Ministry of Interior to the 42000 odd police forces that exist in USA, policing mainly rests on either of the two broad principles of Policing by consent and Policing by law.

The basic concern of police in particular and Criminal Justice Administration in general is to protect the rights of the citizens. Human rights are recognized claims of individuals which are based on accepted value setup of any society. The role of police in free India has been very dubious. Even after decades of freedom the police have not been able to throw off the legacy of the British times. During the British rule police force was organized to crush the people who opposed the foreign rule. The concept of human rights emerged out of the assimilation of moral and political discourses in a society. As far as moral connotation is concerned it is the value system of a society which makes every member of the society to be responsible towards each other's rights. As stated in Article 1 of the Universal Declaration of Human Rights, all human beings are "endowed with the reason and conscience and should act towards one another in a spirit of brotherhood". But the problem arises when this does not happen. It is in this situation that the rights of man face threat and the political concern for the rights emerges in the form of the State and its mechanism. This threat can be both internal as well as external, or from within the society and any aggression from outside the State. To deal with both types of infringements the man has evolved the idea of State. As far as external threat is concerned, the State owns defence mechanism involving para military and military bodies. But threat from within the society is more complex and some time even more subtle. To protect the human rights in domestic arena, State needs a mechanism known as Criminal Justice Administration. Naturally the police force was tyrannous. They dealt with the patriots and revolutionaries as if they were hard core criminals. The process continued even in free India unchecked, unabated. The climax was reached by the time Emergency was declared in 1975 when one could see the brutal dance of police oppression for two and a half years-Emergency in the North nicknamed as 'Police Raj'. The south was not free from the atrocities. The case of Rajan an engineering student in Kerala is not a solitary example. The Police is primary and a frontier agency of

this Criminal Justice System. It is the police which not only brings the culprits before the judiciary but also checks any further infringement of human rights beforehand by maintaining law and order. The police agency directly deals with the people. Hence, it is significant body to protect the human rights. But the role of the police is also marred by a paradoxical situation when the very rights, it is supposed to protect, come under threat at the hands of the police itself. Almost all human rights agencies, whether governmental or non-governmental, have reported or received complaints against the police as major violator of human rights.[2] The human rights situation is some time presented in media in simple terms of black and white without analysing the complexities of the situation and that of the role of the police. The present study aims to analyze this very situation. The working of the police is not independent, it depends upon the policies and laws of the State and the social milieu in which it operates. Police cannot be viewed as an independent body. It is to be studied as an organ of a given Criminal Justice System. Hence, the present study also focuses upon the nature of Criminal Justice System which is working in India.

The role of a modern police organisation is laid down succinctly in the above quote appearing in the web page of UK Home Office.The first idea that comes to our mind when we hear the term "Police" is the idea of a dominant personality who symbolizes the power of the State and criminal justice administration system. On the one hand people view police as a protector of civil liberties and on the other hand police is viewed as a symbol of brute force of state which oppresses the legitimate protests with force. Dictionaries define Police as the governmental department charged with the regulation and control of the affairs of a community, now chiefly the department established to maintain order, enforce the law, and prevent and detect crime.

POLICE UNDER BRITISH CROWN

Period's sinsyne saw ascensive use of the police force for suppressing freedom struggle and maintaining law and order au rests prevention and detection of crime. Indian police metamorphosed to a law and order outfit in the next nine decades au contraire to the proclamations of the Preamble of the Police Act, 1861. British Raj ruled India on the strength of police force during the turbulent periods of the independent struggle. In the process, law and order functions came to cent restage in the charter of priorities of the police duties at the cost of the objectives of prevention and detection of crimes.[3]

George Orwell, under his real name of Eric Blair, served in the Indian Imperial Police, in Burma, from October 1920 to December 1927, eventually resigning while on leave in England, having attained the rank of Assistant District Superintendent at District Headquarters, first in Insein, and later at Moulmein. He wrote of how having been in contact with, in his own words, "the dirty work of Empire at close quarters" had affected his personal, political and social outlook. Some of the works referring to his experiences include "A Hanging" (1931), set in the notorious Insein Prison, and his novel *Burmese Days* (1934). Likewise, although he wrote that, "I loved Burma and the Burman and have no regrets that I spent the best years of my life in the Burma police." in "Shooting an Elephant" (1936), he pointed out that "In Moulmein in Lower Burma, I was hated by large numbers of people–the only time in my life that I have been important enough for this to happen to me.

After 1860 recruitment of senior police officers were done in two ways;

> Appointing officers from the British Army and Nomination from among younger sons of landed gentry in UK.

In 1893 nomination system was abolished Army source was discontinued recruitment of officers through a combined competitive examination held in London for the Indian Police Service candidates toping the merit list were appointed as Assistant Superintendents of Police over Provincial Governments and permitted to recruit some officers directly through common examination which were conducted separately for domiciled Europeans only and superior police service were exclusively reserved for European service. Later as in other civil services recruitment to the IPS allowed for the Indians. Today recruitment made through the Combined Civil Services Examination conducted annually by the Union Public Service Commission. All India Service of the Union Article 312 of the Constitution of India. Probationers recruited undergo very tough basic training course in all aspects of physical/academic/arms/other activities[4]

Policing in democratic societies is governed by the rule of law and is indeed a difficult and challenging task. Given the fact that the Indian police force was trained in the past to serve the objectives of colonial rule and has not yet been granted the autonomy, resources and training for professionalisation in a democratic milieu, its performance has not been entirely disappointing. Compared with many other departments of the government, the police by and large have served the public good even in adverse circumstances. What is disconcerting today is the steady deterioration of standards of policing, the increasing lawlessness amongst the policemen themselves and the attitude of complacency and complicity amongst the leadership in police

organizations. Given the prevailing attitudes and approaches in the police force, there is not much hope that the people will get better services from the police in the immediate future. Since the purity and efficiency of the criminal justice system is largely dependent on the police who feed the system, the future seems bleak for criminal justice in general.[5]

Indians to the Higher Offices

British Government realized the inadequacy of the Indian element in the superior civil service:

(a) In 1870, an act was passed authorizing the appointment of Indians to the higher offices without any examination, but it came into effect only in 1879.

(b) The rules adopted in 1879 ordained "that a proportion not exceeding one sixth of the total number of covenanted civil servants appointed in any year by the Secretary of State should be natives selected in India by the local governments subject to the approval of the Governor-General-in- Council."

These officers were called "statutory civil servants" and were recruited from "young men of good family and social position possessing of fair abilities and education". The system was, however, subject to same defects from which all systems of nomination were bound to suffer.

Even Indians themselves preferred competitive examination. But in order to give Indians a fair and equitable chance, they recommended that there should be simultaneous examinations both in England and in India.

For the same reason they were against lowering of the maximum age of admission below 21 as it would adversely affect the Indian candidates who were to be examined in a foreign tongue. The lowering of the maximum age limit to nineteen in 1877 was regarded as a deliberate attempt to shut out Indians and led to an agitation which culminated in the Congress movement.

The Congress vigorously took up the question of simultaneous examination and employment of Indians in larger numbers.

Public Service Commission

In 1886, Lord Dufferin appointed a "Public Service Commission" to investigate the problem with Sir Charles Atchnison as its president.

(a) The Commission rejected the idea of simultaneous examination for covenanted service, and advised the abolition of the statutory civil service.

(b) It proposed that a number of pasts, hitherto reserved to covenanted service should be thrown open to a local service to be called the Provincial Civil Service, which would be separately recruited in every province either by Promotion from lower ranks or by direct recruitment.

(c) The terms covenanted and un-covenanted were replaced by Imperial and Provincial, and below the latter would be Subordinate Civil Service. The recommendations were accepted. The covenanted civil service was hence forth service was called after the particular province, as for example, the Bengal Civil Service. A list of posts reserved for the Civil Service for India, but open to the new provincial service, was prepared and local governments were empowered to appoint an Indian to any such "listed post".

In other branches of the administration such as Education, Police, Army, Public Works and Medical Departments, too, there were similar divisions into imperial, provincial and subordinate service. The first was mainly filled by Englishmen, and other two almost exclusively by Indians.

A MAJOR TURNING POINT

Indian independence marks a major turning point in the history of its police. The event marks the transition of India police from a colonial heritage to a democratic character. The change has momentous impact on the spirit, character and objectives of the organization. The basic interests of a colonial police are the perpetuation of the colonial rule wherein matters ectogeneous to the interests are treated secondary. In a democratic police, the foremost objective is upholding the interests of the country, its people, its democratic heritage and the sanctity of the constitution. This is a formidable responsibility. Maintenance of order, rule of law, security of the people, safety of the national properties and interests, prevention of offences and investigation of crimes sit squarely on the sturdy shoulders of a democratic police. Its allegiance shifts from the rulers in a colonial rule to the people, the interests of the country and its constitution in a democracy. The shift is basic to the character, job culture, functional values and the organizational gestalt of the police force.

The word police is derived from the Greek work "Politeia" or its latin equivalent "Politia". "Politia" is latinisation of Greek word "Politeia" which is derived from "polis" or city-State and which means "Citizenship, Administration or Civil Polity". In Latin, "Politia" stands for State and administration. Hence, the word police is a body of State or administration which involves civil servants whose duty is the preservation of order,

prevention and detection of crime and enforcement of laws. Today, the police is designated as the "executive civil force" of the State which is entrusted with the duty of maintaining public order and of enforcing regulations for the prevention and detection of crime. In other words, the police is a constituted body of persons, empowered by the State to enforce the law, protect property and limit civil disorder.[6] A dictionary of the French and English Tongue, published by Randle Cotgrave in 1611, defined the verb policier as 'to order, govern, rule advisedly', while police itself meant 'civil government' and generally the government of a city or a town. In France, over the next two centuries, 'police' began to attach itself with specific tasks mainly concerned with the management and good order of urban areas.[7]

Alternative names for police force, used in different countries include constabulary, gendarmerie, police department, police service, crime prevention, protective services, law enforcement agency, civil guard or civic guard. Members of the police force are often termed as police officers, troopers, sheriffs, constables, rangers, peace officers or civic/civil guards. In Ireland, the police personnel, are called the Garda Síochána i.e. guardians of the peace.

As far as the function and the role of the police is concerned, conventionally, the police is designated as the executive civil force of the State which is entrusted with the duty for maintaining public order and enforcing regulations for the prevention and detection of the crime. But, this role is developing into a multi-functional and multidimensional affair in the contemporary world. Today, the police is expected, not only to act as a negative enforcement agency, checking all sort of crimes, but also seen as a positive agency which is indulged in community policing and contacting people of social front for making reforms.

THE EVOLUTION OF THE POLICE

The evolution of the police can be traced back to ancient civilizations like China, Greece, India and even the epoch of Roman Empire. Law enforcement in Ancient China was carried out by "Prefects". The notion of a Prefect in China has existed for thousands of years. Prefects were government officials appointed by local magistrates, and these Prefects usually reported to the local magistrate, just as modern police report to the judges. Under each Prefect, were "sub-prefects" who helped the law enforcement agency of the area? Some Prefects were responsible for handling investigations, much like modern police detectives collectively.[8]

In Ancient Greece, publicly owned slaves were used by the magistrates as police. These slaves were used to guard public meetings, to keep order and for crowd control, and also assisted with dealing with criminals, handling prisoners, and making arrests.

Other duties associated with modern policing, such as investigating crimes, were left to the citizens themselves. During the period of Roman Empire, the policing existed in the form of local watchman, hired by the cities to provide some extra security. These watchmen were known as "Vigiles".[9]

Modern police in Europe has a precedent in the Hermandades or "brotherhoods", peacekeeping associations of armed individuals, a characteristic of municipal life in medieval Spain.[10]

France, Britain and Ireland have made special contribution in the evolution of modern policing. In France, the police system is the direct descendant of the 'Marshalcy' of the ancient regime, commonly known by its French title, the 'Maréchaussée'. The Marshalcy dates back to the Hundred Years War whereas some historians trace it back to the early twelfth century. During the revolutionary period, Marshalcy commanders generally placed themselves under the local constitutional authorities. As a result, the Maréchaussée, whose title was associated with the king, was not disbanded but simply renamed gendarmerie nationale in February 1791. Its personnel remained unchanged, and its role was significant. However, from this point, the gendarmerie, unlike the Marshalcy, was a fully military force.

The first police force in the modern sense was created by the government of King Louis XIV in 1667 to police the city of Paris, the largest city in Europe at that time. The royal edict, issued by the Parliament of France on 15 March 1667, created the office of Lieutenant General de Police (Lieutenant General of Police), who was to be the head of the new Paris police force, and defined the task of the police as "ensuring the peace and quiet of the public and of private individuals, purging the city of what may cause disturbances, procuring abundance, and let each and everyone live according to their station and their duties".[11]

After the French Revolution on 12th March, 1829, a government decree created the first uniformed police in France, known as Sergents de Ville (City Sergeants), which the Paris Prefecture of Police's website claims, were the first uniformed policemen in the world.[12]

The history of policing in England has special significance for India as Indian police system is the legacy of the British colonial system. Hence, to understand Indian police system, it will be worthwhile to analyse

the evolution of the police system in England. In United Kingdom, the development of police forces was much slower than in the rest of Europe. The function of the British police was performed by private watchmen, which existed from 1500 onwards, thief-takers and so on. The former were funded by the private individuals and organisations and the latter were granted rewards for catching the criminals who would then be compelled to return stolen property or pay restitution. The word police was borrowed by the Britishers from the French people. The word and the concept of police itself was "disliked dubbing it as a symbol of foreign oppression".[13] Before the 19th century, the first use of the word police, recorded in government documents in the United Kingdom, was the appointment of Commissioner of Police for Scotland in 1714 and the creation of the Marine Police in 1798 (set up to protect merchandise at the Port of London). This force is still in operation today as part of the Metropolitan Police and is the oldest police force in the world. Even today, many British police forces are referred to officially by the term "Constabulary" rather than "Police". The police force got constituted in Scotland under the Glasgow Police Act as passed on 30th June, 1800 and the first organized police force in Ireland came about through the Peace Preservation Act, 1814. The Irish Constabulary Act of 1822 marked the beginning of the Royal Irish Constabulary. On 29th September, 1829, the Metropolitan Police Act was passed by the British Parliament, allowing Sir Robert Peel, the then Home Secretary, to constitute the London Metropolitan Police. This promoted the preventive role of police as a deterrent to the urban crime and disorder.[14]

The third pillar of the British imperialism in India (the first and second being the civil service and army respectively) was the police. It was through this instrument the Mai–Baap 'myth' of the British administrators was created which in a way helped the British Imperialism to build a 'cultural hegemony' over ever quarrelling masses of India, a mere geographical expression, they claimed and legitimized. Though 'a system of circles or Thanas headed by Daroga with its sepoys was rather a modern concept, evolved once again by Cornwallis, but a two–tier police administration with the Nazim or Governor at the provincial headquarters and the Faujdar with a contingent of military police in the district, a primitive police system was present even in Mughal period.

The existence of a local subordinate functionary called Shigdar is referred to at places but he does not seem to form a part of the regular hierarchy of police officials. The other significant character to Mughal 'proto–police system', i.e. the existence of a 'non–official peace–keeping force',

intended primarily for the land revenue collection but also invested with the responsibility of law and order, had its root in the village system. With the disintegration of central authority of the Mughals, the official and private instruments of the police began to work at cross–purposes, the latter becoming increasingly independent of the former especially in the districts under the Zamindar or revenue–farmers' leadership. With the arrival of the British on the Indian political platform, the system of official and un–official police system, working for cross–purposes, needed a change for the obvious reasons. But the Daroga system introduced by Cornwallis in 1792 did not remain limited to reducing the non–official apparatus to the 'original intention' of the instruction. The private system was struck off. The Zamindars and farmers were altogether divested of their local responsibility and were asked to disband their militia. The police Daroga of Cornwallis, who stepped into the position previously occupied by Zamindari Thanedars, became a direct instrument of Government operating under the direct control of the English magistrate. The authority of Daroga extended to the village watchmen and although their appointment and emolument remained for time being with the Zamindars, it was not long before they became stipendiary servants for the Government. The village Militia, which under the Mughals were paid and controlled by the community, became the stipendiary servants of government under British. The agency through which the change was brought about was that of the police Daroga. In the big cities the old office of Kotwal was, however, continued, and a Daroga was appointed to each of the wards of a city.

Another important feature which distinguished the police reforms of British was the introduction of a coordinating agency under special and expert control exercisable over a group of magistrates by a separate civilian superintendent of police appointed in 1808 for the divisions of Calcutta, Dacca and Murshidabad and in 1810 for those of Patna, Benaras and Bareilly. It was a controlling function which later came to be rested in the Divisional Commissioners appointed under Regulation I of 1829. Earlier under Mughals, there had been no such agency between the Faujdar and Nazism. The search for a general system of police for the whole of British India proceeded in 1860 from two main considerations, efficiency and economy. A police force had been organized for Punjab in 1849 on the lines comparable to those of Sind. It consisted of a military preventive police and a civil detective police. In 'Mutiny', this force contributed effectively to the restoration of order. But it involved serious financial burdens, and the financial crisis that followed the; Mutiny' necessitated an

immediate reduction of cost and therefore a commission was appointed. The Commission (1860) recommended:

> The abolition of the military police as a separate organization and the constitution of single homogeneous force of civil constabulary for the performance of all duties which could not properly be assigned to its militarily arm.

The discipline and internal management of the force so established was to be vested in an Inspector General of Police. He was to be assisted by a District Superintendent in each district, with an Assistant Superintendent in case the size of a district happened to be unusually large, both these officers being European, and the I.G. being, on occasion, of the Indian Civil Service, and sometimes an officer of the police department created for each of the provinces.

The subordinate force below them was to consist of inspector, head constables, sargents and constables; the head constable being in–charge of a police station, while the Inspector, of a group of such stations.

The village police was to remain an official apparatus.

It was specifically laid down that Divisional Commissioners should cease to be Superintendents of police.

On the question of the relation between magistracy and the police the commission made it clear that no magistrate of rank lower than the District Magistrate should exercise any police function.

The Commission submitted the draft of a Bill on the pattern of Madras Police Act (1853) to give effects to its recommendations, and this was passed into Act V of 1861. The importance of the traditional co-operation of the community was thus completely lost sight of, and responsibility for all police work was entrusted on regular police officers at subordinate levels who were for the most part untrained and ill–educated. Once again, the Indians were excluded from all superior posts due to the very logic of imperialism. The police was, on the whole, unsympathetic to the native population which was obvious, for they were not meant for restoration of law and order to promote Indian interests, but they wanted to restore it to make it possible and possible for further unending process of 'colonial' exploitation and 'drain of Indian wealth' to the mother country, the shop–keepers of the world, the 'Great Britain'.

In United States of America, the police system is mostly based on modern British model. But the role of the police got new dimensions here. After

the civil war, policing became more para-military in character, with the increased use of uniforms and military ranks. In 2005, the Supreme Court of the United States ruled that the police do not have a constitutional duty to protect a person from harm.[15] The contemporary concept of community policing or a police system with more social role evolved in the US. Other roles or branches of policing like police detective, police with auxiliary administrative duties and specialized police units like bomb squad, are also the result of ever emerging needs of the modern State and society.

Today is the age of internationalism or globalization. Hence, the international interactions have increased manifold, giving birth to new threats to the human rights.

This has generated the need for international policing or global role of police. In United Nations, the policing is playing an important role in peace keeping missions. The international community seeks to develop the rule of law and reform security institutions in States recovering from conflict.[16] In the mid of 1990s, a new term "Transnational Policing" has emerged, which mention the policing that transcended the boundaries of the sovereign nation-State.[17] Transnational policing pertains to all those forms for policing that, in some sense, transgress national borders. This includes a variety of practices. But cross-border police cooperation, criminal intelligence exchange among police agencies working in different nation-States, and police development-aid to weak, failed or failing.

The cross-border policing has a long history in Europe. The setting up of 'Interpol' before the Second World War, is one such example. Apart from this, the cross-border exchange of information had also been frequent. In 1992, the Schengen Treaty took place. It formalized aspects of police information exchange across the territory of the European Union.[18]

WORLDWIDE TRENDS

The cardinal question is how far Indian police in the democratic ambience worked –out its adaptations to the new situation and zeitgeist. Half a century should suffice for a fair and complete assessment. The developments Indian police underwent in this period can either be due to the worldwide developments in the field of policing and police system as a continuing process or due to the adaptation of Indian police from the colonial heritage to the democratic vintage. The evolution in worldwide policing practices and police system in the latter half of the 20th century itself is portentous. National security activities gained primacy neck and shoulder above

the crime and law and order functions. With it came the gray areas of clandestine operations across the countries. Police shed their uniforms and threw laws and morals to the wind in pursuit of national security policy. They became international players, hopping from country to country in disguise, committing murders, overthrowing governments, forging passports, shipping weapons, training rebels, spreading, disaffections, organizing violent protests etc in the interests of their own countries.

Indian model of police organisation is an example for a multiple unorganised decentralised policing. In sharp contrast to the British principle of policing by consent, India follows policing by law. Each state has its own police force, whose top echelons are filled by officers of Indian Police Service, which is a central service. Many analysts have commented that the Indian Police Act, 1861, which was brought into force immediately after the First War of Indian Independence in 1857 was based on distrust of Indian officials and was aimed at ensuring strict control over the Indian population. Even after attaining independence, successive governments did not try to change this basic character of Indian Police force. Though the framers of the Indian Constitution envisaged police as a state subject, vide Article 246 read with entries I & 2 of List II of Seventh Schedule of Indian Constitution, most Indian states opted to adopt the Indian Police Act, 1861 without any change, while the very few states, including Kerala which opted for Police Act of its own, modeled its statute broadly based on the Indian Police Act, 1861 itself. Even the model Police Act, 2008 does not have any basic difference from the philosophy of Indian Police Act, 1861.

While we can broadly classify the Indian Police organisation as a multiple, un coordinated, decentralised model, the presence of IPS officers at the top ranks of most police forces create an oblique Centralised control.

The quasi-federal character of the Indian polity, with specific provisions in the Constitution, allows a coordinating and counseling role for the Centre in police matters and even authorizes it to set up certain central police organisations.

The head of the police force in each state is the Director General of Police (DGP) – responsible to the state government for the administration of the police force in each state, and for advising the government on police matters. The DGP represents the highest rung in the police hierarchy.

The hierarchical structure of the police in India follows a vertical alignment consisting of senior officers drawn, by and large, from The Indian Police Service (IPS) who do the supervisory work, the “upper subordinates”

(inspectors, sub-inspectors, and assistant sub-inspectors) who work generally at the police station level, and the police constabulary who are delegated the patrolling, surveillance, guard duties, and law and order work. The constabulary accounts for almost 88% of total police strength.

Section 3 of the Police Act, 1861 vested the superintendence of the state police force in the state government.

A system of dual control at the district level is introduced under Sec. 4 of Indian Police Act, 1861. It places the police forces under the District Superintendent of Police, but subject to the "general control and direction" of the District Magistrate. The draft Police Act, 2008 apparently tries to change this dual control.

NATIONAL SYSTEMS OF CRIMINAL JUSTICE ACROSS THE WORLD

There are major variations among the criminal justice systems of the nations of the world. These national systems, moreover, have undergone important transformations over the course of history. Research has focused attention on such broad comparisons across the world and over time.

Important differences exist between Western systems of criminal justice and their non-Western counterparts (see Adler, 1983; Ebbe, 1996; Fennell, 1995; Fields and Moore, 1996). Within Western nations, there are variations in the conceptions and goals of criminal justice, but they largely represent variations on a similar theme, especially when compared with other criminal justice systems in non-Western settings. For example, research has analyzed the roots of the United States system in Anglo-Saxon legal culture and explored the differences that have come to exist between contemporary systems that evolved in that tradition, such as in Canada and England. In a comparative analysis of pretrial prejudice in the Canadian and U.S. Judicial Systems, for instance, Vidmar (1996) notes that the Canadian legal system, unlike the American system, stresses the right to a fair trial over the rights of a free press, manifested in the judge's right to ban the public and the press from the courtroom if it is deemed to be in the best interest of public morality or necessary to maintain order.[19]

Similarly, McKenzie (1994) brings out differences within Anglo-Saxon systems, emphasizing the different legal ideologies of criminal justice in the United States and the United Kingdom. McKenzie found that the U.S. system relies on a due process model that emphasizes the rights of the defendant, while the United Kingdom's crime control model stresses the

function of criminal justice to punish the guilty.[20] In a similar vein, Hirschel and Wakefield (1995) note some marked differences between courtroom procedures in England and the U.S., setting England's structured system of barristers and solicitors apart from the informal, sometimes televised proceedings in the United States.

For the most part, the functions of police organizations – and the jobs of police officers – are the same or similar from country to country. Whether you're in Russia, New Zealand, the United States or Argentina, police officers are responsible for maintaining public order; ensuring safety and security and preventing and investigating crimes. The differences become apparent when you begin to look at how those organizations are constituted, the equipment they use, and they ways in which they go about their jobs. Perhaps the most striking difference in policing between the various nations is the structure and organization of the police system itself. These differences are broadly categorized as *centralized* and *decentralized*. These terms refer to the number and authority of police organizations within a country and the specific role of those agencies.

Comparing different but related systems of criminal justice, researchers often suggest how one system can learn from the other. Thus, comparing the U.S. and French criminal justice systems, Frase (1990) suggests that the United States might adopt from the French system a variety of features such as: more careful selection and supervision of police, prosecutors and judges; more effective regulation of prosecutorial charging discretion; and increased use of alternatives to plea bargaining.

The United States reflects a decentralized system in which there are multiple levels of law enforcement and police services, all of which are essentially independent from each other. In the U.S., every political subdivision has the ability to provide police services, so that almost every city, town, village, county, and state has at least one and possibly multiple law enforcement agencies, all of whom operate within their own chains of command. While these organizations often cooperate and operate in concert with each other, they also perform overlapping and duplicative services and are not formally responsible to one another. The U.S. Department of Justice estimates that there are approximately 17,000 different police forces within the U.S., making the nation perhaps the most decentralized country in the world with regard to policing. In contrast to the decentralized model seen in the U.S., Sweden employs a completely centralized police force, in which only one agency – the Rikspolis – is responsible for providing law enforcement, policing and investigative services to the entire country.

More important than such suggestions —which may remain without real consequences— are the various trends of convergence between criminal justice systems across different countries, which researchers have found to have been taking place in recent decades. For example, describing differences between the U.S. and U.K. systems, McKenzie (1994) notes that the United Kingdom has shifted towards adopting a due process model, while the U.S. increasingly employs crime control strategies.[21]

Likewise, Zedner (1995a) discusses shifts in criminal justice ideology in Britain and Germany and notes that the once more liberal penal ideology of Britain has moved to a harsher approach, as manifested, for instance, by adopting tougher noncustodial sentences and longer custodial sentences. In contrast, Germany's traditional harsh system of penology has recently shifted towards adopting more lenient strategies, which are manifested in a lessening of prison time and an easement of sentences.[22]

In similar vein, research from Harding and associates (1995) found that the British and Dutch systems of criminal justice have also converged inasmuch as the criminal justice procedures in the two countries are being harmonized as part of a broader plan of so-called Europeanization, i.e. a harmonization of criminal justice in the countries of the European Union. The authors note that transnational efforts such as reform practices based on an international human rights discourse have facilitated this assimilation trend, even though the legal systems of these nations are based on distinct ideologies.[23]

While the U.S. and Sweden are the opposite extremes, many countries demonstrate varying degrees of centralization. In Canada, the Royal Canadian Mounted Police are responsible for providing policing to every province with the exception of Quebec and Ontario, which provide their own provincial police forces. Other nations have regional or state police forces that are separated by geography or by roles and responsibilities.

Beyond the differences among criminal justice models that are applied in the Western world, there are important variations between Western and non-Western systems. Allen (1993) applies a convenient model that distinguishes between four systems of criminal justice: Common, Civil, Islamic and Socialist systems. Common law systems, for example, in the U.S. and U.K., are adversarial-based, involving two opposing sides of a lawyer representing the defendant and a prosecutor representing the people.[24] The common law system typically relies on prior court decisions as precedents to be used in later court cases. The civil law or continental system —which is applied, for example, in Sweden, Japan and Germany—

is an inquisitorial model that typically grants less rights to the accused and that operates on the premise that pre-trial inquiry and application of written law should guide society's quest for justice. Islamic law, which is prevalent in Arabic countries, is rooted in religious values and derives its premises from the Koran. Saudi Arabia, for example, has a criminal justice system that is completely integrated with Muslim religious culture (Adler 1983). Socialist systems, finally, reflect a Marxist-Leninist ideology that views the criminal justice system as a means of training a nation's people to fulfill the responsibilities the state has proclaimed to be ideal.[25]

Comparative criminal justice research has also devoted attention to the variations that exist between nations because of their different backgrounds in terms of cultural values and political ideas. For instance, the specific characteristics of the criminal justice systems of socialist countries have also been investigated. Epstein and Wong (1996), for example, have analyzed the implications of the concept of dangerousness in the People's Republic of China. The authors suggest that in the Chinese systems those perceived as dangerous-to-society receive harsher punishments, especially when they engage in so-called counter-revolutionary political actions or have knowledge of state secrets. Other socialist countries have similarly been found to apply harsher forms of punishment than exist in democratic nations (Arthur 1996).

Besides the way ion which law enforcement is organized, the next big difference is the way in which the criminal justice system is executed. Similar to the American criminal justice system, every nation has some semblance of court, corrections and law enforcement component, but the authority of officers to make arrests, conduct searches or even make traffic stops with or without reasonable suspicion or probable cause differs significantly. Police in the United States cannot even temporarily detain a person without having at least reasonable suspicion that the person has committed, is committing or is about to commit a crime. They cannot make an arrest unless they have probable cause to believe that a crime has been committed and that the person they are arresting committed it. By contrast, in many countries in Europe and elsewhere, you can be arrested just on suspicion of a crime. For this reason, arrests in and of themselves are not as devastating as they are in the U.S., where arrests are only made when a person is going to be charged with a crime. Court procedures, too, vary widely from nation to nation, as do individual rights with regards to the legal system.

The State is duty bound to provide a judicial system coupled with enforcement agencies and a redressal system for creating a civil environment

under which every individual can enjoy his rights and liberties. This also includes a good criminal justice system. Criminal justice administration provides legal arrangements and procedures through which a citizen can seek justice in case of the violation of his rights and he can also seek appropriate compensation and redressal for it.[26] As defined in the report of the Committee on Draft National Policy of Criminal Justice, "the Criminal Justice means the criminal law, the criminal procedure, the institutions of enforcement of the criminal law and the personnel involved in administering the system. Its objects are prevention and control of crime, maintenance of public order and peace, protection of the rights of victims as well as persons in conflict with the law, punishment and rehabilitation of those adjudged guilty of committing crimes and generally protecting life and property against crime and criminality." Criminal Justice System includes certain multiple sub-systems such as the police, the prosecution, the judiciary, the prisons and a number of co-existing social control mechanisms outside the formal State system. It is important that for a successful Criminal Justice System each of these sub-systems accomplish a desirable degree of efficiency and effectiveness in supporting the mission of freedom from crime. The main sub-system of the criminal justice administration are further governed by three independent elements, namely (a) the laws, substantive and procedural; (b) the institutional structure set up to enforce and administer the laws, in each sector; and (c) the quality of personnel who are entrusted with the job of administering the institutions.[27]

The Indian criminal justice system evolved in the course of its long history from the Hindu period onwards. In ancient India, the concept of crime is explained in Rigveda and developed further by Manu in Manu Samriti.[28] Manu charactirised the crime into 18 different categories. The Rigveda defines the concept of "Jivagrib" as a person with the duty to control the crime. Similarly, Manu specified that the main duty of the king is to refrain from the violence and punish the evil doers. He also mentioned about the concept of patrolling, spies system and police posts to be administered by the king. Apasthamta Dharm Sutra (600 BC to 300 BC) also explained about the crime and the code of conduct to control the crime. Kautilya in his epic work Arathasastra (300 BC), gave a detailed account of criminal administration. He also gave the concept of 'Durgpal' or 'Kotpal' as special officials with the duty to control the crime. He also emphasized over a strong 'guptachar' or spy system. This concept of criminal administration was enforced by Chandragupta Maurya and later on, Ashoka the Great also used to have a well-oiled spy system. Later, in the medieval period, the

Afghan rulers introduced the concept of 'Faugdar' or 'Kotwal' who was incharge of law and order administration with other duties like maintaining the register of all the inhabitants of his area and the Kotwal had to report it directly to the Mohasib about all the cases causing any breach of order. The Kotwal also had to perform the duty like patrolling, guarding the vintage points, maintaining the record of all the arrivals and departure of the strangers. In spite of this, there was no independent police organization which existed during this time. After the Afghan rulers, the Mughal rulers also continued with this office of Kotwal. The powers of Kotwal are well defined in Ain-e-Akbari, a book written by Abul Fazal, one of the ministers of Mughal emperor Akbar.[29] A western author Edward recognized Kotwal as a police officer, responsible for the maintenance of public order and decency in the society. According to him, Kotwal was responsible for (1) the detection of crime; (2) clamping curfew in the city; (3) fixing prices and rates of goods; (4) examining weight and measures; (5) maintaining social decency; and 6) preserving public security and order. Under the Mughals, the administration of order began to take shape in India. At the provincial level, there was a Subedar or Nazim, under whom there were many Faugdars with above mentioned duties. The Mughals also introduced rural policing and appointed Chowkidars under Faugdar, at the village level. During this period, due to administrative indifference, there was no clear distinction between the police and the army.[30] The Police as a civil force developed only during the British period. All these Muslim rulers, guided by the Quran, introduced sematic traditions and conventions in Indian criminal justice administration. But it was during the British period that the modern Indian criminal justice administration emerged. The Britishers not only introduced the western system but also blended it with the Indian traditions in this regard. The system of administration of justice in the Presidency town of Bombay was revised in 1827 and from that time, the law administered by the Criminal Courts was in accordance with the law laid down in Regulation XIV of 1827.[31] But in the other two Presidencies of Calcutta and Madras, the Mohammadan Criminal Law remained operative till the Indian Penal Code came into force. The Indian Penal Code came into operation on 1st January 1862. It was drafted by the First Law Commission of India, of which, Lord Macaulay was the President and Neeleod, Adderson and Mellet were the other members. They drew not only upon English and Indian laws and regulations, but also upon Livingstone Louisiana Code and the Code of Napoleon. The Draft Code was placed before the Governor General of Indiain- Council in the year 1837 and it was revised by Sir Barnes Peacock, Sir J.W. Colville and

others. After its completion in 1850, it was presented before the Legislative Council in the year 1856 and ultimately it was passed on 6th October, 1860. The Indian Penal Code was thus given effect to on 1st January, 1862. In the Indian Penal Code, the Criminal law of India has been codified. It deals specifically with offences, being the substantive law. For the proper trial of offences, provided under the Indian Penal Code, Procedural Law was necessary. But prior to 1887[32], there was no uniform consolidated Criminal Procedure for the entire British India. There were a few separate Acts for the Presidency towns and Provinces. Having realized the necessity of a uniform Law of Criminal Procedure, uniformity was introduced in 1882 for the whole of British India, both in the Presidency towns of Calcutta, Madras and Bombay and also in Moffussil courts. Thus, a Uniform Code of Criminal Procedure was passed in 1882. Thereafter, came the Code of Criminal Procedure, 1898, which remained operative till the present Code of Criminal Procedure, 1973, was enacted. The Code of Criminal Procedure Bill was introduced in the Rajya Sabha on 4th December, 1972 and it was passed on 13th December, 1972. The Lok Sabha passed the aforesaid Bill with certain amendments on 12th December, 1972 and again in the Rajya Sabha on 18th December, 1973, by adopting all the amendments carried out by the Lok Sabha. The Code of Criminal Procedure got the assent of the President of India on 25th January, 1974 and it came into force on 1st April, 1974.[33]

In the West, there are mainly two models for the criminal justice administration Adversarial System and Inquisitorial System. The former was adopted in the Anglo-Saxon system of England which later greatly influenced Indian system of criminal justice. Under this system, the role the of courts remains passive and the burden of proof lies on the individual. But in the Inquisitorial System, which was adopted by France and other continental nations, the courts perform the investigative role. As India is a poor country, the burden of proof over the individual can sometimes, adversely affect the delivery of Justice. From the above observation, it is clear that under the Indian criminal justice system the question of justice cannot be separated from the issue of social justice. Bharat B. Das, in his study on 'Victims in the Criminal Justice System', observed that the Indian Constitution has the signature tune of 'Social Justice' and the criminal justice administration under it, is to be geared towards the same goal. Hence, the criminal justice system can not be distinguished from the perception of human rights in the broader sense.[34] The subject of criminal law and procedure is included in Concurrent List, (Items 1 and 2 of List III of the Seventh Schedule) of the Constitution of India. Therefore, the

Union Government and the State Governments have jurisdiction over the subject. This develops a peculiar problem of different models of criminal justice system under the Union Government, State Governments and Union Territories. This can lead to the denial of natural justice to the citizens. Hence, the need was felt for a national policy on criminal justice. For this purpose, a special committee was constituted to draft the National Policy on Criminal Justice by the Ministry of Home Affairs in July 2007.[35] The committee pointed out following key elements, on the basis of which, such policy should be drafted: (a) The role of the Central and State Governments, given the scheme of the Constitution in respect of law and policy-making as well as their implementation; (b) the imperatives of human rights protection and the obligations of the State under the Constitution and international human rights instruments; (c) the changing nature of the crime and its management in the context of developments in technology, market economy and globalization on the one hand, and the shifting trends in the modern warfare strategies with proxy wars, increasingly substituting the conventional wars on the borders, on the other; (d) the implications of terrorism and organized crime which raise issues of national security; (e) the relative neglect of victims in the criminal justice system; (f) the lack of adequate data and systematic planning for better co-ordination, increased efficiency and performance evaluation of the system; (g) the special needs of weaker sections of the people in policy making and allocation of resources for the system; (h) the need for diversion, settlement and alternate ways of dealing with crime; (i) the question of deterrence and effectiveness of punishments; (j) institutional reforms in the police, prosecution, courts and the correctional services; and (k) the role of media, civil society, and NGOs in the prevention of crime and treatment of offenders etc.[36]

It is an irony that the very criminal justice administration which is meant to protect the rights, is sometimes alleged to be the violator of the rights itself. Sometimes, it fails to provide justice or redress, sometimes, it delays justice and at the extreme, sometimes, goes on to violate the rights of the citizen. The causes can be structural, procedural or practical problems and may also include the environmental factors like social and political circumstances. The focus of the present study revolves around this very aspect along with the context of the police system.

Though they may operate differently and they may be organized in a variety of ways, the goal of police officers, and indeed the criminal justice system, is essentially the same regardless of what country you're in.

To round off this review of national systems, a word needs to be said about systems of criminal justice in Africa. Arguably the one continent of the world that has experienced the most radical changes since the past century, Africa has criminal justice systems facing special circumstances because of the dual heritage of colonialism and traditionalism. Colonialism refers to the time when many countries in Africa where occupied by Western countries such as England and France. Traditionalism relates to the conventional values and ideas that have historically prevailed in the continent. During colonial rule, Western powers introduced values and criminal justice systems that had not evolved spontaneously in the African context, leading to tensions and conflicts within the system. Traditional African values are similarly in tension with more modern notions that may have emerged, especially among the younger generations. These problematic conditions lead to a condition of inconsistency in the criminal justice system. In a study of criminal justice in Sierra Leone, for instance, Thompson and Potter (1997) note conflicts that exist between traditional or customary law and English-imported law. Similarly, Adler (1983) discusses the case of Algeria where a French-imported system of law is attempted to be combined with Socialist principles and Islamic culture.[37]

These and other transformations indicate that it is crucial to look at national systems of criminal justice not only in terms of broad comparisons across regions of the world, but also in historical terms as being subject to transformations over time. Particularly in recent decades, criminal justice research has therefore centered on patterns of change, increasing interdependency between national systems, and lasting problems of multiple traditions of criminal justice. In the next section, more specific forms of these transformations are discussed in terms of recent political and economic changes.[38]

THE STATE AND FUTURE OF COMPARATIVE CRIMINAL JUSTICE

It is undeniable that comparative research on criminal justice is a rich tradition which has made important progress over the years. The benefits of a comparative focus may be especially felt in the current era of globalization, which has brought countries of the world more closely together. A comparative outlook, moreover, has been fruitful for research as well as teaching, as is shown by the many educational texts that are now available (see Dammer and Reichel, 1997; Deflem, 1998; Fairchild 1993; Reichel, 1999; Terrill, 1997). Providing clarity in approach and

presentation, comparative criminal justice research can also hope to be useful for the policy questions that confront countries in matters of crime.[39]

A variety of styles and perspectives can be followed in comparative criminal justice research, focusing on one or more components of the system, on two or more countries, in more or less recent times. Based on a model suggested by John Vagg (1993), at least four interesting goals of comparative criminal justice research can be distinguished (Vagg, 1993). First, it can make efforts to link crime trends to social, economic, or political denominators in different countries. Second, it can make direct comparisons between countries in terms of a particular question related to one or more aspects of criminal justice. Third, it can strive to produce broad generalizations and generate policy recommendations. And, fourth, it can detail a wide range of consequences and problems that flow from a particular regional development.[40]

Clearly specifying the goals of research is a first and necessary step towards the development of any sound strategy of criminal justice research, but some issues are specific to research of a comparative nature (Meyer, 1972; Zvekic, 1996). Arguably the most important consideration in comparative criminal justice research is to recognize the possibly country-specific impact of cultural, social, economic, and political contexts on the researched criminal justice systems and, by implication, on the research findings. In other words, what works in one country may not necessarily work in another. The variable influences of the wider societal context of criminal justice systems should therefore remain of primary interest, especially when suggestions are made to transpose or somehow learn from criminal justice policies abroad.[41]

Furthermore, as Hirschel and Wakefield (1995) remark in their study of English and U.S. criminal justice systems, both similarities and differences have to be documented and weighed over and against one another. Moreover, as John Vagg (1993) points out, social, economic and political conditions will influence how the data on criminal justice in various countries are to be treated and utilized. The variable conditions, therefore, have to be carefully specified in order to properly contextualize research data.[42]

Additionally, researchers should be clear about the relevant variables to be considered and should be aware that certain issues may not have an impact in one particular jurisdiction but may have relevance in other settings (e.g., Pampel and Gartner 1995). Also methodologically relevant are concerns of measurement error in countries with less autonomous research

traditions, cross-national disparities in legal and research definitions, failure to operationally define relevant dimensions of inquiry, disparity in data collection procedures and availability of data, and linguistic problems (Meyer, 1972; Vagg, 1993; Zedner 1995b).[43]

Providing one remains sensitive to these important methodological issues, it can be possible, as comparative criminologist Freda Adler (1996) recently argued, for comparative criminal justice research to respond adequately to current conditions that have transformed and will continue to transform the world from a mere collection of separate nations into an interconnected and interdependent global system. Under those circumstances, a comparative approach to criminal justice may also hope to usefully contribute to offer solutions to the dilemmas and challenges that face criminal justice systems across the globe.[44]

The authority of police comes from the people- their laws and institutions. Police agencies are not only part of the community but also part f the government, which determine their formal base of authority and of criminal justice system, which determines society's course in deterring lawbreakers and rehabilitating offenders. In a Constitutional system, the ultimate authority springs from the Constitution itself. The authority of police in every jurisdiction is derived from the sovereign authority – it could be either the Constitution which gives the elected government executive authority over the subjects or the "grund norm" which gives the sovereign authority over its subjects devoid of any written constitution.

SECURITY CONSCIOUSNESS

Indian police could not lag behind. Moving pari passu with the world trend is basic for survival. The consequence was the rising prominence of security activities at the cost of both the prevention and detection of crimes and the law and order functions. A craze for VIP and VVIP security is the Indian manifestation of the new security consciousness. World-wide rise in terrorism gave way for specialisation in anti-terrorist operations all over the world. Crack-forces became the spine of the security police. Anti-hijack squads were organized as an elite force of the police. Advances in science and technology made national security a high-tech field. Satellites, modern communication systems, high resolution photographics, laser beams, night vision systems, computer technology etc. made national security highly advanced and complex operations. The international developments only marginally touched Indian police for lack of will to be a major player in international clandestine warfares. The only real concern of

Indian police more suo in the last half century was VIP and VIPs security. Here too, performance did not match the concern as many of its important leaders including those occupied top positions of Prime Minister and Chief Minister fell prey to assassins.[45] Indulgence of Indian police in form in lieu of substance, in number in place of efficiency and in display where subtle moves were en regle led to the grave failures. The popular axiom of Indian police to this day is that larger the number, better the security. Motto is countering security threats with counter threats; or better, meeting security gauntlets with the show of muscle power. The approach is the antithesis of modern perceptions and theories of security policing. In Indian ambience, VIP security has become a fanfaronade; a procession of sound, light and motions; a festive assemblage. Tragically, it is happening at the cost of law and order functions and more so, at the cost of prevention and detection of crimes.[46]

The role of police is to address all sorts of problems when and in so far as their solutions do or possibly require the use of force at the point of their occurrence. Manning remarks that "...policing is an exercise in symbolic demarking of what is immoral, wrong and outside the boundaries of acceptable conduct. It represents the state, morality and standards of civility and decency by which we judge ourselves. The organisation of police in different countries is primarily rooted on the socio-cultural and historic background of the country. For example in UK which has long tradition of parliamentary democracy, policing works on the principle of consent by the population, where as in most other countries, policing power is vested on state by law.

As such the police organisations have nothing in common in many countries except their basic goals (in some jurisdictions even these goals do not match!). However criminologists have tried to bring out common features in police structures world over on the basis of certain features, the most prominent of them being the command architecture.

MUSICAL CHAIR

The situation is tardier in law and order functions. Obvious powers and tremendous avenues for illgotten money make law and order jobs hotly sought after posts. Politicians and people in power are the bestowers of these jobs on favourite few. Result is the desperate concours of police officials of all ranks to aggrace politicians and people in power to corner right spots in the musical chair. The ragmatical situation leads to law and order functions losing the edge of fairness and objectivity in efforts to keep

right people in right side. This is how law and order police become law for themsleves or for their political masters against the raison d'etre of a law and order machinery. The situation breeds corruption and encourages partisan policing. Law and order duties being closely interlinked with the everyday life of the people, police on the duties come in contact with them everyday and present the image of the entire police force. The *hors la loi* image, corruption, inefficiency, meekness before the mighty, insensitivity, arrogance and immanity to the *hoi polloi*, these are the cornerstones of the epinosic image, the law and order police spawned for the benefit of the Indian police.[47]

LOSS OF CREDIBILITY

Fences itself grazing the field in law and order policing led to the debasement of moral values in public life. Money power became the effective counterpeise against the arms of the law and the state power. Making money by any means became the secret of success. Frauds and corruption became lucrative business. Governance was commercialised and State power became a venal commodity. Administration process became a scelerate and police lost credibility. People were forced to pursue illegal and unwholesome means in their dealings with the State and the police for survival. Laws as means of the state power became loathsome objects for the commonman. This spread unrest and protests and violent agitations became the order of the day. The people and the police found themselves pitted against each to break the other.[48] Violent protests led to violent suppressions by the police. Hatred spawned hatred and violence begot violence. This is where India stands today. Violence by dalits, attacks by Naxalites, terrorism in Punjab and Kashmir, gangawars in Bombay and Bangalore, lawlessness in Bihar and UP or enlevements by ULF activists speak of the symptoms of the same malady namely lawlessness in the law and order police that divellicate from its raison d'etre.

CHARTER OF PRIORITIES

The pressure of law and order functions and importance of VIP security sidelined prevention and detection of crimes to a minor responsibility in the charter of priorities of the Indian police. Preventive techniques saw no updating from the mechanical motions of the pre-independent vintage. Prevention is forgotten in the pressure of other works. Indian police come to picture only after a crime is committed for detection. Here again, investigations are hijacked by political and money muscles.

CRIMINAL JUSTICE SYSTEM

Too many cases under investigation with investigators is a serious misease of Indian crime investigation field. Work-pressure leads to cursory investigation. Third degree methods are adopted for easy results. The malfeasance itself is a black-mark on Indian criminal justice system. Corruption and political pressures lead to miscarriage of justice. Cases are taken up for investigation, investigated and chargesheeted according to political conveniences. Bails, arrests, searches, pace of investigation and timings of the chargesheet or final report are subject to the equation between the head of the investigating team and the head of the government. This is the situation at all levels including the premier investigating agency of the country.[49] Case diaries were tampered at highest levels before sent to courts. Intentions of chargesheeting political heavyweights were declared to media before legal compulsions of such a sensitive act was met. Cases of political significance were chargesheeted on filmsy grounds and later equitted by the court. Inaction in some cases in part of the apex investigating agency of the country led courts to monitor investigation of the cases and warn of contempt proceedings for non-compliances. The apex court of the country observed about the conduct of the heads of the premier investigating agency of the country that "there appears to be too many officers bitten by the publicity bug…Inefficiency appears writ larger than performance."[50] When the head of the agency was removed from his position for misdemeanour, the media of the country fished in the troubled water to sensationalise the issue; the apex court was constrained in the matter to observe that his removal should have come earlier. This is the egarement to which Indian police condemned its criminal justice system.[51]

INDIFFERENT POLICE ADMINISTRATION

There should be a single root for the general fall of standards in Indian Police. It is insensitive and indifferent police administration, lacking in all branches of administration, be it planning, organization, coordination, direction, execution, control or research and development mechanism. The cause of atrophy lies more in negative schemings than in lack of a positive face. Haphazard organizational growth as responses to the time to time pressures sans elements of foresight and detailed planning, corruption in selection and recruitment procedures, sham training practices, non-existent inter-branch coordination, apocryphal infrastructure, directionless directions, self-serving decisions, deviant control mechanisms, perverted assessments and farcical research and modernisation programmes have all added to the poor standards of Indian police today. Huge budget allocations

made for police are want-only frittered away without accountability. Precious human resources are wasted away with frivolous and mischievous games in career planning programmes sans thought or seriousness. The culprits of these shoddy affairs vary from the top-brass of the police to the fonctionnaire in the government to the so called professional outfit, the egregious Union Public Service Commission. Incompetence is writ large in their approach to police administration. Their failures and mischiefs in managing human resources seriously affect the interests of an organization based on human resources like the police.[52]

GLIMMER OF HOPE

Not that all is bad. Occasional good works are there. The role of Indian secret police in liberation of Bangladesh is the *tour de force* of Indian clandestine operations. So to lesser extents are the successes in containing activities of LTTE cadres and Sikh and Kashmiri militants. India showed considerable presence of mind in Afghanistan front also. The fear of law and a semblance of order, the law and order machinery could infuse in a country of India's size itself is a matter of credit and pride to Indian police. The unshaken trust of the plebeian on the criminal justice system of the country nonobstante the extant maelstrom in the field *per se* is its apogee and speaks volumes about the utility of police investigation in controlling crime.[53]

What is distressing is that what is done is far short of what is expected from Indian police. No country can afford to have an apollyon in its midst in the shape of a corrupt, inefficient and disorganised police force. Right leadership at the top can be the lever de rideau to bring the system to its professional senses. Such a leadership in police should rise ab intra from the very womb of the degenerate system by rupturing the womb. The walls of the womb are hard and thick in police. That is why the apotropaic process takes a long time. Till then, Indian police must boil in the broth of its own ignominy.[54]

CAUSES FOR POPULAR DISSATISFACTION WITH THE POLICE

What are the causes for popular dissatisfaction with the police and who is responsible for it? What follows are examples of popular discontent against the police. The issue is not whether all of these are absolutely true or not but whether they exist in the public mind and whether there is any justification for them.

- Police are the principal violators of the law and they get away with impunity.
- Some sections of the police are in league with anti-social elements. Consequently they indulge in selective enforcement of the law.
- Police exhibit rude behaviour, abusive language and contempt towards courts and human rights; they indulge in all forms of corruption.
- Depending on the socio-cultural status, economic power and political influences of people who approach them, police adopt differential attitudes, violating equality and human dignity.
- Police are either ignorant of the precepts of human rights or they deliberately disregard them in the matters of arrest, interrogation, searching, detention and preventive policing.
- Given the dismal record of prevention and successful investigation of crimes, the police lack accountability in protection of life and property.
- While crimes are getting sophisticated, the police are becoming less professional. There is no evidence of a collective desire within the police organization to redeem its public image.
- The police are insensitive towards victims of violent crimes. They sometimes behave rudely with victims, as if they are responsible for their fate.
- At least a section of policemen think of human rights as antithetical to effective law enforcement. They blame the law, lawyers and courts for their own inefficiency.
- Of late, some policemen have publicly shown leniency towards fundamentalists and terrorists, manifesting a dangerous threat to security and constitutional governance.[55]

No honest person within or outside the police could totally deny the charges. Of course, they can give alibis and explanations that may or may not be acceptable to the public. Well thinking persons should acknowledge the existence of such perceptions in a wide spectrum of the citizenry and must work out strategies to remove them progressively in the interests of public service and professionalism. Those who do not want the situation to change will continue to provide excuses and explanations accusing others in society or in the criminal justice system for the malady. The tragedy is that unlike other departments of the government, if policing tends to become lawless, the very foundations of democracy are in jeopardy,

development subverted and the country's integrity compromised. Hence the urgency to reform the police and their style of functioning.[56]

It is a sad fact, that even after 138 years of legal existence (since 1861), Police in India are neither able to give satisfactory service to the people, nor able to win public approbation. Compared to other wings of Public Administration, Police have a very poor image. Notwithstanding the fact, that since Independence, Police have stood as a bulwark against the Forces of disintegration and faced successfully the threats to National integrity and Sovereignty and thousands of Policemen have sacrificed their lives in the process, in public minds, the `dark and dirty' image of Police remains.[57]

It is a truism that the quality of life in a Democracy is directly related to the quality of Police Service it has. An ethical, lawful and people-friendly Police service is the hallmark of a liberal Democracy. Judged from this standard, India has miles to go before she can proudly proclaim herself as a liberal Democracy.

Volumes have been written about the constraints that prevent Police from meeting the needs and aspirations of people. Legal infirmities like the Constitutional provisions which makes the Police a State subject: Police Act of 1861: Defects in Procedural and Evidence Acts and so on and a non-cooperative Executive Magistracy and Judiciary: Lack of Functional Autonomy and Resources are being cited as reasons for poor performance. There is lot of truth in all these, Statistics prove that Police have increased in numbers in a great deal and allocation of resources has also been abundant. Yet, we find Police have not been able to achieve their goals and objectives. In all humility, it is suggested that even if all these impediments were to disappear overnight, Police will still fail to perform. Reasons are lack of clarity in goals and objectives and infirmities in Police Administration.[58]

MISSION OF THE POLICE

In a Democracy, the Mission of the Police should be to serve the People, unfortunately, in India, the Police have adopted a contrary Mission namely 'Establishment Protection'. Considerable resources of the Police organization are being spent not on Public Order and Prevention and Detection of Crime, but for protecting and perpetuating the ruling elite. In the process, democratic dissent is stifled and Human Rights of people are trampled upon. Therefore, in the first place the Police organization should define its Mission as `Service to the People'.

CHANGE THE ETHOS

The Ethos of Police organization should be changed from 'Enforcement' to 'Enablement'. This will make the Police service a proactive social service organization. Instead of being on the look out for violators, Police should look for victims and take steps to remove the causes for their victimisation.

MEANS AND ENDS

The Philosophy of the Police organization should change from achieving their ends using all dubious and illegal means to achievement through ethical and lawful policing. To a large extent the mistrust of the Police by the public and the Judiciary is due to the fact that the Police do not apply ethical standards to the means adopted by them.[59]

PROBLEMS WITH THE SYSTEM OF POLICING

The above described system was no doubt well suited to the needs of a simple, homogeneous, agricultural community, but could not support the strain of political disorder. Extortion and oppression flourished unchecked through all gradations of the officials, responsible for the maintenance of peace and order. Both village watchman and the heads of villages, and even the higher officials, connived at crime and harboured offenders in return of share of the booty. Their liability to restore the stolen property or make good its value was disregarded; or if this obligation was enforced, neither the property nor its value was restored to the owner. Fines were imposed when a more severe punishment was called for; and offenders who were possessed of any property could always purchase their liberty. According to Sir Thomas Munro[60], "all the people, employed to keep guard are either themselves robbers or employ them, and many of them are murderers, and though they are now afraid to act openly, there is no doubt that many of them still secretly follow their former practices."[61]

Many offenders were arrested but great numbers got escaped as connivance was prevalent among the watchmen who were themselves thieves. The inhabitants were often backward in giving information for the fear of assassination, which was very common and sometimes really took place.

Where crimes have long been encouraged by the weakness of the government, by the sale of pardons, and by the connivance no reformation could be looked for.

The British period had a great impact on the modern Indian police system even in the post independence period. Not only the legal but modern Indian policing system has also inherited a cultural legacy of its colonial past. In

fact, Mr. Ashwani Kumar, the former IGP Punjab, has attributed all the present ills of the Indian police to its 'colonial hangover'.[62] However, we cannot ignore the contribution of the Britishers period in introducing the modern policing in India. The Britishers came to India in the form of colonial exploiter and they wanted peaceful and orderly conditions suitable for their mercantile interest. Therefore, peace, order and control over highway crimes were their high concerns. After gaining political control over one major portions of India, their main concern was to have a strong Centre. All this underlines the basic nature of the British police system which was basically a criminal administration system, maintained with brute use of force. Lord Cornwallis focused his attention on the reorganization of the criminal justice system through his Judicial Plan of 1790. He himself observed, "the administration of justice is oppressive, unjust and corrupt. The law administering criminal justice was also uncertain and inadequate to bring the culprits to the book."[63]

The Britishers adopted the prevailing muslim criminal law at that time. But that was a bit discrimatering in nature because a muslim murderer could not be convicted on account of the evidence from a non muslim and one muslim witness was equal to two hindu witnesses. This system was carried on by the native officials like Kazi, Mufti and Maulavis. The Britishers gradually intended to reform this traditional administration, Therefore, they handed over the powers of criminal administration to the district magistrate or the collector. Under the British system, the criminal administration was subordinate to the revenue administration and this symbolized their preference for protecting their economic interests. First of all, in 1792, Lord Cornwallis organized a separate police force under the District Magistrate of Bengal. This replaced the Zamindari and Thanedari system. Under this system, each police zone with an area of 400 sq. miles, was supervised by a Daroga. In 1793, under the Judicial Plan of Lord Cornwallis, every district was divided into zones of 20 sq miles, each headed by a Daroga, who was appointed by the District Magistrate. Under Daroga, there was armed constabulary and above him was the direct control of the Kotwal. Both Kotwal and Daroga were to apprehend the criminals and prevent the incidence of crime and to maintain peace and order.[64] Every police station under Daroga had a Moharir, a Zamandar and 10 Burkandaz[65] In 1808, the office of the Superintendent of Police was created in Calcutta, Dhaka and Murshidabad District. The area of the Superintendent was equivalent to the District Magistrate. Later on, in 1810, this system was also introduced in Patna, Banaras and Bareilly. In 1829, Division Commissioner replaced the

office of Superintendent of Police. Various police reform committees under Lord Welleasley (1801) and Lord William Bentick (1806), recommended that village police system should be given more powers in order to check the crime. In 1818, during the rule of Warren Hastings, the powers of the Superintendent of Police were expanded and the provision of preventive detention on security grounds was introduced for the first time in India.[66] In 1843, Sir Charles Nappier organized the Sind Police Force on the model of Royal Irish Constabulary. This model had a system in which the entire territory was under one Inspector General and the districts were headed by the Superintendent of Police. The latter was made responsible both to the IG and the Collector or DM. The Sind Police Force was basically para-military in nature and not a civil force. Later on, this model was introduced in other parts of British India too.[67] In 1854, the Tehsildar was empowered to exercise certain police powers and the office of the Daroga was placed under his supervision. The first war of Independence or revolt against the Britishers in 1857, gave a shock to the prevailing police system and a dire need was felt to reform and reorganize the police system. Because of this revolt, in 1858, the British Crown took over the control of East India Company which led to a qualitative change in the criminal justice system in India.

In 1860, the newly organized Police Commission submitted its report on the basis of which, The Police Act, 1861, was enacted, which was later on amended in 1895 and continued in the Independent India too. This act introduced a police system with uniform structure in India. It retained some old features, modified certain others and introduced many new things e.g. the office of the Daroga was converted into that of Sub-Inspector.

In 1860, Indian Penal Code and in 1861, Code of Criminal Procedure (Cr. P.C.) was also introduced. The Cr. P.C. was later on amended in 1869, 1872 and 1882. In 1898 and later on in 1973, a new Cr. P.C. was introduced. The Cr. P.C. explained the duties of the police in case of an offence against the State or sedition. It laid down paramilitary duties for the security of the State and maintenance of peace and public order, to the police and this was given precedence over the basic police duties of investigation and trial of criminal offences.[68] This also reflected the focus of the Britishers, as far as the nature and the functioning of the police was concerned. The basic thrust of the Police Act, 1861, can become clear by the terms of reference of the Commission which drafted this act.[69]

Following are the main points which were put before the Commission and which still govern the Indian police:

(a) the Indian police to be subject to the civil government and its functions to be civil not military;

(b) its functions to be protective (as to the public) repressive (as to criminal) and detective police and judicial functions to be separated;

(c) the organization and discipline of the force to be similar to that of the Indian Army and to be centralized in the hands of the executive government;

(d) the pay of the lower ranks to be at par with that of an unskilled labourer;

(e) the internal economy of the force to be in the hands of the police officers;

(f) only one force to be any locality not one under the police officers and one under a magistrate and;

(g) the village police to be used primarily as sources of information and not employed on executive duties.[70]

The Police Act of 1861 was the cornerstone of the police system but even after 1861, many recommendations regarding the reforms were made and even some structural changes were also introduced. In 1872, the Indian Evidence Act was introduced. In 1900, the Prison Act was enacted and adopted. In 1902, Indian Police Commission under Lord Curzon made certain recommendations and similarly in 1912, the Royal Commission recommended to make the police organization more simple and effective. In 1923, the League Commission recommended that fifty percent of the police officials should be recruited from amongst the Indians. In 1946, the Delhi Special Police Establishment Act was enacted to check the corruption in the police force. This Delhi Special Police Organization later on became Central Bureau of Investigation (CBI) under the Indian Government. In 1934, on the basis of the Police Act of 1861, the Punjab Police Rules of 1934 were introduced.[71]

Ironically, in the post independence history of India any move to change the basic framework which even remotely leads to the lessening of control over the police, has been resisted by all means. Over half a century after independence has passed and many commissions have been set up but their recommendations have not relieved the police of its negative image.

CONCLUSION

In any free society, all organs of governance or private enterprises feel a compelling need to contribute positively to the growth and progress of the country. If this is true, then, how can those who join the police, continue to be identified as a grossly negative force of oppression? Even today, the police continues to be inextricably enmeshed in and is unable to come to terms with contemporary social reality. It is increasingly becoming alien and painfully irrelevant to the current Indian situations. This is a matter of concern for all the citizens and academicians. The society too, wants these most manifest arms of governance to become more people-friendly and compassionate.

Having known the police only as a repressive, corrupt and aggressive agency, the society has to be the first to get involved in the process which the police should follow.

A well disciplined and idealistic police force could have set the example for others by its own lawful and correct behaviour. But this was too much to expect from a much maligned, misused, abused and colonial police, which the country got in legacy at the time of transfer of power.[72]

The need of the hour is to reshape and reorient the old police so as to fit it into the new concept of a democratic setup as enshrined in the Constitution of India. Reforms in the police are imminent to give it a human face with human values and to further tone up the criminal justice administration in India.

ASSIMILATION OF LESSONS

While as a democracy, India should be striving towards an inclusive policing, where the policing functions are carried out on the basis of popular consent, accountability and transparency is also required and in this the British models of making police accountable to the public is worth emulation. In fact, the Police Complaints Authority (PCA), which is already brought in force in many states in India as an aftermath of Prakash Singh judgment, is nothing but a copy of the English model.

While the emphasis of the UK model is participatory management of the police system, it appears that emphasis of the Indian models is to vest more discretion on the executive authorities.

It is also sad to note that there are no suggestions in the existing reform recommendations to augment the existing system of village level cooperation in policing. S. 72 of the draft Kerala Police Act, 2008 for

example provides for a system of community policing, which perhaps is the sole proposition in the whole of the draft statute that calls for community consultations. However, there are no provisions which make the recommendations of the Community Liaison Group mandatory and this would make the community policing an exercise to create informants rather than participants in the policing process.

Even the Police commissions appointed by successive governments which formed the basis of the guidelines issued by the Supreme Court in this regard, did not give as much thrust to the democratization as to the independence of the police force from the governmental intervention.

CONCLUSION

On the basis of the analysis of the police systems across countries, the following suggestions are made:

- There is a need to amend the various Police Acts in the country to bring in more accountability and transparency in the functioning of police.
- Instead of governmental functionaries, independent personnel having wide experience and knowledge in law, management, accounting, social service etc., should be appointed as members of the bodies which make appointments and handle complaints against police.
- As pointed out, there should be independent Police Complaints Authority to handle complaints against police men and independent State Security Commission to handle appointment of top officials of police. The members of these bodies should be selected through an open recruitment process, and the selection committee can comprise of the members mentioned currently as members of State Security Commission. At least 1/3rd of the members of the State Security Commission and Police Complaints Authority shall be drawn from judiciary/legal academicians in consultation with the Chief Justice of High Court.
- Functions of State Security Commission should also include a general supervision of the investigative functions, including providing facilities for crime investigation, though it is not desirable to give the Commission any powers to interfere in case to case investigation.
- State Security Commission as envisaged by National Police Commission draft is also an appellate authority to whom complaints regarding illegal or irregular orders from superiors is to be made.

A proper avenue for venting such complaint and more importantly for recording the same, would create a sense of independence in the police psyche which is essential to ensure a free and fearless police force.

- The Police Complaints Authority should be given the powers to record all sorts of complaints against the police officers and to publish the details there of in the website for public scrutiny. This would help a greater accountability in the police.
- There should be a proper enforcement mechanism for the findings of Police Complaints Authority. The findings of the Authority should be final and the Police Complaints Authority should be designated as the sole disciplinary authority over the police officials, failing with the exercise of Police Complaints Authority in discharge of their duties would go waste.

In conclusion, it must be said that if the policing in India has to imbibe the true spirit of community participation and become a role model for the policing, then the emphasis on executive discretion should give way to participatory policing and there administration of police should be made more transparent and participatory. It should be borne in mind that in a modern democracy police has a great role in keeping the social fabric together and ensuring the continuance of democracy. Hence it is important to modify the negative perception about the police that is deep rooted in the commoners psyche as an instrument of torture by the power wielders, and to create a feeling of comity in the public mind that police is their friend and guide and the representative of common men in combating crime, who is accountable to public for their deeds and misdeeds. Equally important is the feeling of comfort in the minds of police men who should be freed from arbitrary interference from powers-that-be in discharge of their duties to ensure their allegiance to cause of common men and to uphold the scepter of justice entrusted to them by law in a just and equitable manner, acceptable to common man.

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JUDICIAL ACTIVISM – WHAT KIND?

Dr. Vijay Pal Singh[*]

ABSTRACT

The real question is: What should be the field of the courts, policy-making and activism and do the courts have competence in that field? It is plain that the judiciary is the least competent to function as a legislative or the administrative agency. For one thing, courts lack the facilities together detailed data or to make probing enquiries. Reliance on advocates who appear before them for data is likely to give them partisan or inadequate information. On the other hand if courts have to rely on their own knowledge and research it is bound to be selective and subjective. Court also has no means for effectively supervising and implementing the aftermath of their orders, schemes and mandates.

Keywords : Judicial Activism, Judgment, Court, Constitution etc.

Today the question is not whether the courts should be active or restrained or whether courts make public policy or not. Such a debate seems futile and sterile. The real question is : What should be the field of the courts' policy-making and activism and do the courts have competence in that field? It is plain that the judiciary is the least competent to function as a legislative or the administrative agency. For one thing, courts lack the facilities together detailed data or to make probing enquiring. Reliance on advocates who appear before them for data is likely to give them partisan or inadequate information. On the other hand if courts have to rely on their own knowledge and research it is bound to be selective and subjective. Court also have no means for effectively supervising and implementing the aftermath of their orders, schemes and mandates. Moreover, since

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courts mandate for isolated cases, their decrees make no allowance for the differing and varying situations which administrators will encounter in applying the mandates to other cases. Courts have also n method to reverse their orders I are found unworkable or requiring modification.

The courts' disadvantages in entering into field of social policy by such judicial mandates have been well summarized thus:

The point is that the courts will draw from a body of experience not germane to the problem they will face. Given their limited means of informing themselves and the episodic nature of their efforts to do so, they will only dimly perceive the situations on which they impose their order. Even if they do perceive, the will necessarily come too late with a pound of 'remedy' where a smaller measure of prevention was needed. Their rules, tailored to the last bit of trouble, will never catch-up with the next and different dispute. They will allow or forbid and be wrong in either event, because continuous, pragmatic and flexible regulation alone can help. They will on most occasions naturally shy away from basing their judgments on what they arc accustomed to as regards as 'political factors' incompatible with their disinterestedness, although these may form the only sensible context of questions before them and they will thus find themselves resting judgments on trivia or irrelevances. All this will not only, by its sheer volume divert the energies of the courts from their proper sphere but will also tend to bring the judicial process into disrepute by exposing it as inadequate to the task with which it should never have been entrusted."[1]

The first is the Supreme Court "nationalizing" seats in medical colleges in India. On June 22, 1984 in *Pradeep Jam* v. *U.P.*[2] the Court with the of safeguarding the unity and integrity of India held that the principle of open merit required all medical colleges in India conducted by the States and Municipalities to allow open competition to students from all over India and not restrict entrants to their own State. The Court however allowed pro-tern pore 30% of the seats at the under-graduate level and 50% seats at the post-graduate level to be reserved for students from the local universities. It appears that in a subsequent unreported order the Court revised the figures to 15% and 25% respectively. Liberty was given by the Court to the Medical Council of India to cut down the State's quota and increase the all-India quota if it thought fit later.

The judgment was pronounced on 22nd June 1984 and the Court stated that it was to be brought into force from 1984 academic year. It did not give any indication how the all India open merit seats were to he filled in; whether b the respective state governments or universities or by the Medical Council

of India. The Court assumed that the problem was simply solved by its judgment and obviously under estimated the difficulties that arose from its implementation. Three years later the Court had to admit "This court had not then assessed what magnitude the task of implementation of the scheme would involve."[3] Within a month of Pradeep fain's judgment, on July 26, 1984, the Court was constrained to defer the implementation of its order to the next academic year of 1985-86 as students who had planned their studies earlier were taken by surprise at the new dispensation ordered by the Court.[4] On May 1, 1985 the Court pulled up the Medical Council of India, the Government of India and the State Governments for not taking urgent steps to hold an all-India examination for the academic year 1985-86 and blamed these bodies for the plight of students.[5]

Total chaos and uncertainty prevailed in universities, colleges and amongst students, when the Supreme Court recessed between May 1985 to July 1985 and the academic term was to commence in June 1985. No one was sure about the method of holding the examination for the eats to be filled up from the all-India quota. Neither the Government of India nor the Medical Council of India had ever conducted such examinations. Each state began to hold its own "all-India examination" on different dates. Students were ignorant of the syllabus or scope of such examinations and those eager to secure admission moved from state to state to sit for such "all India" examinations. On the re-opening of the court, on July 8, 1985 a host of agitated students and parents from all over India and different Universities moved the Court complaining in the words of the Court itself of an "almost chaotic situation prevailing in the matter."[6] The Court was compelled to put off the scheme to the next academic year of 1986 to work out the modalities of an all India examination.

The Court found that the matter was far more complex than it imagined. On September 15, 1985, the Court gave directions to the government of India, Ministry of Health to convene a meeting of the Deans of faculties of medicine of various Universities and representatives of State Governments and of Medical Council of India and the Dental Council of India to evolve a proper scheme of all India examination "which will cause the least amount of hardship and inconvenience to the students."

It was not until July 21, 1986 that the Court after disposing off several objections was able to give some definite shape to a revised scheme for holding the all-India examination for under-graduates.[7] The Medical Council of India on whom so much trust was reposed by the Court was found not to have the power under the Indian Medical Council Act, 1956

to hold an entrance examination and had no experience or infrastructure to hold it. The task of holding this examination was given to a totally different Central Agency, the Central Board of Secondary Examination.

On April 30, 1987 the Court ordered the further postponement of the examinations to be held on May 3, 1987 in view of the objections to title scheme from the States. On August 3, 1987 the Court gave further directions to remove the difficulties that were brought to its notice and directed that the examination should be postponed to the academic year 1988-89 and gave a warning that no further application for modification of the scheme would be entertained.[8] On September 25, 1987 the Court gave directions for holding the all India examination for post-graduates in 1988.[9] The examination was finally held for the first time in February 1989.

Despite attempts of the Court to treat the matter as closed, case after case comes up for solving the problems which arise from this judicially imposed formula. Colleges and examination bodies have failed to follow directions issued by the Court pleading that there was scope for confusion in these directions. These pleas have been rejected by the Court which has found the State authorities guilty of "willful default and total callous indifference to binding and lawful orders made by the Court." The Court has repeatedly issued "stern warnings" that its directions are not intended to be brushed aside or ignored and the Court expects meticulous compliance. In the second of such cases the Court initially contemplated contempt proceedings against the State and principals of seven medical colleges in U.P. but relented to make the State of U.P. pay exemplary costs of ₹ 20,000 and the seven principals to pay costs of ₹ 500 each personally to be recovered from them from their salary with no reimbursement by the State.[10] A complaint made to the Court that the all-India entrance examination ordered by the Court under its scheme was working "arbitrarily" was dismissed by the Court observing "it is well settled that judicial determination is not to be tested by the touchstone of Article 14.[11]

A host of problems continue to crop up in this judicially imposed scheme throughout India. Litigation in medical colleges has become the order of the day in certain High Courts a considerable part of it being due to the non-filling of fall-India seats in time resulting in denial of such seats to local students arid numerous related problems arising from the all-India reservation.[12]

Was the Supreme Court justified in decreeing the "nationalization" of medical seats in this manner causing so much uncertainty, anxiety and travail to the student? In the first place, medical education is a concurrent

subject of legislation under the Constitution, and the States have control over medical colleges in their own territories. Only Parliament could have legislatively taken away the control of medical seats from the States which set up the colleges and vested them in the centre. By a judicial edict the Supreme Court has transferred 15% of the under graduate medical seats and 25% of the post-graduate medical seats from the States and vested them in the control of a Central Government agency.

The professed object of the scheme formulated in Pradeep Jam's case was to make all medical admissions open to merit by competition between students throughout India and take away the power of state colleges to allot their seats exclusively to students residing in their own state. This was said to be necessary in the interest of preserving the unity of India and equality of opportunity. As a temporary measure, States were permitted to "reserve" 85% of seats for undergraduates and 75% for post-graduates. These "reservations" for the state were to be progressively reduced with the goal of open merit in an all India competition for all the seats. Considering the difficulties which the implementation of the scheme has encountered, it is safe to say that the temporary "reservations" of the State quota are unlikely to be further diminished and will remain permanent for all times.

The second example of avoidable judicial activism was in the Shriram Food & Fertilizer Industries' Case.[13] A bench of three judges of the Supreme Court in that case engaged itself for several weeks at length on whether a caustic chlorine plant should be allowed to be re-started by the management of the Shriram plant following a closure after leakage of oleum gas from the plant on a public interest petition against a private corporation which owned it. The Court ordered a committee of experts to examine the hazards from the plant and the safety devices in the plant. After a minute examination of various reports and experts' views, the Court observed:

> "These various considerations on both sides have to be weighed arid balanced and a decision has to be made as to on which side the considerations preponderate and tilt the balance. It is a none too easy task, for the decision either way may entail serious consequences. We have therefore reflected over the various aspects of the question with great anxiety and care and taking an over all view of the diverse considerations, we have, with considerable hesitation, bordering almost on trepidation reached the conclusion that, pending consideration of the issue whether the caustic chlorine plant should be directed to be shifted and

> relocated at some other place, the caustic chlorine plant should be allowed to be restarted by the management of Shriram, subject to certain stringent conditions which we propose to specify."

In the second round, when the same petition was referred to a larger bench of five judges on the question whether Shriram as a private corporation would be liable for violating fundamental rights under Articles 21 and 32 of the Constitution, the Court held that they did not propose to decide the question because "they had not had sufficient time to consider and reflect on this question in depth."[14] Apart from the fact that it turned out that the Court could not have entertained the petition against a private corporation in which it passed the order to restart the plant, the question remains was the Court called upon to and was it competent to carry out this technical evaluation at a tremendous loss of judicial time and resources? Could it not have directed the problem of restarting and relocation of the plant to be solved by an expert governmental agency rather than to have undertaken the task itself with its self-confessed hesitation and trepidation?

Increasingly, the Court's administrative directions and legislative prescriptions are becoming difficult to implement and supervise.[15] In several cases, the Court has found State Governments indifferent to the court's edicts compelling the Court to issue notices for contempt of its orders, as in the case of the Court's directions for setting up of consumer courts. In the child adoption directions of the Court, the failure of the State to implement the Court's 1984 judgment for 6 years, led Chief Justice Mr. Ranganath Misra to threaten to issue "a certificate" to the defaulting States that their Governments' defiance of the Court's orders has resulted in a breakdown of the Constitution with an invitation to the President of India to take the necessary action of imposing President's rule if the default persisted. One wonders what the Court would do if this extra-Constitutional certificate itself was disregarded".[16] In the case of the direction issued by the Court in the vehicular pollution cases to carry out an experimental measure to run 100 buses at one Delhi transport depot with Compressed Natural Gas (CNG) and diesel, the Court had to censure the officers of the Union Petroleum ministry for their lack of enthusiasm in carrying out the Court's directions and for finding difficulties in their implementation. The Court ordered that its censure should be put up to the Cabinet Secretary for such action as he may deem fit.[17]

The Court's sincere desire to do justice to the commoner and to shake a wooden bureaucracy is undoubted but increasingly it is whittling down

its prestige by issuing administrative precepts which the authorities find difficult to implement or which the Court has no institutional means and authority to supervise and enforce them. The reality of the situation is that the judicial branch is simply not equipped to be legislative or administrative. Hence the need for a sparing use of judicial power in demarcated fields of judicial manageability.

None of these constraints in the Court's competence operate in the field of human and civil rights. In this field, the Court's activism has been and can be invaluable and beneficial. The Supreme Court's lead in the field of civil liberties and personal liberty in the post-emergency period is truly impressive. The theme of those decisions is a firm belief in the liberal idea of human dignity. Access to the courts by disadvantaged and deprived sections of the community is now easy and routine. Criminal justice has been humanized. The Court has become an educative force in the field of human rights. It is in the field of human and civil rights that the Court has found a safe and competent field for its activism.

The Court's activism in personal liberty cases was spawned with a series of cases in 1979 known as the Hussainara Khatoon cases.[18] The Court acting on a newspaper report investigated and found under trial prisoners in Bihar jails languishing for periods longer than the maximum sentences which could be imposed on them. Since then, the Court has assumed the part of an active participant in the eradication of inhuman and cruel practices in prisons, remand homes and exploitation of labour on construction sites and other places.

Overall, the meaning and content of personal liberty has been qualitatively and qualitatively enlarged by such cases in a manner not thought of by the Court previously. In such social action litigations the Court has found a means of asserting its relevancy and utility to Indian society. It is in personal liberty cases since 1977 that the Indian judiciary, led by the Supreme Court, has truly justified its activism and the Court has redeemed its apparent record of indifference to personal liberties during the emergency period. One wish that the Court would sustain with equal activism the original impetus it gave to the protection of minorities and their rights to establish and administer educational institutions between 1950 and 1970.

The Court is on firm ground to intervene in such matters and protect such interests. For one thing, the Court has a clear textual mandate in its favour in such interventions as these cases are grounded on the protection of fundamental rights, generally Article 21, the right to life, Secondly, orders of the Court in such cases seek to protect sections of the community and

interests which are not adequately protected or represented in the political processes. It is in such fields that courts can render invaluable service and channelize their scarce judicial resources and utilise them to either initiate actions or to supplement the actions of the Government or other non-government bodies. In such matters there can never be a tension between the institution of judicial review and representative government. Judicial review has total legitimacy in such fields.

Justice Powell of the U.S. Supreme Court has observed in this context:

> "The irreplaceable value of the power (of judicial review) articulated by the Chief Justice Marshall (in *Marbuiry* v. *Madison*) lies in the protection it has accorded the Constitutional rights and liberties of individual citizens and minority groups against oppression or discriminatory government action. I is this role not some amorphous general supervision of the government that has maintained public esteem for the federal courts and has permitted the peaceful existence of counter-majoritarian implications of judicial review and the democratic principles on which our federal government in the final analysis rests."[19]

With no prospect of a change in responsive government in the immediate future, the pressure on courts to resolve the nation's social and political problems and mal-administration in the country is bound to increase. If the Indian judicial system is to be saved from collapse, the need is not only for more judges and courts but also a need to conserve judicial power where it can be utilised most effectively on a principled and predictable way and in areas where it is most needed.

Under no Constitution can the power of courts go far to save the people form their own failure. There are too many dangers to the judiciary itself from an omnipresent and rescuing judicial review. In its own interests the Indian judiciary may sooner or later have to propound a policy of judicial non- intervention in defined areas. Such a policy is not a sign of weakness or abdication by the judiciary but only recognition of the fact that the Constitution did not make the judiciary a substitute for the failure of the other branches of government and that judicial power has its limitations.

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"UNFINISHED AGENDA OF INDIAN CONSTITUTION" UNDER ARTICLE 44

*Dr. Gulab Rai**

INTRODUCTION

What's a Uniform Civil Code (Meaning)

UGC essentially means a set of laws regulating personal matters relating to property, inheritance marriage, divorce, and maintenance for different communities in India.

There are different laws governing different communities. So the law governing different communities. So the law governing inheritance or divorce among Hindu's would be different from those pertaining to Muslims or Christians.

The demand for UGC essentially means unifying all these personal laws to have on set of secular laws irrespective of a particular community. The Constitution of India says that the state shall endeavor to secure for the citizens a uniform civil code throughout the territory of India[1].

Its implementation as duty of the state apart from being an important issue regarding secularism in India, it became one of the most controversial topics in contemporary politics during such buro case.

LEGAL HISTORY

During the debates in the Constituent Assembly B.R. Ambedkar had demonstrated his will to reform Indian society by recommending the adoption of civil code of custom inspiration. He had then opposed the

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delegates who wished to immortalize personal laws, especially Muslim representatives, who showed themselves very attached to the Shariat.

I personally do not understand why religion should be given this vast, expansive jurisdiction, so as to cover the whole of life and prevent the legislature from encroaching upon that field.

However Ambedkar did not obtain anything more than Article of D.P. Stipulating that *"State shall endeavor to secure the citizens a uniform civil code through our territory of India"*.

This was remain a dead letter.

An objection was taken to this provision in the constituent assembly by several Muslim members who apprehended that their personal law might be arrogated.

This objection was met by pointing out :

(i) that India has already achieved uniformity of law over a vast area.

(ii) that though there was diversity in personal law, there was nothing sacrosanct about them.

(iii) the secular activities such as inheritance covered by personalities should be separated from religion.

(iv) that a uniform law applicable to all world promote national unity and

(v) that no legislature would forcibly amend any personal law in future if people were opposed to it[3].

In the recent times uniform civil code came in the light because a Christian man file a writ petition in the Supreme Court and he challenged the divorce act. He said that the Christian husband and wife has separated from each other up to two years before obtaining divorce when an the Hindu Law is only one years. On the other side there are three Muslim women has file writ petition in the Supreme Court and said that Talaq-ul-Biddat (Irrevocable Talaq) and Nikah Halala is against the Muslim Law and Kuran. So Supreme Court ban on these matter.

THE CONSTITUTIONAL IS BEING FAIL, FOR WEAKNESS OF GOVERNMENT

(i) In the case of Mohd. Ahmed Khan *v*. Shah Bano Begum[3]

The Supreme Court has ruled that a Muslim husband is liable to pay maintenance to the divorced wife beyond the iddat period.

The Court said that the time has come for the intervention of the legislature in these matters to provide for a uniform civil code.

To nullity the decision of Supreme Court Parliament has passed an act Muslim women (Protection of Rights on Divorce) Act, 1986.

(ii) In a historic judgement in Saria mudgal *v*. Union of India.[4] The Supreme Court has directed the Prime Minister Narsimha Rao to take fresh look at Art. 44 of the Constitution which enjoins the state to secure a uniform civil code which accordingly to the court is imperative for both protection of the oppressed and promotion of National unity and integrity. The Court directed the union government through the secretary to ministry of law and justice, to file appeal by august 1995 indicating missteps taken and efforts made by the government towards securing a uniform civil code for the citizen of India.

In the Lily Thomas *v.* Union of India[5]

The Supreme Court said that to apply the uniform civil code on the citizen may be controversy.

There are many case where the Supreme Court has directed to the legislature to take effective step on the uniform civil code.

- In another landmark judgement in Danial Latif *v.* Union of India[6] a five judges Constitution bench of Supreme Court upheld the Constitutional validity of the Muslim women (Protection of Rights of Divorce) Act, 1986 and held that a Muslim women has right to maintenance even after iddat period under the 1986 Act.

In an earlier case Maharishi *Avadesh v.* Union of India the Supreme Court has specially declined to issue a writ directing the respondents to consider that question of enacting a common civil code for all citizens of India holding that the issue raised being a matter of policy, it was for the legislature to take effective steps on the court cannot legislate.

CONSTITUTIONAL PROVISION

Article 44 of constitution enumerates that the state shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.

The provision is a part of the DPSP (Directive Principle of State Policy) that are not enforceable by any court. However according to Article 37 the government is duty found to apply these principles in making laws.

The Apex Court of the nation no's repeatedly reminded the government of this policy directive but has always respected its non-just cable nature and refrained from issuing any direction.

WHY DO WE NEED A UNIFORM CIVIL CODE

India needs a uniform civil code for two principles reasons:

- First a secular republic needs a common law for all citizens rather than differentiated rules based on religious practiced.
- There is second reason why a uniform civil code is needed: gender justice. The rights of women are usually limited under religious laws.

WHY IS IT DIFFICULT TO IMPORTANT?

The vast diversity of the personal laws along with the devotion to which they are adhered to makes uniformity of any sort very difficult to achieve, various issues involved with uniform civil code creates hindrance to achieve the goal such as marriage adoption, succession and maintenance.

SOME OF THOSE CONTENTION ARE

- Muslim women (Protection of Rights and Divorce) Act, 1986
- Tax exemptions and breaks granted to the Hindu Undivided Family.
- Polygamy among Muslims, Hindus and Tribal.
- Concept of shared labour in marriages that would necessarily mean an equal division of assets acquired in the life of a marriage in case of a divorce when it is just one year for others.
- Muslim women right to legally adopt children even though this goes against their personal law.

LESSONS FROM THE GOA EXPERIENCE

The only one example of a uniform code in India is the Portuguess Civil Procedure (1939) of Goa, a marriage law differ for Catholics and people of other faiths and if a marriage is solemnized in Church then Church laws applies.

The customs and uses of the Hindu's of Goa are recognized including "limited" polygamy for Hindus.

PRESENT SCENARIO

Currently there is a Hindu Marriage Act, 1955, a Muslim Personal Law (Shariat) Application Act, 1937, a Christian marriage act, a Parsee Marriage

and Divorce Act. Hindu marriage act applies to any person who is Hindu, Buddhist, Jain or Sikh by religion. There is also a special marriage act 1959 under which people can perform marriage irrespective of the religion followed by either person. These laws deal with the matters involving Marriage, Divorce, Inheritance, adoption and maintenance of respective religious. Having a uniform civil code will mean mat at mese laws will be replaced by Indian Christian except in the state of Goa or governed by the Indian Christian Marriage Act, 1872 and their divorce related matters fall under the Indian Divorce Act, 1872 and their divorce related matters fall under the Indian Divorce Act of 1869.

CONCLUSION

India is a secular state Secularism is basic feature of the constitution[7]. There are many act like as Indian Penal Code, the Code of Civil Procedure 1908, apply to all citizens of India whether Hindus or Muslims. Why cannot uniform civil code apply on all these persons?

The Apex court of the Country has repeatedly reminded the government of this policy "directive but has always respected its non-justiciable nature" and refrained from issuing any direction. The Centre has reportedly asked the law commission which has an advisory role on legal reform to examine the implications of implementing a uniform civil code.

The law minister as also sent related documents to the commission, which is currently headed by retired Supreme Court Justice Balbir Singh Chauhan.

The panel will submit are part after discussions with experts and stakeholders.

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STATE OF WEST BENGAL *VS.* COMMITTEE FOR PROTECTION OF DEMOCRATIC RIGHT : A CASE STUDY

Akansha Srivastava[*] *and Sagar Khanna*[**]

INTRODUCTION

In the case of *State of West Bengal v. The Committee for Protection of Democratic Rights*[1] presents a question challenging Indian Constitution with respect to the power of judiciary via other organs of the state. This is a landmark judgment where the Supreme Court held that high court can order the Central Bureau of Investigation (CBI) to investigate any offence without the consent of the state government minding the territorial jurisdiction where the offence is alleged to have taken place. This is an executive power that has been denied to the parliament. Thus, when the petitioner argued relying on the doctrine of separation of powers, the court denied the petitioner by using its power of judicial review. Thus, this case brings out the readable battle between the legislature, executive and judiciary, bringing the wider scope of judicial power.

The court in its decision placed basic feature of the constitution, *i.e*. Judicial review, against the other two who had been put forward by the petitioners instead the court must have addressed the constitutional issues as well as legal issues arising in the mater to precisely analyze the scope of judicial powers.

The judgment is significant for further expanding the scope of Article 21. The Court has held that Article 21 not only takes within its

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fold enforcement of the rights of an accused, but also the rights of the aggrieved, and that the State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain circumstances, even a witness to the crime may seek for and shall be granted protection by the State.

The critique describes the background of the case, discussing the fact and judgment of the case and also examines the basic structure of the applied by the court and also the scope of the powers of the High Court and doctrine of separation of powers. This article highlights the weakness and conclusion of the court's reasoning and suggests the approach that it should have chosen.

BACKGROUND

In the present case, a five judge bench of the Apex Court was addressed to decide whether the High court can direct the CBI, established under the Delhi Special Police Establishment Act, 1946 to investigate any offence without the consent of the state government minding the territorial jurisdiction where the offence is alleged to have taken place under article 226, of the Indian Constitution. The question for this came into existence when the Calcutta High Court directed the CBI to investigate the case where 11 eleven members of a political party in West Bengal were killed and the allegations were made against the ruling party. After discovering the negligence and imperfection in the investigation even after more than 3 months from the date of crime, the High Court objected that the serious questions might arise questing the investigation done by the state police and ordered the CBI to investigate the case.[2] This decision was challenged and the petitioners approached the Supreme Court where the matter was set before constitutional bench.

The petitioner expends an argument based on 2 features of the Indian Constitution, i.e., federal setup and separation of powers. As per constitutional provisions[3] and statutory provisions,[4] the state legislature has jurisdiction over state police matters and the parliament cannot infringe upon it without the consent of the concerned state government.

It was then argued that these restrictions over the powers of the parliament reflects federal setup extents to judiciary and barring the courts from directing one state police to investigate the crime of other state without its consent, and such a direction would be in breach of the federal setup given by the Indian Constitution.

It was further argues that the doctrine of separation of powers prevents the exercising of executive power by the courts of directing the police of one state to carry forward investigation in another without the governments consent. In brief the petitioners argued that the impugned direction of the High Court is violative of the federal structure and the doctrine of separation of powers both being the basic featured of the constitution. But the petitioners arguments were rejected by the Supreme Court and concluded that any direction by the High Court to the CBI to investigate an offence minding the territorial jurisdiction and without the consent of the state with neither infringe the federal structure nor the doctrine of separation of powers and shall not be help violative by law under Article 226.

APPLICATION OF THE BASIC STRUCTURE

Supporting the judiciary's power of directing the CBI to investigate crimes and offences in other different states without their consent, the court landed up pitting 1 basic feature of the constitution, i.e., judicial review against two others, i.e., federal structure and separation of powers which were put forth by the petitioners. However, doctrine of basic structure is used only when a constitutional amendment[5] was challenged otherwise, doctrine has no part to play in this case.

For deranging matter further, the court then concluded that *"Any law that abrogate or abridges fundamental rights would also be violating the doctrine the basic structure."*This can have 2 meanings: firstly that the fundamental rights are the part of the doctrine of basic structure; and secondly that even the ordinary legislations are subject to doctrine of basic structure. Also, the applicability of the doctrine of the basic structure has been debated before also. In *Indira Gandhi* vs. *Raj Narain,*[6] it was held that the constitution already imposes restrictions on ordinary law-making power, and to subject such statutes to basic structure would mean rewriting the constitution and defraud the legislature of acting within the constitutional. This got accepted in latter cases.[7] The court widen the scope of the doctrine of basic structure by bringing within its ambit legislative and judicial works, without even considering the earlier decision or discussing the meaning of the expansion.

POWERS OF THE HIGH COURT

High court gets the power under Article 226 to issue directions, order and writs for the enforcement of fundamental rights or for any other use. In this

case, the court widen the scope of Article 21 by saying that the *"Rights of an accused but also the rights of the victim. The state has a duty to enforce the human rights of a citizen providing for fair and partial investigation against any person accused of commission of a cognizable offence."* In some situations, even a witness to the offence may pursue such protection. This is an important step in the jurisprudence of the Article 21 in relation to criminal law which has focused more on the rights of the respondent than of the victim.[8]

Therefore, the judgment mentions that if the right of a victim to a fair and partial investigation is being violated, the High Court can issue orders to CBI by exercising power of judicial review under Article 226. What needs to be clarified is whether this power gets whittled down by any of the arguments put forward by the petitioner with relation to federal setup and doctrine of separation of powers.

Federal Setup

The petitioner argued on the contrary that if the parliament passes a law authorizing the police of one state to investigate in another without its consent, such a law may be invalid. Therefore, the judiciary, the protector of constitution cannot pass any order disturbing the federal setup provided under the constitution. In this context, the court concluded that since the judiciary is the defender of the federal structure of the constitution, an order given under Article 226 to uphold the constitution cannot be termed as violating the federal structure. The court has not properly considered the power of high courts under Article 226. While the petitioner is correct on his part that if such a law is passed by the parliament would not be valid, and it needs to be remembered that the violation of basic feature is not the reason of illegality but the main reason is because the parliament lacks *legislative competency* to enact as per Article 246. The issue should be examined by the constitution itself which provides federal setup. It does provide for the distribution of legislative and executive between the center and the states.[9] This provides for integrated judiciary wherein both high courts and supreme courts interpret the state and union laws, having jurisdiction and providing all the constitutional remedies to cases.[10] With the insertion of 2nd clause in Article 26, High Court minding the territorial jurisdiction of which the cause of action arises, can issue directions to any government or authority situated even beyond its territorial jurisdiction.[11] Hence, where the explicit restrictions is being placed on the parliament's

power under Article 246 read with the 7th schedule, and also in absence of such restriction over the powers of the High Court, the comparison drawn by the petitioner is flawed. It is the reason of such a constitutional setup that the High court's order under Article 226 is valid.

Separation of Powers

Whether the judiciary can exercise the power of executive of directing the police of other state to carry on the investigations without the consent of that state is one of those questions involved in this case, and also that the doctrine of separation of powers curtail the power of judicial review. The court held that the exercise of the power of judicial review by the High Court would not amount to an infringement of the separation of powers principle.

The court observed that in modern times, this doctrine doesn't restrict itself to a rigid separation of powers between the 3 organs of Indian judicial system. As said by a retired Supreme Court judge Ruma Pal, the constitution allows for parallelism of power,[12] with hierarchies between the three organs in particular fields which must be maintained and balanced by each organ subject to checks by the other two.[13] Where there is inaction by the executive for whatever reason, in exercise of its Constitutional obligations the judiciary can provide a solution till such time as the legislature or the executive act to perform their roles.[14] The judiciary has not only issued directions to the executive to perform its functions,[15] but has also exercised executive power often, an example being the judiciary's active role in environmental matters.[16]

CONCLUSION

This case study argue that whether the conclusion of the supreme court is impartial and correct as the court has failed to give proper reasoning to support its decision. There is no doubt whether the judicial review is one of the most significant aspects of the Indian Constitution and must be used by the courts to ensure the protection of the Rights of the people. However, the court should not rely on just only the judicial review for or against any argument that may be presented before it. In this case, the court emphasized too much on the concept of the judicial review to justify its powers of giving directions to the CBI. In *I.R. Coelho* v. *state of Tamil Nadu*[17] an opinion was formed stating that "*Courts may be forced to modify the principle of parliamentary sovereignty…in cases where judicial review is sought to*

be abolished". The Court also concluded that "*judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between the Parliament and the State Legislatures, it is also necessary to show any transgression by each entity*". So such over emphasis on judicial review was not only unnecessary in the circumstances of the case, but also call criticisms of the over-activism by giving a meaning of usurpation of powers and self-declared supremacy over the other organs.

The doctrine of basic structure by the court without the proper debate on the jurisprudences and declaring the law through the different propositions without reasoning them can have far-reaching results. With due respect to the Supreme Court, it is submitted that the court should have attended the arguments directly seeking answers direction within the Indian Constitution and its provisions. The court expanded the Article 21 but it barely touched upon how the right of a victim to a fair investigation falls within article 21 and mentioned it only in the conclusion. The court declared the High Court's direction under Article 226 is absolutely valid even without examining whether this right had been violated in the facts of this case. Although the final decision of the court is right, the fault reasoning put up many questions which can have serious practical problems.

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THE NEED OF NUCLEAR ENERGY IN INDIA: ROLE OF LAW AND POLICIES

Jyoti Jain[*]

INTRODUCTION

In today's time the atom generates are less than three percent of India's electricity needs. But the country has a plan for the future. By 2022, the total generation of nuclear energy is expected to increase eight times of India's electricity needs. And by 2052, the energy generated from atom would have increased 70 fold contributing nearly 26 percent of India's total energy requirements. The vision for development of nuclear energy is not new, but it has been from pre- independence days. The process of development of Nuclear energy was not smooth, it had to face many obstacles due to technical regimes adopted by various nations that either had to expertise or had harnessed nuclear energy.

The inculsion of India into global nuclear energy order has made further necessary for the country to make structural and procedural modifications I its nuclear regulatory framework by bringing them in conformity with international norms & practices. The nuclear accidents in Chernobyl and the three mile Island in the US had revealed the world the dangers involved in using the atom to generate energy. These accidents had even led many countries to either withdraw the plans for the construction of new reactors or decommission the operating reactors. In the whole world, the operators and regulators function under global nuclear safety regime. The regime is a collective international enterprise that sets safety parameter for all the operators and regulators, monitoring the progress and safety measures. Technical assistance is provided by various international organizations like IAEA, NEA, & WANO for the upgradation of safety standards. The international engagement is an important factor, the responsibility of ensuring safety ultimately lies with individual countries.

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Besides safety which primarily aims at avoiding all major and minor accidents, security issues of nuclear materials are also matters of huge concern to the international community. The need for such international cooperation is only bound to increase with the prospects commissioning of new nuclear plants and fuel cycle facilities becoming brighter. The objective of the paper is to study the existing national and international frameworks, regulations and norms and make recommendations to strengthen the former. The study therefore covers the following areas:

1. The prospects for development nuclear energy in India.
2. Best international practices relating to safety, security, liability management and suitable recommendation therefore.
3. The existing legal and institutional Structures in India
4. The need for Indian Government to enact a Nuclear Liability Act.
5. Policy recommendations.

GROWING GLOBAL NUCLEAR POWER INDUSTRY

Affordable and uninterrupted energy supply is critical to attain development goals. But the disparity in access to energy supply across the world is a major concern among countries. Lack of access to adequate energy supply translates into economic deprivation and upsurge in poverty level. Both at the individual as well as national level. It is important to understand the disparity in global energy access as a first step towards resolving the economic and social deprivation of human kind.

Can nuclear power bring about a feasible solution to the energy crisis in the world today?

The impact of the Chernobyl accident which happened in 1986 on the global nuclear industry was catastrophic. After it, many country changes in their legislation to phase out the existing nuclear power generating facilities. Many non nuclear power countries decided not to develop nuclear power this resulted in the nuclear industries being viewed with suspicion and fear by people across the world. However, today global nuclear industry is growing at a faster pace with many of the existing nuclear power countries planning more operable reactors and also with the emergence of new countries planning to build nuclear power as a long term alternative. Countries such as Germany, Italy and UK have already made clear plans to further develop their nuclear power industry.

Growing Opportunities for Nuclear Power

Nuclear power sector plays a vital role in the energy securities of countries which are depending heavily on fossil fuels. The main role it plays is in sharing the burden of meetings the growing energy demand along with other fuel types. Currently, nuclear energy is in the energy mix of 32 countries and more than 40 countries are seriously contemplating building power facilities. Among the emerging nuclear power countries, many of them have already had clear timelines for getting their first nuclear plan operational. This indicates the growing importance of nuclear power in the world and a renewed interest in nuclear power generation. As per the current production ratio, global crude and natural gas reserves would only last for 42 years and 60 years respectively.[1] This is one of the key energy security concerns many of the countries that depend on petroleum sources. According to king Hubbert, the world appears to be on the threshold of an era which in terms of energy to consumption will be at least to an order of magnitude greater than the made possible by fossil fuel.[2]

Environmental Concerns and Demand for Cleaner Energy To Promote Nuclear Industry:

The uninterrupted energy supply is the key determinant for economic development, consumption of fossil fuels is one of the major sources of anthropogenic greenhouse emission. More than 75 per cent of the total anthropogenic carbon dioxide emission is related to the use of conventional fossil fuel burning. In order to minimise environmental damage and climate change hazards, it is important to reduce the energy-related emissions. This necessitates significant reduction in the share of fossil fuels in the energy mix of countries which depend heavily on conventional fuel sources. Nuclear power as a source of energy can contribute significantly to the alleviation of the risk of global climate change and greenhouse gas emission.

PROSPECT OF NUCLER ENERGY IN INDIA

Industrialization and the rising concern over climate change have put India and other emerging economies in a unique position where these countries will have to negotiate a middle path between economic development and environmental sustainability.

One of the primary challenges for India would be to alter its existing energy mix which is currently dominated by coal, to accommodate a greater share of cleaner and sustainable sources of energy. At present, only

3 per cent of India's total electricity comes from nuclear power plants. An assessment of India's nuclear sector, especially after the Indo–U.S. Nuclear Deal suggests that nuclear energy could be a sustainable and a robust alternative to fossil fuels in India. It could also reduce India's increasing dependence on petroleum imports.[3]

Nuclear energy has been given importance with the conclusion of the Indo–U.S. Civilian Nuclear Agreement. The Agreement has also enabled India to envision a possible and realistic future of nuclear energy as it can now trade in civilian nuclear energy with various Nuclear Supplier Group (NSG) countries. The deal has made it possible for India to sign civilian nuclear agreements with countries like France, Russia and Canada. As per the Department of Atomic Energy, India plans to increase its nuclear energy production to 20,000 MWe by 2020 and 63,000 MWe by 2032. Currently India has an installed capacity of 31281 MWe of nuclear power.[4] According to the Nuclear Power Corporation of India Limited (NPCIL) there are currently seven new nuclear reactors are under construction. This shows that efforts are being made to achieve the ambitious target of generating 20,000 MWe of power by 2020 from 4120 MWe at present.

Best Practices for Private Nuclear Industry Regulation

A nuclear industry directly or indirectly owned by the government or the private sector or industry has to abide by some fundamental rules and regulations. Adherence to the fundamental rules and regulations for operating a nuclear facility, especially a nuclear reactor is required for any foreign industry as well. A nuclear industry may operate as a foreign subsidiary or may register itself as a company according to the law of the country where it operates.

The International Atomic Energy Agency (IAEA), in one of its publications,[5] enumerates 11 basic principles for running nuclear energy and ionising radiation activities. These are:

(a) The safety principle;

(b) The security principle;

(c) The responsibility principle;

(d) The permission principle;

(e) The continuous control principle;

(f) The compensation principle;

(g) The sustainable development principle;

(h) The compliance principle;

(i) The independence principle;

(j) The transparency principle; and

(k) The international co-operation principle.

Nuclear Energy: Existing Legal Framework in India

The establishment and regulation of the nuclear energy regime in India has largely been effected through the provisions of the Atomic Energy Act, 1962. The essential scope of this enactment has been to facilitate the development of atomic energy, the range of the regulatory arm of this enactment is much longer and broader to include any activity that relates to or involves a radioactive substance. It was a legislation enacted soon after India's independence by the Constitutient Assembly to locate the development and use of nuclear energy. The 1948 enactment envisaged the constitution of an Atomic Energy Commission (AEC).

The Department of Atomic Energy was established in 1954. The 1962 Act replaced the 1948 enactment.[6] The atomic energy regulatory framework as envisaged under the 1962 Act is an umbrella legislation covering areas such as identification, siting, installation, operation and safety of the atomic reactors. The institutional framework relating to the Indian atomic energy establishment has a **three-tier structure**:

On top is the Atomic Energy Commission which could be regarded as the highest policy making body. The **second tier** is the Department of Atomic Energy which generally oversees research and development, industrial and other organisational structures of atomic energy-related issues. The **third tier** is the Atomic Energy Regulatory Board which was established in 1983 is an independent body whose primary mandate is to oversee and constantly monitor the safety aspects of the atomic energy sector. It works directly under the Atomic Energy Commission.

Network of Rules and Regulations

The 1962 Act, as stated above, is framework legislation providing, broad areas for regulation specifically of the use and development of radioactive substances. Section 30 of the 1962 Act specifies areas in which rules and regulations are needed. These rules and regulations are necessary for

effective implementation and operation of the 1962 Act.[6] some of them are as follows:

- restrictions on information and to prescribe measures to guard against unauthorised dissemination or use of such restricted information;
- declaring any area as prohibited area and prescribing measures to provide against unauthorised entry into or departure from this area;
- reporting of information relating to the discovery of uranium, thorium and uranium;
- compulsory acquisition of prescribed substances, minerals and plants; regulating the production, import, export, transfer, refining, possession, ownership, sale, use or disposal of the prescribed substances and any other articles that in the opinion of the Central Government may be used for, or may result as a consequence of the production, use or application of atomic energy;
- regulating the use of the prescribed equipment;
- promoting co-operation among persons, institutions and countries in the production,
- use, application of atomic energy and in research and investigation in the field.[7]

Rules relating to the Control of Irradiation of Food

The Atomic Energy (Control of Irradiation of Food) Rules, 1990 (revised in 1996) seek to regulate the irradiation of foods in the country. An 'irradiated food', according to these rules, mean articles of food subjected to radiation by (i) gamma rays; (ii) x-rays generated from machine sources operated at or below an energy level of 5 million electron volts; and (iii) sub-atomic particles, namely electrons generated from machine sources operated at or below any energy level of 10 million electron volts, to dose levels as specified in the rules. The procedures outlined are similar and require prior authorisation from the Central Government.

Other Rules and Notifications

- The Atomic Energy (Working of the Mines, Minerals and Handling of Prescribed Substances) Rules, 1984 regulate the activities pertaining to mining, milling, processing and/or handling of prescribed substances.
- The Atomic Energy (Arbitration Procedure) Rules, 1983 were framed to give effect to Section 21 of the 1962 Act to regulate arbitration procedure for determining compensation.

- There are several notifications issued to give effect to some of these regulations such as: Radiation Surveillance Procedures for Medical Applications, 1989 (GSR-388); Radiation Surveillance Procedures for persons using Sealed Sources in Industrial Radiography, 1980 (GSR – 735). AERB has been designated as the competent authority to implement these notifications. Its primary responsibility is to enforce protection of occupational workers and other persons on site, protect the public and the environment from possible adverse effects arising from nuclear and radiation facilities.[8]
- Guidelines for Nuclear Transfers (Exports) were issued by the Department of Atomic Energy in February 2006 with a view to regulate the export of certain prescribed substances, prescribed equipments or transfer of related technology to any country and to outline export controls with regard to nuclear transfers to any country.

Electricity Act, 2003

The supply and transmission of electricity is regulated by the Indian Electricity Act 2003[9] which provides for the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to the development of the electricity industry, promoting competition therein, protecting interests of consumers and supply of electricity to all areas, rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commission and establishment of Appellate Tribunal for matters connected therewith.

Environment (Protection) Act, 1986

The Environment Protection Act, 1986, and Environment (Protection) Rules, 1986, are applicable in all atomic energy projects. These laws provide for the protection and improvement of the environment and matters connected therewith. It empowers the Central Government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. All projects or activities, including expansion and modernisation of existing projects or activities, require prior environmental clearance from the Central Government in the Ministry of Environment and Forests (MoEF) on the recommendations of an Expert Appraisal Committee (EAC).

THE INDIAN NUCLEAR ENERGY LAW

Implementing Nuclear Treaties: Limits of 1962 Act

India has been concluding and taking upon itself several treaty obligations relating to nuclear energy. Earlier in the 1950s, India had a fuel-supply arrangement with the US with regard to its Tarapur reactor. This ran into some trouble and the fuel supply was stopped pursuant to India's Pokharan I nuclear test. During this period and thereafter, India had to face harsh and restrictive nuclear trade regime. India was kept outside the purview of global nuclear energy trade. For this reason, international obligations relating to nuclear energy were less onerous at that time. There were hardly any obligations and most of its nuclear regime was policy-driven (through bilateral contractual arrangements in most cases) despite the enactment of Atomic Energy Act, 1962. However, all this seemed to have changed with the Indo-US Joint Statement of July 2005.

2005 Statement and Agreement with US

We begin our analysis with the Indo-US 2005 July Statement as that opened up various possibilities for India. There is a view that the July 2005 Statement was simply a statement of intent and accordingly, did not create any binding obligation on either of the two countries. It nevertheless, laid the framework for future negotiations. The Statement, at least, made it sufficiently clear to India as to what would be the nature of its obligations if it wishes to end its 'nuclear isolation'. In that sense, the July 2005 Statement could be regarded as a signpost and a 'soft' legal instrument articulating a certain intent expressed in terms of written commitments. This document had only limited legal effects.[10] Some of these intended obligations required reciprocal initiatives (not actual implementation) though some were specific and definitive to India.[11]

The 2007 Agreement for Cooperation between the Government of India and the Government of the United States of America Concerning Peaceful Uses of Nuclear Energy ('2007 Cooperation Agreement' hereinafter) created a set of binding obligations between both countries.

Approach of Indian Courts

The Indian Supreme Court has laid down and reaffirmed the strict liability principle in several cases.

In *M.C.Mehta v. Union of India*[12] the Court held that "in plants run by enterprises which are engaged in hazardous or inherently dangerous

activity that poses a potential threat to the health and safety of persons, such enterprises have an absolute and non-delegable duty to ensure that no harm results to anyone". The Supreme Court reaffirmed this view in the case of *Indian Council of Enviro-Legal Action v. Union of India* and stated that, "once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good losses caused to any other person by his activity, irrespective of the fact that he took reasonable care while carrying on his activity.

The Court in *Vellore Citizens' Welfare Forum v. Union of India*[13] ruled that the "Remediation of the damaged environment is part of the process of Sustainable Development and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology." After this 1996 *Vellore* case the Indian Supreme Court has reiterated the principles enunciated therein too many other cases. References should also be made to *Andhra Pradesh Pollution Control Board v. MV. Nayudu*[14] and *Narmada Bachao Andolan v. Union of India.*[15]

Although these cases deal essentially with environmental degradation, the Court's *obiter* on the question of liability outlines the approach of the Court in general. In two recent cases the Indian Supreme Court has interpreted these issues of liability in the context of 'public trust' doctrine. This doctrine was laid down by the Court in *M.C. Mehata v. Kamal Nath*[16] in 1997 and the same was reiterated in a crucial 2006 case, namely, *Intellectual Forum v. State of Andhra Pradesh.*[17]

Above cases are cited to show the somewhat far-reaching trend or approach that could be adopted by the Indian courts and these could be extrapolated to liability issues.

PROPOSED INDIAN NUCLEAR LIABILITY BILL

The Civil Liability for Nuclear Damage Bill, 2010, has been introduced in Parliament.[18] This draft bill on nuclear liability, more or less, follows the language of the Vienna and Paris Conventions. The Statement of Objects and Reasons to the bill points out that the geographical scope of damage caused by a nuclear accident many not be confined to national boundaries and it may have trans-boundary effects. Therefore, the Statement of Objects and Reasons points out (a) it is desirable that protection is accorded to victims of such incident or accident by a third party liability regime; and (b) to give compensation to persons if they suffer nuclear damage as a result of a nuclear incident. It is also noted that the 1962 Act has no provision on the nuclear liability or compensation for nuclear damage due

to nuclear accident or incident, and no other law deals with nuclear liability for nuclear damage in the event of nuclear incident.

The provisions of the Indian law will be Briefly Examined in the Following Sections

The Indian draft law on nuclear liability has 49 sections and is spread over seven chapters.[19] Chapter II (Sections 4 to 8) is important as it deals with substantive aspects of nuclear liability.[20] It also provides for the appointment of a Claims Commissioner who would look into all claims that might arise from nuclear incidents. The short Preamble to the Bill sums up the functional aspects of the law as "to provide for civil liability for nuclear damage, appointment of Claims Commissioner, establishment of Nuclear Damage Claims Commission and for matters connected therewith or incidental thereto".[21] This draft bill defines 'nuclear damage' in Section 2 (f). The language of this draft is similar to the Vienna Convention definition on 'nuclear damage'. This definition broadly categories situations and circumstances that could be regarded as 'damage'. These are - (a) personal injury; (b) damage to property and the consequent economic loss; (c) damage to environment and costs of restoring it; and (d) any other economic loss (other than the one caused by impairment of environment) permitted by general law on civil liability in force in India.[22]

Requirements of a Nuclear Liability Act

By and large these conventions established certain norms as being fundamental to a good nuclear liability act. These were:

A. Strict Liability

The relative safety of NPPs, there are certain unique features associated with nuclear accidents. First of all, the damage caused by ionizing radiation to living cells, especially human cells, may not be immediately recognisable; it may be latent for a long time. Since the radiation doses received by living cells have cumulative effects, there may be damage caused by different sources of radiation.

B. Financial Liability

Winning in court does not by itself guarantee that the plaintiff will be able to recover the award. If the losses to victims exceed the operator's ability to pay, the operator may as well declare bankruptcy, in which case the victims will not be able to recover the full award. It is, therefore, necessary that the law directs the operator to maintain

insurance or provide other financial security covering its liability for nuclear damage in such amount, of such type and in such terms as may be decided by the legislature or the executive of the state.

C. Absolute Liability

While in theory it may be possible to suggest that all parties connected with the operation of a nuclear facility - the operator of the facility, the supplier of technology and equipment- all should be held responsible for a share of the damages, in practice this may prove difficult, if not impossible. In particular, if the nuclear accident is sufficiently serious, the special environmental conditions - such as radiation hazards, high temperature melting or fatalities among operating staff - prevailing after the accident may prove it impossible for a sufficiently provable forensic linkages to be established between the different parties involved

D. Operator's liability

Finally there is the issue of whether or not there should be a total overall cap on the nuclear liability over and beyond the financial guarantee 6 required from the operators. Without such an express limitation, the liability of the operator would be unlimited. Certainly there is no bar on requirement of unlimited liability on part of the operator even if an unlimited financial coverage is not possible.

POLICY RECOMMENDATIONS

Diversifying Energy Mix: Steady and sustained high rates of growth of the Indian economy in the coming decades, in line with the growth experienced during this past decade, points to a rapidly increasing energy demand. To satisfy these demands, keeping in view the changing pattern of fuel consumption worldwide and the uncertainty about future hydrocarbon supply and prices, India must diversify its energy mix.

Three Stage Nuclear Energy Programme: India has one the largest deposits of thorium in the world and India is one of the leaders today in research in studying the properties of thorium and its utilization in energy generation. The long standing three stage strategy of the Indian nuclear energy program to exploit thorium in the last stage must be pursued vigourously to rapidly expand India's nuclear energy generation capacity in the coming decades leading upto the second half of the century.

The Atomic Energy Regulatory Board: The Atomic Energy Regulatory Board (AERB) regulates all aspects of civil uses of nuclear

energy. There is a need to make the AERB an independent regulatory agency separate and distinct from and independent of the Department of Atomic Energy (DAE). It should be a statutory board accountable only to the Indian Parliament entrusted with the licensing and regulation of all civil nuclear activities in India both in the public and private domains.

The Atomic Energy Act of 1962: The rapid and accelerated development of nuclear energy in the country calls for major changes in the manner in which nuclear sciences and technologies have been planned and directed in the country. Therefore, The Atomic Energy Act of 1962 needs to be amended suitably in the context of the changed circumstances under which the Indian civil nuclear program is intended to be developed.

Export Controls and safeguards: India has so far maintained an impeccable record in maintaining high standards of safety and security in the area of nuclear materials and technology. India is also one of the leading countries in the field of nuclear science and technology.

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6. Repealed vide Section 32 of the 1962 Act.
7. Section 2 (g) of the 1962
8. See Sections 41, 49, 50, 76, 83, 112 and all other enabling sections of the Factories Act, 1948, read with Sections 23 and 30 of the Atomic Energy Act, 1962.
9. The Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998 was replaced in the year 2003 with Indian Electricity Act 2003.
10. Pemmaraju Srinivasa .Rao, "The Role of Soft Law in the Development of International Law: Some Random Notes", *Essays in International Law*, Asian-African Legal Consultative Organisation, 2007; also see www.aalco.int.

11. Such as, for example, the Separation Plan, Safeguards Agreement with IAEA, modalities concerning the reprocessing of spent fuel and implications arising out of testing of nuclear devices.
12. It is known famously as Oleum Gas Leak Case. See All India Reporter (AIR) 1987 Supreme Court 1086 quoted in page 1098.
13. 1996 (5) Supreme Court Cases 647.
14. Manu/Supreme Court/0032/1999
15. Manu/Supreme Court/1007/1997.
16. See (2002) 10 Supreme Court Cases 664.
17. 2006 (3) Supreme Court Cases 549.
18. This Bill was introduced in the Lok Sabha on May 7, 2010. The opposition to this bill is broadly on the following lines: (a) that it limits the liability in case of a nuclear accident; (b) that it limits access to courts.
19. Statement of Objects and Reasons introduced by the Government of India on February 11, 2010 concerning the draft Indian bill.
20. The Civil Liability for Nuclear Damage Bill, 2010 (Bill No. 19 of 2010).
21. *Ibid*.
22. According to Section 2 (f) 'nuclear damage' means "(i) loss of life or personal injury to a person; or (ii) loss of, or damage to property".