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Research Papers

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REHABILITATION OF SEXUALLY ABUSED CHILD: AN OVERVIEW

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ABSTRACT

The term child sexual abuse refers to the maltreatment towards the minor with the intention to cause venereal satisfaction by bodily contact, non-physical and incestuous act etc. This victimization caused due to the ill mindset, aggression, revenge or by the pedophilia patients etc. Approximately 430 million children are living inside India. The Constitution of India has provided special right to the women and children, simultaneously the United Nations Children's fund is providing appropriate health and monetary welfare to live a well-being life to the children[1]. However the report displays that approximately 19.7% female and 7.9% male children have victimized of children exploitation. The societal approach towards the child sexual abuse explain regarding the exploitation of female child only, rather the current established amendment bill Protection Of Children from Sexual Offences indicate towards the gender neutral approach in this ill-treatment. Both male and female children are equally privileged by law and victimized by the crime. There are various researches evident that not less than 30% children exploited by family and 60% are by the outsiders[2]. This kind of events instigates the victim towards traumatized psychology, suicidal act, addiction to toxic products etc. which consider being a maximal impact upon them.

The research tries to discuss regarding the increasing issue of child exploitation, even though the numerous amendments, enactments and analysis of the legal framework. What are the essential causes and consequences to be scrutinize upon the emerged issue. How does the analysis uncover the gap between the established facts and current scenario? The analyst proffers an overview upon the statistical, psychological and rehabilitative approach of the victim. The study also emphasizes upon the legislative provisions of prior and post ramification in the Protection of Children from Sexual Offences Act, 2012 with an appropriate judicial analysis. Lastly it has provided a modernist dimension in reformation of the current societal approach to understand the victim thought process and introduce some pristine proposition to fulfill the object of the study.

KEY WORDS: Child sexual abuse, Victim, Rehabilitative, Exploitation, UNICEF, POCSO.

CHAPTER-I

1. INTRODUCTION

The victimization of the children in sexual abuse has done by the family as well as the stranger equally. They are vulnerably challenged physically, psychologically, socially and emotionally etc. The act doesn't only include the intercourse but the injudicious contact, forcefully visualizing the intimacy video and trafficking also. The abuse puts an impact upon the child mental health during the process and afterwards. The commission, treaties and statutes etc has structured to protect the children as considered being a vulnerable part of the society. The society development is directly proportional to growth of women and children. The basic hierarchy a child can live through the act:-

1. Sexual abuse
2. Psychological damage
3. Rehabilitation
4. Re- exploitation

Sexual abuse includes the forceful intercourse with the absence of consent and will. The minor instigate to act against his physical and psychological demands. By the act of the offender it has infringed the psychological behaviour of a child which doesn't get survived by only the penalty or punishment; it needs an appropriate rehabilitation and restoration of the state of mind[3].

[1] Allison N Sinanan, "Journal of Trauma &Treatment", S4-024, J Trauma Treatment, 2015.

[2] Ibid

[3] Ishita Bhatnagar "Child Sexual Abuse In India"8685.

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1.1 Overview

The constitutional provisions scripted as according to the life, livelihood, health, and education etc of a human being. The famous author Dr, Seuss of America said that "A person is a person, no matter how small". The article 14,15,19,21 etc are structured and amended to comfort the children and women specially. The combine approach of Indian legislation and international statutes has started to protect the children but the process of the applicability is deliberately steady. The approach of commission in the name of "National commission for protection of child rights" has provided the protection to the minors. Being a victim as well as accused in both the ways the child should be safeguarded by the laws[1].

Report displayed that the victimization of the children irrespective of gender has increasing even if the presence of stern statutes and laws. So in the year of 2012, the "protection of children from sexual offences Act" has come into force to deliver the special protection to the children.

1.2 Statement of Problem

The Indian laws try to disintegrate the consistency of the crime against children. Due to the less awareness and the applicability of the laws, there has been a lacuna find in the implementation of it. From the international framework to the national legal approach sanctioned various laws and create the committees to provide prerogative situation to live. The report displays that approximately 19.7% female and 7.9% male children have victimized of children exploitation. The article 15(3) of fundamental rights has provided special provision to the children as well as the United Nations Children's fund also provides the monetary privilege to them. When the debate come out regarding the burning issue the enactment of Protection of Children from Sexual Offences has come into discuss. The research paper not only discuss about the gap, privilege and amendments but the rehabilitation of the victimized children. By maintaining the article 14 of Indian constitution as equality before law and equal protection of law, the children includes both the gender male and female.

Though the crime has initiated after the completion of malicious motive of the offender but the justice has not been served after the pronouncement of punishment in this matter. The child sexual abuse has reached to the end after the rehabilitation and restoration of the psychology of the victim. The research tries to discuss regarding the increasing issue of child exploitation, even though the numerous amendments, enactments and analysis of the legal framework. What are the essential causes and consequences to be scrutinize upon the emerged issue. How does the analysis uncover the gap between the established facts and current scenario? The analyst proffers an overview upon the statistical, psychological and rehabilitative approach of the victim. The study also emphasizes upon the legislative provisions of prior and post ramification in the Protection of Children from Sexual Offences Act, 2012 with an appropriate judicial analysis. Lastly it has provided a modernist dimension in reformation of the current societal approach to understand the victim thought process and introduce some pristine proposition to fulfill the object of the study.

1.3 REVIEW OF LITERATURE

- "Behavioral and Psychological Assessment of Child Sexual Abuse in Clinical Practice" : published by Prof. Savita Malhotra (M.D.; Ph.D; F.A.M.S) & Dr. Parthasarathy Biswas (M.D.) : in International Journal of Behavioral Consultation and Therapy : on Volume 2, No. 1, 2006[2] : The above mentioned article discussed about the psychological and behavioral approach of a child victim. How the state of mind react after the victimization and the trial process.
- "skin to skin contact not needed for sexual assault" : published by India.com: on 18th November 2021,11:35[3] : This article discussed about the Bombay high court judgment regarding the "skin to skin touch"
- "Coach repeatedly touches aspiring cricketer's shoulders, chest, sexually harasses her" published by TimesnowNews,on 21st October 2021[4] : This article mentioned about the abusive behaviour of the coach during the training period. The sexual harassment can be done at any phrase.

[1] Ibid

[2] Prof. Savita Malhotra (M.D.; Ph.D; F.A.M.S) & Dr. Parthasarathy Biswas (M.D.) "Behavioral and Psychological Assessment of Child Sexual Abuse in Clinical Practice" Volume 2, No. 1, 2006.

[3] "skin to skin contact not needed for sexual assault" : published by India.com: on November 18th 2021,11:35

[4] "Coach repeatedly touches aspiring cricketer's shoulders, chest, sexually harasses her" published by TimesnowNews,on 21st October 2021

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- "Man forces 17 year old daughter to sleep next to him, sexually harasses her" published by Times Now News, on 20th October 2021[1] : The times now article focuses upon the sexual harassment by the family member with the intention to do so.

1.4 Scope & Objective:

The research paper focuses on the child by the infringement of established law and order. The sole direction of the research is to scrutinize the gap between the prior and amended laws. Lastly, what are the behavioral approaches needs to be taken for the rehabilitation and restoration of the victimized child psychology. By this analysis the suggestion can be modify the situation and decrease the cases of sexual abuse. If there are some then the matter should be register to create a deterrent.

- To analyzed the data of registered cases of child sexual abuse.
- The aperture between the pre and post enactment of POCSO.
- To maintain the gender equality among the victim and provide similar advantages of statutes.
- However the psychology of the victim shall rehabilitate and restored after the criminal trial.

1.5 Research Question:

1. What are the causes and consequences to be analyzed regarding the emerged issue?
2. How does the analysis uncover the gap between prior and current legal scenario?
3. What are the modernist approaches to rehabilitation the psychology of the victim?

1.6 Hypothesis:

- The various legal enactments such as POCSO, CWC, JJA and the constitutional laws has researched and established the statutes by the registered cases. But in which pragmatic process to be reviewed the current scenario to reach out in the judicial decision.
- The human rights and the criminal statutes are safeguarded the rights of a victim by penalized the offender. But the fundamental purpose to furnish an adequate method to restored the psychological need of a victim.

1.7 Methodology:

The Study upon the child sexual abuse has followed the doctrinal, theoretical and analytical method etc. The various judicial decisions, news article, journal and other written publications etc. The secondary data has collected to provide a comprehensible clarity to the research.

1.8 Chapterization:

As per the chapterization, the whole research study divided into five parts.

- The first chapter has combinable focused upon the introductory part, reports, research problem, review of literature, scope and objective, research question, hypothesis and methodology etc.
- The second chapter discussed about the legislative provisions, committee & commission report etc.
- The third chapter has emphasized upon the judicial interpretation regarding the research topic.
- The forth chapter has mentioned about the victim psychology as well as the suggestion to be rehabilitation method, modification and induction statutes.
- The last chapter provides conclusion of the issue.

CHAPTER-II
2.0 LEGISLATIVE PROVISION

2.1 Kinds Of Abuse:

- Bodily contact: This type of bodily abuse includes the contact between two bodies without the consent and will of one person. The forceful sexual intercourse, inserting any object into the vagina or anus for the physical satisfaction of the offender has considered under the bodily contact.
- Intangible abuse: Unlike the bodily contact a child can be exploited through other process. Both forceful mental seduction and physical intimacy is criminally liable under the India statutes. E.g. – who so ever

[1]"Man forces 17 year old daughter to sleep next to him, sexually harasses her" published by Times Now News, on 20th October 2021

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made any indication to evince any private part and array any indecent video that belongs to the intangible or physical act to provoke a person act accordingly. That act also considered under intangible abuse of a person.

- As the statute never permits the sexual intercourse between family members. This act is known as "incest". The section (5) of POCSO act, 2012 has also prohibited the sexual relation between the blood as well as adopted relatives.
- Involving a child into prostitution forcefully doesn't approved by the court of law. Also child trafficking for sexual privilege is a penalized act. The other forms of child sexual abuse are there, such as tourism abuse, virtual sexual exploitation and human trafficking etc[1].

2.2 Grounds Of The Offence:

There are various factors influencing to happen the crime. Those are:

1. Forbidden to provide sex education.
2. Gender biasness
3. Fallacious behaviour

Forbidden to provide sex education:

As the Indian society never permit to discuss or to ask about the sexual relation at any phase. The less awareness regarding the issue instigates the offender to do so.

Gender biasness:

The children are treated as vulnerable part of the society. But during the victimization the gender biasness has come into picture. Some matters are focused upon the patriarchal power and some are dominant upon the weaker.

Fallacious behaviour:

In these cases where the family of the victim has a part of the offence, the victim forcefully maintain the silence under the pressure of the family. Due to the minor behaviour the parents stay in denial by avoiding the truth of the circumstance. So this ground can be a privilege to the offender and drawback to the victim. Sometimes the fiduciary relation is one of the reasons not to believe the victim.

2.3 Report & Statistical Data:

Crime against children rate is increasing day by day. As per the National crime record bureau, 2015 there are 94,172 cases of crime against children registered. A child has not been victimized by one part or point of time but at any place. The report displays that the children belongs to the age group above 5 years more likely to victimize. But current upgrade statute of the society showed that less than 5years up to teenagers equally victimized by the sexual offenders. Both the genders are equally swedging against the abuse but the males are also instinctively victimized as compared to female.

The 1998 RAHI report has surveyed regarding the child sexual abuse for the first time. The report has emerged with an approximate value of 76% of sexually victimized children and 40% of them are abused by the family members. The male victimized rate is not less than 57.30% and female are 42.7%. At an approximate rate of victimized children:

State	Gender (male)	Gender (female)
Assam (highest)	62.55%	51.19%
Bihar	35.89%	30.40%
Delhi	54.66%	22.54%
Goa	2.55%	2.17%

The report has also mentioned that 50% of the victimized children abused by the known and family members. Approximately not less than 77% people refuse to register the child abuse cases[2].

2.4 Overview On Pocso :

[1] "Journal of Trauma & Treatment" Sinanan, J Trauma Treat 2015, S4:024.

[2] Id, page no. 1.

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The Indian constitution has provided special provision for women and children irrespective of gender, sex, caste, religion etc. Article 14 stated about the "equality before law" and "equal protection of law". At the same instance article 15(3) provides special rights to the women and children. The article 15(3) has an exceptional alignment with the POCSO act for the unbiased exercise of rights and speedy justice of the trial.

The prior scenario of the POCSO act has dealt by the Indian penal code, 1986. But due to the loopholes and discriminative implication of the provisions, there are some drawbacks came out. As the section 375 of Indian penal code, 1986 has drafted only to provide privilege to the female, so it hasn't applicable to the male child. To avoid the gender biasness, the protection of children from sexual offences act, 2012 has drafted. To bring out a sensible interrogation, questioning and trial towards the abused children some mentioned rule of Pocso act has followed.

i. According to section 19(6) after the registration of sexual abuse case, the discussed matter should forward to the CWC within 24hours.

ii. The declaration of the victim needs to be tapped as per the convenience place and time of the victim with the presence of female investigator.

iii. The trial process should reach to a conclusive decision as soon as possible.

iv. According to the section 34(1) the trial should be on camera by the magistrate of special court.

v. The abuse minor physical examination should be accomplished by the female doctor with the approval of the parents or trustee.

vi. The complete trial process has to be followed by the observation of the condition and consent of the minor. (Provided that the physical & the psychological state should be stable)

vii. As according to rule 4(4) and 4(5) of Pocso act, the committee has decided the children and act for the best interest of the children.

Relation between Juvenile justice act and Protection of children from sexual offences:

The investigation officer has a responsibility towards the victim, so the SJPU has followed the mention procedure of trial.

1) According to the section 19(2)(a) of POCSO act stated that the case should be registered by the aware person.

2) As per the section 19(5) of POCSO act, has drafted about the utmost good care and solicitude for the victimized children duration of the trial and rehabilitation process.

3) Rule (5) and section 19(5) of POCSO act, has discussed regarding the availability of medico privileges the victim without any discrimination.

4) Section 25 of the POCSO act has emphasized upon the record of confession by the presence of magistrate with the consent of the abused child.

5) Section 19(6) states about the production of document to the magistrate and the CWC within the appropriate time.

The burden of proof in the child sexual abuse lies upon the victim where the evidence, medical examination and the circumstantial proof states about the culpability of the accused. The protection of children from sexual offences act, 2012 has put a gender neutral approach towards the abuse child which twirls the circumstance in the favor of the victim.

Penalty and Recompense:

- Section 19 of POCSO act, 2012: The child sexual abuse cases needs to be register by any person who so ever aware of the offence.
- Section 21 of POCSO act, 2012: Any person whose has not been register the case of abuse shall be punished due to failure of registration of the offence. The punishment is not less than 6months to the extension till 1year with fine.
- Section 21(2) of POCSO act, 2012: The person who is a minor shall not be punished if he is failed to register the case.

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- The aware person has the obligation to register the case if he failed then liable for punishment with fine.
- The trial should be adjudged by the special court.
- Section 4 of POCSO act, 2012: The liable person has punished not less than seven years which can be extended to life imprisonment.
- Section 6 of POCSO act, 2012: The offender belongs to the trustworthy category or any authorized personality than they are penalized for not less 10years and fine.
- Sexual intention and harassment has penalized not less than 3 years which may extend to 5years with fine.

Recompense
The court has power to grant the interim monetary amount to better treatment and bear the trial expenses. Section 7 of POCSO act, 2012 has drafted about the compensation by the special court for the loss or injury of the victim.

Commission
The rights of children have safeguarded by the "National commission for protection of children". The commission has scripted by the some rules and governs by the tribunals. The UN convention in 1990 has accepted the well being, security and evolution of the minor in current societal approach. The UNICEF and national charter for children, 2003 proposed some evolutionary method for the child rights. This commission has the power to induce the trial process. It has the power to take the suo motu cognizance for the emerged matter. The commission has the right tanalyze the laws, policies and guidelines to move forward the case into a right direction to reach into a decision[1].

CHAPTER-III
3.0 JUDICIAL INTERPRETATION

3.1 Judgments:

A. Tuku Ram and others V. state of Maharashtra (AIR1979 Sc 185)[2] : This judgment is commonly known as Mathura rape case. A tribunal girl was raped by the policemen. The subordinate court has entitled upon the penal laws by the differentiation of free consent and surrendering herself. The amendment has made after the Mathura case by the incorporation of section 114(A) in Indian evidence act, 1872. The offence are held guilty of gang rape and awarded by the punishment of 10year which may extend to life imprisonment. This matter made an amendment in criminal amendment act, 1983.

B. Nipun saxena V. Union of India (2019)2 SCC 703[3] : The Supreme Court held some guidelines upon the child sexual victims. The identity of the rape victim shouldn't be revealed. After the death of the victim also the family has no right to reveal the identity. Only the power lies upon the session court to divulge the description if any best interest lies. It has mention under section 372 of criminal procedure code, 1973. Every state should establish a "one stop center" to prevent the sexual offences.

C. Satish Ragde V. state of Maharashtra (criminal appeal No. 161 of 2020)[4] : This judgment is commonly known as *"skin-to-skin contact".* The offender has victimized a 12 years child of sexual assault by pressing the breast for his sexual satisfaction. The sessions court has cited that non contact of skin to skin create no offence. As the offender was pressed the breast over the dress so it's not a rigorous offence. The court held liable of 3 years and penalized by rupees of 1500 /- as monetary fine.

3.2 Criticism: The judicial decisions only made to create a deterrent not to prevent the offences. As the case of child sexual abuse not only aims the punishment but the recovery of the well state of mind of a child. In the case of Satish Ragde, the hon'ble justice Pushpa Ganediwala stated that non contact of skin can't be an offence. As the Section 10 of POCSO act, 2012 mentioned about the punishment of having wrongful intention, then how can't the non contact be an offence. The state of mind of a child during the sexual harassment irrespective of physical or nonphysical contact is sensitive. So the judgment of the Bombay

- [1] Jennifer M. Foster & Nishi Tripathi "child sexual abuse in India,current issues and research" September 2013

[2] Id, page no. 01

[3] Nipun saxena V. Union of India, (2019)2 SCC 703,India

[4] Satish Ragde V. state of Maharashtra, criminal appeal No. 161 of 2020,India

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high court should be modify as the psychological state of a victimized child is more crucial than creating a deterrent.

CHAPTER-IV
4.0 REHABLITATION AND EFFECT

The after effects are long term upon the victim psychology. The person not only physically but psychologically incurred challenges such as suicidal thoughts, behavioral changes, trust issues, harmful tendency, intoxication, food intake issues, stress, hormonal changes etc. As the children are unaware of the consequences and effects upon the body, so they can transmit any disease from the offender's body to themselves. The abused minors are introduced with new changes in their body which can cause of emotional instability. As there are privileges available for the offender so the victim couldn't able to speak up regarding the issues.

A person can't predict where a child victimized of any sexual abuse or not because there are no particular sign. It can be seen as asymptomatic syndrome. The initiation of the matter only by the hearsay evidences. The theory of punishment not only focused about the deterrent but reformation theory also. Reform can also be considered as reformation of the victim psychology. The international journal stated by the author "Raskin and Esplin's" that "Statement Validity Analysis" (SVA) which means after the trial process and the duration of treatment the victim should communicate properly by their issue[1].

4.1 Suggestions

1. To create helpline services for the sexually abused children. As the children are effectively active in virtual mode, so they can exercise this method.
2. The family should be aware and communicative with the children.
3. By analyzing the current scenario the schools and the parents should provide sex education to the children. Most likely to provide the knowledge regarding the delicate touch and the indecent touch.
4. Before pronouncing any judicial decision, the judiciary needs to be analyzing the judgment twice as it related to the child victimization matter.
5. The burden of proof needs to be shifted upon the offender to create compatibility among the society, law and order.
6. There should be special force needs to be establish which maintain the number of registered and unregistered cases of sexual abuse children.
7. The simple punishment should be abolished to create a rigorous deterrent.
8. The judiciary should take a suo motu cognizance in the matter of child sexual abuse and insert a mandatory statute regarding the rehabilitation of sexually abuse children.
9. And also the hon'ble judge should appoint psychiatry to examine the sexually abused child.
10. A person who belongs to fiduciary relation, responsible authority and family member should punish with rigorous imprisonment and high rate of fine.
11. Who so ever contaminate the evidence and try to gain inappropriate monetary value should be punished.

CHAPTER-V
5.0 CONCLUSION

The child sexual abuse is a heinous crime as the children considered to be vulnerable in nature. The person who tries to victimize a child shall liable under the legal statutes. The research paper reaches into a conclusion where the interpretation of Indian scenario, interpretation of statute with appropriate judicial analyses, psychological impact and suggestions etc. The constitutional law, POCSO, penal provisions has states the advantages and disadvantages about the provision with respect to the scenario. Not only the national but the international approach towards the issue to have put a different dimension to it. The criminal laws of India need to be modified as according to the scenario. The modification and implementation should move hand in hand.

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[1]Prof. Savita Malhotra (M.D.; Ph.D; F.A.M.S) & Dr. Parthasarathy Biswas (M.D.), OP.CIT. Page no.03.

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LEGAL AID AND SOCIAL RESPONSIBILITY- A PERSPECTIVE ON THE ROLE OF LAW SCHOOLS IN FACILITATING LEGAL SERVICES

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ABSTRACT
Education plays an important role in the society and for a social change. As a potential instrument and a powerful medium of bringing changes in the society it enables drawing out of the best in the body, mind and spirit of individuals. It equips an individual with ability to understand and reflect upon knowledge and processes and to act in a responsible manner. Legal education is a species of main stream education involving the study of law and society. It inculcates the ability to make use of law, to analyze it and to criticize it as a member of the legal community. It focuses on the individual freedom and also on the development of society, solidarity and strengthening of rule of law. The progress of high quality legal education is a prerequisite to high quality legal practitioners. Legal Education precedes Law Profession, which in turn aims to provide legal remedies to the society. Article 14, 22(1) and 39A of Constitution of India makes State responsible for securing Justice to all and providing legal relief for poor and marginalised section of the society. Those remedies also come in form of Legal Aid. The Law Colleges are the very instrumentalities entrusted with provisioning Legal Education and Facilitating Legal Aid & Clinical Legal Education. This Study explore that how Law Colleges has been imparting Legal Education and Clinical Legal Education in order to prepare young legal professionals ready to serve the society through Legal Aid. Also the perspectives on change in approach by the law colleges in reaching the poor and needy by way of adopting certain areas in order to provide free legal aid.

Keywords: Key Words: Legal Aid, Clinical Legal Education, Law Colleges, Legal Remedies, Profession.

INTRODUCTION:

Peace and harmony is very essential for the growth and development of a nation which can be ensured through fair administration of justice. In a welfare State like India where people are known for its diversity, it is the obligation of the State to ensure equal administration of justice as it is a sine que non of fair administration of justice. To promote equal administration of justice irrespective of economic or other disability, the concept of free legal aid emerged. It promotes the saying that justice should not only be done but seem to be done. Another hurdle in the path of administration of justice is delay, cumbersome process and high litigation cost. These problems become more complex when a person who comes before a court for protection is poor, illiterate or ignorant about his rights. Failure to get easy, cheap and expeditious justice shakes the very faith of people in justice administration system. The founding fathers of the Constitution of India had taken a positive approach towards doctrine of equal justice, which becomes apparent on the plain reading of the preamble of the constitution. It provides for justice in all its forms- social, economic and political. This preamble promise is further strengthened by provisions in Articles 14, 21, 22(1), 32, 39-A, 38, 41, 46, 142 and 226 of the Constitution of India[1].

Law as a profession provides valuable service throughout the society in different ways to different groups of people at the different level in both the public and private sphere. Whether be any section of society, the law is needed for all. Law is not just the contribution of the lawyers but the profession also depends on the contribution of the budding lawyers or the law students. It is important to acknowledge and thank those who are the foundation of this profession as they provide their high level of service on which the modern society is dependent. In the modern context, it also provides us with the opportunity to highlight the role of law students in the legal profession as well as in the society. Law students have a strong sense of justice and have a will to remove the injustices from the society and through their legal knowledge gained through legal education they make this change significant. The change is not sudden but is a result of a gradual change that comes over a period of time.

Article 14 states that "Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 22(1) states that "No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice".

[1] Preamble, Part III and IV of the Constitution of India.

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Article 39A of the Indian Constitution states that *"The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.*[1]*"*

Justice is what we usually talk about whenever we come across Indian Judicial Process. The purpose for which Judiciary has been established is to deliver justice to everyone irrespective of his social and economic condition. Very often, it becomes quite difficult for a person to get justice because of certain economic means or certain procedures which he is not aware of. Usually, a person does not want to indulge himself in the litigation process because of delay in justice. It has become a mindset of various people that if a person is entering into the process of litigation, then it would become very difficult for him to get out of it. Various Legal Aid Committees have been established by Central and State Government in order to make sure that justice can be delivered to those persons who are not able to represent themselves because of their economic condition. Indian Constitution envisages making the state oblige to enact a suitable act in order to provide free legal Aid to those people who cannot afford the litigation process. The role of Law Schools in this regard can play a very prominent role by adopting certain areas for provisioning continuous free Legal Aid.

BACKGROUND

Justice UU Lalit the current executive chairperson of the National Legal Services Authority (NALSA) said that law students should act as a bridge between the providers and seekers of legal aid. He has urged law students to give back to society by acting as paralegal volunteers in the hinterland, similar to students of medicine who intern and work in rural areas as a matter of compulsion. It was urged to the law colleges to facilitate that students also give back to society in the form of acting as paralegal volunteers, between the providers and seekers of legal aid[2].

Further, the Bar Council of India (BCI) had assured NALSA that law colleges would be extending such support. "If law colleges adopt maybe two or three talukas in the region, then maybe there will be a regular stream of students who will be devoted to the cause of legal aid.

Although the BCI Rules provide for compulsory internship opportunities for law students, an institutional framework deserves to be designed for law students to assist in legal aid as part of their curriculum[3]. This will not only help students understand ground-level problems in justice dispensation but also help the legal service authorities in getting help for the needy.

A culture of such programmes needs to be cultivated, where for a lengthy period of time, law students are engaged at a particular place to learn the basics of procedural aspects pertaining to litigation. Law students are young, energetic and full of enthusiasm. Their energies need to be channelized by adopting at least one taluk in a manner that the society as a whole derives benefit out from it. By training in rural or semi-rural areas, students will learn the basics of civil litigation, e.g. property and family disputes as well as criminal litigation pertaining to different crimes in the society. They will also get a better grasp of on-ground realities in the country.

INSIGHTS OVER RIGHT TO EQUALITY & ACCESS TO JUSTICE:

Preamble of India provides for securing all citizens equality of status and opportunity along with justice-social, economic and political. Both the objectives have inter-connection. Equality promotes justice and justice promotes equality. We cannot expect justice without the support of equality. Equality in a country like India where differences among people prevail because of Social, Economic and Political factors is a far cry without the support of provisions like legal aid. Legal aid brings less advantageous people at par with affluent counterpart so that they could get equal opportunity to seek justice. Apart from preamble access to justice also get assistance from fundamental rights. Fundamental rights enshrined in part III of the Constitution are the tools to achieve the objectives laid down in the preamble. These are basic, natural and inalienable rights which are essential for growth and development of human beings which ultimately lead to growth & development of a nation. Articles 14, 21, 22, 32 and 226 provides for the free legal aid. Article14 provides that the State shall not deny to any person equality before the law or the equal protection of law within the territory of India. Article 14 uses two expressions "equality before the law" and "equal protection of law". Equality before law is taken from

[1] Preamble, Part III and IV of the Constitution of India.

[2] https://www.livelaw.in/top-stories/legal-aid-justice-lalit-law-colleges-nalsa-national-legal-services-authority-179122

[3] Part III and IV of the Constitution of India.

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England and equal protection of law is taken from American Constitution. Both these terms appear same but they have different meaning. Equality before law provides that everybody is equal before law irrespective of position and economic resources on the other hand equal protection of law provides a helping hand in terms of special provisions to those people who are at less advantageous position so that they could avail the benefits of law as their affluent counterparts are availing and equality before law could be maintained. In India because of illiteracy, ignorance, poverty and lack of faith in judicial system people do not get equal opportunity to get fair justice as their educated and affluent counterparts get. So provision like free legal aid becomes very essential to provide them equal protection of law which is a fundamental right of every person

AUDI ALTERAM PARTEM:

Another supporting provision which is implicit in right to equality is the principle of Audi Alteram partem. It means the other party must be heard. This principle is implicit in Article 14 which is a fundamental right of every person. So it is the duty of the State to ensure every person proper representation before Court irrespective of his means or knowledge. Free legal aid is implicit in Article 14. The law schools and the law students can be a bridge in ensuring the legal aid served

RIGHT TO LIFE AND ACCESS TO JUSTICE:

Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except according to procedure establish by law. The Supreme Court in **Menaka Gandhi V. Union of India**[1] held that under Article 21 life and liberty of a person can be taken away only by the procedure establish by law. The procedure which can take away life and liberty of a person should be just, fair and reasonable. Any procedure established by law which does not provide for free legal aid for poor and illiterate people to ensure fair representation before court cannot be treated as just, fair and reasonable. So the Hon'ble Supreme Court widened the scope of Article 21 to include provisions of free legal aid in it.

The Hon'ble Supreme Court reaffirmed its stand in **Hussainara Khatoon V/s. Home Secretary** [2]to include right to free legal aid in Article 21. The right to free legal service is clearly an essential ingredient of 'just, fair and reasonable' procedure which can take away the life and liberty of a person accused of an offence. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty. The state is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the need of justice so require. Provided the accused person does not object to the provision of such lawyer.

Again the Hon'ble Supreme Court reaffirmed the obligation of State to provide free legal aid to poor person in **M.H. Hoskot V. State of Maharashtra**[3] by giving similar decision. It stated that if a prisoner is unable to exercise his constitutional and statutory right of appeal including special leave to appeal for want of legal assistance, then it is the obligation of the court under Article 142 read with Article 21 and Article 39A of the constitution to assign counsel to the prisoner provided he does not object to the lawyer assigned by the court.

Similarly in **Sukh Das v. Union Territory of Arunachal Pradesh**[4] , It was held that Free legal aid at the State's cost is a fundamental right of a person accused of an offence. This right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21.

OBLIGATION TO INFORM THE RIGHT TO LEGAL AID:

Right to legal aid cannot be denied to him on the ground that he failed to apply for it. The magistrate is under an obligation to inform the accused about this right and to inquire about his wish of legal representation at the State's cost, unless he refused to take advantage of it.

In the case of **Mohd. Ajmal Amir Kasab vs. State of Maharashtra**[5] the Hon'ble Supreme Court directed all magistrates in India to discharge their duty of informing about free legal aid. It was held that the right to legal aid, consult and defended by a legal practitioner, arises when a person arrested in connection with a cognizable offence is first produced before a magistrate. So It is the duty and obligation of the magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right

[1] Maneka Gandhi v. Union of India AIR 1978 SC 597.

[2] Hussainara Khatoon & Ors V. Home Secretary, State Of Bihar, 1979 AIR 1369, 1979 SCR (3) 532

[3] M.H. Hoskot V. State of Maharashtra, AIR 1978 SCC 1548, (1978) 3 SCC 544.

[4] Sukh Das v. Union Territory of Arunachal Pradesh 1986 AIR 991, 1986 SCR (1) 590

[5] Mohd. Ajmal Amir Kasab vs. State of Maharashtra (2012) 9 SCC 1

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to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, that one would be provided to him from legal aid at the expense of the State. The right flows from Articles 21 and 22(1) of the Constitution and needs to be strictly enforced. All the magistrates in the country were directed to faithfully discharge the aforesaid duty and obligation any failure to fully discharge the duty would amount to dereliction in duty and would make the concerned magistrate liable to departmental proceedings.

ASSISTANCE BY COMPETENT ADVOCATES[1]:

Legal Aid to accused persons without means in all cases tried by a court of session, is a mandatory constitutional necessity, it is further necessary that such lawyer should be competent. Indigence should never be a ground for denying fair trial or equal justice. Therefore, advocates competent to handle cases should be appointed. To provide free legal aid in true sense we need to have well trained lawyers willing to perform free legal aid. It is possible if there are adequate number of colleges with necessary infrastructure, good teachers and staff. Since the government is unable to establish adequate number of law colleges, it is the duty of government to permit establishments of duly recognised private law colleges and afford them grant in aid on the similar lines on which it is given to government recognised law colleges. This would facilitate functioning of these colleges efficiently and in a meaningful manner. These colleges will turn out sufficient number of well trained or properly equipped law graduates in all branches year after year. This will in turn, enable the State and other authorities to provide free legal aid and ensure that opportunities for securing justice are not denied to any citizen on account of any disability.

ASSISTANCE BY LAW SCHOOLS AND THE LAW STUDENTS:

Understanding the importance of legal aid under various circumstances as a matter of a legal right as directed by the Supreme Court in various cases, it is necessary to make the free legal aid reach the needy in time. The major obstacle to the legal aid movement in India is the lack of awareness amongst the people about the legal service as a constitutional right. People are not aware of the legal right as a basic right due to which the legal aid movement has not achieved its goal yet. It is the absence of legal awareness which leads to exploitation and deprivation of rights and benefits of the poor. However looking over the existing difficulties that are faced by the legal services authority in facilitating the free legal aid it is felt that an institutional mechanism allowing Law students to pay back to the society is a need of the time. As an institution the existing law schools can play a better role by adopting one or more taluks within its limits in this regard. There are various law schools that have made a decent attempt in expanding the horizon of institutional legal services through legal aid programmes vehemently.

The law school can do much better going one step ahead by adopting at least one taluk within its reachable limits. The law students can engage themselves in fulfilling the desired objectives of the legal services authority and also gaining a firsthand experience over the legal challenges.

Who is entitled for legal aid? How a law school and a law student can be helpful? According to Section 12 of the Legal Services Authorities Act, the following categories of people are entitled for free legal services[2];

1. A member of a Scheduled Caste or Scheduled Tribe; 2. A victim of trafficking in human beings or begar as referred to in Article 23 of the Constitution 3. A woman or a child; 4. A mentally ill or otherwise disabled person; 5.A person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; 6. An industrial workman; 7. In custody, including custody in a protective home within the meaning of clause(g) of Section 2 of the Immoral Traffic (Prevention) Act, 1956(104 of 1956); or in a juvenile home within the meaning of clause(j) of Section 2 of the Juvenile Justice Act, 1986 (53 of 1986); or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of Section 2 of the Mental Health Act, 1987(14 of 1987);or 8. In receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the state government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the central government, if the case is before the Supreme Court.

The aforesaid legal services can be facilitated by the law schools and the law students by becoming a bridge between the legal services institution and the beneficiary. The law school can as a pilot project may try

[1] Section 9A of Advocates Act, 1961 and Section VI, Rule 46 of the Bar Council of India Training Rules, 1995

[2] Section 12 of the Act entitles a person to legal services if that person is a women, child, member of Scheduled Caste, Schedule Tribe, victim of trafficking, Industrial Workmen, persons in custody or victims of disasters, etc.

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establishing a cell in the targeted area and deputing its law students as a pre-job training. A MoU can be entered with the jurisdictional legal service institute for certain duration and provision support to them.

Provision of free legal aid may include: 1. Representation by an advocate in legal proceedings; where a law student can help in assisting the representing counsel. 2. Preparation of pleadings, memo of appeal, paper book including printing and translation of documents in legal proceedings; where a law student can in fact assist and also learn for his own benefit 3. Drafting of legal documents, special leave petition etc.; where a law student can be of a great support 3.Rendering of any service in the conduct of any case or other legal proceeding before any court or other Authority or tribunal and; where a law student can confidently serve in this regard 4.Giving of advice on any legal matter; where a law student can be of a great support.

Further, the free legal services[1] also includes a provision of aid and advice to the beneficiaries to access the benefits under the welfare statutes and schemes framed by the central government or the state government and to ensure access to justice in any other manner where both the law school and the law student shall be a great facilitator of such a service.

There are four main reasons why the National Legal Services Authorities[2] has not been able to deliver real legal aid: 1. There is a general lack of awareness of the availability of legal aid. 2. There is a perception that free service is incompatible with quality service. 3. There are not enough lawyers delivered by the legal services authorities, and 4. Lawyers generally are uninterested in providing competent legal assistance because of financial constraints. Moreover, too often lawyers assigned to provide legal aid and paid with public funds do not faithfully represent their clients, casting serious doubt on the credibility of the scheme of legal aid provided to weaker sections of society. Some lawyers engaged by legal aid committees hold their client's cases for ransom by employing delay tactics. These lawyers compel their clients, many innocent, to pay additional amounts of money to them, even though they are supposed to obtain their fee from the legal aid committee. One factor that may be contributing to this is that the remuneration paid to lawyers by the legal aid committee is very low and does not even meet the lawyer's incidental expenses.

Another major obstacle to the legal aid movement in India is that the delivery system for legal aid is far too inefficient. More lawyers must be encouraged to delivery free legal aid and a campaign should be launched to inform people about the existence of free legal aid. The legal aid movement cannot achieve its goal so long as people are not aware of their basic rights. When the poor are not aware of their legal rights, they are subject to exploitation and ultimately deprived of the rights and benefits provided to them under law. Thus, the key to a successful free legal aid system is increased awareness among the populace and more efficient delivery processes. In creating awareness the law schools can play a vital role. Successful legal aid delivery in India requires the government to embark on a campaign to inform and educate the public of its right to free legal aid. Further, the government must employ more efficient processes to improve legal aid delivery and encourage law schools to play the primary role.

CONCLUSIONS:

Legal aid is not a charity or bounty, but is an obligation of the state and right of the citizens. The focus of legal aid is on distributive justice, effective implementation of welfare benefits and elimination of social and structural discrimination against the poor. It works in accordance with the Legal Services Authorities Act, 1987 which acts as the guideline of the rendering of free justice. The prime object of the state should be "equal justice for all". Thus, legal aid strives to ensure that the constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the downtrodden and weaker sections of the society. But in spite of the fact that free legal aid has been held to be necessary adjunct of the rule of law, the legal aid movement has not achieved its goal. There is a wide gap between the goals set and met. The major obstacle to the legal aid movement in India is the lack of legal awareness. People are still not aware of their basic rights due to which the legal aid movement has not achieved its goal yet. It is the absence of legal awareness which leads to exploitation and deprivation of rights and benefits of the poor. The Law schools and the law students are the very instrumentalities entrusted with provisioning Legal services and Facilitating Legal Aid to the poor and needy, their role by adopting it as a primary responsibility can do a lot in facilitating legal services as a matter of a basic right.

[1] Introduction and history of NALSA, available at- http://nalsa.gov.in

[2] See, particularly Section 4 (e), Section 7 (C), 10, 11(b), 12 and Chapter VI A of Legal Services Authorities Act, 1987.

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GOVERNMENT POLICIES AND PROGRAMS TOWARDS EMPOWERMENT OF RURAL YOUTH THROUGH NEHRU YUVA KENDRA OF DHARWAD DISTRICT

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ABSTRACT
In this present condition Economic and Social development highly depends on the active participation of youth in the development of the country. But for rural youth there is lack of resources and trainings for their self development. There majority of youth population lives in rural area. It is a very difficult for rural youth to think about empowerment of their own conditions. Youth Empowerment amongst rural youth has been a recent concern in rural India. Rural youth are the people who accept challenging role to meet their personal needs and mainly about empowerment.

This paper mainly concerned with the Youth Empowerment of rural areas of India this is a conceptual paper and was secondary data from books journals articles. Websites and Government Reports, this study highlighted the current situation of rural Youth Empowerment in India through Nehru Yuva Kendra. This paper also towards on the future prospects of Youth Empowerment and development initiatives for making youth development more successful this study suggested more strategies for empowerment of rural youth

Keywords: Youth, Empowerment, Rural youth, Government Programmes, Nehru Yuva Kendra.

INTRODUCTION
The Indian government brought many policies on youth to bring change and development in the sector of youth. The youth of a country is the most essential and productive population it impacts on development and predictability. The scenario turns towards the updating the youth to the new skills and work atmosphere which enhance the accountability and affectivity of youth. Very important role of government is to enact and implement the policies and programs which policies consists of skill Trainings, soft techniques, and developmental initiatives to encourage and enables the youth as more sensitive and more accelerative in work force. The present government given more concentration and priority to empower the youth by implementing such wonderful youth policies and programs.

Youth Concept and Definition.
Youth is the very active and potential in nature, they perform a large scale of work force. Youth policy defines youth age group from 13 to 35 and of the policies opines the same definition. The government has initiated a number of adolescent-specific policies and programs these policies take into account recent shifts in addressing the needs of this special population and indicate a political commitment for meeting the development of the adolescents. **The National Youth Policy 2003** includes 13–35-year-olds as youth this special group with special needs and advocates for specialized programs. The Policy considers youth as potential unit of the country which helps the development of nation. The Exposure Draft **National Youth Policy 2012**, aims to change the age bracket to 19–35 years with specific talents are very active in nature to work contribution. The Exposure Draft recognizes the need for an integrated and collaborative approach to youth development programs and the need to provide a distinct framework to all concerned ministries and departments **(Ministry of Youth Affairs and Sports 2012).**

Rural Youth.
India is county of villages, villages are the best identification of rural India where the Indian tradition and culture lives according census of India 2001 638,365 villages recorded. In 2011 census of India 649,481 villages recorded, as of calculation in 2019 664,369 villages are shaped India a royalty of unique culture and traditions. These villages provides food grains, vegetables, and row goods for manufacturing industries, its hub of agricultural job opportunities for literate and illiterate people. It's a very ancient identity of the nation. 61 percent of the population in India belongs to the age group 13-59 years and 38 percent of them belongs to the age group of 13-34 In rural areas, about 14 percent males and 13 percent females. Total 27 percent of total population of India.

Government Policies and Programs.
The Government of India initiated various policies and programs for the empowering the rural youth to strengthening Indian economy by making youth to involving in manufacturing and social service sectors policies and programs are as fallows.

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1. National Young Leaders Programmme(NYLP).
2. Nehru Yuva Kendra Sanghatan(NYKS).
3. National Service Scheme(NSS.)
4. Rajiv Gandhi National Institution of Youth Development(RGNIYD).
5. National Policy for Youth and Adolescent Development(NPYAD).

Programs.

1. Deen Dayal Upadeyaya Grameen Kaushalya Yojana.

DDU-GKY was launched on 25 September 2014 b union ministers Nitin Gadkari and Venkaiah naidu on the occasion of 98th birth anniversary of pandit Deen Dayal Upadayaya. The vision of DDU-GKY is to transfer rural poor youth in to an economically independent and globally relevant workforce. It aims to target youth, in the age group of 15-35. DDU-GKY is a part of the National Rural Livelihood Mission (NRLM), Tasked with dual objectives of adding diversity to the income of rural poor families and to cater the career aspirations of rural youth.

2. The Make In India

The Make India Initiative was launched by Prime Minister in September 2014 as part of a wider set of Nation-building initiative. To make and encourage companies to manufacture in India and incentivize dedicated investments into manufacturing. The policy approach was to create a conductive environment for investments, develop a modern and efficient infrastructure, and open up new sectors for foreign capital. The initiative targeted 25 economic sectors for job creation and skill enhancement, and aimed to transform India in a global design and manufacturing hub.

3. Startup India

Government of India launched the Startup India initiative by Prime Minister Narendra Modi January 16 2016 under the ministry of Commerce and Industry. A startup defines as an entity that is headquartered in India, which was opened less than 10 years ago, and has annual turnover less than 100 crore. Under this initiative, the government has already launched the I-MADE program, to help Indian entrepreneurs build 10 lack mobile app startup-ups, and Mudra bank is financing for this initiative.

4. Digital India.

The Government of India launched the Digital India Initiative on 1 July 2015, by Prime Minister of India Narendra Modi, with an objective of connecting rural India with High-speed internet networks and improving digital literacy. The vision of digital India program is inclusive growth in areas of electric service, products, manufacturing and job opportunities its aim is to digital empowerment.

Empowerment and Nehru Yuva Kendra

Youth empowerment is a huge concept. Today many organizations are working for the empowerment of youth empowerment. Nehru Yuva Kendra is training the the youths with various aspects. Mainly skill development, leadership building , Yuva startup , and making youth people as the social conscious, social developmentive, social change agents, they tracing various problems of the illiterate youth and guiding them for their sustainable development through planes and programs. Nehru Yuva Kendra was established in the year 1972, with the main objective to improve the youths to develop in skills and improve their personality by encouraging them to take part in nation building. In the year 1987-88, Nehru Yuva Kendra Sangathan was set up as an autonomous organization under the Government of India Ministry of Youth Affairs and Sports. Main objectives of this organization is to channelize the youths and support them to participate as volunteers, self-help and community participation. In District of Dharawd there are 593 total numbers of affiliated youth clubs which have 6326 male youth and 839 total 7165 youth members are beneficial of government policies and programs. Across Dharawd District Nehru Yuva Kendra imparting skill Trainings, educational awareness, and community participation, awareness among society, Social Change, Economic Independence, enabling progress, and overall development of rural youth.

CONCLUSION

The government is going all out to ensure a better life for its every citizen. But there are still many groups outside the development web. The youth of the rural area are the major sector that has to be given care for the empowerment. It's very essential to impart various training by implementing youth policies and programs. In India several programs on empowerment of youth are implemented successfully, and made a step to challenge the gaps of rural youth needs related to the skills trainings, and occupational educations. Central government

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brought fruitful programs to enhance the capacity of rural youth and aims at empowerment of them. As a agency government the NYK is playing a vital role in implementation of the government schemes and programs to reach the beneficial of the rural India, in Dharwad District NYK working with the rural youth for empowerment by involving the youth and volunteers of the agencies in schemes and programs.

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A CRITICAL STUDY ON LEGAL IMPLICATIONS OF MINOR'S AGREEMENT IN INDIA

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INTRODUCTION

A contract is basically an agreement between two parties creating a legal obligation for both of them to perform specific acts. In order for the contract to be enforceable, each party must exchange something of value (consideration). It means when both parties made a promise for each other and when such promise is recognised or enforceable by law then it is called contract.

Our daily life is surrounded by agreements, whether we realize it or not. From morning to evening we make a numeral of agreements, irrespective of our capacity to do so. For example, the transfer of property through sale, mortgage, lease, exchange, or gift, the formation of partnerships and companies, performing arbitration, mediation, negotiation and conciliation, registering patents, copyrights, intellectual properties, the execution of negotiable instruments, insurances and various services. When the agreement is made by a capable person then it is recognized and protected by law; while in the case of an incompetent party (particularly a minor) it lacks such recognition and protection by law. It means only capable person can enter into contract, other than capable no one can enter into contract. A minor's agreement stands void ab initio; hence a minor is discharged from the contractual obligations. But under several laws, such as the TPA, the Sales of Goods Act, the Partnership Act, the Companies Act and the Insurance Laws etc. a minor is allowed to be a beneficiary through the contract created thereunder. Though the Indian Contract Act, 1872, does not allow a minor directly to be a beneficiary, even through judicial pronouncements, this gap has been filled.

In the Law of Contract, persons below the age of majority were formerly called infants. There are now more generally called minors. The Indian Majority Act was amended in 1999 and the age of majority is now 18 in all cases even if the guardian for minor's person or property has been appointed by the Court. But the question whether persons under 18 years are bound by contracts can still arise today e.g. in cases of "contracts for the benefit of minors" or "necessaries" supplied to minor (goods or services). Legal problems can also arise where a claim is made by the minor against the other party, either to enforce the contract or to reclaim money or property the minor has parted with. If minor's agreement is void from the very inception (void ab intio), no suit can lie against him, or can the minor ratify it on attaining majority. The law on this subject is based on two principles.

1. The first and more important is that the "law must protect the minor against his inexperience, ignorance and immaturity which may enable an adult to take unfair advantage of him or to induce him to enter into a contract."

2. The 2nd principle is that the "law should not cause unnecessary hardship to adults who deal fairly with minors."(e.g.; in case of supply of necessaries, beneficial agreements etc.)[1]

Meaning of Agreement and Contract:

Section 2 (e) of the Indian Contract Act, 1872 defines the term **agreement** as "every promise and every set of promises, forming the consideration for each other". It means where there is a proposal from one side and the acceptance of that proposal by the other side, it results in a promise. That promise will creates consideration for both parties[2].

Section 2(h) of the Indian Contract Act, 1872 defines "Contract" is an agreement enforceable by law". It means a contract is an agreement between two or more people to do something or event or act or action[3].

Capacity of the Parties:

As per Sec-10 of the Indian Contract Act, 1872, for a valid contract the parties to the contract must be competent to contract. Se-10 of the Indian contract Act, 1872 provides that all agreements are contracts if they are made by

[1] http://law.uok.edu.in/Files/5ce6c765-c013-446c-b6ac-b9de496f8751/Custom/fnl-Capicity-Minors'%20Ag%202020%20U2-L3-Mushtaq%20A-done.pdf dated on 17-10-2021 at 7:30am.

[2] Dr. R.K.Bangia, Indian Contract Act, Allahabad Law Agency,14th ed, 2010, p-2

[3] Dr. Kailash Rai, Contract-1 (General Principles of Contract) Central Law Publications, Allahabad, 3rd ed, 2011, p-49.

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(1) The free consent of the parties,

(2) Competent to contract

(3) For lawful consideration and

(4) With a lawful object

Who are competent to contract?
Competency to contract is an essential element to a valid contract. Sec-11 of the Indian contract Act, 1872 provides that every person is competent to contract,

(a) Who is the age of majority according to the law to which he is subject (Major)

(b) Who is of sound mind and

(c) Who is not disqualified from contracting by any law to which he is subject

(Insolvent or bankrupt).

Who are incompetent persons?
The persons who are

(a) Minors

(b) Unsound mind

(c) Persons disqualified by the law to which they are subject[1].

Minor: the person who is not complete the age of majority (18 years) is called minor. Minor is the incompetent person to enter into contract. It means anyone who is under the age of 18 is known as a minor. Every agreement with minors is void from the beginning. it is void and null hence there is no legal obligations arising from a minor's agreement and contract per se hence nobody who has not attained the age of majority can enter into a contract.Sec-11 of the Indian contract Act, 1872 provides that a person who will be competent to contract if he has attained the age of majority. According to Sec-3 of the Indian Majority Act 1875 a person shall be deemed to have attained his majority when he completes the age of 18 years, except in case of a person whose person or property a guardian has been appointed by the court, in which case the majority does not arise till the completion of 21 years of age by the ward, and it is immaterial, whether the guardian dies or is removed or otherwise ceases to act. In England the age of majority is 18 years.

It may be noted that the Indian Majority Act is being amended so as to make the age of Majority as 18 years for every person, irrespective of the fact that in respect of them any guardian has been appointed. The bill has been passes by both the houses of parliament but the president's assent has yet to be obtained.

A Contract made with a Minor is Void:
If any person enter into contract with minor that contract is called void. Because minor is an incompetent person to enter into contract and he don't have proper capacity to understand the nature, subject matter and terms of the contract. Therefore, if any person enters into contract with minor such contract is void. It means beginigly it is invalid. In **Khangul v. Lakha Singh case**, A minor misrepresented his age, and contracted to sell a plot of land to the plaintiff. He received Rs. 17, 500/- from the plaintiff. Later he refused to perform the contract. Then plaintiff filed a case against the defendant (minor) but court held that the plaintiff could not recover of possession or refund of consideration, because the contract is void[2].

In **Mohori Bibee V. Dharmodas Ghose** case Privy Council held that a minor in this case mortgage his property in favour of Brahmo Dutt, the defendant the attorney at the time when the transaction was taking place had knowledge about plaintiff being a minor, an action was brought against Brahmo Dutt by Dharmodas Ghose on the grounds that Dharmodas was a minor when he executed the mortgage and the mortgage should be void and canceled. The judgment held that contractual agreement with minors is void thus mortgage deed is also void[3].

[1] Avatar Singh, Contract and specific Relief, EBC, Lucknow, 4th ed, 2018, p-153-154.

[2] Dr. R.K.Bangia, Law of Contract, Allahabad Law Agency, 2007, 11th ed, p- 87-88

[3] https://www.legalbites.in/effects-of-minors-agreement dated on 18-10-2021 at 4:30pm.

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(1) A minor's agreement is void from the beginning: A contractual agreement dealing with a person below the age of 18 in India is considered void from the beginning in the same way a minor cannot enter into a contract.

(2) A minor's property is liable for necessaries: if a minor is supplied by someone with food, medication, clothing and other necessities, the person who supplied such necessities is entitled to be reimbursed from the property of that person.

(3) No estoppel against a person below the age of 18: A Minor inducing another person by falsely representing himself to be a major to enter into a contract with that person can appeal his age as a defense.

4) No ratification of contractual agreement: minor's agreement being void, an agreement entered by him during his minority cannot be ratified after becoming a major.

(5) No specific performance of contractual agreement: the party and the minor in a minor's agreement cannot be urged for specific performance of an agreement.

(6) The rule of estoppel: Estoppel is a rule which can hold a party liable who has started to do something before coming into a contract as a part of the -consideration. This rule cannot be applied to minors[1].

(7) Restitution of benefit: when a person at whose option a contract is voidable revokes it, the other party need not perform it. This applies to voidable contracts, but a minor's contract being void, a minor cannot be asked to refund the moneylender.

(8) No insolvency: Due to minor's incapability of contracting debts and dues payable from the minor's personal property he is not personally liable as the result of which he cannot be held insolvent

General rule Exceptions:
The certain exceptions to contractual agreement of minors are:

(a) When the minor has performed his obligation: In a contract, a person below the age of 18 cannot become a promisor but can be a promisee. In case the party hasn't completed their obligations but the minor has then the minor can enforce the contract being a promisee.

(b) A contract entered by a minor's guardian for his benefit: In this case if a party does not perform its promise the minor being a promisee can sue the non-performing party. In the case of **Great American Insurance v. Madan Lal**, the guardian entered into an insurance contract on the behalf of the son in respect of fire for the minor's property. When the property was damaged compensation was questioned by the minor, the contract was opposed by the insurer on the grounds of the minor's incompetency to enter into a contract. But later it was held that this contract was enforceable, and the insurer is liable to the guardian[2]. The contracts with minors can be made partially enforceable by keeping certain factors like guardian, mutuality, compensation and restitution in mind, instead of making the whole contract as void ab initio.

When a minor is supplied with Necessities
In case a minor who is incompetent to enter into a contractual relationship and is provided by another person with necessities of life, the person who thus supplied the necessities to the minor can be reimbursed from the property of the minor. A minor cannot be bound if he does not have any property. The general law states that contracts entered into by children that are for necessaries are binding on children, as are those for apprenticeship, employment, education and service where they are rightly said to be for the benefit of the child. These latter contracts are therefore voidable at the option of the minor.

Two conditions must be satisfied to render minor's estate liable for necessaries. They are

(a) The necessaries supplied to the minor should really be necessities required for a minor's life.
(b) There shouldn't be sufficient supply of these necessities with the minor before.

CONCLUSION
It can be concluded from the researched facts mentioned that a minor's contract is void as soon as one enters into a contract with the minor because a minor cannot form a mental capacity to enter into a contract. Besides

[1] S.K. Kapoor, the law of Contract, central law agency, Allahabad, 1984, 3rd ed, p-82-84.

[2] https://dictionary.cambridge.org/dictionary/english/agreement dated on 22-10-2021 at12:30pm

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minor's agreement being void there are certain exceptions to the general rule. Therefore it concludes that a minor's agreement is considered as

Void from the beginning due to minor's incompetency to form mental intent to enter into a contract and also because of minor's inability to draw consequences arising from the contract. Below the age of 18 years does not have the capacity to enter into a contract. A contract or agreement with a minor is null from the beginning, and no one can sue them. Minor's agreement is a void one, meaning thereby that it has no value in the eye of the law, and it is null and void as it cannot be enforced by either party to the contract. Even after he attains majority, the same agreement could not be ratified by him. Here, the difference is that minor's contract is void/null, but is not illegal as there is no statutory provision upon this. A minor's agreement is a set of promises or a contractual agreement having one party as a minor. Minor is considered incompetent to contract under the Indian Contract Act, 1872. This is so because minors are not mature enough to be responsible with respect to legal matters. In competency of a minor to enter into contract means incompetency to bind himself by a contract. There is nothing which debars him from becoming a beneficiary, e.g., a payee and endorsee or a promisee in a contract.

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LEGAL REGULATION OF FASHION TECHNOLOGY THROUGH INTELLECTUAL PROPERTY RIGHTS

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"Fashion is not something that exists in dresses only. Fashion is in the sky, in the street, fashion has to do with ideas, the way we live, what is happening"- Coco Chanel

ABSTRACT
The right to clothing is inevitable part of life. Life cannot be imagined without clothing and footwear .Fashion has always been part of our life this has led to development of industrial sector which includes, branding, merchandising, marketing etc. As this industry focuses on creativity and intellect of a person, An industry which prides itself for its innovation and growth. It has become a ground for the proliferation of profit and duplication in industry. The tremendous growth of the fashion industry has made designers and fashion houses realize the importance of the intellectual property. The author explores how it has been affected by unwarranted piracy and is managing to cope up with it.

INTRODUCTION
The term "Fashion" is a diverse word. The definition of this term differs geographically, culturally as well individually. The fashion industry, also called as Apparel industry is not limited to garments and apparel. An organization can manufacture, build and monetize a distinctive brand by way of different valuable assets that range from distinctive branding elements to print and patterns, and proprietary design staples.

The core of fashion is considerably more than pieces of clothing and attire. It is an organization's capacity to manufacture and monetize a distinguishable and distinctive brand with intellectual proprietary rights. Intellectual Property is a significant law in about each industry because of its capacity to secure creations such as inventions, literary and artistic works, components of fashion designs, symbols and images used in trade and commerce.

Design copying is widely accepted, occasionally complained about, but more often celebrated as "homage" rather than attacked as "piracy.

Counterfeit products pose a huge threat to the economy too (due to government's loss of revenue), apart from posing huge challenges to the profits and brand values of the popular brands. In the fashion industry, the counterfeiting is known as willful counterfeiting as the buyers while being aware of the counterfeit products buys the same, which can be attributed largely to the huge gap in the price between the original and counterfeit product.

Unlike countries like France, where the buyers are criminally liable for buying a counterfeit product, India, currently does not have any law for the same. In India, the owners of the original products have the right of moving to court of law of appropriate jurisdiction seeking permanent injunctions and thereby preventing the counterfeiters from selling counterfeit products. The owners of the original products may also move to the court seeking compensation for their losses.

The Indian Fashion Market is booming across continents. At the heart of fashion are designs, innovation and unique trends. Fashion is not only restricted to apparels but also extends largely to luxurious goods and products. Each year the fashion hub produces a whole new collection of designs which needs to be protected and regulated by a proper forum of law. Through IPR protection is guaranteed to the maker against its use, aesthetic aspects and product features or a print.

As per study conducted by the associated chambers of commerce and industry India (ASSOCHAM), the domestic designer apparel industry in India by year 2020 will cross over Rs 11,000 crore. Even though contribution of Indian designer worldwide is minimal to 0.32% but by year 2020 it may reach by 1.7%[1].

Fashion Industry & IP Protection
Trademark Protection

[1] Role of Intellectual Property in the Fashion Industry By LexForti Legal News Network

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The trademark owners have to make their products or goods in a unique style or to marketing their products in the different ways to attract consumer's attention in the crowded market. For protecting the brand, image, logo and sign of the products or goods they have to register their goods under the trademark law.

Copyright and Designs

Numerous components of fashion are protectable under the Copyright Law such as such as drawings, photographs of models, jewellery, editorial content, fabric pattern and design software. In Louis Vuitton Malletier v. Atul Jaggi[1] and Another, Delhi High Court recognized copyright of plaintiff in 'Toile Monogram' pattern as well as in the Murakami monograms of plaintiff . In Microfibres, Inc v. Girdhar, the issued was raised that whether the arrangement of motifs, flowers, leaves and shapes which have been arranged in a particular manner would be applicable for Copyright as 'labour and skill' in which the court held that such type of work could not be included in the definition of "Artistic works" as provided under Section 2 (c) of the Copyright Act, 1957 .

Patent Protection

Patent invention grants protection for 14 years for design patent and 20 years for utility patent from the filing date and after the protection ends it falls under public domain and anyone can commercially exploit it without infringing the patent. Though patent inventions can be extremely costly and time consuming it can be used to secure an innovation which can be used in Fashion industry for a long period of time and it will not get outdated if the innovation is novel and the process can be repeated every year in the industry. In 2016 Louis Vuitton has been granted 6 Design Patents followed by Bottega Venetta been granted three and Balenciaga have been granted two.

Revelant Legal Provisons relating to this Industry

IPR Law in India provides protection to the fashion design under three legislations i.e.

1. The Designs Act, 2000,
2. The Indian Copyright Act, 1957,
3. The Trademarks Act, 1999 and GI Act, 1999.

From the perspective of Fashion Industry, the Acts do not protect the entire garment as a whole; rather it protects the particular/individual aspects like shape, pattern, colour etc. of the garment.

Cases laws related IPR in fashion technology

Star Athletica V. Varsity Brands

The star case Athletica case [2]dealt with a simple question which is if you have series of sizes and shapes on an article of clothing, is that protectable? An employee of this company that made pretty much all the cheerleaders uniform in the country went to another country and copied some of the designs of his original employer. His new company was sued for Copyright infringement. The Court looked into two different aspects of the designs. Theirs is the more Utilitarian Design , Like the cut of the uniform, versus the designs, the images that were on the uniforms. The Court states that the Copyright would not protect the cut of the apparel , but would protect the design.

In Rajesh Masrani v Tahliani Design[3] was provided with an opportunity to respond to some aspects highlighted above. In the case, the Plaintiff alleged that the drawings which it made in the course of developing garments and accessories were artistic works under Section 2(i)(c) of the Copyright Act, 1957. The patterns printed and embroidered on the fabric were also alleged to be artistic works, as were the garments finally designed. The plaintiff also alleged infringement of copyright in these various artistic works, and a Single Judge issued an interim injunction in its favor.

[1] Louis Vuitton Malletier v. Atul Jaggi2010 (44) PTC 99 (Del)

[2] Star Athletica V. Varsity Brands [3] 30the Division Bench of the Delhi High Court https://en.wikipedia.org/wiki/Star_Athletica,_LLC_v._Varsity_Brands,_Inc.https://indiankanoon.org/doc/111285241

[3] Rajesh Masrani v Tahliani Design2008 PTC (38) 251 (Del)

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CONCLUSION

Although the process of registration is expensive and weighty, the practice of registration needs to be adopted so as to restrain unscrupulous competitors from copying some of the most innovative creations and ensure guarantee in the futuristic aspect. Therefore, the generation of an idea marks the advent of a unique feature but that needs to be protected by IP to prevent its plagiarism.

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INTERNATIONAL MANDATE FOR PROTECTION OF RIGHTS OF INVISIBLE DOMESTIC WORKERS: A STUDY

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INTRODUCTION

International law is a body or set of rules that apply between the sovereign independent States in the conduct of inter-relationship with one another. Concerning the subject of labour jurisprudence, the International Labour Organisation (ILO) is a relevant entity for regulating, protecting and promoting the rights of workers. The International law prescribes the minimum code of conduct either bilaterally or multilaterally for the regulation and protection of rights of the labourer's. The subject 'labour' did receive worldwide recognition in the 19th century with the establishment of the International Labour Organisation.[1] The International Labour Organisation (ILO) is one of the firstborn organs, which was the result of the peace agreement entered between the States after the end of the First World War.[2] It was adopted at the Paris Peace Conference on April 11, 1919, with an avowed object to secure and maintain just, fair, humane conditions of labour for men, women, and children across the global community. The purpose of ILO is to enforce the international agreements between the member states that signifies protection and promotion of rights of labour and prevent unfair labour practices among employers and between countries.[3]

In the International community, the global economy has expanded its space for easy entry for women workers in the informal sector employment that is primarily unprotected and has been uncoiled by any form of legal protection. The driving force behind the principles of international labour law is to achieve the value of social justice. The growth of international human rights law about worker's rights in general and rights of women workers, in particular, is been developed and boosted through the interpretation of the Second-generation rights,[4] that has been proclaimed under the International Economic Covenant.

The Core Conventions of International Labour Organisation (ILO) affirmatively proclaims for the attainment of social and economic rights to the major component of the workforces that have been scattered among both formal and informal sectors.[5] Various rights emphasised by the ILO; such as freedom to form association, the right to work, equal pay for equal work between men and women, the right to organise to bargain collectively, freedom from forced and bonded labour, right to receive social security benefits, the abolition of child labour and freedom from various kinds of discrimination, right to maternity benefits and the right to enjoy many other labour rights. The member countries of International Labour Organisation have to mandate to incorporate the fundamental principles of labour rights and minimum labour standards into their domestic legal system so that the workers are allowed to enjoy and exercise their fundamental labour rights[6] and thus are entitled to lead a dignified life as a human being.

[1] An international organ that was set up even prior to League of Nation. First and foremost, important international body mainly set up for harmonising and regulating the protection of rights of working group of people. The ILO became the First Specialist Agency of the United Nations Organisations (UNO) with effect from December 14, 1946.

[2] The First annual Conference (referred to as ILC) began on 29th Oct, 1919 at Washington DC and adopted the first six International Labour Conventions which dealt with hours of work in industry, unemployment, maternity protection, night work for women, minimum wage and night work for young persons in Industry.

[3] Constitution of ILO, adopted by the peace conference in April 1919, a part of the Treaty of Versailles that ended up WWI to reflect the principles of achieving universal peace across the globe on social justice. The preamble strives to achieve permanent peace at work based on norms of justice and humanity.

[4] The Economic covenant also known as the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) came into force in the year 1976.

[5] They have been referred to as the organized and unorganized sector in India, respectively.

[6] Vinita Singh, *Women Domestics-Workers within Households,* 59 (Rawat Publications, New Delhi, 2007).

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The fundamental and principal obligation of the International Labour Organisation is the promotion and protection of the fundamental human rights of the labour. The labour rights recognised[1] and interpreted through the provisions of the International Labour Organisation, are to be duly respected by the member nations of ILO [2] and if the member nations commit rights violation, then the administrative body of ILO can receive and investigate complaints, alleging labour law violation by member countries under its complaint mechanism.[3] The International Labour Organisation's (ILO) Conventions, Recommendations, and many other International instruments are binding among the signatory member countries, and they should abide by the same, other countries can keep watch and report about their non-compliance to Human Rights Committee and Economic and Social Council (ECOSOC) through Inter-State communication system.

The International treaties, which forms the basis of international law, shall be treasured, respected, obliged and applied within the national domestic legal system of an independent sovereign state through the process of specific incorporation so that the workers in general and women workers, in particular, will be entitled to claim their rights legitimately. Globally, among the informal sector workforce, women workers are dominated and proportionately represented in various categories of occupations under the informal sector employment. The feminist thinkers have always ascertained that ever since the beginning of human civilisation, women's right has been violated in various forms.[4] Women workers who are being disproportionately employed in certain occupations and enterprises in the informal sector are more vulnerable to abuses and exploitation when compared to that of male counterparts in the Indian labour market economy as they are deprived of their rights that are essential for their well-being. The spectacle of migration of women workers either internally or crossing the borders for securing a source of income for gaining financial support in an environment that is unregulated and unrecognised is another major issue that is yet not adequately regulated and addressed.

Internationally, the concept of Human Rights has been recognised in the Universal Declaration of Human Rights (UDHR), the two International Covenants, and various other existing Regional Human Rights Instruments.[5] It is universally accepted and recognised principle that the right to life, liberty, equality and dignity are inherent and innate rights that are termed as human rights. Article 1 of UDHR proclaims that all member nations shall respect and promote human rights.

In our country, India, the Protection of Human Rights Act, 1993 defines human rights as

"*All those rights that are related to life, liberty, equality and dignity of an individual, which has been guaranteed by our constitution and the same has been embodied in the International covenants and are enforceable by the courts of law in India."*[6]

The rights of the women workers are central, inherent, necessary and pre-eminent for the overall development of the nation, and thus for themselves for appending to their economic and political empowerment. The Charter and the Preamble of the United Nations Charter[7] and UDHR[1] proclaims that the member countries of United

[1] These includes Convention (No 11) on the Right of Association (Agriculture), 1921; Convention (No 87) on Freedom of Association and Protection of the Rights to Organise, 1948; Convention (No. 98) on Right to Organise and Collective Bargaining, 1949; Convention (No 29) on Forced Labour, 1930; Convention (No. 100) on Equal Remuneration, 1951; Convention (No 111) on Discrimination, 1958; Convention (No 156) on Workers with Family Responsibilities, 1981; Convention on Maternity.

[2] Presently the total members of ILO are 185 countries in the International community.

[3] Human Rights Watch, *Global Report of Abuses Against Women Workers*, Report on Women's Human Rights, Human Rights Watch Women's Rights Project, 279 (Oxford University Press, Delhi, 1998).

[4] Alakh N. Sharma and Seema Singh (ed), *Women and Work-Changing Scenario in India,* 6, (Indian Society of Labour Economics, B.R Publishing Corporation, Delhi, (1993).

[5] American Convention on Human Rights, European Convention of Human Rights and The African Charter of Human Rights.

[6] The Protection of Human Rights Act, 1993, At 2.

[7] Charter of UN, adopted at the San Francisco Conference with 45 countries attending the said conference in the year 1945.

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Nation (UN) shall stand for the promotion and be determined to confirm faith in essential Human rights, in the dignity and worth of the human person, in the equal rights of men and women. The Charter intends to promote social progress and better standards of living among the individuals belonging to the nation's small or big. Aftermath of 1945, towards the end of the Second World War, the advancement of labour rights for women workers was the concern of the World community.

Currently, in the global labour market, the much-occupied labour activity that attracts large scale women workers and girl children is the domestic work sector, a part of the informal economy that is highly unprotected.[2]

International Instruments, Conventions, and Declarations

The Magna Carta of Human rights, Universal Declaration of Human Rights, 1948 (UDHR) reassert, incorporates and recognises the rights of women workers. In the international community, the aim of the member countries in desiring to collectively support the rights of women in general and women workers, in particular, are identified, recognised and protected in the said international instrument. The United Nation Organisation has ratified the Declaration on 18th December 1979, and the Government of India has always been an active participant of the same. The CEDAW Convention was acceded to by the Indian government in the year 1993 and reiterated that discrimination against women results in significant violation of human rights. The governing body of the International Labour Organisation (ILO) embodies the principle of equal pay for equal work and in promotion of the same; the Philadelphia Declaration, 1944 has been passed.[3]

International covenants, namely the Civil Covenant,[4] and the Economic Covenants,[5] play a prominent and promotional role in reinforcing the protection of rights of the women workers in the said informal sector.[6] Women workers always have stood as the backbone of any economy across the globe. Worldwide, the domestic workers, a segment of informal sector employment are the neglected class of workers and violations of their human rights via abuses and exploitation is a universal phenomenon that requires special attention rather than exclusion.

The International treaties that demonstrate and upholds the rights of individuals as a 'worker' are the United Nation Charter (UN); Universal Declaration of Human Rights (UDHR); International Labour Organization (ILO); International Covenant on Civil and Political Rights, 1966 (Civil covenant-ICCPR); International Covenant on Economic, Social and Cultural Rights, 1966 (Economic Covenant-ICESCR); Convention on Elimination of Discrimination against Women (CEDAW);[7] Convention on Rights of Child,[8] 1989; and, various other International and Regional instruments.[9]

[1] The Declaration was adopted in the year 1948, Dec 10th. The said Declaration (UDHR) comprises of a total of 30 Articles. The said declarations are just universal in nature and are guiding principles for member countries, but they lack a strict implementation system.

[2] ILO's *Report on Global Estimates on Migrant Workers: Results and Methodology,* (Special Focus on Migrant Domestic Workers, Geneva, ILO, 2015).

[3] The Equal remuneration convention was adopted to achieve this objective outlined in the Philadelphia declaration.

[4] International Covenant on Civil and Political Rights, 1966, came into force in 1976.

[5] International Covenant on Economic, Social and Cultural Rights, 1966, came into force in 1976.

[6] The Universal Declaration of Human Rights, article 1 defines 'discrimination against women to mean 'any form of distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of imposing or nullifying the recognized enjoyment or exercise by women'.

[7] CEDAW, article 11: provides provisions for ensuring Protection of women against discrimination in employment and providing safe working conditions.

[8] The Child Rights Convention, 1989, Protection of Child from hazardous employment under article 32 of CRC.

[9] American Convention of Human Rights; European Convention on Human Rights: African Charter on Human Rights; Convention concerning Forced or Compulsory Labour 1930; Convention concerning the Abolition of Forced Labour, 1957, and so on.

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Nevertheless, the laws asserted by international instruments is to be incorporated into municipal law of each state to be binding, but still, we find that there is a presence of a large-scale violation of rights of women workers in the informal sector, due to non-acceptance and non-ratification of most of the international treaties by most of the nations across the globe. The thoughts of adequate protection of rights towards women workers in the global community are explicitly proclaimed under various international organs and instruments. Such instruments are Economic and Social Council (ECOSOC); United Nation General Assembly's Declaration on Elimination of Discrimination against Women, 1967; U.N Commission on the Status of Women; Human Rights Committee, an implementation mechanism for the protection of the human rights of individuals.

The international instruments and covenants have significantly enshrined and proclaimed the principles of gender equality and also directed the member countries to adopt and implement the same into their national legal system. Presently, the International Labour Organisation (ILO) has 185 members' countries as its members and has so far adopted 189 Conventions, six protocols and 204 recommendations. Out of which, India has ratified forty-five (45) conventions and one protocol of ILO.[1] Sometimes even a non-member of ILO can be asked to respect the ILO conventions. Nevertheless, it depends on the particular countries' domestic ability to coup with the situations of respecting labour rights or not for the working-class people.

Table of International Instruments and Conventions

Country	CEDAW	ICERD	Discrimination		Migrant Workers		C- 189	ICCPR & ICESCR	CRC
			C 100	C 111	C 97	C 143			
INDIA	Ratified in the year, 1993	Racial Discrim-ination Convention.	Equal Remuneration Convention. Ratified by India	Yes Holiday with pay	No	No	Signatory but not ratified	Yes	Yes, in 1992.

International Labour Organisation (ILO) and Decent Work Status for Domestic Workers

According to ILO, a labour working in either of the economic sectors (formal or informal sector) shall exclusively enjoy his or her labour rights only when the said essential elements of '***decent work'*** are being warranted and abounding on them. Domestic workers, especially women, usually work in situations and the conditions that are appalling and inexcusable. Domestic women workers are not being treated in suitable terms by any of the national legislation across the globe as they address the formal sector workers, and therefore their rights to live with dignity and enjoy the '*decent work'* status is of no meaning. The structure and the extent of the domestic work sector are quite negligible. Given the picture, that prevails about the growing demand of participation of women workers in the domestic work sector in most countries, and growth of Migrant Domestic Workers (MDWs), an urgent need is necessitated to regulate and strengthen the legal protection for these domestic workers at sub-national, national and at the international level.

The International and National labour jurisprudence aims at the creation of an environment with the just and equitable economic world order, securing distributive justice, economic growth, and construction of employment opportunities for poverty alleviation and economic reforms in a community. Globally, decent work is a goal that is to be achieved as a development index towards realising the entitlements or rights for the domestic workers. The labour rights that is being mentioned in various International Instruments, Convention, the Magna Carta of human rights,[2] and the Economic covenant, must be mandatorily respected, recognised, promoted and interpreted as rights for the unprotected class of informally employed domestic workers,[3] that mostly includes women workers.

[1] Government of India, *Daljeet Singh, Director General, Indian Labour Year Book,* 2015, 185, (Ministry of Labour and Employment, Labour Bureau, Shimla/Chandigarh), 61st issue, Dated 29/03/17.

[2] The Universal Declaration of Human Rights, called the Fundamental Constitution of Human Rights.

[3] Gerry Rodgers, "'Decent Work as a Development Objectives",44 No 1 *The Indian Journal of Labour Economics*, 17 (2001).

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Globally, the material fact is that millions of women workers are migrating within and outside their country of origin, to find their destination in domestic work sector as an alternative source of livelihood as most of them are unskilled and illiterate. The problems and the conditions of employment and work are similarly co-existing in all the corners of the world where ever the domestic workers are present. The issues in such informal employment persist due to non-recognition of such work and lacunas in existing labour laws for the inclusion of domestic workers. Recognition of the rights of domestic workers and ensuring protection against abuses and exploitation are the primary purposes of ILO, and thus the organisation has proficiently played a significant role in enacting legislation for the protection of rights of the invisible domestic workers.

According to ILO,[1] currently there are around 67.1 million adult domestic workers across the globe, but these numbers are likely to be much higher due to higher informality and irregularity in this sector, as well as lack of reliable statistics based on univocal definition and criteria. The International Labour Organisation (ILO) defines ***"domestic work***" as work performed by an individual worker in one or more households for certain fixed amount of wages. The term '***Domestic Worker'*** is defined as all those people engaged in domestic work within an employment relationship. The International Labour Organization (ILO) undertakes to protect the rights of domestic workers, promote equality of opportunity and treatment, and improves living and working condition. The efforts for the international protection of domestic workers were adopted through a resolution on the Conditions of employment of domestic workers as early as 1948 by the ILO. The ILO has always been the forerunner in guaranteeing protection to the invisible domestic workers.

A survey of seventy (70) countries conducted by the International Labor Organization in the year 2007 found that 40 per cent of the countries do not offer domestic workers a weekly day of rest, and fifty per cent or half of the countries have no limit on regular hours of work for the domestic workers.[2] The informal sector workers usually do not enjoy some of the necessary labour rights such as civil, political, social and economic rights that are available for the sustenance of their life.[3] The International Labour Organisation's governing body on 19 March 2008, decided to include the item 'Decent Work for Domestic Workers' (Standard Setting) on the agenda of the 99th session (2010) of the International Labour Conference. The said session proposed for the adoption of the Convention on Domestic Worker's rights by the ILO, that came up for approval in the year 2011. On June 16, 2011, the ILO Member countries, trade unions, employer's association, and all others voted on behalf of adopting an International Domestic Workers Convention No 189 on decent work for extending the protection for securing legal protection and enhancing the rights of domestic workers. The International Convention on Decent Work for Domestic Workers No 189 took its birth, and it came into force on Sep 5th 2013.

The Domestic Workers (DW) convention clearly outlines the basic rights and entitlements for domestic workers and provides guidelines on terms and conditions of employment, wages, working hours, occupational safety and health, social security and the avoidance of child labour. The Convention's s global strategy consists of solidification of national dimensions and institutions including policy and legislative reforms; endorsing the ratification and implementation of the domestic workers Convention, 2011 (No 189) and Recommendation (No 201); facilitating the organisation of domestic workers; creating awareness-raising and advocacy; and development of knowledge base and policy tools for promoting and protecting the rights of domestic workers.

The primary stakeholders of the International movement for domestic workers included the domestic workers' organisation,[4] trade unions, and civil society groups including migrant's rights and children's rights group; human rights advocates and many others were the driving force behind the tripartite negotiations (including a representative of employers, workers and the Government).[5] Aftermath of 2011 symbolising a significant victory, a year for revival and glory of success for the domestic workers, June 16 is being celebrated as

[1] ILO 2015 Report. *Supra* note 22.

[2] ILO's, "The Right to Unite: A Handbook on Domestic Workers Rights Across Asia, 2010", Asia Pacific Forum on Women, Law and Development, 2010.

[3] Srijit Mishra, "Informal Workers and their Rights", 13 *Journal of NHRC* 277-300 (2014).

[4] Such as IDWF, NDWM, SEWA, and many other International, national trade union and non-governmental organisations stand for extending the rights of domestic workers.

[5] Human Rights Watch, *A Joint Report on Claiming Rights Domestic Workers Movements and Global Advances for Labour Reform*, 3, Prepared by Human Rights Watch, (The International Domestic Worker's Network and The International Trade Union Confederation, Oct 2013).

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'***Domestic Workers day,'*** a day to commemorate the victory, recognising the worth and potential of domestic workers in the realm of informal sector employment across the globe.[1]

The Domestic Workers Convention No 189, a '*Magna Carta'* for domestic workers is extensive propaganda and a pro-active document that acknowledges the rights of domestic workers across the globe. This groundbreaking treaty was the first and foremost crucial global document for the regulation and protection of the rights of domestic workers. The first two pro-active countries to ratify and implement the provisions for the recognition of domestic workers in their respective domestic legal systems were Uruguay and Philippines.[2] Presently as on May 2018, twenty-five countries[3] have ratified the Convention No 189 and Brazil was the 25th country to ratify the above-said convention that upholds the right and dignity of domestic women workers. India is in the process of ratification but yet not completed the process.

The Domestic Workers Convention No 189 obliges the ratified member countries to protect the domestic workers against violence and abuses, mandates regulation of private employment agencies that recruit and employ domestic workers, and prohibits employment of child labour in the domestic work sector. Process of the ratification and implementation of the internationally adopted Domestic Workers Convention No 189 and its Recommendation No 201,[4] will act as a constructive response to respect the labour rights of domestic workers and protect their elevated status of life. Convention No 189 serves as a ground norm for the protection of the domestic workers, full-time, part-time workers employed in the informal employment of the informal sector.

Key Provisions of the International Domestic Workers Convention No 189

The International Domestic Workers Convention No 189 is the first of its kind that reaffirms and proclaims minimum labour standards for the protection of domestic workers. Internationally, the dreams of domestic workers thrived in the year 2011, and this year was marked as a revolutionary year for all the class of domestic workers across the globe as it was a dream comes true for the overall millions of domestic workers, predominantly women workers. The International Labour Organization (ILO) adopted the much-awaited Domestic Workers Decent Work Convention No 189, a positive mirror that reflects the rights of the workers for claiming their legal protection. This convention was a constructive response of the ILO towards the miserable conditions that were being faced by these domestic workers at the hands of their employers and the placement agencies and for recognising and granting the rights of domestic workers in their respective national legal system. The convention protects domestic workers from violence and abuse, regulates private employment agencies that recruit and employ domestic workers, and prevents child labour practices in domestic work.

The DWC comprises of totally twenty-seven (27) Articles, and each Article systematically defines and interprets the meaning of domestic workers, rights of domestic workers and other incidental issues about domestic workers. The ILO's Recommendation No 201 comprises of twenty-six (26) recommendation. The summary of the provisions of the Domestic Workers Convention is listed below as follows: -

Article 3: Each member States shall stand affirmatively to protect and promote the fundamental human rights of all the domestic workers. The domestic workers are entitled to enjoy and realise the **ILO's fundamental principles** and rights at work under the said provision of the convention, namely:

1) Freedom of association;
2) The elimination of forced labour;
3) The abolition of child labour;
4) Elimination of all forms of discrimination concerning employment and occupation.

Article 4: Ensuring p**rotections for young children-** the member States shall provide a minimum age following the provisions of Minimum Age Convention, 1973 (N0. 138) and for ensuring that domestic work by children above that eligible legal age should not be employed, which interferes with their necessary education facilities;

[1] June 16th of every year after 2011 is celebrated as 'Domestic Workers' Day to commemorate the significance and importance of domestic work sector in India and across the globe.

[2] The first country was Uruguay and next was the Philippines, was we find more of migrant domestic workers.

[3] *Supra* note 47 at 24.

[4] *Supra* note 52 at 282.

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Article 5: **ensuring protection for domestic workers against all forms of abuses**, harassment, and violence at their work and workplace;

Article 6: **Guaranteeing fair terms of minimum standards of employment**, concerned with decent working conditions, and decent living conditions for live-in (permanent or temporary) domestic workers;

Article 7: the member states are allowed to prescribe provisions for a written contract between the employer and the worker and all the information about **terms and conditions** of employment to be reduced in writing;

Article 8: protections to the migrant domestic workers, which includes a formal written job proposal before migrating and a contract enforceable in the host country of employment. The host and sending countries should also cooperate in extending protection to the migrant domestic workers to protect them and specify the terms of repatriation;

Article 9: **prohibits the total internment** in the employer's household during rest periods or leave, and ensures that the domestic workers can keep their passports/identity documents with themselves;

Article 10: ensuring **equal treatment with such other regular workers** with regards to hours of work, annual leave, overtime pay, and rest periods, taking into account the distinctive features of domestic work;

Article 11: ensuring **minimum wage coverage** where it exists to domestic workers and ensure non-discrimination concerning payment of wages to men and women;

Article 12: **payment to be made at least once a month in the form of cash** and a limited proportion of 'payments in kind.'

Article 13: the right to a **safe and healthy working environment** according to the national laws, regulation and practices;

Article 14: equal treatment concerning **social security provisions, inclusive of maternity protection** (can be gradually applied);

Article 15: regulating **of recruitment/ private placement agencies** including investigation of complaints, establishing responsibility and obligations of agencies, penalties for violations, promoting bilateral or multilateral cooperation agreements, and ensuring recruitment fees that have not to be deducted from domestic workers' salaries;

Article 16: **adequate access to courts for resolving any form of disputes that arise in the said employment;**

Article 17: ensures an effective, efficient and accessible, flexible **complaint mechanism:** the necessity for complying with labour inspections, and imposing penalties for non-compliances of the provision of the convention;

Article 18: provides for the implementation of the provisions of the convention in consultation with the representatives of employers and workers organisation;

The remaining Articles from Articles 19-27 speaks about the ratification, publication and the reporting procedure of the member states towards the implementation of the convention in their respective countries. The accompanying Domestic Workers Recommendation (No.201) provides the member states with non-binding guidance for strengthening protections for the domestic workers and ensuring conditions of decent work for them. A woman's work in their domestic household (unpaid work) is usually not counted as an economic activity, and do not get reported in the National income statistics of a particular country.

Nevertheless, society undervalues the immense contribution made by *women* as domestic workers and, to some extent; the official statistics also reproduces the prejudices against domestic workers in society.[1] However, ultimately, all the forms of abuses and exploitation of domestic women workers will be ended, and their rights will be guaranteed only with the mandatory ratification and implementation of the International Labour Organisation's DW's Convention No 189 and its Recommendations No. 201 by all the member countries of United Nations.

[1] Human Rights Watch, "Middle East Failing to protect Domestic workers- Legal advance in Two Dozen Countries as New Treaty Enters into Force", 2/5, (Oct, 28, 2013), retrieved from https://www.hrw.org/print/251574 on 31/05/2019 at 2.30 pm.

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Ratification and Implementation of International Convention on Decent Work for Domestic Workers in the Indian domestic Legal system

The ratification process of an international instrument involves a crucial phase of implementation and enforcement of treaty obligations among the member signatories. However, the adoption of the ILO Domestic Workers Convention on June 16, 2011, was a significant success to millions of domestic workers across the globe. The beneficial commitment of any member country of ILO towards guaranteeing and ensuring the protection of rights of domestic workers includes in the ratification of the International Domestic Workers Convention on Decent Work, 2011, No 189. Most member states find it difficult to enforce the provisions of the Convention No 189, due to the limitations prevailing in the domestic legal system of that particular State to legitimately recognise 'Domestic work' as 'work' in its real sense. The member nations after signing the treaty have to ratify the same for its binding nature into their domestic legal system.[1] India is only a signatory to the Convention No 189, and she is yet to ratify the same, due to various constraints in our existing system. Therefore, there is absence of a comprehensive legal protection compendium for domestic women workers in India.

CONCLUSION

The ratification process builds a rich history of activism on domestic worker's rights. Widespread ratification of the Convention is the vital strategy for sparking national debates about the value of work inside households, enhancing national protections, ending generation of marginalisation, discrimination and exploitation of rights of domestic workers. Therefore, India is lagging behind in not effectively implementing stouter policy measures to put an end to the challenges or difficulties faced by the domestic worker's issues to realise their fundamental labour rights. With the absence of implementation of the convention, the dream of realising the rights for the domestic workers by many is a nightmare. Across the globe, the elasticity of demand and supply of domestic workers stipulates that currently, domestic women workers are inevitable for the survival of the families, provisions of entitlements or benefits to this occupational category are menial or subsumed. The international and national protection should promote the rights and protection of these domestic workers, especially women workers to enjoy their decent work status as a 'worker'.

[1] The Vienna Convention on Law of Treaties, 1969.

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RIGHTS OF PATIENTS IN INDIA- AN IGNORED AND FORGOTTEN TOPIC

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ABSTRACT
In India rights of patients is mostly confined to the limits of providing treatment and healthcare to the patients. Rights of patients in all developed nations include some basic rights such as right to information, right to informed consent, right to privacy and right to records apart of basic right of treatment. The present health care system in India in its struggle to provide health care facilities to all have in fact ignored the rights of patients in all aspect. It is to be acknowledged that only providing medical treatment does not complete the duty of the State in protecting the rights of Patients in India. Hence, this research paper makes an elaborate study on the rights provided to patients in India under various laws, regulation, and guidelines. It analyses if those rights are actually implemented by highlighting the results of some surveys and studies. This paper also studies the views and opinion of the judiciary with the help of landmark case laws.

Keywords- Patients' rights, Charter of Patients' Rights, Public Health, Right to information, Right to informed consent, Code of Medical Ethics.

INTRODUCTION
India is a country which is considered to have a well comprehensive legal framework with established laws and legal principles to protect all of the basic rights. Be it rights of citizens, women, children, consumers, workers, or prisoners, one names it and there is a definite set of rules and system to protect the same. Rights of patients is not an exception to it and there are definite statutes and laws granting and protecting it. This research paper at first elaborately discusses these rights of patients under Indian legal system and then makes an attempt to analyze if those rights are effectively preserved and restored in India or not.

Meaning of Patients-
According to Cambridge dictionary 'patient' means a 'person who is receiving medical care, or who is cared for by a particular doctor or dentist when necessary.' The word 'patient' has not been defined anywhere under Indian Law. The term covers those people who receive healthcare services by doctors or medical professionals. However, Article 42 of the Constitution of India mentions that the Government including state governments have a duty to provide healthcare services and improving public health.[1]

Laws governing Patient Rights
The laws governing rights of people who approach healthcare establishments or medical professionals in India include:

- The Constitution of India, 1950
- Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002
- Drugs and Cosmetics Act, 1940
- Clinical Establishment(Registration and Regulation) Act, 2010
- Indian Penal Code, 1860 and Code of Criminal Procedure, 1973

Rights of Patients in India according to Charter of Patients' Rights
The National Human Rights Commission(NHRC) with an intention to ensure the protection and promotion of Human rights of those who are among some of the most vulnerable sections of society – ordinary patients and citizens seeking health care across India drafted an enabling document the Charter of Patients' Rights. Another objective of this Charter is to generate widespread public awareness and educate citizens regarding what they should expect from their governments and health care providers—about the kind of treatment they deserve as patients and human beings, in health care settings.

According to the Charter of Patients' Rights, the NHRC has incorporated the following as rights of patients:

1) **Right to Information-** According to Annexure 8 of Standards for Hospital level 1 by National Clinical Establishments Council set up as per Clinical Establishment Act 2010, 'every patient has a right to

[1] Article 42, Constitution of India, 1950; Entry 6, List II, Schedule VII, Constitution of India, 1950

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adequate relevant information about the nature, cause of illness, provisional / confirmed diagnosis, proposed investigations and management, and possible complications to be explained at their level of understanding in language known to them.' The Medical Council of India Code of Ethics includes the provision that the treating physician has a duty to ensure that this information is provided in simple and intelligible language to the patient to be communicated either personally by the physician, or by means of his / her qualified assistants.[1] Patients Charter by National Accreditation Board for Hospitals (NABH) provides that every patient and his/her designated caretaker have the right to factual information regarding the expected cost of treatment based on evidence. The hospital management has a duty to communicate this information in writing to the patient and his/her designated caretaker. Further it states that they should also be informed about any additional cost to be incurred due to change in the physical condition of the patient or line of treatment in writing. On completion of treatment, the patient has the right to receive an itemized bill, to receive an explanation for the bill(s) regardless of the source of payment or the mode of payment and receive payment receipt(s) for any payment made.[2] The Consumer Protection Act, 1986 also provides that patients and their caretakers have a right to know the identity and professional status of various care providers who are providing service to him / her and to know which Doctor / Consultant is primarily responsible for his / her care. Further it adds that the hospital management has a duty to provide this information routinely to all patients and their caregivers in writing with an acknowledgement.

2) **Rights to records and reports-** Rights to records and reports as incorporated in various laws and regulations are as follows: Annexure 8 of Standards for Hospital level 1 by National Clinical Establishments Council set up as per Clinical Establishment Act 2010 states that 'Every patient or his caregiver has the right to access originals / copies of case papers, indoor patient records, investigation reports (during period of admission, preferably within 24 hours and after discharge, within 72 hours). This may be made available wherever applicable after paying appropriate fees for photocopying or allowed to be photocopied by patients at their cost.' MCI Code of Ethics Section1.3.2 envisages that 'the relatives / caregivers of the patient have a right to get discharge summary or in case of death, death summary along with original copies of investigations. The hospital management has a duty to provide these records and reports and to instruct the responsible hospital staff to ensure provision of the same are strictly followed without fail.'

3) **Rights to Emergency Medical Care-** According to MCI Code of Ethics Sections 2.1 and 2.4 it is the duty of the hospital management to ensure provision of such emergency care through its doctors and staff, rendered promptly without compromising on the quality and safety of the patients.

4) **Right to Informed Consent-** Every patient has a right that informed consent must be sought prior to any potentially hazardous test/treatment (e.g., invasive investigation / surgery / chemotherapy) which carries certain risks. It is the duty of the hospital management to ensure that all concerned doctors are properly instructed to seek informed consent, that an appropriate policy is adopted and that consent forms with protocol for seeking informed consent are provided for patients in an obligatory manner. It is the duty of the primary treating doctor administering the potentially hazardous test / treatment to explain to the patient and caregivers the main risks that are involved in the procedure, and after giving this information, the doctor may proceed only if consent has been given in writing by the patient / caregiver or in the manner explained under Drugs and Cosmetic Act Rules 2016 on informed consent.

5) **Right to confidentiality, human dignity, and privacy-** All patients have a right to privacy, and doctors have a duty to hold information about their health condition and treatment plan in strict confidentiality, unless it is essential in specific circumstances to communicate such information in the interest of protecting other or due to public health considerations. Female patients have the right to presence of another female person during physical examination by a male practitioner. It is the duty of the hospital management to ensure presence of such female attendants in case of female patients. The hospital management has a duty to ensure that its staff upholds the human dignity of every patient in all situations. All data concerning the patient should be kept under secured safe custody and insulated from data theft and leakage.

[1] *India releases charter of patient rights – Future Medicine ...*, https://futuremedicineindia.com/u-c-h/medico-legal/1810/india-releases-charter-of-patient-rights.

[2] Charter of Patients' Rights for adoption by NHRC

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6) **Right to second opinion-** Every patient has the right to seek second opinion from an appropriate clinician of patients' / caregivers' choice. The hospital management has a duty to respect the patient's right to second opinion and should provide to the patients' caregivers all necessary records and information required for seeking such opinion without any extra cost or delay. The hospital management has a duty to ensure that any decision to seek such second opinion by the patient / caregivers must not adversely influence the quality of care being provided by the treating hospital as long as the patient is under care of that hospital. Any kind discriminatory practice adopted by the hospital, or the service providers will be deemed as Human Rights' violation.

Other Ancillary Rights of Patients in India

Some of the other rights which are provided to patients in India under various laws and regulations are as follows:

- Right to transparency in rates and care according to prescribed rates wherever relevant.
- Right to non-discrimination-
- Rights to safety and quality care according to standards.
- Right to choose alternative treatment options if available
- Right to choose source for obtaining medicines or tests
- Right to proper referral and transfer, which is free from perverse commercial influences
- Right to protection for patients involved in clinical trials
- Right to protection of participants involved in biomedical and health research
- Right to take discharge of patient or receive body of deceased from hospital
- Right to Patient Education
- Right to be heard and seek redressal

Assessment of Effectiveness of Patients' Rights

Any right without application is like a toothless tiger, patients' rights laid down in various laws and regulations are not an exception to it. A recent study wherein data was collected from 120 hospitalized patients revealed that 76% of the patients were aware of patients' rights and 73% about its goal but only 43% knew that it was applicable in India irrespective of the absence of a legal bill or charter. There was significant difference between private and general wards respondents showing very low awareness of 44%.[1] The study also revealed that as the rate of patient right awareness and practice was compared, it was seen that in most of the rights there was high awareness except the right to informed consent, while many rights were not satisfactorily practised in the hospital like the patient's right to be informed, right to informed consent and the right to grievance redressal.[2] In another survey conducted on patient-physician communication around HIV testing, a number of gaps between practice and guidelines were identified.[3]

The obvious question which arises now is that do the patients in India are really aware of their rights and if yes how much to these rights are implemented and preserved. The Charter of Patient Rights is undoubtedly a welcoming effort, but it is reduced to a mere document until and unless there is a proper framework accountable to the people which would supplement those rights. Moreover, apart from the Charter of Patient Rights, most of the other laws and regulations have a duty-centric approach and does not represent patients' rights. They imposed certain duties on the medical practitioners and care takers, mostly in the form of guidelines which are mostly unknown for a greater section of patients in India. Often, people do not realize their specific rights at the time of their care because those rights are either not clearly defined or included in a bundle of papers that

[1] Fernandes AB, D'Cunha S, Suresh S, "*Patient Rights: Awareness and Practice in a Tertiary Care Indian Hospital,'* Int J Res Foundation Hosp Health Adm 2014: 25-30

[2] Ibid

[3] Datye V, Keilmann K, Sheikh K Deshmukh D, Deshpande S, Porter J, Rangan S, '*Private Practitioners' communication with patients around HIV testing in Pune, India,'* Health Policy Plan, 2006 Sep; 21: 343-52

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patients need to sign during registration. So, its lack of awareness among the people which is turning these rights ineffective mostly.

Judicial Interpretation of Patients' Rights

Effective implementation of rights always needs a just and fair interpretation of the law which provides those rights. Hence, to assume the effectiveness of patients' rights in India, it becomes imperative to examine the judicial interpretation of the same with the help of the following case laws:

The landmark case law on one of the most basic but forgotten patient rights, right of informed consent is of ***Samira Kohli v. Dr. Prabha Manchanda & Another***[1]. In Samira Kohli, the petitioner, consulted with Dr. Prabha Manchanda, the respondent, regarding her prolonged menstrual bleeding. She was admitted to the respondent's clinic where she signed the consent form for hospital admission, medical treatment and for surgery. The consent form for surgery described the procedure to be undergone by the petitioner as 'diagnostic and operative laparoscopy. Laparotomy may be needed.'[2] The petitioner was subjected to a laparoscopic examination under general anaesthesia. While the petitioner was unconscious during her examination, the respondent's assistant took the consent of the patient's mother for a hysterectomy. After this, the respondent removed the patient's uterus (abdominal hysterectomy), ovaries and fallopian tubes (bilateral salpingo-oophorectomy). The petitioner filed a complaint before the National Consumer Disputes Redressal Commission (NCDRC) under the CPA, claiming compensation of INR 25 lakh from the respondent. Her complaint alleged that the doctor had been negligent and that the radical surgery, by which her uterus, ovaries and fallopian tubes had been removed, had been performed without her consent. The petitioner claimed compensation for the loss of her reproductive organs, irreversible damage to the body, loss of the opportunity to become a mother, diminished prospects of matrimony and emotional trauma. The NCDRC dismissed the complaint on the grounds that the hysterectomy had been performed with adequate care and that the patient had voluntarily sought treatment at the respondent's clinic. Aggrieved by the order, the petitioner filed an appeal in the Supreme Court of India. The court overruled the order passed by the NCDRC and held that:

…there was no consent by the appellant for performing hysterectomy and salpingo-oopherectomy, performance of such surgery was an unauthorized invasion and interference with appellant's body which amounted to a tortious act of assault and battery and therefore a deficiency in service.[3]

The court, however, observed that even though the respondent's act was in 'excess of consent,' the act was done in good faith and for the benefit of the petitioner. Consequently, the compensation that was directed to be paid to the petitioner was significantly less than claimed.

Kohli's case importance in moulding informed consent jurisprudence in India lies in these facts that it rejected the principle of reasonable person standard, for information disclosure and that it adopted a socio-economic line of reasoning to establish the liability. It is noteworthy to mention here the observation made by the Judges in this case:

In India, [the] majority of citizens requiring medical care and treatment fall below the poverty line. Most of them are illiterate or semi-literate. *They cannot comprehend medical terms, concepts, and treatment procedures*. They cannot understand the functions of various organs or the effect of removal of such organs. They do not have access to effective but costly diagnostic procedures. Poor patients lying in the corridors of hospitals after admission for want of beds or patients waiting for days on the roadside for an admission or a mere examination, is a common sight. For them, any treatment with reference to rough and ready diagnosis based on their outward symptoms and doctor's experience or intuition is acceptable and welcome so long as it is free or cheap; and whatever the doctor decides as being in their interest, is usually unquestioningly accepted. *They are a passive, ignorant and uninvolved in treatment procedures.*[4]

[1]Samira Kohli v. Dr. Prabha Manchanda and Another (2008) 2 SCC 1. Available at:

https://indiankanoon.org/doc/438423/ (accessed 29 November 2021).

[2] Ibid

[3] Ibid

[4] Samira Kohli v. Dr. Prabha Manchanda and Another (2008) 2 SCC 1. Available at: https://indiankanoon.org/doc/438423/ (accessed 29 November 2021).

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The Judges while highlighting the poor condition of the patients in India also raised a question on the relevance of informed consent in India. They were of the opinion that :

The poor and needy face a hostile medical environment inadequacy in the number of hospitals and beds, non-availability of adequate treatment facilities, utter lack of qualitative treatment, corruption, callousness, and apathy. Many poor patients with serious ailments (e.g., heart patients and cancer patients) have to wait for months for their turn even for diagnosis, and due to limited treatment facilities, many die even before their turn comes for treatment. What choice do these poor patients have? Any treatment of whatever degree is a boon or a favour, for them. *The stark reality is that for a vast majority in the country, the concepts of informed consent or any form of consent, and choice in treatment, have no meaning or relevance*.

Now, here the question which arises is that whether the right of informed consent is optional and not a basic right which should be available to all irrespective of their background and financial status? Will it be justified to treat informed consent right as a luxury which will be provided for only a section of the society?

Few other observations of Supreme Court in this context are worthy of reproduction:

In **Martin F. D'Souza v. Mohd. Ishfaq**, the Supreme Court opined that "101. The Commission should have realized that different doctors have different approaches, for instance, some have more radical while some have more conservative approaches. All doctors cannot be fitted into a straitjacketed formula and cannot be penalized for departing from that formula….102. While this court has no sympathy for doctors who are negligent; it must also be said that frivolous complaints against doctors have increased by leaps and bounds in our country, particularly after the medical profession was placed within the purview of the Consumer Protection Act. To give an example, earlier when a patient who had a symptom of having a heart attack would come to a doctor, the doctor would immediately inject him with morphia or pethidine injection before sending him to the Cardiac Care Unit because in cases of heart attack time is the essence of the matter. However, in some cases, the patient died before he reached the hospital. After the medical profession was brought under the Consumer Protection Act vide Indian Medical Assn. v. V. P. Shantha ((1995) 6 SCC 651), doctors who administer morphia or pethidine injection are often blamed, and cases of medical negligence are filed against them. The result is that many doctors have stopped giving (even as family physicians) morphia or pethidine injection even in emergencies despite the fact that from the symptoms the doctor honestly thought that the patient was having a heart attack. This was out of fear that if the patient died the doctor would have to face legal proceedings….111. The courts and the Consumer Fora are not experts in medical science and must not substitute their own views over that of specialists. …112. It must be remembered that sometimes despite their best efforts the treatment of a doctor fails. For instance, sometimes despite the best effort of a surgeon, the patient dies. That does not mean that the doctor or the surgeon must be held to be guilty of medical negligence unless there is some strong evidence to suggest that he/she is."[1]

In **Kusum Sharma v. Batra Hospital**[2], Supreme Court observed that "78. It is a matter of common knowledge that after happening of some unfortunate event, there is a marked tendency to look for a human factor to blame for an untoward event, a tendency which is closely linked with the desire to punish. Things have gone wrong and, therefore, somebody must be found to answer for it. A professional deserves total protection."[3]

The legal system has to strike a careful balance between the autonomy of a doctor to make judgments and the rights of a patient to be dealt with fairly. Indian courts tend to give sufficient leeway to doctors and expressly recognize the complexity of the human body, inexactness of medical science, the inherent subjectivity of the process, genuine scope for error of judgment, and the importance of the autonomy of the medical professional.[4]

CONCLUSION

India has undoubtedly come across a long journey in providing and protecting the basic rights of patients by adopting laws, regulations, and guidelines. The Charter of Patients' Rights by The National Human Rights Commission is a welcoming step towards adopting a well comprehensive system in that regard. But what has been observed both through some studies and surveys as mentioned earlier in this research work is that some

[1] Martin F. D'Souza v. Mohd. Ishfaq (2009) 3 SCC 1.

[2] Kusum Sharma v. Batra Hospital (2010) 3 SCC 480

[3] Ibid

[4] Amit Agrawal, 'Medical Negligence: Indian Legal Perspective', Ann Indian Acad Neurol, 2016 Oct; 19(Suppl 1): S9–S14.

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sections of the society are well aware of their rights as a patient but are hesitant to claim or implement them while there is another section who are all together in dark. In fact, due the poor condition of the public health sector, some patients' right like informed consent, right to information, right to privacy, right to records and reports are a mere formality and is considered as a luxury for the patients. More or less the same view is highlighted in judicial pronouncements as well. The Judiciary has also opined that due to overburden of medical professional specially in public sector, it some rights like right to choose, informed consent are high expectations.

Hence, it is the need of the time to reconsider the framework of medical system and laws on it in India and make efforts to adopt a system where the basic patients' rights will not be considered a luxury but natural human rights. Till then the Patients' Rights in India is for sure an ignored and forgotten topic.

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CONSTITUTIONAL VALIDITY OF FARM ACTS, 2020 VIS-A-VIS FEDERALISM

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INTRODUCTION

The Constitution provides a federal system of government in the country, even though it describes as a 'Union of States'. The term Federalism implies that, the Indian federation is not the outcome of an agreement between independent units and the units of Indian federation cannot leave the federation. The distribution of legislative powers between the Union and States is fundamental and basic principle of a Federal Constitution[1]. These powers are divided between the Union and States not by any law passed by the Union, but by the Constitution itself. Union-State relations have been a critical issue for a long time, from the very beginning when the Constitution was drafted and came into force; this issue came into light for discussions. Of course, the relations between the Union and States have been established and incorporated under the Constitution, but it seems that either the provisions are not sufficient or the implications of the same has not been made out properly. But, it is a fact that there is something wrong somewhere, which has created the complications between the States and also between the Union and States. Because of these complications, relations between these two agencies have not been harmonized. It is also true that to sort out this problem a lot of efforts have already been made out, but till today this position is not harmonized. At present, the problem of Union-State legislative relations has assumed the same importance which had the marginal problem in pre-independence India.

Recently, the Union Parliament has passed three agriculture related Acts which is commonly known as Farm Acts, 2020[2]. Before being enacted by the Parliament, the farm laws were promulgated as ordinances on 5th June 2020. Passing of these laws gave rise to a big controversy among all the stake holders particularly the Union, the States and the Farmers because of the various socio-economic, political, legal and constitutional issues which involved within these three controversial Acts. Writ petition was filed to challenge the Constitutional validity of these legislations[3]. At this juncture the researcher made an attempt in this research paper to analyse the scheme of distribution of legislative powers between the Union and States under the Indian Constitution and this research paper is undertaken to critically analysis into the Constitutional validity of the controversial and contentious Union Farm Acts 2020 in the light of the Principle of Federalism & Basic Structure.

Brief History of New Acts

India is and has been an agrarian country. After independence, farmers used to sell their products directly to the consumers. But due to prevailing system of Zamidars or money lenders, farmers were trapped in perpetual debt. Farmers need to buy seeds, fertilizers and other things required for growing a crop, for buying all these things they need money so farmers took loans from Zamidars or money lenders who used to charge a very high interest rate on the principal amount. Farmers were unable to pay such a hefty amount and in such cases to get their money back money lenders or the Zamidars used to buy the whole produce of the farmers but, they paid very less amount to farmers because farmers did not have the bargaining power. Now to again sow their fields farmers required money so this cycle continued and farmers were always in debt.

This process was very exploitative to help the farmers and end this system Government of India introduced APMC (Agriculture Produce Market Committee) Act. It was introduced in 1960's at the very same time when green revolution started in India many experts believe that in the major of green revolution APMC Act played a major role. APMCs set up Mandis or Markets across India where farmer's produce was sold. There are around 7000 APMCs in India at present. Now, the process of selling the produce is that after harvesting crops are brought to the Mandis or Markets where they sell the produce through auctioning or price discovery. Whom are the farmers selling the crops? Not to the government but the middlemen or Arhatiyas. Middlemen are people

[1] Subash N.Singh, *Centre State Relations in India*, H.K. Publishers, Delhi (1990), P.73

[2] (1) The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, (2) The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 and (3) The Essential Commodities (Amendment) Act, 2020 dated 27.09.2020

[3] Section(s)2,3,4,5,6,7,13, 14, 18 and 19 of the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 Act which came force 27.09.2020. It is submitted that this act is violative of Article 14, 15 and 21 of the Constitution of India and accordingly, liable to be struck down as Unconstitutional, illegal and void.

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between the farmer and the retailer or big traders. For example, farmers sell their vegetables to the middlemen and then the vegetable vendor buys vegetable from the middleman, vegetable vendor will not buy directly from the farmers. Government gives license to these Middlemen; shops, storage facilities etc. are provided to them in APMC markets. Many people work in these APMCs, there is storage of grains, so it requires laborers, accountants so overall it is a self-thriving ecosystem. One thing which should be noted here is these APMC markets are regulated by state governments, a tax is charged on each transaction so in a way government knows at price produce is being sold.

Now what about the produce that are not bought by the middlemen in these markets? This is being bought by the government at MSP (Minimum Support Price). MSP is constant throughout the country. MSP also ensured that produce bought be the middlemen were not below a certain price. When everything is so good are farmers happy? According to National Crime Bureau report 2018, 1,34,560 suicides were reported in India out of which 10,350 were farmers remember this was total number of reported cases. This system was good seeing 1960's but with time we need to evolve similarly, not much was done to APMCs and some problems popped up. Middlemen started exploiting farmers they formed cartels or an understanding among themselves and started buying the produce at MSP only and sold to traders at a high rate. For example, MSP for onion is Rs.8.5 per kg (data as of February 06, 2019) but we buy onions at Rs 35 – 80 per kg depending on State. In a way we can say Minimum Support Prize became Maximum Selling Price. Voice arose from time to time to remove these defects and in response government brought the three Acts in 2020[1]. These three farm Acts seek to replace ordinances issued in June 2020[2].

These Acts envisage to bring change in some of the key aspects of the farm economy trade in agricultural commodities, price assurance, farm services including contracts, and stock limits for essential commodities. These Acts sought to bring much needed reforms in the agricultural marketing system such as removing restrictions of private stock holding of agricultural produce or creating trading areas free of middlemen and take the market to the farmer.

We have already discussed the process currently in place well according to the new market place law, farmers can sell their produce anywhere not just in the APMC approved mandis or market places but literally anywhere i.e., they can sell inside the State, outside the State, or if they wish they can also sell it online. Which means according to union government this law is been brought in to give freedom of choice to farmers they will have a variety of marketplaces. The government says, this is actually going to do good to them because they can choose from several options.

Federalism and distribution of powers

The Constitution provides a federal system of government in the country, even though it describes as a 'Union of States'[3]. The term federalism implies that, the Indian federation is not the outcome of an agreement between independent units and the units of Indian federation cannot leave the federation. With respect to the nature of Indian Constitution the Supreme Court ruled differently in various cases. In *State of West Bengal* v. *Union of India*[4] the apex court held that the Indian Constitution did not propound a principle of absolute federalism. Whereas in *Kesavananda Bharati* v. *State of Kerala*[5], some of the judges of the Supreme Court regarded federal character of the Indian Constitution as, basic Structure of the Constitution. In State of *Rajasthan* v. *Union of India*[6], BEG, C.J., characterized the Indian Constitution as "more Unitary than Federal", and having the 'appearance' of a Federal structure. in *State of Karnataka* v. *Union of India*[7], BEG, C.J., said: "our Constitution has, despite whatever federalism may be found in its structure, so strongly unitary features also in it……". In

[1] Supra Note.2

[2] The central government in COVID-19 period promulgated three Ordinances on June 5, 2020

[3] Article 1 of the Indian Constitution

[4] AIR1963 SC 1241

[5] AIR 1973 SC 1461

[6] AIR 1977 SC 1361 at p. 1382.: (1977) 2 SCC 592

[7] AIR 1978 SC 68 : (1977) 4 SCC 608

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Satpal v. *State of Punjab*[1] the Supreme Court again held that ours is a Constitution is the combination of federal structure with unitary features.

India undoubtedly is a Union of States whether we describe our Constitution as federal or quasi federal. Units of the Union have also certain powers as has the Union itself.The Indian Constitution contains federal and non-federal features, therefore, it is not purely federal and purely unitary, it is combination of both hence rightly termed as "Quasi-Federal[2]" Constitution.

Professor Dicey says that the distribution of powers is an essential feature of federalism[3]. He also found the root cause of division of powers in the very object for which a federal polity is established. Prof. K.C. Wheare the champion of normative federalism echoed the Dician concept of essentially of division of powers under a federal system. The details of the division of powers between the National and State Legislatures may very under every different federal Constitution, but the basic on which the division of powers should rest are similar in all the federations. The general principle guiding the division of powers has been very highly pointed out, Prof. Dicey when he said whatever concerns the national as a whole should be placed under the control of national government. All matters which are not primarily of common interest should remain in the hands of the several States.

Scheme of Distribution of Legislative Powers in India

The Constitution of India came into force with effect from the 26th January, 1950. The Constitution of India possesses a very elaborate and comprehensive scheme of the distribution of powers between the Union and States. It follows no single pattern of division of powers prevalent in any traditional federation. It makes its own mode of division of powers, combination of the Canadian and the Australian method of distribution of powers is evident under the Indian Constitution[4]. The federal scheme in the Constitution of India is adopted from the Government of India Act, 1935[5]. Borrowing the pattern of treble enumeration from the Government of India Act, 1935, the framers of our Constitution added the distribution of legislative powers between the Union and States in Part XI of the Indian Constitution, commencing from the Articles 245 to 256 and VII Schedule. There are two fold distribution of legislative powers have been made under the Constitution between the Union and States[6]. The first one with respect to the territory and another one is with respect to subject matter.

As regards the territory Article 245(1) provides that Parliament has power to make laws throughout the territory of India, States can make law to whole territory of State is concerned[7]. According to Clause (2) of Article 245 a law made by Parliament shall not be deemed to be invalid on the ground that it has extra-territorial operation, i.e. takes effect outside the territory of India. Article 246 of Indian Constitution provides for the distribution of legislative powers between the Union and State with respect to the subject matter[8]. In India the legislative

[1] (1982) I SCC 12

[2] Jain, M. P. *Indian Constitutional Law*, Wadawan and Co., New Delhi (5th edn, 2003), p.23

[3] Dicey, A.V. *An Introduction to the Study of Constitution*, MacMilan & Co. Ltd., London (10th edn,1965), p. 151

[4] Amal Ray, "*Inter-Governmental Relations in India",* Asia Publishing House, 1966 p.24

[5] D.J.De. "*The Constitution of India*", Asia Law House, Hyderabad Vol. 2, 2002, P.1952.

[6] Jain, M.P. "*Indian Constitutional Law*", wadhawa Nagpur P.557.

[7] Article 245(1) of the Indian Constitution; Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

[8] Article 246 includes the following clauses:

1)Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the seventh Schedule (in this Constitution referred to as the "Union List").

2)Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

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powers of the Parliament and State Legislatures have been divided into three lists in the Seventh Schedule of the Constitution. Seventh Schedule contains three lists i.e. Union List having 97 subject matters on which the Parliament having exclusive power to make laws, State List contain 66 subject matters on which State Legislature can make laws and there are 47 subject matters in the Concurrent List on which both Union and State Legislatures can make laws concurrently. State List covers only Sixty Six items it is comparatively small field than Union List even though State Legislation is curtailed by making a number of entries in the State List, subject to entries in the Union List[1] or Concurrent List[2] or any other law made by Parliament[3]. Some items in Concurrent List are made subject to Union List[4] or to any law made by the Parliament[5]. The Article 246 would show that the non obstante clauses are mere aids to the interpretation of the entries in the three lists that is whether the subject matter of legislation in question appertains to the List II or List III. The course indicated by these clauses is that the court must proceed in the following order: list I, List III and thereafter List II[6].

Apart from this scheme if any matter does not fall under any of the lists, then as per Article 248 read with Entry 97 of the Union List, Parliament can exercise the residuary legislative power. In *Dhillon*[7] case the Supreme Court by majority has ruled that once it is found that the subject matter of the impugned legislation does not fall under any entry in List II or III then Parliament can take recourse to the residuary power, or it can be combined with any entry in List-I. Since the Article 246 (2) gives power to two Legislatures, a conflict can arise between laws passed on the same subject by the two Legislatures. To deal with this situation, the complicated provisions of Article 254 may be analyzed into the following propositions.

1. Clause (1) says that if a State law relating to a Concurrent Subject is repugnant to a Union law relating to that subject, then whether the Union law is prior or later in time, the Union law will prevail and the State law shall to the extent of such repugnancy be void[8].
2. The State law however does not become void as soon as the Union Parliament legislates with respect to the same subject. There is nothing to prevent the State Legislature to legislate with respect to a concurrent subject merely because there is a Union law relating to the same subject. Art 254 (2)[9] is attracted only if the State law is repugnant to the Union Act[10], which means that the two cannot stand together[1].

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3)Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

4)Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

[1] State List Entries 11,13,17, 22, 23,24, 32 & 54

[2] State List Entries 11,13, 26, 27 & 57

[3] State List Entries 12, 37& 50

[4] Concurrent List Entries 19 & 32

[5] Concurrent List Entries 31, 33(a) & 40

[6] Jennings, "Some Characterstics of the Indian Constitution", Published by Geoffrey Cumberlege, Oxford University Press 1953, P.61

[7] (1971) 2 SCC 779 : AIR 1972 SC 1061

[8] Article 254(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

[9]Article 254 (2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision is repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in the State:

[10] *Amalgamated E.C.* v. *Ajmir Muncipality* AIR 1969 SC 221 (234)

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Union Supremacy

In addition to the long arms of Union and Concurrent Lists leaning balance of legislative powers in favour of the Parliament, there are several ways in which the plenary powers of the Union Legislature are ensured by Constitution. The scheme under the Constitution tilting balance of legislative powers in favour of the Union may be conveniently divided in to three heads[2],

1. Legislative Methods of the Union to Control over States:
2. Provisions under the Constitution ensuring national supremacy in legislative fields and

Legislative Methods of the Union to Control over States

In spite of clear demarcation of Union and State subjects under the Constitution, Union Legislature exercises control over the power of State Legislature to make laws. Those circumstances are explained hereunder.

1. Previous sanction to introduce legislation in the State Legislature (Article 304).
2. Bills which must be reserved for President's consideration
3. Instruction of President required for the Governor to make Ordinance relating to specified matters [Article 213(1)].
4. Veto power in respect of other State Bills reserved by the Governor (Article 200).

Provisions under the Constitution ensuring national supremacy in legislative fields

1. Power of Parliament to Legislate in the National Interest (Article 249)
2. Legislation with the Consent of States
3. Legislation for Giving Effect to International Agreements
4. Legislation during Proclamation of Emergency

a. National Emergency

b. Failure of Constitutional Machinery in States

The Constitutional (101st Amendment) Act, 2016

Prior to the constitution came into force the concept of Goods and services was a State subject and it was placed under Entry 48 of the Provincial List of VII Schedule of the Government of India Act, 1935. As per this entry Provincial Legislature could make legislation on the subject "taxes on the sale of goods and on advertisements". But there was no subject "tax on sale of goods" in the Federal List. Hence, only State legislatures were having exclusive power to make law on that subject. Again, there was no restriction on states power to levy tax on sale of goods. Each States Legislation relating to sales tax had its own separate definition clauses with respect to sale.

After Constitution came into force, Entry 54 of the States List deals with the "taxes on sale or purchase of goods." As a result of this entry only State Legislatures can make law on taxes relating to sale of goods. There was no corresponding provision in the Union List for levying tax on the sale of goods so as to give power to the Union Legislature to make law on this subject. But, the 6th Constitutional Amendment Act, 1956 substituted the words "taxes on the sale or purchase of goods other than newspapers", subject to the provisions of entry 92A of Union List. Therefore the entry gives power to the State Legislature to make law on the subject taxes on the sale or purchase of goods other than the newspapers. But such law enacted by the State Legislature is subject to the law made by the Parliament under entry 92A of the Union List. This 6th Constitutional Amendment Act, 1956 also inserts a new entry to the Union List i.e. entry 92A it states about "Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter State trade or commerce."[3] As a result of this Constitutional Amendment, legislation pertaining to levy tax on the sale or purchase of goods

[1] *Zaverbhai* v. *State of Bombay*, AIR 1954 SC 752

[2] Anirudha Prasad, "*Centre State power under Indian federalism",* Deep & Deep Publication, New Delhi 1986 p. 90

[3] Section 2 of the Constitutional (6th Amendment) Act, 1956.

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conferred to the Union Legislature. This position is continued until enactment of the 101st Constitutional Amendment Act, 2016[1].

Before Hundred and First Constitutional Amendment Act, 2016 State cannot tax services and vice a versa, Centre cannot tax goods within State. As a result there was no scope for enactment of GST in India without making amendment to the Constitution. For GST to be implemented Article 246 needs to be overruled, otherwise there is no chance of implementing the GST. In this regard the 101st Constitutional Amendment Act was enacted to make certain changes to the Constitutional provisions so as to implement the GST.

State exclusive jurisdiction over agriculture

Agriculture is a multi-faceted activity and therefore, the framers of the Constitution distributed the various subjects of legislation in respect of agriculture and related matters between the Union and the States on a threefold pattern.

1. Agriculture and most mattes ancillary to or directly connected with it, were placed within the exclusive legislative and executive competence of the States. (vide Entries 14, 15, 16, 18, 21, 28, 30, 32, 45, 46, 47 and 48 of the State List)[2].
2. The matters of Concurrent jurisdiction of the Union and the States relating to agriculture are: 'Prevention of the extension from one State to another of infectious or contagious diseases or pests of affecting men, animals or plants' (Entry 29); Trade and commerce in, and the production, supply and distribution of products of any industry (including one having a nexus with agriculture) controlled by the Union by virtue of a law made by Parliament under Entry 52, List I, or of food-stuffs, cattle fodder, raw cotton and raw jute (Entry 33); and 'Price control' including that of agricultural products and agricultural inputs (Entry 34). Apart from the above, 'Economic and social planning' in Entry 20 of the Concurrent List is comprehensive enough to include planning and development of agriculture and related activities.
3. Certain matters related to 'agriculture' in the State List have been made expressly subject to List I or III. Examples of these matters are to be found in Entries 17, 24, 26 and 27 of the State List.

Constitutional Validity of Farm Acts, 2020

The Central Government has invoked Entry 33 in the List III which essentially deals with trade and commerce. Agriculture though, is exclusively a state subject listed in Entry 14 in List II along with Entry 26 in List II which refers to "trade and commerce within the state". The path taken by the Union Government weaken the spirit of cooperative federalism which is a part of the basic structure of the Constitution even when the Judiciary has upheld the legislative powers of states in Intra-state Agricultural marketing. The Laws certainly have a poor legal validity but are expected to pass the test of constitutionality when challenged in the apex court.

The issue has been raised by many farmers that how can the Centre take decision on something which has been listed under the State list. In Indian Constitution, the VII schedule has defined the subjects of jurisdiction for Union and State Governments. List I has subjects reserved for union Government (Union List), List II has subjects reserved for the state Government (State List) and List 3 has the subjects reserved for the both state and Union government (Concurrent List). Agriculture has been listed under the entry no. 14 of State list. Now while formulating the Farm Act union Govt. has invoked the Entry 33 of list III which says that the Parliament can make laws in Public Interest on the matters involving trade, commerce, production, supply and distribution of industrial Products. Article 249 of Indian Constitution deals with "the power of Parliament to legislate with respect to a matter in the state list in the national interest." This Article gives the power to the Parliament to make laws with respect to any matter enumerated in the State List if it comes to the national interest. Taking the same contention Writ Petition was filed before the Supreme Court of India and it was registered as *Rakesh*

[1] The Constitution (One Hundred One Amendments) Act, 2016 was enacted w.e.f 8th September 2016

[2] Accordingly, agricultural education and research, protection against pests and prevention of plant diseases; preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice; pounds and the prevention of cattle trespass; land, rights in or over land, land tenures including the relation of landlord and tenant; collection of rents; transfer and alienation of agricultural land; land improvement agricultural loans; colonization; fisheries; markets and fairs; money -lending and money-lenders; relief of agricultural indebtedness; cooperative societies; land revenue; maintenance of land records taxes on agricultural income; duties in respect of succession to agricultural land and estate duty in respect of agricultural land, have all been made exclusive responsibility of the States.

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Vaishnav & Ors v Union of India & Ors[1]. Court stayed The implementation of the three farm laws 1) Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020; (2) Essential Commodities (Amendment) Act, 2020; and (3) Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020.

CONCLUSION

Based on the foregoing discussion, it can be concluded that the spirit of Indian Constitution demands that the Union and States are independent to make laws in their respective field assigned by the Constitution. Though the Union has supremacy in certain situations that is also mentioned in the Constitution itself, but that does not gives them legitimacy to encroach upon the State List and If Union Government keeps on transgressing the limits, then it will ultimately destroy the fabric of the basic structure of the Constitution i,e Federalism. The fact that under the scheme of our Constitution, greater power is conferred upon the Union vis-a-vis the States does not mean that States are mere appendages of the Union. With the sphere allotted to them, States are supreme. The Union cannot tamper with their powers. Hence the Independent Judiciary must playing its judicial activism role interfere in such a situation suo-motu and delimit adversarial federalism of the Union and shows them the path of cooperative federalism in order to save the basic structure of the Indian Constitution. Though the Agriculture remains within the State List, the State is handicapped from exercising any control over the agriculture and curtailed the power of the State to impose any tax or cess by the APMC resulting in a huge income loss for the State Governments. In the light of above premises, the author submits that the three Farm Acts on agriculture enacted by the Union Parliament goes against the spirit of federalism, hence legally speaking , their Constitutional validity shall be highly questionable & debatable before the Court of law and judiciary definitely upheld and protect the basic structure of the Indian Constitution.

[1] *Rakesh Vaishnav & Ors v Union of India & Ors*, WP.1118/2020

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CONUNDRUM OF MEDIA- RIGHT TO PRIVACY AT PERIL

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"The court of public opinion moves much faster than the law"-T.E

INTRODUCTION

Media involvement and passing verdict in under trial cases are increasing rapidly the impact of media is also affecting the Judges where they are somehow compelled emotionally or through other factors to take decision based on the media criticism and there are many examples on the same, media house has an upper hand when the verdict needs to be passed in high profile cases. The media has also involved themselves in investigation and provide opinion on the same to general public which is actually and roadblock to investigation agency. Its rightly said that if there must be a smooth running of the democracy then freedom of speech and expression must prevail, though the media helps in social, political changes but sometimes they are also used as a tool for other unethical activities which tampers the tranquillity of the country.

Media holds a power to interpret the opinions of the public at large and also capable of highlighting any such issue or news through its electronic mode and gain public attention. The media is considered to be one of the efficient tools in a democratic country in the Indian constitution under article 19(a) which guarantees freedom of speech and expression also provides this right to the media as the makers of the constitution have envisaged that existence of powerful media is the cornerstone of a democratic country especially in India which is diverse with various culture and customs.

Its undisputable that in many dimensions the unprecedented media has being beneficial to the general public and it has also gained appreciation from state and judicial organs where fearless and ethical journalism has helped them to serve justice to people who were victimised, however as we know that every coin has two sides so does media as its well known fact that right to freedom of speech and expression is not absolute in nature and hold certain restriction these restrictions are imposed so that it would not overpower other freedom.

The role of media is not confined towards expression of an individual's opinion or views but it's also responsible and tool to build one's view on various aspects such as regional national and international agenda. One of the main objectives of the media is to mobilize the thinking process of millions of people the media role is magnums where justice learned hand of the United States quoted that "the hand that rules the press, the radio, the screen and the far spread magazine rules the country". In recent era media also plays a role of the judiciary where they are conducting trial on their respective platform without any authorisation and pass the verdict against any individual even before the trial would start before the court of law. Media cannot usurp the functions and deviate the actual function of the state and misguide the public.

The current generation which is found of breaking news and increase of competition the media has opted various other ways to increase the TRP and also attract the attention of viewers are has more often amounted to distortion of facts and sensationalization, this act as an encouraging factor and motives the use of intrusive newsgathering practices which tend to violate the privacy of people who are subject to such coverage. The issue is worsened when the media extensively covers sub-judice matters by providing opinions that are prejudicial to the interest of parties who have been tried by the judiciary.

MEDIA TRIAL

In our society whenever a sensitive issue has been taken up by the state and judicial authorities there is always curiosity where they look forward for every minute update on the issue as it being the talk of town and try to collect information from the available sources in order to cater such section of society the media would self-analyse and interpret facts and publish the same to public at large however such investigation by the media is prohibited in India but still there is existence of such practice where the media house pass verdict against the individual based on the unreliable facts and make a person accused or innocent this procedure is called as ***MEDIA TRIAL.***

In the recent times there have been several events where the media has indulged in conducting trial and has also passed verdict even before the court gives its judgement and such verdict have had a major impact on the lives of the individuals who were involved in said incident, and also have labelled many persons as accused and criminals.

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2-Prejudice to Judicial Process

The principle of natural justice; 'every accused has a right to a fair trial' clubbed with the principle that 'Justice may not only be done it must also seem to be done'. In present context media has been known as court of public and have directly indulged themselves in interfering with court proceedings, this act of media which overlooks the golden principle of jurisprudence 'presumption of innocence until proven guilty' and 'guilt beyond reasonable doubt' is a grave injustice caused to the seekers of justice and also hampers the image of judiciary in public at large.

The apex court have made observation regards to the presumption where it states that "to emphasise on the fact that the presumption is legal in nature. This should not be destroyed at the very threshold through the process of media trial especially when an investigation is pending in the matter. Such a subversion of the criminal justice system would be in derogation of the rule of law and would also impinge upon the protection granted to an accused under Article 21 of the Constitution. It was also observed that protection of such presumption is essential for maintenance of the dignity of the courts and is one of the cardinal principles of the rule of law in a free democratic country. Reporting or criticism in sub-judice matters must be subjected to checks and balances so as not to interfere with the administration of justice".[1]

The present media has created a major blockage towards the criminal justice administration of the nation where the media is constantly abusing their powers and also their interference in the role of other authorities have made people lose hope in the justice system and administration of our country. Media have their implied right enshrined under article 19(1)(a)[2] of the Indian constitution. this freedom encompasses the right to freely express one's opinion through writing, speaking, printing pictures or any other form and this right was termed as foundation of democracy because without free discussion and expression of once opinion its impossible for a government to perform[3]

The judges and investigating authorities who are involved cases which are of high profile shall also be influenced by the media trial as there are also human beings who stand on the same footing as the other humans are who hold similar emotions and sentiments and they are also subjected to such prejudice trials conducted by media and the probability of they being influenced stands evident and this would violate the fair trial and also the basic principles of natural justice and judicial process.[4]There are various instances where the apex court have drawn the line between the phrases such as "media trial", "fair trial" and freedom of speech and expression.[5]

Influence on Judges

The Supreme Court in State of Maharashtra v.Rajendra Jawanmal Gandhi[6] observed that has held that a trial by press, electronic media or by way of a public agitation is the very anti-thesis of rule of law and can lead to miscarriage of justice and a Judge is to guard himself against such 'pressure'.

The apex court held that "Conviction, if any, would be based not on media's report but what facts are placed on record. Judge dealing with the case is supposed to be neutral. Now if what petitioner contends regarding denial of fair trial because of these news items is accepted it would cause aspiration on the Judge being not neutral. Press report or no reports, the charge to be framed has to be based on the basis of the material available on record. The charge cannot be framed on extraneous circumstances or facts dehorns the material available on record. While framing the charge the Court will from prima facie view on the basis of the material available on record. To my mind, the apprehension of the petitioner that he would not get fair trial is perfunctory and without foundation. None of the news items, if read in the proper prospective as a whole, lead to the conclusion that there is any interference in the administration of justice or in any way has lowered the authority of the Court. The Trial Court has rightly observed that after the charge sheet has been filed, if the Press revealed the contents

[1]Anukul Chandra Pradhan v. Union of India; (1996) 6 SCC 354

[2]Freedom of Speech and Expression

[3]Ramesh Thappar V. state of Madras A.I.R 1950 S.C 124 - 3-

[4]Manu Sharma v. State (NCT of Delhi); (2010) 6 SCC 1

[5]P.C. Sen, In re; AIR 1970 SC 1821 and Reliance Petrochemicals Ltd. v. Indian Express Newspapers, Bombay (P) Ltd.; (1988) 4 SCC 592.

[6]Crl. M.P. No.839/97

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of the charge sheet it by itself by no stretch of imagination amounts to interference in the administration of justice."[1]

The apex court have clearly differentiated the role of media and judiciary and has provided clarity stating that the media and judiciary are two different institutions and there is no possibility for overlapping of power or functions, hence its forbidden to discharge the function of other body which it is entitled to. This clarification states that media houses are expected to perform within their sphere that is journalism and not involve or cat as special agent of the court.[2]

Effect of Media trial

Arushi-Hemraj Murder Case

This case gained a lot of media attention and was in the news for a very long time. Aarushi was murdered along with her household worker Hemraj in May, 2008. Initially, a lot of names occurred on the suspect list. The sensational media coverage was criticized by many as a trial by the media, which involved salacious allegations against Aarushi and suspects. The media raised questions on Arushi's character as her affair with Hemraj, though no provident evidence had been found for the same. The parents were convicted for the murder and sentenced to life imprisonment in November, 2013. But it was argued by many critics that the case was based on very weak evidence, the evidence was not strong enough to fully blame parents for the murder, there were other suspects too but because of media trial interference, it raised questions in minds of the people. In the Allahabad High Court, the decision was challenged by the Talwar's, which later in 2017 acquitted them as giving them benefit of doubt and calling the evidence as unsatisfactory.

Sheena Bohra Murder Case

In the year 2012 Indrani Mukerjee was arrested for the murder of Sheena Bora, the shocking news, in this case, was that Sheena was the daughter, not the sister as claimed by Indrani Mukerjee. The media highlighted the case and even after her arrest Indrani never accepted that she had two children and was stuck to her statement claiming Sheena as her sister. The murder also brought into light the murky financial dealings of Indra Mukerjee and her husband Peter Mukerjee They successfully manipulated facts hence no trail was initiated against them for three years. The personal life of Indrani Mukerjee had been pierced by the tormenting eyes of the media which paved the way for fresh debate in the murder trial issue of the accused. Indrani's character and personal life, all the aspects which have no ration with the investigation of the murder of Sheena were under the public lens of scrutiny through media. The journalism ethics had been again under the controversial debate due to their meddling with the personal matter of the accused.

Jessica Lal Murder

In 1999, Jessica Lal (model turned barmaid) working in a restaurant owned by socialite Bona Ramani in Mehrauli, South Delhi's, was shot dead by Manu Sharma (alias Siddharth Vashisth), son of Congress former Union Minister, Vinod Sharma after Jessica refused to serve liquor to him and his friends. This case immediately gained media coverage after the murder when the accused was acquitted by the trial court. This case became one of the top cases where the public pressure and media compelled the justice system to take a second look at this case. Though Manu Sharma was acquitted initially in the year 2006 as the Delhi police failed to sustain the grounds on which they had built up their case after public outcry due to the media coverage of the case, the Delhi High Court sentenced him to life imprisonment.

Sushanth Singh Rajput Case

In the wake of the death by suicide of the popular Indian actor, Sushant Singh Rajput, the reporting of this case provided for a sad state of affairs by news reporting channels. The reporting by such news channels hampered the investigation which was exponentially important for justice administration. Several Public Interest Litigations were filed in the Bombay High Court against the media trials in the wake of such reportage. The phenomenon of declaring the accused as a convict even before the Court had given its judgment, is called media trials. It is the widespread coverage of the guilt of the accused and imposing a certain perception about him, regardless of any of the verdict given by the court of law. In the present case, the reputation of the partner of the deceased actor, actress Rhea Chakraborty, was brutally torn apart by the media houses in what may constitute a "media trial".

[1]Sushil Sharma v. The State (Delhi Administration) and Ors1996 CriLJ 3944. - 4-

[2] K. Anand v. Delhi High Court; (2009) 8 SCC 106 as well as M.P. Lohia v. State of W.B.; (2005) 2 SCC 686.- 5-

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Freedom of Press V/s Right to free and fair trial

Freedom of the press has always been a cherished right in most of the democratic countries and the press has rightly been described as the fourth pillar of democracy whereas a fair trial is a fundamental right which flows from article 21 of the Constitution. Denial of the fair trial is the denial of human rights[1].The right to a fair trial is an absolute right that is provided to any individual, within the territory of India vide Article 14, Article, 19, Article 20, Article 21 and Article 22 of the Constitution of India. The trial conducted by media flouts the principle of fair trial. Under Article 19(1)(a) of the Constitution, the rights of the freedom of Press have been recognized as Fundamental Rights and under Article 21 of the Constitution the accused/suspect and under trial and the Civil litigant have Fundamental Right to have a free and fair trial[2],every person, therefore, has a right to a fair trial by a competent court in the spirit of the right to life and personal liberty. Thus, right to a fair trial being a fundamental right cannot be refused to any person by the virtue of Constitution.[3]. The Supreme Court explained that a "fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated.",[4]

The media has impact trial at a larger extent, where the trial conducted by media hinders the fair trial, there are several instances where the media houses have extended their rights which is prejudicial in the interest of the public. The media's impact on public is to greater extent where the media is known to be truthful and anything against them will be termed biased and unethical. The Hon'ble Apex court held that "No doubt it would be mischievous for a newspaper to systematically conduct an independent investigation into a crime for which a man has been arrested and to publish the results of that investigation. This is because trial by newspapers, when a trial by one of the regular tribunals of the country is going on, must be prevented. The basis for this view is that such action on the part of a newspaper tends to interfere with the course of justice whether the investigation tends to prejudice the accused or the prosecution. There is no comparison between a trial by a newspaper and what has happened in this case."[5]The Supreme Court of India has held that "freedom of the press extends to engaging in uninhabited debate about the involvement of public figures in public issues and events. But, as regards their private life, a proper balancing of freedom of the press as well as the right of privacy and maintained defamation has to be performed in terms of the democratic way of life laid down in the Constitution".[6]

The Contempt of Courts Act, 1971

The trials conducted by media or nay publication made by the media is immune from contempt proceedings. However, any publication which interferes with or obstructs or tends to obstruct any proceeding, be it civil or criminal, and the course of justice, which is actually a pending proceeding, constitutes the contempt of court. It has been termed as contempt because some of the acts which are published before the verdict given by the court, can mislead the public and affect the rights of the accused of a fair trial. Such kind of publications may be related to his previous convictions or the confession he made in front of the police or merely character assassination of the accused. Article 19(1)(a) of the Constitution of India guarantees, freedom of speech and expression and Article 19(2) permits reasonable restrictions to be imposed. Article 19(2) does not refer to administration of justice but interference of administration of justice is clearly referred to in the definition of 'criminal contempt' in Section 2 of the Contempt of Courts Act,1971 and in Section 3 amounts to contempt. Therefore, any publications or media coverage which interfere or tend to interfere with the administration of justice amount to criminal contempt under the Contempt of Court Act and the provisions of that Act impose reasonable restrictions on freedom of speech, such restrictions would be valid.

Regulating Bodies

Currently there is no statutory body which would govern the news channels majorly all are self-regulated. The News Broadcasting Standards Authority is one such regulatory body which has been created by the association of news broadcaster's which has a set of ethical code which regulate the television content, the said body has

[1]Rattiaram v. State of Madhya Pradesh AIR 2012 SC 1485-6-

[2]Maneka Gandhi Vs Union of India 1978 SCR (2) 621

[3]Mohd. Hussain @ Julfikar Ali v. The State (Govt.OfNct),Criminal Appeal No. 1091 of 2006

[4]Zahira Habibullah Sheikh v. State of Gujarat(2005) 2 SCC (Jour) 75

[5] Saibal Kumar Gupta and Ors. v. B.K. Sen andAnrAIR 1961 SC 633

[6]R. Rajagopal v. State of T.N(1994) 6 SCC 632-7-

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very limited powers where it can censure, admonish and warn any such broadcasters who are violating the code ethics and also fine such broadcasters a sum of Rs. One lakh if there is a violation, Broadcast Editors Association is also a body which works on similar note. The media house has separate body which governs the advertisements and those bodies are governed through agreements and not have any statutory power for the same[1]

200th LAW COMMISSION REPORT

The law commission of India in its 200th report released in 2006 august has titled it as "Trial by Media: Free Speech and Fair Trial Under Criminal Procedure Code, 1973" which broadly deals with several aspects of rights relating to freedom of speech , freedom of press, right to fair trial .The commission has said, "Today there is feeling that in view of the extensive use of the television and cable services, the whole pattern of publication of news has changed and several such publications are likely to have a prejudicial impact on the suspects, accused, witnesses and even judges and in general on the administration of justice ".Justice M. Jagannadha Rao stated that this was taken up by Suo-moto considering the prejudicial coverage of news and information. In the current scenario there is an extensive use of electronic media and its clearly visible that the media publications have gone through a drastic change and this change is unhealthy as it has encouraged many prejudicial news affecting the public opinion.

The commission report has tried to elaborate the pros and cons of media trial where it has made recommended to address the hindering effect of medial trial on criminal justice system, further it has recommended in prohibition of publication anything that is prejudice to accused and such publication shall be prohibited from time the accused is arrested. The report noted that at present, under Section 3 (2)of the Contempt of Court Act, such publications would be contempt only if a charge sheet had been filed in a criminal case. The Commission has suggested that the starting point of criminal case should be from the time of arrest of an accused and not from the time of filing of the charge sheet. In the perception of the Commission such an amendment would prevent the media from prejudging or prejudicing the case. Another controversial recommendation suggested was to empower the High Court to direct a print or an electronic media to postpone publication or telecast pertaining to a criminal case and to restrain the media from resorting touch publication or telecast. The 17th Law Commission has made recommendations to the Centre to enact a law to prevent the media from reporting anything prejudicial to the rights of the accused in criminal cases from the time of arrest, during investigation and trial.

CONCLUSION

Media in today's world has emerged to be a necessary evil and there is an alarming need to regulate the same there is a grave necessary to have stringent laws as its evident that there is competition of media houses and commercialization of information has encouraged many unlawful practices which is against the public good. The role of Media to provide information emerge as one of the fundamental rights enshrined under part III of the constitution, right to speech and expression which directly reflect the publication acre subject to certain restriction which are provided under Article 19(2) of the constitution.

One of the effective methods to regulate media is to bring them under the liability of contempt jurisdiction where the court will be empowered to penalise and punish those who violate the basic conduct and ethics. The apex court have approved many contempt cases against media as they cannot be permitted with right to freedom of speech and expression to that extent which would prejudice the trial.

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[1] The Advertising Standards Council of India -8-

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WOMEN'S PROPERTY RIGHTS VIS-A- -VIS WOMEN EMPOWERMENT MEANS TO GENDER EQUALITY IN INDIA-A STUDY

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I- INTRODUCTION

"Gender" refers to the roles, behaviours, activities and attributes that a given society at a given time considers appropriate based on biological sex. These attributes, opportunities and relationships are socially constructed and are learned through socialization processes gender determines what is expected, allowed and valued in a woman or a man in a given context. In most societies there are differences and inequalities between women and men in responsibilities assigned, activities undertaken, access to and control over resources and decision making opportunities. In patriarchal societies, political, economic and social power lies with men and attributes associated with manliness are valued over those associated with women[1] Gender equality is a fundamental human rights principle enshrined in binding human rights treaties, and a goal to which governments and international organizations have committed.

Gender equality means that the rights, responsibilities and oppourtinies of individuals will not depend on whether they are born male or female, stipulates the equal right of women and men to opportunities and resources irrespective of their gender or the sex with which they were born[2] Achieving gender equality includes a positive obligation to address the underlying causes and structures of gender inequality(transformative equality), including discriminatory norms prejudices and stereotypes, and the transformation of institutions that perpetuate discrimination and inequality. In the context of the justice sector, gender equality means that women and men should have equal opportunities to participate in the development and application of the law, to have their rights equally protected and promoted and to have their needs equally addressed,[3]

Gender inequities throughout the world are among the most all pervasive, though deceptively, subtle farms of inequality. Gender equality concerns each and every member of the society and forms the very basis of a just society. Human rights issues, which affect women in particular, play a vital role in maintaining peace and prosperity of a just society. It is an established fact that women represent very kernel of the human society around which social change must take place. The last decade of the century has seen a growing recognition of women's rights as human rights and as an integral and indivisible part of universal human rights. The protection of human rights of women, will however a challenge to all countries in the 21st century.[4]

The position of women in India has transformed over the decades. Great strides have been made in ensuring equality for women in Indian society. However, contradictions and gaps in protecting certain basic rights of women continue to exist. The Government has actively both through law and policy sought to improve the status of women. Keeping in mind the regional variations, religious, caste and class-based differences that have a definitive Impact on women in India;[5] The Government of India adopted a National Policy for the Empowerment of Women in 2001 to bring about gender justice and gender equality. Several State Governments have also formulated similar policies for women's empowerment. Efforts to set up effective institutional machinery to address women's issues are prevalent both at the national and state level.

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[1] Eleanor Gordon, justice and gender, a gender and security toolkit, DCAF,Geneva center for security sector Governance/OSCE/ODIHR,UN Women

[2] Definition adapted from UN OSAGI(200) "important concepts underlying gender mainstreaming" new york United Nations

[3] Eleanor Gordon, justice and gender, a gender and security toolkit, DCAF,Geneva center for security sector Governance/OSCE/ODIHR,UN Women

[4] Dr. A.S.Anand, chief justice of india, delivered lecture at new Delhi on 2/12/2001 adapted for course curriculum on gender sensitisation of judicial personnel national commission for women, centre for women and law wb university of juridical sciences

[5] Kamala sankaran, roopa madhav, wp1/2011,gender equality and social dialogue in India, ILO,in cooperation with industrial and employment relations department bureau for gender equality, available at https://www.ilo.org., publication wcms 150428

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To possess and own property has been the aspiration of every human being. Everyone struggles in life to acquire some private property which acts as a security and an item of wellbeing for the family. Possessing property also provides status in the society. Property is very important and is also believed by many as a basic right and as the foundation of liberty. The positive aspects of proprietary rights are that they provide a number of advantages which contractual transactions do not do so. Property rights avail against the whole world irrespective of the consent of others while contractual rights prevail only against the parties to an agreement.[1]

Firstly, the Hindu code bill 1953, it seeks to codify the law relating to the rights of property of a deceased Hindu who has died intestate without making a will, both female and male. Secondly, it prescribes a somewhat altered form of the order of succession among the different heirs to the property of a deceased dying intestate.[2] That is one fundamental change which this Bill seeks to make. In other words, it universalises the law of inheritance by extending the Dayabhaga rule to the territory in which the rule of the Mitakshara now operates.

II- GENDER & RIGHTS

Gender equality is a fundamental human rights principle enshrined in binding human rights treaties, and a goal to which governments and international organizations have committed. In addition, integrating a gender perspective in the justice sector improves security and rule of law by facilitating equal access to justice.

The status of any given section of population in a society is intimately connected with its economic position, which itself depends on rights, roles and opportunities for participation in economic activities. The economic status of women is now accepted as an indicator of a society's stage of development. This does not, however, mean that all development results in improving women's economic status. Patterns of women's activity are greatly affected by social attitudes and institutions, which stem from the social ideology concerning basic components of status in any given period.

The debate regarding women's economic role and the need for equality of rights and opportunities for economic participation has cantered round three basic arguments:

1. Human rights and social justice. Women's economic subjugation or dependent position is the result of a right distinction in men's and women's roles in society and leads to exploitation.

2. Utilisation of human resources: it is in the interest of a society to make full and most effective use of its human resources. The full benefit of development can only be realised with people's participation and the economic role of women cannot be isolated from the total framework of development,

3. Implications of social change: socio-economic and political change creates a need to extend the spheres of knowledge and activity of all members of a society.[3]

However right to property is a natural and inherent right of an individual. Most of the modern constitutions, except those of communist countries have recognised the right of private property. Therefore, citizens have to own and possess the property. Hence, women should also get this property right without any bias. The most obvious manifestation of vesting control in a single person is characterized an ability to exclude others from access to or use of resource.

III- INTERNATIONAL COVENANTS

The demand for a guarantee of fundamental right to property can be traced back to the time of the Magna Carta, in 1215.women's ability to participate in the economy depends on social and political factors. These include access to family planning and other healthcare services, social protection coverage for girls, girl's, girl' completion of a quality post primary education, improving literacy rates of adult women and increasing women's influence in governance structures and political decision making. But many of these are mutually dependent on each other and reinforcing education and training. Education for girls is a powerful tool for women empowerment. Education provides women with the knowledge, skills and self-confidence to seek out economic opportunities.

[1] Dr.V.B.Coutinho, legaltheory and jurisprudence. Taxmann's publication page no 148

[2] Hindu code bill D:\AMBEDKAR-13\VOL-14\V14-01 MK Ms 8-10-13 S.K.—05-12-2013, accessed the web On ministry of external affairshttps://mea.gov.in

[3] Report of the committee on the status of women in india, towards equality, government of india ministry of education and social welfare , department of education and social welfare new delhi December 1974 accessed the website on 21/October 24th 2021,

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India has been a signatory to most of the Conventions, beginning with the UN Charter. The Convention on Elimination of all forms of Discrimination against Women (CEDAW) was signed in 1979 but ratified only as late as 1993. At Vienna convention of Human Rights, when the international fraternity met, India's commitment was made to the CEADAW,. Another important development is The protection of Human Rights Act 1993 which of course, excludes the application of CEDAW but human rights have been defined the rights of life, liberty and dignity.

International human rights standards and instruments enshrines the equal rights of women to land and properly. UDHR sets the principle of non-discrimination including based on sex, in the enjoyment of rights, it guarantees including as it relates to property, food and housing. Article 3 of the International Covenant on economics, social and cultural rights calls on states to undertakes to ensure the equal rights of men and women to the enjoyment of all economic, social and cultural rights set forth in the present covenant and prohibits discrimination based on sex.. The united nation's committee on economic social and cultural rights also states that women have rights to own, use or otherwise control housing land and property on an equal basis with men and to access necessary resources to do so.[1] Article 3 of ICCPR (political rights) guarantees equality between women and men. In general comment no 28 on the equality of rights between men and women in united nations human rights committee states that " the right of everyone to be recognized everywhere as a person before the is particularly pertinent for women who often see it curtailed by reason of sex or marital status. This right implies that the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground. It also implies that women may not be treated as objects to be given together with the property of the deceased husband to his family".

At the international level India has ratified various international conventions and human rights instruments committing to secure equal rights of women, prominent among them are ratification of the convention on elimination of all forms of discriminations against women (CEDAW) in 1993. The Mexico plan of action in the year 1975, the Nairobi Forward looking strategies of 1985, the Beijing declaration as well as the platform for action (1995) and the outcome document adopted by the UNGA session on gender equality and development and peace for the 21st century, titled further actions and initiatives to implement the Beijing declaration and the platform for action have been un reservedly endorsed" by India for appropriate follow up.[2]

IV- INDIAN WOMEN SOCIAL -PROBLEM

Social protection of women is need of the hour. Innovative initiatives have been taken at global level to secure women's property rights and land tenure including rights to inherit. Land is not only a productive asset, it is also important as collateral for securing finance and credit. Lack of security in land tenure reduces incentives to invest in improving the land, resulting in lower productivity. In many parts of the world, women's rights to land and property are systematically denied .Laws give women fewer or less secure rights than men. This makes women to depend upon men as their rights are secondary rights, depends upon men folk in the society. Because, these rights may be lost sometime due to divorce, widowhood or their husband's migration.

Women are vulnerable to economic exploitation and to suffer from violence and HIV.. the joint united nations programme on HIV/AIDS(UNAIDS), the united nation's development fund for women have observed that the abuses of human rights that women deal with on a daily basis can become nearly instrument able obstacles when HIV/AIDS is involved.[3]

The ability of rural women to protect themselves from violence requires the realization of their socioeconomic rights, particularly those regarding land sex based discrimination with regard to land ownership and its effective control is the single most critical contributor to violations of the economic, social and cultural rights of women among the agrarian economies of most developing countries.[4] In Kerala research has shown that 49% of women with no property reported physical violence compared to only 7% of women who did own property. Importance

[1] United Nations Committee on Economic social and cultural rights.

[2] www.wcd.nic.,in/women development accessed on 14/10/2021 at 8 pm.

[3] Securing women's land and property rights: A critical step to address HIV, Violence and Food security page 4, open society foundation available at www.open society foundations.org, page no4

[4] Securing women's land and property rights: A critical step to address HIV, Violence and Food security page 4, open society foundation available at www.open society foundations.org page no 5

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of immovable property as asset and social support from it will strengthen women.[1]The general comment also states that "states must ensure that the matrimonial regime contains equal rights with regard to ownership and administration of such property, where necessary. Women should also have equal inheritance rights to those of men when the dissolution of marriage is caused by the death of one of the spouses.[2]

The principle of gender equality is enshrined in the Indian constitution in its preamble, fundamental rights, fundamental duties and directive principles of state policy .concept of equality is enshrined in Indian constitution and it not only grants equality to women, but also empowers the state to adopt measures of protective discrimination in favour of women,

Indian democratic polity within its framework its laws, development policies plans and programmes have aimed at women advancement in different sphere, fifth five year plan onwards there was marked shift in the approach to women's issues from welfare to development, women's empowerment has been recognised as the central issue in determining the status of women.

V- THE EXECUTION

The police, judiciary and the administration that runs the country are the Guardians of justice delivery system Access to justice s recognized in international human rights law as a basic human right and a means to protect other human right. It is a means by which people can seek and secure a fair swift and just remedy through affordable, effective and accountable formal and informal justice mechanisms, which conform with international human rights standards and which respond to the specific needs of the individual concerned. Access to justice means different things in different contexts; it may relate to appearing physically before a court, to the appropriate prosecution of a crime or the protection of a right such as socioeconomic rights[3] access to justice is a basic principle of the rule of law and a key human rights safeguard, enabling the enjoyment of a range of human rights. Access to justice is also an essential component of sustainable development, recognized in sustainable Development Goal (SDG) 16.

VI- THE APEX COURT & HINDU WOMEN SUCCESSION

The supreme court on right to property in India gave a very comprehensive definition of "property and observed: property means the highest right a man can have to anything being that right which one has to lands or tenements, goods or chattels which does not depend on other's courtesy; it includes ownership, estates and interests in corporeal things, and also rights such as trademarks, copyrights, patents and even rights in personam capable of transfer or transmission, such as debts and signifies a beneficial right to or a thing considered as having money value, especially with reference to transfer or succession, and of their capacity of being acquired"[4]

Before the Hindu Succession Act 1956, the laws did exist but it was conservative and not reformatory. Women were given limited ownership and not whole. A widow was entitled only to a limited estate in the property of the deceased with a right to claim partition; daughters had virtually no Inheritance rights. Hindu Succession Act 1956 led a pathway to an equal share[5] in the division of property to sons, daughters, widows and the mother of the deceased. The Act was amended in 2005 to provide that the daughter of a coparcener in a joint Hindu family shall, by birth, become a coparcener in her own right in the same manner as the son, having the same rights and liabilities in respect of the said property as that of a son. It has been 15 years since the amendment of The Hindu Succession Act (2005), but a lot of women, even educated ones, are in the dark about their rights over ancestral property.

Supreme Court decision says, if the father dies before 2005 and has portioned his properties, women of that family cannot ask share in that family. Because, though amendment to Hindu succession Act 2005 says women is an equal coparcener along with other men folk of the family and to make it clear SC has given this verdict

[1] Pradeep kumar panda, "rights based strategies in the prevention of domestic violence" ICRW working paper 344, International Center for research on women, Washington, DC,2002.

[2] United Nations Committee on the elimination of discrimination against women, general recommendation on 21, equality in marriages and family relations(13th session 1992 UNDOC, A 49/38)

[3] DCAF,OSCE/ODIHR, UN Women(2019) "Justice and Gender", in gender and security toolkit. Geneva DCAF, OSCE/ODIHR, UN Women

[4] RC COOPER Union of India AIR 1970 SC 564: also known as bank nationalisation case

[5] V.Tulsamma v .Shesha Reddy/ 1977 AIR 1944, 1977 SCR (3) 261

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and this says Act is prospective and not retrospective. but this is discriminatory as women as wife and as mother lives in the same house after the death of the head of the family, as women resides in the same house and performs all obligations and right to take share of the property should also be given for the women coparcener. This defeats the object of Hindu succession Act 2005.[1]

CONCLUDING THOUGHTS

The issue of gender justice has been debated over for a long time and is still one of the biggest human rights and is essential for a peaceful and developed society, achieving gender equality is still an unfinished business. The Indian courts often act as activists for people and a profound Indian constitution create hope for achieving gender justice.

The recent Supreme Court[2] judgement on daughter's right to property, Supreme Court observes that the provisions confer the status of coparcener on the daughter born before or after amendment in the same manner as a son with the same rights and liabilities. Daughters cannot be deprived of their right of equally conferred upon them by section 6 of the Hindu succession act. The judgement recognizes that in a coparcenary property, the daughters have an equal right. The Supreme Court also stated that since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9/9/2005.

Following are the recommendations

Adopting legislation that requires that all government allocated land and housing be granted in the joint names of married couples to women individually. Add safeguards to ensure that women understand their rights and obligations as owners; policymakers should consider adopting the concept of co-ownership of martial property. This would grant both spouses equal rights to property acquired during marriage. The study of women's rights to and land and control over land and related resources in rural Karnataka with the intention of identifying policy and legislative alternatives for improving women's access and rights.[3]

[1] Women has no equal share in property, sc says available at http://www.udayavani.com/kannada/news. Accessed on 7/2/2017 at 4.20pm

[2] Vineeta sharma v rakesh sharma and others civil appeal no 32601 of 2018

[3] Jennifer brown, kripa ananthpur rene giovarlli. Women's access and rights to land in Karnataka,My 2002, RDI Reports on foreign aid and development, NRDI 2002, IIN 1071-7099

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REDRESSAL MECHANISM UNDER E-COMMERCE RULES, 2020- A BLESSING FOR E-CONSUMERS

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INTRODUCTION

E-commerce is playing a vital role in fulfilling the demands and needs of consumers in all aspects but the question is, are consumers satisfied with service provided by e-commerce entities. E-commerce means selling and buying goods/ services through digital platform. There are many e-commerce players like Amazon, Mynthra, Ajio, Flipkart, tatacliq, etc., selling goods, providing services through online platforms. People who are purchasing through online platform are called e-consumers. In the present digital era, consumer is a king as he gets all the goods at his finger tips for selection and the same will be delivered at his door step within no time.

In India, e-commerce is regulated according to E-Commerce Rules, 2020. The said rule monitors and controls the activities of e-commerce players and at the same time it protects the interest of e-consumers. Because of advanced technology, e-commerce has grown enormously and simultaneously it is attracting greater number of consumers at global level as there is no jurisdictional limit on e-commerce entities. The new E-Commerce Rules, 2020 deals with duties and liabilities of e-commerce entities. The primary issues about online shopping are privacy issues, unfair trade practices, misleading advertisements, etc,. When a consumer uses digital platform, he needs to share many sensitive data with e-commerce entity, but sometime, without the consent of consumers his/her personal sensitive data will be shared with the third person which violates consumers' privacy and at the same it is punishable under Information Technology Act, 2008. But the question is how many e-consumers are aware about the platform available for them to protect their rights. The major issue involved here is the terms & conditions in privacy policy adopted by the e-commerce entities which are different standards and it always go unnoticed by the e-consumers. There must be some standard privacy policy to be laid down by the authorities.

The research paper will throw light on how effectively the present e-commerce rule is addressing the issues mentioned above relating to e-consumers and redressal mechanism in India. It also throws light on measures to be taken by the authorities in creating awareness among e-consumers and the active role of consumer authority in redressal mechanism.

E-commerce entity

A person who owns, operates or manages digital or electronic facility or platform for electronic commerce, but does not include a seller offering his goods or services for sale on a market e-commerce entity.[1] Apart from e-commerce entities, inventory e-commerce entity and market e-commerce entity which provides an information technology platform on a digital or electronic network to facilitate transactions between buyers and sellers[2]. Amazon, Flipkart, etc falls under market e-commerce entity category.

Duties of e-commerce entities[3]

- To appoint a nodal person of contact who shall be a resident in India to ensure the compliance of the e-commerce rules. This helps in resolving the jurisdictional issues while addressing the issues relating to off shore e-commerce entity and also give easy access to the consumers in India.
- E-commerce entity shall disclose clear/ correct information relating to name of the entity, principal office, details of the websites, contact details and details about the grievance officer on their online platform and the same shall be accessible to all the consumers for easy communication specially for quick redress of their grievances.
- E-commerce entity shall not indulge in unfair trade practices, in case they practice unfair trade practices defeating the interest of the consumer, it shall by inquired by the consumer commission.

[1] Definition under Rule 3 of E-commerce Rule 2020.

[2] E-commerce Rule, 2020

[3] Rule 4 of E-Commerce Rule,2020

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- There shall be appointment of grievance redressal mechanism who has a duty to acknowledge the receipt of the consumer complaint within 48 hrs and it should to addressed within one month.
- Discrimination between the consumers shall be permitted in an arbitrary manner affecting the rights of the consumers.

The above duties are imposed on all the e-commerce entities, but how far these duties are complied by them. In the present pandemic situation purchase through online mode has been increased but most of the e-consumers are not aware about the above provisions. Many times, the information disclosed on websites will not be clear and sometime it will not be available /accessible for consumers.

Redressal Mechanism under E-Commerce Rule, 2020

In the present situation, e-consumers prefers online mode of redressal mechanism. As per the rules mentioned above, every e-commerce entity should appoint grievance officer in its premises facilitating the speedy disposal of cases. Many online sale platforms do not disclose the name and address of the grievance officer. The New Consumer Protection Act, 2019 provide provisions for establishment of mediation cells at commissions at all level to facilitate speedy disposal of the consumer complaints. As per UNCTAD model, the online mediation and conciliation mode can also be adopted instead of regular consumer forum proceedings[1]. Ticket number for each complaint lodge shall be allotted which will help the consumers to track the status of their complaints which is really helps e-consumers to get remedy.

A few digital platforms of e-commerce entity mislead consumers by giving incorrect information or through misleading advertisement. There is no doubt that the e-commerce rules provide provisions dealing with such situation but whether the consumers know about the online redressal mechanism. As per the new rules, every e-commerce entity must have redressal office in its premises and provide remedy for consumers. There are so many digital platforms provided by e-commerce entities to expand their business. To attract consumers, they indulge in unfair trade practices by quoting less price than the actual cost. The consumers who want goods at affordable price should not become a scape goat because of such unfair trade practice.

When goods are sold through online platform, it becomes difficult for consumers to check quality and sometimes, they won't get goods as per their expectations. In such situations, the 'Return & Refund Policy' of e-commerce entities play a vital role but again there is no uniformity adopted by them and same needs to be addressed. Another major issue which needs to be addressed in e-commerce and protection of e-consumers interest is online financial fraud and e-consumers are the major victim. In this situation, there must be some initiative to be taken by e-commerce entity to take action to safeguard the interest of consumers. As we are all know that anybody can access digital platform information globally, at this point it becomes difficulty for a consumer to find out proper authority to access justice specially when an entity is an overseas entity.

The new Consumer Act, 2019 has provided provisions for establishment of Central Consumer Protection Authority having power to investigate and provide remedy for consumers, but the question is how far this authority is functioning effectively and reaching consumers specially e-consumers. The practical issues involved in online purchase mode are many entities do not disclose the name and address of the entity which shakes the confidence of e-consumers, proper breakup value of the goods will not be specified by the entity which will be purchased by consumers. Many overseas entities are selling goods in India and it consumes a lot of time and quite expensive also and at the same time redressal mechanism for online purchase is a complicated process which defeats consumers' interest.

Consumer Protection Councils

The Consumer Councils shall be established at Centre and State level by the respective governments to fulfill the following objectives:

- To promote and protect the rights of consumers.
- Protection against the hazardous goods sold in the market.
- To protect against misleading advertisements, unfair trade practices practiced by the sellers relating to quality, quantity, price, etc.
- Right to access to all variety of goods for competitive prices.

[1] UNCTAD E-Commerce Guidelines 2017.

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- To protect the right to seek appropriate remedy at consumer forums.
- To create awareness about consumers' education.

These consumer councils must take initiative to create awareness among all classes of consumers specially provisions and forums relating e-consumers disputes in the present situation. The consumer councils can join hands with NGOs which are working for protection of consumer rights. Being an advisory body, the council can make recommendations for the implementation of provisions of 2019, Act and the Central government can constitute standing council to monitor the implementation of the consumer councils.

Central Consumer Protection Authority

The Centre Government under the new Act can establishment Central Consumer Protection Authority to regulate unfair trade practices, misleading information and to prevent violation of consumers' rights. The authority also has responsibility to promote, protect and enforce consumers rights in the market.[1] The above activities will be funded by the central government from time to time.

Powers of the Authority

- Power of general superintendence
- Power of investigation
- Recommend for adoption of international laws/ practices to protect the interest of consumers
- Undertake and promote research in consumers right in cooperation of NGOs and other institutions.
- To take action against misleading advertisements, investigation and imposing penalty

Consumer Forums Redressal Agencies

Under the new Act 2019, various platforms are established to redress the grievances of all classes of consumers like District Redress Commission, State Redress Commission and National Commission for appropriate remedy. State government can establish District Commission at each district consisting of President and two members or more in consultation with the Central government. The district commission has the jurisdiction to allow complaint when the monetary value of the goods/services is not exceeding 1 crore. The proceedings will be conducted by the President and one member, the admissibility of the complaint by the commission shall be decided within 21 days from the date of filing a complaint. If the complaint is not be rejected within the above mentioned date, it shall be deemed to be admitted. In case the compliant is rejected, the complainant shall be heard by the commission before rejecting the complaint.

Mediation Redress Mechanism

As per the new Act 2019, the provision to establish mediation cell at district commission for the speedy disposal of the matter. As per section 37 of the 2019 Act, the district commission can refer the complaint to the mediation with the consent of the parties after the first hearing of the complaint by the commission. This provision is a new hope for consumers to get quick and appropriate remedy. As per UNCTAD Guidelines on E-Commerce 2017, online mediation and conciliation opportunities can be made available to consumers for easy disposal of cases. As mentioned above, the 2019 Act provides express provisions for mediation as a redressal mechanism to resolve consumer disputes. The mediation cell shall be established at district and state commission by the state governments and Central government will establish mediation cell at national commission.[2] In the same manner, state consumer commission and national consumer commission also dispose consumer complaints as per the provisions of the new Act 2019.

The mediation cell shall maintain panel of mediators who will be training and appointed for a period of 5 years and eligible for reappointment. The mediation proceedings will be conducted by the appointed mediator by considering the rights and obligations of the parties, the usage of trade and the circumstances giving rise to the consumer disputes and other factors as per the principles of natural justice.[3] The mediation proceeding shall be completed as prescribed by the regulations, if any settlement is reached by the parties and it shall be recorded in writing and signed by the parties and their respective representatives if any. On the basis of the settlement agree of the parties, the mediator shall write a settlement report and forward the same to the commission. On the

[1] Sec 10 of CP Act, 2019

[2] Section 74 of CP Act, 2019.

[3] Sec 79 of CP Act, 2019.

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basis of the settlement report, the commission shall pass an order accordingly. If there is no settlement arrived by the parties in mediation proceedings, same shall be reported and commission shall continue its hearing of the matters without causing any delay. In a similar manner state consumer commission and national commission shall conduct its proceedings of the complaint filed by the consumer.

In the present scenario, the ADR mechanism is playing a vital role in resolving many disputes. As mentioned above as per UNCTAD model if online mediation is adopted by the consumer commissions, it will reduce the burden of the consumer forums, saves time, cost effective and consumers will get appropriate remedy within time.

CONCLUSION

To conclude, the Consumer Protection Act, 2019 and E-Commerce Rules are recently enforced in India to tackle many issues which are raised due to more use of internet facilities by all, specially by the teenage consumers. Due to advanced technology, we have become more vulnerable and our rights as a consumer are violated to a larger extent. We have moved from the traditional rule of caveat emptor to product liability principle where the manufacturer, dealer, supplier and sellers are held responsible for selling defective goods through digital platform or other modes to consumers. As highlighted above, consumer is a king and king deserves a best.

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AN ANALYSIS OF INDIA COMBATING PIRACY IN INDIAN OCEAN REGION

Gurvinder Kaur

ABSTRACT
Maritime piracy is a very important issue for International politics and when data shows that there is a surge of 20% attacks worldwide which is reported according to a report by the International Maritime Bureau of the International Chamber of Commerce (ICC)[1] released in January 2021. Maritime security is the need of the hour and when the trade between countries is becoming voluminous the necessity is even more. The main intention of this paper is to highlight the non-traditional threat in the Indian Ocean region- PIRACY. It is noticed now and then that ships and vessels are attacked and looted by Somalian Pirates. The main choke points in the Indian Ocean are the Eastern African Coast – Gulf of Aden and Gulf of Guinea and the other being St. of Malacca which is also one of the busiest routes. So my paper will be dealing with what is the role that India is playing to combat piracy, the Maritime Piracy Bill, and also suggestions to solve the shortcomings. The research methodology is Doctrinal, various reports and UN data is collected and an assessment is done on the role India is playing to reduce the impact of piracy.

Key Words – Maritime Security, Piracy, Indian Ocean, East African Coast, St. of Malacca.

INTRODUCTION

Shipping in the Indian Ocean Region (IOR)

The Indian Ocean Region is one of the busiest routes for International as well as regional shipping. In geopolitical terms, this region is gaining importance because of the strategic location of many hubs in and around the Indian Ocean. This is partly because of the crucial strategic significance of the trade routes that criss-cross it. These are vital to the economies both of the extra-regional countries, which are dependent on the rich resources of the Indian Ocean Region (IOR), and to the countries within the region itself.

Two-thirds of the world's seaborne trade in oil, 50% of the world's seaborne container traffic, one-third of the world's seaborne bulk cargo, and the world's highest tonnage in the seaborne transportation of goods are reported to transit through the Indian Ocean each year.[2] It is not just the extra-regional traffic from the Suez Canal and ports in the Middle East to destinations in East Asia, North America, and Europe that is important, but also the intra-regional trade and various sub-regions of IOR - East Africa, the Gulf, the Indian sub-continent and Southeast Asia. While larger ships are occasionally hijacked by Somali pirates, the smaller vessels in the local trade provide the 'bread and butter' targets and steady income for the pirates. The income comes not only from the ransoms received for the release of hijacked vessels but also possibly from protection money received for not hijacking vessels. There is nothing new to this. Piracy has been endemic to the Indian Ocean for centuries, with the coast of East Africa from Somalia south to Mozambique once being so unsafe that it was referred to as the Pirate Coast.

Background of Piracy

Pirates are not just functional characters but are one of the most serious and devastating threats faced in the International Waters and High Seas. The era between 1650 – 1730 is known as the golden age of piracy as there existed thousands of pirates who looted and killed the ships, vessels, and sailors. Though maritime piracy has existed for over 4 centuries now, sailors could not report the atrocities that happen to them till 1992.[3]

In the year 1992, the IMB (International Maritime Bureau) formed the piracy reporting center (PRC) which is serving as one point of contact for sailors who can now report piracy, armed robbery, and stow away incidents. Even though many people claim that piracy was only in the 16th or 17th century but the bitter reality is that even in the 21st-century piracy can be witnessed.[4]

Piracy has gained attention only after regular attacks by the Somalian Pirates which is not more than 15 years. If we see the history and geography of Somalia, it is seen that frequent wars, famine have aggravated their economic problems which have given birth to pirate gangs who go to the seas to hold seafarers as hostages and

[1] https://www.icc-ccs.org/

[2] https://www.tandfonline.com/action/journalInformation?journalCode=rior20

[3] Maritime Piracy In The 21st Century – ALL INDIA LEGAL FORUM

[4] IMB Piracy Reporting Centre (icc-ccs.org)

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claim ransom in return for their lives. The occurrence of piracy activities is spread across the globe and is most prevalent in the areas of the Carribean, Gulf of Guinea, Strait of Malacca, and the Indian Ocean.[1]

For the year, 2019 alone 119 incidents of piracy were reported, in 2018 the cases were worse as around 156 cases were registered. Though the number of people taken to hostage has decreased by a good margin, the statistics concerning weapons have increased and it thereby affirms IMB's concerns regarding the threats on the security of sea travelers and the ships.[2]

Gulf of Guinea

It covers the West African Coast and has been identified by IMB that 95% of global piracy happens in this place. In the 1980s there was an increase in the number of investments by MNC's in Nigeria but these activities of piracy were quite high so in the long run, it was noticed that the region surrounding the Gulf of Guinea lost on a lot of international economic investment and thereby depriving the areas of development opportunities. This contributes to a range of other economic activities, including fishing and tourism. These economic deficiencies combined with unemployment result in a never-ending chain of crime. And ironically, this chain of crimes is a product of piracy and armed robbery and also the root cause of the same.[3]

Indian Ocean

The Indian Ocean is considered a free sea where ships, merchants can use the sea without any restrictions and permission. But then things changed after the advent of Europeans in the 15th century. They inflicted a sense of supremacy over the waters and slowly grabbed sovereignty over the Indian Ocean. Thereby, they began imposing restrictions, taxes, etc to exert their powers on waters. This affected the local communities across many coasts and agitated many. This led to the formation of aggressive groups that the Europeans perceived as "outlaws" and piracy became a major weapon in the hands of these people. In 2011, there were around 201 cases reported and in 2019, 162 incidents were reported. So we can see a marginal decrease in the cases.[4] In September 2021, India joined as an observer in the Djibouti Code of Conduct(DCOC) a multinational group that aims at countering maritime piracy and providing safe and secure seafaring in the Indian Ocean Region.[5]

The Strait of Malacca

The St. of Malacca is the region connecting Andaman and the South China Sea. This region is an important travel route for Indo- Sino trade and investigation, it faces a lot of maritime piracy incidents. The regions around Indonesia are mostly equipped with weapons such as knives and guns.[6] In 2018, Indonesia reported 36 actual and attempted occurrences whereas in 2019 there were only 25 actual and attempted incidents had occurred. The numbers have drastically reduced.[7] In the year 2020, 16 cases had been reported in the Indonesian region, and 15 ships were attacked in the Singapore Strait, but most of them were low-level crimes. [8]

Maritime Piracy Laws and Enforcement

International Laws regarding maritime piracy is prima facia governed by Article 100 to 107 of the United Nations Convention on the Laws of the Seas(UNCLOS). Though Article 105 of the UNCLOS is made clear that, apart from the power of the states to capture pirate ships within their jurisdiction, any state may seize and arrest the pirate ships and their inhabitants of those water who aren't a part of the jurisdiction of any state at all.[9]

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[1] https://www.cambiasorisso.com/sea-pirates-of-the-21st-century-are-gangs-run-by-criminal-masterminds-hostage-negotiator

[2] News - Maritime piracy incidents down in Q3, yet Gulf of Guinea remains a hot spot (icc-ccs.org)

[3] Pirates are kidnapping more seafarers off West Africa, IMB reports - ICC - International Chamber of Commerce (iccwbo.org)

[4] The forgotten history of piracy in the Indian Ocean | OUPblog

[5] India joins Indian Ocean grouping against piracy as observer | Latest News India - Hindustan Times

[6] Strait of Malacca | strait, Asia | Britannica

[7] • Indonesia - number of piracy attacks 2020 | Statista

[8] Pirates are kidnapping more seafarers off West Africa, IMB reports - ICC - International Chamber of Commerce (iccwbo.org)

[9] Piracy Under International Law

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On the issue with the definition of piracy given in Article 101 of the UNCLOS is that it restricts the definition of piracy to the high seas that too only between two ships or aircraft. Earlier the system was used to keep track of the ships on high seas was AIS(Automatic Identification System) but now they have been replaced by LRIT (Long Range Identification Tracking) System. The reason why LRIT's are preferred more is because AIS systems used to be turned off by the sailors so that they don't get tracked by the pirates, but the LRIT system is only accessible to designated authorities and thereby ensure the security of the sailors without the fear of being tracked.[1]

Enforcement of anti-piracy instruments is an arduous task; this argument can be understood if we look at the maritime security regime in general. Maritime security measures usually operate at national, regional, and international levels simultaneously. It is submitted that the anti-piracy regime suffers from weak surveillance, capacity-building, and enforcement mechanisms. With regards to Somalian piracy, the UNGA has emphasized that the international community must assist the Somalian government in strengthening its institutional capacity to fight piracy and tackle underlying causes.

The United Nations Security Council has also called upon member states and international organizations to assist Somalia and nearby states by enhancing their capacity to ensure coastal security. The lack of capacity is mostly with regards to enforcement infrastructure, naval force, legal institutional, lack of trained personnel, lack of appropriate law to deal with the issue, and so on. With respect to Somalia, the United States and European Union have initiated capacity-building programs; these programs are based on the understanding that maritime security is a multi-dimensional concept and it requires capacity building at both sea and land. They aim at addressing the wider governance issue which is the root cause of maritime piracy. Thus, they tend to provide a link between security, institution, and the socio-economic environments in such countries.[2]

One of the most important factors for the suppression of piracy is international and regional cooperation between states.[3] It is submitted that states have always taken international and regional cooperation against maritime security threats rather seriously, especially when piracy is involved.[4] International and regional cooperation can be influenced by geopolitical or other issues: this makes the attainment of a conducive environment for achieving cooperation between states a complicated task. For instance, due to various unresolved delimitation claims, many coastal states have unsettled claims against their neighbors or otherwise. Such unresolved claims could affect inter-state relations. This would not only cause strains in cooperation efforts but also cause overlap of efforts. [5]

Another important issue is the "soft law" nature of the regime. The Conventions, including UNCLOS, UN resolutions, IMO resolutions, and IMO codes are couched in soft law terms. The adoption of such a law is dependent upon the member states. In other words, such laws do not have legally binding consequences, except for the UNSC resolution adopted under Chapter VII of the UN Charter. In the case of maritime security regime under UNCLOS as well, the element of national security makes international law-making a lot more difficult, as states are not willing to compromise with their sovereignty. Thus, in such a situation, soft law is the best

[1] The declining impact of piracy on maritime transport in the Indian Ocean: Statistical analysis of 5-year vessel tracking data - ScienceDirect

[2] Bueger, C., and T. K. Edmunds. 2017. "Beyond Sea Blindness: A New Agenda for Maritime Security Studies." International Affairs 93 (6): 1293–1311. doi:10.1093/ia/iix174

[3] Gottlieb, Y. 2015. "Combating Maritime Piracy:

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possible option to make maritime security instruments, which give enough latitude to states with respect to enforcement and implementation. [1]

Measures adopted by India to Combat Piracy in Indian Ocean Region

The measures taken by the Indian Government can be viewed at three levels. Firstly, operationally via kinetic means, by deploying naval ships with armed helicopters to patrol the piracy-prone areas. Secondly, in the international arena, by participating in the various multilateral fora that have been set up to combat piracy, and thirdly, internally by taking steps to arrest and prosecute pirates and strengthen the fight against piracy via a piracy bill.

Operationally, the Indian Navy commenced anti-piracy patrols in the Gulf of Aden from October 2008. Indian Naval ships operate independently and are not part of the multinational forces that operate in the area. To achieve a high degree of cooperation with other maritime forces, India is an active participant in various cooperative mechanisms like "Shared Awareness and De-confliction (SHADE)" that have been established to facilitate sharing of information. In addition, India, Japan, and China (all three nations operate independently) have agreed to coordinate patrols thereby ensuring effective and optimum use of the combined maritime assets to escort ships, especially in the Internationally Recommended Transit Corridor established for use by all merchant ships in the Gulf of Aden. The Director-General Shipping has launched a web-based registration service where merchant ships can register with DG Shipping in order to avail of the escort facility provided by Indian Naval ships in the Gulf of Aden.

Due to the spread of piracy in the Indian Ocean, Indian Naval and Coast Guard ships have also been deployed in piracy-prone areas nearer the Indian coast. As a result, around 1000 plus ships of various nationalities have been escorted and around 40 piracy attacks were prevented by Indian forces deployed in these areas. At the international level, India continues to take up the issue of piracy and its attendant ramifications at various fora and advocates steps to be adopted by the international community. Internally, India arrests and prosecutes pirates as per the laws of the land, a weak point as of now as there is no specific penal code that addresses the issue of piracy. In arresting and prosecuting pirates, India is one of the few nations that do so. In order to strengthen the fight against piracy, a piracy bill was introduced in the Lok Sabha during the 15th session in April 2012.

Piracy can be eradicated by addressing the root causes, an aspect well recognized by the international community. The root cause of piracy in the Indian Ocean lies on land i.e., the instability in Somalia. Addressing this issue requires an international understanding and sustained effort. [2]

India on 17th September 2020 had joined the Djibouti Code of Conduct (DCOC), a grouping on maritime matters aimed at countering piracy, as an observer as part of efforts aimed at enhancing maritime security in the Indian Ocean region. The move to join the grouping followed a high-level virtual meeting held on August 26. The development comes at a time when India is shoring up its position in the Indian Ocean and nearby waters as part of its overall Indo-Pacific policy. India has signed reciprocal military logistics support agreements with Australia and Japan this year to increase interoperability with the navies of those countries.

The DCOC, which aims to repress piracy and armed robbery against ships in the western Indian Ocean and the Gulf of Aden, was adopted on January 29, 2009, by the representatives of Djibouti, Ethiopia, Kenya, Madagascar, Maldives, Seychelles, Somalia, Tanzania, and Yemen.

Comoros, Egypt, Eritrea, Jordan, Mauritius, Mozambique, Oman, Saudi Arabia, South Africa, Sudan, and the United Arab Emirates signed on later, taking the total countries in the grouping to 20. As an observer at DCOC, India looks forward to working together with member states towards coordinating and contributing to enhanced maritime security in the Indian Ocean Region. Under the code of conduct, the member states cooperate in countering piracy and armed robbery on the high seas and promoting the implementation of relevant UN Security Council resolutions. They also cooperate in the investigation, arrest, and prosecution of persons suspected of having committed acts of piracy and armed robbery against ships, the interdiction and seizure of

[1] Boyle, A. 2005. "Further Development of the Law of the Sea Convention: Mechanisms for Change." International and Comparative Law Quarterly 54 (3): 563–584. doi:10.1093/ iclq/lei018.

Boyle, A. 2014. "Soft Law in International Law-Making in International Law." In International Law, edited by D. Malcolm, 141–158. Evans, Oxford: University Press.

[2] https://idsa.in/askanexpert/IndianGovernmenttocombatpiracyintheIndianOcean

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suspect ships, the rescue of ships and people subject to piracy and armed robbery, and the conduct of joint operations.[1]

The Anti – Maritime Piracy Bill, 2019

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) defines piracy to include any acts of violence, detention, or destruction committed for private ends against persons or property on board a ship on the high seas or outside the jurisdiction of any state.[2] Acts of piracy threaten maritime security by endangering the welfare of people traveling by sea and the security of navigation and commerce. [3] These acts may result in the loss of life, physical harm, hostage-taking, disruptions to commerce and navigation, and financial losses to ship-owners. As per the International Maritime Organisation, during 2018 and 2019, 84 acts of piracy were reported globally.[4]

Currently, India does not have domestic legislation on maritime piracy. In the past, provisions of the Indian Penal Code, 1860 (IPC) pertaining to armed robbery and the admiralty jurisdiction of certain courts have been invoked to prosecute pirates. [5] However, the sovereignty of India extends only up to the territorial waters of India (12 nautical miles from the coastline)[6]. Piratical acts by a foreigner committed outside the territorial waters of India do not constitute an offense under the IPC. For example, in the Alondra Rainbow case (1999), the Mumbai High Court acquitted the accused on grounds that India did not have the jurisdiction to prosecute them.

In 1995, India ratified the UNCLOS, which gives a uniform international legal framework for combatting acts of piracy. Consequently, the Piracy Bill, 2012 was introduced in Lok Sabha in April 2012. The 2012 Bill lapsed with the dissolution of the 15th Lok Sabha. The Anti-Maritime Piracy Bill, 2019 was introduced in Lok Sabha on December 9, 2019, and has been referred to the Standing Committee on External Affairs for detailed examination.

Highlights of the Bill:

- The Bill enables Indian authorities to take action against piracy in the high seas. The Bill brings into law the UN Convention on the Law of the Sea. It applies to the sea beyond the Exclusive Economic Zone (EEZ), i.e., beyond 200 nautical miles from India's coastline.
  The Bill defines piracy as any illegal act of violence, detention, or destruction against a ship, aircraft, person, or property, for private purposes, by the crew or passengers of a private ship or aircraft.
  Piracy also includes inciting and intentionally facilitating such acts of violence, and voluntarily participating in the operation of a pirate ship or aircraft.
  Committing an act of piracy will be punishable with: (i) life imprisonment; or (ii) death, if the act of piracy causes or seeks to cause death.
  Participating, organizing, aiding, supporting, attempting to commit, and directing others to participate in an act of piracy will be punishable with up to 14 years of imprisonment, and a fine. [7]

CONCLUSION

Challenges confronted by Indian Navy

- **Low Capital allocation**- While the Indian Navy is now more networked and technology-enabled than it was in the past, it still continues to face budgetary constraints. The allocation to the Navy has reduced

[1] https://www.hindustantimes.com/india-news/india-joins-indian-ocean-grouping-against-piracy-as-observer/story-ki47pyuwxJeZhk4Wzbxr9O.html

[2] UNCLOS+ANNEXES+RES.+AGREEMENT

[3] Piracy Under International Law

[4] Piracy under international law, Oceans and Law of the Sea, United Nations, https://www.un.org/depts/los/piracy/piracy.htm.

[5] Report no. 16, on "The Piracy Bill, 2012", Ministry of External Affairs, August 14, 2012, https://prsindia.org/sites/default/files/bill_files/SC_Piracy_Bill_2012.pdf.

[6] The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976, http://legislative.gov.in/sites/default/files/A1976-80.pdf

[7] The Anti-Maritime Piracy Bill, 2019 (prsindia.org)

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from 18 percent of the defence budget in 2012-13, to 13 percent in 2018. Such low levels negatively impact future force planning and capability development.

- **Gap between promises and delivery** - For the Indian Navy to be recognised as a 'net security provider' in the IOR, it needs to bridge the gap between commitment and implementation. Most IOR littorals lack the necessary capacity to ensure the security of their declared maritime zones and perform their rights and duties. These littorals look towards India to ensure its security. However, India has a poor track record in converting capital into deliverables or influence. Therefore, India needs to develop a defence diplomacy fund through which the current situation of poor delivery can be altered.
- **Poor allocation of resources** - When it comes to allocation of resources, there is no concept of prioritisation in the Ministry of Defence. There is also hardly any adequate dialogue between the Ministry of Defence and Ministry of External Affairs. While the resource pool is indeed limited, the allocation which Indian Navy receives for foreign assistance has to be prioritised and shared with the relevant executing agencies. India must look to engage in a participative programme between the service provider and the agencies that are the sources of funds. This will go a long way in ensuring the Indian Navy's ability to convert money into influence.[1]
- **Weak coordination in various maritime aspects** - Maritime security entails not only hard-security aspects like protecting EEZ, HA/DR operations, asset allocation, or conducting anti-piracy patrols, but also includes issues related to blue economy, climate change, and coastal maritime infrastructure. Coordination and building synergy between the various stakeholders is the most important and challenging task. All agencies concerned should be coalesced under one umbrella agency and work together to sort out the different inter-agency issues. The Indian National Security Council Secretariat (NSCS) or a proposed National Maritime Commission (NMC), will be the most appropriate organisation to carry out this role.[2]

Suggestion – What India can do.

- **Develop multiple strategies and impose costs on adversial stands** - To be successful in the emerging competition arising in the Indian Ocean, India needs to be willing to pay the costs and develop multiple strategies in various domains ranging from diplomatic, informational, military, maritime research, blue economy, industrial development, cultural and educational domain, energy, to climate and weather concerns. Developing these multiple strategies should involve not only the navy, military or the Ministry of Defence, but a multitude of other government agencies as in the case of China. Developing friendly, supportive, and accommodative relationships has always driven Indian engagement in the IOR. Since most littorals do not want to be in a position of choosing sides between major players like India and China, at worse, India should accept neutrality. Therefore, India must look to develop multiple strategies that impose costs on adversarial stance against Indian interests.
- **Work to develop a multilateral security architecture for Western Indian Ocean** - Over the years, various maritime security cooperation mechanisms have been developed in the Western Indian Ocean. Few examples include: Combined Maritime Forces (CMF), Contact Group on Piracy off the Coast of Somalia (CGPCS), Djibouti Code of Conduct (DCoC), and Regional Maritime Information Fusion Center (RMIFC) in Madagascar. However, while these frameworks exist, they remain under-optimised. While some have remained as loose, ad hoc form of cooperation, others are heavily dependent on funding from the European Union, or lack the necessary political buy-in.[3] Therefore, the need of the hour is developing a security architecture for the WIO by strengthening existing frameworks and working together to serve the interests of the region. India, which has long maintained a presence in Western Indian Ocean, is well-placed to play a greater role and shape the maritime security architecture in the region. India should look to offer greater capacity building assistance, training and skilling of

[1] Manu Pubby, "Cabinet Secretariat raps MoD, MEA for not involving NSA" *The Economic Times*, August 21, 2019.

[2] Setting up of a National Maritime Commission was proposed by Indian Chief of Naval Staff Admiral Karanbir Singh while delivering a speech on the topic "Indian Ocean-Changing Dynamic-Maritime Security imperatives for India" as part of a series.

[3] Christian Bueger, "What is the right security architecture for the Western Indian Ocean?" Keynote address at the International Maritime Conference 2019, held in Karachi, Pakistan, February 2, 2019.

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professionals in maritime domain and sharing operational experience to countries in the WIO. The Information Fusion Centre-Indian Ocean Region (IFC-IOR) launched in December 2018 has established linkages with 13 international maritime agencies and more than 16 countries,[1] including various WIO littorals that can play a more prominent role in increasing regional maritime domain awareness. This has been a big step towards achieving the Indian vision of SAGAR (Security and Growth for All in the Region) and working towards capacity building, coordinating incident responses, sharing submarine safety information, and assisting in keeping the global maritime commons open and accessible for all. As a tool for diplomacy, the IFC-IOR should cooperate closely with regional mechanisms including the Djibouti Code of Conduct network, Regional Maritime Information Fusion Center (RMIFC) in Madagascar and Regional Coordination Operations Center (RCOC) in Seychelles to develop shared standard operating procedures.

[1] Curtain raiser Maritime Information sharing Workshop 2019. *Press Information Bureau*, Ministry of Defence, Government of India, June 11, 2019, New Delhi.

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THE IMPACT OF THE CRIMINAL TRIBES ACT OF 1871 ON THE SOCIAL LIFE OF THE CRIMINALIZED TRIBES- AN OVERVIEW

Dr. B. P. Mahesh Chandra Guru and Ms. Shabeena Tabassum

ABSTRACT
The unsettled wandering set of communities of India during the British Times were categorized as wrong doers and were criminalized through the Criminal Tribes Act of 1871 (CTA). There has been much discussion amongst the academicians particularly belonging to the criminalized communities about the impact of CTA on the socio-economic life of those wanderers. An attempt is made in understanding the historical factors, issues and the necessity for such a law.

Keywords: Crime, Tribe, Nomads, CTA etc.

INTRODUCTION:
No one is a conceived criminal. Criminal is the result of society. How he is made a criminal clarifies the circumstance of the making of criminal tribes and their examples and progress. The Criminal Tribes Act was one of the many laws passed by the British colonial government that applied to certain identifies groups of people in India based on their nature and characteristics of life. Many communities of traders, craftsmen, and pastoralists were called the criminal tribes during the colonial rules. The officers of the British government were suspicious of roaming people. They were against the movable artists and merchants (who hawked their stocks in villages) and pastoralists (who wander in search of fresh pastures for their animals). Consequently, the colonial administration to check these activities of the moving tribes passed the Criminal Tribes Act and listed many tribes of India as Criminal Tribes.

The Criminal Tribes Act: The Criminal Tribes Act 1871 was first implemented mostly in the Punjab Province of Northern India and later was extended to the Bengal Presidency and other areas in 1876, and in the year 1911 the law was covered through the central provinces and the Madras Presidency. By 1924 the CTA covered almost the entire British India. The purpose of the Act had been to suppress "Hereditary Criminal" sections of Indian society.

A total of about 200 communities were affected by this law. Today's de-notified communities are the ones who were covered by this act and were later de-notified by our first Prime Minister Jawaharlal Nehru in 1952, when this Act was scrapped, being considered by Jawaharlal Nehru to be a blot on the law book.[1]

The late 19th century had been a particularly hard period for the policy maker in British India, with economic depression, unemployment, strikes and growing political radicalism. Poverty, alcoholism, ill health (and crime) had not disappeared even in England in spite of decades of social legislation. There was great temptation for believing - preferably supported with scientific proof - that crime was a hereditary trait, and called for measures to re-engineer society on biological, rather than social or political bases. The pseudo-science of Eugenics seemed to provide an explanation, among many other issues, to the problem of rising crime and poverty.

Indian criminality was linked to the introduction of the railways, the new forest policy, repeated famines and so on. The administrative rationale was that with the introduction of certain policies designed to raise revenue, some communities had irrevocably lost their means of livelihood. The wandering groups were put at a halt. The act categorised the communities of craftsmen, traders and pastoralists as criminal tribes, mainly, because they moved from one place to the other. It came to be believed that they were criminal by birth. These communities were forced by the government to live in notified village settlements. They could move out of these villages only after a permit was granted to them. They were continuously watched by the village police. Thus, they lost their customary rights to move freely in the region. The colonists wanted them to settle down at one place because it was easy to control and collect taxes from the settled communities. But, the effect was something disastrous that lead the groupsto survive their living by committing crime. How else could they live except by committing crime, especially if there was no property to support them? The relationship between **itinerant** (The one who travels from place to place) and **sedentary** (Settled at one place) communities has become increasingly problematic in modern times. The more the itinerant communities get marginalised to the main sphere of society

[1] Dr.B.P.Mahesh Chandra Guru and Ms. Shabeena Tabassum, Feb 2017, The Banjara Community of India: Status, Problems and Prospects, International Journal of Trend in Research and Development, Volume 4(1), ISSN: 2394-9333

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because of transformative processes, the more they become suspect from the point of view of the sedentary society they interact with. In real terms, their increasing marginality simply compounds the already existing prejudices against them. This is true with the wandering groups that their suffering being an itinerant was unwelcoming and is so even in the present times.

The plethora of new legislation that the British introduced created new **'criminals'** all the time. These were either people ignorant of the new laws, or those willfully defiant of the ones which encroached on their traditional rights - for instance, forest laws. There were a number of communities who did not know the newly imposed forest laws under which they were forbidden to collect honey, bamboo leaves, or medicinal herbs which they used to barter with the villagers. They continued to do so, partly in ignorance, partly thinking this to be their hereditary right. The large number of new laws on common pastures for grazing of cattle similarly turned whole communities into criminal tribes by the British administration because they continued to graze their cattle. It is true that the wandering groups have suffered from such a complex laws and policies that remain hidden and constantly hunted their livelihood. Once the wanderers supposedly were the Kings of Jungles; faced threat of punishment even for picking wood for fuel. The champions of distance trade; became the scapegoat of tyrannical foreign rule.

A Historian, David Arnold has suggested that this law was brought into force because many identified tribes were small communities of poor, low-caste and nomadic people living on the fringes of the society. Living as petty traders, pastoralists, gypsies, hill and forest dwelling tribes, they did not conform to the British colonial idea of civilized living, which involved settled agriculture and waged labour. Because it came to be thought that behavior was hereditary rather than learned, crime became ethnic, and was merely a social determinism till then became biological determinism. This paradigm shift seems to have arisen out of the prevalent belief in 19th century Europe that people with peripatetic lifestyles were a menace to society and required control, or at least surveillance.[1]

The Criminal Tribes Act (CTA) 1871 was fairly broad in scope and much discretion was given to local administrators and village elites to decide who should be subjected to the law and how to enforce punishments (*Sec. 2 of the CT Act, 1871: " If the Local Government has the reason to believe that any tribe, gang or class of persons in addicted to the systematic commission of non-bailable offences, it may report the case to the Governor General in council, and may request his permission to declare such tribe, gang or class to be criminal tribe").* Provisioning such an authority to the local government was a mockery by the British law makers. Firstly they have destroyed the local economies which were our heritage for centuries irrespective of caste based profession of Sedentary and trade of the itinerants (nomads) with a monopoly transport system. The itinerants (nomads) were the one who were affected under this section. Those who never stayed at one place obviously the Local Government identify as strangers to their jurisdiction, irrespective of good behavior, branded as the offenders and stigmatized whomsoever they noticed.

Further, Sec.4 of the CT Act, 1871 : *" If such tribe, gang or class has no fixed place of residence, the report shall state whether such tribe, gang or class follows any lawful occupation, and whether such occupation is, in the opinion of the Local Government, the real occupation of such tribe, gang or class, or a pretence for the purpose of facilitating the commission of crimes, and shall set forth the grounds on which such opinion is based: and the report shall also specify the place of residence in which such wandering tribe, gang or class is to be settled under the provisions hereinafter contained, and the arrangements which are proposed to be made for enabling it to earn its living therein.'.* The supervision and control intended was maybe to serve the authoritarian interest as a caretaker government. However, it has failed in its performance. Taking the relevancy of this section with the Pardis, Guzzars, Banjaras, Bhils, Minas, Kurabas, Kurumas Dangers, Madhura etc., identification as a criminal tribe is done without any mischance. It imposed a lawful **stigma as criminals** on the community that lived a respectful life. 'Enabling to earn its living', remain only on the law book; rather left nowhere and ruined the Tribes without any proper settlement even after Independence. Though they were not criminals, were pushed by the circumstantial law and policy into hardship to cause theft only to feed the bellies. Having destroyed the source of survival, not allowing feed even on the forests and not even allowing cultivating the land and expecting to live in dignity was an impossible phenomenon[2].

[1] Radhakrishna, Meena (2001). Dishonoured by History: "Criminal Tribes" and British Colonial Policy. Orient Blackswan. p. 2. ISBN 81-250-2090-X.

[2] Criminal Tribes Act 1871

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Sec. 6 of the CT Act barred the then Courts from questioning the validity of notifications whether the provisions complied or not; this is a vehement lapse not allowing the law to serve the interest of the affected tribes, thus denial of justice totally on all parlances.

Sec. 13 directed asking the tribe to settle at the place of residence prescribed by the local government. For the purpose of this section, the mobile groups gradually became a habitat, located on the hill tops, forests, and edges of the forest, barren land, deserted areas and such places where there is no accesses to either the civic amenities or even access to the local administration itself. The plight of such an arrangement still remains amongst the forced settled groups.

Sec.18 provisioned for the maintenance of the register by the magistrate to take roll calls of such tribes, groups, or class. Maintenance of register means one has to present himself whenever called upon at such place and time by the magistrate or any such authorities. It specifies the jurisdiction of movement hence causing a circumscribing limit beyond which one cannot move. The very basic right of freedom of movement and liberty was snatched in a blot on ink permanently. It also Authorized many supervisors, and legalizing their dominance and exploitation. Sub – standard treatment of citizens by the fellow citizens added another social disease in the cast based Indian society. A new class was created 'CRIMINALS BY BIRTH'. It stigmatized those tribes then, and now it is carried forwarded.

After India's Independence, there was a ray of hope of getting out of the stigma as criminals amongst the Notified Criminal Tribes under CT Act 1871. But, it took a new twist. The post Independence Government came up with a fanciful law "Habitual offenders Act 1952". That gave a new identity to those Criminal Tribes under CT Act 1871.

IMPACT OF CT ACT: The colonial government prepared a list of "criminal castes", and all members registered in these castes by caste-census were restricted in terms of regions they could visit, move about in or people they could socialise with. [1]In certain regions, entire caste groups were presumed guilty by birth, arrested, children separated from their parents, and held in penal colonies or quarantined without conviction or due process.

Colonial Justification; When the Bill was introduced in 1871 by British official T.V. Stephens, said: "... people from time immemorial have been pursuing the caste system defined job-positions: weaving, carpentry and such were hereditary jobs. So there must have been hereditary criminals also who pursued their forefathers' profession

James Fitzjames Stephen testified, "When we speak of professional criminals, we...(mean) a tribe whose ancestors were criminals from time immemorial, who are themselves destined by the usage of caste to commit crime, and whose descendants will be offenders against the law, until the whole tribe is exterminated or accounted for in manner of thugs"[2]

The castes and tribes "notified" under the Act were labelled as *Criminal Tribes* for their so-called "criminal tendencies". As a result, anyone born in these communities across the country was presumed as a "born criminal", irrespective of their criminal precedents. This gave the police sweeping powers to arrest them, control them, and monitor their movements.

Once a tribe was officially notified, its members had no recourse to repeal such notices under the judicial system. From then on, their movements were monitored through a system of compulsory registration and passes, which specified where the holders could travel and reside, and district magistrates were required to maintain records of all such people.

The British government was able to summon a large amount of public support, including the nationalist press, for the excesses committed, because the Criminal Tribes Act was posed widely as a social reform measure which reformed criminals through work. However, when they tried to make a living like everybody else, they did not find work outside the settlement because of public prejudice and ostracisation. The pastoralist and the wanderer group's livelihood were lost. They were asked to settle in places which are not native to them. They became poor and disrespected by other people in society. They were treated as outcaste and faced exploitation

[1] Cole, Simon (2001). Suspect identities : a history of fingerprinting and criminal identification. Cambridge, MA, USA: Harvard University Press. pp. 67–72. ISBN 978-0-674-01002-4.

[2] Raj and Born Criminals Crime, gender, and sexuality in criminal prosecutions, by Louis A. Knafla. Published by Greenwood Publishing Group, 2002.

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The implementation of the CTA, indeed, manufactured a large number of criminals in India. The colonial state saw dacoity as the hereditary trade of certain communities. The impact of the Act was enormous, Police were given unlimited powers to control them, arrest them for no reason and monitor their movements through compulsory registration and passes. They were prohibited from recourse to appeal and use of judicial system, and district magistrates maintained regular records of so called 'Born Criminals'. They were arrested without any intimation or valid reason; they were doubted for any crime that took place in the vicinity. Their Right to live, Right to Speak, Right to Information and Right to Privacy were continuously violated. Well, as an extension of this Act, separate 'Reformatory Settlements' were established for boys, aged between four and eighteen, far from their families. Here they were subjected to low paid work and compelled to report the guard rooms several times a day, so that they did not escape the premises. In 1936 Jawaharlal Nehru talking of this Act commented that 'no tribe can be criminals by birth', and the Criminal Tribes Act, 1871, were repealed in 1949, as it was against the spirit of Indian Constitution and a shameful colonial legacy.

After India's Independence, there was a ray of hope of getting out of the stigma as criminals amongst the Notified Criminal Tribes under CT Act 1871. But, it took a new twist. The post Independence Government came up with a fanciful law "Habitual offenders Act 1952". That gave a new identity to those Criminal Tribes under CT Act 1871.

HABITUAL OFFENDERS ACT 1952:

After independence The Criminal tribes under CT Act 1871 were de-notified. The massive crime wave after the criminal tribes were de-notified led to a public outcry and the Habitual Offenders Act (HOA) 1952 was enacted in the place of CTA 1871; it states that a habitual offender is one who has been a victim of subjective and objective influences and has manifested a set practice in crime, and also presents a danger to society. The HOA effectively re-stigmatized the already marginalized "criminal tribes". The previously criminalized tribes still suffer a stigma, because of the ineffective nature of the new Act, which in effect meant relisting of the supposed de-notified tribes. Out of 313 identified Nomadic Tribes, 198 were de-notified (Vimuktha jati - Ex-Criminal Tribes). Today the social category generally known as the de-notified and nomadic tribes includes approximately 80 million people in India.[1] In 2008, the National Commission for Denotified, Nomadic and Semi-Nomadic Tribes (NCDNSNT) of Ministry of Social Justice and Empowerment recommended those same reservations as available to Scheduled Castes and Scheduled Tribes be extended to around 110 million people of denotified, nomadic or semi-nomadic tribes in India; the commission further recommended that the provisions of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 be applicable to these tribes also. Today, many governmental and non-governmental bodies are involved in the betterment of these denotified tribes through various schemes and policies.

CONCLUSION

Commemorating 31 August 2021 that marks the 69th year of the repeal of the Criminal Tribes Act, 1871. This act was the most draconian law passed by the British colonial state, under which millions of nomadic and semi-nomadic communities were declared criminals and put under continuous surveillance, making their lives impossible. 31 August is celebrated as Vimukta Jatis day in India by the de-notified tribal communities. The Criminal Tribes Act is a stain on the history of British India. The stigma it has caused has a deep impact on socio-economic standards of the nomadic, semi-nomadic and other wandering groups since the time of imposition of this harsh law. The stakeholders on this front viz. the Government, NGO's , such other social institutes has the burden to help these groups to get rid from the shadow of stigmatization.

[1] C. R. Bijoy (February 2003). "The Adivasis of India – A History of Discrimination, Conflict, and Resistance". PUCL Bulletin. People's Union for Civil Liberties. Archived from the original on 16 June 2008. Retrieved 31 May 2007.

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AGRICULTURAL LABOUR PROBLEMS AND CHALLENGES DURING THE PERIOD OF COVID-19 PANDEMIC

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ABSTRACT
The problems of Agricultural Labour exist since ancient times. The problems and challenges faced during the period of COVID – 19 mounts to lose the hopes of survival especially in the Agricultural Sectors and in specific with labour force. The Nation declared Lockdown since March 24, 2020 onwards by the authorized Chairman of the Disaster Management as laid down by the Disasters Management Act 2005 and he is none other than the Prime Minister of India. Low wages, exploited working hours, rude Behavior with labour, work life balance, working conditions People at executive level thinks the Labour as a commodity and never realize that labour is not a commodity. Sometimes work involves in using pesticides to protect the crops which leads to hazardous environment and the smell to be tolerated which leads to occupation health disorders. The Government of India has keen interest to overcome from the agricultural labour problems and the challenges faced by them. The agricultural labourers' problems is a peculiar phenomenon and it cannot be predetermined, however an appropriate Government at both Central and State jurisdiction has taken several remedial measures to overcome from this and which do not yield any result. Labourers have lost their jobs during the period of COVID-19, To commute to the work place there is no transportations and hence cannot honor the time of commitment. There will be a chain link with agricultural laborers during the production of food ingredients and hence without their support one cannot survive and hence government have lot of plans to alter the working conditions of the Agricultural labourers by enacting the laws and amended the existing law. Undivided Hindu law family is now witnessing a nuclear family. The labour force is shifting from their cultural activities to industrialization where they can get more financial resources. The labourers will work on two types of land cultivation. 1. Rain feed cultivation land and 2. Water feed cultivation land apart from this seasonal plant workers where in which the job will depend only on certain periods the question will arise what they have to do there afterwards? What about their financial obligations to lead the life and to care for the family members? it is essential to know that the Agricultural labourers are covered under Socio Legal Protection or not. Laboure's in the agriculture section is in safe zone or not, what is the dependency level can be determined very easily.

INTRODUCTION
Agriculture: it is a question whether agriculture is science or Art? Practically one will select either Science or Art. People will not agree as science because there are no scientific procedures to be followed. As the days crosses everything has become science. Now testing of soil for construction of House, it will decide how many courses of paya is required to sustain the building otherwise building will collapse. While digging water seepage will occur and construction cannot be so easy this is also a science to stop by curing the soil. To find out the growth of the crops is possible or not land is cultivatable or not can be determined again by testing the soil. Once again, any chemical fertilizer is added to grow the crop or not or whether it is purely nature and organic fertilizer is used can be determined and hence it is strongly argued that it is a science. This is not a pure science but it is an applied science Hence Agriculture means covering all the areas like crop production and its sub components such as horticulture, livestock rearing, fisheries, forestry.

Laboure's: unskilled person working for wages is called as Laboure's

Agriculture labourers: unskilled person who works in an agricultural industry in any form for wages or remuneration or in barter system of some exchange is identified as Agriculture labourers. It is not necessary to work only in the crop producing field but also storage place transportation of products from one place to another place in other words any eatable items involves with the labourers is called as agriculture labourers

Problems: The difficulties or the hurdles the former or the agriculture labourer are facing and it is a big question that how to resolve this? It can be resolved by intervening by the entry of government

The labourer can be classified into two major groups (1) Family Agricultural Labourer and (2) Hired Agricultural labourer

Family Agricultural Labourer work on the family farms and there are no fixed hours or days of work or fixed payment

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Hired Agricultural Labourer work on hired basis with fixed number of hours and days for payment this is sub divided into Free agricultural labourer and unfree agricultural labourer The Free Agricultural Labourer are having capacity to accept or reject the conditions of employment and wages offered by the employer. The Unfree agricultural labourer are thouse whose vbargaining power is virtually non-existent or has been surrendered . Further it has classified into major 4 divisions based on the length of the services. The are as follows:

a) For a period of one year

b) For a single crop

c) For short term

d) Daily labourers

a) For a period of one year: This is fixed for a period of one year. Palikapu is the name given in one state and Chief permanent agricultural farm servant. Only a few people can afford to blue flu and fifth five year hire this type of labourer. This is costing more to the employer. But the high-fifth

b) For a single crop season (Rabi or Kharif) : this class of labourer employed not for the entire year but for a single crop season from ploughing to harvesting. Dependin upon the area and the particular crop this involves a period of 5 to 8 months. For example, 'Bhagia' labourers of Gujarath employed in this manner. They usually get a share of the form produced but alternatively they may be paid a fixed quantity.

c) For Short term: this category is engaged on a short term bases for the time necessary to complete agricultural operation (for more than single day to a season). Rice growers of kerala engaged labourers for a short term for budding or ploughing. Their local name is 'Baniyala '.

d) Daily labourers: They are in fact to be found in a greater or lesser degree in every part of india. They may have land of their own or of the employer (termed as "dina Kuly" "Dina Majur" at various places).

Similarly, the unfree agricultural labour class can be sub divided into 3 sub groups:

1. Annual Unfree Agricultural labour class: they may also be termed as attached a labourer. This class is serving on a full-time year-round basis. Bond-servants of this type from lowest cast, where formally quite common in south india. They are called as Dhers or holeyas. Another example as reported by Dr M N Sreenivasan a farm of that bondage is known as Jeetha,

2. The attached workers in most of the cases work from morning till knight and did all kinds of domestic and agricultural works.

3. Beck and all labour: whenever the master needs services of these labourers they have to attend his call. The employer generally grants some loans to workers without interest and in consideration of this detors workers has to work in the fileds of employer creditors. Such group of workers appeared to be tipical in orissa. One group of workers in coaster zone where known locally as Kothias. The advantage in such an arrangement was that the employer was assured of the worker's service on any day. He required him without having to pay for the whole year. That Mohindersingh has reported " Kamia" group of labourers of Bihar under this class. The haly system of surath district in Gujarath represents another instance of beck and call relationships.

4. Forced labourers: They are termed as Begar in Uttarpradesh and Bihar. This type of forced , typical unpaid short termed labour constitutes forced labour class or beggar. Dr AM Lorenzo defines it as customery right of the land lord to extract to a certain number of days , free labour from their ryots (Tenants). This claim ranges between 3 to 20 days annually without payment.

5. The unfree class labourer cannot refuse to work. This Bondage is due to a traditional attachment to a family or an estate; or due to indebtedness or allotment of a plot of land or tenancy of employer's folding. They usually gets a lower wage and their hours of work is irregular.

6. There exist no single, homogeneous class of labour; there are considerable variations, depending on nature and composition both of labour and its employement. The proceeding analysis shows the disticnction between organized and unorgansied employement. Due to slow pace of industrialization only a little population of labour class could be accommodated in organized sector living the majority still dependedt on unorganized sector, where working nd living jconditions are less regulated, less prescribed, less norms, and less achieved than jthe standard norms, due to lack of collective bargaining. The majority of

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unorganized labourers are agricultural labourers, having some special characteristics which differentiae them from organized or industrial labour exposing them to exploitative factors. The atrocities of cast and class structure being socially, economically and politically, depressed and the peculiar situations of agricultural employment, lack of the employer – employee relationship, seasonality of employment, less demand and more su-ply ration, lack of collective bargaining, and isolation of rural population restrained them to share the fruits of development despite contributiong to the national economy. It is clear from the review of meaning and statistical profiles that it is difficult to provide preside definition of meaning to agricultural labour and due to imbalance in-between population explosion and economic growth, majority of the population depends on agricultural employments. The profile of composition established the fact that main constituents of agricultural labour class belongs to scheduled cast, scheduled tribes and backward classes. Cast is still one of the deciding factors of social economic and political status, up to a large extend, at least in rural India.

The Problems faced by Agricultural labourers

In the beginning most of the countries of the world has similar occupational structure. With the advent of industrial evolution the process of industrial development , subsequently altered this pattern. However , Indian occupational structure was not altered subsequently. This stagnant position has contributed to the increase in households living below poverty line. The failure of land reform and other planning's for the development of rural working forces, rather than on social forces. The ultimate effect is that landlords still continue to rue over rural labour The misfortune is that they agricultural workers are steeped in ignorance and those who impact knowledge are themselves exploiters. That is the reason why the rural poor still look upon land around with wistful eyes. In order to appreciate and eradicate the problems of agricultural labouers, they need is to evaluate the sociological factors which have resulted into failure of their economic development. These sociological factors may have negative as well as positive character.

a) First group of problems arise out of the persistence of old social institutions like caste, joint family tribes, traditional religious organizations and serfdom. They also emerged out of old forms of social control like supernatural sanctions, authoritarian norms complicated and intricate caste family Tribal religious and other customary sanctions penetrating almost every core of life of the Indian community. They further emanate from large scale of illiteracy , ill-health and unemployment

b) Second group of problem arise from the very nature of the economic development which has been inaugurated by the government since independence. They arise due to industrialization of commercialization of introducing money economy in every corner of the country. They also arise out of agrarian policy and from the very character of the economic order which is wishes to establish. For example commercialization brings out a shift in power and authority in the village. Not the farmers and the producers but the owners and administrators are becoming the ruling group.

c) Unemployment. Underemployment and disguised unemployment is the Third group of problems. And which is the cause for all other problems

d) Agricultural Wages

e) Experience of different states in the implementation of Minimum Wages in Agriculture

f) Income : per capita income of house holds of agriculture labourers

g) Indebtedness

h) Problems of Bonded labourers and its systems

i) Problems of Migration

j) Problems of organizations

k) Working conditions and conditions of work

l) Hours of work

m) Occupational risks

Types of problems

An agricultural Labour problems and challenges during the period of COVID-19 Pandemic

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Corona Virus started from China's wuhan city spread not only to India but also to the entire globe. The deceases are powerful and it kills the people in a very large scale and in the exponential way. Before we aware to take necessary steps lot of people lost their life's. Government of India has to declare the lockdown in order to avoid the spared of the deceases. As per the disaster management ACT 2005 , Chairman being the head of the constitution and administration of the country the prime minister used his powers to declare lockdown in view of the delink the chain of spread of the decease. During the period of lockdown there were no transportation to commute from one place to another place. Their movement is restricted. People advised not to come out of the house. All activities have come to total halt. The crops grown which were to be cut from the field and make it dry to sell the raw products to the customers. Due to the fear of death labourers has not come out of the house. Because of two reasons 1. They got effected themselves 2. It effects to others from the people. The crops or any other production from the agricultural productions unable to move from the place itself as there was no transportation. The food materials which is perishable items have spoiled for examples tomoto and water milon, kharbooja, muskmelon, vegetables. Consider the case of Milk, curd which cannot reach the required customers and cannot be stored also. The agricultural labourers became helpless as there was no possibility to move their product whether perishable items or nonperishable items. Food is essential for everybody. Many people has died due to hungry. Due to the restriction of movement of people, agricultural labourer movement also restricted and hence they cannot go out of their house which resulted in loosing their job and became unemployed. Once they became unemployed their house per capita income reduced and they have gone below the poverty line. The stored food materials are not sufficient to eat. On the other hand to cut the grown up crops, agricultural labourers are not available. Many people have migrated during the lock down period. They forced to stay wherever they are. Agricultural laborer's are not ready to accept for changes. As mentioned earlier the types of laborer available in the market everybody lost their jobs. Owners were also effected because they have to incur heavy loss with the grownup crops unable to cut and distribute to the required places. Since there were no transportation.

Low wages,: As the laborer's are available in surplus quantity the demand is very less and hence agricultural laborer's are getting low wages. Even government cannot manage and cannot take any action since they too know that earning is impossible during the period of COVID-19 Pandemic.

Exploited working hours, : If the agricultural laborer's willing to work for more hours with the low paid wages then only they will get job otherwise they may not even get that job. Keeping in view of the family members and dependents on this bread earning agricultural laborer they have to accept and forced to stay extended hours.

Rude Behaviour with labourer,: every minute is counted by the owner since he is the paying master. The master thinks I am losing the money for idle time and hence he behaves very rudely with the agricultural labourer's

Work life balance, Agricultural labourer's have to balance at work as well as their family. Especially women agricultural labourer's they have to cook and take care of their kids and children with a time bound preparation of food etc. on the other hand they have to serve with their masters otherwise the master will terminate from the job itself if he or she is a bonded labourer then he will give lot punishments and they cannot escape from this since there is no other alternative for their survival working conditions: working conditions of labourer especially during the period of COVID-19 pandemic is very critical. It is very difficult to maintain the distance as it involves close movements. Further it is an impossible task to use frequently sanitization because it is a food manufacturing industry otherwise the food items will be contaminated with sanitization materials. People may fall sick even then they have no excuses since far away labourers cannot reach the place in time

People at executive level thinks the Labour as a commodity and never realize that labour is not a commodity. : Executives of agricultural industry treats their subordinates as commodity and jthey have rights over them. They treat with in humanity. Just a banana leaves after easting meals the banana leaves will be throw away from the dinning hall similarly the labourers are also treated once the job required is completed they will never ask the labourers problems.

Sometimes work involves in using pesticides to protect the crops which leads to hazardous environment and the smell to be tolerated which leads to occupation health disorders.: Pesticides are dangerous to health but it is inevitable to be with it because if we do not apply or spray the pesticides to the crops, immediately worms or insects will attack the crops and crops will not yield properly and production of food will become very low or poor quality and cannot be used with ful extent and hence use of pesticides is very essential. By neglect or oversite or by absent mind without washing the hands if he consumes he will die on the spot. The smell

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produced by the pesticides cannot tolerate if it continues for a period of 15 days one will fall sick due to the bad air produced by the pesticides

Chain Link of problems: to purchase of good strengthened and production yielding seeds in bulk shortage of money or insufficient money and will wait to receive the loan from bank - depending on the rain feed land or water filed land seeds to seed in the field and rearrange for this labour force is essential during the period of covid-19 it has come to total halt. Assuming that without any hassel this part is over then feeding water and remove the unwanted growing of any other plants and maintenance of clean in he field. Afterwards crop cutting and to disburse, load and unload in the transportation. Then it needs storage space to preserve the materials and to create an awareness among the general public the materials are available here. They have to pay the commission to the middle men. The profit will get less because of cheating, involving the middle men loss of production etc. these are some major problems faced by the agricultural labourers during the period of COVID-19 Pandemic.

Remedial measures by government: Government has taken some remedial measures such as relaxed the covid-19 rules to the agricultural labourers and its sectors such as movement of materials and transportation to shift the food products to the market and to ensure to reach to the consumers as end users. Government has given 6000 INR to all the farmer and its agricultural labourers who are enrolled in the systems. Amended the existing rules to sell the product directly from the farmers production unit itself instead of selling through middle men and APMC Yards. Waived the loan interest from the banks. Organized to receive the loan from the banks not only for the seeding and maintenances but also to construct their houses

Conclusions: Agriculture is one of the prioritized sectors in India as it depends for food. The people working in this sector are called as agricultural labourers and they are facing lot of problems and the challenges faced by the labour force cannot be determined easily. The natural calamity and the disaster effect the agricultural labourer even one cannot imagine. Corona virus COVID-19 pandemic worsen the situation of the agricultural labourers. Covid-19 pandemic created the worst situation to every body in the nation and especially with agricultural labourers including male, female and children and adolescents. Government has taken several measures to resolve the problems of the agricultural labourers but not yet resolved completely. Government has introduced lot of reforms to give benefits directly to the farmers but farmers are still resisting to receive the same.

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INTERNATIONAL FRAMEWORK ON CHILD LABOUR AND EDUCATION

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I. INTRODUCTION

Child labour is not about children performing small tasks in the house nor is it about children participating in work suitable to their level of development, but it is concerned with performance of work which is contradictory to national and international standards.[1]It has to be noted that the international policy framework governing child labour and child education is strong, robust, orchestrated and categorized because a number of International Conventions, Covenants, Treaties and Declarations are in place. Child labour and a child's right to education are directly or indirectly associated with many international standards and initiatives.[2] Several international bodies are putting in efforts and implementing various programmes to combat child labour and impart quality education.

The research paper primarily focuses on the international framework governing child labour and education. It comprises of the International Conventions, Regional Conventions and other international instruments relating to child labour and education. It also analyzes the relationship between the international framework and Indian Constitution and to what extent India has complied with the international provisions relating to child labour and education.

II. International Policy Framework Concerning Child Labour And Education

The broad international policy framework concerning child labour and education adopted by the United Nations, International Labour Organization and Regional arrangements are discussed hereinafter.

a) The Geneva Declaration of the Rights of the Child, 1924

The Declaration articulates that a child must be protected against every form of exploitation.[3] Also, it explicitly posits that the means essential for the material and spiritual development of the child should be provided. [4]

b) Universal Declaration of Human Rights, 1948

The UDHR specifically states that slavery or servitude which includes child labour should be prohibited in all their forms.[5] Motherhood and childhood are entitled to special care and assistance.[6] Every individual is assured of right to free and compulsory education at elementary stage, higher education shall be made accessible on the basis of merit and technical education shall be made generally available to all. It also envisages that no government, group or individual should interfere or act in a way to destroy the rights and freedoms guaranteed under Universal Declaration of Human Rights.[7]

c) Declaration of the Rights of the Child, 1959

[1] *Child Labour and Education for All- A Resource Guide for Trade Unions and A Call Against Child Labour and for Education for All*, Education International, 2013, p. 5, available at https://www.ilo.org/actrav/info/pubs/WCMS_305446/lang--en/index.htm (accessed on 18/04/2021)

[2]*Mainstreaming Child Labour Concerns in Education Sector Plans and Programmes*, International Labour Organization, 2011, p. 1, available at https://www.ilo.org/moscow/information-resources/publications/WCMS_308699/lang--en/index.htm (accessed on 15/04/2021)

[3] The Geneva Declaration of the Rights of the Child, 1924, available at http://www.un-documents.net/gdrc1924.htm(accessed on 15/04/2021)

[4] *id.*

[5] Art. 4, Universal Declaration of Human Rights, 1948, available at https://www.un.org/en/about-us/universal-declaration-of-human-rights (accessed on 15/04/2021)

[6] Art. 25, Universal Declaration of Human Rights, 1948, available at https://www.un.org/en/about-us/universal-declaration-of-human-rights (accessed on 15/04/2021)

[7]*ibid*, Art. 30

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This Declaration is the amplification of the rights of the child as provided in the UDHR, 1948.[1] It stipulates that every child irrespective of physical, mental or social conditions is bound to receive free and compulsory elementary education.[2] Also, the child shall be protected against all forms of exploitation and shall not be admitted to employment before an appropriate minimum age as would prejudice his health or education or intervene with his physical, mental or moral development.[3]The best interests of the child shall be the paramount consideration.[4]

d) International Covenant on Civil and Political Rights, 1966

The Covenant expressly provides that family is the fundamental group or unit of society and is therefore entitled to protection by society and the State.[5] It categorically articulates that every minor shall be protected in his family, society and the State. It prohibits discrimination on the grounds of race, colour, sex, language, religion, national or social origin, property or birth with respect to the same.[6]

e) International Covenant on Economic, Social and Cultural Rights, 1966

This Covenant vehemently pronounces that children and young people should be protected from economic and social exploitation. Law punishes the employer if their employment affects health, morals or poses danger to the child's life. It obligates the States to set age limits below which paid employment of children shall be prohibited and punished by law.[7] Further, the State Parties should recognize the right of everyone to free and compulsory primary education, accessibility of secondary education and higher education.[8]

f) The United Nations Convention on the Rights of Child, 1989

Primary education shall be free and compulsory, secondary education and vocational education shall be made accessible for every child.[9] Children should be protected from performing hazardous work which tends to interfere with child's education and also child's physical, mental, spiritual, moral and social development.[10] While taking decisions on the rights of children, the public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, shall take into consideration the best interests of the child.[11] The State Parties may take appropriate legislative, administrative, social and educational measures to protect the child exploitation while living with the parents, guardian or any other person.[12]. The Convention also mandates that the state parties shall recognize the right of every child to an adequate standard of living, which is crucial for its physical, mental, spiritual, moral or social development. [13]

III. Conventions Adopted By International Labour Organization Relating To Child Labour

The Conventions adopted by International Labour Organization relates to various aspects of child labour such as minimum age for employment of children and obligations on the state parties to make an effort to abolish

[1] Article 25 (4) of Universal Declaration of Human Rights, "Motherhood and Childhood are entitled to special care and assistance"

[2]Principle 5, Declaration of the Rights of the Child, 1959, available at https://cpd.org.rs/wp-content/uploads/2017/11/1959-Declaration-of-the-Rights-of-the-Child.pdf(accessed on 20/04/2021)

[3]*ibid,* Principle 9

[4]*ibid,* Principle 2

[5]Art. 23, International Covenant on Civil and Political Rights, 1966, available at https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx (accessed on 15/04/2021)

[6]Art. 24, International Covenant on Civil and Political Rights, 1966, available at https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx (accessed on 15/04/2021)

[7]*ibid,* Art. 10(3)

[8] *ibid,* Art. 13

[9]*ibid,* Art. 28

[10] Art. 32, Convention on the Rights of the Child, 1989, available at https://www.ohchr.org/en/professionalinterest/pages/crc.aspx (accessed on 15/04/2021)

[11]*ibid,* Art. 3

[12]*ibid,* Art. 19

[13]*ibid,* Art. 27

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various crimes against children. The following are some of the International Conventions on child labour and education:

a) Minimum Age (Industry) Convention, 1919

The first international Convention on child labour adopted by ILO provided that children under the age of fourteen years shall not be employed or made to work in any public or private industrial undertaking.[1] Children under twelve years of age shall not be employed in manufacturing activities, mines and transport business.[2] India has ratified the Minimum Age (Industry) Convention, 1919 on 9th September, 1955.

b) ILO Forced Labour Convention, 1930

This Convention obligates the members of the ILO to curtail the use of forced or compulsory labour in all its forms within the shortest possible period.[3]The term forced or compulsory labour includes all work or service which is extracted from any person under the menace of penalty and for which the said person has not offered himself voluntarily.[4]The term "menace of penalty" refers to penalties imposed in order to coerce someone to work.[5]Penalties can come in different forms including violence, intimidation, accumulated debt, retention of identity papers, threats of denunciation to immigration authorities and so on.[6]

c) ILO Minimum Age Convention, 1973

It obligates the members to adopt a national policy designed to achieve the effective abolition of child labour and to lay down minimum age for admission to employment or work taking into consideration the fullest physical and mental development of young persons.[7] The minimum age for admission to employment shall be 15 years so that the children would have completed compulsory education. In case of economically and educationally backward countries, minimum age shall be 14 years. Thus, the Convention does not completely forbid employment of children below the minimum age of employment. National laws may be framed permitting employment of children between the age group of 13-15 years in light work which does not affect the school attendance and health of the child.[8]

d) ILO Declaration on the Fundamental Principles and Rights at Work, 1998

Under this Declaration, all the members of ILO have the obligation to respect four core labour standards which are as follows: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) elimination of all forms of forced or compulsory labour; (c) effective abolition of child labour and (d) elimination of discrimination in respect of employment and occupation.[9]

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[1]Art. 2, Minimum Age (Industry) Convention, 1919, available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:CON,en,C005,/Document#:~:text=Children%20under%20the%20age%20of,the%20same%20family%20are%20employed (accessed on 18/04/2021)

[2]*ibid,* Art. 6

[3]Art.1, ILO Forced Labour Convention, 1930, available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029 (accessed on 22/04/2021)

[4]*ibid,* Art.2

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[8]*supra* at 2

[9] Organization for Economic Cooperation and Development, *Combating Child Labour- A Review of Policies*, Organization for Economic Co-operation and Development, (2003), p. 114, available at https://3lib.net/book/964009/022024?dsource=recommend (accessed on 20/04/2021)

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e) ILO Worst Forms of Child Labour Convention, 1999

The Convention applies to everyone under the age of 18 years. It imposes obligation on the state parties to take immediate and effective measures to secure the prohibition of worst forms of child labour. It prohibits all forms of slavery or practices resembling slavery such as sale and trafficking of children, forced or compulsory labour, child prostitution, child pornography, offering of a child for illegal activities like production and trafficking of drugs or work by its nature as is likely to harm the health, safety or morals of children.[1] It advocates international co-operation amongst member States for giving effect to the provisions of the Convention including support for social and economic development, poverty eradication programmes and universal education.[2]The two core Conventions were ratified by India.

f) Optional Protocol to the Convention on the rights of the child on the involvement of children in armed conflict

It mandates that the State Parties shall take all possible steps to make sure that that persons below18 years shall not directly part-take in hostilities.[3] The states shall increase the minimum age for the voluntary recruitment of persons into their national armed forces.[4]The Protocol also lays down the rehabilitation and social re-integration mechanism for persons who are victims of armed conflicts. The afore-mentioned mechanism shall be achieved through international co-operation, technical co-operation and financial assistance amongst the member states.[5]

g) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

The elimination of the sale of children, child prostitution and child pornography can be achieved by adopting a holistic approach, addressing the underlying factors like poverty, lack of education, gender discrimination and harmful traditional practices.[6] The State Parties shall prohibit the sale of children, child prostitution and child pornography[7] under criminal law and impose penalty.[8]

h) Domestic Workers Convention, 2011

It needs to be highlighted that the domestic workers contribute significantly to the global economy and domestic work is undervalued as it is performed by women and girls who belong to disadvantaged communities.[9] The Convention calls for the elimination of all forms of forced or compulsory labour, abolition of child labour and elimination of discrimination.[10] The Labour Conference has also adopted the Domestic Workers

[1] *ibid at 36*

[2] Art. 8, ILO Worst Forms of Child Labour Convention, 1999, available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_decl_fs_46_en.pdf (accessed on 15/04/2021)

[3]*ibid,* Art. 1

[4]*ibid,* Art. 3

[5]*ibid,* Art. 7

[6]Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, available at https://www.ohchr.org/en/professionalinterest/pages/opsccrc.aspx (accessed on 16/04/2021)

[7]*ibid,* Art. 1

[8]*ibid,* Art. 3

[9]The Domestic Workers Convention, 2011, available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189 (accessed on 18/04/2021)

[10]Suneetha Eluri and Alok Singh, *Unionizing Domestic Workers: Case Study of the INTUC- Karnataka Domestic Workers Congress*, (2013), p. 22, available at https://www.ilo.org/newdelhi/whatwedo/publications/WCMS_218933/lang--en/index.htm(accessed on 18/04/2021)

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Recommendation which augments the Domestic Workers Convention[1] by aiding in the effective implementation of the rights of the domestic workers stipulated in the Convention.[2]

IV. REGIONAL ARRANGEMENTS CONCERNING CHILD LABOUR AND EDUCATION

The regional arrangements aim at promotion of child welfare by specifying the minimum age for employment and also prohibit child prostitution. It calls for concerted effort of the member states to combat violence against children. The following are some of the regional arrangements on child labour and education:

a) European Legislative Policy Framework Concerning Child Labour and Education

The Charter of the Fundamental Rights of the European Union prohibits employment of children.[3]The minimum age to enter employment should not be lower than the age of compulsory education and the Charter recalls that when young people are admitted to work, the working conditions should be appropriate to their age.[4] The age of compulsory education shall be 15 years and with respect to occupations regarded as dangerous the minimum age of admission to employment shall be 18 years.[5]

b) SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia

The main objectives of implementing this Convention are three-fold. Firstly, to unite the State Parties in their determination to redeem the promises made by them to the South Asian Child[6] at the World Summit for Children and successive SAARC summits. Secondly, to work together with commitment and diligence towards the development and protection of the South Asian Child. Lastly, to make appropriate regional arrangements in order to assist the member states in fulfilling and protecting the rights of the child, taking into account the changing needs of the child.[7] This Convention proclaims that the development of the full potential of the South Asian Child is a critical concomitant to the region's collective march towards accomplishing solidarity, justice, peace and human progress.[8]

c) SAARC Convention on Preventing and Combating Trafficking in Women and Child for Prostitution

The Preamble emphasizes that the practice of trafficking in women and children for the purpose of prostitution constitutes violation of basic human rights and dignity.[9] It calls for co-operation amongst member states to effectively deal with prevention, interdiction and suppression of trafficking in women and children and also promote rehabilitation and repatriation of the victims of trafficking.[10] The members shall take all appropriate measures to declare trafficking an offence under their respective criminal law and impose punishment.[11]

V. OTHER INTERNATIONAL INSTRUMENTS CONCERNING CHILD LABOUR AND EDUCATION

[1] *id.*

[2] *id.*

[3] Art. 32, Charter of the Fundamental Rights of the European Union, available at https://rm.coe.int/16802f5eb7(accessed on 20/04/2021)

[4]Organization for Economic Cooperation and Development, *Combating Child Labour- A Review of Policies*, Organization for Economic Co-operation and Development, (2003), p. 116, available at https://3lib.net/book/964009/022024?dsource=recommend (accessed on 20/04/2021)

[5] *ibid* at 54

[6]Art. I, SAARC Convention on regional arrangements for the promotion of child welfare in South Asia, available at https://www.ilo.org/newdelhi/WCMS_251025/lang--en/index.htm (accessed on 18/04/2021), "South Asian Child shall mean a national of any Member State of the South Asian Association for Regional Cooperation (SAARC), below the age of 18 years unless, under the national law, majority is attained earlier."

[7]*ibid,* Art. II

[8]*id.*

[9] *supra* at 59

[10]Art. II, SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, available athttps://www.ilo.org/newdelhi/WCMS_251026/lang--en/index.htm (accessed on 18/04/2021)

[11]*ibid,* Art. III

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Apart from the International Covenants, Declarations, Conventions and Regional Conventions, various World Conferences and Programmes have laid stress upon the importance of free education and prevention of exploitation of children. The other international instruments relating to child labour and education are:

a) The International Programme on the Elimination of Child Labour

It was launched in 1992 to mobilize and operationalize ILO's mandate with regard to child labour.[1] India was the first country to sign an MOU with the ILO for the purpose of executing IPEC and the main goals to be accomplished were [2] to provide for educational rehabilitation of the children and strengthen the capacity of government and other organizations towards elimination of child labour.

b) The Millennium Development Goals

The UN Millennium Declaration proclaimed in September, 2000 commits nations to a new global partnership to reduce extreme poverty by setting time bound targets to be complied with before 2015 that are known as the Millennium Development Goals.[3]There are linkages between the millennium development goals and child labour.[4]

i. Goal 1 emphasizes on eradication of extreme poverty, ensuring employment opportunities and thereby reduce hunger.[5]

ii. Goal 2 aims to achieve universal primary education.[6]

iii. Goal 3 is concerned with promotion of gender equality and empowerment of women.[7]

c) Education for All

The World Conference on Education for All held at Jomtien, Thailand in 1990 committed to make primary and secondary education a high development priority. This was reaffirmed at the World Education Forum in Dakar, Senegal in April 2000. It has set various goals which included[8] early childhood care and education, access to suitable learning and life skills programmes and eradication of gender disparities in primary and secondary education. The EFA Global Monitoring Report is responsible for the publication of the progress made in achieving the aforesaid goals through policy reforms.[9]

VI. ANALYSIS OF INTERNATIONAL INSTRUMENTS WITH SPECIAL REFERENCE TO INDIA

In 1974, Government of India adopted a National Policy on Children which declared that children are nation's greatest assets. Eventually, India ratified the UNCRC, 1989 on 11th December, 1992 which mandated the state parties to pass legislations in conformity with the provisions of the Convention. Various government ministries, government departments, international agencies, non-governmental organizations and legal fraternity must be involved in the implementation mechanism. Hence, Child Labour (Prohibition and Regulation) Act,

[1] *A Decade of ILO- India Partnerships-Towards a Future Without Child Labour (1992-2002)*, International Labour Organization, 2004, p. 4, available at https://www.ilo.org/newdelhi/whatwedo/publications/WCMS_124342/lang--en/index.htm (accessed on 18/04/2021).

[2] *supra* at 63, p.17

[3] Education International, *A Resource Guide for Trade Unions and a Call Against Child Labour and for Education for All*, International Labour Organization, 2013, p. 24, available at https://www.ilo.org/actrav/info/pubs/WCMS_305446/lang--en/index.htm (accessed on 26/04/2021).

[4] *supra* at 2, p. 3

[5] *supra* at 65

[6] *The Millennium Development Goals Report*, United Nations, 2015, p. 4, available at https://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20(July%201).pdf (accessed on 18/04/2021)

[7] *supra* at 68, p. 5

[8] Education International, *A Resource Guide for Trade Unions and a Call Against Child Labour and for Education for All*, International Labour Organization, 2013, p. 25, available at https://www.ilo.org/actrav/info/pubs/WCMS_305446/lang--en/index.htm (accessed on 26/04/2021)

[9] *id.*

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(CLPRA)1986 was subsequently amended in 2016. Article 21-A[1] and Article 45[2] of the Indian Constitution ensures free and compulsory education. It is in consonance with Article 28 (1) (a)[3] of the UNCRC. Article 24 of the Constitution postulates that, "No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment." Under Article 39 (e)[4] and 39 (f)[5], the states are obligated to direct their policy towards protection of child from abuse and exploitation. It is in unison with Article 32 (1) of UNCRC.[6]

Further, India has ratified the ILO Minimum Age Convention, 1973 and the ILO Worst Forms of Child Labour Convention, 1999 in June 2017. In accordance with the international standards, Right of Children to Free and Compulsory Education Act, 2009 which mandates free and compulsory education to children between 6 to 14 years of age was enacted. The International Conventions have declared child as a person below the age of 18 years as child, whereas Indian legislations have specified 14 years. Although, the ILO Minimum Age Convention, 1973 provided that the minimum age for admission to employment is 15 years so that the child would have received education, the Child Labour legislations in India have failed to consider the same.

Even though the CLPRAA, 2016 appears prima facie to be in conformity with the aforesaid international standards, in reality it is not so. It prohibits the employment of children below the age of 14 years in any occupation or process. It allows employment of adolescents who are between 14 to 18 years of age in other occupations except hazardous occupations or processes. Therefore, per se it might seem that the amendment is in line with the ILO Minimum Age Convention, 1973, nevertheless, it is violating several international standards. This is because the amendment has reduced the list of 83 occupations and processes set out in the Schedule to include only mines, inflammable substances or explosives and hazardous process. This implies that children can be employed in works like chemical mixing units, cotton farms, battery recycling units and brick kilns.[7]Further, the Act is defective because it shall not apply to children working in family enterprises and audio-visual entertainment industry which includes advertisement, films, television serials, or any such other entertainment and sports. In a country like India, poverty and economic necessity might coerce families to employ children in activities inappropriate to their age. This might result in denying them elementary education.

The Indian judiciary has acknowledged the importance of international conventions in various decisions. In 1993, while delivering the landmark judgment of *Unni Krishnan* v. *State of Andhra Pradesh*[8], the Court referred to the educational provisions as laid down in Article 26(1) of UDHR and Article 13 of ICESCR. It is pertinent to note that in *M C Mehta* v. *State of Tamil Nadu*[9], the Supreme Court reiterated that the Convention accords

[1] Art. 21-A, Constitution of India, "The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law determine."

[2]Art. 45, Constitution of India, "The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years."

[3] Art. 28 (1) (a), UNCRC, "State Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular make primary education compulsory and available free to all."

[4] Art. 39 (e), Constitution of India, "The State shall, in particular, direct its policy towards securing- that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength."

[5] Art. 39(f), Constitution of India, "The State shall, in particular, direct its policy towards securing-that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

[6] Art. 32 (1), UNCRC, "States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development."

[7]Ruchira Gupta, "A Law that Allows Child Labour", The Hindu, August 10, 2016, available at https://www.thehindu.com/opinion/columns/A-law-that-allows-child-labour/article14560563.ece (accessed on 19/04/2021)

[8] 1993 AIR 2178

[9] AIR 1997 SC 699

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special protection to children's rights, aims at continuous improvement in the situation of children all over the world and guarantees their development and education in conditions of peace and security. Thus, it can be concluded that the Convention not only protects the child's civil and political right, but also extends protection to child's economic, social, cultural and humanitarian rights.[1]

VII. CONCLUSION

It can be inferred from this Chapter that a plethora of International Conventions, Covenants, Declarations and Treaties are in place to tackle child labour and provide quality education across the globe. In India, various constitutional provisions ensure right to education, freedom from exploitation and healthy childhood. The CLPRA, 1986 and RTE Act, 2009 were implemented with the same objectives. However, the CLPRAA, 2016 is contradictory to the international policy framework. It is curtailing the smooth implementation of the Right of Children to Free and Compulsory Education Act, 2009.

[1] *id.*

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MEDIA TRIAL VIS-A-VIS RIGHT TO FREE SPEECH - A CRITICAL ANALYSIS

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ABSTRACT

In a democracy, the right to freedom of expression, and press freedom, is fundamental. There is still a need for certain rights to be supported by law, but equality is not entirely unlimited or absolute. The role of the media cannot be denied because it keeps the public informed, trained and alert. It often acts as a watchdog for the government's functions and corruption, making them publicly accessible through different media sources, such as television, radio, and newspapers. Therefore, it provides a chance to address topics entirely for free. But, media today are seen to serve as "public court" as well as are trying to intervene with the court proceedings, which overlooks the fundamental difference between an "accused" and a "convict," which takes into account the golden principles of "pronouncement of innocence to the point where it proves guilty." The analysis concentrates on the equilibrium between independence and limitations.

Trial by media reveals various facets of society. This article examines how such a media trial impacts the accused's right to a fair trial and the tension between press freedom, fair trial and judicial independence. And the culture that has a direct effect on every Constitution's judicial system, and we cannot deny the fact that India itself is a significant example of how much he is the most extraordinary victim of the act of the media trial in the field of judgements.

The study shows that lawyers conclude that judges changed their decisions because of media manipulation and that the verdict was influenced by an "extensive review of cases by the media before the judicial process was completed." It also states that "India has long remained reluctant to allow unrestricted access by the media to its functions and deliberations." People will suffer tremendously if external influences of some sort vitiate the decision-making process. In cases under investigation, research was carried out on media interference. The literature suggests that the media trial is a complex mechanism in which individuals are condemned without being heard.

Keywords – Media Trial, Fair Trial, Judiciary, Justice, Judgements, Contempt, Accused, Victim, miscarriage of Justice.

INTRODUCTION

In the present scenario, the media houses are also seen as "public courts" and begin to interfere with the proceedings of the Court that miss the crucial difference between "accused" and "convict," to maintain the golden standards of "innocence presumption until it has proved itself guilty." Therefore, prejudicing the public, even the courts, that the accused, who is supposed to be innocent, is believed to be a criminal living without addressing all his rights or freedoms. The solution to these issues is often a sensitive issue. These questions have not been adequately answered and are urgently needed to deal with this problem.

In simple words, free speech or freedom of expression means freedom to say what is felt and regarded as the first condition of freedom. It is the manifestation of thinking in words with no restrictions at all. It is seen as an inherent right and is not provided for by the state or the government. But by any individual in its natural character, it is an innate right. It does not mean that the constitutions of different countries cannot guarantee it. The protection of the right to freedom of expression is paramount in a liberal democracy. This provides a chance to address topics entirely for free. Free speech means communicating ideas regardless of the medium used. Such rights must always be supported by law so that no one is robbed of them.[1]

Press freedom is essential in a democratic society as it serves the public interest by delivering views and information without prejudice. It is an anticipation that the press will neutrally communicate news so that the public has no impact or distortion on the real problem. The press is a robust tool for holding the government accountable for its acts of violence. Much as "freedom of expression" should not limit the "freedom of the press," too. The "freedom of the press" can be enforced based on "reasonable limits," as set out in Article 19(2) of the Indian Constitution.

The role of the media cannot be denied as it informs, educates and alerts the public; it is regarded as the "fourth pillar" of democracy. It acts as a watchdog for the functions and corruption of the government by making them

[1] D D Basu, Commentary on The Constitution of India, Wadhwa and Company Nagpur 6th Ed., 2019.

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available to the public in different media such as TV, radio, journals, etc. But, at the same time, another problem has to be looked at: the press often tries to sensationalize news and misrepresent reality so that it catches people's attention to keep up with the competition in this region. It is an organization that begins to judge any problem by blatantly ignoring the 'presumption' concept rather than allowing the citizens to know any evidence. There are cases in which the media go beyond their limitations. It can also pose a risk to the right to a fair trial. For these purposes, press freedom must act within acceptable limits like all other freedoms.

Media, neutrally distributed to society, are considered preferred rather than conduct trials by media that may be contrary to the fair trial. If the press reports a wide range of issues subjugated in a pending case before a Court, the problem reaches its height. It publishes opinions and facts that clearly harm the interests of the parties. The judicial institution can administer a fair trial. The trials through the media should be prevented, or the judiciary should intervene.[1]

It is essential to fix this problem of the "media trial." Press freedom should not be such as to hurt people or culture as a whole. The media should be accountable for their behaviour, and therefore their liberty cannot be absolute, like any other right.

MEDIA TRIAL

The media trial is undoubtedly an unreasonable intrusion in the judicial process. First of all, it would be helpful to try to identify what the "media trial" really entails before examining the question of the justifiability of media trials. 'Proceedings' is a word related to the judicial process. Any justice system is essentially subject to a fair trial for the accused. Trials are simply court proceedings. India is a country where everyone is curious to learn about sensational and high-profile events. People themselves begin to gather information to guide the case. In this process, the media publish themselves in journals, blogs and news outlets, publishing their own version of facts about the people's hunger for these sensations. This is referred to as research journalism that is permitted in India. In media and media proceedings, the force of influence and of revolutionizing masses to perceive a guilty or innocent intellect. Media proceedings are not only a legal matter. It also constitutes a political problem. It destroys the lawyers of the legal path on the one side.[2]

On the other hand, it distracts the laypeople, the 'public in the republic,' from fundamental problems such as economic catastrophes, unemployment or increasing rights. Authoritarian regimes often have invisible diversion ministries that manifest themselves in the media. Democracy demands constant watchfulness.

In 2015, Justice Kurian Joseph, during his address at the Bar Summit in Chennai, while citing the pressure on the courts in the Nirbhaya rape case has pointed out that "lawsuits still unresolved, the media trial should be evaded, thus avoiding the immense burden caused by this.

"Before a case is over, stop trying (cases) in the media. Don't ever pursue a dispute in the press; it pressurizes on judges and citizens as well." He recalled that one day a judge who dealt with the case told him, They would hang him if he didn't offer the penalty. He referred to the pressure amount produced. If I hadn't punished them, they'd be (like) that if the press had already made their decision. However, he continued, It wasn't because the media had said it, but because it had reasons to give the punishment." [3]

THE IMPACT OF MEDIA TRIAL

Now the media is a "public court", which can also be named "Janta Adalat", and has started interfering in court proceedings to the extent that even before the Court, it takes its own decision. While the "innocence presumption, whether it is not found guilty" and the "criminality beyond reasonable doubt" laws remain at stake, the primary distinction between an accused and the accused has been disregarded entirely. We now have a mass trial where the media itself investigates the accused and generates a public opinion even before the Court becomes aware of the case. This procedure obstructs the public, leading to the assumption many times that the accused, who is thought to be innocent, is a criminal with no right or freedom of remedy. Where there is unfair coverage of prosecution and the media believes, through its trial, that the accused person is a suspect, it will become prejudice to the "administration of justice", and the case is of media contempt.

[1] Juhi P. Pathak, Introduction to Media Laws and Ethics, 2014, Shipra Publications, New Delhi.

[2] Madhavi Goradia Divan, Facets of Media Law, 2nd Ed., EBC Publications.

[3] DNA India Newspaper, May 19th 2016, Source PTI, https://www.dnaindia.com/india/report-sc-judge-cites-nirbhaya-case-says-no-to-media-trial-2108070, accessed on 04/12/2021.

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To a point, it is agreed that the media catalyzes the quick success of the trial and media advocacy by publicizing those evidence, as best seen in Jessica Lall's case. However, until the trial has started, the media cannot declare the innocence or guilt of the people involved in the case based on their opinion. The judge, and not the media, is responsible for determining the guilt or innocence of an individual following our constitutional scheme. In addition, an individual's credibility may be irreparably damaged if he/she is prematurely convicted.[1]

THE INFLUENCE OF MEDIA OVER THE SOCIETY

Paid news from any political party or other large organization may quickly mislead the media from its proper aim, and the media, instead of being a light to the world or an eye-opener, becomes a pawn in the hands of powers. As a result, media that was once for the people, by the people, and of the people has now become for the sponsor, by the sponsor, and of the sponsor. These difficulties can sometimes give rise to media trials, in which the media proves someone guilty even before a court of law can decide.[2]

The Supreme Court, in the case of *State of Maharashtra v. Rajendra Jawanmal Gandhi*, remarked that a trial by press, electronic media, or public agitation is the polar opposite of the rule of law. Parties have a constitutional right to a fair trial in a lawsuit before an impartial panel uninfluenced by press dictation or popular opinion. This might quite easily result in gross injustice; thus, a Judge should be wary of any such pressure and carefully adhere to the principles of the law.[3]

The media's gaze has entered the personal life of the primary culprit in the Sheena Bohra Murder Case, Indirani Mukherjee, who the media have extensively accused. Every part of her personal life and character was scrutinized in public by the media. There have been countless occasions when the press had undertaken an accused's trial and issued a verdict even before the judiciary decided.

Trial by Media: Free Speech versus Fair Trial Under Criminal Procedure (Amendment to the Contempt of Courts Act, 1971), the Law Commission's 200th report, has advised a law prohibiting media from revealing anything prejudicial to the accused's rights from the time of the arrest to investigation and trial in criminal proceedings.[4][5]

VIEWS BY THE INDIAN COURTS OF MEDIA TRIAL

In India, the courts have the power to pass pre-publication or pre-broadcasting injunction or prior restraint order in sub-judice matters. The two-pronged test of necessity and proportionality has to be satisfied before ordering postponement of publication. Moreover, the injunction order should only be passed if reasonable alternative methods or measures would not prevent the said risk. The defendants must send the plaintiff a written notice, through electronic means, before airing any storey involving the plaintiff, obtaining his viewpoint. Suppose the plaintiff refuses to speak or does not respond within a reasonable period. In that case, he will not be forced to do so, and the story will be broadcast with the information that the plaintiff has declined to speak to defend himself.[6]

The Press Council of India Act established a body known as the Press Council of India, a statutory self-governing entity. Its overarching goal is to safeguard journalistic freedom. The Council may caution, reprimand, or punish a newspaper or news agency for their professional misconduct, a violation of a code of journalistic ethics, or an offence against the public interest. It might also denounce the government or other organizations

[1] Abilasha Rathore & Kanika Satyan, Judicial Intervention in the Sub-judice -The emerging issues of Trial by Media, Bharati Law Review, 2015, http://bharatilawreview.com/uploads/46-57_Abhilasha_Rathore_Kanika_Satyan_FF.pdf, accessed on 06/12/2021.

[2] Nandi, K. (2011). Investigative Role of Media: Responsibility to the society. http://docplayer.net/50431743-Investigative-role-of-media-responsibility-to-the-society.html, accessed on 02/12/2021.

[3] *State of Maharashtra v. Rajendra Jawanmal Gandhi (1997) 8 SCC 386.*

[4] 200th Report of the Law Commission on "Trial by Media: Free Speech v. Fair Trial Under Criminal Procedure (Amendments to the Contempt of Court Act, 1971)".

[5] Sudhanshu Ranjan, 'Media on Trial', The Times of India, https://timesofindia.indiatimes.com/edit-page/media-on-trial/articleshow/1460248.cms, accessed on 04/12/2021.

[6] Justice Manmohan in Shashi Tharoor's defamation case on Arnab Goswami and Republic TV news channel, https://www.opindia.com/2017/12/while-republic-tv-win-the-case-the-news-minute-looks-for-shashi-tharoors-victory/, accessed on 03/12/2021.

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interfering with journalistic freedom. While conducting an inquiry under the Press Council Act, it has the same powers as a civil court in deciding a dispute under the Code of Civil Procedure. The Council might also order that the council's findings be published in that defaulting newspaper. The Council has the authority to take action against infringing periodicals based on complaints brought to it. The Press Council protects press freedom and upholds and enhances the standards of newspapers and other organizations. It is mainly made up of newspapers responsible for policing the behaviour of fellow members.[1]

As a result, the Council has taken on the function of a self-regulating body of the newspapers together. In addition to conducting investigations into complaints presented before it, the Council also has the authority to review allegations *suo moto*. It has the capacity to issue observations against officers, including the government if it deems as essential for the discharge of its tasks. In a nutshell, the Press Council is a statutory, quasi-judicial, self-regulating organization with no teeth (power to impose legal penalties). The influence of the Press Council of India is limited, and the rise in media sensationalism and rivalry among newspapers has expedited the media's departure from conventional accountability and ethical principles. As a result, the invasion of individual and collective rights is increasing, necessitating the need for a reinforced statutory entity in the media industry.[2]

The Relationship Between The Media And Judicial Independence – Madrid Principles

The International Commission of Jurists, the Centre for the Independence of Judges and Lawyers, and the Spanish Committee of UNICEF sponsored a meeting in Madrid, Spain, in January 1994, with attendees from 40 nations. The meeting's goal was to investigate the link between the media and judicial independence as protected by the United Nations Principles on the Independence of the Judiciary, which was established in 1985. The gathering also aimed to develop guidelines addressing the nexus between free expression and judicial independence. The preamble to this text highlights the Rule of Law. For the Rule of Law to prevail, freedom of speech, particularly freedom of the press, becomes a crucial component in a democratic society. The courts and the media are both given tasks and obligations under this document.

The fundamental concept enshrined in the document is freedom of expression, including media freedom. It is the role and right of the media to acquire and transmit information to the public. And also, to comment on the administration of Justice, including cases before, during, and after the trial. The core idea is not subject to any specific constraints, and its application is quite broad.[3]

LANDMARK JUDGEMENTS

There is a very different category of media people in the criminal court system who cover high-profile trials. The way the proceedings contain witnesses, testimony and critical elements may also be influenced by this.

1. Y.V. Hanumantha Rao v. K.R. Pattabhiram and Anr. (3rd September 1973)

A curfew has been implemented in a limited area of Andhra Pradesh. The Court considered the curfew, and no law was applied to uphold the curfew to be arbitrary. "Deccan Chronicles," while the curfew law was pending, published it and clarified why the case was enforced in conjunction with its historical context. At that time, it was observed that no comment should be made in a dispute that could raise significant risks of bias to any trial. In contrast, a dispute continued in a courtroom, e.g. prejudice to any judgement taken by the judge, the defendant or any other general public having access to such news media. In this case, the fact that reality was established before the judicial decision was still seen as an appropriation of the Court, even though someone who published such news opines that it is valid.[4]

2. R.K. Anand v. Delhi High Court (29th July 2009)

The Supreme Court examined the main issues involved in the media dispute. The case arose from an NDTV private T.V. in the infamous BMW hit and point that ensued in the death of six people by speeding a BMW car

[1] Media Organisation, Orissa State Open University, http://osou.ac.in/eresources/DJMC-01-BLOCK-03.pdf, accessed on 06/12/2021.

[2] id; Murali Krishnan, Hindustan Times, October 13th 2020, https://www.hindustantimes.com/india-news/media-trial-causing-great-damage-to-judiciary-attorney-general-kk-venugopal/story-XXroXLeMrdHYAKP85SjsgL.html, accessed on 03/12/2021.

[3] Nabeela Tareen, 'Salient features of The Madrid Principles on the principles on the relationship between Media and Judicial Independence', https://legaldesire.com/salient-features-of-the-madrid-principles-on-the-principles-on-the-relationship-between-media-and-judicial-independence/, accessed on 02/12/2021.

[4] Y.V. Hanumantha Rao v. K.R. Pattabhiram & Anr. AIR 1975 AP 30.

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driven by a wealthy family. A fatal connection between the public prosecutor and his witnesses and the defence. While the proceedings were pending, NDTV broadcast a sting proceeding to reveal how a senior defendant applied himself to a charge negotiated with the help of a public prosecutor specializing in defence. The Delhi High Court opened the Suo-Moto proceeding and debarred the public prosecutor and defendant council from practice for four months by making them guilty of contempt of court. The appeal was eventually referred to the Supreme Court, and the NDTV was convicted by a media court trial, which was not allowed to display the stings until it received permission from the High Court. The Supreme Court of India dismissed the argument, stating that such a path would not be an exercise in journalism, but rather the media would be working as a special vigilance agency for the court. The Supreme Court ruled that NDTV was not guilty of media trial, which can be defined as "the influence of television and newspaper coverage on a person's reputation by fostering a widespread perception of guilt independent of any judgement in a court of law." The Court denied R.K Anand's appeal and gave him a notice for the increase of sentence.[1]

3. Manu Sharma v. State of Delhi (Jessica Lal Case)

This case is famously recognized as Jessica Lal Murder Case, where the incident resulted from a young woman's cold and bloodied murder in 1999. She was a waitress at a prominent Delhi restaurant. Manu Sharma, a key accused, was a son of a strong politician. In 2006, all nine convicted were acquitted by the Court in Delhi. As to the acquittal, a considerable amount of public dismay arose. The media fought against the corruption of the proceedings by utilizing the political links used by the accused, how the witness was made into a hostile and how shoddy the prosecution was. The media reported on the ludicrous lack of Justice by the public. The Delhi High Court, later on, ordered the case to be re-examined without waiting for the government's appeal against the acquittal of the accused. The retrial, mainly due to media scrutiny, led to the conviction of defendants who had been released earlier.[2]

4. Nupur Talwar v. Central Bureau of Investigation (Arushi Talwar Case)

It's a case involving the murder of a 14-year-old teenager in her home, which drove tabloid journalism to a new low in their defamatory coverage of the inquiry; portions of the media demonstrated a reckless disregard for the law. Aside from the trial by media, the incident prompted significant legal problems that necessitate remedy, including invasion of privacy, breach of confidence, and defamation of both living and deceased people. The media delved into the personal lives of Aarushi and her parents, publishing Aarushi's private communications and portraying Aarushi's father as a killer. The victim's parents were framed for their daughter's murder even before the case was proven in court.

Due to the media's involvement, which biassed the judges' minds, the victim's parents were given a life sentence. The parents of the victim appealed the judgement. After hearing the appeal, the Allahabad High Court acquitted the parents of Arushi Talwar, holding that the CBI had presented no evidence of the parents' guilt beyond a reasonable doubt. The media has skewed the outcome of the Arushi Talwar case by accusing the victim's parents of murder before the court's decision.[3]

5. Sexual Harassment controversy of Jasleen Kaur (August 2015)

The Jasleen Kaur harassment scandal arose from Jasleen Kaur's claim of sexual harassment levelled against Sarvjeet Singh in 2015. Jasleen Kaur, a Delhi lady, accused a guy, Sarvjeet Singh, of harassment on Facebook with a photo in August 2015. The post quickly went popular on Indian social media and drew a lot of attention. She gained significant support for speaking out against eve-teasing and sexual harassment, including from national celebrities and lawmakers. Sarvjeet was arrested the next day and released on bail later on. The media conducted a Trial in which Sarvjeet was tagged on national news networks as a "National Pervert" and "Delhi ka Darinda" (Delhi's predator). An eyewitness vouched for Sarvjeet's innocence a few days after the occurrence, increasing genuineness to Sarvjeet's narrative.

After four years, the Indian Court cleared Sarvjeet of all accusations and declared him innocent in 2019. However, he had lost his work by that time and could not locate another job due to media publicity.[4]

[1] R.K. Anand v. Registrar (2009) 8 SCC 106.

[2] Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1; Venkatesen J., Supreme Court confirms life term to Manu Sharma - The Hindu, April 19th 2013, http://www.thehindu.com/news/national/supreme-court-confirms-life-term-to-manu-sharma/article403180.ece, accessed on 07/12/2021.

[3] The Arushi Murder case; Nupur Talwar v. Central Bureau of Investigation and Anr. AIR 2012 SC 1921.

[4] The Logical Indian, https://thelogicalindian.com/news/saravjeet-singh-jasleen-kaur/, accessed on 04/12/2021.

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CONCLUSION

We can conclude by saying that the trial by media has more of a negative impact than of any positive ones. The courts must appropriately govern the press. Wherever a government-controlled media doesn't benefit democracy, the credibility of the individual and the judgment of the courts are harmed even further by the consequences and results of unexplained publications. Media trials have, therefore, only helped the people in a few cases because it does not happen, so it has to be restricted. Media, as many call it, "the general public's eyes and ears." Justice Markandey Katju questions 'if lines can be drawn for the medical and legal profession, why not for media?'. There is a thin-line difference between control and regulation, where the former has no freedom, and the latter has freedom but is subjected to reasonable restrictions.[1]

Media is our society's backbone. The dependence of the general public on it, the confidentiality and the faith entrusted to it, which blindly embraces the reality of media-published news, is to become a responsible media. In fact, this requires the presence of responsible media. No liberty can be absolute, as precious as it may be. This also applies to the freedom of the press. Not only is press freedom subject to existing laws of our country, like contempt and defamation, but it also bears responsibility for the community in which it works. It should take on specific tasks in fulfilling its function.

The press has a responsibility to uphold such integrity and decorum and avoid consent, in the presence of veritable newspapers or fair commentaries, to the vulgarity, obscenity, character killings, and violation of citizens' privacy incitement of violence, disorder and disintegration. The media deeply feels this rule of subjugation and complains that courts do not regard the law of subjugation during the trial. However, the sub-judge rule must be urgently liberalized and enforced only in crucial cases that would possibly impact the trial and not in any event that could have an extensive effect on the trial. Another major restriction to media stings and trials is public interest. When there is no public interest, the media loses ground and becomes self-serving or manipulative.[2]

Norms That the Media Should Follow For Any Media Trial To Avoid Any Issues on The Path of Justice Under The Constitution of India Are –

As a responsible media outlet, it should adhere to the following guidelines while reporting on a crime or other connected news:

- The case's accuracy must be maintained and checked before it is reported/published, and seen by everybody.
- Every caution must be taken to prevent any opinion-based writing, i.e. supporting or defaming any person or party.
- The right to privacy shall not be infringed upon.
- When reporting court proceedings, accuracy is of paramount significance.
- Reports that are based only on suspicion or personal opinion will not be publicized.
- It is always forbidden to express appreciation for an act of violence.
- The title must not be meant to be dramatic or provocative on purpose; it must be appropriate for the content printed beneath it.
- In the event of an error, rectification must be published as soon as possible.

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THE ABROGATION OF ARTICLE 370 -ITS PROPRIETY AND IMPLICATIONS

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ABSTRACT
The State of Jammu and Kashmir holds a unique place in Indian History and its polity. Article 370 determined the relationship of the State of Jammu and Kashmir with the rest of India. By virtue of this article a special status and autonomy were bestowed on the concerned State. Article 370 extends a key provision added under the said Article, known as Article 35A, which provided for a special privilege to the permanent residents of Jammu and Kashmir. The revocation of Article 370 along with its subsidiary article and the annulment of special status have raised a cardinal question on the democracy and violation of the basic structure of the Constitution of India and also on the nature of Jammu and Kashmir's accession to the Indian Domain. The main intention of this paper is to analyse the constitutional validity of revocation of Article 370 and its propriety with its implications.

Key Words: Jammu and Kashmir, Accession, Implications, Constitutionalism, Special Status

INTRODUCTION

Article 370 of the Constitution of India relates to the State of Jammu and Kashmir is nearly Seventy years old. 26th January 1950 holds a very important place in the history of Indian democracy because the Constitution of India was enforced and with this Article 370 came into existence. Article 370 provided special status to the state of Jammu and Kashmir (J&K), a landlocked territory that lies in the northwestern part of the Indian subcontinent. The territory called paradise on earth became a disputed territory after the partition of the Indian subcontinent in 1947.[1]

For about a hundred years until 1858, large parts of the Indian subcontinent were ruled by the British East India Company. Later in the year 1858, the British Crown assumed sovereignty over Indian territory from the said East India Company. When the British Crown gained sovereignty, there were around 565 Princely States, which though linked to the Indian territory but was not annexed to the British Crown. These States under the personal rule of their Princes and Nawabs enjoyed internal autonomy and were allowed to govern their traditional matters like health, education, and development. But they traditionally paid their allegiance to the British Crown as the British Government was responsible only for defence and foreign affairs. The Government of India Act, 1935 prescribed for a credible federation of the provinces and the Princely States as a unit. But the Princess and the Nawabs of the princely States did not give their consent for accession, thus the federation became a reality only for the provincial Government of British India but not for the Princely States.[2] The status of these princely states was altered through the Indian Independence Act which was passed on the 18th July 1947. At this crucial juncture of partition in 1947, all the princely states including Jammu and Kashmir were asked to join either of the two dominions, India or Pakistan based on their geographical indication and wishes of the people or the rulers could even decide to remain independent.[3]

THE ACCESSION OF JAMMU AND KASHMIR TO INDIA

Jammu and Kashmir known as '*paradise on earth*' before the partition was the second-largest princely state which was ruled by the Dogra rulers. The Independence of India Act, 1947 which was passed by the British created two Dominions India and Pakistan. The Princely states were provided the option to join Indian dominions or the Pakistan territory. Jammu and Kashmir State one amongst the Princely States was granted the autonomous identity, based on the majority of the Muslim population. The state was not bought within the

[1] SYED RIFAAT HUSSAIN, RESOLVING THE KASHMIR DISPUTE: BLENDING REALISM WITH JUSTICE, THE PAKISTAN DEVELOPMENT REVIEW 1007-1035 (Pakistan Institute of Development Economics, Islamabad)

[2] SUMIT DUTT MAJUMDER, ARTICLE 370 EXPLAINED FOR COMMON MAN, 18(Niyogi books, New Delhi 2020)

[3] Hem Raj Singh, *Legal Standing of J&K Accession*, (Vol XXV, Part12,)p. no 13 LAWYERS UPDATE, December 2019

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process of integration of the Indian Princely States, which was united with the Indian territory through the Instrument of Accession.[1]

Constituent Assembly was formed to frame a Constitution for Independent India. Amongst the various impediment faced by the Constituent Assembly, the most critical one was the incorporation of the numerous Princely States which gained sovereignty and became independent through the Act of 1945. Most of the Princely states (except states of Junagadh, Hyderabad, and Kashmir) acceded to the Domain of Indian by suitable instruments. While the two Dominions had been created to free the Muslim minorities from the fear of being dominated and suppressed by the Hindu majority, this idea did not reflect in the choice made available to the Indian States, as the Indian States could join either of the two Dominions as long as the ruler of the State saw it fit to do so and a valid instrument of Accession was duly executed and accepted.[2]

The State of Jammu and Kashmir had not acceded to either India or Pakistan instead, it had a standstill agreement with both the Dominions. Two months after independence, Kashmir was invaded by the Pathan tribesmen after Indian independence in August 1947. Hence, Maharaja Hari Singh wrote to Lord Mountbatten seeking military help. Mountbatten in his reply mentioned that "*It is my government's wish that as soon as law and order have been restored in Jammu and Kashmir and her soil cleared of the invader, the question of the State's accession should be settled by a reference to the people"*.[3] This comment has said to have sowed the seed of the Kashmir dispute. Later in the year 1947, on October 26th, Maharaja Hari Singh signed the 'Instrument of Accession' which gave recognition to the special status of Jammu and Kashmir.

BACKGROUND OF INCLUSION OF ARTICLE 370

The Drafting Committee of the Constitution of India sought to incorporate some of the terms of the Instrument of Accession into the Constitution to reflect the legal relationship between the Union and the State as it existed at the time.[4] This ultimately led to the crystallization of Article 370, which gave recognition to the special status of Jammu and Kashmir within the framework of the Constitution. At this point, the government of India gave an assurance that the people of Jammu and Kashmir state through their constituent assembly would frame their state constitution and determine the center jurisdiction over the State.

The accession of Jammu and Kashmir State into the Indian Union was approved by Jammu and Kashmir Assembly in the year 1956. Now the fundamental reason for drafting an exclusive constitutional Article for the state was the Schedule which was annexed to the Instrument of Accession signed by the Maharaja on October 26, 1947. Three days after Kashmir acceded to India, Maharaj Hari Singh appointed Sheikh Abdullah as the Head of the Administration through an *Emergency Administration Order* drafted on 30th October 1947.[5] The Emergency Administration was replaced an interim government was appointed with Sheikh Abdullah as the Prime Minister. Two major developments took place one was the formation and inclusion of Article 370 to the Indian Constitution and the second development was to bring the necessary changes to be brought to the Constitution of Jammu and Kashmir by the newly constituted Constituent Assembly. The Schedule of the Instrument specifically mentioned that the Dominion of India, to which the state had acceded, would be empowered to make laws for Jammu and Kashmir only on matters pertaining to defence, external affairs, and communications. Clause 7 of the said Instrument did not bind the Jammu and Kashmir state to accept any future Constitution of India.

On framing the Indian Constitution in the year 1949, Sheikh Abdullah and his three colleagues from the National Conference represented Kashmir in the Constituent Assembly in Delhi.[6] The Government of Jammu and Kashmir had proposed Article 306A in a certain form which was later referred to as Article 370 to the Indian Constitution. Article 370 of the Indian constitution is a temporary provision that grants special status to

[1] MOHAN KRISHEN TENG, KASHMIR ARTICLE 370, 3 (published by Anmol Publications, 1990) available at http://ikashmir.net/article370/index.html

[2] Supra note 2, p. no 14

[3] Government of India, *White Paper on Jammu and Kashmir* (February 1948), p.no 46-48: Inderjeet Sambyal, *Accession day*: *History and Facts*,(October 30, 2021, 7:45 PM), https://www.dailyexcelsior.com/accession-dayhistory-and-facts/

[4] B. S. RAO, THE FRAMING OF INDIA'S CONSTITUTION: Select Documents, 567 (1967).

[5] Supra note no 2. P. no 16

[6] H.O. AGARWAL, KASHMIR PROBLEMS ITS LEGAL ASPECT,35 (Central Law Publications, 2010)

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Jammu and Kashmir under Part XXI of the constitution of India which deals with temporary, transitional, and special provisions, that have been accorded to the state. Under this article the Indian Parliament cannot increase or reduce the borders of the state...all the provisions which apply to other states are not applicable to Jammu & Kashmir.[1]

REVOCATION OF THE SPECIAL STATUS

Seventy years later on 5th August 20019, the Union Government through two Presidential orders revoked the special status which was enjoyed by the State of Jammu and Kashmir since 1954.[2] The President of India, in the exercise of powers conferred to him by clause (1) of Article 370 issued the Constitutional (Application to Jammu and Kashmir order), through this order, the special status enjoyed by the people of Jammu and Kashmir for a very long period was restrained. A bill on the reorganisation of Jammu and Kashmir was introduced in the parliament to repeal the provision of not only Article 370 but also Article 35A of the Indian Constitution which empowered the Jammu and Kashmir State legislature to define the permanent residents of the state and the special rights and privileges provided to them. [3] Article 35A was not included in the original draft Constitution of India, but later on, it was imbibed to the Constitution of India through the Presidential order of 1954. To guarantee these special rights and privileges, this Article clearly says that no act of the State legislature which is guaranteed under this provision cannot be challenged for the violation of the Constitution or any other laws.

Immediately after the abrogation of Article 370 of the Indian Constitution, the Jammu and Kashmir Reorganisation Act 2019 was passed by the Parliament, which divided the state into two union territories in the name of Jammu and Kashmir and Ladakh. Thereby depriving the people of a separate government which was formed at the inception of the Indian Constitution. The territory was brought exclusive control of the Central Government which has led to the gross violation of the federal structure of the Indian Constitution.

THE IMPLICATION AFTER REVOCATION OF THE SPECIAL STATUS

The revocation of special status to the people of Jammu and Kashmir has affected not only the fundamental rights but has also violated the federal principles laid down by the Indian Constitution. It has modified the term on which the State had acceded to the Indian Union through the instrument. India has always claimed that Jammu and Kashmir are an integral part through the Instrument of accession but, it has never shown this instrument publicly which casts serious doubts on the already fragile Indian claim on Kashmir.[4] At the same time the promise of a plebiscite was reiterated in the 1948 White Paper on Jammu and Kashmir, which stated that " in accepting the accession, the Government of India made it clear that they would regard it as purely provisional until the will of the people of the State could be ascertained".[5]

The revoked article 370 of the Indian constitution allowed the President of India to revoke it by public notification. However, the recommendation of the Constituent Assembly of Jammu and Kashmir was a key requirement for such notification.[6] In the absence of such assembly, it could be revoked with the concurrency of the State Legislative Assembly. At the time of the revocation of Article 370, the State was under the Presidential rule and the State Assembly had ceased to exist and governor being head of the State, his concurrence was obtained to render the provision of Article 370 irrelevant. It is to be noted that the governor is the selected representative of the President and the consultation of the Kashmir political leaders who were under

[1] Kashika Mahajan,*Abrogation of Article 37*0, volume 8, Issue 9, INTERNATIONAL JOURNAL FOR SCIENCE AND RESESARCH, September 2019

[2] See 'The Constitution (Application to Jammu and Kashmir) Order 2019(5 August 2019) (November1, 2021, 10:30 PM),: 'Declaration under Article 370 (3) of the Constitution' (6 August 2019) (November 1,2021, 10:40 PM)

[3] Sheikh Aamin Hussain, *Abrogation of Article 370 and its Consequences: - An analytical study,* Volume 9, Issue 4 , INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS, April 2021; See Supra Note 2, p. no 109

[4] Syed Abdul Rasool, *Kashmir Conundrum and the International Law, Modern Diplomacy*, June 27, 2020, (November 13, 2021, 7:30 PM), https://moderndiplomacy.eu/2020/06/28/kashmir-conundrum-and-the-international-law/

[5] White Paper, 1948, pp.2-3

[6] *Article 370 in The Constitution Of India 1949*, INDIANKANOON.ORG, N.D. (November 15, 2021, 6:30 AM) https://indiankanoon.org/doc/666119/

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home arrest were not consulted before taking such a major step. It continues to be under Governor's rule, with no reasonable prospect of election to the assembly at any time soon. Even the promised panchayat elections, which is the foundation of grassroot democracy, have not been held due to continuing militancy and the pandemic. This has violated the basic principle of democracy imbibed in the Preamble as well as the Indian Constitution and has established a severe political impact on the nation.

Article 370 was added to India's Constitution in 1949. It allows Jammu and Kashmir to have their constitution, a separate flag, and independence over all matters except foreign affairs, defence, and communications. This autonomy which was practised for ages has been revoked through the Presidential order. The order has grossly violated the basic structure of the accession as well as the federal principles of the country. Initially, certain parts of the state celebrated the abrogation of Article 370, now seems to have a second thought about the wisdom enjoyed by them. The abrogation of Article 370 had widened the definition of the term "domicile" and made it easier for the non-resident to acquire land in the state.[1] There is a fear caused amongst the permanent residents that it could open the floodgates to complete change the demographics of the State.

The Jammu and Kashmir Reorganisation Act, 2019 has altered the land laws and the new land laws are implemented by the union government. The requirement of being a permanent resident to buy immovable property in the territory has been waived of which has created a sense of insecurity amongst the people of the region of Jammu and Kashmir.[2] The requirement of being a permanent resident has not been replaced by the term domicile, so it has made possible for anyone from rest of the country to invest and buy land in the region.

The biggest drawback of abrogation of Article 370 was the procedure by which the special status given to the people of Jammu and Kashmir was revoked. The State was under lockdown and the need for proper debate and the constitutional amendment was grossly missing. The State could have been brought into the national mainstream, legitimately by considering the approval of the people of Kashmir, which could have been easily secured if the permanent residents of the territory were willing to follow all the Indian legislation and the Constitution of India.

The abrogation of Article 370 has also curbed the freedom of the press in Jammu and Kashmir. This has led to a lot of problems of disinformation and is causing great apprehension amongst the press and social media. The newspaper does not contain the current political situation nor the statement of any political leaders, the newspaper mostly carries advertisement or government notifications. Sometimes the advertisements are abruptly cancelled, this action seriously violates the freedom of the press, which is implied in the freedom of speech and expression in the Constitution.[3]

CONCLUSION

Since the inception of Article 370 to the Indian Constitution granting of special status to the State of Jammu and Kashmir has been a matter of debate. It has been debated in various platforms and many legal experts are of the opinion that abrogating the provision has put the accession of the state to India in jeopardy. The nature and situation under which the state of Jammu and Kashmir acceded to India is completely a different story as compared with other Princely States who took the major decision at the time of partition in the year 1947. The Jammu and Kashmir reorganisation Act, as well as the Presidential order seems to be unconstitutional and violative of the fundamental rights guaranteed under Article 14 and 21 of the Constitution. Article 370 was extensively considered as carefully drafted in order to ensure the peaceful and democratic accession of the princely state of Jammu and Kashmir to the Indian Union, but by revoking the special status the government has grossly violated the federal feature of the Indian Constitution. In times to come hopefully the Union territory of Jammu and Kashmir will be restored it present status and the government will be able to do justice to the native inhabitant of the territory.

[1] *Kashmir after Article 370,* Volume LV No 34, ECONOMIC & POLITICAL WEEKLY, August 2020.

[2] Muhammad Mutahhar Amin, *Land Laws of Jammu and Kashmir Material Consequences and Political Ramifications,* Volume LVI No4, ECONOMICS & POLITICAL WEEKLY, January 2021

[3] Mohammed Yousuf Tarigami, *Throttling the press in J&K*, The Hindu dated October 18th 2021.

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CRITICAL STUDY ON THE SOCIAL SECURITY OF UNORGANISED WORKERS

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ABSTRACT
People in informal sector ought to be encouraged to grow and prosper if the government want to reduce unemployment and poverty in our country. The unorganised sector contributes significant role in local economic growth and development of the urban economies.

This initiative is a small effort to help understand the quality of life of socio-economic background of the unorganised workers the growing challenges they face.

In this paper we are going to discuss about the concept of unorganised sector its meaning, characteristics, categories, Problems, Challenges and Opportunities for extending Social Welfare Schemes for Unorganized Sector Workers, we also discuss Social Security Measures to Unorganized Sector.

INTRODUCTION
The concept of an informal or unorganized sector began to receive world-wide attention in the early 1970s when the International Labour Organization initiated series efforts to identify and study the area through its World Employment Program Missions in Kenya, Columbia Sri Lanka and Philippines primarily underlined the development strategy based on economic growth in which employment was considered as the prime objective for development.[1] The British Economist Keith Hart in 1971 coined the term informal sector. He made a detailed study of urban Ghana in which the study reported the new entrants, particularly rural migrants, to the labour market in the urban areas were forced to work in the informal sector partly owing to their lack of skill and experience needed for the jobs in the urban formal sector.[2] Since then, the informal sector has been the subject of several studies and seminars covering various aspects like its size, employment potential, its relationship with the formal sector, technological levels etc.[3]

Social security arising out of employment status and provided by employers is largely confined to workforce who are identified as organized workers. Only 0.4% of the unorganized workers in unorganized sector were receiving benefits like provident fund. and this proportion has not changed since 1999-2000.[4] The social security measures such as old age pension, gratuity, employees' state insurance and other insurance schemes are non- accessible to workers of the unorganized sector. A large number of statutes and schemes addressed to different categories of workers are found neither feasible nor practicable. This is because labour relations in the unorganized sector are chaotic and there is no formal employer-employee relationship. But, even if it exists, it is of casual nature.

Since the unorganized sector plays pivotal role in the Indian economy, it needs special attention. Hence, an attempt has been made in this paper to examine the issues and challenges faced by the unorganized workers with a view to overcome the obstacles in the unorganized sector to provide at least a basic minimum social security to the workers.

[1]RS Tiwari, Informal Sector Workers: Problems and Prospects, (New Delhi Anmol Publishers) 2005 Edition ps5

[2]Kishore C Samal, Growth of Informal Sector in India. (New Delhi S.K. Book Agency) 2013 Edition p.160

[3]Report of Second National Commission on Labour, (2002), pp. 596-597

[4]National Commission for Enterprises in the Unorganized Sector, Report on Condition of Work and Promotion of Livelihood in the Unorganized Sector, 2007, p. 4

Definitions and Magnitude of Unorganised Sector
The unorganised sector has grown by leaps and bounds over the years. In India, the term unorganised sector is used commonly in all official records and analyses Changes in trade and technology, accompanied by greater global linkages between nations resulted in threat to worker's income and is particularly in the developing country as there is a rapid expansion of unorganised sector due to increase in employment of poor quality and India is not exception to it. The difficulties in the unorganised sector are multifarious in nature.

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Covering various aspects many efforts have been taken to define this vast segment to identify a common criterion for the identification of unorganised sector enterprises. But the difficulty starts in defining the sector itself to confine them in a comprehensive manner.

DEFINITIONS OF UNORGANISED SECTOR

Some of the definitions of unorganised sector are discussed in detail as follows:

1. Definition of Kenneth King: The word unorganised derives from their being unrecognised in government employment statistics and operating in the main act of the makeshift shelters on urban waste lands, roadsides, and forest fringes.[5]

Unorganised sector could be described as that part of the work force who have not been able to organise in pursuit of a common objective because of constraints such as

a) Casual nature of employment
b) Ignorance and illiteracy
c) Small size of establishments with low capital investment per person employed.
d) Scattered nature of establishments and
e) Superior strength of the employer operating singly or in combination.[6]

The unorganised sector is in no way an independent and exclusive sector. It is linked to, or in many cases depended on the organised sector and the rest of the economy through a variety of linkages. It depends on the organised sector for few raw materials and other capital requirements, generation of employment, marketing facilities, and so on. The sub-contracting model is used by the formal sector for engaging labour in the unorganised sector.[7]

[5]Meenu Agrawal Rural Women Workers in India's Unorganized Sector. (New Delhi: New Century Publications) 2012 Edition, p41.

[6]Government of India, Report of National Commission on Labour (1969) p. 417. [7]Supra note 4, at 602.

2. Definition by 15th International Conference of Labour: According to International Conference of Labour Statisticians the terms unorganised and informal sectors are often used interchangeably. The informal sector may be broadly characterised as consisting of units engaged in the production of goods or services with the primary objective of generating employment and incomes to the persons concerned.8 National Commission for Enterprises in the Unorganised Sector provides definition of unorganised sector as follows:[9]

Unorganised Sector: The unorganised sector consists of all unincorporated private enterprises owned by individuals or households engaged in the sale and production of goods and services operated on a proprietary or partnership basis with less than ten total workers.

Unorganised Workers: Unorganised workers consists of those working in the unorganised enterprises or households, excluding regular workers with social security benefits, and the workers in the formal sector without any employment/social security benefits provided by the employers.

3. Definition of Unorganised Sector and Unorganised Workers Under the Unorganised Workers Social Security Act 2008:[10] Unorganised Sector means an enterprise owned by individuals or self-employed workers and engaged in production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.

Definition of Unorganised Workers: Unorganised sector and includes a worker in the organised sector not covered by any of the acts mentioned in schedule II of the Act.[11]

From the analysis of definitions, it is clear that the unorganised sector is a term that eludes definition as the sector is too vast Unorganised worker means a home-based worker, self-employed worker or a wage worker and varied to confine within a conceptual definition.

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Magnitude of Workforce In The Unorganised Sector

The Economic Survey of 2018-19, released on July 4, **2019**, says "almost 93%" of the total workforce is '**informal**'. But the Niti Aayog's Strategy for New **India** at 75, released in November 2018, said: "by some estimates, **India's informal sector** employs approximately 85% of all **workers**".

More than 90% of workforce and about 50% of the national product are accounted by the informal economy. A high proportion of socially and economically underprivileged sections of society are concentrated in the informal economic activities.[12]

[8]International Conference of Labour Statisticians, Resolution Concerning Statistics of Employment in the Informal Sector, IS (Geneva: ILO). 1993.

[9]Supra note 5, at 3.

[10]Section 2(1) of the Unorganised Workers' Social Security Act, 2008. [11]12 Ibid., at Section 2(m).

[12]Government of India, Report on Employment-Unemployment survey, Vol.I, Ministry of Labour and Employment, (2013-14) p.5.

CHARACTERISTICS OF UNORGANISED LABOUR

The unorganised workers suffer from excessive seasonality of employment, lack of formal employer-employee relationship and inadequate social security protection.[13] Unorganised sector or informal economy is replete with diverse concepts and lack uniformity of definitions. Based on some of the specific characteristics, the unorganised enterprises could be distinguished from formal sector like no paid leave, no written job contract, and no social security to the workers.[14]

The high level of growth of Indian economy during the past two decades is accompanied by increasing in formalisation. There has been new dynamism of the informal economy in terms of output, employment, and earnings. Faster and inclusive growth needs special attention to informal economy.[15]

The unorganised labour is characterised as follows:[16.]

- It is in general a low wage and low earning sector.
- Women constitute an important section of the workers in this sector.
- Family labour is engaged in some occupations such as home-based ones. Economic activities, which engage child labour, fall within this sector.
- Migrant labour is involved in some sub-sectors.
- Piece-rate payment, home-based work and contractual work are increasing trends in this sector.
- Direct recruitment is on the decline. Some employees are engaged through contractors. An increasing trend to recruit workers through contractors is visible in areas of home-based work. There is a sort of convergence of home-based work and engagement in work through contractors.
- If some kinds of employment are seasonal, some others are intermittent. As such, under-employment is a serious problem.
- Most jobs are, for the greater part, on a casual basis.
- Both employed and self-employed workers can be found in a number of occupations. Workers are not often organised into trade unions. The self-employed are seldom organised into associations. There is not much recourse to collective bargaining.
- There are many co-operatives of self-employed workers.
- Very often, others supply raw materials, production by self-employed workers, therefore, becomes dependent on, or linked with enterprises or individuals active in other sectors.
- Debt bondage is very common among the employed as well as the self-employed workers in the unorganised sector.

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- The self-employed have less access to capital. Whatever capital they manage, is mostly from non-banking and usurious sources, especially from the trader contractor.
- Health hazards exist in a majority of occupations.

[13]13, Vol.55, 9 (2014) p.930. [14]Supra note 14, at 5.

[15]Government of India, Report of the Committee on Unorganised Sector Statics, National Statistical Commission, (2012) p.1.

[16]Supra note 4, at 604-605,

CATEGORIES OF UNORGANISED LABOUR

The National Commission on Labour listed illustrative' categories of unorganised labour which are as follows:[17].

- contract labour including construction workers.
- casual labour, labour employed in small scale industry. handloom/power-loom workers
- beedi and cigar workers
- employees in shops and commercial establishments sweepers and scavengers
- workers in tanneries tribal labour
- other unprotected labour

IMPORTANCE AND CAUSES OF UNORGANISED LABOUR

The activities in the informal sector account for a substantial share of total employment in the developing countries ranging from the third to two-thirds or more particularly in urban areas.[18] National level data on employment and income generated in the informal economy is generally not available. India is one of the few exceptions where it has recently estimated the informal sector by National Sample Survey Organisation (NSSA).

Globalisation measured in terms of trade and capital flows between countries and technological changes believe to have played an important role. A faster growth of employment in the unorganised or informal sector is often referred to as an evidence of the employer's unwillingness to expand employment in large sized factories in which the protective labour laws are applicable. They instead farm out work to smaller units. Hence, there is no doubt that employment has growth faster in the informal segment and its share has sharply increased over the years.[19]

Further, the intensified competitions among firms have resulted in driving down the labour cost. These costs are lower in informal economy, due to noncompliance with labour regulations such as minimum wage, social security contributions and other welfare provisions,

Apart from that, improvement in technologies is also have contributed to such in formalisation as we do not possess required skills and training for the employment in the organised sector further distinction is often made within the informal sector between those who operated from their residence, and other micro enterprises. Not all those operating from their residence or who are truly independent enterprises, taking risks and making decisions; many, especially women are paid for their work by the employer. sub-contractor, agent or middlemen and hence consider as "home workers" or "disguised wage workers".

[17]Supra note 7, at 417. [18]Supra note 17. at 1

[19]K.Mariappan, Employment Policy and labour Welfare in India (New Delhi: New Century Publications) 2011 Edition p.78.

The tendency to engage workers outside the factory premises on a sub-contracting basis is widely seen in the process of in formalisation and interpreted as a means by which employers disown responsibilities for their welfare envisaged in the labour standards.[20]

Another factor that has developed the unorganised sector is non-availability of modern sector jobs even to those women and men who live in urban places and have some education and skill. The employment opportunities in the modern sectors are rare due to technological development in these sectors. These sectors are capital intensive

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rather than labour intensive. Thus, a large number of unemployed men and women are attracted by the unorganised sector as entry is easy there and it provides income, though insufficient, to the family. The meagre income that they get is precious for their own and for their survival.[21]

PROBLEMS OF UNORGANISED WORKERS

Unlike organised sector, this sector has not tasted the benefits or derived the advantages that can be gained from organisation. Many of them are victims of invisibility.

The difficulty starts from identifying or defining the unorganised sector itself There is not a single or primary criterion by which the sector could be defined. The large segment of the work force has continued to be neglected even though this sector has a crucial role in economy in terms of employment. Hence, an attempt has been made to address the problems faced by the unorganised workers resulting in vulnerability are as follows:

INSECURITY OF JOB

The informal sector workers often undertake multiple jobs, pursuing of multiple jobs by a person may be taken as a sign of insecurity in jobs. A single job or even two may generate income barely enough for subsistence.[22] For instance employment of agricultural labour is irregular and unassured.[23] This is due to availability of work to them only for about three months and the remaining nine months, they are mostly unemployed and suffer from starvation.[24] Employment in agriculture is this available for fewer days per year.[25] In India Mahatma Gandhi National Rural Workers Employment Guarantee Act, 2005 aims to provide employment security by guaranteeing at least 100 days of work in the most backward districts of the country who can perform manually.[26] But informal workers continue to face the risk of loss of employment as they are varied by nature and location.

[20]Sudharshan Canagarajha and S.V. Sethuraman, "Social Protection and the Informal Sectors in Developing Countries: Challenges and Opportunities". Discussion paper series No.0130 (Washington: World Bank Publication) 2001.p.11

[21]Meenu Agarwal, supra note 6, at 58. [22]Supra note 17, at 25.

[23]Supra note 5 at 126.

[24]Dr. Suresh Srivastava, "Social security for Agricultural Workers in India". In: Debi.S. Saini editor, Labour Law, Work and Development (New Delhi: Westville Publishing House 1995 Edition, p.106.

[25]National Commission for Women Impact of WTO on Women in Agriculture 2005, p.16. [26]National Commission for Enterprises in the Unorganised Sector, Report on Social Security for Unorganised Workers, 2006 p. 22.

IRREGULARITIES AND INABILITY TO SECURE EVEN MINIMUM WAGES.

The Supreme Court of India ruled that employing workers at wage rates below the statutory minimum wage levels was equivalent to forced labour and prohibited under Article 23 of the constitution on India even though economic compulsion might drive one to volunteer to work below the statutory minimum wage.[27]

Most of the studies on conditions of employment in the unorganised sector have examined the wage levels and earnings of workers are identified that the daily wages are below the minimum rate of wages. But the prevailing situation shows the reach and effectiveness of the Minimum Wages Act is limited.[28] In the unorganised sector casual workers tend to be the least protected and have the lowest level of earnings. The wages for the huge informal sector cannot be left to be determined by the interplay of the market forces.[29] There is no uniformity in wage structure across the various States or Union Territories.[30] This is also due to applicability of the Act only to certain employments which does not include all workers. Hence, if a state Government fails to include a particular employment within an industry in the employment schedule, the Minimum Wages Act does not cover all workers in that industry.

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LONG HOURS OF WORK

The long working hours have a severe repercussion on the social and family life of labourers in general and women labourers in particular They do not find any time to take part in cultural or social activities. They do not even take proper childcare.[31]

Long hours work in the unorganised sector beyond the labour and regulatory norms are common in India. In agricultural sector there is no fixed hour work as there are no laws to act as guidelines for the working conditions of agricultural labourers. In case of non- agricultural sectors such as fireworks, match making,

power looms and so on, workers started their work very early in the morning at 6.00 a.m. and continue till late evening. In hand loom sector the work is organised in such a way that wages were based on a 12-15 hours work per day.[32] The Factories Act, 1948, The Minimum Wages Act, 1948 and the Shops and Establishments Act stipulate that no adult worker shall be required to work more than 48 hours in a week. But these provisions relating to working hours have been violated frequently. Thus, limitation on hours of work is almost non-existent.[33]

[27]Peoples' Union for Democratic Rights v Union of India AIR 1982 SC 1473. [28]Supra note 5, at 47.

[29]Government of India, Report of the Working Group on Social Security for the Twelfth Five Year Plan. (2012-17). p.14.

[30]Government of India, "Report of the Working of The Minimum Wages Act. (2013), p.1. [31]Arjun Patel and Desai Kiran, "Rural Migrant Labour and Labour Laws" In: Debi.S. Saini editor, Labour Law, Work and Development (New Delhi: Westville Publishing House) 1995 Edition, p.64.

[32]Supra note 5, at 36.

[33]Kamala Kantha Mohabatra, "Women Workers in Informal Sector in India: Understanding the Occupational Vulnerability International Journal of Humanities and Social Science, Vol.2, 21 (2012) p.198.

POVERTY AND INDEBTEDNESS

Workers in the unorganised sector had a much higher incidence of poverty than their counterparts in the organised sector.[34] Due to low level of income and uncertain employment in the unorganised sector make the workers unable to meet their basic necessities and other social and other cultural responsibilities.

In agricultural sector, it is fact that increased indebtedness is noted as a major reason for suicide in various states.[35] Since the wage levels have been very low, they are worst in terms of poverty level and economic status.

OCCUPATIONAL HAZARDS AND HEALTH ISSUES

The working conditions in the unorganised sector is the main cause to have an adverse effect on the health conditions of workers. Low nutritional intake due to low income, constant physical labour increases health problems to the workers in the unorganised sector resulting in risks of life of unorganised workers. Lack of resources to pay for the health care often forces the poor workers either to forego it or become indebted. With regard to home workers most of the studies reported health problems mainly related to respiratory due to inhalation of the tobacco dust and body ach due to the peculiar posture that has to be maintained at all times of work.[36] In some of the sectors like fish processing units and tobacco and salt pan industry, the working conditions can be called as horrible for workers in general and women workers in particular. In Tobacco processing units the workers have to do their entire job such as plucking winnowing, grading and packaging, while they are surrounded by heaps of tobacco, which is considered to be unhygienic to the health. The mist of tiny particles of tobacco is found to such an extent that the workers can't even see the faces of each other. The factory owners do not take proper care of the workers. They do not provide them facilities like apron, spectacles, mouth closer, socks etc.[37]

Similarly, salt pan workers are also found to be suffering from skin diseases as they have to work constantly in salty water. They develop severe eye problems due to the reflection of light from the heap of salt.[38] In agricultural sector due to extensive use of fertilizers, insecticides and pesticides and mechanisation workers suffer from certain specific health hazards. The pesticide applicators, mixers, loaders are at the risk of exposure to

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toxic chemicals. Since the farming sector is unorganised in character, there is an absence of statistics on farm related accidents and injuries.[39]

34Kannan K.P. "How Inclusive is Inclusive Growth in India Working Paper WP03/2012, New Delhi, Institute for Human Development (IHD).

35Supra note 5, at 135. 36Ibid. at 73.

37Arjun Patel, supra note 33, at. 72. 38Ibid, at.73.

39Supra note 5, at 127.

Thus, workers in unorganised sectors such as fireworks and match industry. leather tanning industries, construction sectors etc, are dangerous and full of hazards. Loss of limbs and amputations occur often when workers operate unguarded or inadequately safeguarded machines.[40] Occupational illness and diseases have also been reported among workers in many industries of unorganised sector.[41]

NON-APPLICABILITY OF SOCIAL SECURITY MEASURES

There are many times when a worker cannot economically active. Due to biological circumstances such as modernity, sickness or old age, on account of personal calamities such as widowhood, or an accident; social or natural calamities such as unemployment, flood, fire drought or high unemployment or closure of an industry During these spells of risk the worker needs support, in the form of some social insurance to survive the crisis and resume work after it. Social security measures are indispensable for unorganised workers to protect them from contingencies and deprivation.

There are no social security measures to provide risks coverage and ensure maintenance of basic living standards at times of crises such as unemployment or health issues.

LACK OF PROPER ENVIRONMENT AT PLACE OF WORK

Lack of sanitation facilities has an impact on health of the workers. But sanitary conditions are so precarious in most of the industries in the unorganised sector due to lack of proper toilet facilities. The facilities such as washing, urinal and toilet facilities at work are found to be low standard. It could be said that no such facilities were provided to workers in the industries. Apart from that, physical conditions such as space. lighting. ventilation etc are very poor.

INSECURITY ARISING OUT OF ILLNESS.

Many studies show health risk as the primary risk of informal sector workers.[42] A number of studies show that risks and crisis situations due to low level of health security are endemic for informal sector workers. Stress events associated with health, dominated the outflows comprising 48% of annual household expenditure, while rituals and marriages account for 30%. The vulnerability of the poor informal workers increases when they have to pay fully for their medical care without subsidy or support.[43]

A number of studies observed that the lack of resources to pay for treatment often leads to the poor foregoing health care or becoming indebted or impoverished trying to pay for it. Poverty was a major factor for not seeking treatment during illness.[44]

40Ibid, at 33. 41Ibid. at.33.

42Sudharshan Supra note 22, at 54. 43Supra note 28, at 6.

44Ibid at 18

LOSS OF INCOME ARISING OUT OF ACCIDENT.

An accident either during the course of work or otherwise is a major crisis for informal workers due to loss of income. It further implies additional income expenditure of medicines. hospitalisation etc. If the accident leads to partial or permanent disability the loss is much greater.[45] in the case of death of a breadwinner, it is permanent loss of income and the family has to borrow money spend savings or sell assets.

LACK OF OLD AGE SECURITY

Most of the provisions relating to provident fund did not reach the construction workers and contract labourers.[46] The old age is a major concern of the workers in the unorganised sector workers Agricultural workers and construction workers are feared of not being able to work during old age For the large

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proportion of old age persons expected in the future, the insecurities will arise due to various reasons such as inability of adult workers to support the needs of old person in the family, inadequate public health care facilities and increasing cost of private health care of the aged etc.[47]

MIGRANT WORKERS

Migrant workers are the most disadvantaged segment of workforce facing adverse working and living conditions. For instance, sugarcane labourers are generally staying in open place in the absence of proper space Also, they have to cook their food in open space, which causes hardship during monsoon season. Since the labourers are staying in open space. they are continuously worried about the menace from snakes, scorpions, mosquitoes etc.[48] In most of the cases, the resident sugarcane cutters have no basic facilities like electricity, water, sanitation etc.[49].

The Problems faced by migrant workers are as follows:

Vast majority of migrant workers fall in the unorganised sector. No working hours are fixed.[50]

They belong to poorest sections of population and inadequate access to basic amenities. People who migrate from rural to urban areas have absolutely no rights when they

arrive[51] as they lack bargaining power and forced to accept work for lesser wages.

[45]Ibid at 21.

[46]Supra note 5, at 41. [47]Supra note 28. at 21.

[48]Arjun Patel, supra note 33, at7. [49]Ibid at 70.

[50]Supra note 4, at 707.

[51]Gender and Economic Policy Discussion Forum Engendering Social Protection of Informal Economy Workers (New Delhi: Institution of Social Studies Trust) November 2012. p.6

ACK OF BARGAINING POWER

Lack of organisation or least unionisation among the unorganised workers is mainly on account of illiteracy and lack of awareness. Despite the increased recognition of informal sector's contribution to employment and gross domestic product among others the lack of worker's rights and legal status has tended to adversely affect worker's prospects This is due to lack of organisation or least organised in the sense that they are not able to voice their feelings or dissent against the attitude of employers in order to protect their interests. Due to long working hours, social isolation of migrant workers, high level of unemployment, illiteracy and lack of awareness are the major hurdles in organising themselves.[52]

LACK OF EMPLOYER-EMPLOYEE RELATIONSHIP

The enterprises in the unorganised sector are mainly unregistered units. Apart from that there is a problem of invisibility of such enterprises as there is no designated workplace due to workers operate work at their homes. Even the entire basis of establishing a master-servant relationship becomes the first hurdle to apply labour laws to this sector. The employee prefers to work for several employers in case he is not given any work on a particular day or sometimes for days together. The other difficulty is the fact that number of home-based workers work through contractors.[53] Particularly for women, it is easy to undertake these activities at home itself.

Hence, there is lack of visibility of employer-employee relationship. Moreover. workers engaged in these enterprises often tend to change employers frequently and therefore it is easy for the employer not to recognise the workers which results in denial of benefits arising out of Minimum Wages Act and Social security benefits.

INSECURITY ARISING OUT OF NATURAL DISASTERS.

There are many natural disasters like floods, drought, famine, earthquake etc., which also have a devastating impact on the informal sectors Natural disasters do not only wipe out the productive base of the informal sector but can also affect the limited household assets of the own.[54]

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VULNERABLE LABOUR GROUPS

The study group on construction of the First National Commission on Labour as well as Second National Commission 2002 observed that in quarries, brick-kilns as well as in big construction sites a system of bondage exists and gets extended from one generation to the next through child labour.[55]

[52]Supra note 5 at 133.

[53]Rani Advani and Debi S Saini, The Constitutional Vision of Development. Unorganised Labour and Accessibility to Justice System. In Debi S Saini editor. Labour Law, Work and Development (New Delhi Westville Publishing House) 1995 Edition, p 195,196. [54]Sudharshan, supra note 22 at 74.

[55]National Commission for Women, Report on The Status of Women Workers in the Construction Industry, 2005. P 2,3.

Apart from migrant labourers, bonded labourers and child workers constitute as a major vulnerable group who are the most deprived and exploited.

The bonded labour involves a debtor-creditor relationship. In this system, the creditor advances loan to the labourers and puts him in bondage till the loan is returned. The repayment of debt is so arranged that the servant cannot repay it during his lifetime by ensuring lifelong service for the masters.

It is this feature, which differentiates bonded labour from unpaid forced labour.[56] In bonded relationship not only the debt perpetuated but also the terms and conditions of the debt are arbitrarily decided and interpreted by the creditor master. This is a case of exploitation and not allowing contract labourers to move is illegal detention.

These are a number of worrying trends as for as the child workers are concerned with liberalisation and opening up of the economy with a growing new demand for child workers in agriculture. Further, there are instance of forced or bonded labour among children. Often, children of indebted labourers are offered to work in return of debt of the debtor to the creditor. Such child labourers are subject to long working hours and involved in the hazardous sectors such as carpet weaving, cloth printing, explosives and fireworks, cigarette making printing and soldering process in electronic industries.[57]

Workers poor infrastructure and lack of basic services result in poor working conditions. Improvements in working conditions can be achieved through better infrastructure and better basic services to the informal workers. Organisation among informal workers will help to address problems concerning their working conditions, since they are able to take self-help initiatives, and link between the workers and the institutional structure that provides services. 58

With regard to improvement of the chances for the application of labour legislations in the informal sector, steps should be taken to improve understanding of the temporary nature of employment relations as well as to make the necessary revision of labour legislations in the line with conditions of the informal sector.

[56]Vidyut Joshi, Bonded Labour Social Context and The Law, In: Debi S Saini editor, Labour Law. Work and Development (New Delhi: Westvill Publishing House) 1995 Edition. p 9. [57]Ramadhargiri, Industrial Relations (New Delhi: Adhyayan Publishers and Distributers)2007 Edition p.22.

[58]ILO, Employment and Social Protection in the Informal Sector, (Geneva: ILO) (2000) p. 16.

CHALLENGES AND OPPORTUNITIES FOR EXTENDING SOCIAL WELFARE SCHEMES FOR UNORGANISED SECTOR WORKERS

The limitations faced in seeking to extend formal social security systems to workers and their families outside the formal sector are well documented. Informal sector workers cannot join formal national social security systems on a voluntary basis. Most are in categories of work that excluded from formal systems. Many systems also exclude enterprises below a certain size or exclude workers with carnations below a certain level from the detailed analysis of the problems faced by workers in unorganised sector, it is realised that social security is mandatory for the unorganised sector workers to decrease their vulnerability. Though some efforts are taken by the Government by passing the Unorganised Workers' Social Security Act, 2008 to provide a minimum level of social security to the poor unorganised workers but proved to be inadequate.

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The growth of informal employment resulted in shrinkage of formal employment consequent upon their quality of life. Therefore, to overcome such adverse consequences. it is necessary to build a strong base for at least a minimum level of social security with a view to climb up vertical occupation ladder resulting in strengthening their financial status. Instead of analysing what sort of social security measures are required to fulfil the multi facet needs of the unorganised sector workers, the need of the hour is how social security programmes have to be effectively implemented for the informal workers who are the target groups.

The growth of informal employment resulted in shrinkage of formal employment consequent upon their quality of life. Therefore, to overcome such adverse consequences, it is necessary to build a strong base for at least a minimum level of social security with a view to climb up vertical occupation ladder resulting in strengthening their financial status. Instead of analysing what sort of social security measures are required to fulfil the multi facet needs of the unorganised sector workers, the need of the hour is how social security programmes have to be effectively implemented for the informal workers who are the target groups.

Hence, with the objective of providing social security to the most vulnerable sector of the society, the Government of India has been actively involved in sponsoring a range of large social welfare schemes under the unorganised workers' Social Security Act, 2008 such as Rashtriya Swasthya Bima Yojana (Health Insurance) etc. including both national and state government initiatives.[59]

TARGET BENEFICIARIES

The definition under the Unorganised Workers Social Security Act, 2008 provides a broad sense of an "unorganised worker and hence the true challenge is on the ground will revolve around the identification of these unorganised sector workers. The state Governments acting through a representative on the State Social Security Administration (SSSA) should be given the authority to determine targeted beneficiaries and the eligibility criteria for the scheme.

[59]The Institute for Financial Management Research. Report of Comprehensive Social Security for the Indian Unorganized Sector (2003) p. 12.

While the scheme will be open to all unorganised sector workers, State Governments should decide the target groups in their particular state in order to avoid overlap between the national scheme and state provided schemes.[60]

LACK OF AWARENESS

The another important challenge is regarding lack of awareness and knowledge which is a significant barrier to most currently sponsored government social security schemes Awareness and the level of understanding ensure the beneficiaries to know about the existence of the schemes and the benefits which they are entitled. In this regard, states should take responsibility of creating awareness about the schemes and the delivery system with a view to facilitate proper implementation of programmes.

TO DESIGN SIMPLE AND EASILY ACCESSIBLE SCHEMES

The purpose of the plans or schemes is to provide immediate and automatic delivery of benefits to the targeted groups. There has been a lot of complaints with regard to accessibility to social security schemes such as the old age pension schemes, schemes for the widows, or social assistance in case of death of the breadwinner of the family.[61] The presence of large number of schemes for the same cause creates lots of confusion at the level of beneficiaries as what exactly they are entitled to. Hence, the challenge has been to design simple and easily accessible social security schemes for the target groups under one umbrella.

Further, with regard to extended opportunities of employment in addition to Mahatma Gandhi Rural Employment Programme, the challenge is also to extend employment opportunities by generating employments as the informal sector workers are exposed to additional threats such as seasonal nature of work to exit poverty and vulnerability with regard to fiscal stress. Instead of survival benefit scheme or minimum pension, appropriate programmes also needed for groups like young widows by linking them to training or employment programmes to fulfil the economic needs of bereaved family.

CONVERGENCE OF SOCIAL SECURITY SCHEMES

There is multiplicity of social welfare schemes run by different Government units at central and state level which is bound to be some amount of confusion and involves the problem of duplication of efforts, record keeping and there is also a possibility of double or multiple benefits reaching the same person under

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different schemes by way of manipulation. Administration of each scheme involves huge administrative cost.[62]

NEED FOR CENTRALISED DATA BASE

The demand by the Government offices to submit documents to fulfil the eligibility criteria will be difficult for the poor unorganised worker as it causes a struggle of foregoing a day's wage in order to stand in long queues in the Government offices.

[60]Ibid at 28.

[61]Gender and Economic Policy Discussion Forum, Emending Social Protection for Informal Economy Workers (2002) p.67.

[62]Supra note 67, at 11.

There should be one centralised data base for all social security schemes and access to social security benefits should be made available against one single identity number.

LACK OF PROPER FOLLOW-UP ACTION

Due to lack of proper follow-up action on informal sector surveys, there is reduction in response rates in future service. Therefore, whenever possible, survey results should be utilised as a basis for the design and implementation of support action programmes and technical co-operation.

From the analysis, it is concluded from the available evidence on various social security programmes including the evaluation studies on the programmes by the planning commission of India, almost unanimously pointed out the delivery deficit in most of social security programmes. Such deficit includes: 63.

- Lack of delivery infrastructure at the of state governments.
- Lack of organisational capabilities on the part of delivery agencies. Misidentification of the programme beneficiaries.
- Incidence of corrupt practices rent seeking by the administration and delivery agencies, and delivery agencies and elite capture of the schemes.
- Lack of awareness on the part of people regarding details of scheme as well as their own entitlements.

[63]Sport 67, at 11.

SOCIAL SECURITY MEASURES FOR UNORGANIZED LABOUR

India has a long tradition of social security and social assistance for the vulnerable sections of society. The institution of self-sufficient village communities, the system of joint families and endowments for religious and charitable purposes. Caste based organizations also based significant role in providing support to the weaker sections in their respective castes. In the wake industrialization and modernization, which gave rise to urbanization, the traditional institutions declined in importance and lost their relevance. Under the colonial regime, social security remained an issue grossed neglected by the government and society. The hardship of disadvantage and vulnerable sections of the populations, especially in the rural areas Steadily grew. After the country achieved independence in 1947, the states showed concern about social security however, it is the industrial workforce, which constitutes only 10% of the total that achieved the attention of the government. The rural workforce and the rural poor have along remained neglected.

It is rightly true that when independent India's constitution was drafted, social security was specially included in the list III to schedule VII of the constitution and it was made as the concurrent responsibility of th~~e central and state government A~~ number of directive principles of state policy relating to the aspects of social security were in corporate in the Indian constitution. The initiatives in the form of acts such as Workmen Compensation Act (1923), The Industrial Disputes Act (1947). The Employees State Insurance Act (1948), The Minimum Wages Act (1948). The Coal Mines Provident Funds and Miscellaneous Provisions Act (1948), The Employees Provident Fund and Miscellaneous Provisions Act (1952), The Assam Tea Plantations Provident Funds/Scheme Act (1955), The Maternity Benefit Act (1961), The Seamen's Provident Fund Act (1966). The Contract Labour Act (1970), The Payment of Gratuity Act (1972), The Building and Construction Workers Act (1996), etc reveal the attention given to the organized workers to

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attain different kinds of social security and welfare benefits. Needless to state that the benefits arising through these initiatives are meant for (a) employees of the Central and State Governments, local bodies, including universities and aided educational institutions, (b) Public Sector establishments, under both the Centre and States, including mines, railways, ports and docks, air corporations, banks, insurance companies, electricity Boards, road transport undertakings, manufacturing units, trading concerns, service industries, etc. (C) employees in organized private sector establishments in industries as in cotton textiles, jute, silk and art silk, cement engineering, chemical, electronics, transport, construction, services and so on. Through it has been argued that the above Acts are directly and indirectly applicable to the workers in the unorganized sector also, their contribution is negligible to the unorganized workers.

Although not much has been done in providing social security cover to the rural poor and the unorganized labour force, the country has made some beginning in that direction. Both the Central and State Governments have formulated certain specific schemes to support unorganized workers. The old age pension scheme was introduced in all states and union territories due to the increasing life expectancy the number as well as proportion of the aged in total population would as is the trends in other countries steadily increase During the 8^{th} plan the programme aimed at both developmental and humanitarian activities it is a community based and family base welfare facilities were developed with the assistance in addition to this old age. Pension scheme introduced in Gujarat. Karnataka, Andhra Pradesh, Kerala. Maharashtra and Tamil Nadu. Kerala was the first to introduce this programme in 1982, the scheme for agricultural workers aged 60 years and above, the amount of pension being Rs 45 per month (enhanced to Rs. 60 in 1987). The government of Andhra Pradesh introduced a pension scheme for landless agricultural workers in 1984. Workers aged 60 years and above were made eligible for pension, which was fixed at Rs 30 per month. The Government of Andhra Pradesh introduced a special programme (Arogya Sri) for the development of economically backward people pertaining to the provision of free medical services. The Old Age Pension (Destitute Agricultural) Scheme introduced by the Tamil Nadu government in August 1981 provided agricultural labourers aged 60 years and above pension at the rate of Rs 35 per month. The Government of Karnataka introduced the Asha Kiran Scheme in 1983 to provide relief against death or loss of limbs due to accident for agricultural workers and other labourers (such as fishermen, beedi workers, washer men, cobblers, masons, goldsmiths, drivers of animal-drawn vehicles and rickshaw-pullers) in the age group 16-65. The Government of Maharashtra introduced a pension scheme in 1980 to take care of and support the physically handicapped and economically weaker sections of society.

In 1986 the government of Kerala introduced a social security scheme for the benefit of artisans and skilled workers in the unorganized sector. The scheme was made applicable to a variety of workers such as tailors, barbers, carpenters, blacksmiths, goldsmiths, tree climbers, masons, potters and dhobis. The Maharashtra Government introduced the Employment Guarantee Scheme (EGS), which constitutes a modest attempt to ensure the right to work as enunciates in the Directive Principles of State Policy of the Constitution of India. The Urban poor welfare schemes stressed out and worked as street vendors, domestic servants, small-time mechanics, rag pickers and scavengers and perform a host of other petty activities as well. Environmental Improvement of Urban Slums (EIUS) Scheme is applicable to notified slums in all urban areas and aims at providing and improving of basic amenities such drinking water supply, water drainage, community baths and latrines, lanes and pathways and street lighting. Urban Basic Services Scheme (UBSS) is aimed at child.Survival providing learning opportunities for women and children, community organization for the slum population. The self-employed women's association SEWA), Ahmadabad brought together poor self-employed women in the organized/informal sector and striving to get them a fair deal in various economic activities.

Poverty Alleviation Programmes are considered necessary on the grounds to improve the development opportunities, strengthen the position of the poor by providing those assets and incomes which in long run help in bringing about structural changes in their favour. The earlier series of poverty alleviation programmes in India tons Small Farmers Development Agency (SFDA), Marginal Farmers and Agricultural Labour, Integrated Rural Development Programmes (IRDP) which are implemented in the country for the development of marginal farmers, agricultural labourers, and rural artisans at state level. This programme is monitored by state level coordination committee. Training of Rural Youth for Self – Employment (TRYSEM) aims at imparting technical and business skills to the rural youth of families below the poverty line. Development for Women and Child in Rural Areas (DWCRA) help to assist the women and children in rural areas through provision of financial sources Various employment-oriented programmes like National Rural Employment Programme (NREP), Rural Landless Employment Guarantee Programmes

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(RLEGP), Jawahar Rozgar Yojana (JRY), Nehru Rozgar Yojana (NRY) implemented for the development of rural unemployed youth and landless labour. Creation of employment programmes for agricultural and home-based workers are fulfilled by the above said programmes.

CONCLUSION

Therefore, it is concluded that social security measures have a twofold significance for every developing country. They constitute an important step towards the goal of a welfare state by improving living and working conditions and affording the people protection against uncertainties of future. These measures are also important for every industrialization plan, for not only do they enable workers to become more efficient, but they also reduce wastage arising from industrial disputes causing work stoppage. Lack of social security impedes production and prevents the formation of a stable and efficient labour force. Social security is, therefore, not a burden, but a wise investment which yields good dividends in the long run. It is also obvious, that India has made significant progress in the field of social security since independence. In this paper, an attempt has been made to understand the concept of social security, objectives, initiatives, benefits towards the development of unorganized workers. It was argued that India had a long tradition of social security and social assistance system directed particularly towards the more vulnerable sections of society. These informal arrangements of social security measures underwent steady and inevitable erosion. It was argued that even after independence, the State was concerned more with the problems of industrial and organized work force and neglected the rural and unorganized labour force on social security matters to a greater extent, till recent past. The social security initiatives of the Centre, State and NGO's indicated that the needs are much more than the supports provided and the efforts must be targeted and vast enough to cover the growing unorganized workers. In sum, the study calls for a Comprehensive, Universal, and Integrated Social security System for the unorganized workers in India.

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IMPACT OF THE AGENDA 2030 ON INDIGENOUS PEOPLES - AN INTERNATIONAL PERSPECTIVE

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ABSTRACT

The worlds estimated 476 million persons are Indigenous Peoples, belonging to 5,000 different groups, in the 90 countries worldwide are at the heart of the 2030 Agenda with its promise to "Leave No One Behind". They make up 6.2% of the world's population, yet account for about 15% of the world's poorest. The 2030 Agenda for Sustainable Development is of critical importance to Indigenous Peoples. It is also imperative that Indigenous Peoples are engaged, at all levels, to ensure that we are not left behind. They lag on virtually every social, economic, or political indicator considered in the Sustainable Development Goal's (hereinafter referred to as SDG's), they continue to face substantial challenges. Indigenous peoples as one of the major groups should be supported in reporting on their contribution to the implementation of the sustainable development goals. The research findings reveal that, despite the inclusion of indigenous peoples as a disaggregation variable, there is little mention of indigenous people in sustainable development goals. No doubt, that the consultation and formulation of the Agenda 2030 involved indigenous peoples, raising hopes for sustainable development goal's and specified the need to ensure that indigenous peoples can contribute to country-level progress reviews. However, the current UN assessment is that despite progress on some sustainable development goals, the program is at risk of failing to meet the goals. The main object of this article is to examine and evaluate the impact of Sustainable Development Goals on the Indigenous peoples, excavating their developmental issues and human security challenges. The author adopted the doctrinal method of research to draw a particular conclusion.

Keywords: Indigenous Peoples, SDG's, Agenda 2030, Substantial, Excavating, *Impact of the agenda 2030 on indigenous peoples- An international perspective.*

INTRODUCTION

Indigenous peoples play a unique and valuable role in ensuring the sustainable management of a significant share of the world's lands, ecosystems and biodiversity. Indeed, the territories of indigenous peoples are home to 80 per cent of the world's biodiversity. Equally important, the food systems of indigenous peoples are anchored in sustainable livelihoods and the principle of ensuring the food sovereignty and well-being of communities.[1]

It is, therefore, an especially unfortunate reality that indigenous peoples are among the people most likely to be left behind – poverty rates among the world's estimated 370 million indigenous peoples[2] are significantly higher than for populations at large– as a result of discrimination, historic injustices, and inability to protect their internationally enshrined rights to their lands and territories.

The 2030 Agenda for Sustainable Development defines the global development agenda for the next 15 years. For indigenous peoples, it is regarded as an improvement compared to the Millennium Development Goals, where indigenous peoples were largely invisible. The 2030 Agenda consists of 17 goals and 169 targets of which 92 % are closely linked to human rights. 73 out of the 169 targets have substantial links to the UN Declaration on the Rights of Indigenous Peoples.[3] Indigenous peoples participated in the global consultation process towards the 2030 Agenda and, while not all their concerns were included, their advocacy resulted in a framework that makes explicit references to indigenous peoples' development concerns and that is founded on principles of universality, human rights, participation, equality and environmental sustainability - core priorities for most indigenous peoples. It aims to combat inequalities and discrimination and "leave no one *behind", and*

[1] International Fund for Agricultural Development, *Partnering with indigenous peoples for the SDGs.* (2019), https://www.ifad.org/documents/38714170/41390728/policybrief_indigenous_sdg.pdf/e294b690-b26c-994c-550c-076d15190100.

[2] Ibid

[3] http://www.unsceb.org/CEBPublicFiles/CEB_2016_6 _Add.1 %28inequalities framework%29.pdf (visited Nov 30, 2021).

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contains a strong commitment to the disaggregation of data.[1] Indigenous peoples as one of the major groups should be supported in reporting on their contribution to the implementation of the SDG.

The current involvement of indigenous peoples in the SDG's is noted and some of the shortcomings in recent reporting on progress towards meeting the goals are highlighted.[2] The Agenda 2030 for sustainable development has given indigenous peoples a certain level of expectation. As the world is getting ahead towards 2030, there is a little ray of hope among indigenous peoples that their priorities and rights will be recognised.[3]

The Sustainable Development Goals (SDGs)

The sustainable development goals also known as the Global Goals were adopted by the United Nations in 2015 as a universal call to action to end poverty, protect the planet, and ensure that by 2030 all people enjoy peace and prosperity. The 17 SDGs are integrated they recognise that action in one area will affect outcomes in another and that development must balance social, economic and environmental sustainability. Countries have committed to prioritising progress for those who are furthest behind.[4]

The most cited definition of sustainable development is 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs.[5] Over this time, it has worked for peace and security, population control, literacy and education, health, economic development and employment opportunities. The 2030 Sustainable Development Agenda (SDA) is, in its own words, "a comprehensive, far-reaching and people-centred set of universal and transformative Goals and targets."

What do the SDG mean for Indigenous Peoples?

Indigenous peoples have continued to face substantial challenges. They, along with other minority groups, have pushed for recognition that the next steps for development must leave no one behind. *The 2030 Agenda has the potential to be transformative for indigenous peoples if its implementation respects these principles.*[6] *Indigenous peoples believe that the SDG's may be an opportunity for advancing, promoting and recognizing the rights of indigenous peoples.* Yet, Indigenous Peoples have faced difficulty in seeing their perspectives reflected in the 2030 Agenda. Although all of the 17 goals are relevant for Indigenous Peoples, only 4 out of 230 indicators specifically mention Indigenous Peoples.

Many have additionally argued that these few indicators in which Indigenous Peoples are included do not reflect Indigenous definitions of well being. The Major Group for Indigenous Peoples explained in their 2016 paper, "For Indigenous Peoples around the world, 'leaving no one behind' means respecting subsistence economies and promoting nonmonetary measures of well-being.[7] While the 2030 Agenda is beneficial to all global citizens, only the full and effective participation of Indigenous Peoples in the development, implementation, monitoring and review process of action plans and programs on sustainable development at all levels, will provide an opportunity for the fulfilment of the rights of Indigenous Peoples, as prescribed in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).[8]

Indigenous Peoples and the SDGs

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[1] Indigenous World 2020: The Sustainable Development Goals (SDGs) and Indigenous Peoples - IWGIA - International Work Group for Indigenous Affairs, , https://www.iwgia.org/en/ip-i-iw/3658-iw-2020-sdgs.html

(visited Nov 30, 2021).

[2] Richard Madden & Clare Coleman, *Visibility of indigenous peoples in sustainable development indicators*.

[3] What do the Sustainable Development Goals Mean for Indigenous Peoples? | Cultural Survival, , 2017 , https://www.culturalsurvival.org/news/what-do-sustainable-development-goals-mean-indigenous-peoples.

[4] http://www. Undp.org/sustainable-development-goals

[5] Closing the Gap and the Sustainable Development Goals: listening to Aboriginal and Torres Strait Islander people; Closing the Gap and the Sustainable Development Goals: listening to Aboriginal and Torres Strait Islander people, (2019), http://www.unesco.org/ (last visited Nov 30, 2021).

[6] Department of Economic and Social Affairs, *Indigenous Peoples and the 2030 Agenda*, UNITED NATIONS (2017).

[7]https://www.culturalsurvival.org/publications/cultural-survival-quarterly/what-do-sustainable-development-goals-mean-indigenous.

[8] Supra Note 4

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The Sustainable Development Goals are grounded in a vision that aims to transform our world. They aspire to build a world free of poverty, hunger and disease, in which every woman and every girl enjoys full gender equality, where the environment is protected and where all people have access to quality education and decent work.[1] Many of the 17 Sustainable Development Goals and targets are relevant to indigenous peoples and have direct linkages to the human rights commitments in the UN Declaration on the Rights of Indigenous Peoples or the ILO Convention 169 on indigenous and tribal peoples' rights. When, in 2015, the international community agreed on 17 Sustainable Development Goals (SDGs), a set of targets for improving lives while protecting natural resources by the year 2030, they included specific mention of indigenous peoples and acknowledged that there can be no truly sustainable development without protecting the traditional knowledge and territories of indigenous people.

All 17 SDGs are relevant to indigenous peoples. But there are six direct references to indigenous peoples in the 2030 Agenda, including in Goal 2 related to agricultural output of indigenous small-scale farmers, and Goal 4 on equal access to education for indigenous children[2] but the goals on health, education, poverty reduction, food security, peace and security, women's empowerment and reduced inequalities are generally relevant for indigenous peoples.[3] The inclusion of IPs and the active engagement and contribution by the indigenous peoples in the 2030 SDGs agenda shall promote the recognition and protection of their rights, aspirations, and self-determined sustainable development. Equally, indigenous peoples are an indispensable component if SDGs were to be fully achieved.[4]

There is constant debate on SDGs since its inception including its meaning, history as well as its implications in development theory and practice. Amongst them is the persistent lack of direct references to the indigenous peoples in many areas that are closely relevant to their issues. This has resulted in the rights of indigenous peoples including collective rights, cultural integrity and Free Prior and Informed Consent (FPIC), as well as their holistic and self-determined development approaches not reflected in the SDGs among others. Therefore, it is of utmost importance that stakeholders from all walks of the societies at all national, regional and international levels including and especially the indigenous peoples request their rights and aspirations in all dimensions of sustainable development to be manifested in the agenda aligning with the UNDRIP, 2007 and ILO Convention 169.[5]

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) constitutes the overarching framework that defines what sustainable development means for indigenous peoples.[6] If adequately implemented, the UNDRIP can help overcome challenges faced by indigenous peoples in the development context by:

- Fully including indigenous peoples and ensuring that they benefit from local, national and global development efforts, on an equal footing.
- Respecting indigenous peoples' right to self-determined development and ensuring that development contributes to the full realisation and strengthening of their potential by supporting their development priorities and institutional and management capacities.
- Protecting indigenous peoples from adverse impacts of development, which may undermine their rights and well-being if their specific needs and aspirations are not addressed.

Impact of SDGs on Indigenous Peoples

Development and human rights are not contradictory concepts, and they should go together. Indigenous peoples are not opposed to development works, because they know that development works will eventually benefit them. But, if development is for people, their participation should be ensured. They have a different perspective on development which is, self-determined, just and sustainable. Indigenous people are the embodiment of sustainable development. Achieving SDGs means respecting and protecting indigenous human rights,

[1] International Labour Organisation, *Sustainable Development Goals Indigenous Peoples in Focus* 1–12 (2016), https://www.ilo.org/global/topics/indigenous-tribal/publications/WCMS_503715/lang--en/index.htm.

[2] https://sdg.iisd.org/commentary/guest-articles/no-sustainable-development-without-indigenous-peoples/

[3] Department of Economic and Social Affairs, *supra* note 9.

[4] https://aippnet.org/sustainable-development-goals-indigeneity-a-practical-guide-for-indigenous-peoples/

[5] Ibid

[6] Department of Economic and Social Affairs, *supra* note 9.

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recognising their customary institutions, and their sustainable resource management systems, going beyond the social and environmental safeguards to fully respect human rights, equitable benefit sharing, and accountability. [1]The lack of attention to Indigenous status is surprising given the acknowledged disadvantage that Indigenous peoples face across the world. The Indigenous peoples' visions of development were not included in the SDGs and their collective rights were not given sufficient recognition to be consistent with the commitment in the World Conference of Indigenous Peoples (WCIP) Outcome Document to give "due consideration to all the rights of indigenous peoples in the elaboration of the Post-2015 Development Agenda and also ignored the provision of UNDRIP that affirms indigenous peoples right to self-determined development.[2] The SDGs also do not affirm the collective rights of indigenous peoples to their lands, territories, and resources. There are no specific targets relating to indigenous peoples security of land, territories and resources.[3] Indigenous people have been seeking specific consideration in the development of SDG indicators.

In 2015, the UN Permanent Forum on Indigenous Issues recommended that 'the Inter-agency and Expert Group on Sustainable Development Goal Indicators and the United Nations Statistical Commission actively engage with indigenous peoples in developing key indicators relating to indigenous peoples' rights to their lands, territories and resources, free, prior and informed consent, empowerment of indigenous women, access to justice and special measures addressing the particular circumstances of indigenous peoples regarding relevant health, education and socio-economic development targets of the 17 goals'.[4]

Despite the inclusion of ethnicity as a disaggregation variable, there is little mention of ethnicity in the SDG goals or indicators. Disappointment has been expressed by the indigenous peoples with the general lack of references in the 2030 agenda. Implications for achieving SDGs in the global context is lagging in achieving several SDGs targets. Indigenous peoples have been seeking specific considerations in the development of SDGs indicators. Therefore, critically reviewing the findings and recommendations of the inquiry is in order.

The development of SDG indicators, and the work to date on their implementation, include little mention of Indigenous peoples. This is despite the strong calls by various international groups representing Indigenous peoples for the development of Indigenous peoples to be included and recognised in the SDG process.[5] This lack of interaction mirrors the lack of action to date by the international statistical community and many national statistics agencies to address the repeated calls for the development of statistics on Indigenous peoples. Without reliable information on the economic and social condition of Indigenous peoples, they can easily be ignored in national policymaking, their substantial resourcing needs to be overlooked and discrimination disregarded.[6]

The UN Permanent Forum on Indigenous issues additionally warns that "The 2030 Agenda involves serious risks for indigenous peoples, such as clean energy projects that encroach on their lands and territories. To avoid negative impacts, the implementation of the SDGs need to take place in conformity with the United Nations Declaration on the Rights of Indigenous Peoples. It is also important that programs to implement the 2030 Agenda are culturally sensitive and respects indigenous peoples self-determination as well as collective rights in terms of land, health, education, culture and ways of living.[7]

Risks Involved in SDGs for indigenous peoples

Despite the above advances, the SDGs also involve risks for indigenous peoples. Disappointment has been expressed by indigenous peoples with the general lack of references in the 2030 Agenda to the following:

[1] WACC | What do the SDGs mean for the world's Indigenous Peoples?, , https://waccglobal.org/what-do-the-sdgs-mean-for-the-worlds-indigenous-peoples/ (last visited Nov 30, 2021).

[2] Ibid

[3] Supra note 17

[4] Madden and Coleman, *supra* note 5.

[5] Ibid

[6] UN DESA, *State of the World ' s Indigenous*, NEW YORK 250 (2009), https://www.un.org/development/desa/indigenouspeoples/publications/2009/09/state-of-the-worlds-indigenous-peoples-first-volume/.

[7]https://www.culturalsurvival.org/publications/cultural-survival-quarterly/what-do-sustainable-development-goals-mean-indigenous

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- Collective rights in terms of land, but also health, education, culture and ways of living;
- The concept of self-determination, as enshrined in the UN Declaration on the Rights of Indigenous Peoples;
- Holistic development approaches are not too focused on GDP growth, industrialization and increased production;
- The principle of free, prior and informed consent, which is essential for self-determination;
- Cultural sensitivity across several goals, such as on health and education, including for instance education in indigenous mother tongues.
- SDGs focus only on the economic aspects of sustainability rather than human rights-based, eco-system based and knowledge-based approaches for formulating SDGs.

Recommendations/ Suggestions

- Indigenous peoples, as one of the major groups, should be supported in reporting on their contribution to the implementation of the Sustainable Development Goals;
- Member States should facilitate indigenous peoples' participation in national-level processes to plan, implement and monitor national frameworks for the 2030 Agenda, including their capacity building;
- Data-disaggregation and recognition of Indigenous identity in national statistics as well as integration of community-based data from Indigenous communities will allow for assessing progress for Indigenous Peoples.
- Ensuring Indigenous Peoples' participation in implementation, follow-up, and review;
- Indigenous Peoples can contribute to the development of national action plans, follow-up and review at all levels, including for the voluntary national reviews at the High-Level Political Forum;
- Greater awareness of the SDGs among the government/ non-government organs and the society is required.

CONCLUSION

It is our collective responsibility to support indigenous peoples and ultimately, the well-being of our planet. There is a need to avoid policies, programmes and projects to achieve the SDGs that have a negative impact or infringe on indigenous peoples' rights. Therefore, the procedural rights of indigenous peoples to be consulted, to participate and to give or withhold free, prior and informed consent must be upheld in all processes aimed at achieving the SDGs. Such an approach will make the Agenda relevant for indigenous peoples and ensure that they are not left behind while ensuring coherence, effectiveness and efficiency in states' efforts to comply with their human rights obligations and development commitments.

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- International Labour Organisation, Sustainable Development Goals Indigenous Peoples in Focus
- Richard Madden & Clare Coleman, Visibility of indigenous peoples in sustainable development indicators
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DOMESTIC VIOLENCE AND ITS IMPACT ON CHILDREN AS SECONDARY VICTIMS: AN OVERVIEW

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ABSTRACT
Domestic violence is an omnipresent social pathology. It is one of the most common and under-represented problem that affects most women across the world. It stands out to be the epitome of gender inequality. A systemic attempt is made to trivialize the problem labelling it to be a familial conflict. It is a clear violation of human rights which often is ignored by most states. The major reason for perpetual existence of domestic violence despite legal frameworks is the need for power, control and authority in a patriarchal set up. It results in a huge loss in terms of psychological trauma, economic problems, hindrance to social well -being. There is also a growing concern in academic discourse on how domestic violence causes long lasting impact on children who are often profiled as secondary victims. This article intends to highlight on psychological, social psychological perspective and the education system incongruent to understanding the repercussions of domestic violence. The study also makes suggestions to combat and alternative measures to rehabilitate secondary victims.

Key Words: Domestic violence, child, secondary victim, abuse

INTRODUCTION:

Domestic Violence against women is an omnipresent problem that needs the attention of the hour. It is one of the most underestimated social problems. It is to be noted that usually women and children are the primary and secondary victims of domestic violence. [1] (United Nations, 2010)

Domestic violence is an act of pattern of behavior. This involves abuse or violence perpetrated by one individual or group of individuals against one individual or group of individuals. The abuse or violence can be of varying kinds. [2]

It could involve physical or emotional or psychological or financial or verbal. It is a common misunderstanding that physical violence alone tantamount to domestic violence. (Gayathri M 2017)

Domestic violence was brushed off to be more of an interpersonal issue between two individuals in a relationship rather than a social pathology. The United Nations urged its members states to consider acts of domestic violence as a serious violation of human rights. It was around this effort made by the UN that most of the countries including India took the initiations to even consider intimate partner violence to be domestic violence and drag it to the ambit of legal scrutiny.

We need to understand that domestic violence is an act of human rights violation within a domestic setup. There are two kinds of victims that a perpetrator or group of perpetrators that are impacted. They are primary and secondary victims. Primary victims are those who are targeted directly by the perpetrator or group of perpetrators that receive direct forms of abuse. Secondary victims are those that witness domestic violence or intimate partner violence and will have to face the repercussions of short or long term. [3]

Study shows that children who witness domestic violence during most part of their childhood or formative years are likely to grow up to be more susceptible to violence or inflict violence of one form or the other. (Black & Newman, 2000)

This study aims at overviewing the often neglected aspect of domestic violence vis a vis the overall impact on children.

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[2] Thormaehlen, D J, and E R Bass-Feld. "Children: the secondary victims of domestic violence." *Maryland medical journal (Baltimore, Md. : 1985)* vol. 43,4 (1994): 355-9.

[3] Stiles, Melissa M. "Witnessing domestic violence: the effect on children." *American family physician* vol. 66,11 (2002): 2052, 2055-6, 2058 passim.

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Profiling children as secondary victims:
Domestic violence can take various forms. The basic structure is of two kinds. They are direct and indirect. Direct abuse is when the mother is subjected to direct targeted violence. Indirect is when children, even are not directly subjected to violence but are simply exposed, as part of interpersonal conflict between the parent/ guardians/ caregivers. Studies have shown that, even if children do not witness violence directly and only hearing will affect them equally. It is said that children assume they have apart in the causation of violence, try to predict the future instances of violence. The problem lies in profiling children as 'secondary victims'. Even though there is good amount of research to indicate the long lasting effects of domestic violence on women and children is equal, popular discourse has failed in manifesting the same. The categorization of women to be primary victims and children as secondary victims only further establishes that children are only impacted by domestic violence. Their role is made to be passive, while the role of pepetrator of violence and the woman have a dual relationship, while children play a passive role. This is the very core of the problem which deviates state and its entities in making children too the focal point in policy making, rehabilitation. This notion limits the scope in gauging the effects of domestic violence on children and also establishes the fact as to why they are called 'secondary victims'. [1]

The psychological impact of domestic violence on secondary victims:
It is often said that children are resilient enough to adapt to changes easily. However, research shows that the impact that children are left with for a lifetime if professional help is not looked for. [2] (Lewis et al., 2017)

The focus of care, protection and rehabilitation has always been primary victims. Children require stability and nurture to thrive. World Health Organization in its report discusses social determinants of adult health. This report is made in the direction of creating a link between early childhood trauma and adult mental health. The amount of exposure of an infant or a child to physical or emotional or psychological trauma is equivalent to being exposed to it directly. [3]

The maternal health care system too is showing growing concerns over how the unborn fetus, when exposed to domestic violence, shows deterrent growth in the brain and the size of it. Few studies indicate that fetus exposed to domestic violence in the womb have a likely chance of growing up with physical ailments (such as inflammation) that further leads to psychological distress (such as clinical depression). [4]

The secondary victims of domestic violence have both short-term and long-term impact that could play a detrimental role in defining their social and mental well-being. The different stakeholders from varying fields have always expressed concern over the trauma suffered by secondary victims which is considered to be equivalent to the trauma suffered by primary victims. There is a likely chance of this trauma being mentioned to turn to post-traumatic stress disorder. An infant or child biologically expects his or her caregiver to protect at all times of stress. In case the caregiver is in a state of stress and is unable to provide the kind of nurture and protection that is naturally expected then it will turn out to be a sense of deception. The child will grow up feeling insecure in all the other relationships as an adult.

Children in their formative years are completely dependent on their caregivers for emotional regulation. In times of distress such as repeated pattern of domestic violence pushes them to the edge of being more vulnerable. This emotional regulation cannot be provided by the caregiver when she is in a state of high distress. Hence, the safest place seems to be the most terrifying. [5]

A Gauge through Social Psychological Perspective:
The social psychological perspective provides a unique understanding of both short term and long-term effects of domestic violence on secondary victims. The social constructivist approach deals with the evolution of social beings from the quality of interaction an individual has with his or her social environment. This approach helps

[1] Callaghan, J. E. M., Alexander, J. H., Sixsmith, J., & Chiara Fellin, L. (2018). Beyond "Witnessing": children's experiences of coercive control in domestic violence and abuse. *J. Interpers. Violence* 33, 1551–1581

[2] Lewis, N.V., Larkins, C., Stanley, N. *et al.* Training on domestic violence and child safeguarding in general practice: a mixed method evaluation of a pilot intervention. *BMC Fam Pract* **18,** 33 (2017).

[3] Gerhardt, Sue & Matthes, Michiel. (2011). Why Love Matters: How Affection Shapes a Baby's Brain.

[4] K Kendall-Tackett - Child abuse & neglect, 2002

[5] Dr. Nadine Burke Harris – The Deepest Well: Healing the Long Term Effects of Childhood Adversity, 2018

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in understanding that children exposed to prolonged domestic violence find it part of normalcy to experience violence or they could grow up and be perpetrators of violence themselves. [1]

Society and state are required by ethical standards to accommodate devised change for any individual or groups of individuals if marginalized in one way or another. There is growing concern over the negative implications of domestic violence on secondary victims. However, this is indicative in developed countries as opposed to developing or underdeveloped countries. Most underdeveloped countries still struggle to combat the problem of domestic violence. The Republic of India has enacted legislation that aims to protect women against violence of different forms within the family. The enactment is titled, 'The Protection of Women from Domestic Violence Act, 2005'. This law when enforced applied to India except for the state of Jammu and Kashmir. But as per Section 96 of the Jammu and Kashmir Reorganisation Act, 2019, it is extended to the state of Jammu and Kashmir. This enactment has stressed up protecting women from the perils of domestic violence of various forms and providing remedies. However, the perpetrator cannot be penalized. The framework devised reflects the responsibility on part of the state in combating the ever-prevalent social problem of domestic violence. [2]

A thriving democracy such as India has taken a long time to consider domestic violence to be a social pathology from its earlier consideration of an interpersonal conflict. Hence, it becomes difficult for any developing and underdeveloped countries to have a paradigm shift in equivocally helping curb problems of domestic violence on both primary and secondary victims.

There is a web of ambiguity in the basic understanding of how domestic violence affects secondary victims. There are studies made in most fields of knowledge to gauge the impact of domestic violence on children. There seems to be a gap in the redressal mechanism for the same.

Implications of domestic violence on secondary victims and education

Studies indicate that children who are exposed to domestic violence in any form have a lasting effect in their educational attainment. Children are comforted by stability. This very foundation shakes in case of domestic violence. Children who come from broken homes find solace in going to school as they find comfort and safety. [3]The impact of domestic violence can be observed in the formative years. It gets manifested through behavior. Children belonging to the age group of zero to five manifest it through extreme separation anxiety from the parent is who is not abusive. Children of very young age have a limited scope to cope with distress such as domestic violence. They learn to cope in their best possible ability. However, this might not be conducive to the societal standards or expectations as, the society is not designed to accommodate these weary aspects of childhood.

Education staff in the west are trained at the basic level to identify children in distress caused due to domestic violence. They work closely with social welfare officers which help facilitate the problem. The problem lies with developing and underdeveloped countries wherein are still under progress.

Domestic violence, children, and education are closely connected. One of the major reasons for dropping out from school is being subjected to domestic violence. There are other impacts such as concentration problems, cognitive disabilities (stress response shuts all other capabilities of the brain) [4], irritable state of being, unforeseen behavior, hostile state of being, hyperactivity. Children who are subjected to a pattern of violent behavior at home become highly cognizant of possible danger outside of the home as well. If a child is going through unsurmountable emotional upheavals, that acts as a hindrance in cognitive ability to perform well in the academic arena.

Impact on young individuals:

Older children who are exposed to consistent pattern of domestic violence of one form or the other display psychological ailments such as, self-harm, suicidal tendency, masochism, susceptible to substance abuse, disinterest in education.

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Older children are as much susceptible to the repercussions of domestic violence as younger children. The manifestation of the same is subjective to the gender the secondary victim belongs to. Studies show that boys externalize through the antisocial and violent manifestation of behavior, while girls internalize through clinical depression and anxiety.

LIMITATIONS

Domestic violence needs to be addressed seriously enough by the state at the structural level. The literature survey carried are all indicative of how vigilant education system and social security system should be. However, this is something that developed nations can afford to invest their resources but not the underdeveloped or developing nations. Efficient training to workers in the educational sector is challenging with the pre-existing over burden of workload.

Research indicates that not all effects of domestic violence on secondary victims extreme in nature. It could have a snowballing effect. This could also be one of the reasons for neglecting secondary victims in the protocol.

IMPLICATIONS AND CONCLUSION

The relationship and modeled behavior that one is exposed to in his or her formative years defines their relationship with the rest of the world throughout adult life. Domestic violence is one of the biggest reasons for disrupted childhood. There is an urgent need to address this through early mediation, prevention and education. The problem lies with the patriarchal set up wherein need for power and control surmounts to domestic violence. It has long been brushed under the carpet for being an interpersonal problem. It should be rather popularized through mass media that it is a public health issue.

Social implications such as guilt and shame play a vital role in non-disclosure of instances of domestic violence. In conservative societies like India, there is a fear of ostracization and labelling for being transparent about domestic violence. Girls and women are socialized to be non-vocal about inter-personal relationships.

There needs to be a paradigm shift in the approach a state and its subjects have towards domestic violence. The state and its entities should be made aware of serious legal implications of perpetrating an act of domestic violence in order to instill a sense of fear. There are experimental models in parts of US and UK that are result oriented. These could act as models for the rest of the world. These models could be designed as per the needs of that particular society. Parallel interventions is one such model that could be used and popularized through health workers at the grass root level. Responsiveness is imperative in raising a child. Community workers could be trained by professionals and they in turn train the mothers in understanding how significant responsiveness is childcare. Research indicates that a mother's responsiveness can minimize stress response in a child.

A popular model in the US is gaining momentum in tackling the problem of domestic violence and most importantly rehabilitation of victims. Advocacy has proved to be imperative in making easy access to social and community resources that prepares a primary victim independent. One of the major reasons for domestic violence to become a pattern is the element of dependency. This decreases the risk of clinical depression and encourages women to be enterprising of even the slightest of the opportunities.

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IN -SITU AND EX-SITU METHODS FOR CONSERVATION AND SUSTAINABLE USE OF BIODIVERSITY

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ABSTRACT
With the current rate of development, population growth and migration, communities are increasingly unable to meet their sustained needs. Growing demand for fuel, wood and other forest products, pollution due to industrialization and a market for rare animal species and medicinal plants have all threatened the biological diversity and there by hampered a sustainable human development. Further the race for development and cultivation of improved varieties in larger area has threatened biodiversity to a considerable extent. Every species has its importance in its ecosystem as wild plant or animal and it can provide new genetic material for improvement. Economically important plants were exploited to meet the demand of growing population throughout the globe and resulted in drastic decline in the size of their populations. Some species of important plants have already become extinct and they are facing danger of extinction. Many factors both natural and manmade have been responsible for limiting the distribution of creation of species and causing them to become rare and extinct. The diversity of an area may increase where there is physically diverse habitat, moderate, or least disturbance, slight variations in climate parameters like rain fall, temperature, humidity and nutrient supply, complex tropic levels and favourable revolutionary stress. The biological diversity decreases, if exposed to the higher environmental stress, extreme climatic conditions, lack of essential nutrient supply, extreme disturbances. Most of the causes of loss of biodiversity are diverse, complex and a very difficult to address to a common man. Scientifically of course, it is quite clear that human being directly affects the biological diversity. The developmental activities like urbanization, industrialization, shifting, relocation and expanding of agriculture greatly reduce the biological diversity. Mainly, the increasing pressures of human demand for raw material, food, shelter and space adversely affects and reduces the biological diversity. In this background this article aims at examining the methods of conservation and sustainable use of biodiversity.

Keywords: Biodiversity, Conservation, Sustainable use, in-situ, Ex-situ, Distinct.

INTRODUCTION
The conservation of biological diversity constitutes an essential aspect of sustainable development worldwide. It is biodiversity that basically determines the structure and function of all ecosystems. It is the foundation on which the future well- being of human society rests. It has a powerful role in building sustainable development.[1] As human population increases, so does the pressure on ecosystems, since we draw ever more resources from them. Our ecological foot print on the planet is unsustainable and will become unbearable unless we change our consumption patterns and our changing conditions by increasing productivity. But now we have reached the limits of the earth capacities.

In view of the large scale exploitation the useful diversity of various plant species from forest and open areas , particularly for medical and other economic plants and the prevalence of fragile ecosystems in many parts of the country and also the existence of diversity in several useful co existing species. It becomes important to conserve these plant species/ coexisting species and system either by way of domestication methods for their sustainable use or the biological factors that determine the conservation approaches and the most common methods used for germplasm[2] conservation of different categories were clearly defined viz...Ecosystem/ agro-ecosystems,[3] specific habitat, gene pools,[4] special genetic stocks etc.. A balanced application of these ex situ[1]/on

[1]Hari Darshan Kumar, Biodiversity and Sustainable Conservsation, Oxford and IBH Publishing Co. Pvt Ltd, New Delhi, 1999, p 234.

[2]A germplasm is a collection of genetic resources for an organism. For plants, the germplasm may be stored as a seed collection or, for trees, in a nursery.

[3]An agro-ecosystem is the basic unit of study for an agro-ecologist, and is somewhat arbitrarily defined as a spatially and functionally coherent unit of agricultural activity, and includes the living and nonliving components involved in that unit as well as their interactions.

[4]The gene pool is the set of all genes, or genetic information, in any population, usually of a particular species. This also proves to be the basic level at which evolution occurs.

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farm/ in situ/ in vitro conservation approaches and technologies, would be needed so as to suitably register location specificity, case to case basis, cost effectiveness feasibility for retrieval and networking etc.

Biodiversity Conservation

Biodiversity conservation, as modern practices,[2] is not distinguished from earlier approaches to nature conservation by any single and radical quantum difference in approach, rather, it is the result of adopting an holistic view of nature and of an evolving appreciation of population biologically and the significance of diversity itself in human welfare. Some fundamental features to biodiversity conservation are as follows.

1) It is founded on ecological science. The ecological approach is essentially about relationships between different organisms, especially with regard to feeding and energy flow and between organisms and their physical surroundings. Thus planning for biodiversity conservation must focus on many levels, including species, habitat[3] and ecosystems as appropriate.
2) There is considerable emphasis on population processes, including the role and importance of genetic variations within the populations as the basis of adoption, and of chance and deterministic factors in shaping the fate of populations.
3) It is based on the better appreciation of the importance of diversity itself to humanity, whether represented in landscapes or organisms of esthetic value or in the genetic heritage of populations.
4) It is a response to growing awareness of the extremely large number of species that human share the earth with (and the belief that only a tiny proportion of these have been seen and named) and the corresponding wealth of genetic variation of potential use.
5) At the same time, it is a response to a deep felt appreciation of the major and all pervading negative impacts that humanity is having on other biota, coupled with the realization that the quality of life for humans itself under threat because of these impacts.[4]

Sustainable Use:

Sustainable use of biodiversity means to use natural resources at a rate that the earth can renew them. It's a way to ensure that we meet the needs both present and future generations. Sustainable use of biological resources involves the idea of harvesting[5] the annual growth of the resources in such a way that some desired stock of the resources is held roughly constant year by year. The growth that is harvested is the sustainable yields. Hence, in choosing the sustainable yield to harvest it is essential to have some idea of the desired stock of the resources. Traditionally, many experts have opted for the maximum sustainable yield,[6] the highest yield that can be obtained each year. The economic approaches require that the sustainable yield consistent with maximum net social benefits is the yield to be harvested.[7] Since the cost of the harvesting very maximum sustainable yield and

[1]Ex-situ conservation means literally, "off-site conservation ". It is the process of protecting an endangered species of plant or animal outside its natural habitat; for example, by removing part of the population from a threatened habitat and placing it in a new location, which may be a wild area or within the care of humans. While ex-situ conservation comprises some of the oldest and best known conservation methods, it also involves newer, sometimes controversial laboratory methods.

[2]Saving Biological Diversity: Economic Incentives By Organisation for Economic Co-operation and Development, http://books.google.co.in/books?id=RQ1ap-hCNu8C&pg=PA67&dq=Biodiversity+conservation,+as+modern+practices&hl=en&sa=X&ei=i8lcU73GDsaGrge0iICwDA&ved=0CEsQ6AEwBQ#v=onepage&q=Biodiversity%20conservation%2C%20as%20modern%20practices&f=false

[3]A habitat is an ecological or environmental area that is inhabited by a particular species of animal, plant, or other type of organism. It is the natural environment in which an organism lives, or the physical environment that surrounds a species population.

[4]See Saving Biological Diversity: Economic Incentive, OECD Publishing, p 68.

[5]Jyoti K. Parikh, Hemant Datye , Sustainable use of biological resources involves the idea of harvesting, Sage Puplication India Private Limited, New Delhi, 2003, p 261.

[7]Ibid.

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the economically optimal sustainable yield need not be the something.[1]Despite the intuitive appeal of sustainable use managing resources sustainably is in fact very complex issues. The more complex the ecosystem in which the managed species exists, generally the more complex the management problem is the kinds of problems that arise relate especially to uncertainty about the inter-relationships between species and between species and their habitats. This kind of uncertainty underlines the need for continuous investigation, research, education and information about biological diversity and ecosystem behavior. Sustainable use also continues to be regarded as an offence against the intrinsic rights of the species being managed. Hence there remains a tension between the older idea of conservation and the more recent uses of the term sustainable use a tension often revealed in international wildlife conservation discussions.[2]

The biological diversity is the vital sources for entire humanity for food,[3] medicines, clothing[4] and housing as well as spiritual inspiration. It is the very basis of existence of human being along with the other organisms.[5]The biological diversity that hardly finds us today may prove very useful tomorrow. It may prove needful and essential. Sustainable advances in biological productivity will not be possible without access to the existing biological diversity. Therefore, there is an urgent need to take conservation measures to conserve and protect existing richness of biological diversity for future. The conservation of biological diversity can be viewed as a form of natural insurance against present and future events like climate change that may devastate the present biological diversity. The strategy of conservation depends on the nature of the material and on the objective and scope of the activity. The nature of the material is defined by the length of the life cycle, the mode of reproduction, the size of the individuals and its ecological status, whether wild, weedy or domesticated. The purpose to which the material is put will determine the degree of integrity which is essential or desirable to maintain. Conservation strategy must take into consideration the time dimensions; whether it is for short-medium or long term storage and where the storage will be located. The genetic makeup of the material and the type of sample collected will reflect the breeding system of the material and how it will be regenerated.[6]Biological diversity may be conserved with two methods discussed as bellow.

1) In Situ conservation
2) Ex- Situ Conservation

In Situ Conservation:[7]
In situ means 'on Site"[8] hence the in situ conservation is the conservation of species diversity within normal and natural habitat and ecosystems. It refers to the conservation of habitats, species and ecosystems where they naturally occur. During in situ conservation the natural processes and interaction are conserved as well as the elements of biodiversity.[9] Governments as well as nongovernmental organizations are involved in this type of conservation. Both individual species as well as ecosystems/ habitat are conserved by this method, since it is impossible to have meaningful conservation of a species in situ outside the ecosystem of which it is an integral component. It should be mentioned that, however, the mere presence of species in a conserved ecosystem/ habitat is perse no guarantee of its survival unless the levels of protection needed for this species are adequate. Even in areas under active in situ conservation, proper management strategies are needed to maintain the viable populations of a threatened species requiring conservation. Both domesticated and wild species can be conserved in situ through a network of protected areas throughout the globe. Although the problems involved in in -situ conservation are enormous, the result obtained thus far are encouraging, in spite of the fact that the

[1]Ibid

[2]Praveen Chandra Trivedi, Biodiversity: Assessment and Conservation, Agro bios, Jodhpur, 2006, p. 90.

[3] M. Wood , Biodiversity and Democracy: Rethinking Society and Nature, UBC Press, University of British Colombia, p. 50.

[4]Ibid.

[5] Arvind Kumar, Biodiversity & Conservation, APH Publishing Corporation, New Delhi, 2005.

[6]Purohit , Shammi, Agarwal, Environmental Science , Student Edition, Jodhpur, 2007, p. 192.

[7]Article 8 of the Convention on Biological Diversity speaks about the In situ conservation of biodiversity.

[8] Hans-Joachim Jördening, Josef Winter, Environmental Biotechnology: Concepts and Applications p 311, google book visited on 26/04/2014.

[9]Benny Josep, Environmental Studies, Tat McGraw Hill, New Delhi, Second Edition, 2009, p. 113.

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overall extent to which it conserves habitat and species especially in the tropics, is not clearly known. A survey of protected areas worldwide revealed that the in situ method conserves habitat and species to a reasonably good extent.[1]

The in situ conservation of habitat has received high priority in the world conservation strategy programmes launched since 1980.[2] Institutional arrangements especially in countries of the developing world's have been emphasized this mode of conservation. It has some limitations however; there is risk of material being lost due to environmental hazardous. Further cost of a maintaining a large portion of available genotypes in fields may be extremely high. In situ conservation includes a system of protected areas of different categories e.g. National Parks, Sanctuaries, National Monuments, Cultural landscapes, Biosphere reserves etc... One of the best methods to save wildlife species, which is on the road to extinction, is to put it in a special enclosure to reproduce.

National Parks: National Parks may be defined an area, declared by site, for the purposes of protecting, propagating or developing wildlife therein, or its natural environment for their scientific, educational and recreational value. A National Park is a area dedicated to conserve the scenery and natural objects and the wildlife therein. In National Parks, all private rights are nonexistent and all forestry operations and other usages such as grazing of domestic animals are prohibited.[3] However, the general public may enter it for the purpose of observation and study. Certain parts of the park are developed for tourism in such a way that the enjoyment will not disturb or scare the animals.[4]

Wildlife Sanctuaries: Another way for in situ conservation of biodiversity is declaration of wildlife sanctuaries. The basic aim of creation and management of wildlife sanctuaries is to improve, maintain and preserve the environment in and around such areas. It involves the protection of forest areas, conserving soil and water and maintaining the delicate balance of the natural ecosystem. Wildlife sanctuaries play a vital role in conservation of natural ecosystems, biodiversity and the dynamic process associate with them. The management of wildlife sanctuaries has a special place for the conservation of biological diversity.[5] The difference between a Sanctuary and a National Parks subtle and even confusing. Hunting without permission is prohibited and grazing or movement of cattle is regulated in sanctuaries. But hunting and grazing are absolutely prohibited in National Parks which may be established within or outside a sanctuary i.e... The difference is mostly the interference of human or human activities in the area. In a sanctuary, the human activities are allowed but in a National Parks the human interference is totally prohibited.[6]

Biosphere Reserves: Biosphere reserve is the mode of in situ conservation of biodiversity. These are protected areas of representative terrestrial, costal[7] and marine environments that have been internationally recognized for their value in conservation and in providing the scientific knowledge, skills and human values to support sustainable development. The concept of biosphere reserves involves a broad philosophy of long term conservation.[8] The negative effects, direct and indirect of over exploitation and destruction of natural resources in the past few decades has led to worldwide awareness to conserve and protect. There exists a general consensus on the need to protect nature in its fullest form with its enormous genetic diversity and future potentialities.

The main objectives of inter nation network of biosphere reserves are outlined below.

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[1]K.V KrishnaMurthy, An Advanced Text Book on Biodiversity: Principles and Practice, Oxford and IBH publishing, New Delhi, 2009, p 115.

[2] Razdan Introduction To Plant Tissue Culture, Oxford and APH Publishing Company , New Delhi, Second Edition 2010, p. 288.

[3]Francis n Lovett, National Parks: Rights and Common Good, Rowman and Little field Publishers inc, Maryland.

[4]U Kumar, Biodiversity, Student Edition, Jodhpur, 2007, pp. 76- 79.

[5]S.S Negi, Hand Book of National Parks, Wildlife Sanctuaries and Biosphere Reserves in India, M.L Gidwani Indus Publishing Company, New Delhi, 3rd Revised Edition, 2002, p 79.

[7] African Development Indicator, World Bank Washington D C, 2005, p. 360.

[8] Sharad Singh Negi, Biosphere Reserves in India: Land use, Biodiversity and Conservation, Indus Publishing Company, 1996, New Delhi, p. 9.

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- To conserve for the present and future human use the diversity and integrity of biotic communities of plants and animals within the natural ecosystem and to safeguard the genetic diversity of species in which their continuing evolution depends.
- To provide areas for ecological and environments research including particularly baseline studies both within and adjacent to these reserves.
- To provide facilities for education and training
- To maintain essential ecological process and life support systems
- To conserve the genetic diversity
- To conserve that the utilization resources and ecosystems in which they are found are sustainable.[1]

World Heritage Sites: Programmes have also been launched for scientific management and wise use of fragile ecosystems. Specific programs for management and conservation of wetlands, mangroves and coral reef committees oversee and guide these programmes to ensure strong policy and strategic support. Six internationally significant wetlands of India have been declared under Ramsar sites Convention[2]. Additionally eleven wetlands of national importance have been identified for intensive conservation and managements.

Kaziranga[3] Natioanl Park – Assam

Keoladeo Ghana National Park[4]- Rajasthan

Manas Biosphere Reserve[5]- Assam

MaNand Devi National Park- Uttar Pradesh

Sunderban National Park- West Bengal

Ex-situ Conservation of Biodiversity

Ex-situ conservation is the preservation of components of biological diversity outside their natural habitats.[6] This involves conservation of genetic resources, as well as wild and cultivated or species, and draws on a diverse body of techniques and facilities. Some of these include:[7]

- Gene banks, e.g. seed banks, sperm and ova banks, field banks;
- In vitro plant tissue and microbial culture collections;

[2] The Ramsar Convention is the only global environmental treaty that deals with a particular ecosystem. The treaty was adopted in the Iranian city of Ramsar in 1971 and the Conventions member countries cover all geographic regions of the planet.

[3] Kaziranga is a title of a remarkable success story of conservation of the One Horned India Rhinoceros and other wild lives in the North East India. It is not only the homeland of the Great Indian One Horned Rhinoceros, but also provides shelter to a variety of wild lives It is one of the significant natural habitat for in situ conservation of biological biodiversity of universal value.

[4]he Keoladeo National Park or Keoladeo Ghana National Parkformerly known as the Bharatpur Bird Sanctuary in Bharatpur Rajasthan, India is a famous avifauna sanctuary that plays host to thousands of birds especially during the summer season. Over 230 species of birds are known to have made the National Park their home. It is also a major tourist centre with scores of omithologists arriving here in the hibernal season. It was declared a protected sanctuary in 1971. It is also a declared World Heritage Site..

[5]Manas National Park or Manas Wildlife Sanctuary is a National Park, UNESCO Natural World Heritage Site, a Project Tiger Reserve, an Elephant Reserve and a Biosphere Reserve in Assam, India. Located in the Himalayan foothills, it is contiguous with the Royal Manas Park in Bhutan. The park is known for its rare and endangered endemic wildlife.

[6]Yoshifumi Tanaka, The International Law of the Sea, Cambridge University Press, 2012, p 320.

[7] http://www.jamaicachm.org.jm/BHS/conservation.htm, .

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- Captive breeding of animals and artificial propagation of plants, with possible reintroduction into the wild; and
- Collecting living organisms for zoos, aquaria, and botanic gardens for research and public awareness.

Ex-situ conservation measures can be complementary to in-situ methods as they provide an "insurance policy" against extinction. These measures also have a valuable role to play in recovery programmes for endangered species. In agriculture, ex-situ conservation measures maintain domesticated plants which cannot survive in nature unaided. Ex-situ conservation provides excellent research opportunities on the components of biological diversity.[1] Some of these institutions also play a central role in public education and awareness rising by bringing members of the public into contact with plants and animals they may not normally come in contact with.[2] It is estimated that worldwide, over 600 million people visit zoos every year.[3]

CONCLUSION

Since life originated on earth nearly 3.8 billion years ago, there had been enormous diversification of life forms on earth. Earth's rich biodiversity is vital for the very survival of mankind. The reasons for conserving biodiversity are narrowly utilitarian, broadly utilitarian and ethical. Besides the direct benefits (food, fiber, firewood, pharmaceuticals, etc.), there are many indirect benefits we receive through ecosystem services such as pollination, pest control, climate moderation and flood control. We also have a moral responsibility to take good care of earth's biodiversity and pass it on in good order to our next generation. In in-situ conservation, the endangered species are protected in their natural habitat so that the entire ecosystem is protected. Ex-situ conservation methods include protective maintenance of threatened species in zoological parks and botanical gardens, in vitro fertilization, tissue culture propagation and cryopreservation of gametes. Whatever may be the mode of conservation of biodiversity but biodiversity should be protected for the survival of human being.

[1] Prabodh K. Maiti, Paulami Maiti Biodiversity: Perception, Peril and Preservation, PHI Learning Private Li8mited , 2011, New Delhi, p. 2.

[2]Ibid

[3] Paul A. Rees, An Introduction to Zoo Biology and Management, Jophn Wiley & Sons, London 2011, p 1.

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INTERSECTION OF TECHNOLOGY WITH INDIAN MOTOR VEHICLES ACT 2019

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ABSTRACT
Traffic Violations has been one of the major concerns in India since a long time. According to the 2019 Road Accident report by Government of India Ministry of Road Transport & Highway Transport Research Wing, 4,49,002 incidents occurred in the country, resulting in 1,51,113 deaths and 4,51,361 injuries. Great majority of automobile accidents are caused by human negligence such as over speeding, neglecting safety gears, dereliction of traffic rules and distracted driving whilst not discounting poor road conditions. Companies such as Tesla, Waymo, Pony.ai are pioneering in Auto-Pilot and smart vehicles with in built Artificial Intelligence (AI) technology. Auto-Pilot system replaces human drivers in the process of driving, with human supervision, as of today. The invention of Auto-Pilot system is supported by governments all over the world to improve transportation safety, but seems to lack the legal regulations of the same.

This paper analyses the legality of auto-pilot vehicles in India with respect to Indian Motor Vehicles Act (MVA) 2019. Since auto-pilot vehicles utilize advanced technology such as Artificial Intelligence in decision making process, the paper considers the intersection of Technology and MVA. The research involves doctrinal methodology of research by relying on existing relevant statutes, case laws, scholarly literatures, and governmental reports.

KEYWORDS: Artificial Intelligence, Auto-Pilot vehicles, Automobile Accidents.

INTRODUCTION
Motor vehicle accidents is akin to every country regardless of the infrastructure and development of the state. Law has been dynamic with the development and automation of vehicles as well in terms of regulation of the traffic. Be it installation of cameras, disposing of motor vehicle cases, law has adapted to the changing scenario. Likewise, advanced technology has led to the creation of auto pilot cars, which can run autonomously. Auto pilot cars are backed by artificial intelligence technology which guides the car to steer on road. Artificial intelligence is an umbrella term under which different scientific technologies can be seen such as natural language processing, predictive analysis, face recognition and much more. Though the use of technology on a whole itself seems to be an unregulated domain, the application of the same in vehicles can be regulated through the existing Motor Vehicle Act either by interpreting the statute to suit the existing scenario or to amend the statute to regulate auto pilot cars. The nomenclature of auto-pilot, self-driving car and autonomous vehicle is used synonymously in this paper.

Auto Pilot Cars
The impact of the fourth industrial revolution is seen on the automobile industry as well, wherein, the research and development of the industry is focusing on self-driving cars. Self-driving cars are such motor vehicles which work mostly autonomously and hardly seek human attention. Today's autonomous cars can accelerate, break and steer independently[1], while being able to read and interpret the environment that it is in. These cars make use of scientific technologies such as Artificial Intelligence, Radar, computer vision, Lidar to name a few. The main technological backing behind such cars is artificial intelligence. Artificial intelligence is one such recent technological innovation which has left no stone unturned. From health care, education, national security, climate change to weapons, artificial intelligence can be seen in all domains.

The artificial intelligence found in the autonomous vehicle requires large amount of data, sourcing from camera, radar sensors, lidar sensors and other allied equipment which collects information and passes it onto the AI software[2]. Stating a real time scenario, Tesla is one of the leading automobile companies with progressive autonomous car which can 'autosteer' on a complex road structure, 'smart summon' can steer and navigate

[1] SYNOPSYS, https://www.synopsys.com/automotive/what-is-autonomous-car.html (last visited Nov. 14, 2021)

[2]Ben Lutkevich, Self driving car (autonomous car or driverless car), SearchEnterpriseAI, (Nov. 14,2021) https://searchenterpriseai.techtarget.com/definition/driverless-car

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obstacles and maneuver on road[1]. These cars require the input of end destination which by itself will choose the optimal road and navigate through, until the destination.

Pathbreaking technology in self driving cars, is the 'environmental perception' which can read and perceive the environment to steer through. Radar sensors perceive the distance between the self driving car and the vehicle in front of that, while visual sensors recognizes the traffic signals and Lasor sensors fuse the real world data with the data in the AI system[2].

To understand the autonomy in these vehicles better, the NHTSA National Highway Traffic Safety Administration has shelled out a hierarchical differentiation where:

- Level 0 denotes *no aspect of automation* while the driver is in complete control of the vehicle,
- Level 1 *function specific automation* the driver retains overall control of the car and there are certain controls which are autonomous and these may not be linked or dependent on each other,
- Level 2 is a *combined function automation* which involves at least two such primary controls which work mutually without the drivers involvement
- Level 3 is *limited self driving automation* where in the driver need is seen occasionally while the car is able to control and run independently in most aspects
- Level 4 is high automation where the driver is needed to perform certain secondary actions
- Level 5 is full self driving automation the vehicle takes on the full control including the safety measures and the driver is needed only to feed the end destination[3].

According to research statement by Mckinsy, level 4 autonomy is expected to be in running between 2020-2022 and level 5 autonomy by the end of 2030[4]. The implication of benefit and magnitude of legal regulation directly depends on the level of automation in self driving cars.

The need to develop and implement the autonomous vehicle are searing owing to the deaths by road accidents due to human negligence, traffic congestion, inefficiency in fuel consumption.

Regulation of automated cars is in need owing to the expanding market, while the level automation reverberates different legislative attention, such as, a semi autonomous car work on the basis of shared operational driving and fully autonomous cars enjoy complete control over the vehicle. In case of a semi autonomous car, the driver and the car should be in consensus owing to situational specific reaction by either of them[5].

Advantages of Auto-Pilot cars[6]

Prevention of Crash: Human error was responsible for 94% of the 33,133 automobile deaths in 2017 in USA. Computers that use advanced algorithms and systems will effectively remove expensive human error. Auto-Pilot cars would eliminate major causes of accidents, such as intoxicated or inattentive driving. Auto-Pilot cars are expected to cut accidents by to 90%

[1] TESLA, https://www.tesla.com/autopilot (Nov. 20, 2021)

[2] Jianfeng Zhao, Bodong Liang and Qiuxia Chen, *The key technology toward the self-driving car*, Vol. 6 No. 1 International Journal of Intelligent Unmanned Systems, 2, 3-6(2018) 2049-6427 DOI 10.1108/IJIUS-08-2017-0008

[3] Anderson, James M., Nidhi Kalra, Karlyn D. Stanley, Paul Sorensen, Constantine Samaras, and Tobi A. Oluwatola, *Autonomous Vehicle Technology: A Guide for Policymakers*, RAND Corporation, 2016. https://www.rand.org/pubs/research_reports/RR443-2.html.

[4] McKINSEY & COMPANY, https://www.mckinsey.com/features/mckinsey-center-for-future-mobility/overview/autonomous-driving (Last visited Nov. 23, 2021)

[5] Pattinson, JA., Chen, H. & Basu, S. *Legal issues in automated vehicles: critically considering the potential role of consent and interactive digital interfaces*, **7** Humanit Soc Sci Commun **,** 153 (2020). https://doi.org/10.1057/s41599-020-00644-2

[6] SELF DRIVING CARS: PROS AND CONS, https://valientemott.com/blog/blog-self-driving-cars-pros-and-cons/ (Last visited Nov. 28, 2021)

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Societal Cost Savings: When assessing the benefits and drawbacks of Auto-Pilot cars one of the most important considerations is the societal cost. According to reports, Auto-Pilot can save society an estimated 800 billion USD every year. Reduced expenses associated with automobile accidents , less burden on the healthcare system, more efficient transportation, improved fuel economy, and other factors can all contribute to total societal cost reductions.

Traffic Efficiency: The ability of Auto-Pilot cars to communicate in real time, allowing them to travel at optimal distances from one another. It is also ideal to figure out the ideal route for you to travel to avoid being stuck in traffic.

Better access and mode of transportation: Auto-pilot cars might be a safe and dependable form of transportation for persons who are unable or unable to drive. Individuals with disabilities or the elderly would be able to enter an Auto-Pilot car without endangering others. Auto-Pilot cars would also benefit cities with inadequate public transportation. Auto-Pilot cars can readily access places with limited infrastructure.

Environmentally Friendly: One of the most important consideration in the discussion over Auto-Pilot cars is the environment. Internal-Combustion engines will most likely not be used in automobile vehicles. Auto-Pilot cars will drive at steady speeds, continuous braking and acceleration will be reduced. All these things will help to reduce emissions and make the environment more sustainable.

Disadvantages of Auto-Pilot Cars[1]

Security issues: The danger of hacking is one of the major drawbacks to Auto-Pilot cars. To communicate and cooperate with one another, Auto-Pilot cars would need to use the name network protocol. If a huge number of Auto-Pilot cars are connected to the same network, they might be hacked. Even a little security flaw might cause traffic congestion and collisions on congested highways.

Unemployment**:** Those who rely on driving for a vocation may find their profession outdated if Auto-Pilot become more common. Those in the trucking business, as well as bus and taxi drivers, will need to find other jobs. Auto-Pilot cars would also eliminate the need for fast food delivery and Uber Drivers.

Cost Expenditure: Auto-Pilot cars may save money for society in the long run, the initial cost of automated vehicles may be prohibitive. According to some estimates, owing fully Auto-Pilot car will cost an additional 250,000 USD per car. Costs should, of course, decrease as new technology evolves. However, in the early phases, the entry barrier may be too high for the general public.

Decision Making: One of the major considerations of Auto-Pilot cars is its inability to make decisions amongst a variety of bad outcomes. Considering what would happen if an Auto-Pilot car was faced with only two options such as; Taking a left turn and colliding with a person or taking a right turn and colliding with a tree, maybe hurting passengers. What option would the Auto-Pilot car take. The moral machine, built by a team at MIT aims to overcome this problem by gathering data on real-life judgements. The data gathered reveals significant disparities between population groups, making it impossible to program a conclusive response for Auto-Pilot cars.

System Crash: Weighing the benefits and drawbacks of Auto-Pilot cars, a system crash must be considered. As it is believed that Auto-Pilot cars would undoubtedly reduce the number of accidents, the risk factor is not reduced to completely. If the same is applied towards the Auto-Pilot system, the software or any component malfunctions would lead to a greater risk compared to the risk taken by the driver having control over the car.

International Legal Perspective on Autonomous Vehicles

The Vienna convention on Road Traffic of 1968, is the primary international convention that looks into regulation of road traffic, aims at regulating international road traffic and ensure safety through uniform rules[2]. The convention defines motor vehicle as a vehicle which is normally used to carry persons[3], likewise defines 'driver' as any person who drives a motor vehicle[4]. There has been no amendment made to the said Convention since the innovation of the autonomous vehicles. Since such auto-pilot vehicles are powered and run by

[1] SELF DRIVING CARS: PROS AND CONS, https://valientemott.com/blog/blog-self-driving-cars-pros-and-cons/ (Last visited Nov. 28, 2021)

[2] INDIA CONST. Preamble

[3] The Vienna convention on Road Traffic art 1(n) Nov 8 1968, UNTC

[4] The Vienna convention on Road Traffic art 1(v) Nov 8 1968, UNTC

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artificial intelligence, the debate whether AI is considered as 'person' under the law to attract liability is a question to be answered.

Further, the Convention mandates that the driver is responsible for the vehicle in traffic and is also in complete control and is also responsible for the behavior and action of the vehicle[1].

Further, the European Union also has certain regulations to address the issue of intelligent systems on roads. Cooperative Intelligent Transport Systems is one such guidance system which mandates all traffic signals, motor ways and vehicles to be technological equipped to send signals and communicate with technologically advanced vehicles[2]

Germany is the first country to have a regulation in place with regard to self driving cars as early as in 2017, while a in depth consideration is seen by the legislators in terms of ethical and legal questions[3]. In 2017, the amended Road traffic Act, for the first time allowed the drivers to share or transfer control to partial or fully autonomous cars on roads[4], a "black box" to be placed inall cars with shared driving which records the command given by the car to driver to take over the control and legislation set out the compensation amount to be €10million in case of death by such vehicle[5]. In 2021, it passed the Autonomous Driving Act regulating fully autonomous vehicles and allowing them to function on certain pathways in public areas.

The said Act also define an autonomous vehicle as :

"can perform the driving task independently within a defined operating area without a person driving the vehicle"[6]

The legislation pertaining to self driving cars ensures that there is a separate pathway in which such cars can operate and not disturb the lane where the conventional motor vehicles use. Such an option emanates from the definition of "defined operating area" which is approved by the competent authority[7].

Further, the legislation also sets out few technical criteria that is to be present in the car such as ability to follow the traffic regulations, a system to avoid accidents, in case of any functional issue to notify the technical supervisor to name a few. These technical functionalities is to be supervised by a technical supervisor by law who shall in the position to deactivate the system any point[8]. The said law also ensures that adequate measures are taken in lieu of data protection and cybersecurity. The Federal Motor Transport Authority will be the guiding authority under the Act to supervise, collect data and monitor the safety rules and precautions of autonomous cars[9].

Likewise, many states in the United States of America have passed legislations to regulate self-driving cars where in as of today 29 states[10] have passed legislations to regulate use of such cars. A safety guideline (A

[1] The Vienna convention on Road Traffic art 8 Nov 8 1968, UNTC

[2] A European strategy on Cooperative Intelligent Transport Systems, a milestone towards cooperative, connected and automated mobility, European Commission, COM(2016) 766 final, Brussels, 30.11.2016

[3] DAIMLER https://www.daimler.com/innovation/case/autonomous/legal-framework.html (Last visited Nov. 26, 2021)

[4] LIBRARY OF CONGRESS, GERMANY , https://www.loc.gov/item/global-legal-monitor/2017-02-09/germany-government-proposes-automated-driving-act/ (Last visited Nov. 27, 2021)

[5] Ibid,

[6] Autonomous Driving Act, 2021, art 1 (Germany)

[7] GERMANY: ROAD TRAFFIC ACT AMENDMENT ALLOWS DRIVERLESS VEHICLES ON PUBLIC ROADS, https://www.loc.gov/item/global-legal-monitor/2021-08-09/germany-road-traffic-act-amendment-allows-driverless-vehicles-on-public-roads/ (Last Visited Nov. 27, 2021)

[8] Autonomous Driving Act, 2021 § 1d, para. 3, (Germany)

[9] Ibid, note14

[10] Autonomous Vehicles | Self-Driving Vehicles Enacted Legislation, National Conference of State Legislatures, 18/02/2020, https://www.ncsl.org/research/transportation/autonomous-vehicles-self-driving-vehicles-enacted-legislation.aspx, (Last Visited Nov. 28, 2021)

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vision for safety 2.0) has been released by the federal government. In pursuance of the said guidelines, The American Vision for Safer Transportation Through Advancement of Revolutionary Technologies (AV START) Act which sets out relevant definitions, regulation in line with existing federal laws, liability[1]. Nevada was the first US state to legislate in 2011[2] which was followed by few other states and rest have issued executive orders.

Further, The United Kingdom also has Automated and Electric Vehicles Act 2018 the aim of which is to regulate automated and electric vehicles. The Act mainly focuses on the liability, causes for damage, insurance and extending the existing legislations such as Fatal Accidents Act 1976 etc[3]. one of the innovative aspect of the legislation is addressing of the charging points in case of electric vehicles[4].

The legislation regulating the use of motor vehicles in India is the Indian Motor Vehicle Act 2019, the analysis of which with respect to autonomous vehicle can be found below.

Indian Motor Vehicle (Amendment) Act 2019

The MVA is a legislation in India that governs the use and operations of vehicles on the road. The Indian Motor Vehicle 2019 mandates that anyone who drives a vehicle must be always in control of it[5]. This means that if someone is even riding as a passenger, they are not allowed to simply put on their "Auto-Pilot" and let the car drive itself.

It defines the term "Vehicle" broadly, and it can take many forms such as cars, trucks, motorcycles, and bicycles. The act also imposes strict rules on driving licenses for different types of vehicles. This Act mandates that all drivers carry a driving license when operating a vehicle on public roads and highways in India. The driver's license should indicate the type of vehicle the person holds a license for to drive[6].

The further part of this paper will discuss about driving licenses and its importance in India.

Section 2 (10) of the MVA defines the "driving license" as *the issued by a competent authority under chapter II authorizing the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description.*

The recent advancements in technology have led to the development of self-driving cars. These cars are capable of functioning autonomously without any input from the driver. The MVA defines the term 'Driver' as a person who drives or oversees a vehicle. The Act does not regard automated system as a driver. However, it has not specifically dealt with emerging technologies like self-driving cars or electric vehicles yet.

There are many scenarios where liability arises due to automated driving systems. However, the Indian legislation has not provided any guidelines for these cases yet. This is problematic because uncertainty can lead to legal disputes between drivers and manufacturers, with unclear liability that could depend on the jurisdiction of the court hearing it.

The MVA mentions the liability of the driver of a self-propelled vehicle (any motor vehicle than an animal-drawn vehicle). The Act places the responsibilities of prudence on the driver. This brings out the question on how the clauses of MVA is outdated and needs to be updated to include clauses that protect both pedestrians and cyclists from traffic violations.

Auto-Pilot[7] cars are vehicles that can sense its environment, navigating without human input. The MVA defines the specifications, duties, and liabilities of the driver. Traffic rules are mechanisms used to regulate traffic on roads. It is designed to establish economic and efficient movements of vehicular traffic. Road safety is the protection for people travelling on public land (roads), especially pedestrians and cyclists , from harm or accident.

[1] AV START Act 2017 (The United States of America)

[2] Note 17

[3] Automated and Electric Vehicles Act 2018 (legislation.gov.uk)

[4] Fatal Accidents Act, Sec 10,1976 (United Kingdom)

[5] Motor Vehicle (Amendment) Act, § 5, Acts of Parliament 32 of 2019 (India)

[6] Motor Vehicle (Amendment) Act, § 2(10), Acts of Parliament 32 of 2019 (India)

[7] TESLA, https://www.tesla.com/ , (Last visited Dec. 01, 2021)

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Auto-pilot cars are still in their infancy stage. MVA is old and inflexible. It is time to rethink the MVA considering the development of automated transportation technologies. It is important to establish a regulatory framework for Auto-Pilot cars which can balance the need to be innovative with safety concerns. India has one of the highest number road crashes[1] in the world due to lack of traffic rules enforced on drivers, lack of enforcement on existing rules, inconsistent implementation, traffic congestion and poor vehicle quality. The government[2] needs to take measures that ensure that Auto-Pilot cars are safe for drivers, passengers, and pedestrians alike. India is set to become the world's third largest[3] passenger car market by 2026, and the country has seen a surge in demand for such vehicles. However, not many Indians know how to use them and there is a lack of awareness about the traffic rules and road safety of drivers and pedestrians. This includes educating people about safe driving practices and making sure they follow traffic rules.

Further, negligence has been mostly ignored by AI and MVA. Physical injury is at the heart of MVA, and previous research has centered on Autopilot[4]. Autopilot is a device that assists in steering, accelerating, and braking within its lane, if left unchecked may lead to catastrophic bodily injury. The Autopilot, which addresses human negligence, is one of the most intriguing and doctrinally interesting sorts of AI in development for two main reasons. The first is that by automating the driving duty and the second is liability of automobile accidents would shift away from the driver's negligence onto the manufacturers. The proportion of road fatalities in total deaths attributed to "Other Causes" has risen from 42.9 percent in 2015 to 43.9 percent in 2019. Since 2015, there has been an upward trend in the absolute number of deaths in "Traffic Accidents". In 2019 the number of fatalities increased by 1.3 percent (from 1,78,832 to 1,81,113) compared to 2018.

These problems mostly pertain to the breach part of the negligence part of the negligence concept. This is since decision assistance technologies are added to existing contexts: In areas of medical malpractice, financial advice, data security and driving, we have pre-existing negligence obligations. What changes is how individuals make decisions in these situations when Autopilot is incorporated and actions are taken. These breach-related problems, such as the extent of the applicable responsibilities whether activities represent reasonable care and what unanticipated repercussions exist in the new setting. The exception is the distributional issue, where negligence is ill-suited to solve, due to lack of obligation to ensure from a distributional standpoint.

According to the Ministry of Road Transport & Highways Transport Research Wing data, over speeding is the most common violation linked with accidents, accident-related deaths, and injuries in 2019, accounting for 71.1 percent of all road accidents, 67.3 percent of total deaths and 72.4 percent of total injuries, just as it was in 2018. The second most common cause of Negligence is driving on the wrong side of the road or lane indiscipline, which accounts for 5.4 percent of all accidents, 6.1 percent of all deaths and 5.5 percent of all injuries. Drunk driving, jumping red light and using mobile phone while driving all together accounted for 6 percent of all accidents and 8 percent of all deaths. The other group which includes factors such as road conditions, vehicle conditions and so on, accounted for 17 percent to 18 percent of all accidents, accident-related death, and injuries. The data of the above stated negligence increased in 2019 compared to 2018 underscores the necessity for tougher implementation of the MVA[5].

AI's Liability as a Legal Person and its Impact on Auto Pilot Cars.

Corporations' personhood is frequently used as a model for the personhood of robots and other AI systems. To illustrate its futility and theological implications, it is important to quickly examine its legal status. A company is a legal entity made up of people who have come together to pursue a common goal. It is not essential to go into detail on the many theories that support corporate legal personhood, it is useful to know what they are. [6]

[1] Government of India Transport and Highway survey, https://morth.nic.in/ (Last visited Dec. 03, 2021)

[2] India Brand Equity Foundation, https://www.ibef.org/industry/india-automobiles.aspx (Lat visited Dec 02, 2021)

[3] Automotive Component Manufacturers Association of India, https://www.acma.in/, (Last visited Dec. 04, 2021)

[4]Government of India Ministry of Road Transport & Highways Transport, Research Wing. Road Accident Report 2019

[5] Government of India Ministry of Road Transport & Highways Transport, Research Wing. Road Accident Report 2019.

[6] Artificial Intelligence & Intellectual Property, Eliza Mik OUP 2020

AI's legal entity allows it to engage in virtually all legal transactions in company with others, it also consolidates and demarcates its assets to protect them from their owners or their creditors. Legal personhood also makes it easier to pool resources and defend assets in aspect of responsibility, both procedural and financial.

Rights and responsibilities[1] can be defined in terms of AI, but there are no guidelines as to how many legal rights and responsibilities are required to be called a legal person. Normally, it is a right to own property as well as the ability to sue and be sued, which AI does not have now. A human being's legal personhood is commonly defined as something natural, such as feelings, intentions, and consciousness.

If AI exhibits behavior that may be proof of the attributes listed, it implies that autonomous machines mimic human behavior. At the same time, it suggests that we must examine how the need to respect AI's rights affects the rights of other legal entities. The rights of new legal persons impose a duty to respect the rights of previously established legal people. AI cannot have the same rights or liabilities as a natural person.

The responsibility of AI's conduct can be held accountable if it is a legal entity. If AI is regarded to have a juristic personality, it may be subject to both criminal and civil culpability. Pointing the recklessness or negligence of an AI would be difficult and proving *actus reus* and *mens rea* of an AI would be problematic since we cannot apply the same standards or methodologies to AI that we use for a human being. As a result, determining culpability under criminal law for AI in respect to a specific circumstance is difficult.

Scholars[2] and legal reform organizations have already proposed giving AI systems legal personalities to help with liability issues, such as an automated driving system entity in the case of Auto-Pilot cars entity in the case of driverless cars whose behavior may not be under the control of their 'driver' or predictable by their manufacturer or owner. Similarly, most arguments in favor of AI legal personhood are both too simple and very complicated. They are overly simplistic in the sense that AI systems exist on a continuum with hazy boundaries, a relevant category for such acknowledgement is yet to be abolished. If instrumental considerations demanded recognition in certain circumstances, this may be accomplished using current legal mechanisms. Many of the arguments are variations on the android fallacy, based on unspoken assumptions about the future development of AI systems for which personality would be both beneficial and justified. The preferable answer, at least for the time being, is to depend on existing categories, with responsibility for wrongdoing falling on users, owners, or manufacturers rather than AI system.

Safety measures prescribed in the Act only focuses on the two wheeler[3] not that of a four wheeler or a car. Self driving cars delegate the driving control to the software systems and the manufacturer of such cars have a liability to ensure that there are certain safety guidelines and precaution taken care of. A survey report in the USA show cased that the public are fearful[4] regarding their safety and it acts an important impetus in case of self driving cars. The safety aspect does not only mean the safety of persons in the car, but also the public safety in case of self driving cars deployed on road[5]. Further, the Act also mandates that the driver has a duty to stop in case asked by the police personnel[6] and there exists an apprehension whether such autonomous cars can read the signals by a police official to halt the vehicle. Autonomous cars can only distinguish a human's action and comprehend it as an action requesting to stop the vehicle but cannot distinguish incase such an action is made by a police or by any other bystander on road. AI can only detect a person through facial recognition, and if

[1] Rakesh Sharma, *The Notion of Juristic Personality with Respect to inclusion and exclusion of Artificial Intelligence*, Legal Service India, https://www.legalserviceindia.com/legal/article-4007-analysis-the-notion-of-juristic-personality-with-respect-to-inclusion-and-exclusion-of-artificial-intelligence.html (Dec. 4, 07:00 PM)

[2] Chesterman, S. *Artificial Intelligence And The Limits Of Legal Personality*. 69(4), International and Comparative Law Quarterly, 819-844. (2020).doi:10.1017/S0020589320000366

[3] Motor Vehicle (Amendment) Act, § 128, Acts of Parliament 32 of 2019 (India)

[4] Jack Barkenbus Is Innovation China's Next Great Leap Forward? Vol. 34, No. 4 Science and Technology , 23-26 https://www.jstor.org/stable/10.2307/26597985

[5] Ibid,

[6] Motor Vehicle (Amendment) Act, § 132 (1)(a), Acts of Parliament 32 of 2019 (India)

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such is the scenario then all the traffic police personnels facial data shall have to be stored in the software system[1].

Analysis of the empirical data

The researchers analyzed the mind set of Indian drivers through empirical research. Basic questions such as the preference of drivers between manual cars and auto mode; how often do they use camera feature; how often do they maintain their vehicles were a few.

Below seen are the data inferences analyzing the current mindset of the users. The data collection involved random sampling by circulating Google Forms and recording 77 responses from the generic group.

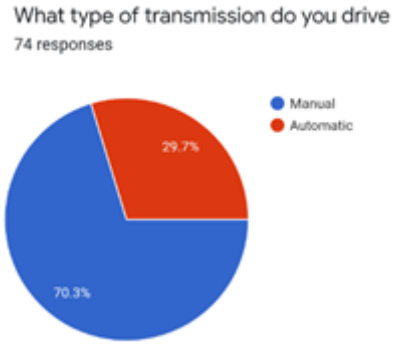

Figure 01

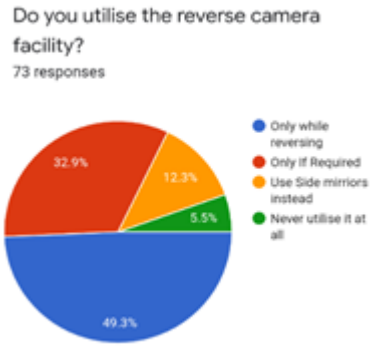

Figure 02

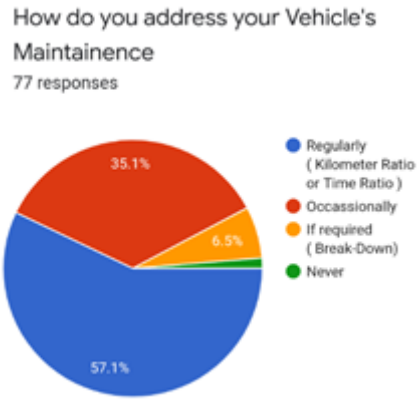

Figure 03

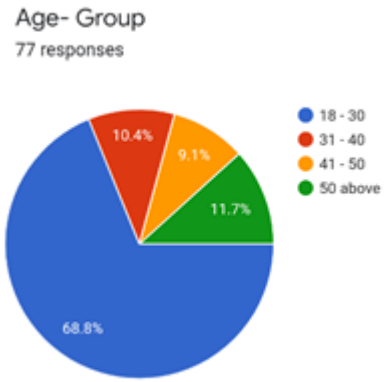

Figure 04

Figure 01 Highlights the preferred mode of driving and it still is the manual mode wherein 70.3% of the sampling results refer the same. The users have not made a shift to the technologically advanced mode of driving which eases their task of driving through the traffic. This bent of mind is also reflected in Figure 02 recording the use of reverse camera in a car which is one of the recent advancement in cars in India. Yet, the response highlight that (Figure 02) only 49% of them use the facility while the rest majority either use the side mirrors or ignore the presence of the camera. Further, figure 03 shows that the majority of the age group using the vehicle is that between 18 – 30 as compared to the other age groups and the response regarding the maintence of car exposes that majority of them do maintain regularly (around 57%) while the rest does not.

The above analysis of the data reveals that the current indian mind set with regard to adaptability to the technological innovation is yet to reach a consensus. Thpugh the majority of the age group using cars are young adults, data highlighted that use of camera, which is one of the simplest technological support in a car is also not utilised well.

[1] Christopher Rigano, "Using Artificial Intelligence to Address Criminal Justice Needs," NIJ Journal 280, January 2019, https:// www.nij.gov/journals/280/Pages/using-artificialintelligence-to-address-criminal-justice-needs.aspx

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This pattern of users choice raises a criticial inference regarding the adaptability to self driving cars and the issue of maintence. Auto-pilot cars require frequent maintence since they sustain on the camera, radar and lidar features. Damage to any may lead to unwarranted results from the software, thereby posing a risk of accident.

Privacy in accordance with MVA

Privacy a quintessential element of right to life was recognised a fundamental right by the supreme court of India in 2017. The growing influence of technology on our day to day affairs, has made everyone's life at ease, parallelly encroaching on the private spheres. Similarly, apprehension of violation of privacy in case of auto pilot cars are one such. When seen through the perspective of privacy by design, AI has been no different, as privacy has not been a priority in the creation of AI technology. In the processing of personal data by AI, there is a considerable danger to individuals' rights and freedoms, which is fundamentally different from the risk posed by data breaches, but with very little "fallout" for the firms involved. The following are some of AI's privacy concerns.

The information scraping appears to violate the terms of service[1], for example; Facebook, YouTube, Instagram, Twitter and Venmo, according to a report by Canada's Office of the Privacy Commissioner (OPC) *'section 6 (ii),* while Clearview AI claims that the information is freely available on the internet, the OPC finds that express consent is required in the case of especially sensitive biometric information, as well as when the collection, use, or disclosure is beyond the reasonable expectations.

The Supreme Court's Stance on the *"Right to Privacy"* in the PUCL Case was maintained in the historic 2017 verdict in *'KS Puttaswamy v. Union of India (SC 2017)'* by a nine-judge bench, which proclaimed privacy to be a fundamental right. The right to privacy's applicability in the context of wiretaps was recently reinforced in the Bombay High Court's October 2019 decision in *'Vinit kumar v. Central Bureau of Investigations and Ors'* , in which the Bombay High Court outlined the scope of the State's power to surveil its subjects. Particularly on matters that do not fall under the categories of "public emergency" or "in the interest of public safety."

Though the fundamental right to privacy is recognised by the apex court, there needs to be a statute law to regulate the area. Personal sensitive data are used by the auto pilot cars as well in terms of Location tracking, owner and passenger information, and other relevant data collected by the sensors[2]. Tesla, one of the leading company in auto pilot cars uses high amount of data to create autonomy in algorithms, to evaluate the infrastructure[3] and much more.

Owing to the lack of data protection regime as seen in other countries, it makes easier to the hackers to collect information about the passengers and customers making way for graver crimes.

SUGGESTIONS

It is evident by the analysis above that the existing motor vehicles Act does not suffice to regulate auto pilot cars in India. As seen in other jurisdictions, India also need to amend the existing legislation to regulate and affix liability to the owner as well as the company manufacturing auto pilot cars.

- Firstly, the definition of 'driver' under section 2(9) is to be expanded so as to include the artificial intelligence system which can be in charge of the auto pilot cars during the 'auto' mode. The current definition of 'driver' includes the word 'person' who acts as a steersman, since AI has not yet been awarded the status of a legal person, its best to amend the definition itself to : "*the person or the system in control of the vehicle"* which acts as a steersman.
- To define the term "system" , to mean and include any technology under the guise of artificial intelligence utilised in developing an autonomous vehicle which guides the vehicle to perceive the environment, steer through the road and such system that suggest the human entity to act in case of an emergency.
- Section 2 (10) of the MVA defines 'driving license', *issued by a competent authority, authorizing a person specified therein to drive a motor vehicle of any specified class or description*. Holder of driving license is

[1] Guy Pearce, *Beware the Privacy Violations in Artificial Intelligence Applications,* ISACA Blog , (Dec. 3, 2021 , 4:15 PM)

[2] Cara Bloom, Joshua Tan, Javed Ramjohn, and Lujo Bauer , *Self-Driving Cars and Data Collection: Privacy Perceptions of Networked Autonomous Vehicles,* ISBN 978-1-931971-39-3 (July 12–14, 2017)

[3] Artificial Intelligence & Autopilot, https://www.tesla.com/AI (Last visited Dec. 2, 2021)

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not entitled to drive all kinds of vehicles[1] . It states that a person holding a driving license is limited to drive registered class or description of the vehicle[2] . Similarly Madras High Court held that there is a nexus between classification of the vehicles into different categories and the issue of driving license to persons to drive the vehicle belonging to different categories[3]. As there is no class or description of Auto-Pilot Vehicle, Section 2(10) needs to amend, inclusion of Auto-Pilot vehicles.

- Section 3 of the MVA states the necessity for driving license, not entitling a person to drive a motor vehicle in any public place, unless he holds an effective driving license. This section needs to be amended in case to permit Auto-Pilot cars on public roads.
- Section 5 of the MVA defines the responsibility of Owners of the motor vehicle, to only entitle a person meets the provisions under Section 3 and Section 4 to drive the motor vehicle. This section needs to be amended for permitting the Auto-Pilot feature.
- Section 10 of the MVA need to be amended with the inclusion of Auto-Pilot Cars, as it defines the holder of the driving license entitled drive the class or described vehicle.
- The Act may also include a special permit to own the autonomous vehicles with regard to the ability to read, interpret and act on the signals signalled by the autonomous vehicle.
- To include safety guidelines before such vehicle is on road such as good security system to avoid hacking of personal data from the system, safety alert in the vehicle in case of theft or in case of health emergency.
- To include product liability over the manufacturer in case of system failure or the failure of the software

CONCLUSION

It will take time to make the shift from driving vehicles with varied levels of autonomy to completely Auto-Pilot vehicles. Modern AI technologies and machine learning development are progressing rapidly in this direction, and is propelling the sector ahead. Top automakers such as GM, Ford, and Tesla are in the last phases of testing their Auto-Pilot cars, indicating that we are on the approach of witnessing a revolutionary change.

To witness the above-mentioned revolutionary change in India, there are various factors which needs to be addressed mainly on the provisions of MVA, requiring to be amended with the inclusion of permitting Auto-Pilot cars on the roads. On the other hand, considering that urban Indians spend 1.5 hours longer each day in traffic than those in neighboring Asian Nations, and due to the country's negligence on road and congested traffic and bad road conditions, the Auto-Pilot may fail to work as it is intended to work.

[1] Motor Vehicle (Amendment) Act, § 2(10), Acts of Parliament 32 of 2019 (India) (notes, pg 8 Bare Act)

[2] National Insurance Co. Ltd. V Shinder Kaur, A.I.R 1998 P.&H 184

[3] United India Insurance Co. Ltd. V. Pala Nigmmal (1991) 2 Acc.C.C. 377

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THE RIGHT TO HEALTH AND DEVELOPMENT IN INDIA: BIOINFORMATICS AND MEDICAL INFRASTRUCTURE LAWS IN INDIA

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ABSTRACT

The right to health has been an integral part of the right to live a life with dignity and the same has been upheld by the apex court of the country in various cases right from the inception of the Supreme Court of India. For a society it is of crucial importance to make sure that the personal health and health overall are being measured in the way of that can be attributable to the state. Health has always been a primary importance for the individuals and also largely the public health as a matter of functioning by the state. A point of consideration taken for the governments in order to facilitate a smooth running of the public policies in tune with the concept of welfare state would be factored by applying it to thematters of public health at both these levels. It is due to this concept of the welfare state that the role of the government has become enlarged in integrating public health as a matter of importance when it comes to the functioning of the State. The foundation for this right to health has been upheld by the Universal Declaration of Human Rights (UDHR)[1] and it is due to the setting of the attainable standards and the extension of the same by way of the Right to Development (RTD)[2] in the future by the United Nations.

The Universal Declaration of Human Rights or the UDHR[3] specifically laid down the foundations for the right to health as this right was focused centrally with the creation of health systems that are attributable with a centralized agency. Various studies conducted comparative analysis of the attribution of right to health amongst the Nations and this brought into the picture such indicators which would suggest the monitoring of health systems and focus on the working of such organizations in lieu of attaining the highest standard of health and ensuring that these standards are delivered to the citizens and the people of the country. It is through these standards and indicators that the right to health is being realized and through such studies it shows that the health systems need to be improved to better realize the applicability of right to health as a means rather than a mere compulsion to be followed.

The researcher through this paper will focus on the study of Right to Health and Development in India especially through the existing framework of Law specifically related to bioinformatics and medical infrastructure laws in India.

Keywords: Law, Constitution, Bioinformatics, Biotechnology, Healthcare, Health.

INTRODUCTION:

The concept of health is perhaps one of the most generic and ancient in nature as protecting ones health is like a reflex action in sentient beings. However, as time passed the need for a structured society grew and power and administration hand in hand gave a new meaning to the term state. In view of this the role of providing healthcare has emerged as a need of the hour in recent times. Development on the other hand has been the measure of success for such administration and governance by the state and similarly healthcare is seen as one of the key factors in deciding the development of the State. Article 1 of the United Nations declaration on Right to development[4] defines the Right to development as "...an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."[5]

[1]The Universal declaration of human rights - www.un.org Available at: <https://www.un.org/en/universal-declaration-human-rights/> accessed October 22, 2021

[2]"Declaration on the Right to Development" (OHCHR) www.ohchr.org Available at: <https://www.ohchr.org/en/professionalinterest/pages/righttodevelopment.aspx> accessed October 22, 2021

[3]Ibid

[4]Supra Note 3

[5]Ibid

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Health and Healthcare should be looked in separate lens as one is factorial of the other this also works similarly with the concepts of personal health and overall health of the State in form of its citizens. It is pertinent to consider that when spoken in terms of health it doesn't just attribute to the absence of any disease, but it is also attributable to the overall wellness of the individual. Public policy and its efficient functioning are detrimental to a competent discourse in a developed society.

Healthcare includes medical care in form of treatments and centres of medical parlance and another important aspect of healthcare is that of preventive care. Elements of preventive care have been really significant in the past decade especially in the recent outbreak of the pandemic. The government has made sure that simplistic communication is passed through in all mediums including the physical and digital mediums. It has elaborated the role of frontline workers[1] in the prevention and regulation of the pandemic and there by effectively displacing the preventive care in that form. One of the main factors of change in this regard was the government's decision of not just relying on the government resources but also opening up to private partnerships with non-state actors as well. All of this when the figures relating to the Annual expenditure is staggeringly low at just 0.9% of the GDP aimed at the public spending.[2]An elderly workforce, a growing middle class population, a rising proportion of lifestyle diseases, increased emphasis on public-private partnerships, accelerated adoption of digital technologies, including telemedicine, as well as an increased investor interest and Foreign Direct Investment inflows over the last two decades, are all driving the growth of the Indian healthcare sector.[3] These developments have increased the need for better healthcare laws with more transparent approach.

It is therefore a cross section of the Right to Health and the Right to Development. To make sure that this transition is achieved, the mechanism to be adopted by the State has to be robust, transparent and efficient. India, being a densely populated country makes things difficult to have an all centric approach. It is ideal to divide the applicability of laws through different tiers of the government from the Panchayats to that of the Union Government. Public health being a State subject matter[4]makes it obligatory for the State Government to route it through the local bodies, the funds for which would be allocated in the State budget.

BIO-INFORMATICS AND LAW IN INDIA

Bioinformatics as discipline is an amalgamation of Computer Science, Information Technology and Biology. The concept emerged in the 1960's and subsequently in the late 1970's with a study headed by O. Dayhoff, Walter M. Fitch, Russell F. Dolittle and others[5]The study of the same has been relatively new in the given scenario. The laws surrounding bioinformatics largely integrate with the intellectual property and the subsequent rights that are a bi-product of the intellectual property. This study helped to develop bioinformatics as a single stream to analyse and understand biological information. Over the years there have been many interpretations and definitions by various authors from across the world. The definition of bioinformatics given by the National Centre for Bio-Technology Information is "the field of science in which biology, computer science and information technology merge into a single discipline.

There are three important sub-disciplines within bioinformatics: the development of new algorithms and statistics with which to assess relationships among members of large data sets; the analysis and interpretation of various types of data including nucleotide and amino acid sequences, protein domains and protein structures: and the development and the implementation of tools that enable efficient access and management of different

[1]"Prevention and Management of Corona Virus" (*Ministry of Health and Family Welfare*) <https://www.mohfw.gov.in/pdf/PreventionandManagementofCOVID19FLWEnglish.pdf> accessed October 29, 2021

[2] Sengupta A and Nundy S, "The Private Health Sector in India" (*BMJ (Clinical research ed.)* November 19, 2005) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1285083/> accessed October 29, 2021.

[3]"A Study of the COVID-19 Impact on Financial Services" <https://www.researchgate.net/publication/354635683_A_Study_of_the_Covid19_Impact_on_Financial_Services_Healthcare_and_Education_Sector> accessed October 29, 2021.

[4]The Constitution of India, 1950, VII Schedule, State List – Entry Number 6

[5] "Scope of Bioinformatics in Biological sciences", Biology-Today.com <https://www.biology-today.com/bioinformatics-biostatistics/Scope-of-Bioinformatics-in-Biological-sciences> accessed October 29, 2021.

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types of information."[1] Bioinformatics in India evolved along with the evolution of Information technology and the companies whose focus was upon the operations relating to life science and biotechnology started engaging in bioinformatics as well. This was due to the fact that a larger market scale in the area could be obtained as these companies already had considerable market shares in the area of life sciences and biotechnology.

India's biotechnology sector is one amongst the top tier in the Asia Pacific region and companies like Tata Consultancy Services, Infosys, WIPRO, BIOCON, etc., started making leaps in the bioinformatic sector.The main focus of this discipline was to respond to the demands for a flexible and efficient means of storing and managing large and complex biological data sets. Rapid developments in the said fields have brought in drastic changes and developments in information technology and therefore has resulted to produce a tremendous amount of information. The primary database constitutes from experimental research and its results like DNA, Protein sequencing, genome mapping, etc., The laws surrounding these, are largely intellectual property laws which protect these databases and also sue generis rights that could be used to protect the investment made over these data sets.However there is a need for specific laws concerning bioinformatics should there be individual areas of expertise taking birth form the discipline. For technologies that could be patentable and other such intellectual properties, the provisions of TRIPS could be seen as a yardstick but sue generis protection sees an effect only in the European Union. Therefore, it is apt to associate bioinformatics as a necessary part that requires protection not only in terms of intellectual property rights but also extend it to incorporate any other sub set of the same.

MEDICAL AND HEALTHCARE INFRASTRUCTURE IN INDIA

Medical infrastructure in India constitutes both the physical infrastructure and technological infrastructure brought in by the boom in information technology and recent innovation in medical science. Private health sector is in a considerably better position as opposed to the government health facilities. Health infrastructure is a key metric for determining a country's health-care policy and welfare system. It denotes the importance of making health-care facilities a priority for investment. India has one of the world's largest populations, which, when combined with widespread poverty, creates a severe challenge in the country. The country is geographically challenged, owing to its tropical climate, which are both a blessing and a curse.

A Subtropical Climate is favourable to agriculture, but it also provides a breeding ground for diseases. India's population is highly susceptible to diseases as a result of a combination of poverty, population density, and climatic variables. Infrastructure has been regarded as the foundation for providing public health services. Skilled labour; integrated electronic information systems; public health organisations, resources, and research are the five components of health infrastructure. When talking about health infrastructure, it is not just talking about the results of a country's health policy; but it is also talking about tangible capacity creation in the realm of public health delivery systems.

The term "healthcare" refers to the provision of services aimed at improving people's health. Healthcare is defined as anything that helps to greater health, such as good food, clean air, exercise, medical intervention, and so on. Physical structure (buildings, etc.) and human resources are both required to give the desired health services; therefore healthcare infrastructure is a good blend of both. The ultimate objective is to bring both of them towards the same horizon in order to make healthcare affordable and more accessible across all the sections of the society. Healthcare in the Tier-1 cities are up to the mark with some of the leading cities of the world, however it is the rest of the country that has to be taken into consideration and states have to watch over and implement efficient laws when talking about affordable healthcare and access to good medical supplies and technology. Therefore when talking about the medical infrastructure, states have to ensure that there is the proper distribution of the health, healthcare benefits. The government must take an integrated approach that considers regional peculiarities with the support of local people; it must establish a decentralised structure that is district-based and which involves active participation from local level institutions such as Panchayats and Corporations.

As discussed above the healthcare (public health) falls under the state subject matter[2] and therefore it is high time that one has to look at the states responsibility in making sure the health, healthcare and public health are

[1]National Center for Biotechnology Information, ncbi.nlm.nih.gov <https://www. ncbi.nlm.nih.gov> accessed October 29, 2021.

[2] Supra Note 10

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met. Right to health is an extended fundamental right that is guaranteed through the Article 21[1] of the Indian Constitution. Right to health have been understood and interpreted through various judicial interpretations and has since become a part of the Article 21 making it an implied fundamental right that is subject to the constitutional protection. Hence the medical infrastructure and its laws in India are a mix of the state sponsored health and healthcare running in tandem with the private non state actors who have been encouraged to take up reforms in the medical infrastructure.

CONCLUSION

Right to health and Right to development are areas of concentration of laws and have a very broad subject matter. Similarly the laws relating to bioinformatics, laws relating to the medical infrastructure and laws relating to the healthcare are all different areas that are very broad and yet in the Indian scenarios are largely unexplored. Therefore the researcher has limited the area relating to bioinformatics and relating to the medical infrastructure into applicability towards the Right to health and Development. The right to health is a comprehensive right, stretching out not exclusively to convenient and proper medical care, yet additionally to the determinants of wellbeing, like admittance to protected and potable drinking water and sufficient disinfection, healthy occupational and ecological conditions, and access to health-related education and information. Right to improvement likewise investigates methods of advancement as a major right of citizens, alongside the directive principles that the constitution delivers. The Right to Development should ensure work, clinical consideration, and training and retirement aide, medical care, education and social security.

In the advent of advances in the technology of the study of medicine, the modes of experimentation in respect to the findings involved in these studies have radically changed. The Covid-19 pandemic has been an eye opener around the world as to how unprepared states can be with respect to the protection of the state against unknown pathological strains of a virus which was very much existent and deeply studied since the late 1980's. Collection of data especially biological information and its processing in invariable and in a densely populated country like India it is a large data set. Currently there isn't an exclusive law dealing with these bioinformatics and its usage in the medical healthcare infrastructure concerned. Therefore invariably this has to be dealt with constitutionally as both Right to Health and Right to Development are implied rights that have taken birth from the fundamental right of Life and Liberty as envisioned under the Article 21 of the Indian Constitution.

[1] Constitution of India - Article 21 - *No person shall be deprived of his life or personal liberty except according to a procedure established by law.*

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THE ROLE OF PANCHAYATS IN THE EFFECTIVE WORKING OF ANGANWADIS UNDER THE INTEGRATED CHILD DEVELOPMENT SERVICES

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ABSTRACT
Anganwadis are a focal point of implementation of national level schemes pertaining to nutritional and educational well-being of children below the age of 6 years in India. These Anganwadis though carry out a variety of functions, end up facing challenges that are diverse in nature. The Panchayat system in the country plays a key role in the implementation of schemes proposed by governments at different level. This Research paper aims at bringing out the relation between these institutions with special preference to the role of Panchayats in aiding the working of Anganwadis.

Keywords/Phrases: Panchayats – Anganwadis – The Integrated Child Development Services – National Schemes – Challenges.

1. INTRODUCTION

'***Today's children are tomorrow's citizens'***; Anganwadis have a key role to play in shaping the future of these children through providing early primary education and following up their nutritional needs. Established before five decades throughout the country under the Integrated Child Development Services (ICDS) to combat hunger and malnutrition in the children below the age of 6 years, Anganwadis end up performing an array of functions such as nutritional services, health services, educational services including Mid-day meals, immunization, nourishment related programs and awareness programs not limited to children but extending to expectant and nursing mothers. As there are additional functions carried out by the Anganwadis, so are the additional challenges that creep into the working of Anganwadis.

Panchayats, on the other hand have a major role to play in facilitating the working of Anganwadis which is bought forth in this paper. The relation between the Panchayats as local governing bodies and their involvement in ensuring effective working of Anganwadis is the subject. While the first Chapter introduces the reader to the broad subject area, the second deals with Panchayat system as a matter of a constitutional mandate. Chapter three deals with Anganwadis under the ICDS and the challenges faced by the Anganwadis, Chapter four throws light on the role of Panchayats and the hurdles in the way of Panchayats in ensuring effecting working of Anganwadis, Chapter five concludes the paper with suggestions.

2. THE PANCHAYATS

Inserted to the Constitution through the Constitution (Seventy-Third Amendment) Act, 1992, Panchayats from time immemorial were the immediate administrative and adjudicatory bodies functioning at village level. The idea of Gram Swaraj was rather borrowed by the already existing Panchayat system in the country. Though innumerable efforts were made to build the whole Constitution – designating village as the fundamental block – these efforts failed miserably[1]. Nevertheless, after two failed attempts to constitutionalise the Panchayat system, in 1992 there was a successful endeavour thereby resulting in the insertion of Article 243[2] to the Constitution of India. The said insertion promises and has lived up to the potential in ensuring decentralisation of administration as it gives away the power of governance to the local bodies. The said Amendment was followed by another Amendment[3] thereby incorporating the system of decentralisation to the urban areas.[4]Though there are claims of shortcomings in the Constitutional provisions as well as the implementation of these provisions, the local governing bodies are a relief to any issue that is immediate in nature.

2.1. FUNCTIONING OF PANCHAYATS

Panchayats function at the village, Intermediate and District levels. Local governing bodies which are democratic to an extent and are vested with various responsibilities including preparation of plans for economic

[1] The Constituent Assembly Debates

[2] Article 243 – Article 243O, *The Constitution of India, 1950*

[3] *The Constitution (Seventy-Fourth Amendment) Act, 1993*

[4] Municipalities, Corporations – Article 243 P – Article 243 ZG, *The Constitution of India, 1950*

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development and social justice, implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule[1] and also Powers, authority and responsibilities of Panchayats including matters such as Education (Primary & Secondary)[2], Adult and Non-formal education[3], public health and sanitation[4], family welfare[5], women and child development[6], social welfare[7], public distribution system[8]. To carry out these functions, the Panchayat is dependent upon the Anganwadis directly or indirectly.

Though the functions carried out by the Panchayats are to be considered as a priority, it is unfortunate to understand that the elections and related matters are glorified beyond metes and bounds and the preliminary functions of the local bodies end up acquiring the secondary or at times tertiary status.

3. ANGANWADIS UNDER THE INTEGRATED CHILD DEVELOPMENT SERVICES SCHEME

Anganwadis are currently working under the Integrated Child Development Services Scheme the importance of which always stands out from the rest. Anganwadi - meaning the 'traditional courtyard' in which children would play, learn and also be nourished by the households; Government as a custodian of the children introduced a welfare scheme – the ICDS in 1975[9]. With the Anganwadis proving efficient, beneficiaries other than children were included under the schemes implemented by the ICDS through Anganwadis.

The Anganwadis Services Scheme (ASS), The Pradhan Mantri Mathru Vandana Yojana, National Creche Scheme, POSHAN Abhiyan, Scheme for Adolescent Girls, Child Protection Scheme to name a few, have been introduced under the canopy of ICDS.[10]

3.1. OBJECTIVES OF THE INTEGRATED CHILD DEVELOPMENT SERVICES SCHEME

ICDS Scheme represents one of the world's largest and most unique programs for early childhood development. ICDS also happens to be the foremost symbol of India's commitment to her children and India's response to the challenge of providing pre-school educationon one hand and breaking the vicious cycle of malnutrition, morbidity, reduced learning capacity and mortality, on the other. The Ministry of Women and Child Development proposes schemes which are implemented by the ICDS.

The Integrated Child Development Services (ICDS) Scheme was launched with the followingobjectives:

1. To improve the nutritional and health status of children in the age-group of 0-6years
2. To lay the foundation for proper psychological, physical and social development of the child.
3. To reduce the incidence of mortality, morbidity, malnutrition and school dropout.
4. To achieve effective co-ordination of policy and implementation amongst the various departments to promote child development.
5. To enhance the capability of the mother to look after the normal health and nutritional needs of the child through proper nutrition and health education.

3.2. CHALLENGES FACED BY ANGANWADIS

Anganwadis, established through the Integrated Child Development Services Scheme were India's response to the challenge of meeting the holistic need of children. The very Integrated Child Development Services Scheme is a unique outreach program for early childhood care and development. Anganwadis cater to the needs of the

[1] Article 243 G, *The Constitution of India, 1950*

[2] Entry 17, Eleventh Schedule, *The Constitution of India, 1950*

[3] Entry 19, Eleventh Schedule, *The Constitution of India, 1950*

[4] Entry 23, Eleventh Schedule, *The Constitution of India, 1950*

[5] Entry 24, Eleventh Schedule, *The Constitution of India, 1950*

[6] Entry 25, Eleventh Schedule, *The Constitution of India, 1950*

[7] Entry 26, Eleventh Schedule, *The Constitution of India, 1950*

[8] Entry 28, Eleventh Schedule, *The Constitution of India, 1950*

[9] https://icds-wcd.nic.in/icds.aspx

[10] *Ibid.*

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society in various ways, but also have a plethora of issues revolving around them. The challenges faced by the Anganwadis can broadly be classified as:

3.2.1. Problems from the perspective of Children and other beneficiaries:

Children between the age 0-6 years are the ultimate beneficiaries as purported by the Integrated Child Development Services Scheme, however the same is inclusive of expectant and nursing mothers as well. Problems faced by the Anganwadis from their viewpoint are listed below:

Access to Anganwadis: Owing to the fact that Anganwadis in a few areas are located within the residential areas, the geographical accessibility of Anganwadis to people residing outside the conventional village – especially the Scheduled Caste and Scheduled Tribe colonies is a serious concern.

Lack of proper infrastructure: Infrastructure and availability of resources play a pivotal role in facilitating the all-inclusive development of children. Schemes proposed and implemented by the Integrated Child Development Services Scheme through Anganwadis reach the peers in parts owing to corruption, maladministration and other implementational issues.Studies show that a majority of Anganwadis do not have access to basic amenities such as sanitation, black boards, piped drinking water or uniforms for the peers.[1]

Inadequate supply of nutrients – poor food grain supply: Reasons such aslack of adequate authorities at different levels to supervise the distribution of food grains and other micronutrients[2]to the Anganwadis persist, thereby taking a toll on the overall supply of nutrients to the beneficiaries.

Inadequate knowledge of the Anganwadi workers/helpers: Most of the Anganwadi workers are not well-literate and their skill is limited. Though there are training/ skill development workshops conducted for these workers to keep them acquainted with new facilities, they are insufficient.[3]

3.2.2. Problems from the perspective of Anganwadi workers/Helpers:

Absence of Job security: Anganwadi workers and helpers are the basic functionaries of the ICDS and play an important role in the implementation of ICDS schemes, yet face many challenges which are listed below. Despite being the basic functionaries of the ICDS, Anganwadi workers and helpers are not accorded with the status of government employees, but are merely considered social workers/voluntary workers.

Honorarium being inadequate: Anganwadi workers suffer due to the inadequate honorarium paid to them. The pay is very basic and does not suffice the primary needs as well. Statistics also bring forth the fact that a majority of Anganwadi workers are in the below poverty level.[4]

Overload of Work: Though Anganwadis were bought into place to address the problem of hunger and malnutrition among children, they ended up being vested with additional responsibilities such as immunization, following up the nutritional needs of expectant and nursing mothers. Drawing and maintaining records pertaining to the above are another challenge. There is an absolute absence of proportion between the work that is churned out of the Anganwadi workers and the honorarium that is paid to them.

Inadequate dispensation of knowledge: Since Anganwadi workers and helpers are primarily involved in activities pertaining to medical observation, dispensation of nutritional supplements, it is more than important to acquaint the Anganwadi workers and helpers about the functions carried out by them.[5]

4. ROLE OF PANCHAYATS

[1]Dr, K.A. Rajanna; *Problems and Prospects of Anganwadi Workers: A Study*, International Journal of Management, IT and Engineering, ISSN: 2249-0558, Vol.9, Issue I, Jan 2019

[2]*India's Primary Policy Response: The Integrated Child Development Services (ICDS) Program* – a Report based on data from NFHS-2(1998-99), Source: World Bank: India's Undernourished Children: A Call for Reform and Action – Aug, 2005, available on www.motherchildnutrition.orgaccessed on November 10, 2021.

[3]Komala M, *The Awareness among Anganwadi Workers about Children with Developmental Delays*, an Article published on Jun, 2016, available on www.motherchildnutrition.org, accessed on November 15, 2021.

[4]*Supra* note 16

[5]Sandip Patil, M.K. Doibale, *Study of Profile, Knowledge and Problems of Anganwadi workers in ICDS Blocks: A Cross Sectional Study*, Aug 2018, Journal of Health and Allied Sciences (12(2)), Department of Community Medicine, Jun 2016.

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The involvement of people in their development and ensuring good governance through grass root level democratic Institutions like the Panchayat Raj Institutions and involving these bodies for the betterment of living/working conditions at the Panchayat level is an endeavour which has attained partial accomplishment.

The ICDS, which seeks to deliver basic amenities to children and other beneficiaries is dependent on active participation of Panchayats. The objective of involving the community by encouraging self-help in improving the quality of life and well-being of the children and other beneficiaries can be achieved through Panchayats. The ICDS is not confined to delivering services alone, but, extends to emphasising the importance of bringing about social change in the community. Despite the built-in element of community participation, ICDS has not been able to involve the community to the desired level,only a few proactive individuals come forward to contribute to the programmes.The very reason of choosing Anganwadi Workers/Helpers from among the locals is to ensure effective delivery of services owing to the familiarity they have with the community, but due to lack of support/involvement from the other peers, the Anganwadi workers/helpers remain stranded.

Studies suggest that a majority of panchayat leaders are not aware of the ICDS services. Hurdles such as non-participation in meetings, lack of time and information, less priority work area show up in the way of Panchayats thereby leading to non-participation.[1]

CONCLUSION & SUGGESTIONS

i. Augmentation of Anganwadi infrastructure to make every Anganwadi available with basic amenities like potable water facility and sanitation should be taken up by the concerned authorities with urgent priority.

ii. There is a need to bridge the gap between the intentions of ICDS and its implementation. Anganwadis are playing an active role in rendering the nation with nourished, healthy children. The scheme incorporating services to overcome the nutritional hazards of the beneficiaries are to be relooked not only from the perspective of the objectives but their implementation.

iii. There is an immediate need to bring about reforms in the funding pattern at Institutional level which is possible through a well deduced legal framework.

iv. The labour standards of the international level[2] should be made applicable to the Anganwadi Workers and helpers in order to ensure access to the basic rights available to labourers.

v. Redirection of the ICDS program towards prioritising on the children between 0-3 years of age shall contribute magnificently towards destroying malnutrition as the same sets in between this age group.

vi. Panchayats being democratic institutions at the grass root level, should positively influence the working of Anganwadis. Most of the objectives of the Eleventh Schedule are rooted through the Anganwadis, collaboration between these institutions is the need of the hour.

vii. The ICDS functionaries should approach/consult the Panchayat representatives at the initial stages of project planning pertaining to implementation of schemes and programs.

[1]Shazia Manzoor and Shabana khurshid, *Panchayat Participation in ICDS Programme in District Budgam of Kashmir, India,* , International Journal of Social Sciences, ISSN 2319-3565 Vol. 3(5), 25-28; May 2014

[2]ILO Declaration on Fundamental Principles and Rights at Work, 1998, www.ilo.org

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DEVELOPING SUI-GENERIS SYSTEM FOR THE PROTECTION OF TRADE SECRET IN INDIA: AN ANALYTICAL STUDY

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INTRODUCTION

The critical detriments of economic growth are knowledge production and distribution. The extent to which firms can create and apply information through innovation determines their competitive advantage in what has become known as the knowledge-based economy. As a result, the role of intellectual property rights in maximizing the efficiency of information markets has taken on new significance.

The broad network of intellectual property rights available to producers of information includes patent and copyright law. It also consists of the less frequently discussed legal law protection of trade secrets. Trade secrets profoundly impact business success in the 21st century. The world transformed into a knowledge-based economy from a material-based economy.

The Indian government has declared the years from 2010 to 2020 as the "Decade of Innovations." The main aim of "this declaration is to develop an innovation eco-system in the country to stimulate innovations and produce solutions" for society, particularly concerning healthcare, energy, urban infrastructure, water, and transportation. The Ministry of Science and Technology promotes innovation through various schemes, including technology business incubators, research initiatives, and entrepreneurial programs. In addition, the government's Cluster Innovation Centre specifically seeks to redefine India's innovation paradigm beyond R&D and is focused on building twenty innovation clusters across the country that will support the national innovation agenda.[1]

India has made prolific growth in the intellectual property field, but it lacks in developing trade secrets legislation. India does not have any legislation to protect trade secrets which makes foreign investors cautious about their safety of secrets[2]. In 2008, the country drafted the National Innovation Act to protect Trade Secrets and confidential information, but it did not pass by either House of Parliament[3]. The Indian legislature adopts several ways for the protection of Trade Secrets and confidential information. The Judiciary mainly relies on the Law of Torts, Sec-27 of the Indian Contract Act, and equitable doctrines to protect trade secrets. But there is one limitation: if any person receives information about trade secrets independently, as through any independent development of some formula, the trade secret owner will not seek any protection[4].

Trade secrets, one of the oldest forms of Intellectual property, have not been considered an essential tool for the growth and development of the corporation as compared to its counterparts' patents, copyrights, trademarks, and designs. Trade secrets are capsules of information that provide a competitive edge over an enterprise; they can succeed if kept secret. Trade secrets, like any other IPR, have immense commercial applicability. Their protection is justified on sound economic grounds, which makes an enterprise competitive. In addition, courts have noted that trade secrets law exists to institute a form of commercial morality, to impose specific moral standards on business relationships.

We are protecting trade secrets under common law and have no legislative protection for the same, but India being party to the TRIPS agreement, is obligated to protect undisclosed information; the kind of protection and its modalities are left to the discretion of the member states they can have a Sui-generis mechanism in the place as provided under Article 10bis of the Paris Convention and Art 39(2) and 39(3) of TRIPS[5].

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[1] Decades of Innovation: 2010-2012 Roadmap, CLUSTER INNOVATION CTR., available at http://innovation.gov.in/innovation/inntoolkit/Cluster%20Innovation%20Centre/ CIC.html.

[2] Nikhil Nair." Are the trade secrets in India satisfactorily protected?" The World Journal of Juristic Polity, ISSN:2394-5044(2017)

[3] Https://spicyip.com/2008/10/innovation-bill-2008-and-trade-secrets.html

[4] Melvin F.Jager, Trade secrets throughout the world, South Asian Edn, Vol-2, ISBN 978-93-81082-881(2012).

[5] Section 7: protection of undisclosed information, WTO-Trade Related Aspects of Intellectual Property Rights, edited by Peter-Tobias Stroll., BRILL,2008, ProQuest Ebook central

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India has recognized the most popular forms of Intellectual property, including Copyright, Trademarks, Patents, Geographical Indications, but still a new type of intellectual property protected internationally; lack of protection in India, i.e., Trade Secrets. Trade secrets have no legal or statutory security in India. Indian Courts deal with trade secrets by principles of equity, common law, and the tort of" breach of confidence." Nevertheless, the utility of all these laws is limited, which requires a contractual obligation between the parties to the trade to maintain trade secrets.

Trade secrets law is usually confused with confidential information. Confidential information in a narrow concept, on the one hand, consists of information or data related to clients, management, etc. Meanwhile, a trade secret is a broader concept that includes business innovations, data, and related information about the company. With the nationalization in India, the demand for trade secret protection arises from fair competition in the market because disclosing the company's secrets will lead to the winding-up of companies. A trade secret is a need for the era.

International framework and definition of Trade Secrets.

The countries in the sample are all members of the World Trade Organization (WTO) and are subject to TRIPS provisions. The TRIPS Agreement was the first international agreement to protect trade secrets expressly[1]. The approach laid out in the TRIPS agreement is based on the notion that protection against unfair competition should include the security of undisclosed information[2]. In presenting this approach, the TRIPS agreement refers to the prior existing protection against unfair competition as shown in the Paris Convention for the protection of Industrial Property, a convention that the World Intellectual Property Organization administers. The similarities among countries in defining trade secrets correspond well with the three requirements of Article 39 of TRIPS. In fact, on this matter, TRIPS reflected then-current practices in many countries, and it has shaped subsequent lawmaking. In practice, the TRIPS requirements are as follows[3]:

- **Secrecy**: The information protected must be secret. Secrecy need not be absolute. The trade secret owner may share the information with employees and business partners. Instead, secrecy requires that the information is not publicly accessible and revealed to others only under conditions that maintain confidentiality concerning the broader public interest[4].
- **Commercial Interest:** The information must have economic value as a result of its being secret. Trade secrets law most typically protects commercial information; that information must derive some utility from being kept secret.
- **Reasonable efforts to maintain secrecy:** The information must be the subject of reasonable efforts on the part of the owner to maintain secrecy. By its nature, a trade secret claim arises when measures to protect the secret have failed[5].

Definition of Trade Secret:

Trade secrets exist in several laws worldwide and are protected in different forms as property, as IPR, under common law, Law of contract, etc. A trade secret refers to any information or data not disclosed to the general public and which the owner attempts to keep confidential[6]. Trade secret law and patents do not fall under the same subject matter. As patents, after a particular time, get open to the public or while registration processes, it gets public, which is not with trade secrets laws[7].

According to Uniform Trade Secrets Act,1970 and "information, including a formula, pattern, compilation, program device, method, technique or process, that:

[1] http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/

[2] https://www.oecd.org/sti/ieconomy/Chapter3-KBC2-IP.pdf

[3] https://www.scribd.com/document/349152454/Chapter3-KBC2-IP

[4] Landes, W.M. & R.A.Posner(2003) , The Economic Structure of Intellectual Property Law, Harvard University Press, Cambridge, MA.

[5] https://books.google.com/books

[6] American Express Bank Ltd Vs.Ms.Priya Puri MANU/DE/2106/2006

[7] Abhinav Kumar, Pramit Mohanty & Rashmi Nandakumar, "Legal protection of Trade secrets: towards the codified regime", Journal of Intellectual property, Vol 11,(2006)

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- Derives independent economic value, actual or potential, from not being known to, and not being readily ascertainable by proper means by, another person who can obtain economic value from its disclosure or use, and
- Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy[1].

Trade secrets fill the gap in Intellectual Property by providing legal shelter to non-patentable, non-copyrightable innovations[2]. On the other hand, trade secrets do not require any conformity to the definition of patentable matter. They need not be novel or non-obvious. The entire object behind its secrecy is its utility, so a trade secret has to be utilitarian in nature. The most important factor for a trade secret is that the content and an expression should remain a secret. The level of secrecy required to be ensured for confidential information is quite different from other forms of intellectual property[3].

Intellectual property or Sui-generis.

The term property has always been a debatable topic under jurisprudence. India has enacted the Copyrights Act,1957, which provides complete and comprehensive copyright protection in India. Further, it has enacted Trademarks Act,1999, which repealed the Trade Merchandise Marks Act.1958. The Patents Act, 1970 extends protection to patents in India. But, there is no specific law for trade secret protection in India. Multiple times trade secrets were not considered as property. Trade Secret law talks about disclosure rather than secrecy. Many courts treat trade secrets as an ordinary law matter rather than a part of Intellectual property., and due to that, they over-focus the confidentiality required to reach" bad actors'.'if we cover trade secrets under Intellectual Property[4], then it will provide legal protection to innovative intentions.

Trade secret protection presents no conflict with Patent Law, as it is inconsistent with the patent policy of encouraging inventions. However, for trade secret protection, uniqueness/novelty in the patent law sense is not required. Further, unlike the holder of a patent, the owner of a trade secret does not have an absolute monopoly on the information or data that comprises the trade secret[5]. Other companies and individuals have the right to discover the elements of a trade secret through their research and hard work.

Consequently, inventors of items that may meet patentability standards would prefer to seek patent protection because such protection is far superior to the protection afforded by trade secret laws.

As far as copyright is concerned, there is no copyright in ideas, and hence copyright law cannot protect confidential information. Section 16 of Copyrights Act,1957 states that" nothing in the Copyright Act should be considered as restraining an action for breach of confidence or breach of trust." There is thus no copyright protection of trade secret misappropriation claims.

Trade secrets as property.

The first question needs us to decide whether or not trade secrets ought to be treated as Property in any respect. The question is of little importance because if trade secrets are treated as mere contract rights, they are suitable only against the promisor. However, if they're treated as property rights, they provide exclusive rights that bind the world in a powerful sense. One possible argument against treating trade secrets as property is that they do not satisfy this exclusivity condition because the secret holder has no way to understand whether others have independently developed the secret on their own. Indeed, under the traditional formulation of the doctrine, other individuals have the privilege to reverse engineer the trade secret for their own use.

Most authors have tried to justify the trade secrets. The first and foremost question which comes into our minds is whether trade secrets are 'property' or not. To many, if trade secrets are property, then laws protecting them are normatively justified. Thus, the question of whether or not trade secrets are property has raged on for many

[1] Section 1(4) of Uniform Trade Secrets Act,1985

[2] Pace Christopher Rebel J, The case for a Federal Trade Secrets Act, Harvard Journal of Law and Technology, 8(2)(1995) 427,428, para 81,para 86

[3] Section 29 of Indian Patents Act,1970

[4] Intellectual property Rights.

5https://www.coursehero.com/file/pqf8dg/In-contrast-a-customers%C3%A2-list-does-not-achieve-trade-secret-status-where-the/

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years. While some wonder why it matters, others believe that the shift toward calling intangible assets 'property' has created and will continue to create a change toward the over-protection of intellectual property[1].

Two primary theories consider trade secrets as property:

- **Exclusive theory:** Those who believe exclusive rights are the sole requirement for property disagree about whether trade secrets should be property. This analysis was followed in

Ruckelshaus Vs. Monsanto Co[2] case, the court termed trade secret as a property on the following grounds:

➔ We can assign trade secrets

➔ Trade secrets have characteristics to be covered under the property

➔ It can form 'res of trust.' It shifts to the trustee at the time of bankruptcy.

With the grounds mentioned above, courts suggested that trade secrets should be covered under the Constitution.

The problem with this argument is that trade secrets are not exclusive, as pointed out by the California Supreme Court in **Cadence Design Sys., Inc Vs. Avant Corp.** held that "the owner of the trade secret is protected only against the misappropriation of the secret by improper means and the subsequent use or disclosure of the improperly acquired secret. There are various legitimate means, such as reverse engineering, by which a trade secret can be acquired and used".

- **Integrated Theory:** Rather than looking at exclusion, integration theorists look at how the asset is acquired, used, and disposed of. They argue that exclusivity is not enough, nor necessary, to define the property. It is argued that trade secrets are property because they are acquired by the actions of the trade secret owner. After all, discoverers can make their "own use" of the information. After all, it is secret and because the owners can decide how information is disposed of by publication or transfer[3]. This theory, however, also fails to resonate. How is it that two people can acquire and use the same secret? Why should the acquisition and use of an idea free for all to discover merit any protection?

About trade secrets, perhaps the most robust common law intellectual property from today, Justice Holmes famously remarked:

The word "property" is an unanalyzed expression of certain secondary consequences of the primary fact that the law makes some rudimentary requirements of good faith. Whether the plaintiffs have any valuable secret, the defendant knows the facts, whatever they are, through particular confidence that he accepted. The property may be denied, but the confidence cannot be. Therefore, the starting point of the present matter is not property… but the defendant stood in confidential relations with plaintiffs[4].

In other words, the idea of property as used in trade secrets is mainly relational. The entitlement to exclude originates in a specific set of circumstances, which is the Law's principle concern. The same is true in various shades of almost all common law intellectual property forms, often questioning their same classification as 'property.'

In Dwarakadas Srinivas V. The Sholapur Spinning & Weaving Co Ltd[5], the court held that

"the word 'property' should be construed in the widest sense as connoting a bundle of rights exercisable, by the owner in respect thereof and embracing within the purview both corporeal and incorporeal rights. The word 'property' is not defined in the constitution, and there is no good reason to restrict its meaning".

Art 300A of the Constitution also consists of intangible properties. In **Entertainment Network (India) Ltd Vs. Super Cassette Industries Ltd**[1], the court stated that while analyzing the ownership of property, it should

[1] Trade Secrets reviewing the old regime: Mayank and Sarthak Kapila

[2] Ruckelshaus Vs. Monsanto Co., 467 U.S.986,1001-04(1984)

[3] Adam Mossoff," what is property? Putting the pieces back together", ARIZ.L.REV., 2003, at 371,405-06

[4] E.I.du Pont & Co vs Masland, 244 U.S.1917,p.100,102.

[5] Dwarakadas Shrinivas of Bombay Vs. The Sholapur Spinning & Weaving Co.Ltd and Ors(18.12.1953-SC): MANU/SC/0019/1953

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always be interpreted under Art 19(1)(g) r/w 300A, and Hon'ble SC also considered that copyright falls under the meaning of the word property of Art 300A and by following the interpretation done under the following circumstance, we can term trade secrets and confidential information as property.

In American Express Bank Ltd. v. Ms. Priya Puri,[2] The Delhi High court held that an employee's rights to seek and search for better employment are not curbed by an injunction even though she had confidential data. Therefore, held to be in favor of the defendant. Thus, the court differentiated between service trade secrets and routine day-to-day affairs of employers, which were in the knowledge of many and were commonly known to others that could not be called trade secrets. Trade secrets could be a formula, technical know-how, or a peculiar mode or method of business adopted by an employer, which was unknown to others.

As Marks Lemley notes, the law of trades originated in the interconnection of many common law doctrines: breach of confidence, breach of confidentiality, common law misappropriation, unfair competition, unjust enrichment, and trespass[3].

By the mid-twentieth century, this had shifted, and courts came to view trade secret law as a branch of torts law, originating in a defendant's bad faith behavior. Eventually, the dominant view shifted to understanding trade secret law as a combination of contract and property principles[4]. If the trade secret is treated as part of the contract, it provides only the right against promisor, but if it is termed as property, it is exclusively available against the world.

The basic idea of property is to exclude other forms of enjoyment and restrict access to other than the owner. It limits the use and disclosure of information possessed by some others. Trade secret holders got the right to protect property, not because they own it. Still, they invented it like copyright and patent for the production of their business. Trade secrets should be protected as IPs like patents and copyright, which focus on innovation, changes, and the development of valuable information, etc.

Trade secret protection and confidential information

A piece of confidential information and knowledge increasingly drives business success; companies are honing their policies and practices to safeguard confidential information of commercial value against accidental, negligent, or willful misappropriation, misuse, sabotage, loss, or theft. Secret information or data needs proper protection and management if it is to be leveraged for competitive advantage. Once confidential information is disclosed to competitors, its value is lost forever. With due effort to keep information confidential or secret, such an intellectual asset becomes a property that may be licensed as a trade secret or used to obtain protection for other types of marketable intellectual property assets.

The Agreement on Trade Secrets of Intellectual property Rights (TRIPs), under article 39, urges its members to protect" undisclosed information" and "data submitted to governments or governmental agencies" through effective measures. This is the first that the protection of" undisclosed information" (i.e., trade secrets) has been expressly brought under the purview of an international agreement on intellectual property rights (IPRs). The International Convention for the Protection of Industrial Property (Paris Convention) covers unfair competition (Art 1(2)) in its competition. Article 39 of the TRIPs Agreement has linked the protection of trade secrets with article 10bis of the Paris Convention by stating that

" In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention (1967), Members shall protect undisclosed information… and data submitted to governments or governmental agencies….

Thus, trade secrets need not be protected as a part of measures guarding against unfair competition. However, it is essential to know what constitutes a trade secret because the mechanism for its protection depends upon that.

[1] Entertainment Network(India) Ltd Vs. Super Cassette Industries Ltd(16.05.2008-SC):MANU/SC/2179/2008

[2] (2006) III LLJ 540 (Del); Michael Heath Nathan Johnson v. Subhash Chandra, 60 (1995) DLT 757 and John Richard Brady v. Chemical Process Equipments P. Ltd AIR 1987 Del. 372, in which the court took note of the contentions of the counsels who referred to English decisions to define trade secret.

[3] Mark A.Lemley, the Surprising Virtues of treating Trade Secrets as IP Rights,61 Stan.L.Rev.311, 316(2008). https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=1439

[4] Ibid

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The significance of trade secrets, TRIPs mandate, and legal framework for its safety in India will be explored in this study.

What constitutes a trade secrets and confidential information?

The term "trade secret" is often used for confidential information associated with industrial and commercial activity. But a trade secret has been differentiated from confidential information as "information which, if disclosed to a competitor, would be liable to cause real harm to the owner of the secret… it must be the information used in the trade or business, and… the owner must limit the dissemination of it or at least not encourage or permit widespread publication"[1].

In Lord Greene, MR's Language in Saltman Engineering Co Ltd Vs. Campbell Engineering Co. Ltd[2], the confidential information "must not be something which is public property and public knowledge." Further, he states," it is perfectly possible to have a confidential document. Still, it is a formula, a sketch, or something of that kind, which is the result of work done by the maker upon materials which may be available for the use of anybody:… What makes it confidential is the fact that the maker of the document has used his brain and thus produced a result which can only be created by somebody who goes through the same process."

Thus, to be confidential, the information, even if in the public domain, the compilation and conclusions drawn from it need not be. Information may also comprise several items retrieved from the available pool of information, but its uniqueness lies in its separate and identifiable collection, which makes it confidential.

Trade secrets may be technical and business secrets. Technical secrets relate to the production of goods and services and consist of an invention, a manufacturing process, chemical formula or engineering and design drawings, and the know-how of the first kind. They also consist of craft secrets and recipes associated generally with cosmetic, food, and pharmaceutical trades. The most common example is coca-cola.

A firm about its activities generates business secrets. They include information on cost and pricing data, sales statistics, a list of consumers and sources of supply, market projections, and details of its promotional strategies and expansion plans. Such information may provide a firm competitive and comparative advantage over its rivals. Article 39 of the TRIPs Agreement covers both technical and business secrets in its ambit.

The intellectual property currently occupies a center stage in international trade. Enterprises rely increasingly on tangible or knowledge-based assets for creating and maintaining their competitiveness in the marketplace rather than on tangible or physical assets. Their ability to create, deploy, and strategically manage such proprietary assets is crucial for business success.

If a trade secret is treated as part of the contract, it provides only the right against promisor, but it is exclusively available against the world if it is termed as property. From the above analysis, trade secrets can be property and can be covered under Intellectual Property.

CONCLUSION

To conclude, the authors of this article respectfully submit that, in the 20th-century, trade secret legislation became a need. The above study focuses on the need for trade secrets in a country full of creativity and innovations. As businesses grow out of their parochial molds and go global, adequate secret protection is becoming necessary. Companies must remember that sufficient and effective creation, protection, use, and management of trade secrets are crucial factors determining their success. Due to lack of protection, many international companies show no interest in investing in Indian companies, which directly affects the country's economy. Protection of trade secrets as property has acquired great importance in the present scenario due to the emergence of different circumstances where it is preferred over patent protection.

It is distressing to accept that Indian Law doesn't place any relevancy upon the growth of recent and developing IPR laws globally. Therefore, a new trade secret legislation is the only way to ensure robust and effective IPR protection, which might successively open up new and profitable avenues for business scenarios in India to prosper.

[1] Stanghton,L.J. in Lansing Linde ltd V. Kerr[1991]1 All ER 418 at 425.Art.39 of TRIPS agreement uses"undisclosed information" in this sense

[2] (1963)3 All ER 43 at 45

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LEGAL FRAMEWORK ON PRIVACY AND DATA PROTECTION IN THE USA

Roopa S.

INTRODUCTION

Privacy is generally accepted as one of the main issues of computer and information ethics. New technologies raise a number of issues for privacy protection. Governments in many countries have recognised that this is a problem that their citizens are sensitive towards. Over the years, rapid technological advances have led to large volumes of data being generated through various activities, and increasing reliance of businesses on data-driven decision making[1]. Thus, there are laws and regulations that attempt to address the issue of privacy. Behind those laws, however, there are philosophical concepts of privacy that are not always easy to identify but that are important to recognise if one wants to understand how and why privacy is legally protected.

"Data Protection refers to the set of privacy laws, policies and procedures that aim to minimize intrusion into one's privacy caused by the collection, storage and dissemination of personal data.[2]" "Personal data generally refers to the information or data which relate to a person who can be identified from that information or data whether collected by any Government or any private organization or an agency[3].

Data Protection in USA

The United States follows a sectoral approach to data privacy protection[4]. There is no specific federal legislation that ensures privacy and data protection in the United States.

The first legislation relating to Data Protection was Fair Credit Reporting Act 1970. This Act regulated the collection of Consumers Credit information and access to their credit reports. The main objective of this Act is to address the fairness, accuracy and the Privacy of the personal information contained in the files of the credit reporting agency. The Act has established a tripartite model for data protection legislation:

1) Provided notice to consumers of specific type of data record.

2) Established an administrative redress procedures administered by a governmental agency and

3) Defined the conditions under which the law enforcement could access the data by meeting various standards of proof[5]

In 1973, the Secretary's Advisory Committee on Automated Personal Data Systems , published by the U.S Department of Health, Education and Welfare (HEW) report. This report mentioned about few fair information practices which were adopted by the US subsequently in the name of Privacy Act 1974. The following are the few fundamental principles laid down in HEW Report,

1) There should not be any personal data record keeping system whose very existence is secret;
2) There must be a way for an individual to look into the information relating to him or her in the record and how the same has to be used;
3) The rules also provided that for the individuals have a right to inform the organization purpose for which the data can be used;

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[1] Data protection and privacy statutes in various countries: European Union – The General Data Protection Regulation, 2016; Australia – The Privacy Act, 1988; Canada – The Personal Information Protection and Electronic Documents Act, 2000; The Privacy Act, 1985.

[2] Vijay Pal Dalmia, "Analysis of the Exploitation of Personal data by Whatsapp and other Social media Platforms", available at : https://in.linkedin.com/in/vpdalmia?trk=pulse-article_main-author-card, (last visited on November 8, 2021).

[3] *Ibid.*

[4] Shawn Marie Boyne, " Data Protection in United States", 66 The American Journal of Comparative Law 299 (2018).

[5] Stepen Cobb, CISSP "Data Privacy and data protection US law and Legislation" available at: file:///C:/Users/sri/Downloads/US-data-privacy-legislation-white-paper%20(1).pdf, (last visited on November 8, 2021).

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4) The way as to be provided for the individuals for correcting or amending the information.

5) The organization which are creating, maintaining, using or disseminating records identifiable personal data must assure the reliability of records.

These principles would bind all the organizations to comply with the code that would seek to protect the information of individuals. The congress ratified the privacy Act in 1974, though the HEW Report called for the legislation which is going to be applied to all automated personal data systems, but the legislation applied only to the federal agency database.[1] This Act declared that right to privacy is a personal and fundamental right protected by the Constitution of the United States[2]. Though Congress mentioned its commitment towards Privacy in 1974, it failed to implement the Comprehensive data protection law. In USA Privacy is protected under two kinds of laws:

a) Federal Laws

b) State Law

Though there are few limitations in Common law and Constitutional Protections, Congress has enacted a number of Federal laws with the object of providing statutory protection to the individual's personal information.[3] Congress has passed various laws protecting the personal information in the most sensitive areas of consumer life, including health and financial information, information about children and credit information.

The following are the few Federal Data Protection Laws:

Federal Trade Commission Act (FTC)

This is considered as the critical law relevant to data privacy and security. The Act was originally enacted in 1914 to strengthen the Competition Law. In 1938 section 5 of the Act was amended to include the activities which are misleading practices harmful to consumers. The most important principle of FTC is that the companies are bound by their data privacy and data security promises.

The Communication Act (1934)

The Communication Act, 1934, provides for a comprehensive scheme for the regulation of Intestate Communications[4]. This Act includes certain Data Protection principles applicable to common carriers, cable operators and also to satellite carriers. The Act was amended by the Telecommunications Act 1996, to impose the privacy and data security requirements on common carriers . The Act mainly centers on a category of information which is referred as " Customer proprietary network information (CPNI)[5]. CPNI is defined as information relating to the "quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier," and is "made available to the carrier by the customer solely by virtue of the carrier-customer relationship."[6] An obligation is imposed under Section 222 (c) of the Act on the carriers regarding CPNI.

Fair Credit Reporting Act (1970)

This Act was enacted in October 1970. The main object of this Act is to promote fair and accurate credit reporting and establishes procedures for the collection, use and protection of personal information held by the "Consumer Reporting Agencies". This Act is made applicable to all the consumer reporting agencies which provide consumer reports. The Act also obligates the authority to follow reasonable procedures to assure accuracy of the information. If it finds that the data is inaccurate or incomplete and cannot be verified, then it has to correct the data immediately. The Act recognizes the right of action of the injured consumer.

Family Educational Rights and Privacy Act (FERPA) 1974

[1] The Privacy Act 1974, 5 U.S.C. § 552.

[2] Alan Charles Raul, Tasha D Manoranjan and Vivek Mohan, "United States" *The Privacy, Data Protection and Cybersecurity Law Review 283* (2014).

[3] CRS Report, Data Protection Law: An Overview available at https://crsreports.congress.gov/product/pdf/R/R45631 (last visited on November 8, 2021).

[4] *Benanti v. United States* , 355 U.S 96104 (1957)

[5] The Communication Act, 1934, 47 U.S.C. § 222(h)(1).

[6] *Ibid.*

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This Act came into force from 1974. This Act protects the data included in the students' educational records and it is applied to all the educational agencies and institutions that receive funding from the U.S Educational department, including non-profit organizations[1]. Under the Act if an educational agency or institution wants to publish information relating to students , then it has give public notice about the categories of the information it wants to publish to the public and also give reasonable time to the parents to inform whether such information should not be released[2].

Electronic Communications Privacy Act (1986)
The Electronic Communications Privacy Act was passed in 1986. This is the primary federal law that governs the monitoring of electronic communications in the workplace. The Act also prohibits the use of any information which have been acquired by illegal, wiretapping or electronic eavesdropping.

Video Privacy Protection Act 1988
The Video privacy protection Act was enacted in the year 1988, in order to "Preserve personal privacy with respect to the rental, purchase or delivery of video tapes or similar audio visual materials. This Act does not contain any data security provision which requires the entities to maintain relating to the consumer information from unauthorized access.

Health Insurance Portability and Accountability Act (HIPAA) (1996)
The Department of Health and Human Services Act has enacted (HIPAA) to regulate Medical information, which is called as "Protected Health information" (PHI). These regulations apply to health care providers, health plans and health care clearinghouses as well as business associates[3].

Children's Online Privacy Protection Act (1998)
Children's online Privacy Protection Act was passed in the year 1998. This Act regulates the Collection and useful information relating to the children under the age of 13 years by Internet, Websites and Mobile applications[4].

Financial Services Modernization Act (Gramm – Leach Bliley) (1999)
The Act is know as Gramm Leach Bliley Act. This Act imposes data protection obligation on the financial institutions. The *GLBA* is most well-known as the repeal the *Glass-Steagall Act of 933*[5]. These obligations are centered on a category of data called Data "Consumer"[6] "nonpublic personal information"[7](NPI) and generally relates to :

a. Sharing NPI with the third parties;

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[1]The Family Educational Rights and Privacy Act of 1974, 20 USC § 1232g.

[2] The Family Educational Rights and Privacy Act of 1974, 1232 g (a)(5)(A).

[3] A "business associate" is defined as "with respect to a covered entity, a person who: (i) [o]n behalf of such covered entity . . . , but other than in the capacity of a member of the workforce of such covered entity or arrangement, creates, receives, maintains, or transmits protected health information for a function or activity regulated by this subchapter . . . ; or (ii) [p]rovides, other than in the capacity of a member of the workforce of such covered entity, legal, actuarial, accounting, consulting, data aggregation . . . , management, administrative, accreditation, or financial services to or for such covered entity, or to or for an organized health care arrangement in which the covered entity participates, where the provision of the service involves the disclosure of protected health information from such covered entity or arrangement, or from another business associate of such covered entity or arrangement, to the person."

[4] *Supra* note 39 at 310

[5] https://www.investopedia.com/terms/g/glba.asp (last visited on November 9, 2021)

[6] GBLA defines "consumer" as an "individual who obtains, from a financial institution, financial products or services which are to be used primarily for personal, family, or household purposes" or "the legal representative of such an individual." 15 U.S.C. § 6809(9).

[7] GBLA defines "nonpublic personal information" as "personally identifiable financial information" that is not "publicly available" and is either is "provided by a consumer to a financial institution," "resulting from any transaction with the consumer or any service performed for the consumer," or "otherwise obtained by the financial institution."

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b. Promoting privacy notices to consumers and

c. Securing NPI from unauthorized access.

Non-Solicited Pornography and Marketing Act (CAN-SPAM Act)
This Act was passed in the year 2003 to set a national standard for the regulation of commercial email messages. Commercial email messages are defined as any email message, the primary purpose of which is the commercial advertisement or promotion of a commercial product or service[1]. According to the law, subject lines must be clear and accurately reflect email content[2].

Consumer Financial Protection Act (CFPA) (2010)
This Act was passed in 2010. The Act has constituted Consumer Financial Protection Bureau, an independent agency under the Federal Reserve System. This Act was enacted in 2010 as Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the CFPA created the Consumer Financial Protection Bureau (CFPB) as an independent agency within the Federal Reserve System[3].

Apart from Federal Laws many of the U.S States have passed legislation mandating stronger protection of personal information than the Federal laws. Each state has its own constitution and among these states 10 States have explicit right of Privacy. The following are the few State Privacy and Data Protection Laws :

- California Online Privacy Protection Act (CalOPPA)
- California Financial Information Privacy Act
- California Shine the Light Law
- California Consumer Privacy Act
- Information Security Breach and Notification Act

CONCLUSION
The current legal landscape governing data protection in the United States is complex and highly technical. Although Congress has enacted a number of laws designed to augment individual's data protection rights, the current patchwork of Federal law and the State law are limited to specific industry participants, specific types of data, or data practices . Though "right to privacy" developed over the course of the 20th century, but this right generally guarded only against government intrusions and does little to shield the average internet user from private actors.

[1] *Supra* note 13 at 7

[2] Available at : https://www.techopedia.com/definition/26266/can-spam-act (last visited on November 9, 2021).

[3] Consumer Financial Protection Act of 2010, Pub. L. No. 111-203, tit. X, 124 Stat. 1376, 1955–2113 (2010) (codified at 12 U.S.C. §§ 5491–5603).

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RULE OF LAW AS AN IDEA OF PUBLIC LAW

Dr. Nalini R

ABSTRACT
Public law refers to the relationship between the citizen and the state, whereas private law encapsulates the relationship between citizens. but what makes both public law and private law most interesting is Rule of law. In this small piece of writing the writer intends to show how the concept of rule of law, not only ensure the supremacy of law but also plays an important role in attainment of all forms of equality and justice especially in the field of Public law.

KEY WORDS: Rule of Law, Public law, Supremacy of law.

"When the Rule of Law disappears, we are ruled by the whims of men."

— TIFFANY MADISON

Rule of law in simple words means, law is supreme, and nobody is above the law. Law is different compared from one place to another. Something which is illegal or against the law may be totally normal in another place and similarly something said to be normal in one place may be against the law in another place. Unlike personal law that affects only a certain class or category of people, public law affects the society in whole.

Even though there is a lot of variation in different laws from place to place, we can see that there is one thing that is common everywhere, i.e. law is considered as supreme and nobody, nobody is above the law. The rich, the poor, the ruler, the ruled, everyone is below it and should obey it.

In the earlier days, law developed based on the local precedents and as well as the methods adapted were different between two different places. As time passed, it was seen that there were adaptations of law from one place to another. But as law is made and designed for a particular place by the political institutions of that place and as such they are specifically designed in such a way that they suit their specific needs and in the event if the same is to be considered for application at another nation, it would be just and necessary so as to examine the same for compatibility with the laws of that nations.

Contrary to oligarchy, according to the rule of law, all the members of the society, including the government are subject to law and the same is applicable even for those who makes those laws or enforces them and as well as the adjudicating authorities are bound to it. It also contradicts the so called divine rights or the God's mandate, which was the political and religious doctrine of the royal, wherein the king or queen i.e. the ruler is preselected by birth and not by the will of the people. The constitution of UK considers rule of law as the most fundamental doctrine. As a matter of fact, it is also said that the whole constitution itself was founded on the idea of the rule of law. The doctrine is also accepted in the Constitution of U.S.A and India as well.

Originally, the phrase "*Rule of Law*" is a derivation from the French phrase *'La Principe de Legality'*, which means "*the principle of legality*" and refers to a government that is based on principles of law and not of men. According to Plato, "*Where the law is subject to some other authority and has none of its own, the collapse of the state, in my view, is not far off; but if law is the master of the government and the government is its slave, then the situation is full of promise and men enjoy all the blessings that the gods shower on a state*" and Aristotle wrote that "*law should govern and those in power should be servants of the laws.*"

The development of the legal concept finds its roots in the history of various ancient civilizations. But in modern times, A.V.Dicey is credited for the popularisation of the expression of "the rule of law", as it had a long lasting influence, especially because of the reason that he had considered mainly three distinct elements such as firstly, nobody can be punished until and unless there is a clear breach of law; next, everyone is equal before law and nobody is above it and thirdly, law is the best protector of a citizens freedom.In the present day, there are various organization that are involved in promoting the rule of law.

Over time, the term 'rule of law' has been used to express a wide variety of ideas and as such the same also had several meanings and definitions. As a result, due to the differing conceptions, the rule of law doctrine has always been a topic of disagreement and debates. But as already said that nobody is above the law, even neither the Government is above that and the government or the administration has to act only within the permissible limits of law. There is a defined set of laws that also describes how the government needs to function which has to be adhered at all times. It is only when adhered to the principle of rule of law, the individual liberty and right can be protected in a better way.

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For the peaceful living of a society, it is necessary that it is built on foundation of laws under which each individual is equal and equally accountable as well. It is also necessary that the fundamental rights are enforced, and its violation being fairly adjudicated in theindependent courts. According to The World Justice Project (WJP) Rule of Law Index, which has collected huge data on the rule of law, it is seen that since the past three years, there has been a noticeable decline in the rule of law around the world. Even though it is observed that the technical reforms and assistance have resulted in positive changes and encouraged governments to deliver its core duties tothe citizens, still the number of countries declined in the past few years has outnumbered the countries that have improved. As such it is necessary to check oncorruption, protect fundamental rightsand alsohave a strong civil society that supports human rights and bodies that can tackle the challenges such as corruption.

When the United Nations was formed in1945 with anintention to promote international cooperation, it was created on three pillars i.e. international peace and security, humanrights and development. For the UN system, rule of law is a fundamental to international peace and securityand as well as for political stability to achieve progress and development, botheconomicallyand as well as socially. It also protects the rights of the people and as well as fundamental freedom.

Every legal system is unique. Effective rule of law helps in the recognition of fundamental rights and reduction of corruption. It also helps to protect people from injustices irrespective of them being a large or small group. When there is a strong rule of law holding all individuals equal and accountable, it is also seen that the society lives in peace and prospers further resulting in a higher GDP per capita. Many countries also support the following of the rule of law adhering to the principles of human rights and also want to enforce it to corporations and institutions as well so that there would be transparency in resolving conflicts. As time passed, a lot of new things came under the rule of law. The advancement of the rule of law is essential for sustained development and as well as economic growth of a nation by eradicating poverty and hunger.

In this modern world, which is growing faster and faster than ever before, there is requisite of an independent judiciary so that the judges are not under any form of pressure and hence are free to make decisions impartially. Without the rule of law, there will be no peaceful interactions with one another. Law puts a boundary between what we want to do and what we can do. It touches every aspect of life including our freedom of expression, liberty, etc. especially when it would impact others in a negative way. Hence, there would be peace and harmony in the society. In fact, the modern democratic society is built on the concept of the rule of law. In India, the constitution is said to be the supreme and when the constitution of India was framed, several provisions were adopted from UK and USA. All laws made should comply with accordance to the constitution. But even after so many years, it sometimes feels that there have not been achievements up to the expected point.

Common law system of justice originated from the British and the same was also adopted by India. In India, the concept of "fair, just and reasonable" test was introduced by the Apex court in Article 21 after the Emergency. Despite of its length, the Indian Constitution is highly flexible, and this has gained huge attention and praise. Time has played a major role in the evolution of society and with the passing of time; the judiciary of the nation has also played a major role in the shaping of the rule of law in India. Even though there are several instances wherein we can see that there have been instant positive approaches taken, still it is always argued that there has been not enough practical application with respect to the context.

The framers of our constitution have done a commendable job. Even though there are powers given to amend necessary parts, the whole of constitution cannot be changed. But the laws that were framed decades ago are still in existence, and with several amendments it has changed the crux of the matter. The rule of law being a very old concept has changed and evolved gradually to suit the modern days and if enforced in a rightful manner, would surely yield results that are beneficial for the development of the society in all fields. It is time that we focus on the weak areas and the loopholes so that they can be addressed in an efficient manner and each and every individual in the society ensures that they maintain the Rule of Law.

Rule of law ensures that law is supreme, and everyone is equal before law. It keeps a tab over the abuse of power by the authorities and in turn promotes qualitative life. This in turn helps in building the nation as there would be reduction of corruption and development in various sectors of the nation. As they say "*Dharmorakshatirakshitaha*", if we uphold dharma, in turn, it will protect us.

REFERENCE

- The Council of Europe, International Commission of Jurists, United Nations, International Bar Association, World Justice Project, The International Development Law Organization (IDLO), The International Network to Promote the Rule of Law (INPROL), etc

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THE INCREASING RISK OF BREAST CANCER WITH HIGH BMI

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ABSTRACT

Background: *The Breast cancer is the most common cancer in women both in developed and developing countries, comprising 16% of all females cancer, Weight gain and obesity is another potential risk factor which may influence the incidence of breast cancer .*

Objective: *To characterize the association of obesity as a possible risk factor for breast cancer.*

Patients and Method: *This study was done between July 2017 and February 2018 where informations was obtained from 25 female patients that was diagnosed with breast ca, some of which was admitted in the first floor surgery department in bqauba teaching hospital and some was attending the breast unit in the outpatient clinic, the following data was obtained : age, height , weight, family history, martial state and if it's newly diagnosed or a recurrence ,The age of the patients was ranging from 25-65 years old and BMI was calculated as weight in kilograms divided by the square of height in meters ,Based on the world health organization classification BMI<18.5 is considered as underweight,18.5-25 as normal weight <25-30 as overweight and ≥30 as obese.*

Results: *The total number of patients was 25 females, 4% were between the age of 20-30 and 20% between the age of 60-70 as the age groups involved was between(20-70), the BMI divided in four categories(≤18.5,18.5-25, 25-30 and ≥30) in overall there was an increase in the incidence of breast ca in overweight category, the cumulative incidence included 0% for the ≤18.5, 36% for patients with BMI 18.5- 25 ,56% for the 25-30 and 8% for the > 30.*

Conclusion*: The results of this study have shown that body mass index is associated to breast cancer incidence especially in older age group.*

Recommendations *:The Education of the women for losing weight is an important part in decreasing the risk of breast cancer particularly in post-menopausal period and there are many different ways for losing weight including having regular meals ,decreasing the high fat food and physical activity.*

INTRODUCTION

Anatomy of The Breast

The breast is a modified sweat gland Lobules are the chief functional and structural unit of the breast. Many lobules join to make a lobe. There are 15–20 lobules of glandular tissue embedded in fat, and Each lobe is drained by a lactiferous duct (2-4 mm) **Fat** accounts for its smooth contour and **most** of its bulk. These lobules are separated by fibrous septa running from the subcutaneous tissues to the fascia of the chest wall **(the *ligaments of Cooper/ Astley Cooper fibers/ suspensory ligaments* ,**Majority of cancers develop in upper outer quadrant; an axillary tail of breast tissue often extends into axilla.

In Case of Advanced Breast Cancer

Tumors may grow through retromammary space Subsequently invade deep fascia & pec. major m. Leads to fixation of malignant breast lesion to chest wall Shortens suspensory (Cooper's) ligs. Leads to irregular dimpling of skin or retraction of nipple,

There Are Four Boundaries For A Mastectomy

- Clavicle – superior boundary
- Infra-mammary fold (above rectus sheath) – inferior boundary
- Sternum (midline) – medial boundary
- Latissimus dorsi (ant. border) – lateral boundar.

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The first lymph node draining the tumourbearing area is called as Sentinel node. Cutaneous lymphatics communicate with opposite breast across midline.

Blood Supply Of The Breast Include:
1-thoracoacromial artery

2-lateral thoracic artery

3-internal thoracic artery

4-posterior intercostals aretery and the venous drainage by superior vena cava and axillary vein.

Nerve Supply:
• Cutaneous innervation (T1-T6)

• Medial pectoral n.

• Lateral pectoral n.

• Long thoracic n.

Supplies serratus anterior superficially

Bmi
The **body mass index** (**BMI**) or **Quetelet index** is a value derived from the mass (weight) and height of an individual. The BMI is defined as the body mass divided by the square of the body height, and is universally expressed in units of kg/m^2, resulting from mass in kilograms and height in metres.

The BMI may also be determined using a table or chart which displays BMI as a function of mass and height using contour lines or colours for different BMI categories, and which may use other units of measurement (converted to metric units for the calculation).

The BMI is an attempt to quantify the amount of tissue mass (muscle, fat, and bone) in an individual, and then categorize that person as *underweight*, *normal weight*, *overweight*, or *obese* based on that value. However, there is some debate about where on the BMI scale the dividing lines between categories should be placed. Commonly accepted BMI ranges are underweight: under 18.5 kg/m^2, normal weight: 18.5 to 25, overweight: 25 to 30, obese: over 30. People of Asian descent have different associations between BMI, percentage of body fat, and health risks than those of European descent, with a higher risk of type 2 diabetes and cardiovascular disease at BMIs lower than the WHO cut-off point for overweight, 25 kg/m^2, although the cutoff for observed risk varies among different Asian populations.

Triple assessment in breast cancer
The triple assessment consist of clinical evaluation ,mammography and fine needle aspiration cytology has been routinely practiced in the developed world as an alternative to conventional open biopsy in the pre-operative diagnosis of breast lumps, it's simple ,reliable, reproducible, less traumatic and cost effective in terms of money and time and it's diagnostic accuracy has been reported to reach 100%.

The Breast cancer is the most common cancer in women both in developed and developing countries ,comprising 16% of all females cancers .It's estimates that breast cancer lead to 519,000 death in women in 2004[1].Although breast cancer is thought to be a common cancer in the developed countries, a majority (69%)of all breast cancer deaths occurs in developing world. Indeed, increase life expectancy, increase urbanization and adoption of western life style have increased the incidence of breast cancer in developing countries [1,2]. A recent study indicated that breast cancer is the leading cause of cancer and cancer related mortality in women worldwide so that cause-specific mortality rate increases with age among postmenopausal women with hormone receptor-positive breast cancer [3]. The etiology of breast cancer is not well known. However ,several risk factors have been suggested to have an influence on the development of this malignant tumor including, genetic ,hormonal ,environmental ,sociobiological and physiological factors [2].Weight gain and obesity is another potential risk factor which may influence the incidence of breast cancer , There are numerous observational studies which has investigated the correlation between obesity and breast cancer. How ever the results are inconsistent. Some researchers believe that body mass index greater than 30 may increase the risk of breast cancer both in pre- and post-menopausal periods [4-7]. Whereas others claim that obesity may reduce the risk of breast cancer during premenopausal period but increase the risk during postmenopausal period [8-11]. There is no universal consensus on the relationship between BMI and breast cancer . To date , A few meta-analysis have been conducted to estimate a summery measure of the effect size of the overweight and

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obesity on breast cancer. However , these studies were limited to the English language studies cited by Medline[12,13]. Thus ,the present up-to-date meta –analysis was conducted to assess the results of both cohort and case-control studies addressing the correlation between BMI and breast cancer cited by all major international electronic databases in order to estimate the overall effect of body mass index on breast cancer risk Obesity is a pandemic health concern, with over 500 million adults worldwide estimated to be obese and 958 million were overweight in 2008 [3]. One of the established risk factors for breast cancer development in post-menopausal women is obesity [4], which has further been linked to breast cancer recurrence [5] and poorer survival in pre- and post-menopausal breast cancer [6, 7]. Preliminary findings from randomised, controlled trials suggest that lifestyle modifications improved biomarkers associated with breast cancer progression and overall survival [8]. The biological mechanisms underlying the association between obesity and breast cancer survival are not established, and could involve interacting mediators of hormones, adipocytokines, and inflammatory cytokines which link to cell survival or apoptosis, migration, and proliferation [9]. Higher level of oestradiol produced in postmenopausal women through aromatisation of androgens in the adipose tissues [10], and higher level of insulin 11], a condition common in obese women, are linked to poorer prognosis in breast cancer. A possible interaction between leptin and insulin [12], and obesity-related markers of inflammation [13] have also been linked to breast cancer outcomes. Non-biological mechanisms could include chemotherapy under-dosing in obese women, suboptimal treatment, and obesity-related complications [14]. Numerous studies have examined the relationship between obesity and breast cancer outcomes, and past reviews have concluded that obesity is linked to a lower survival; however, when investigated in a meta-analysis of published data, only the results of obese compared with non-obese or lighter women were summarised [6, 7, 15]. We carried out a systematic literature review and meta-analysis of published studies to explore the magnitude and the shape of the association between body fatness, as measured by body mass index (BMI), and the risk of total and cause-specific ortality, overall and in women with pre- and post-menopausal breast cancer. As body weight may change close to diagnosis and during primary treatment of breast cancer [16], we examined BMI in three periods: before diagnosis, <12 months after diagnosis, and ≥12 months after breast cancer diagnosis. **O**BESITY IS A WELL-ESTABlished risk factor for postmenopausal breast cancer.1,2 Risk associated with adiposity has been explained predominantly by increased production of available endogenous estrogens in the adipose tissue ,potentially initiating and promoting breast carcinogenesis.3-5 Adulthood weight gain has also been associated withan increased risk of postmenopausal breast cancer.6-11 However, it is unclear whether the risk of breast cancer associated with weight gain is independent of the timing of weight gain or whether weight that is gained during potentially susceptible life stages (ie, perimenopause)is the relevant determinant of risk. Individual periods of hormonal change have distinct biological effects that may differentially affect the body size and breast cancer relation.12Associations of adiposity and adult weight gain with postmenopausal breast cancer have been stronger in women who do not use menopausal hormone therapy(MHT).2,6-11 However, little is known about whether hormonal and reproductive factors reflecting early exposure to female hormones, such as age at menarche, modify the relations of adiposity and weight change to breast cancer risk. suggests that obese women have a poorer prognosis than lean women after treatment for breast cancer.1In an observational prospective study of about 350,000 US women, a highly significant trend was observed of an increasing risk of dying as a result of breast cancer with increasing body mass index (BMI).2Womenwho are obese may be diagnosed at a more advanced stage of disease, with larger tumors, and more often with nodal involvement, but multivariate analyses have demonstrated an independent prognostic effect on the risk of recurrence, disease-free survival, and overall survival.

PATIENTS AND METHOD

A prospective study done between July 2017 and February 2018 where informations was obtained from 25 female patients that was diagnosed with breast ca ,some of which was admitted in the first floor surgery department in bqauba teaching hospital and some was attending the breast unit in the outpatient clinic, the following data was obtained : age, height , weight, family history, martial state and if it's newly diagnosed or a recurrence ,The age of the patients was ranging from 25-65 years old and BMI was calculated as weight in kilograms divided by the square of height in meters ,Based on the world health organization classification BMI<18.5 is considered as underweight,18.5-25 as normal weight <25-30 as overweight and ≥30 as obese.

RESULTS

pre-menopausal and post-menopausal women were involved in this study in a total of 25 cases

Table 1:The association of age with breast ca in women

AGE	Number of patients	percentage %
20-30	1	4%

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30-40	5	20%
40-50	4	16%
50-60	10	40%
60-70	5	20%

the distribution according to the age in Table 1 shows the highest incidence in the age group(50-60 years) with a percentage of 40%

Table 2:The association of BMI with breast ca in women

BMI	Number of patients	Percentage %
18.5≥	0	0%
18.5-25	9	36%
25-30	14	56%
30>	2	8%

Table 2 for the BMI divided in four categories(≤18.5,18.5-25, 25-30 and ≥30) in overall there was an increase in the incidence of breast ca in overweight category, the cumulative incidence included 0% for the ≤18.5, 36% for patients with BMI 18.5- 25 ,56% for the 25-30 and 8% for the > 30.

Regarding the family history 44% of the patients were positive and 56% negative.

DISCUSSION

The study confirms that overweight and obese women are at increased risk for breast cancer and also indicates that such an association becomes stronger with advancing age .

A few studies have considered lifetime weight change and have generally found that weight gain were related to breast cancer risk(Ballard-Barbash et al,1990;Brinton and Swanson ,1992;Barnes-Josiah et al,1995).It is unclear ,however ,to what extent the role of weight gain was explained by a positive correlation with BMI at diagnosis .an Italian case-control study (Franceschi et al ,1996) showed that the association between BMI and breast cancer risk tended to increase with the passing of time after menopause, As measures of height and weight were self-reported in this study it is possible that inaccuracy in recall influenced the results.

It's possible that the association between BMI and breast cancer risk might be partly explained by other biochemical variables that was not measured ,some of the hormones that may be associated with breast cancer risk are prolactin ,insulin-like growth factor-I and insulin.

CONCLUSION

The results of this study have shown that body mass index is associated to breast cancer incidence especially in older age group.

RECOMMENDATIONS

Obesity is a modifiable risk factor for breast cancer that is amenable for modification and the obesity may be the principle contributing factor for a substantial number of cases of breast cancer and for losing weight there are many ways including:

1- Limit non-nutritious foods, such as: Sugar, honey, syrups and candy

2- Cut down on high-fat foods by: Choosing poultry, fish or lean red meat ,Choosing low-fat cooking methods, such as baking, broiling, steaming, and boiling and Using low-fat or non-fat dairy products.

3-Eating regular meals : Eating at regular times during the day helps burn calories at a faster rate .It also reduces the temptation to snack on foods high in fat and sugar.

3- Be physically active. Physical activity is anything that gets the heart rate up, like walking. The aim should be for at least 150 minutes of moderate activity a week. Even 10-minute blocks count toward the goal**.**

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MYCOTOXIN AND FUNGAL INFECTION IN POULTRY FEEDS

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ABSTRACT
Mycotoxins are the fungal metabolites which are a major pollutant in the animal feed. These secondary metabolites are synthesized by Penicillium, Fusarium and Aspergillus. The mycotoxins includes T-2, nivalenol, fumonisins, zearalenone, which may impact negatively the productivity and health of poultry farms. Detrimental effects may be caused by mycotoxins on the growth performance and health of poultry, this can include prohibition of stunted growth, lowered production of eggs, suppression of immunity, and organ function. In the present study, we have analyzed the various fungi found in the poultry feed and their percentage of infection or contamination. In the poultry feed, Aspergillus, Rhizopus, Penicillium, Mucor and Alternates are major fungus infection. There infection rate was 87.10%, 83.87%, 70.32%, 33.55% and 16.13%, respectively. Also, mycotoxin groups and subtypes are listed here.

Keywards: *Mycotoxins, Fungal metabolites, Poultry feed, Contamination, Infection*

INTRODUCTION
Mycotoxins are byproducts of fungal metabolites which may pollute human food and animal feed. By specified fungi like *Penicillium, Fusarium* and *Aspergillus*, these secondary metabolites are synthesized [Zhu et al., 2016]. Around 200 fungi species may synthesize mycotoxins, and around 300 chemically variable metabolites of fungi are recognized as mycotoxins. These metabolites may occur in the broad scale of crude materials arising from plant and animal sources, which are utilized in the formation of animal feed between the agriculturally crucial mycotoxins, the aflatoxins and the ochratoxins are the most disastrous to the poultry factory [khatoon and Abidin, 2018]. Other mycotoxins include T-2, nivalenol, fumonisins, zearalenone, which may impact negatively the productivity and health of poultry farms [Murugesan et al., 2015].

Various factors impact the contamination rate of poultry feeds *via* mycotoxins. These factors involve the conditions of weather, fungal species contaminating the harvests, crops gathering method, variations in season, also the storage method of ingredients and provender [Ezekiel et al., 2014]. Species of fungi can infect ingredients and poultry feed, and endure dormant until satisfactory requirements of growth, like aerobic condition, high humidity and be available. Below favorable conditions, the polluting fungi begin to develop and synthesize various mycotoxins and subordinate byproducts [Khatoon and Abidin, 2019].

Detrimental effects may be caused by mycotoxins on the growth performance and health of poultry, this can include prohibition of stunted growth, lowered production of egg, suppression of immunity, and organ function [Ezekiel et al., 2014; Yang et al., 2020]. These impacts eventually may lead to serious economic losses. Besides, metabolites of fungi can also terrorize human health which eats up contaminated meat of poultry. The numerous mycotoxins presence in food of human and provender of livestock may aggravate the problem of toxicity via the synergistic effect development [Njobeh et al., 2012].

Feed of poultry is synthesized from a diversity of compounds which arise from plants and animals. Cereals are adding up in poultry feed as an energy source, while proteins can arise from plant resources, like peanut and soya bean, or animal origin like bone meals and fish. These compounds can be infected with mycotoxins like fumonisins, ochratoxin A, zearalenone, aflatoxin B1 [Guerre, 2016]. Agencies take an example, the Food and Drug Administration of United States and European Commission have accepted regulative guidelines which control the maximum tolerance levels of various mycotoxins in animal and food provender. Dissimilarities in the limiting concentrations take place according to the raw material type, intended use, animal's age and species [Yang et al., 2020].

Table 1. Constituents of poultry feed

Constituent	Components	Chick starter (lbs)	Turkey starter (lbs)
Wheat	Carbohydrates, proteins, and water	30	25
Oats	Fibres, fats and carbohydrates	18	10

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Barley	Amylase, protein, lipid	15	15
Milk powder/ skim milk/ butter milk	Vitamin, riboflavin, protein	3.0	4.0
Fish oil	Vitamin A and D	0.5	1.0
Iodized salt	Sodium	0.5	0.5
Meat	Protein, minerals, fats, fatty acids, vitamins, carbohydrates	5.0	10
Fish	Lipid, protein, mineral, vitamin D and B2, omega 3 fatty acid	5.0	10

The mycotoxin's incidence in poultry feed have been described around the world [Ezekiel et al., 2014; Morrison et al., 2017; Zhang et al., 2018]. The industry of poultry in the Governorate of Sulaymaniyah, Kurdistan, Iraq's region, is a necessary agriculture sector, which supplies food for greater than 1.5 million persons and assists the economy of region. Nevertheless, there are small data regarding the mycotoxins incidence in ingredients and animal feed. Nevertheless, this work deliberated to inquire about various mycotoxins, called T-2, zearalenone, fumonisins, Ochratoxins A, Aflatoxin in ingredients of feed utilized topically for poultry in Sulaymaniyah.

Basically animals need a sufficient supply of water, minerals, vitamins, fats/oils, proteins and carbohydrates. Nevertheless, the raw materials composition in feed of animal varies from preparation to preparation and among various species [AFMA chairman's report, 2015/16]. Generally the feeds are synthesized and stored for long time period before dispension and feed's moisture may be variable, often leading to mycotoxin and fungal contamination [Rodrigues et al., 2011; Bryden, 2012; Greco et al., 2014; Zachariášová, 2014]. Mycotoxins are familiar toxic secondary substances synthesized via different filamentous species of fungi of Alternaria, Penicillium, Fusarium and Aspergillus genera. Those are generally called as contaminants of feedstuffs and food [Njobeh et al., 2012; Greco et al., 2014]. Although around 300 mycotoxins are familiar to occur under broad climatic conditions range, those which are remarkable because of economic and health significance. These mycotoxins significance, let up on their existent in the feed and food above limits of regulation. Other than their feed's and food's presence, appearing *Alternaria* mycotoxins like TeA (tenuazonic acid), AOH (alternariol) and AME (alternariol monomethyl ether) are encountered frequently as feed ingredients contaminants [Fraeyman et al., 2017] which occasionally could find themselves in terminal product. Even though their levels of contamination are commonly low with limited data of toxicity in chickens, their risk of health may not be excluded completely when considering their feasible effects of immune and reproductive system in both animals and humans [Scott et al., 2012; Grover and Lawrence, 2017].

Many cases linked to chronic conditions resulting from the mycotoxin's consumption frequently at fewer doses that go unrecognized specifically as they can co-exist all around the developmental cycles of animal's, causing numerous diseases [Zinedine et al., 2007; Gillespie and Flanders, 2010; Shareef, 2010; Zain, 2011; Grenier et al., 2016]. In poultry the OTA (ochratoxin A) contaminated feed consumption may effect in ochratoxicosis, a common OT's term giving rise to disease, indicated by low production of egg and low gain of weight [Gillespie and Flanders, 2010; Bryden, 2012], whereas the AF contaminated feed consumption resulting in the anorexia, aflatoxicosis and hepatic condition and influencing rate of growth, lowering production of egg and growing rates of death [Gillespie and Fanders, 2010; Zain, 2011]. Aflatoxins which flourish mostly under tropical surroundings are having the ability to extensively cause liver damage in other livestock and poultry [Bryden, 2012]. The co-existence of zearalenone (ZEN), deoxynivalenol (DON) and FUM's in poultry feed may lead possibly to symptoms like lowered height of villus in broiler chicks [Zinedine et al., 2007; Grenier et al., 2016].

Feed describes one of the chief facets in production of poultry. Both layers and broilers are efficacious in transforming feed to food materials [Shareef, 2010; Stoev et al., 2010] and as such there are greater carry over chance of mycotoxins into consumable by-products via poultry bird nourished with polluted feeds. The mycotoxin contaminated poultry feeds situation is a notable prospective of carry over negatively affecting performance and health of poultry. Layer and broiler chickens in farm afflicted by mycotoxicosis was seen to reveal symptoms like oral lesion, inclusion body hepatitis, visceral haemorrhage, enhanced leg malformation incidence, gizzard erosions, pale fatty liver, enlargement of kidney, egg blood spots high chances, low fertility, vaccination responses failure, immunosuppression, competency of reduced feed conversion and weight loss [Shareef, 2010; Stoev et al., 2010; Greco et al., 2014]. Such circumstances can seriously and negatively impact the poultry industry.

The microscopic fungi presence affects the feeds quality, their nutritional quality and organoleptic attributes [Cegielska-Radziejewska et al., 2013]. Like microorganisms moulds will utilize and assimilate the most freely

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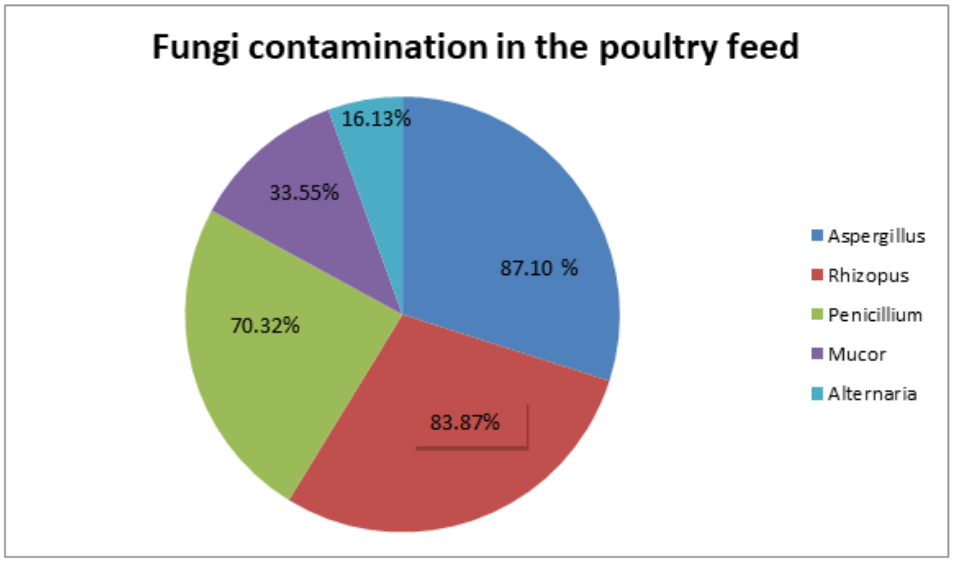
accessible nutrients in the substances they grow upon and spoiling can effect in the loss of 5-100% feed nutrients [Okoli et al., 2006]. Concerning the quality of nutrition minerals, proteins and lipids are of necessary importance for the proper growth and development of farm animals. The nutritional requirements and quantity of feed relies on the age and weight of the poultry and also the season. Healthy poultry need adequate quantity of proteins, lipids and carbohydrates, along with the essential dietary minerals and vitamins [Gillespie and Flanders, 2009; Damerow, 2012].

Figure 1. Fungi found in poultry feed and their composition



Additionally to their negative effect on organoleptic and nutritional properties, moulds may synthesize various mycotoxins [Shareef 2010]. It is familiar that animal feed contamination with mycotoxins can instigate mortality and sanitary interferences between animals and human consumer's secondary contamination via milk, meat or eggs [Nyamongo and Okioma, 2005]. Mycotoxin contaminated diet consumption can instigate long lived, chronic and acute toxic impacts [Binder et al., 2007; Venancio and Paterson, 2007]. With regard to animals and humans in normal terms, mycotoxins show toxic activities and are distinguished by estrogenic, teratogenic, mutagenic and carcinogenic properties [Cegielska-Radziejewska et al., 2013]. Mycotoxins like patulin, fumonisins, ochratoxin A, deoxynivalenol, T-2 toxin, zearalenone and aflatoxins may be recognized the commonest mycotoxins established in food and feed [Hussein and Brasel, 2001; Orellano, 2007; Gimeno et al., 2007]. Mostly poultry mycotoxicoses are caused by a consumption of contaminants low concentration above a long with the representative chronic manifestations of suboptimal production, poor feed efficacy and poor growth. Consumption of high concentration leads however to acute clinical manifestations connected with immune system, specified vital organs and other facets of avian physiology and also mortality [Cegielska-Radziejewska et al., 2013; Mabbett, 2004].

- **Classes of mycotoxin and its toxicity**

Mycotoxins are comparatively large and varied set of toxic subordinate metabolites of less molecular weight. They are produced typically by filamentous fungi, specifically those associating to the genus *Fusarium, Alternaria, Penicillium and Aspergillus* even though Stachybotrys and Claviceps are crucial producers of mycotoxins. Roughly 300-400 mycotoxins are reported and identified so far [Pinotti et al., 2016; Dzuman et al., 2015; CAS1.Mycotoxins, 2003]. Nevertheless, concerning their feeds prevalence and their investigated effects on health of livestock, only some mycotoxins groups are recognized to be of economic concern and safety known as zearalenone (ZEN), trichothecenes (TCR's), ochratoxins (OT's), fumonisins (FM's), aflatoxins (AF's) [FAO and WHO, 2007; Smith et al., 2016; Pinotti et al., 2016].

Table 2. Classes of mycotoxin and their types

Mycotoxin groups	Subtypes
Aflatoxin	Aflatoxin B1(AFB1), Aflatoxin B2 (AFB2), Aflatoxin G1 (AFG1), Aflatoxin G2 (AFG2), Aflatoxin M1(AFM1), Aflatoxin M2 (AFM2)
Fumonisins	Fumonisins B1 (FB1), Fumonisins B2 (FB2), Fumonisins B3 (FB3), Fumonisins B4 (FB4)
Ochratoxins	Ochratoxin A (OTA), Ochratoxin B (OTB)

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Trichothecenes	Trichothecene A (A-TRC's), Trichothecene B (B-TRC's), Trichothecene C (C-TRC's), Trichothecene D (D-TRC's),
Zearalenone	α- Zearalenone (α-ZEL), β- Zearalenone (β- ZEL)

CONCLUSION

In the poultry feed, Aspergillus, Rhizopus, Penicillium, Mucor and Alternates are major fungus infection. There infection rate was 87.10%, 83.87%, 70.32%, 33.55% and 16.13%, respectively. Also, mycotoxin groups and subtypes are listed here. Hence, there is an urgent need to reduce the mycotaxin contamination. This can be done by improving the feed quality or enriched it with some non-toxic fungicides.

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A REVIEW OF APPEARANCES OF VISUAL POLLUTION AND THEIR EFFECTS ON HUMAN HEALTH IN BAGHDAD CITY

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ABSTRACT
The visual pollution is one of the types hidden environment pollutions that spread in the urban environment and have a negatively affect in our daily lives its refers to everything negatively effects of visual image they are all human works and actions that harm the beholder eye, Visual pollution obstruct our eye and effect on whole living organism and destruct the economic health of city. Visual pollution one of the result in local community which effect the enjoyment of a place and feeling existing space. was the main cause of it from smoke spewing chimneys of factories, Open storage trashes The data also showed that the greatest effect of visual pollution was negative and chaotic visuals followed by distraction eye fatigue about , The best methods to safe our environment from the effects of visual pollution by use of moderate advertising at public place and educate people to know the importance of natural healthy environment

We conclude that Visual pollution is as dangerous as other pollutions are, It is our responsibility to prevent visual pollution by making more people aware about its dangers, finally, controlling the sources of visual pollution and protect natural environment are very important to protect the healthy and happy human generations, Build more green jungles that constructing the cement buildings and giving beauty view to city, Reducing the telecommunication and electric wires and poles, mobile towers appearance and number of graffiti's at public place

Key words: visual pollution, human health, Baghdad city

INTRODUCTION
The visual pollution is one of the types hidden environment pollutions that spread in the urban environment and have a negatively affect in our daily lives[1], visual pollution refers to everything negatively effects of visual image [2], they are all human works and actions that harm the beholder eye. Visual pollution' has been primarily recognized and researched in the mid of 20th century has been discussed in the developed part of the world resulting in the emergence of different acts, rules and policies for the protection, preservation and enhancement of the urban visual environment [3]. A school of thought defined visual pollution as the type of pollution which offends human vision, spatial orientation, physical, mental health, or has psychological and economic effects on a community [4,5].

In an urban context, we define the term 'VPOs' to refer to all the manmade features along with their physical characteristics (placement, appearance, size, color, view and functional hindrance etc.) that affect the visual quality of urban surroundings from a human's eye view.

Urban visual pollution is the negative physical condition of a number of objects which have a direct as well as an indirect relation with the quality of the built environment which ultimately has implications for humans living in that place [6,7]. It has been reported that visual pollution objects (together or individually) impact human health [8,9], distract drivers particularly along main high ways [10,11], reduce property values, deface public places, spread annoyance, encourage needless consumption, or affect the identity of places [12,13]. It has been argued that better visual quality of a space has a relation to the safe and good behavior of residents and so as with better communities at a larger scale [14,15].

Visual pollution obstructs our eye and effect on whole living organism and destruct the economic health of city.Visual pollution one of the result in local community which effect the enjoyment of a place and feeling existing space. Existing space design is out of context or out of character are also leads to visual pollution.

There are many reasons responsible for visual pollution phenomena from these reasons. The city considered a beauty format includes ecology, History, Geography, Logical, Political, economic, engineering dimensions. It is structure entity. The new culture in which started after the industrial revolution .It changes the old culture and replaces many signs and concepts dominant f or a long centuries these changes gradually a cope with the advance of society so the main reasons of visual pollution phenomena are[16] :

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1. Context.

2. Planning reasons.

3. Behavior reasons.

4. The increase of population density.

5. Economical differences.

6. Political and military factors.

7. Scientific development.

LITERATURE REVIEW

1.1 Visual Pollution

An aesthetic issue and refers to the impacts of pollution that impair one's ability to enjoy a vista or view. Visual pollution disturbs the visual areas of people by creating harmful changes in the natural environment which is directly attract on general health hazards like asthma, diarrhea, etc. Solid waste cause infections to animals in environments, driver's problems, loss of traffic signal by dazzling billboards, health issue cause by magnetic fields with open cables and creates shorts circuits. Anything which impede with the "pretty scenes "and others defacement which is one of the reason of visual pollution that is counted as origin, garbage dump within unregulated area, running wire, pole, in uneven way, poster banners, ruins buildings. The sense of human being get transformed on displaying of pollutants for long time Billboards,[3][4] open storage of trash, antennas, electric wires, buildings, and automobiles are often considered visual pollution. An overcrowding of an area causes visual pollution. Visual pollution is defined as the whole of irregular formations, which are mostly found in nature.[5][6].

1.2 Types Of Visual Pollution

Visual clutter and visual blight are two types of visual pollution. Visual blights counted as dust and microns on highly congested street which play role towards missing objects in soundings. Visual clutter counted as billboards, electric lines, pole, ruins buildings etc. Numbers of cause responsible for visual pollution are administrative negligence, excess advertisement, vandalism, unregulated articles in public spaces it unknown to displaying, ruins building with unknown owners. All cities are adopted same kind of visual pollutions it destroyed the uniqueness of the place it homogenization of the community.

Visual clutter are the physical elements which attacks the nerves in such a way that it can has a tragic effect. The reflections of these blights are random and could attack any parts of human psychology. One of most concerned care in this is when a person serving 8-10 hours of day in office comes back to home and counter by these clutter, because it can have very dangerous effect on his mental health. The clutter are mostly situated on poles, buildings fences, chock, and streets, which are the common ways to pass by and hence these elements cannot be avoided as they are Omni-present. Even poster and banner are change after a time being, the unorganized electric poles, cables, wires are also remain constant they effects very badly.

Visual blight are the invisible particles which are also responsible for visual pollution they are in the form of micro-organism, tiny dust particles, sound and lights are common to most of the surroundings. If opening of the house in street, then the dust particles would enter inside and cause visual pollution. Even the market and public places are affected. A part from human being the flora and fauna are also affected because of excessive sound, birds migrates, and due to light sensibility flora effect in the flower blooming and fruit maturity and alteration of reproductive time.

Graffiti is one of the form of visual pollution that make an individual's nuisance that impede and spoils the peace environment of local neighborhoods.

1.3 The Sources Of Visual Pollution

- Excessive and overcrowded advertisements: means of advertising can have negative effects on the appearance of a region, if there are excessive numbers of billboards near the streets (fig.1), this may lower the visual attractiveness of a city. Moreover, some areas are also covered with many banners or other ads that may also lead to significant visual pollution.

- Telecommunication and electric wires and poles, Mobile towers :In some cities, houses are still connected with wires and cable in order to provide phone lines or other basic devices, these cables may lead to significant visual pollution, since it is usually no pretty picture if you have excessive cables on every house.

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- Signboards, Billboards, Posters and Hoardings.

- Unproductive lands and deforestation.

- Graffiti: it is defined as street markings, offensive, inappropriate, and tasteless messages made without the owner's consent.[9] Graffiti adds to visual clutter as it disturbs the view.

- Bad designed Buildings and huge Constructions: Local managers of urban areas sometimes lack control over what is built and assembled in public places. As businesses look for ways to increase the profits[10]for example poorly planned buildings and transportation systems create visual pollution. High-rise buildings, if not planned properly or sufficiently, can bring adverse change to the visual and physical characteristics of a city, which may reduce said city's readability [11]

- Smoke spewing chimneys of factories: Smoke can also be a great contributor to visual pollution. Especially in rush-hour, excessive amounts of harmful gases are emitted into the atmosphere. This can lead to significant smog. Some big cities are suffering from excessive smoke levels almost every day due to emissions from factories and cars and other sourses, which can in turn lead to significant visual pollution

- Open storage trashes: In many cities there is no attention in the streets and other areas there is a quantity and dirty amount of causing a small optical pollution.

- Local Authorities: local authorities of urban area have no control over what is getting displayed where and who is building what in public places. Local administration is observed to be so careless that they don’t even know what kind of posters are there on the road side[12]

- Natural causes: Dust storms, Smog and growing some unplaced plants as well as the influence of the aesthetic city.

Fig(1) Appetences of visual pollution in Baghdad city , Iraq

1.4 Effect Of Visual Pollution On Human Health

Visual pollution on human being affected in two forms these are direct effects being psychological and physiological or indirect effects which lead to disturbance and road accident and can lead to :

1)Lower quality of life: Visual pollution can lead to a loss in the quality of life. This is especially true when the negative effects of visual pollution are quite high as well as negative and chaotic visuals can reduce decision making power of human mind especially in kids.

2)Dark dangerous color combinations can change human perception and human psychological mood and behavior.

3)Depression, Stress and Anxiety due to bad views.4)Loss of tourism income.

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5)Eye fatigue:Visual pollution can cause eye fatigue. Depending on the level of pollution, eyes can be hurt quite a lot from visual distractions, which may in turn lead to serious eye issues.

6) Distraction: Visual pollution lead to distractions and also to information overload. Especially in areas which have a high density of physical commercials, people easily distracted and may also suffer from information overload since their brain will not be able to process all the information in a healthy manner[13].

7) Accidents: The distraction related to visual pollution lead to accidents. chances increase accident since your attention may not be focused solely on driving but on other things around you.

8)Physical health issues: Visual pollution may also cause physical health issues. This can be due to a lack of sleep due to distractions from excessive light pollution. A lack of sleep increases the probability for stress which may in turn lead to serious issues like heart attacks[14].

1.5 Visual Pollution Malformations

Malformations of visual pollution can be classified as [25.26] to:

(a)Media surfaces and various ads (billboards, posters, commercial sculptures, signatures, flags)

(b)Traffic vehicles (crowdedness, parking, and even bicycles in some intensive places)

(c)Mass (business, education, tourism)

(d)Transitory architecture (details, entertainments, religious, political, and oriented events).

(e)Visual barriers (The fences, transfer architecture)

Objective Of The Study

- inductive the visual pollution in Baghdad city
- study the reasons that led to spreading this phenomenon
- The negative effects resulting from visual pollution.
- Prevention practices of visual pollution phenomenon in our environment.

RESULTS AND DISCUSSION

Baghdad city considered a beauty format includes ecology, history, geography, logical, political, economic, engineering dimensions but in last years after 2003 the random spread of generic animals that effect on traffic as well as unorganized industrial stores also largest uses of generator to produce electricity and uses of telecommunication and electric wires cause significant visual pollution. The largest source of visual pollution is Smoke spewing of factories may be due to the spread of smoke and fumes from factories without supervision [28].Telecommunication and electric wires cause significant visual pollution by and this corresponds to the study [29] in Baghdad because of the electric power lack in Iraq, people are using private generators to provide them with the electricity, they need causing the establishment of private irregular electricity network beside the national electricity network. Excessive and overcrowded advertisements causing moderate impacts on our environment and human health which not correspond to the study that was conducted in Britain where the overcrowded advertisements is a major sources of visual pollution [30] .

According to present study the graffiti and bad designed buildings cause visual pollution with moderate percentage which disagree with Egyptian study that show the graffiti and bad designed buildings causes high level of visual pollution in old city [31] and these result from that most people of Baghdad city have the opinions the graffiti is evidence of beauty and urbanization while it is one of the major causes of visual pollution as well as ignorance of the people about concept of visual pollution and their lack of desire to know their effects on city appearances in future.

On other hand the present study was agreed with [32] which conducted in the Mosul city that open storage trashes cause visual pollution with highly percentage and have the largest impact on mental health of humane so can reduce decision making power of human mind especially in kids and can cause confusion and accidents [33]. Present study show by the questionnaires most of samples express that the optimal solution for prevention of visual pollution and environmental protection is a moderate advertisement in public places as well as setting rules and regulations by local authorities for environmental protection all of these were agree with [29] in main streets of Karda in Baghdad city.

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CONCLUSIONS

1- Visual pollution is as dangerous as other pollutions are.

2- Unpleasant and unnatural visuals can harm our mental health and also it can harm our thinking power.

3- This research showed that more than 65% percent of people are had a concept about the sources of visual pollution and their impacts on beauty view of old city

4- It is our responsibility to prevent visual pollution by making more people aware about its dangers.

5- Major solutions is to enhance the municipality management in both planning and operation methods relayed to pollution removal, running awareness campaigns to educate the people about the visual pollution effects and how to reduce it and reduce the military appearances in the city

RECOMMENDATION

1- Technology can make our life easy but natural environment and natural beauty is our life.

2- Controlling the sources of visual pollution and protect natural environment are very important to protect the healthy and happy human generations

3- Reducing the telecommunication and electric wires and poles, mobile towers appearance and number of graffiti's at public place.

4- Build more green jungles that constructing the cement buildings and giving beauty view to city.

5- Raise the kids and minors s knowledge because they are the next generation who has to face the visual pollution even more.

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PATTERNS OF COMMUNITY EMPOWERMENT THROUGH THE UTILIZATION OF VILLAGE FUNDS IN MATA AIR VILLAGE, CENTRAL KUPANG DISTRICT, KUPANG REGENCY

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ABSTRACT

Purpose: *This research is intended to examine the pattern of community empowerment through the use of village funds in Mata Air Village, Central Kupang District, Kupang Regency.*

Research Methodology: *The type of research used in this research is descriptive research with a qualitative approach. The location of this research is in Mata Air Village, Central Kupang District, Kupang Regency with community informants, village/district officials and community leaders of Mata Air Village. In addition, the village and sub-district governments are also used as informants to obtain valid data. Sources of data in this study obtained through primary sources and secondary sources. Data collection was done by means of observation, interviews and document searches. The data collected was then analyzed using the analytical method from Creswell.*

Finding: *The findings in this study are that village funds are used for various developments for the welfare of citizens and residents are also actively involved in managing village funds so that by themselves it will increase community capacity at the micro level.*

Limitations: *This research was conducted during the Covid-19 pandemic so that researchers could only collect information from a few people.*

Contribution: *This research can be used as an evaluation material for Mata Air Village and also as an academic reference for students.*

Keywords: *Village, Empowerment, Fund and Community.*

1. INTRODUCTION

The village is a legal community unit that has an original structure based on special origin rights. The rationale for village governance is diversity, participation, genuine autonomy, democratization and community empowerment (Widjaja, 2003:3).

The enactment of Law Number 6 of 2014 concerning Villages is a reflection of village strategy in national development. The village as an autonomous government organizational unit in Indonesia is undergoing a repositioning of governance administration in accordance with the paradigm shift from building a village to a developing village. Decentralization gives local governments the authority to manage their own budgets in accordance with the potential and local wisdom of each region and village as the lowest autonomous government unit.

The village as the lowest autonomous government unit in Indonesia is undergoing a repositioning of governance administration in accordance with the paradigm shift from developing a village to a developing village. Decentralization gives local governments the authority to manage their own budgets in accordance with the potential and local wisdom of each region and village as the lowest government unit.

In Government Regulation No. 72 of 2005 it is stated that decentralization is not only limited to the district level but also to the village level which can be seen as a legal entity, with territorial boundaries, given the authority to regulate and manage the interests of local communities based on local origins and recognized and respected customs. Likewise in Law no. 6 of 2014 concerning Villages emphasizes that villages have primary rights and traditional rights to regulate and manage the interests of local communities and play a role in realizing the ideals of independence based on the 1945 Constitution of the Republic of Indonesia.

The village was originally a local community organization that had territorial boundaries, was inhabited by several residents, and had to manage their own customs. In the development of development in the village, although there are statutory regulations that guarantee the independence of the village to regulate itself, along the way there are still many villages that have not succeeded in development and are still in poor and powerless conditions. Many factors make people suffer and are forced to live with a low quality of life so that they are disadvantaged, systematic poverty, which often causes various problems, both in terms of education, health and economy. This is illustrated by the number of development programs that fail to eradicate poverty which has an impact on the lives of some rural communities, therefore these communities need to empower themselves,

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increase their capacity to face the challenges of an increasingly complex life.

In its implementation, the central government allocates transfer funds to the regions and these funds give greater authority to villages and the annual budget, which is legalized through Village Law Number 6 of 2014 and is referred to as the Village Fund. Through the Village Fund the central government allocated around IDR 628 million (~USD 48,300) per village in 2016. This allocation increased in 2017, where the allocation will be around IDR 1 billion (~USD 76,900), albeit based on the 2017 budget plan. Each village will only get around IDR 800 million (~USD 61,538) in total (Watts et al, 2019).

In Government Regulation Number 60 of 2014 concerning Village Funds which states that the source of village funds comes from the APBN (State Revenue and Expenditure Budget) which is intended for villages which is transferred through the Regency/City APBD (Regional Revenue and Expenditure Budget) and is used to finance government administration, implementation of development, community development and community empowerment. The village fund management process in question starts from planning, implementation, administration, reporting and accountability. All village fund management processes must be based on the principles of transparency, participation and accountability.

One of the reasons for the need for village funds is because the village fund policy is in line with the regional autonomy agenda, where the village is the basis for decentralization. The village fund policy is very relevant to the perspective that makes the village the basis for participation. Because the village is in direct contact with the community and community control is stronger, decentralization to the village level can improve government functions according to community needs. Good, responsible and transparent use of village funds will greatly help rural communities to get out of poverty and vice versa.

The objectives of village funds that are channeled to rural communities include; (1) Helping to overcome economic problems in the village, reducing poverty, reducing unemployment, inhibiting urbanization and reducing inequality; (2) Contribute to the economic strengthening of rural communities, contribute to equitable development and its results, build infrastructure and create new job opportunities and opportunities; (3) Besides being used for village development, but also for the creation of human resources (HR) in the village, such as training, counseling, mentoring and monitoring that are more organized and networked; (4) Strengthening coordination, consolidation, and synergy in the implementation of priority village development programs by the central, regional, sub-district, and village governments; 5. Build public service infrastructure and facilities as well as strengthen and develop the economy of rural communities while the benefits of the Village Fund will be used primarily to finance community development and empowerment to improve the welfare of rural communities, quality of life and poverty alleviation, as stated in the government work plan from the village.

The village has the power in the form of very strong social capital. This is strength for village development. Village communities have various social ties and strong social solidarity, as important assets for government, development and community activities.

Mutual cooperation and the strength of local values are assets of rural development that aim to accelerate rural economic development. Independence and mutual cooperation have proven to be the most important pillars for true village autonomy, although on the one hand the wealth of social capital is inversely proportional to economic capital. The social capital of rural communities consists of social ties (social bridges) and social networks (social ties). To free these limited social ties, an independent movement from the village community is needed. In addition to strengthening social capital, villages must also strengthen economic capital (financial capital), knowledge capital and human capital.

However, there are still many weaknesses that arise when the funds are used for empowerment and development purposes. This weakness creates problems such as misappropriation of funds, so that their use is not as effective as expected. This is due to the fact that fund managers do not yet have sufficient competence to manage these funds. This condition causes many government empowerment programs to fail in their implementation, one of which is in Mata Air Village, Central Kupang District, Kupang Regency. In general, the distribution of village funds in each region, as well as the implementation of the use of village funds that are still not effective, are still obstacles faced in implementing the policy of distributing village funds (Bustomi et al, 2020).

In its implementation in the Mata Air Village, activities financed from the Village Fund are guided by technical guidelines set by the Kupang Regent regarding activities financed from Village funds and preferably carried out self-managed using local resources/raw materials and strived to absorb more labor from the community. The Spring Village itself. Village funds disbursed for the Mata Air Village can be used to finance activities that are

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not included in the priority use of Village funds after obtaining approval from the Kupang Regent by ensuring that the allocation of Village funds for priority activities has been fulfilled and/or community development and empowerment activities have been fulfilled.

The community of Mata Air Village in the Central Kupang District, Kupang Regency, East Nusa Tenggara Province correctly understands the basis of Law No. 6 of 2014 concerning Villages, and how to describe it to improve community welfare. Many factors are the cause of the emergence of economic problems for the people of this spring village, such as the high unemployment rate, the lack of human resources, and the lack of creativity of the village community in processing natural resources. However, with the existence of this Village Fund, the people of Mata Air Village are well aware that they can actually get out of their situation of helplessness towards a better situation by utilizing abilities that they have not been aware of. Pre-research data obtained from the village head of Mata Air, Benyamin Kanuk, during his tenure from 2017, he has budgeted village funds to be managed by Village Owned Enterprises (BUMDes). Benyamin said the village funds obtained must be managed by utilizing the potentials that exist in the village in order to improve the economy of the people of Mata Air Village.

2. LITERATURE REVIEW

2.1. Community Empowerment

Empowerment is a concept that was born as part of the development of the mind of western society and culture, especially Europe, literally empowerment means "to give power or authority to act" which means to give power or transfer power and "to give ability to or enable" which is defined as an effort to give ability or empowerment. In line with the above, Prijono and Pranaka (1996:44-45) state that the concept of empowerment may be seen as part or soul of the currents in the second half of the 20th century which are now widely known as postmodernism, with an emphasis on attitudes and opinions whose orientation is anti-system, anti-structure and anti-determinism which is applied to the world of power. Meanwhile, Paul in his book on restructuring and organizational empowerment (Sedarmayanti, 2000:78) also states that empowerment means an equitable sharing of power so as to increase political awareness and power of weak groups and increase their influence on development processes and outcomes.

Empowerment is a strategy or a development paradigm that is implemented in community development activities, especially in developing countries. This empowerment arises because of the failure experienced in the process and implementation of development that tends to be centralized, such as community development or community development. This model does not provide direct opportunities for the people to be involved in a development process, especially in the decision-making process concerning the selection of officials, planning, implementation and evaluation of development programs.

As mentioned above, the notion of community empowerment actually refers to the word "empowerment" as an effort to actualize all the potentials possessed by the community. Kartasasmita (1996:3) states that community empowerment is a concept of economic development that encapsulates social values so that within that frame of mind, efforts to empower communities can be seen from three sides, namely:

a. Creating an atmosphere or climate that allows the community's potential to develop (enabling). Here the starting point is the recognition that every human being, society has potential that can be developed. That is, no society is completely without power. Empowerment is an effort to build that power, by encouraging, motivating and raising awareness of its potential and trying to develop it.

b. Strengthening the potential or power possessed by the community (empowering). This strengthening includes concrete steps and the provision of various inputs as well as opening access to various opportunities (opportunities) that will make the community more empowered. For this reason, it is necessary to have a special program for people who are less empowered, because general programs that apply to all, do not always reach this level of society.

c. Empowering also means protecting. In the process of empowerment, the weak must be prevented from becoming weaker, because they are less empowered in the face of the strong. Therefore, protection and siding with the weak are very basic in the concept of community empowerment. Protecting does not mean isolating or covering oneself from interaction. Protecting must be seen as an effort to prevent unequal competition and exploitation of the strong over the weak.

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Based on this opinion, it can be said that the empowerment strategy in community development is an effort made to improve and become independent and self-supporting of the community in accordance with the potential and local culture it has as a whole and comprehensively so that the dignity of the layers of society whose conditions are unable to escape from poverty. and retardation. Empowerment does not only include strengthening individual members of the community but the existing living institutions in society need to be empowered. Through this empowerment strategy, community participation in implementing development will increase. Thus, the scope of empowerment is not only increasing the capacity of individuals, but also groups and institutions that exist and grow in the community. Community empowerment does not make the community more dependent on various programs of giving.

Such an empowerment approach is expected to give roles to individuals not as objects but as actors who determine their own lives. This human-centered approach to community empowerment (people centered development) then underlies the insight of local resource management (community based resource development), which is a people centered development planning mechanism that emphasizes social learning technology (social learning) and program formulation strategies. Whatever the goal to be achieved is to increase the community's ability to actualize its capabilities (empowerment).

Mitchell (1995:45) explains that empowerment means removing the bureaucratic boundaries that compartmentalize people and making them use their skills, experience, energy and ambition as effectively as possible. This means allowing them to develop a sense of belonging to the parts of the process, especially their responsibility. While at the same time demanding that they accept a wider share of responsibility and ownership of the whole process.

Hikmat (2004:4) explains that the concept of empowerment in the discourse of community development is always associated with the concepts of independence, participation, networking and justice. Wahyono et al (2001:8) states that the community empowerment approach emphasizes the importance of self-reliant local communities as a system that organizes them.

People who are being empowered generally have limitations in developing themselves. Therefore, a companion is needed to guide them in an effort to improve their welfare. Assistance in the concept of empowerment is very essential and its function is to accompany the process of forming and administering community groups as facilitators, communicators or dynamists and to help find ways to solve problems that the community itself cannot do.

2.2 Disaster Management

According to Mardikanto (2014:202), there are six goals of community empowerment, namely:

a. Better Institutions

The increase in activities/steps taken is expected to lead to institutional improvement, including the development of business partnership networks.

b. Business Improvement (Better Business)

Improvement of education (spirit of learning), improvement of business accessibility, activities and institutional improvement, are expected to improve the business being carried out.

c. Improved Income (Better Income)

With the improvement of the business carried out, it is hoped that it will be able to improve the income it earns, including family and community income.

d. Improvement Of The Environment (Better Environment)

Income improvement is expected to improve the environment (physical and social), because environmental damage is often caused by poverty or limited income.

e. Better Living

The level of income and improved environmental conditions are expected to improve the living conditions of every family and community.

f. Community Improvement (Better Community)

A better life, supported by a better (physical and social) environment, is expected to lead to a better community life.

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2.3 Village

In the General Indonesian Dictionary, it is stated that a village is (1) an area inhabited by a number of families that have their own government system (headed by the village head), (2) a group of houses outside the city which are a unitary village, hamlet, (3) backwoods or hamlet (in the sense of the interior or the opposite of the city), (4) place, land, area (Poerwadarminta, 2007: 286).

The village is one of the autonomous regions that is at the lowest level of the regional autonomy hierarchy in Indonesia, as stated by Nurcholis that, "the village is the lowest government unit". One form of village government affairs that is under the authority of the village is village financial management. Village finances are all village rights and obligations that can be valued in money, as well as everything in the form of money or goods that can be used as village property in connection with the implementation of rights and obligations (Hanif, 2011:81).

Villages based on the provisions of Article 1 point 1 of Law Number 6 of 2014 concerning Villages are defined as traditional villages and villages or what are called by other names, hereinafter referred to as villages, are legal community units that have territorial boundaries that are authorized to regulate and manage government affairs, the interests of the local community based on community initiatives, origin rights, and/or traditional rights that are recognized and respected in the government system of the Unitary State of the Republic of Indonesia.

Kartohadikoesoemo (1984:280) states that the village is a legal entity where a ruling community resides and the community holds its own government. While the definition of village according to Ndraha (1981:33) is the lowest unit of government organization, has certain territorial boundaries, is directly under the sub-district, and is a legal community unit that has the right to organize its household.

Handono (2005:132) states that the village is always associated with two main images, namely: (1) the village is sociologically seen as a community in a certain geographical unit which they know each other well with a relatively homogeneous life style and many depend directly on the community, so that most of the people are still very dependent on nature, and (2) villages are often identified with power organizations. Through this lens, the village is understood as a power organization that politically has certain authority in the structure of the state government.

Based on the definitions of the village above, the village has its own autonomy and territorial boundaries to regulate and manage the interests of the village community itself. With the enactment of Law Number 6 of 2014 concerning Villages, villages are required to be independent in carrying out their government affairs, especially in managing village finances. The source of village income that comes from village original income is a form of village independence in managing finances. Thus, the village is not dependent on transfers of funds from the local government or the central government.

Sukriono (2008:1) expressed his opinion that the lowest government unit in the State of Indonesia is the village. The concept of the village as a social entity is very diverse, namely according to the intent and point of view that will be used in viewing the village. The term village can be a concept without political meaning, but it can also mean a political position and at the same time the quality of the position against other parties or forces.

According to Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages, the village government consists of the village government and village consultative bodies. The village government consists of the village head and village officials. The village head has the task of carrying out government, development and community affairs.

Sukriono (2010: 189) defines village government as village heads and village officials as elements of village administration. This formulation is different from Law Number 5 of 1979, which states that the village government consists of the village head and Village Mediation Institution. Village Mediation Institutionis a kind of village representative body. However, because the village head leads the Village Mediation Institution, its position, role, function, and main tasks are not clear as an institution with legislative or executive functions. Law No. 22/1999 clearly distinguishes the roles of the village head and the Village Consultative Council. The village head is the implementer of the policy while the Village Consultative Council the policy-making and supervisory institution (village regulations). So, Village Consultative Council is an institution like the People's Representative Council in the village.

The village has its own government, which is called the village government. This village government is the implementation of government affairs by the village government and village consultative bodies in regulating and managing the interests of the local community based on local origins and customs that are recognized and respected in the system of the Government of the Unitary State of the Republic of Indonesia. The

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implementation of village government is a subsystem of the government administration system, so that the village has the authority to regulate and manage the interests of its people.

Article 18 of Law Number 6 of 2014 concerning Villages explains that village authority includes authority in the field of village administration, implementation of village development, village community development, and village community empowerment based on community initiatives, origin rights, and village customs. Furthermore, Article 19 explains "Village authorities include: authority based on origin rights; village-scale local authority; authority assigned by the government, provincial regional government, or district/city regional government". The implementation of authority based on the right of origin and local authority at the village scale as regulated and managed by the village. The implementation of the assigned authority and the implementation of other task authorities from the government, provincial regional government, or district/city regional government are managed by the village.

2.4 Village Fund

Based on Law Number 6 of 2016 concerning villages, villages are given the authority to regulate and manage their authority according to their needs. This means that village funds will be used to fund the overall village authority in accordance with the needs and priorities of the village funds. Village funds are funds sourced from the state revenue and expenditure budget intended for villages which are transferred through the district/city regional income and expenditure budgets and are used to finance government administration, development implementation, community development and community empowerment. The government budgets village funds nationally in the State Revenue and Expenditure Budget every year. Village funds are sourced from government spending by making village-based programs more effective and equitable (Saibani, 2014).

The Ministerial Regulation also stipulates that village funds are prioritized to finance the implementation of local village-scale programs and activities in the field of village development and village community empowerment. Priority for the use of village funds is based on the principles: first, justice by prioritizing the rights or interests of all villagers without discriminating, second, priority needs, by prioritizing village interests which are more urgent, more needed and directly related to the interests of the majority of village communities (Indrawati, 2017:4).

In order to realize orderly, transparent, accountable and quality management of village funds, the Government and districts/cities are given the authority to be able to impose sanctions in the form of delaying the distribution of village funds in the event that reports on the use of village funds are late/not submitted. In addition, the government and districts/cities can also impose sanctions in the form of reducing village funds, if the use of these funds is not in accordance with the priority of using village funds, general guidelines, technical guidelines for activities or there is money storage in the form of deposits for more than 2 (two) months. The budget allocation for village funds is set at 10% (ten percent).

The purpose of the village fund is based on Law no. 6 of 2014 concerning inner villages (Indrawati, 2017: 4), namely:

a. Improving public services in the village.
b. Eradicating poverty.
c. Promote rural economy.
d. Addressing the development gap between villages.
e. Strengthening the village community as the subject of development.

3. RESEARCH METHODOLOGY

The research method used in this research is descriptive research method with a qualitative approach. Descriptive method is a method of researching the status of a human group, an object, a condition, a thought or a class of events at the present time with the aim of making a systematic, factual and actual description, picture or painting of the facts, characteristics and the relationship between the phenomena investigated (Nasir, 2005:54). Sources of data in this study obtained through primary sources and secondary sources. At the initial stage, the informant was determined purposively and then determined by rolling and expanding (snowball sampling) to the next informant until data/information saturation was obtained. Data collection is done by triangulation technique. Triangulation technique is defined as a data collection technique that combines several data collection techniques and existing data sources, in this case, researchers use different data collection techniques to obtain data from the same source. Researchers used participatory observation, in-depth interviews and documentation for the same data source simultaneously (Sugiyono, 2012:241). The value of the data

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collection technique with triangulation is to find out the data obtained is convergent (extensive), inconsistent or contradictory. Therefore, with triangulation, it is hoped that the results obtained can be more consistent, complete and certain.

In analyzing the data, the data obtained by the researcher used the data analysis technique proposed by Creswell (2016). One of the reasons the author uses the Creswell data analysis method is because this data analysis technique can provide an overview and exploration of the data that is appropriate and relevant to the data collected. Creswell's data analysis technique is considered more detailed and well structured in compiling the data stages so that it can form a very comprehensive and in-depth discussion, besides that there is a visualization stage that presents the data. In this spiral data analysis technique, there are stages of data description, clarification and interpretation of data that can compose a comprehensive discussion. Because the explanations presented step by step in this method are explained in a concrete way and clearly what the author must do, of course this is the reason for the author to use the analytical technique described by Creswell.

The explanation of each data analysis step proposed by Creswell (2016:264-268) related to the terminology used by the researcher is as follows:

a. Researchers begin to process and prepare data for analysis. This step involves transcribing interviews, scanning material, typing field data or sorting and organizing the data into different types depending on the source of information.

b. The second step is to read the data as a whole. The first step is to build a general sense or information obtained and reflects on its overall meaning. At this stage sometimes the researcher writes small notes and makes memos (small notes) about the data that is considered important

c. The next step is to start coding all the data. Coding is the process of organizing data by collecting chunks (text or images) and writing categories within boundaries. The codes are grouped into three categories, namely:

1) Codes related to the main topic are already widely known by the general reader, based on previous literature and common sense.

2) Surprising and unexpected codes at the start of the study.

3) The codes are odd and have some conceptual interest for the reader.

d. Next, apply the coding process to describe the setting (field), people (participants), categories and themes to be analyzed. This description involves the delivery of detailed information about the person, location or event

e. The fifth step is for the researcher to describe the themes mentioned above and restate them in a qualitative narrative/report. This approach includes the chronology of events, themes (sub-themes, special illustrations, perspectives and quotes), relationships between themes, visuals, pictures or tables.

f. The last step is making interpretation (interpretation in qualitative research) or interpreting the data. This helps researchers uncover the essence of an idea. Interpretation can be in the form of meaning that becomes a comparison between research results and information from literature or theory. In this case, the researcher confirms whether the results of the study confirm or deny the previous information. The researcher describes how the final narrative results will be compared with general theories and literature.

4. RESEARCH RESULT

As mentioned earlier, community empowerment is basically a process of change towards a better condition, more empowered. This better condition of life can concretely be referred to as an increase in the standard of living of the community. Hikmat (2004:4) explains that the concept of empowerment in the discourse of community development is always associated with the concepts of independence, participation, networking and justice. Wahyono et al, 2001:8) states that the community empowerment approach emphasizes the importance of self-reliant local communities as a system that organizes them. In this process, synergy is needed from all elements of society to face changes in the direction of a better life. The changes referred to here are changes towards an increasingly mature society, responding to their needs and potentials.

The collective action that exists in the community must be sustainable and realized in the form of a pattern of joint activities that have been institutionalized, appreciated and become part of the community's activities that grow in the empowerment process. In other words, this activity will automatically increase community capacity at the micro level. This is further strengthened by the enactment of Law Number 6 of 2014 concerning Villages

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where villages are required to be independent in carrying out their government affairs, especially in managing village finances, one of which is village funds.

Village funds are prioritized to finance the implementation of local village-scale programs and activities in the field of village development and village community empowerment. Priority for the use of village funds is based on the principles: first, justice by prioritizing the rights or interests of all villagers without discriminating, second, priority needs, by prioritizing village interests which are more urgent, more needed and directly related to the interests of the majority of village communities (Indrawati, 2017:4). The government budgets village funds nationally in the APBN every year which comes from government spending by making village-based programs more effective and equitable (Saibani, 20145:4) with the aim of increasing community capacity through empowerment.

This community capacity building is also inseparable from the community's willingness to actively participate in every effort made. To mobilize community participation in village development, a special approach or pattern is needed to build public awareness that they actually have the potential and opportunity to be actively involved in the village development process. This is what the motivator, facilitator, and does, namely knowing the potential of the community, entering into village policy and entering into the local wisdom of the village community. With the enactment of Law Number 6 of 2014 concerning Villages, villages are required to be independent in carrying out their government affairs, especially in managing village finances. What it does is touch what the community needs. This is done to hear and find out what the needs of the people of Mata Air Village are.

One of the factors that influence the success of rural community development and development programs is community participation which not only involves the community in decision making in every development program, but also the community is involved in identifying problems and potentials that exist in the community. In the use and management of village funds, community involvement is very important so that its use and management can be targeted and the benefits are in accordance with the real interests of the community (Diatmika and Yuniart, 2020).

In response to this statement, the first step was to establish village discussion forums in each hamlet based on groups, ranging from children, youth, women, people with disabilities and the elderly. All of them are involved in discussions to hear the needs of each group. This forum is held in each hamlet with the aim that all communities can be actively involved in it which according to Mitchell (1995:45) that empowerment means removing bureaucratic boundaries that compartmentalize people and make them use them effectively maybe his skills, experience, energy and ambition. This means allowing them to develop a sense of belonging to the parts of the process, especially their responsibility. While at the same time demanding that they accept a wider share of responsibility and ownership of the whole process.

In order to invite the community to be involved in development, they must first develop their self-confidence. Wahyono et al, 2001:8) states that the community empowerment approach emphasizes the importance of self-reliant local communities as a system that organizes them. Make the community aware that in fact they are capable of participating in the process of development activities. When the awareness and confidence of the noble community grows and is given the space or opportunity to be involved in every process, the community feels belonging and valued.

For the disability group, the village government and the community agreed to use the village fund budget of Rp.135 million to build an Integrated Service Post for disability. This Integrated Service Post built and started operating in 2019 Residents who have physical limitations, he continued, have not received adequate health services, so his party presents the special Integrated Service Post facilities for disabilities. The Village Fund allocation for this Integrated Service Post is used to procure several assistive devices for people with disabilities such as wheelchairs, glasses, hearing aids and crutches. In collaboration with health workers from the Tarus Public Health Center, this Integrated Service Post provides health checks and supplementary feeding services for people with disabilities. This Village Fund is also set aside for urgent needs of people with disabilities if one day it is needed. In addition to services at the Integrated Service Post, the village government and the community also establish a compassionate care forum that routinely with health workers provides health services to people with disabilities who because of their circumstances cannot come to check their health at the Integrated Service Post.

The needs of each community group are different; therefore the approach used to capture each need must also be appropriate. The needs of children's groups are different again. Through these discussion groups they are familiarized and given space to express their needs. Likewise with other groups such as women's groups with

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the need for productive businesses such as making VCO, making snacks such as corn chips, sweet potatoes, cakes from local food to increase household income. Youth groups in Mata Air village, who do not yet have jobs need productive businesses such as barbershops, tire repairs and other businesses. Other groups of farmers have more needs. The need that they expressed in the discussion forum was to open a road in the rice field area so that they had access to transport their unshelled grain to be sold to the market.

The pattern of approach used by the village head in order to be able to capture the needs needed by the residents is that the proposals for the needs of the villagers are then brought to the Community-level Development Planning Deliberation and continued to the Village Development Planning Meeting. At the Village Development Planning Meeting stage, it is identified which activities are funded through community self-help, allocation of village funds or Village Funds. To meet the needs of the program proposed by these groups, allocation of village funds and the Village Fund finance it. Village development through community empowerment also raises awareness of the potential, both in terms of human resources and natural resources. Other potentials of the Mata Air village found in the village discussions identified that the spring village has potential in the fields of agriculture and tourism that can increase economic growth and the welfare of the village community. This approach needs to be taken because the Government has a big role in building the country's economy, especially to build the local economy for villagers (Matridi et al, 2019).

In addition, there is a Village-Owned Enterprise with the name Ina Huk taken from the Timorese vocabulary, which means One Mother. So it is hoped that this Village-Owned Enterprise will become the "mother" for the people of the Mata Air village. The agricultural sector unit of this Village-Owned Enterprise is engaged in the provision of fertilizers, medicines and the provision of animal feed and fish feed. Businesses in the tourism sector are developed Sulamanda beach object as mainstay tourism. Since 2017 until now, the Mata Air Village Government has disbursed funds from the Village Fund of more than IDR 200 million as capital participation in the Ina Huk Village Owned Enterprise for the management of the two potential villages. Used to build various facilities at Sulamanda beach resorts such as residents' stalls, toilets, trashcans, photo spots, and others.

Other income sourced from this tourist attraction is toilet rental of IDR. 2000 one-time use and vehicle parking fees, namely for motorbikes, the tariff is IDR. 2000 and for cars, the tariff is IDR. 5000. Other income comes from the rental of *lopo* by groups of visitors. The results of this parking income are deposited into the village treasury as Village Original Income. Village officials to manage parking at the tourist attraction gave the youth group. In addition, there are several cafes managed by the Mata Air youth group.

Another business development of Ina Huk Village-Owned Enterprises is from the agricultural sector, which is able to become a rice barn for the people of Mata Air Village. With good irrigation arrangements, the people of Mata Air village harvest rice 2 times a year. The village community's harvest is also purchased by the Village-Owned Enterprises at a price of IDR. 10,000/kg of grain.

From what has been described above, it can be seen that this participatory pattern is able to foster self-confidence from the community and make the community aware of the capacity they have in developing villages. This is necessary because the village government has a considerable responsibility in managing human resources to generate regional economic benefits (Zeho et al, 2020). This finding is in line with the findings of Bere et al (2020) that the village community is already quite actively involved from the decision-making stage to enjoying the results.

In a participatory manner, the community is formed in groups to provide their own courage to express opinions and play a role in the decision-making process. Because to become a person or group of people who are empowered/have power other than money, knowledge, and the group also has an important role. A group of people will give power and that power will give power to that person or group.

Another approach used by the head of Mata Air Village in the community development process is to build networks with other parties such as the Bengkel Appek NGO and the Rumah Perempuan NGO in terms of institutional strengthening, in collaboration with universities (Nusa Cendana University and Kupang State Agricultural Polytechnic) in in terms of freshwater fish cultivation and the National Population and Family Planning Agency in terms of education for healthy and prosperous families and the networks built personally by the village head. Networking with other parties is very helpful in increasing the capacity of groups and individuals who want progress. In addition, by building a network can help individuals in developing group effectiveness in finding new ideas.

By building networks with other parties, the community will not only benefit from the economic aspect, but also from other social aspects. Networking with other parties also actually reduces the financial costs that must be

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incurred by the group. It is because the social network that is built can reduce the cost of paying for experts. One of the advantages of networking is that it triggers the community to foster a sense of solidarity between them. The network built in community empowerment not only brings financial benefits but also social benefits such as the growing sense of solidarity among village communities.

In a theoretical framework, the people of Mata Air village have proven that this step will help individuals to gain knowledge, understanding, and strength to avoid apathy. This step was taken because there is no standard formula for mobilizing participation from where to start. If this step is the initial phase, then the mobilization of community participation will be slow and can develop according to the process. This is due to individual differences that affect the mobilization process for community participation. The differences in question include differences in knowledge, differences in attitudes, and differences in behavior. Departing from the existing differences, the government can try to create a community forum so that existing differences can be resolved through deliberation and consensus. The public space (community forum) which is formed based on the needs of the community based on the results of identification through this social group has its own charm for the community, so that the community can participate without realizing it because the essence of empowerment is an equitable sharing of power.

Based on this opinion, it can be said that the empowerment strategy in community development is an effort made to improve and become independent and self-supporting of the community in accordance with the potential and local culture it has as a whole and comprehensively so that the dignity of the layers of society whose conditions are unable to escape from poverty and retardation. Empowerment does not only include strengthening individual members of the community but the existing living institutions in society need to be empowered. Through this empowerment strategy, community participation in implementing development will increase. Thus, the scope of empowerment is not only increasing the capacity of individuals, but also groups and institutions that exist and grow in the community. Community empowerment does not make the community more dependent on various giving programs.

5. CONCLUSION

Based on the analysis and discussion previously discussed, it can be concluded that 1). The benefits of the village fund are prioritized to finance development and community empowerment in order to improve the welfare of rural communities, the quality of human life, as well as poverty alleviation, as outlined in the Village Government Work Plan, 2). Participatory collective action that exists in the community must be sustainable and realized in the form of a pattern of joint activities that have been institutionalized, appreciated and become part of community activities that grow in the empowerment process. In other words, this activity will automatically increase community capacity at the micro level and 3). Networking with other parties is very helpful in increasing the capacity of groups and individuals who want progress. In addition, by building a network can help individuals in developing group effectiveness in finding new ideas.

Suggestions that can be given based on the findings and conclusions of the study are 1) For the Mata Air Village government to further explore and utilize the untapped potential of the village such as the potential for ecotourism so that more and more community groups are involved in the village development process, 2). To the Mata Air Village Community, the habit of discussing and building networks in groups that have been formed should be maintained and improved so that more groups are formed and 3). The sub-district and district governments should pay more attention to some of the development issues that exist in Mata Air Village, especially those related to community development.

LIMITATION AND STUDY FORWARD

The limitation of this research is that this research must be carried out during the Covid-19 pandemic so that researchers can only meet a limited number of people in order to maintain the applicable health protocols. For further researchers, it is recommended to explore further about the broad use of village funds so that it can be seen in detail how village residents use village funds for the common good.

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POLICY STUDY ON THE USE OF NTT MOTIF WEAVING UNIFORMS IN THE SCOPE OF THE EAST NUSA TENGGARA PROVINCIAL GOVERNMENT TOWARDS MULTICULTURALISM AWARENESS IN THE BUREAUCRACY

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ABSTRACT
The policy that regulates the use of the latest national ASN uniform is regulated in the Minister of Home Affairs Regulation Number 11 of 202 concerning State Civil Apparatus Service Clothing in the Ministry of Home Affairs and Regional Government. The multicultural policies above are then passed down at the regional level. The Province of NTT regulates it in the Regulation of the Governor of NTT Number 12 of 2016 concerning Clothing for State Civil Apparatus Employees in the Government of the Province of East Nusa Tenggara. The purpose of the policy on the use of the ikat sarong in NTT is to preserve cultural values, as well as to encourage tourism promotion and regional economic growth through the community craft industry. This study uses a qualitative approach and is located in several Regional Apparatus Organizations (OPD) within the scope of the NTT Provincial Government with Informants are sall ASN are policy implementers, but only a few who meet the criteria of informants will be selected. Data collection techniques and procedures in this study were interviews, observation and documentation. Activities in data analysis use the theory of Milles and Huberman, 1984 in Sugiyono, (2014: 335).

The results showed that By acknowledging the existence of all ethnic groups in NTT, respecting them, and appreciating the differences between each ethnic group, ASN within the NTT Provincial Government has created a passive representation of multiculturalism. This policy has proven to be able to give birth to a sense of pride in NTT as a unit, building inter-ethnic communication which previously tended to be rigid and lame because of a very high ethnic ego. In addition, this policy is also able to arouse a sense of brotherhood between ethnic groups because each ASN wears a uniform woven with motifs from different ethnicities so that they are able to accept and establish good relations and cooperation with all ethnic groups in NTT. The process of bringing awareness of multiculturalism continues so that the results can be sustainable and collective.

Keywords: *Policy, Ethnic, Weaving and Motive*

1. PRELIMINARY

Indonesia is a multicultural country that was born and formed based on an awareness of pluralism, of differences that do not destroy but unite. The plurality and heterogeneity reflected in Indonesian society are united in the motto Bhineka Tunggal Ika, which is different but still one. According to Nasikun (2007:33) that the plurality of Indonesian society can be seen at least from its two unique characteristics, first horizontally, it is marked by the fact that there are social units based on differences in ethnicity, religion, customs, as well as regional differences and secondly by vertical is marked by the vertical differences between the upper and lower layers which are quite sharp. So that in addition to uniting, Indonesia's pluralism can also be a threat to the Indonesian nation, because pluralism can be a source and potential for conflict that can disrupt and even threaten the unity and integrity of the nation. Globalization and friction conflicts that occur between ethnic, cultural, religious, social, political and economic conflicts often occur. Therefore, this threat needs to be managed as well as possible. One of them is by building awareness of multiculturalism in the social order. . The government's role is important in producing this policy. This policy is expected to be able to increase love and respect for the nation and appreciate the differences that are part of the Indonesian nation. This threat needs to be managed properly. One of them is by building awareness of multiculturalism in the social order. . The government's role is important in producing this policy. This policy is expected to be able to increase love and respect for the nation and appreciate the differences that are part of the Indonesian nation. This threat needs to be managed properly. One of them is by building awareness of multiculturalism in the social order. . The government's role is important in producing this policy. This policy is expected to be able to increase love and respect for the nation and appreciate the differences that are part of the Indonesian nation.

The multicultural policy is part of the national policy initiated by the government since the 1970s. The Ministry of Religion in 1970 had made a multicultural policy with the aim of realizing harmony in the midst of existing differences. The purpose of this policy is to build multicultural awareness, which is the ability to recognize cultural differences and similarities and the ability to view differences as diversity. The fifth Governor of NTT from 1993 to 1998, Major General TNI (Ret.) Herman Musakabe, was the originator of the initial policy of

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using NTT motif weaving as the uniform of the State Civil Apparatus (ASN) or better known at that time as the woven motif uniform which must be used by ASN every year. Thursday and Friday.

The policy that regulates the use of the latest national ASN uniform is regulated in the Minister of Home Affairs Regulation Number 11 of 202 concerning State Civil Apparatus Service Clothing in the Ministry of Home Affairs and Regional Government. Article 4 mentions the types of Daily Service Clothing (PDH) in the form of batik/weaving/striated or regional specialties. This regulation also states that the criteria for ASN official attire are not only simple, comfortable to wear, harmonious, polite and humanistic model designs must also be able to support the smooth implementation of tasks and functions, pay attention to gender, prioritize domestic production, encourage national strengthening and strengthen the nation's culture.

The policy objective of using the ikat sarong in NTT is to preserve cultural values, and to encourage tourism promotion and regional economic growth through the community craft industry. This goal is in line with the mission of the NTT Provincial RPJMD for the 2018-2023 period. Regional autonomy requires each region to prepare a development plan that is tailored to the potential and needs of each. Therefore the Regional Medium-Term Development Plan (RPJMD) which is a regional planning document for 5 years containing official guidelines for the Regional Government, DPRD, private sector and community in carrying out development, for the 2018-2023 period is regulated in the Regional Regulation of the Province of East Nusa Tenggara Number 4 year 2019.

Based on the description of the problem above, the authors are interested in focusing the research on "Study of Policy on the Use of Uniform Weaving Motifs of NTT in the Scope of the Government of East Nusa Tenggara Province towards Awareness of Multiculturalism in the Bureaucracy".

2. LITERATURE REVIEW

a. Public policy

Public policy is described by Robert Eyestone in The Threads of Public Policy (1971:18) briefly and broadly as "…the relationship of governmental unit to its environment." Thomas Dye (1992: 2) describes public policy as "…what governments do, why they do it, and whats difference it makes." It can be concluded that public policy is work carried out by the government with the aim of solving problems, increasing human resources or whatever that is then able to produce something. This definition is too broad according to Subarsono (2016: 2) because it also explains that policy includes all government choices to implement or not to implement.

James E. Anderson (1979:3) defines public policy as a policy set by government agencies or apparatus. However, it is realized in reality that public policy can be influenced by actors and factors from outside the government. David Easton explains in depth that when the government makes public policies, at the same time the government allocates values to the community, because every policy contains a set of values in it (In Dye, 1981).

In line with David Easton, Harrold Lasswell and Abraham Kaplan argue that public policy should contain goals, values, and social practices that exist in society (In Dye, 1981). This means that public policies must not conflict with the values and social practices that exist in society. When public policy contains values that are contrary to the values that live in society, then the public policy will get resistance when implemented (Subarsono, 2016: 3).

Many problems, symptoms, or phenomena that exist in society are tried to be resolved through policy. Some have succeeded but many have failed. There are parties who agree that the right public policy is able to overcome all problems, symptoms and phenomena that occur in society, but there are even those who are apathetic towards public policies which they consider more beneficial to certain parties. There are several considerations in studying public policy, namely the first is scientific considerations (scientific reasons) which according to James E. Anderson (1990), Thomas Dye (1992) and Moran, Rein, & Goodin (2006) in Agustino (2017: 3) study policies in order to gain more in-depth knowledge of the "policy process". The second is professional considerations (professional reasons) described by Don K. Price (1965, in Agustino 2017:4) as a further step from scientific considerations. According to him, the scientific considerations used in studying public policy are quite important, but it is not wise to just study and stop at the enrichment of knowledge. Problems, symptoms, or phenomena whose root causes are known, must be taken immediately to resolve them. Third, political reasons explain that public policies are studied so that every law and regulation produced by political decisions can be appropriate to achieve the targeted goals (Agustino, 2017:5). According to him, the scientific considerations used in studying public policy are quite important, but it is not wise to just study and stop at the enrichment of knowledge. Problems, symptoms, or phenomena whose root causes are known, must

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Analytical activities in public policy are basically open to the participation of other disciplines. Therefore, in public policy, there will be a picture of the synthesis of various disciplines in one package of togetherness. Based on the public policy approach, it will be integrated between practical reality and theoretical views together (Anggara, 2018:13).

3.2 Policy on the Use of Motif Weaving Uniforms in NTT

Meaning (2018:12-13) explains more specifically about the relationship between administrative science and anthropology which studies human behavior in society, including cultural differences that exist within nations and also between nations. How we behave is a function of our culture and this is a contribution to the field of administration. Anthropology gives consideration in making public policy. The government will know more about the cultural life of the local people, so that the development policies that are rolled out will be more accurately targeted.

The policy on the use of NTT motif woven uniforms was initiated by the fifth Governor of NTT from 1993 to 1998, namely Major General TNI (Ret.) Herman Musakabe. The use of NTT motif weaving as a Civil Servant (PNS) uniform or better known at that time as the woven motif uniform must be used by PNS every Thursday and Friday. This policy had a wide impact nationally because it was followed by other provinces which used their respective traditional cloths as ASN uniforms.

The use of traditional cloth in each region is then regulated in national policy. The policy that regulates the use of the latest national ASN uniform is regulated in the Minister of Home Affairs Regulation Number 11 of 2020 concerning State Civil Apparatus Service Clothing in the Ministry of Home Affairs and Regional Government. Article 4 mentions the types of Daily Service Clothing (PDH) in the form of batik/weaving/striated or regional specialties.

In NTT this policy is regulated in several policies, namely:

1. Regulation of the Governor of NTT Number 12 of 2016 concerning Clothing for State Civil Apparatus Employees within the Government of the Province of East Nusa Tenggara;
2. Circular Letter Number BO.065/24.a/III/2019 concerning the Use of Sarong Ikat Ikat Clothing in the East Nusa Tenggara Region for State Civil Apparatus (ASN) Employees in the East Nusa Tenggara Provincial Government;
3. Circular Letter Number 025/30/BO2.1 concerning Amendments to Circular Letter Number BO.065/24.a/III/2019 concerning the Use of Sarong Ikat Motifs in the East Nusa Tenggara Region for State Civil Apparatus (ASN) Employees in the Provincial Government East Nusa Tenggara.

These policies regulate the use of woven uniforms with NTT motifs, whether used as uniforms used on Thursdays or used in their entirety (not sewn) every Tuesday and Friday. This policy is limited to ASN within the NTT Provincial Government, but almost all districts/cities in NTT also regulate the use of motif weaving uniforms in their regional policies.

NTT motif weaving itself is very well known at the national and even international level. This fabric is known for its attractive and varied colors and motifs. Jes A. Therik in his book entitled Woven Speech: The Language of Decorated Textiles in Southeastern Indonesia (2018: 13) explains that:

"…traditional woven fabrics reflect, and derive meaning from, the culture and society within which the weavers create their fabrics. These works originate from a complete immersion in the culture of the ethnic group, especially in its religious outlook. Textile images give life tribal religions and beliefs, which may differ from place to place. These ornaments often have multiple meanings—or contain meanings that are difficult to express verbally or analyze rationally, even by the weavers, themselves."

The weaving of traditional motifs reflects and explains the meaning of the culture and society in which the cloth is woven. These works were born from the perfect blending of certain tribal cultures, especially their religious

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views. The images on the weaving motifs bring to life the religions and beliefs of different tribes in each place. These images have many meanings that are difficult to express verbally and difficult to analyze rationally even by the weavers themselves. This is what makes NTT motif weaving very rich in colors and motifs.

This is also explained by Van Peursen (2005: 10) that culture is a sediment of human activities and works. As the 'sediment' of human activities and creations, of course, culture at least also presents humans as creators. One of the cultural products is motif weaving. Leuape in his journal entitled Dialetics of Ethnographic Communication Emik-Emik on Woven Fabrics (2017) explains that woven cloth is more than just a function of clothing, namely as a representation of its symbolic meaning, including its visual appearance. Weaving as clothing can actually be used as a 'social skin and human culture'. Because the weaving of the NTT motif is a symbol of the social and cultural life of the NTT people, the policy of using this patterned weaving uniform was born.

3. METHOD

This study uses a methodology with a qualitative approach. The location of this research is atseveral Regional Apparatus Organizations (OPD) within the scope of the NTT Provincial Government, namely; Organization Bureau; Department of Education and Culture; Department of Tourism and Creative Economy; Department of Industry and Commerce; Regional Development Planning, Research and Development Agency; Regional Human Resources Development Agency; Regional Civil Service Agency. Informants in this study came fromWithin the scope of the NTT Provincial Government, there are 39 OPDs with a total of 14,381 ASN people (data as of December 2020). All ASN are policy implementers, but only a few who meet the criteria of informants will be selected. Data collection techniques and procedures in this study were interviews, observation and documentation. Activities in data analysis using the theory of Milles and Huberman, 1984 in Sugiyono, (2014: 335) stages of data collection, data reduction, data display and conclusion drawing/verification (in Sugiyono, 2014: 335), namelyData Collection (Data Collection), Analyzing Data (Data Reduction), Presentation of Data (Data Display), Drawing Conclusions and Verification (Conclusion Drawing/Verification).Validity testing is based on the certainty of whether the research results are accurate from the point of view of researchers, participants or readers in general (Sugiyono, 2014:121) including; Trust (Credibility), Transferability (Transferability), Dependence (Depenability), Certainty (Confirmability).

4. RESULTS AND DISCUSSION

The results of the research will be presented based on indicators (1) recognition of abundant cultural diversity, namely when the ASN knows thoroughly and completely about the various ethnic groups in NTT; (2) respecting differences, namely when ASN considers that all ethnic groups in NTT have similarities and differences which are the characteristics of each ethnic group; (3) acknowledging, namely when ASN is able to give equal appreciation to all ethnicities and provide space for each to carry out their own habits or characteristics without any protests or restrictions; (4) empowering (empowering), namely when ASN with its authority in the bureaucracy also supports the development of ethnic groups with development programs or through their duties and functions within the bureaucracy in the form of formulating a vision, mission and other public policies; and (5) celebrating (celebrating) differences to create unity, when ASN is able to work together with other ethnic groups in decision-making forums or other public forums in order to formulate development programs with respect and tolerance. If indicators 1, 2, and 3 are met, a passive representation of multiculturalism is achieved. Meanwhile, if indicators 4 and 5 are met, the representation of multiculturalism is actively achieved. when ASN is able to work together with other ethnic groups in decision-making forums or other public forums in order to formulate development programs with respect and tolerance. If indicators 1, 2, and 3 are met, a passive representation of multiculturalism is achieved. Meanwhile, if indicators 4 and 5 are met, the representation of multiculturalism is actively achieved. when ASN is able to work together with other ethnic groups in decision-making forums or other public forums in order to formulate development programs with respect and tolerance. If indicators 1, 2, and 3 are met, a passive representation of multiculturalism is achieved. Meanwhile, if indicators 4 and 5 are met, the representation of multiculturalism is actively achieved.

1. **Recognition**

In this indicator, the measure used is that the ASN knows and is able to distinguish the woven uniforms of the NTT motif based on the ethnic origin of the fabric. This knowledge includes the introduction of motifs and colors, the distribution of motif weaving types based on gender and level of custom, the use of motif weaving based on needs such as special events, mourning, proposals, and others as well as how to use them. In addition, knowledge about the weaving of NTT motifs is explored more deeply in the philosophical story behind the motifs and colors in weaving.

Abundant cultural diversity is when ASN knows thoroughly and completely about the various ethnic groups that

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exist in NTT where the results show that 20% of ASN have knowledge and are able to distinguish "all" NTT motif weaving according to ethnic origin and fall into the "Very Good" criteria. . This percentage is an accumulation of 21% of ASN originating from NTT and 14% of ASN originating from outside NTT. 49% of ASN that fall into the "Good" criteria consist of 57% of ASN from NTT and 14% of ASN from outside NTT. They know and are able to distinguish “most” of NTT motif weaving according to ethnic origin.

The next criterion is "Enough" where ASN knows and is able to distinguish "a small part" of NTT motif weaving according to ethnic origin. ASN according to this criteria is 29% with 21% ASN from NTT and 57% ASN from outside NTT. 3% of ASNs who only know and are able to distinguish motif weaving from their ethnic origin and where they are domiciled are ASNs from outside NTT as much as 14%.

From the percentages and information above, it can be concluded that most ASN (49%) know and are able to distinguish most of the weaving motifs according to ethnic origin, from Flores, Sumba, Timor, Alor, Rote and Sabu. As many as 29% of ASN only know about weaving motifs from a small number of ethnic groups in NTT and most of them are ASN from outside NTT. This shows that by implementing this policy, ASN who are not from NTT are finally able to recognize the weaving of NTT motifs as an invaluable wealth and heritage of their ancestors. In fact, there are 14% of non-NTT civil servants who know and know comprehensively about NTT motif weaving from all ethnicities.

However, the knowledge possessed by ASN is still limited to the introduction of motifs and colors, the distribution of motif weaving types based on gender and level of custom, the use of motif weaving based on needs such as special events, mourning, proposals, and others and how to use them, while knowledge of philosophical stories in behind the motifs and colors in weaving is still very low because only 11% or 4 ASN have knowledge of the philosophical story of motifs and colors from certain ethnicities. This is due to the field of work carried out and interest in NTT motif weaving.

Carla Fernandez Duran and Lorena Pacheco say that multiculturalism begins with the recognition of the right to be different and from respect for cultural diversity. It is limited to the coexistence of diverse cultures sharing the same space and time and, to some extent, expecting that harmony will grow from the acceptance of the other. Multiculturalism is a situation where all different cultural or racial groups in a society have the same rights and opportunities, and no one is ignored or considered unimportant (in Bakry, 2020:5).

Based on the theory and research results showing that recognition of diversity has been carried out well in ASN within the scope of the NTT Provincial Government, as well as comparisons with other journal references, the researcher concludes that the indicators of recognition of diversity have been met. This recognition of diversity is the beginning of the birth of awareness of multiculturalism in a community or organization, including in the bureaucracy. The aspects in diversity are many but with time, this process will work out well. With this acknowledgment, an attitude of acceptance of one another between ethnic groups will be born which is able to generate collective multicultural awareness within the bureaucracy, especially within the scope of the NTT Provincial Government.

2. **Respect differences,**

In this indicator, the size used is that ASN wears a woven uniform with a NTT motif according to gender and the origin of the motif, which of course has its own characteristics. With the knowledge they have, ASN wears the NTT motif woven uniform according to their knowledge. Each ethnic group in NTT has similarities and differences in the way of use which is the hallmark of each ethnic group. The correct use includes the selection of motifs and colors, gender and level of custom, needs such as special events, mourning, proposals, and others.

From the explanation of the research results and observations at the research location, it can be said that more than half of the ASN in the NTT Provincial Government have been able to respect the ethnic groups in NTT. This result is also explained by Gregor Neonbasu (2020:292) that multiculturalism develops in tune with people's concerns (researchers, analysts) for complete respect or attention to minority groups and recognition of socio-cultural diversity in multidimensional human life. Although NTT does not have an ethnic majority and a minority, an attitude of respect or respect still needs to be fostered in the multidimensional diversity of NTT, including multi-ethnicity.

The attitude of respecting diversity, especially local culture, was also explained by a previous journal entitled The Challenge of Multiculturalism in Development by Irwan Abdullah (2006) that the effort to find a national culture has become a futile effort which has caused us to deny local culture. National culture is by no means the pinnacle of regional culture, it must be a natural synthesis of regional culture. Respecting culture means respecting the ethnicity from which the culture originates. The use of woven uniforms with NTT motifs from

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various ethnic groups in NTT is a natural synthesis that forms the awareness of multiculturalism in NTT.

Based on the results of the study and based on theories and other journal references, the researchers conclude that the indicators of respect for diversity have been met. Respect for diversity goes hand in hand with the birth of collective multiculturalism awareness in a multidimensional community or organization including in the bureaucracy, especially in the scope of the NTT Provincial Government.

3. **Appreciate (acknowledgment)**

In this indicator, the measure used is that ASN is able to give equal appreciation to all ethnicities by means of not only wearing NTT motif woven uniforms that come from their own ethnic origin, but also wearing NTT motif woven uniforms from other ethnicities without any protests or restrictions. ASN does not limit each other in the use of woven uniforms with NTT motifs from any ethnicity. This means that ASN who come from Timorese ethnicity, not only have NTT motif woven uniforms from Timor, but also NTT motif woven uniforms from other ethnic groups such as Flores, Sumba, Alor, Rote, and also from the Sabu ethnicity.

At this stage, ASN learns to work together with other ethnic groups (learn to live together). In addition, when an ASN of Timorese ethnicity uses a woven uniform with a Sumba motif, he of course indirectly becomes a Sumbanese. Likewise, when ASN of Alor ethnicity wear Rote motif woven uniforms, they indirectly become Rote people. This is a process of learning to be or positioning yourself in the position of ASN with different ethnicities.

The results of research related to this indicator can be presented in the following table:

Table 1.1: Use of NTT Motif Woven Uniform By Ethnic Origin

ASN	% SERAGAM KAIN TENUN						Jumlah ASN
	Flores	Sumba	Timor	Alor	Rote	Sabu	
Flores		90	100	60	60	50	10
Sumba	100		100	67	100	100	3
Timor	100	100		57	57	57	7
Alor	100	100	100		0	100	1
Rote	100	60	100	20		100	5
Sabu	100	100	100	100	100		2
Non NTT	100	100	100	43	86	100	7
Rata-rata	84						35

Source: Research data (2021)

The motivation to choose NTT motif weaving used as a uniform is because of a sense of pride in NTT motif weaving as much as 46%, taste or liking for fabric colors, motifs and also the quality of NTT motif weaving (fashion) as much as 20%, as many as 14% choose motif weaving because affordable prices and available in the market, 6% chose it because there was an element of proximity to motif weaving (domicile/marriage marriage), and the remaining 3% chose cloth because of the regulations that required it. The results of this study prove that 97% of the motivation to use NTT's woven uniforms from other ethnicities is without coercion but on personal choice. This shows a balanced attitude of respect for all ethnic groups in NTT.

Gina Lestari in her journal Bhinneka Tunggal Ika: Indonesia's Multicultural Treasures in the midst of SARA's Life explains that diversity is a gift from God that cannot be separated from the challenges that often arise in people's lives. Responding to differences with intolerance, distinguishing differences, contradicting other people who are not the same as him, and even committing acts of violence that trigger mass conflict. This is very vulnerable to occur in Indonesian society (2015). This is also vulnerable to occur, especially in NTT with its abundant diversity.

So with a percentage of 84% who have NTT motif woven uniforms from other ethnic groups from Flores, Sumba, Timor, Alor, Rote and Sabu and 97% of ASN use it without any restrictions or coercion and purely on personal motivation, it can be interpreted that most ASN already have an attitude of respect for other ethnicities with all the similarities and differences without anyone being superior or inferior to one another. By being able to appreciate cultural differences, the researcher concludes that the indicators of acknowledgment in the bureaucracy within the Provincial Government have been very well fulfilled. ASN has a collective awareness of multiculturalism in the bureaucracy within the NTT Provincial Government.

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4. **Empowering**

In this indicator, the measure used is that ASN with its authority in the bureaucracy also supports the preservation and development of culture, including the weaving culture of NTT motifs with development programs or through their duties and functions within the bureaucracy in the form of formulating a vision, mission and other public policies. Research on this indicator is prioritized on informants who are echelon as policy makers, namely the Head of the Office/Agency or the Secretary of the Service/Agency. The results show that all informants make policies, in the form of development programs and activities in accordance with their duties and functions in accordance with regional and national development policies. Thoha (2002) explains that our bureaucracy is a Pancasila bureaucracy where the style and behavior is Pancasila inspired. In the fifth (fifth) precept,

Development programs and activities are based on national and regional development agendas. The development of tourism and all its supporting sectors is one of the development agendas in the 2019-2023 NTT Provincial RPJMD (prime mover) so that each sector does its part in supporting this development agenda. The purpose of this policy is to preserve cultural values, encourage tourism promotion and regional economic growth through the community craft industry.

This policy on the use of NTT motif woven uniforms supports the achievement of 4 (four) of the 5 (five) development agendas in the 2018-2023 period. Empowerment carried out through programs and activities that support so that all ethnicities can have equal and balanced opportunities in development occurs not because of personal intentions or motivation but is the impact of carrying out duties and functions within the bureaucracy.

According to Weber, the Father of World Bureaucracy, in the bureaucracy authority is said to exist when obedience is given on the basis of belief in the legitimacy or validity of the order. In the government system, where the relation with the rules is a fixed price that must be obeyed by all bureaucrats in the administration of public services (Weber, 1947). RPJMD is an order made in binding rules so that it must be obeyed and implemented by ASN as development actors (bureaucrats) in the organization. Rewansyah (2010) also explained that the reforms carried out in the bureaucracy aimed at building public trust and eliminating the negative image of the government bureaucracy by forming a proportional state apparatus.

In line with that, Peters in Bureaucracy and Democracy (2010) also expresses his opinion regarding the bureaucracy that public bureaucracy is needed for the administration of public programs, but does not pay too much attention to the individual needs of the community. In addition to its hierarchical and authoritarian nature, the bureaucracy is expected to be able to guarantee fair or equal treatment of citizens. On the other hand, the bureaucracy is considered responsive to public wishes and seeks to map priorities that have a positive impact on citizens (2010).

On the other hand, the researcher found that the policy on the use of NTT motif woven uniforms that had been running so far, with 2 (two) modification models described in the policy description, it can be concluded that leadership plays a major role in the success or failure of this policy in creating awareness of multiculturalism. in the bureaucracy. This policy was carried out in phase I where the leadership was held by military forces so that control and command were carried out with firmness and personal motivation or personal choice did not exist at all. In phase II, this policy is designed a little differently by not eliminating the previous model but motivation and choices are provided as long as they are used correctly.

In phase I, the policy on the use of NTT motif woven uniforms is still material, namely the policy described by Anderson (1990:15) as "…either provide concrete resources and substantive power to their beneficiaries or impose real disadvantages on those adversely affected". In other words, material policy is a policy that provides tangible material sources for those who are entitled to receive it, such as policies related to the regulation of the use of motif weaving uniforms for all ASN in the scope of the NTT Provincial Government in order to increase the production and income of weavers, tailors, and craftsmen. fabric collectors and entrepreneurs who sell woven fabrics either individually or in groups.

Weaknesses in the policies of the previous period were observed by the phase II leadership. The reason, as explained earlier, is that 1 sheet of woven fabric can be sewn into 1 or more pieces of work clothes because it can be modified with other types of fabric so that the expenditure on woven fabrics is not so significant. The introduction of the fabric motif is not very clear because it has been modified with a different type of fabric. In addition, the use of woven cloth uniforms in the form of sarongs is used as the way of wearing inherited by ancestors that needs to be passed on by NTT people. The use of woven cloth uniforms in the form of sarongs 2 times a week has an impact on increasing woven cloth purchases because they cannot be modified.

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This policy in phase II does not just stop as a material policy but becomes a symbolic policy. Symbolic wisdom is more about respecting certain values than giving in tangible forms. For example, the public housing policy is a material policy formulated by the government with the aim of creating national integration (a symbolic policy). Therefore, material and symbolic policies must be seen as a continuum (Agustino, 2017: 23).

The way of wearing or wearing a woven cloth uniform with a sarong model, in addition to increasing the income of weaving craftsmen, also preserves the culture handed down by ancestors in the form of colors, motifs, and stories of each woven cloth used. This is also explained by Peursen (2005:10) that culture is a sediment of human activities and works. As the 'sediment' of human activities and creations, of course, culture at least also presents humans as creators. One of the cultural products is woven cloth.

Leuape in his journal entitled Dialetics of Ethnographic Communication Emik-Emik on Woven Fabrics (2017) explains that woven cloth is more than just a function of clothing, namely as a representation of its symbolic meaning, including its visual appearance. Weaving as clothing can actually be used as a 'social skin and human culture'. NTT woven cloth is a symbol of the social and cultural life of the NTT community so that the policy on the use of woven cloth uniforms is developed to be more varied by using it as a sarong and shirt for 3 (three) days in 1 week.

Dunn (2003:237) explains that the practical weakness of the symbolic model is that the results may not be easy to interpret, even among specialists, because the assumptions may not be adequately stated. Based on the results of the research, most of the informants are trapped in the material paradigm of policy and have not looked deeper into the symbolic meaning of this policy. The value to be built, from the diversity of NTT, this policy leads ASN to an awareness of multiculturalism indirectly.

Judging from the RPJMD development agenda for the 2018-2023 period, which is a policy that 4 (four) of the 5 (five) agendas support the growth and development of NTT motif weaving from various aspects and automatically the success of the policy on the use of motif weaving uniforms by empowering all existing resources in order development of local culture, this proves that the leadership owned by NTT is a leader who has high multicultural awareness so that he is sensitive and able to formulate a development agenda that prioritizes the management of diversity in NTT and protects it from the influence of globalization.

5. **Celebrate (celebrate)**

In this indicator, the measure used is that ASN is able to process differences to create unity, is able to cooperate with ASN from other ethnicities in carrying out bureaucratic tasks and creates a conducive, comfortable and neutral work environment for all ASN from various ethnicities. In various matters that differ between ethnicities, it is necessary to explore what things are able to unite all of them.

This means that the policy of using patterned weaving uniforms is based on the spirit of unity. Collective identity as NTT people is formed from the overall synthesis process of local culture. Bekker & Leide (2003) explain multiculturalism which is not only limited to describing the existing reality, but also a kind of way of thinking or a paradigm that believes or believes that various cultures instead of one culture (monoculture) can coexist peacefully in a country. In other words, this paradigm also has political implications, namely encouraging or legitimizing the incorporation of cultural diversity in the wider community.

Based on interviews with informants, researchers found several changes that occurred in the work environment related to the implementation of the policy on the use of NTT motif weaving uniforms. The policy in question is the policy on the use of motif weaving uniforms in stages I and II. There are those who feel there is a change, but there are also those who feel that there is absolutely no change in their perspective, mindset and behavior and that of their colleagues as policy implementers.

With the implementation of the policy on the use of NTT motif weaving uniforms, there has been a change that is felt by ASN as a felt impact. The changes include increasing pride, opening up inter-ethnic communication, establishing inter-ethnic cooperation and increasing a sense of brotherhood. Caleb Rosado explains that the essence of multiculturalism is being able to celebrate with other ethnicities by transcending all barriers and bringing unity in diversity (1997). These 4 (four) changes are the main capital in creating unity among differences. So based on the results of the research findings in the field, it shows that the indicators of celebrating (celebrate) diversity in forming unity are starting to work well. The researcher concludes that the fulfillment of this indicator is in progress, while the process of changing behavior or mindset is not an easy thing and takes a long time. is the forerunner of the birth of a real multiculturalism awareness in the bureaucracy.

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5. CONCLUSION

By acknowledging the existence of all ethnic groups in NTT, respecting them, and appreciating the differences between each ethnic group, ASN within the NTT Provincial Government has created a passive representation of multiculturalism. This was born because of the diversity within the bureaucracy and grew even more with the policy of using the NTT motif woven uniform as one of the unifying elements among the existing differences. By implementing this policy, like it or not, like it or not, ASN slowly opens up and begins to learn about the uniqueness of each existing ethnic group. By knowing him properly and correctly, a sense of respect and appreciation arises by itself.

It does not stop at passive representation, this policy is able to grow the basic strengths needed to achieve active representation of multiculturalism. The policy of using the NTT motif woven uniform was able to bring about changes that became a strength in managing a bureaucracy with ethnic diversity like NTT. This policy has proven to be able to give birth to a sense of pride in NTT as a unit, building inter-ethnic communication which previously tended to be rigid and lame because of a very high ethnic ego. In addition, this policy is also able to arouse a sense of brotherhood between ethnic groups because each ASN wears a uniform woven with motifs from different ethnicities so that they are able to accept and establish good relations and cooperation with all ethnic groups in NTT. The process of bringing awareness of multiculturalism continues so that the results can be sustainable and collective. These forces are the main capital in maintaining the awareness of multiculturalism in the bureaucracy within the NTT Provincial Government.

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AN ANALYSIS OF LEGAL REGULATION OF BIO DIVERSITY SYSTEMS IN INDIA

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ABSTRACT
The term biodiversity (from "biological diversity") refers to the variety of life on Earth at all its levels, from genes to ecosystems, and can encompass the evolutionary, ecological, and cultural processes that sustain life. India occupies only 2 per cent of the available landmass but harbours 8 per cent of the world's diversity. It is one of the 17 megadiverse countries in the world. The number of varied terrains and climates existent on the Indian subcontinent is unique and home to more than 50,000 species of plants and 40,000 species of animals. With a long coastline of 7516 km and the land frontier of 15000 km, it is one of the richest countries in terms of biodiversity. Thus legal regulation of bio diversity is essential for protection of life species.

The 17.41% of India's geographical area comprises of ecologically representative areas on land and in inland waters, as well as coastal and marine zones, especially those of particular importance for species, biodiversity and ecosystem services. The area is being conserved through 'protected areas' designation and management, and other area-based conservation measures.

Articulating India's commitment towards conserving biodiversity, the minister also said the country was fully committed to the global 30x30 initiative a global effort to protect at least 30% of the planet by 2030.[1] India is committed to joining hands in shaping the global conservation policy while making its own contribution in enhancing its conservation estate.

The author of this article is discusses the legislative provisions and various judicial decisions on protection of biodiversity.

Keywords: *Biodiversity, Ecosystem, Judicial decisions and Legislative Provisions*

INTRODUCTION
Biodiversity refers to the variety of living species on Earth, including plants, animals, bacteria, and fungi. While Earth's biodiversity is so rich that many species have yet to be discovered, many species are being threatened with extinction due to human activities, putting the Earth's magnificent biodiversity at risk[2].

India has set aside over 17.41% of its geographical area for meeting the country's conservation objectives and more areas are being identified to enhance this coverage. Biodiversity will have more events to celebrate this 2021. The fifteenth meeting of the Conference of the Parties (COP 15,October 2021) to the Convention on Biological Diversity (CBD) will reviewed the achievement and delivery of the CBD's Strategic Plan for Biodiversity 2011-2020. It is also anticipated that the final decision on the post-2020 global biodiversity framework will be taken. This new framework has included a focus on ensuring work to preserve biodiversity contributes to "the nutrition, food security, and livelihoods of people, especially for the most vulnerable. The efforts for a sustainable biodiversity will be represented in two new decades for the period 2021-2030: the UN Decade of Ocean Science for Sustainable Development and the UN Decade on Ecosystem Restoration.

Biological diversity is often understood in terms of the wide variety of plants, animals and microorganisms, but it also includes genetic differences within each species for example, between varieties of crops and breeds of livestock and the variety of ecosystems (lakes, forest, deserts, agricultural landscapes) that host multiple kind of interactions among their members (humans, plants, animals).

Biological diversity resources are the pillars upon which we build civilizations. Fish provide 20 per cent of animal protein to about 3 billion people. Over 80 per cent of the human diet is provided by plants. As many as 80 per cent of people living in rural areas in developing countries rely on traditional plant-based medicines for basic healthcare.

[1] https: //www.un.org/en/observances/biological-diversity-day#:~:text=This year 2021 the theme, to several sustainable development challenges

[2] *https://www.nationalgeographic.org/encyclopedia/biodiversity/retrieved on21/10/2021*

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But loss of biodiversity threatens all, including our health. It has been proven that biodiversity loss could expand zoonoses - diseases transmitted from animals to humans- while, on the other hand, if we keep biodiversity intact, it offers excellent tools to fight against pandemics like those caused by corona viruses.

- Current negative trends in biodiversity and ecosystems will undermine progress towards 80% of the assessed targets of 8 Sustainable Development Goals.
- Three-quarters of the land-based environment and about 66% of the marine environment have been significantly altered by human actions.
- 1 million animal and plant species are now threatened with extinction.

The objectives of halting biodiversity loss and promoting the sustainable use of terrestrial and inland freshwater ecosystems are included in Sustainable Development Goal 15. The importance of biodiversity and the targets should reach by 2030.

India is home to 7.6 per cent of species of mammals all over the world, 12.6 per cent of species of birds, 6.2 per cent of species of reptiles, 4.4 per cent of species of amphibians and 11.7 per cent of species of fishes. India is home to four of the thirty-four biodiversity hotspots all over the world. Two of them, the Himalaya and Western Ghats lie entirely within the territory of India.

The loss of biodiversity is irreversible and hazardous. The cultural diversity that exists today is a result of biodiversity and when biodiversity is at stake so is cultural diversity. It affects the food chain and livelihood and the culture of millions.

The Indian Constitution encompasses the protection of Environment and this sentiment is enshrined in Article 48A and 51A *(g) which states that "the State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country and that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures."*

In efforts to realize the Constitutional mandate of environmental protection, India has planned and executed multiple policies, programs and laws and one of the important laws in relation to biological conservation and bringing into effect the Convention on Biological Diversity (CBD) is the Biological Diversity Act 2002. There are multiple Acts and Rules related to Biodiversity in India such as the Indian Forests Act, 1927, the Air (Prevention and control of Pollution) Act 1981, Protection of Plant varieties and Farmer's Rights (PPVFR) Act, 2001 etc. India was one of the first few countries to bring about a comprehensive legislation on biodiversity conservation. The Biological Diversity Act, 2002 and the Biological Diversity Rules notified in 2004 give effect to the objectives of the CBD which is to conserve biodiversity, to have sustainable use of its components and to have fair and equitable sharing of the benefits arising from genetic resources and is the primary legislation through which the Access and Benefit sharing mechanism enshrined in the Nagoya Protocol is implemented in India[1].

The Biological Diversity Act, 2002

The Biological Diversity Act, 2002 was brought into force to fulfil the obligations under Convention on Biological Diversity (CBD) which was ratified by India.

The Biodiversity Act, 2002 also did the task of filling the gap in the legislation left by the previous environmental legislations like the Indian Forest Act, 1927, Wildlife Protection Act, 1972, Environment Protection Act, 1986. A strong legislation was needed to protect India from bio-piracy after it became an open economy in 1991. Hence the Act was passed in 2002, with the objective of conservation of biological diversity.

The Act was enacted to regulate the use and exploitation of biological resources of the country. The purpose was to protect the knowledge of biodiversity held by the local communities. It also involves the constitution of committees for implementing the provisions of the Act. The Act intends to protect and rehabilitate threatened species.

Three basic objectives of The Biological Diversity Act, 2002, (A) Conservation of Biological Diversity. (B) Sustainable use of its components. (C) Fair and equitable sharing of the benefits arising out of the use of biological resources.

[1] https://nlsabs.com/?page_id=146 retrieved on12/12/2021

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Legal compliances for biodiversity-related activities under the Biological Diversity Act, 2002

Persons who cannot undertake biodiversity-related activities
Section 3 of the Biodiversity Act, 2002 states the persons who cannot undertake biodiversity-related activities without the permission of the National Biodiversity Authority.

- Subsection (1) of section 3 states that no person referred to in subsection (2) shall without previous permission of National Biodiversity Authority get any biological resource present in India as well as knowledge associated to it for research or commercial purposes.
- Subsection (2) of section 3 contains the list of people who are required to take permission, persons who are not citizens of India, a non-resident citizen as defined under Clause 30 of Section 2 of Income Tax Act, 1961, and a body corporate, association or organization which has not been incorporated or registered in India and also an organisation though incorporated and registered in India but has in share capital or management non-Indian participation.

Transfer of results of research
Section 4 of the Act is regarding the transfer of results of research relating to any biological resources to a non-citizen or non-resident Indian for monetary consideration, it cannot be done without previous permission of the National Biodiversity Authority. The transfer does not mean publication of research papers or dissemination of knowledge in seminar or workshops.

Sections 3 and 4 not to apply to certain collaborative research projects
- Subsection (1) of Section 5 states that the provisions of Section 3 and 4 do not apply to collaborative research projects which involve the transfer or exchange of biological resources or information thereto among institutions, including Government sponsored institutions of India, and such institutions in other countries, if the conditions mentioned in subsection (3) are fulfilled.
- Subsection (2) of Section 5 of the Act states that all collaborative research projects other than the ones mentioned in subsection (1) shall remain in force except for the provisions of the agreement that are not consistent with the provisions of the Act. According to subsection (3) of section 5 of the Act, the collaborative research projects should conform to the guidelines issued by the Central Government and should be approved by the Central Government.

Application of intellectual property rights
Section 6 is concerned with the application for intellectual property rights for any invention based on any research or information collected on a biological resource obtained from India.

- Subsection (1) states that application of intellectual property rights should not be without the prior approval of National Biodiversity Authority. If a person applies for a patent, he can seek permission after applying for the patent but before the sealing of the patent by the patent authority.
- Subsection (2) of Section 6 states that the National Biodiversity Authority can, while giving approval levy a benefit-sharing fee or royalty or both or impose conditions comprising the distribution of financial benefits arising out of commercialization of such rights.
- Subsection (3) states that the provisions mentioned under section 6 shall not apply to any person who is applying for any right under a law relating to the protection of plant varieties enacted by the Parliament.
- Subsection (4) of section 6 states that where a right has been granted under subsection (3) then the authority granting approval shall endorse a copy of such document to the National Biodiversity Authority.

Compliance for Indian citizens for obtaining biological resource for certain purposes
Section 7 of the Act discusses the legal provisions which have to comply with by Indian citizens. It states that any citizen of India or a body corporate, association or organization which has been registered in India, shall take biological resource for commercial use or bio survey and bio utilization for commercial use without obtaining prior permission from the concerned State Biodiversity Board. The above provisions shall not apply to the local people and growers and cultivators of biodiversity, vaids and hakims.

The organizational Structure of Authorities under the Act
A three-tier system was set up under the Biodiversity Act, a National Biodiversity Authority at the national level, State Biodiversity Boards (SBBs) at the state level and Biodiversity Management Committees (BMCs) at the local level. The functions of these authorities include the regulation of the activities of, advising the

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Government in matters of biological diversity, sustainable use of its components, and equitable sharing of profits. It also includes granting of the approval under Sections 3,4 and 6 of Biodiversity Act, 2002.

Section 23 of the Act, explain the Functions of State Biodiversity Board. The functions of the State Biodiversity Board shall be to,

(a) advise the State Government, subject to any guidelines issued by the Central Government, on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of the benefits arising out of the utilisation of biological resources;

(b) regulate by granting of approvals or otherwise requests for commercial utilisation or bio-survey and bio-utilisation of any biological resource by Indians;

(c) perform such other functions as may be necessary to carry out the provisions of this Act or as may be prescribed by the State Government.

Section 24 of the Act of 2002, discusses the powers of State Biodiversity Board. according to this section State Biodiversity Board has power to restrict certain activities violating the objectives of conservation, etc.— (1) Any citizen of India or a body corporate, organisation or association registered in India intending to undertake any activity referred to in section 7 shall give prior intimation in such form as may be prescribed by the State Government to the State Biodiversity Board. (2) On receipt of an intimation under sub-section (1), the State Biodiversity Board may, in consultation with the local bodies concerned and after making such enquires as it conservation, may deem fit, by order, prohibit or restrict any such activity if it is of opinion that such activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or equitable sharing of benefits arising out of such activity: Provided that no such order shall be made without giving an opportunity of being heard to the person affected. (3) Any information given in the form referred to in sub-section (1) for prior intimation shall be kept confidential and shall not be disclosed, either intentionally or unintentionally, to any person not concerned thereto.

Establishment of National Biodiversity Authority

The National Biodiversity Authority is established under Section 8 of the Act. The section states that the National Biodiversity Authority shall be a body corporate having all the features of a company like perpetual succession, common seal etc.

Subsection (3) of Section 8 states that the head office shall be located in Chennai and offices can be set up at other places with the previous permission of the Central Government. The National Biodiversity Authority consists of a Chairperson, an eminent person having knowledge in the field of biodiversity and three ex-officio members one representing Tribal Affairs ministry and two others representing Environment and Forest ministry. All of them shall be appointed by the Central ministry.

Section 18 of the Act of 2002 discusses the Functions and powers of National Biodiversity Authority. As per this section duty of the National Biodiversity Authority to regulate activities referred to in sections 3, 4 and 6 and by regulations issue guidelines for access to biological resources and for fair and equitable benefit sharing.

Section 21 of the Act of 2002.explain the Determination of equitable benefit sharing by National Biodiversity Authority. According to this section, The National Biodiversity Authority shall, subject to any regulations made in this behalf, determine the benefit sharing which shall be given effect in all or any of the following manner, namely:

(a) Grant of joint ownership of intellectual property rights to the National Biodiversity Authority, or where benefit claimers are identified, to such benefit claimers;

(b) Transfer of technology;

(c) Location of production, research and development units in such areas which will facilitate better living standards to the benefit claimers;

(d) Association of Indian scientists, benefit claimers and the local people with research and development in biological resources and bio-survey and bioutilisation;

(e) Setting up of venture capital fund for aiding the cause of benefit claimers;

(f) Payment of monetary compensation and other non-monetary benefits to the benefit claimers as the National Biodiversity Authority may deem fit.

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The National Biodiversity Authority has got powers to frame Regulations under Section 64 of the Act of 2002. As per this section The National Biodiversity Authority shall, with the previous approval of the Central Government by notification in the Official Gazette, are regulations for carrying out the purposes of this Act.

Penalties under the Act

Subsection (1) of Section 55 states the punishment a person will get if he contravenes or attempts to contravene the provisions of Section 3 or Section 4 or Section 6, he will be imprisoned for a period extending to five years or fine which may extend to ten lakh rupees and if the damage caused is more than ten lakh rupees, the fine will be proportionately adjusted or both. Whosoever contravenes the provisions of Section 7 or any order under subsection (2) of Section 24 shall be punished with imprisonment for a period extending to three years or with fine up to 5 lakhs or both

Judicial response to protecting Biodiversity in India

The Hon'ble Apex Court in the case of *T.N. Godavarman v. Union of India* [1] has emphasised the importance of international conventions and treaties as under: "Duty is cast upon the Government under Article 21 of the Constitution of India to protect the environment and the two salutary principles which govern the law of environment are : (i) the principles of sustainable development, and (ii) the precautionary principle. It needs to be highlighted that the Convention on Biological Diversity has been acceded to by our country and, therefore, it has to implement the same. As was observed by this Court in Vishaka v. State of Rajasthan in the absence of any inconsistency between the domestic law and the international conventions, the rule of judicial construction is that regard must be had to international conventions and norms even in construing the domestic law.

The Uttarakhand High Court in ***Divya Pharmacy v. Union of India and others,***[2] held that Biological resources are definitely the property of a nation where they are geographically located, but these are also the property, in a manner of speaking, of the indigenous and local communities who have conserved it through centuries. The court said that "Indigenous and local communities, who either grow 'biological resources', or have traditional knowledge of these resources.

Bayer corporation v/s Union Of India Bayer Corporation v. Union of India[3]***,*** *in this case the* Bayer was granted for Nexavar, a liver and kidney cancer drug. The firm became aware that Cipla had also filed an application for approval to market the same product in a generic version. Bayer sued to stop Cipla from marketing their drugs.

The court directed the Drug Controller General of India not to give marketing authorisation to Cipla. The court appreciated the necessity of protecting patent rights even if the impunged product was not in the Indian market.

F. Hoffman La Roche v. Cipla[4]***,*** In this case Roche filed a patent infringement suit against Cipla after it locally launched Erlotinib. Cipla filed a counter claim challenging Roche's patent. The pricing of Tarcera came into focus as well as that it was not manufactured locally.

The court stated that there was no infringement as the patent which was in question was a mixture of Polymorphs A and B, whereas the drug Tarceva drug consisted of only Polymorph B. The point here to be noted was that Roche had applied for patent of Polymorph B but was denied by the Indian Patent office as it did not satisfy the criteria of Section 3(d) and the test of patentability was not satisfied. Moreover, the court considered the intent of the legislature in enacting Section 3(d) and anti-ever greening laws and held public interest above everything. The court realised that in here a lifesaving drug was in question, and hence the drug which was made available by Cipla was three times less priced than the drug which was manufactured by Roche.

Further the court observes that the application to the Controller for patent on Polymorph B was rejected on the grounds that it did not show enhanced therapeutic efficacy over the closest prior art. Prior art would mean the knowledge existing in the public domain. The existing technologies can be understood to mean prior art.

[1] *(2002) 10 SCC 606*

[2] *2018 SCC Online Utt. 1035/S) No. 3437 of 2016*

[3] *2014 SCC Online Bom 963: (2014) 5 AIR Bom R 242*

[4] *148 (2008) DLT 598, MIPR 2008 (2) 35*

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Bristol -Myers Squibb Company & Others Vs. Dr. Bps Reddy & Others,[1] in this case

Bristol Myers Squibb(BMS) holds a patent for Dasatinib in India . It sued Hetero Drugs when it found that Hetero was seeking marketing approval to generic drug makers for drugs that have already been granted patents in India. This was prevented Hetero from manufacturing or selling its generic version. This case is a score for pro-patents groups. It also raises the question-can a linkage be made between india's patent office and DCGI, which is mandated by the Drugs and Cosmetics Act to check only for safety and efficacy?

CONCLUSION

India has made a framework regarding biodiversity which holds great significance in the protection of the environment. The present policy has some deficiencies which need to overcome. The solution is to make amendments and focus on implementation and adopt a stronger proactive community involvement. Through the creation of awareness, the citizens can be mobilised and change can be brought about in the current situation of biodiversity. Once the people are aware and know the consequences they can work towards protection and preservation of the environment. Awareness has to be created at the grass root level, the local communities need to be made aware of the Biological Diversity Act. Together we are stronger rather than few individuals trying to make a difference.

The stakeholder of traditional knowledge, need protection from international law from exploitation by vested interests. Article 27.3(b) of TRIPS Agreement which deals with patentability or non-patentability of plant and animal inventions, and the protection of plant varieties. The Dhoa declaration further says the TRIPS Council should also look at the relationship between the TRIPS Agreement and the UN Convention on Biological Diversity, the protection of traditional knowledge and folklore. The fair and equitable sharing of the benefits arising out of the use of genetic resources is one of the three objectives of the UN Convention on Biodiversity(CBD)

The CBD recognises the sovereign right of states over their natural resources in areas within their jurisdiction.[2] The traditional knowledge can be misappropriated by vested interests by indulging in patenting the knowledge. An effective way of avoiding such practices would be to make sure that TK would always be duly recognised as prior art. Therefore, methods of documenting and sharing information on TK, such as databases and registers, in order to allow patent examiners to take them into account in prior art searches need to be explored.[3]

The assumptions are important in order to move towards a more equitable way of fostering and applying TK, However, it is also necessary to point out some other problems that local communities face when confronted with an international IPRs system.

Most basically the current patent system is practically inaccessible to indigenous peoples and communities, primarily because of their lack of funds, but also because often they have not received the education that is necessary to man oeuvre within the extremely complex legalities of the patent system. This makes it even more inaccessible for women as they are often at a social and economic disadvantage compared to men.

Furthermore, even if there were to be some other form of compensation provided besides the patent system, at the collective level or even individual level, it would be difficult to attribute 'ownership' to a particular local group, particularly when a product is widely used throughout a region[4] .

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2. Environment and pollution laws, Krishan Arora, Professional book publishers, New Delhi, 2008.

3. Environmental jurisprudence, IndrajitDube, Lexis Nexis, Butter worths, NewDelhi, 2007.

4. Environmental law, S. C. Shastri, Eastern Book company, Third edition, Lucknow, 2008.

[1] *CLA No. 1 of 2013*

[2] *Plant Breeders Bill Sufers Setback,29/11/2014, available http://www.ghanaweb.com /GhanaHomePage/regional /artikel.php?ID=337094*

[3] *The Review of Article 27.3(B) Of The Trips Agreement, And The Relationship Between the Trips Agreement and The Convention On Biological Diversity (Cbd) And The Protection of Traditional Knowledge and Folklore, p 14, available at http://trade.ec.europa.eu/doclib/docs/2005/february/tradoc_111153.pdf*

[4] *https://blog.ipleaders.in/legal-compliances-biodiversity-india*

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5 Environmental law and policy in India. Divan and Rosencranz, Oxford University press, New Delhi, tenth edition, 2008 .

6. Lal's commentaries on Water and Air pollution and Environment (protection) laws, fourth edition 2000.

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CONSTITUTIONAL AND LEGAL DIMENSIONS OF TRIAL BY MEDIA – AN ANALYSIS

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ABSTRACT
Media undoubtedly till date is still believed to be the pillar of Indian and other democratic countries in the world. Media draws its freedom in India from the Constitution Article 19(1) (a) which do include the freedom of press. Media trial is a recent method of broadcast to signify the truth of some of the sensational cases both civil and criminal in character.

On the other hand, the friction grows between the media trial and the trial that goes on in courts due to the reason of apprehension that sometimes or at some stage of the case proceedings the judges are likely to be prejudiced leading to conviction of the accused though he is by all means an innocent. This could happen when the media on its self -wisdom conduct evidence of the witnesses listed in the trial.

The Authors of this Article likes to focus on some of the issues such as:

a. News or views in context with trial by media.

b. Interference by media through trial by media into personal matters rather than real issues.

c. Elaborating the issue without caring for the end action.

d. Issues and Challenges on trial by media and its impact on judiciary.

e. Freedom of press vice-versa fair trial and Independence of judiciary.

Keywords: *Pillar of democracy, Constitution of India, Media, Media trial, Judiciary.*

INTRODUCTION

Media is considered as the fourth pillar of democracy. At some occasions, the Hon'ble Supreme Court, High Courts, National Human Rights Commissions take Suo-moto cognizance of the matters reported in the media about some sensational news yet the same courts have cautioned the media whenever it conducts a trial about any case when the trial by media prejudice the mind of the judge and the proceedings before the court. The courts have held, there has to be a balance between freedom of speech and expression extended to the media and for protecting the independence of judiciary.

The Authors categorically submit that media is not only a 'powerhouse of news,' but it is also a 'powerhouse of knowledge'. It is the media which remains as backbone of our nation and act in a free, neutral and active way for safeguarding the democracy in different countries of the World. The media plays an important role as an unbiased informer, as an educator, as a mentor and as a guardian of society. As powerhouse of knowledge, media has become important agency for creating public opinion on issues and provides knowledge about political affairs, cultural affairs, world events and crimes, policies of the government, sports, entertainment, environment, science, technology and development.

Media plays an important role as educator by creating awareness about happenings around North, East, West and South coined as 'NEWS'.As a guardian, media plays the role of creating awareness about the rights of individuals in society. Therefore, the following views are expressed by great men in our society about media:

1. Justice Billings Hand (1959), learned judge of United States of America (USA), states that "The hand that rules The Press, The Radio, The Screen and the far spread Magazine, rules the country".[1]
2. The Former Prime Minister of India Pandit Jawaharlal Nehru (1916) said, "I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed and regulated press."[1]

[1] Learned Hand (1959), "The Spirit of Liberty: Papers and addresses" published by Alfred A. Knopf, New York.

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3. An eminent economist and noble laurate Dr.Amartya Sen (2012) said that, "Free press is the essential condition for liberty. A good democratic culture will build only by an unbiased media. Thus, "the survival and flowering of Indian democracy owes a great deal to the freedom and vigour of our press."[2]
4. Lord Atkin in *Liversidge v Anderson*[3] quoted - "it would be within the courts preview to determine the reasonableness of the action", he said this for the reason that media freedom should abide to the restrictions imposed by freedom of speech and expression.

I. STATEMENT OF THE PROBLEM

The most accepted principle of criminal jurisprudence is that "an accused is an innocent until his guilt is proved beyond doubt". The foundation for the said principle is based upon the principles such as free press, fair trial and non-prejudice trial.

At many occasions, frictions arise between the principles mentioned above and the print and electronic media which exercise their freedom with a spirit of 'investigative journalism' or otherwise called as 'trial by media/media trial' is likely to prejudice the judge and court proceedings leading to sometimes convicting of accused though by all means he is an innocent.

Due to over activism during trial by media, there is likelihood that the facts through trial by media may suppress the real facts while they interview the witnesses, their relatives etc. of both the victim and the accused.

Most importantly, due to aforesaid friction there arise a problem leading to conflict between freedom of press and the independence of Judiciary including violation of Law of contempt of court etc.

II. OBJECTIVES OF THE STUDY

1. The object of the study is to know why the views overtake the news in media.
2. The object of the study is to suggest safeguards for an accused, the victim, their relatives and at last to protect their freedom of speech and expression.
3. The object of the study is to suggest for protecting the interest and freedom of print and electronic media in the aftermath of input of technology into media.

III. HYPOTHESIS

1. Media activism at some occasion imposes indirect pressure upon judiciary by prejudicing the judge and court in deciding criminal and civil cases.
2. Independence of judiciary and democracy is jeopardized when there is no balance struck between freedom of speech and expression and restrictions imposed upon it by the Constitution.

IV. METHODOLOGY OF RESEARCH:

The Authors of this article adopted doctrinal method of research for writing this article. The author visited the libraries of the University Law College & Dept. of Studies in Law, Bengaluru, National Law School of India University, Bengaluru, Institute of Social and Economic Change, Bengaluru and the Library of High Court of Karnataka, Bengaluru for collecting legal literature relevant to the topic of this Article.

V. REVIEW OF LITERATURE

A. Books:

1. Lalit (2010) - This book served a great source of information for writing this article since it gives information about politico-economic and cultural matters.[4]
2. Iyer,J.V.R Krishna(2005), a renowned judge of Supreme Court in this book lays emphasis upon the editorial freedom in the interest of the public.[5]

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[1] Nehru, (1916, June 20), Former Prime Minister's speech on (protest against the press Act, 1910)

[2] Sen, "The glory and the blemishes of the Indian news media" (2012, April25), 'The Hindu'

[3] (1942) AC 206

[4] Lalit Bhasin, (2010) - "Media world and the Law", Universal Law Publishing Co. Pvt. Ltd. New Delhi.

[5] Iyer,J.V.R Krishna (2005), "The Regional Media andThe Democratic Process: Off theBench" (Reprint), Universal Law Publishing Co. Pvt. Ltd. New Delhi.

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3. Kumar Mithilesh (2013)- This is an interesting book for the reason that, the author of the book elaborates upon the freedom of speech and expression, restrictions imposed upon it. The book discusses how the trial by media should be conducted.[1]
4. Rajan (2011)[2]
5. Sahay (2011)[3]

B. Articles:

1. Ray and Dutta (2015)[4]
2. Mahecha (2016)[5]
3. Nimisha Jha (2015)[6]

The aforesaid review of literature was helpful for the authors in completing the article. Especially, the book by Manoj Rajan, discuss in Chapter IV, the various aspects of Investigative Journalism or Trial by Media and its relation with freedom of speech and expression and the Independence of judiciary was more relevant for writing this article. Further, the book by Mukul Sahay discuss upon the ethics that Mass Media should keep in mind while exercising its freedom of speech and expression. The said book was also helpful in writing this article.

VI. CONCEPT OF MASS MEDIA IN INDIA

In the ordinary lay man's meaning, the term 'Mass Media' means 'technology that is intended to reach a mass audience by way of providing information and communication through the means of newspapers, radio, television and internet'.

At different intervals of time, there has been placement and replacement of different kinds of Media. Originally, popular radio was replaced by television and television is now replaced by Internet and mobiles. It is to be noted, there is again rejuvenation of popularity of radio due to FM channels broadcast. It is to be further noted that how the internet has made possible for getting any information just by clicking a mouse and get such information which is very instant and could not be got through scheduled programs.

By all means, everyone admits that, mass media is creating public opinion, education and awareness in society through the news that is printed and electronically provided through television and internet.

When we speak about Media trial, it would be appropriate first to provide the meaning of the word 'trial' and the word 'case' which is filed before adjudicating body including the courts.

According to Section 190 of the Criminal Procedure Code,1973 (CrPc), the word 'Trial' means 'to take cognizance of the case y the magistrate for conducting the proceedings.

According to Section 2(a) of The Legal Services Authorities Act,1987, the word 'Case' means 'a suit or any proceeding before a court'.

The meaning of the word "Media Trial" could be said as, regardless of any verdict or judgement of a court, it is a phrase used to describe the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt and at some occasions the innocence of the accused. Therefore, it is submitted that media trial though not a judicial trial yet it has the trappings of the trial by courts leading to some sort of perceptions in the minds of the public and the court that there is slightly to prejudice the proceedings before the court.

[1] Kumar Mithilesh (2013), "Media Trial Versa Free and Fair Administration of Justice – Need for Guidance", Singh and Associates, New Delhi.

[2] Rajan, Manoj (2011), "Media in Modern India" Deep and Deep Publications Pvt. Ltd.

[3] Sahay Mukul (2011), "Media, Law and Ethics" Wisdom Press.

[4] Ray and Dutta (2015)"Media Glare or Media Trial ethical dilemma between two Estate of Indian democracy".

[5] Mahecha (2016) "Media Trial – A Threat to Fair Trial"

[6] Nimisha Jha (2015) "Constitutionality of Media Trials in India: A Detailed Analysis"

After mentioning the meaning of Mass Media, trial, case and media trial, the author feels it would be appropriate to dwell into brief history of media trials that commenced in India about some sensational cases especially post-Independence period. Alongside some media trials relating to foreign cases are also mentioned.

The earliest media trial commenced from 1967 in a case known as *'The Frost Programme'*[1] followed by *O.J. Simpson murder case (1995)*[2], which is a case of famous football player, O.J.Simpson, where his wife was murdered and there was a trial by media as to how O.J Simpson escaped from the allegations against him of his wife's murder, In *Bijal Joshi rape case(2003)*[3], where a lady Bijal Joshi committed suicide with a note that her lover Sajal and his men gang raped Bijal in a hotel. These facts were brought to light by media trial and pressurized the investigating authorities and the courts to get justice to the deceased Bijal Joshi. Had media not intervened, the accused Sajal would have been acquitted by Court. In *Priyadarshini Mattoo murder case (2006)*[4], where the deceased Priyadarshini Mattoo, a law student from University of Delhi, Campus Law Centre was murdered by her supposed loving companion Santhosh Kumar Singh who harassed the deceased in several occasions in college and complaints were pending against him before police. In 2006, he managed to come to deceased house and murder her. Due to the intervention of trial by media, the accused Santhosh Kumar Singh was convicted by High Court of Delhi. Also *Aarushi Talwar Murder case (2008)*[5], *Jessica Lal case (2010)*[6], *Sushant Singh Rajput case (2020)*[7] and lastly *Disha Ravi case (2021)*[8] is discussed in the foregoing paragraphs of this article.

1. Issue No.1 - Issues Relating To News Or Views In Context With Trial By Media:

Without discussing under this heading about trial by media, the authors of this article like to focus how and why the views of the mass media especially the electronic media have overcome the news that they have to inform to the viewers of the TV.

Originally, the relationship between media and the corporate houses were limited to the extent of receiving the advertisement and using the revenue out of such advertisements for running or conducting their media services to the society by broadcasting the news.

As time went on, the media houses instead of becoming new broadcasters became themselves as agenda setters and as an entity that play a prominent role in shaping the public discourse. It is evident from the partnership entered by the media with the leading corporates for the purpose of getting friendly press coverage of such corporate houses entering into partnership. This as a result has converted role of the media from providing their views instead of providing the news to the viewers entitling media in making money.

The Authors of this article bring to the notice of the readers that how recently the Republican TV Editor-in-Chief, Arnab Goswami[9] and others were alleged through an FIR filed by the Mumbai police alleging that, how the said republican TV manipulated in increasing their TRP (Television Rating Points) which then decides who gets more advertisements. Further, it is evident that how the owner of News Corp. Mr. Rupert Murdoch[10] became popular in setting the agendas for public discourse in USA and as well-earned money for his company. The Information provided by Murdoch was considered to be authenticated. Therefore, whomsoever he interviewed; it was a prestige for the interviewed to gain mileage in society. The Authors submits that, due to

[1] Jeffries, Stuart (1 September 2013). "Sir David Frost obituary -The Guardian. (ISSN 0261-3077).

[2] The People of the State of California v. Orenthal James Simpson, No. BA 097211 (Cal. Super. CL, LA. County) (Oct. 3,1995).

[3] Chandan Panalal Jaiswal vs State of Gujarat, 2004 CriLJ 2992

[4] State (Through CBI) vs Santosh Kumar Singh, 2007 CriLJ 964

[5] Dr. Rajesh Talwar And Another V. Central Bureau of Investigation, 2013 (82) ACC 303

[6] Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1.

[7] Rhea Chakraborty vs State of Bihar, Transfer petition (Cri.) No.225 of 2020

[8] Union of India (represented by CBI) vs Disha Ravi (2021).

[9] Arnab Manoranjan Goswami vs The State of Maharashtra, SLP (Crl) No. 5598 (2020)

[10] Rupert Murdoch, i.e., Keith Rupert Murdoch, was an Australian-born American newspaper publisher and media entrepreneur who founded the global media holding company (1979)- the News Corporation Ltd.— often called News Corp.

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competition amongst the media for entering into partnerships with corporate houses ultimately culminated to make media an entity of money-making venture, as a result the views of the media were to be formed in such a way, they attract the attention of the corporate houses and sometimes the Government at large, thus ultimately leading to overcome the real news by the personal views of the media houses. It further noted that how the friction arose between the electronic and communication department of India and the twitter company regarding the reporting of farmers agitations in the boarder of New Delhi. This shows how the role of the mass media is changed from service-oriented entity to business profit making entity in India and elsewhere.

Due to the aforesaid changed position of the mass media especially the electronic media the views of the media override the real news that they have to provide for the viewers.

2. Issue No.2 And 3: Interference By Media Through Trial By Media Into Personal Matters Rather Than Real Issues And Elaborating The Issue Without Caring For The End Action:

The Authors of this article like to take up issue No.2 and Issue No.3 together to focus how the mass media especially the Television has inserted its personal editorial views suppressing the real facts of the case and further by doing so, the editorial views of the television did not care for the end action that happened. This means at some occasions trial by media has damaged the reputation of a person or has encroached into the private rights of the persons during the course of investigation by the police and the other State and Central Investigative agencies. The Author respectfully submits that the trial by media has many positive impacts and negative impacts in society. This is evident when the media trial was conducted pertaining to *Sheena Bohra murder case* (2018)[1], where the media trial completely in a way depicted Indra Mukherjea as an accused in the murder of Sheena Bohra. But then, investigative reports on record of CBI revealed the retrieved messages between Sheena Bohra and Rahul Mukherjea who was later named as the accused in the case. Therefore, this in a way the trial by media tarnished the image of Indra Mukherjea (negative impact of media in society).

Further, the authors cites some cases where the trial by media has played a significant role in managing to get the accused guilty of the crime rather than before the delivery of verdict or judgement by the courts. This in a way repose some confidence in public discourse that the trial by media is useful for convicting the real accused in a criminal case. Examples of these type of cases are *Priyadarshini Mattoo case, Jessica Lal case, Nitish Katara murder case (2008)*[2] and *Bijal Joshi rape case*. However, in a sensational case of murder, popularly known as 'Aarushi Talwar murder case,' where the media depicted through its media trial that the parents namely Dr. Rajesh Talwar and Nupur Talwar were responsible for the murder of their daughter Aarushi Talwar. But then the investigation report of the CBI relieved their parents connected to the murder of their daughter, Aarushi Talwar.

Further, how much sensation the trial by media was created in Sushanth Singh Rajput case (2020) (a noted and celebrated Actor) wherein which the trial by media depicted his girlfriend Rhea Chakraborty likely responsible for abetment of suicide of the celebrated actor. This in a way of course has caused damage to the reputation and tarnished the image of Rhea Chakraborty. However, the matter is still under the process of Investigation with the CBI.

In a recent example of media trial, popularly known as the 'Toolkit' case connected with the agitation of the farmers in New Delhi, the CBI arrested Ms Disha Ravi aged 21. She alleged that her image and reputation is tarnished by the electronic news channels media which in a way has affected her right to privacy guaranteed to her as per Article 21 of the Constitution since the media is conducting a trial that Disha Ravi is responsible for instigating and aggravating the agitation by the farmers. Accordingly, the Delhi High Court in 2021, February 18th through Hon'ble Mrs. J. Pratibha Singh issued notices to the TV News Channels to find out the truth in the allegations made by Disha Ravi. Finally after some stage of investigation the Hon'ble Court gave bail to Disha Ravi.

Therefore, the Authors humbly submits that, media trial on some occasions brings its personal views in the news channels relating to a sensational case and thus led to the interference into personal affairs of either the victim, their relatives or the accused and his relatives without caring for the end actions.

3. Issue No.4 And 5:Freedom Of Speech And Expression And Judicial Independence, Free Trial And Its Impact On Independence Of Judiciary:

[1] Pratim Alias Peter Mukherjea vs Union of India, Writ Petition No. 4400 of 2017 in the High Court of Bombay

[2] Vishal Yadav vs State of Uttar Pradesh, Crl.M.B.1381/2008

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In the foregoing paragraphs, the Authors focus issue No.4 and 5 raised in this article.

Article 50 of Indian Constitution (1950) guarantees Independence of Judiciary. This means the legislature and the executive should not interfere with the affairs of judiciary. If we say media is the fourth pillar of democracy, then it is very much obvious that media should also not interfere or encroach into the affairs of judiciary for safeguarding its independence. Therefore, the issue is raised as to how and when the media trial interferes with proceedings of the courts and prejudices the minds of the judges who decide the cases. Trial by media was conducted before the verdict of the court.

In order to substantiate in support of the issue, the trial by media interferes with the judiciary and its independent function. It is appropriate to convey to the readers of this article, there is a legal framework in place according to which the violation of such legal framework amount to contempt of court and violation of the provisions of the Constitution. Therefore, the legal framework provisions are mentioned by the Authors.

The two revolving tensions surrounding the issues raised by the author is that there should be no trial by media; and secondly, it is not for the press or anyone else to prejudge a case. Therefore, in this regard there is a legislation known as the "The Contempt of Court Act, 1971" which deals about civil and criminal contempt and provides the punishment and remedy for the same. Though the said Act does not contain direct provisions denoting trial by media yet the Act contains provisions which draw inference when any publication printed or otherwise does not amount to contempt.

For instance, Section 3 - Innocent publication and distribution of matter not contempt.—

(1) According to this section any publication whether by words, spoken or written, or by signs, or by visible representations, or otherwise interfere or obstruct the proceedings of the court or tend to do so in a case pending before the court amounts to contempt of Court unless such person had made the publication on reasonable grounds that he had no knowledge about the pending of case either civil or criminal before the court.

Whereas Section 4 provides that "Fair and accurate report of judicial proceeding is not a contempt. — Subject to the provisions contained in section 7, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding or any stage thereof.

Whereas Section 12 providing for Punishment for Contempt of Court and whereas Section 15 providing for "Cognizance of criminal contempt in other cases" are also relevant in context with trial by media.

All together to put it in a simple sense, any trial by media should not involve with wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court amounting to civil contempt. Further, any trial by media should not also involve the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner amounting to criminal contempt. Therefore, the print and electronic media should keep in mind the Contempt of Court Act, 1971 while conducting trial by media.

Another legal framework is found in the provisions of the Press Council of India Act, 1978. Though the said Act does not contain provisions for any actions for publication of news by newspaper or otherwise, yet the Act contain provisions to warn, admonish and direct the newspapers publishers not to repeat any acts of publication against the law. In this connection, the Supreme Court has rightly held in the case of *Ajay Goswami vs Union of India* (2006)[1], that the Press Council of India Act does not apply to broadcastings by electronic media and the Act contains under Section 14 only contain the power of declaratory adjudication by way of giving warnings admonishing and directions in violation of the said Act.

"The Constitution of India" provide freedom of speech and expression as per Article 19(1)(a). However, Courts in India have held freedom of press is part and parcel of 19(1)(a) in the cases such as *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*[2] and in *Printers (Mysore) Ltd. v. CTO*[1]. However, the trial by

[1] Ajay Goswami vs Union of India, Writ Petition No. 384 of 2005, Supreme Court.

[2] Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641

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media conducted by the electronic media and through print media should borne in mind that they do not have absolute freedom of speech and expression rather they have restrictions to be borne in mind while exercising their freedom. In this direction Article 19(2) of our Constitution provides or impose reasonable restrictions which read as follows-

Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

Therefore, the authors respectfully submits that, the trial by media if followed strictly and abide with the legal framework mentioned above contained in the Constitution, the Contempt of Court Act and the Press Council of India Act, there will be no bar or objection for any media trial either published by print or broadcasted by electronic media. Accordingly, Issue 4 and 5 are addressed.

1. OBJECTIVES MET AND HYPOTHESIS PROVED:

The Authors submits that the objectives mentioned and the hypothesis framed are established and proved in support of the legal literature as provided in this article. Hypothesis No.1 and 2 is proved while discussing Issue No. 4 and 5 raised by the authors in this article. Whereas Objective No.1 is met in issue No.1 mentioned in this article while objective No.2 and 3 are met in Issue No. 4 and 5 in this article.

2. Law Commission Of India 200th Report On Trial By Media Free Speech And Fair Trial Under Criminal Procedure Code, 1973, August 2006:

The Law commission of India has immensely contributed for reforming the law relating to contempt of court in context with trial by media. Some of the most important recommendations are as under:

1. The Law Commission recommended that there is a need for amending Section 2(c) of the Contempt of Court Act,1971 especially the word 'publication' in section 2 (c). It recommends publication should include radio, cable television and world wide web(internet) for attracting the provisions of the said Act.
2. The Law Commission after referring to Section 3 of the aforesaid Act, in context with using the word 'pending' proceedings before court recommends that the word 'active' be inserted in place of the word 'pending' so that media trials be covered for action under the Contempt of Court Act right from the point of arrest of the accused in case the trial by media prejudice the proceedings of the court.
3. There are other recommendations also which can be taken note of for reform in trial by media and Law of Contempt of Court.

CONCLUSION:

It is humbly concluded that the freedom of speech and expression extended to the media should not be reduced at any point of time except when there is a mis-balance between the trial by media and the freedom of speech and expression. At any cost, the proceedings of the court or the Judges should not be prejudiced during trial by media. Therefore, trial by media is both a boon and a bane.

SUGGESTIONS:

1. The trial by media should always borne in mind there should not be any hostility against the character of the accused and depict him in such a way he is fit to be convicted.
2. It is a simple rule of criminal jurisprudence that with few exceptions, no confessions made before the police is not admissible as evidence. This rule has to be borne in mind whenever trial by media is conducted. Normally the media trials do enquire the witness and reveal the information given to the media. Therefore, any such information either revealed by accused, witness or by any relatives of the accused or the victim cannot be substantiated for convicting a person on the basis of media trial.
3. There is also a regular procedure of examination of witnesses by way of examination in chief, cross examination and re-examination of the witnesses for gathering the authentic evidence by the courts. Most of the times, the newspapers interferes with the function of the Court without safeguarding these procedures of examinations of witnesses. Such conduct of media trial will prejudice the judge as well as the proceeding of the court.

[1] Printers (Mysore) Ltd. v. CTO, (1994) 2 SCC 434

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4. Whenever the trial by media is conducted there should not be over-exaggerated about the activities of police or their versions in courts of investigations about any criminal case narrated to the media. This in a way may lead to contempt of court and liable for punishments.
5. Yet another principle of criminal jurisprudence is that adverse comment should be avoided due to the reason that the witnesses may deter to appear before the courts in case any trial by media makes adverse comments about the witnesses.

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HOPE FAMILY PROGRAM EVALUATION (CASE STUDY OF SOCIAL WELFARE OF PEOPLE WITH DISABILITIES IN KUPANG CITY)

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ABSTRACT

Purpose: *This study was conducted to evaluate the implementation of the Family Hope Program for Persons with Disabilities in Kupang City.*

Research Methodology: *The type of research used by researchers in this study is descriptive research with a qualitative approach. Research data obtained by means of interviews, observation and documentation.*

Results: *This study found several findings. First, the quantity and quality of the Family Hope Program human resources are adequate to manage the Family Hope Program in Kupang City. Second, there are 164 families who are beneficiaries of the Family Hope Program. Third, the data validation process is carried out door-to-door. Fourth, there is coordination with external parties related to the education and health components in the Family Hope Program. Fifth, there is an increase in the amount of assistance by 25% for people with disabilities during the pandemic.*

Limitations: *This research was conducted during a pandemic so there are obstacles to conducting research due to the policy of limiting physical contact.*

Contribution: *The findings in this study can be used by the local government as a consideration for evaluating the family of hope program in Kupang City. In addition, this research can be used as learning material for students of social science, administration and politics.*

Keywords: *Policy, Community and Assistance.*

FOREWORD

The focus of development carried out by developing countries, including Indonesia, is generally placed in the economic field, in the sense of rapid efforts to produce visible changes physically. The management of such businesses requires highly skilled government and bureaucratic personnel who are ready to move the engine of development professionally. Today, various organizations, both business and government, such as the United States, are changing the paradigm from producer orientation to community orientation. Human Resources are concentrated on community service, manufacturing value-added products, and being competitive. Government officials and service units are encouraged, motivated, to compete in providing excellent service (which is more satisfying to the community) in accordance with their respective fields of work. In a radical reflection, that society as human beings need to need the help of others, to perfect themselves through government services. Therefore, Frederickson, (1997) asserts that in providing services or helping others, it is necessary to pay attention to aspects of honesty, justice and truth, openness, simplicity and love that are the application of the spirit of public administration.

Furthermore, Drijarkara (1989) stated that humans perfect themselves for others in love and compassion, so by themselves they perfect the community that needs the help of others, in the sense that service is one of the main tasks of government officials, including business people. The subjects served are the public (public), and the

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form of service is in the form of goods and services, in accordance with the interests of the community and the prevailing laws and regulations in the performance management of public sector organizations. Thus, a government was born, an almost perfect organization. The government actually wants to meet all forms of demands and needs of groups that rely on them through formal consensus, starting with providing a sense of security in people's lives, then at the next level the government's role is diversified by trying to reach almost all problems that occur in society, even in difficult circumstances certain expansion of the role into the area of privacy. The reason is that when individuals have not been able to adequately meet their own needs, intervention from the government is needed to encourage a better life in the future, so that the government cannot be blamed, even when individuals in society enter a critical period after going through a level of fairness like others. The government does not hesitate to do what is best to maintain the stability of the lives of its members of the community, whenever and wherever they are. So government is a perfect organization. Thus, government is essentially a reflection of God's perfection in the truest sense.

In religious teachings, government is established in the third hierarchy after submission to God and the prophets or apostles. No one denies that it is in this context that government has a radical meaning for its presence in the midst of society. He was born solely to provide real answers to any problems faced by the people under him. A group of people who claim to be the government, of course, is required to be a group that at least has divine knowledge (belief) and has prophetic behavior to form a government that can be trusted to be a savior for the problems faced by the community. Based on that belief, it is not appropriate if a government is filled by a group of people who do not have divine values and prophetic behavior (at least display an attitude as a fair and wise leader), so that the government will act otherwise, becoming a source of problems faced by the people. Only by understanding this substance can people realize how important a government is in providing the best for its people, even more so, with the reasons and ways in which such a noble government needs to be born. Automatically the reason for the importance of a government seems to no longer need to be searched for because by understanding the substance above, no human being will avoid the formation of a government in this universe. The problem is how the government can be born in the midst of society in a good and right way so that it is able to assume such a large responsibility according to the characteristics of divinity and prophethood. This awareness will require us to reflect on a more radical (deep) reflection on the importance of institutions that are capable of producing reliable government individuals from time to time, because the core of all current problems in Indonesia, such as poverty, unemployment, educational backwardness, poor government administration, unprofessional, inefficient, and unproductive, according to Ryaas Rasyid (in Ndolu; 2009), is government.

In general, people know a number of institutions that equip individuals as candidates for government cadres by combining divine attributes in the form of text ideals with prophetic traits in the context of the reality of the context. With this method, it is hoped that government organizations can be filled by a group of people who have the values of God's perfection so that what is the impression of the government as a perfect organization cannot be said to be a mere lie so that everyone is subject to the government. Therefore, in the Epistle of the Apostle Paul to the people in Romans 13:1-2, states that everyone must submit to the government because there is no government that does not come from God, and existing governments are appointed by God. For whoever opposes the government is against the decree of God, and whomever does it will bring punishment upon him. Therefore, currently what is needed in government affairs according to Yuddy Chrisnandi (in Ndolu; 2009), is a strong leader, a leader who has a vision for the future, a leader who knows how to run the wheels of government, how to manage government effectively, and is based on high spiritual values in all areas of development.

Development in a country is essentially a joint effort between the government and the community. The development is to change every aspect of the country's life from the current conditions towards a better community life in the future. One of the developments carried out by the government, especially in developing countries, is development on the problem of poverty. Poverty is basically a form of problem that arises in social life, especially in developing countries, one of which is Indonesia.

One of the efforts made by the Indonesian government in the context of accelerating poverty reduction is the Family Hope Program policy, which has been implemented since 2007. The Family Hope Program was implemented on a household basis, and then changed to family based. This change is based on the real conditions of Indonesian society, where several families can gather in one household.

Initially, the Family Hope Program was intended as a form of long-term investment to create strong and quality human resources by focusing on health and education aspects. Then in 2016, a focus was added to the aspect of

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social welfare where the components of assistance recipients were vulnerable groups such as elderly family members (elderly) aged 70 years and over and people with severe disabilities.

The criteria for the recipients of the Social Assistance Program for the Family Hope Program since 2016 are as follows: a. The criteria for health components include: 1) Pregnant/breastfeeding women and 2) Children aged 0 to 6 years. b. The criteria for the education component include: 1) Elementary school/madrasah Ibtidaiyah children or the equivalent; 2) Junior high school/madrasah tsanawiyah or equivalent; 3) High school students/madrasah aliyah or equivalent; and 4) Children aged 6 (six) to 21 (twenty one) years who have not completed the 12 (twelve) years of compulsory education. c. The criteria for social welfare components include: 1) Elderly people ranging from 70 (seventy) years and above; and 2) Persons with severe disabilities.

The expansion of the component of the Family Hope Program aims to reduce the burden of spending on families of the Family Hope Program that supports the elderly and severe disabilities so that these families can shift the costs of meeting their needs to more productive consumption or at least maintain their level of consumption. With this new perspective, the Family Hope Program assistance does not only focus on the health and education components but also includes the social welfare component in the form of funds for income maintenance (Ministry of Social Affairs, 2016).

The Family Hope Program The Social Welfare component since 2016 has changed in several ways due to changes in the Family Hope Program in general. These changes are presented in table 2 below:

Table 1: Policy Developments for the Family Hope Program for the Social Welfare Component 2016-2020

2016	2017	2018	2019	2020
Cash assistance	**Non-Cash Assistance**	**Non-Cash Assistance**	**Non-Cash Assistance**	**Non-Cash Assistance**
Variation Index	**Flat Index**	**Flat Index**	**Variation Index**	**Variation Index**
Seniors: 70 years and over. Aid IDR 2.4 million per year per person Maximum 2 people per family Individually or in a family	Seniors: 70 years and over Flat assistance IDR 2 million per year per family Individually or in a family	Seniors: 70 years and over Flat assistance IDR 2 million per year per family Individual or in the family	Seniors: 60 years and over Aid IDR 2.4 Million per person per year per family Only in the family	Seniors: 70 years and over Aid IDR 2.4 million per person per year per family Only in the family and limited to only 1 elderly
Disability: Severe Disability Assistance IDR 2.4 million per year per person Individually or in a family	Disability: Severe Disability Flat Assistance IDR 2 million per year per family Individually or in a family	Disability: Severe Disability Flat Assistance IDR 2 million per year per family Individually or in a family	Disability: Severe Disability Help IDR 2.4 million per person per year per family Only in the family	Disability: Severe Disability Aid IDR 2.4 million per person per year per family Only in Family and Limited to 1 severe disability

Source: Ministry of Social Affairs, in the Center for the Study of State Financial Accountability (2021).

Persons with Disabilities, previously known as Persons with Disabilities, are considered a vulnerable community because of the disability they experience, they can experience various obstacles and stigma in interacting with other communities. Therefore, the State is obliged to protect, from various possibilities of mistreatment, as well as to provide various services in order to enjoy a prosperous life. Social welfare policies and programs in Indonesia under the Ministry of Social Affairs are carried out through the efforts of Social Rehabilitation, Social Protection, Social Security, and Social Empowerment. Taking into account the policies and programs mentioned above, it appears that the handling of disability problems tends to focus on persons with disabilities.

Law Number 8 of 2016 Article 1 paragraph 1 defines persons with disabilities as: “every person who experiences physical, intellectual, mental, and/or sensory limitations for a long period of time, who in interacting with the environment can experience obstacles and difficulties to participate fully and effectively with other citizens based on equal rights” article 4 paragraph 1 defines that the variety of persons with disabilities includes:

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1. Persons with physical disabilities;
2. Persons with intellectual disabilities;
3. People with mental disabilities; and/or
4. Sensory disability

The explanation section of Article 4 paragraph 1 of Law No. 8 of 2016 further elaborates on the definition and variety of persons with disabilities, namely that what is meant by:

1. “Persons with physical disabilities” are impaired movement functions, including amputation, paralyzed or stiff, paraplegic and cerebral palsy (CP). Due to stroke, due to leprosy, and small people.
2. "Intellectual disability" is a disturbance in the function of thinking because the level of intelligence is below average, including slow learning, mental disabilities and Down syndrome.
3. “Mental persons with disabilities” are disorders of thought, emotion and behavior, including:

a. Psychosocial include schizophrenia, bipolar, depression, anxiety, and personality disorders; and

b. Developmental disabilities that affect social interaction skills include autism and hyperactivity

4. “Persons with sensory disabilities” are disturbances in one of the five senses functions, including visual impairment, deafness, and/or speech disability.

People with disabilities are actually not that different from society in general. Groups of persons with disabilities in the community tend to experience discrimination in their daily lives due to the non-inclusive physical and social environment. This means that the environment in which persons with disabilities are located tends not to support the actualization of their potential. Therefore, society is often accused of being the external cause of a person's disability. This accusation, although not fully grounded, is one of the results of the efforts of groups of people with disabilities in shifting the general view of the causes of disability, namely from being centered on the individual to being community (social) (Bhanushali: 2007).

Persons with disabilities are part of Indonesian citizens who are also entitled to the same position, rights, obligations, and roles to achieve and obtain education to learn, have the right to a decent life, and have the ability to work, produce a work that has a selling value to be marketed. This is as mandated in the 1945 Constitution in article 27 paragraph 2, namely: "Every citizen has the right to work and a decent living for humanity". Problems faced by persons with disabilities in Indonesia include lack of access to information about the importance of doing rehabilitation, lack of public facilities that make it easier for persons with disabilities to carry out daily activities and lack of access to work for Persons with Disabilities, Health and Social Welfare for Persons with Disabilities (Sugi, 2012).

Global trends show that people with disabilities tend to have a high vulnerability to experience exclusion in development. The exclusion is not only from the opportunity to enjoy the results of development, but also the opportunity to actively participate in development. Consequently, people with disabilities tend to have a lower quality of life than non-disabled people: lower levels of education and health, as well as more limited job opportunities and access to public facilities. In addition, households with people with disabilities are more likely to be found in the low welfare group. These conditions ultimately marginalize the opportunities for persons with disabilities to participate actively and meaningfully in development.

Most people with disabilities live in vulnerable, underdeveloped, and/or poor conditions because there are still restrictions, obstacles, difficulties, and reduction or elimination of the rights of persons with disabilities. Various kinds of challenges and obstacles occur both in terms of education, economy, and other things. The government has actually fulfilled some of the needs of persons with disabilities for social protection insurance through various health and employment insurance schemes and social assistance schemes, although in terms of coverage it is still too small. Then, when viewed from the social security provided by the government through the Employment Social Security Administering Agency, generally it only covers people who work in the formal sector with workers' compensation schemes. The number of recipients of social assistance for persons with disabilities through the Social Assistance program for Persons with Severe Disabilities is still small because the program only covers persons with severe disabilities who are unable to support themselves and do not have a steady source of income. Therefore, as a means of compensation for people with severe disabilities who live in a family, the Family Hope Program will be provided with a component for people with severe disabilities (which are not covered by the Employment Social Security Administering Body).

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In relation to the government's role in improving the welfare of people with disabilities, the Kupang City Social Service has an important role as a work unit that handles community social problems including the welfare of people with disabilities through various programs, one of which is the Family Hope Program for Social Welfare Components of Persons with Severe Disabilities. Based on the data, there are 982 people with disabilities in Kupang City spread over 6 Districts.

Table 2: Data for Persons with Disabilities per District in Kupang City in 2020

No.	Sub-district	Man	Woman
1.	Maulafa	109	98
2.	Kota Lama	97	73
3.	Alak	69	68
4.	Kelapa Lima	57	43
5.	Kota Raja	131	90
6.	Oebobo	90	57
Total		**553**	**429**
Grand Total		**982**	

Source: Kupang City Social Service in Blegur (2020).

There are several types of persons with disabilities. Out of the 982 persons with disabilities, 187 persons with physical disabilities are male and 134 female persons and people with intellectual disabilities 36 people and women 29 people. There are 53 men with mental disabilities and 42 women. There are 145 men with sensory disabilities and 100 women. There are 132 people with multiple disabilities for men and 124 for women.

Table 3: Data on the Variety of Persons with Disabilities in Kupang City in 2020

No.	Variety of Disabilities	Gender		Total
		Man	Women	
1.	Physical disability	187	134	321
2.	Intellectual disability	36	29	65
3.	Mental disability	53	42	95
4.	Sensory disability	145	100	245
5.	Dual disability	132	124	256
Number of Persons with Disabilities in Kupang City		**553**	**429**	**982**

Source: Kupang City Social Service in Blegur (2020).

The Family Hope Program Program, its utilization is provided with the principle of efficiency, such as budget availability, given on a temporary or short-term basis, even conditionally. The Family Hope Program with Severe Disabilities is given to families who have members with disabilities with the aim of reducing the burden of family expenses because the expense burden increases to meet the needs of members with disabilities. The amount of the Family Hope Program Social Assistance Fund is based on the 2020 Family Hope Program Technical Guidelines; assistance to the social welfare component of people with severe disabilities is IDR 300,000/month or IDR 3,600,000/year.

As conditional assistance, the Family Hope Program has obligations that must be fulfilled in all components so that beneficiaries continue to receive assistance from the Family Hope Program. If the health and education components apply hard conditionality, then specifically for the severe disability welfare component, soft conditionality is applied, which means the implementation of verification of obligation commitments based on the abilities of family members with disabilities. The obligation for the category of recipients of disability assistance is that the family or administrators serve, care for, and ensure health checks for people with severe disabilities at least once a year by using home visit services (health workers come to the homes of Beneficiary families with severe disabilities) and home care (the caretaker bathes, takes care of, and cares for the Beneficiary Families of the Expected Family Program).

Based on data from the secretariat of the Family Hope Program in Kupang City, people with disabilities who received assistance from the Family Hope Program were 164 Beneficiary Families spread over 6 sub-districts.

Table 4: Beneficiary Families of the Hopeful Family Program in Kupang City As of September 29, 2021

No.	Sub-district	Total Beneficiary Families
1	Alak	21

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2	Kelapa lima	21
3	Kota lama	10
4	Kota raja	29
5	Maulafa	28
6	Oebobo	55
Total		164

Source: Secretariat of the Kupang City Family Hope Program (2021).

A strong commitment from the government to reduce poverty, improve the quality of human resources and improve the welfare of the community through social security is therefore important to evaluate the PKH policy program. This evaluation of the Family Hope Program is needed to see the gap between "hope" and "reality" in this program. It is undeniable that the effectiveness of government administration related to the family has a significant impact on the economic condition and also the mental health of the family (Esses et al., 2017; Irianto et al., 2018; Lestari, 2016). Moreover, it is very important to evaluate the layoffs in order to identify the progress of PKH implementation in Kupang City.

Policy implementation is the application of public policies that have been formulated, and leads to results that can be in the form of the policy itself or the benefits that can be felt by the users, so that policy implementation needs to be studied more deeply whether the implementation is successful in accordance with the objectives or impacts of the policy because implementation is a an important aspect of the overall policy process that produces outputs concerning how much change has been achieved from the programmed goals and these changes are easy to measure (Kiwang: 2018). This statement supported by Bajuri (2003:111-112) who states that the success of implementation is strongly influenced by how a policy design is able to comprehensively formulate aspects of implementation as well as evaluation methods to be implemented.

Policy evaluation, according to Anderson in Arikunto (2002), is an activity involving the estimation or assessment of a policy that includes the substance, implementation and impact of the policy implementation. According to Bridgman & Davis (2000:130), the measurement of public policy evaluation generally refers to four main indicators, namely:

1. Input indicators focus on assessing whether supporting resources and basic materials are needed to implement the policy. These indicators can include human resources, money or other supporting infrastructure.
2. Process indicators focus on assessing how a policy is transformed in the form of direct services to the community. This indicator covers aspects of the effectiveness and efficiency of the methods or methods used to implement certain public policies.
3. Outputs indicators (outcomes) focus the assessment on the results or products that can be generated from the system or public policy process. This outcome indicator is, for example, how many people have successfully participated in a particular program.
4. Outcomes (impact) indicators focus on the question of impacts received by the wider community or parties affected by the policy.

In connection with the evaluation measurement indicators, there are several problems in the implementation of the Family Hope Program for the Social Welfare Component of Persons with Disabilities in Kupang City. The problem that exists is the difference in understanding regarding the technical guidelines for the Family Hope Program, this of course has an impact on data collection and verification of data on recipients of the Family Hope Program assistance for severe disability components so that it will have an impact on the implementation of the Family Hope Program in Kupang City.

LITERATURE REVIEW

Public Policy Evaluation

The term policy evaluation according to Arikunto (2002), relates to measuring and assessing. Measuring means comparing something with a quantitative (positive) measure. While assessing means taking a decision on something with a good or bad measure, right or wrong and qualitative. Furthermore, the term policy evaluation according to Anderson in Arikunto (2002) policy evaluation is an activity that involves the estimation or assessment of a policy that includes the substance, implementation and impact of the implementation of the policy. According to Lester and Stewart (Winarno, 2008:) policies can be distinguished in two different tasks, the first is to determine the consequences caused by a policy by describing its impact. The second task is to

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assess the success or failure of a policy based on predetermined standards or criteria. Simple policy evaluation, according to William Dunn in Agustino (2008), relates to the production of information about the value or benefits of policies and policy outcomes.

The criteria for evaluating public policy according to Dunn (2003), include:

1. Effectiveness. With regard to whether an alternative achieves the expected results or achieves the objectives of the action taken.
2. Efficiency, with regard to the amount of effort required increasing certain effectiveness, which is synonymous with economic rationality.
3. Adequacy, with regard to the extent to which a level of effectiveness satisfies the needs, values or opportunities that give rise to the problem.
4. Equity is closely related to legal and social rationality and refers to the distribution of outcomes and efforts between different groups in society.
5. Responsiveness, with regard to how far a policy can satisfy the needs, preferences, or values of certain community groups.
6. Accuracy is a criterion of accuracy that is closely related to rationality, substantive, because the question of policy appropriateness is not concerned with an individual criterion unit but two or more criteria together.

According to Finterbush and Motz in Subarsono (2009), policy evaluation consists of several methods, namely:

1. Single program after-only, i.e. information is obtained based on the condition of the target group after the program is run.
2. Single program before after, namely the information obtained based on the state of the target and not the target of the program being executed.
3. Comparative after-only, namely the information obtained is based on the state of the target and not the target of the program being run.
4. Comparative before after is information obtained based on the effect of the program on the target group before and after the program is run.

According to Notoatmojo (2003), evaluation activities include the following steps:

1. Establish or formulate evaluation objectives, namely about what will be evaluated against the program.
2. Determine the criteria that will be used in determining the success of the program to be evaluated.
3. Determine the method or method of evaluation.
4. Implement, manage, and analyze the data or the results of the evaluation.
5. Determine the success of the program that is evaluated based on predetermined criteria and provide explanations.
6. Prepare recommendations or suggestions for further programs.

According to Bridgman & Davis (2000:130) Public policy evaluation measurement generally refers to four main indicators, namely:

1. Input indicators focus on assessing whether supporting resources and basic materials are needed to implement the policy. These indicators can include human resources, money or other supporting infrastructure.
2. Process indicators focus on assessing how a policy is transformed in the form of direct service to the community. This indicator covers aspects of the effectiveness and efficiency of the methods or methods used to implement certain public policies.
3. Outputs indicators focus the assessment on the results or products that can be generated from the public policy system or process. This outcome indicator is, for example, how many people have successfully participated in a particular program.
4. Outcomes (impact) indicators focus on the question of impacts received by the wider community or parties affected by the policy.

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Hope Family Program

The Family Hope Program is a poverty alleviation program that provides cash assistance to very poor households. The Family Hope Program budget comes from the State Revenue and Expenditure Budget where the position of the Family Hope Program is part of other poverty reduction programs. The Family Hope Program is under the coordination of the Poverty Reduction Coordination Team, both at the central and regional levels. The Family Hope Program is a cross-ministerial and institutional program, because the main actors are the National Development Planning Agency, the Ministry of Social Affairs, the Ministry of Health, the Ministry of National Education, the Ministry of Religion, the Ministry of Communication and Information Technology, and the Central Statistics Agency. President Susilo Bambang Yudhoyono in Gorontalo launched the Family Hope Program in July 2007. In the early stages, the Family Hope Program was implemented in seven provinces involving 500,000 very poor household heads. The seven provinces are: Gorontalo, West Sumatra, DKI Jakarta, West Java, East Java, North Sulawesi, and East Nusa Tenggara. The year 2007 was the initial stage of program development or the pilot stage.

The purpose of the trial is to test the various instruments needed in the implementation of the Family Hope Program, such as among others the method of targeting, verification of requirements, payment mechanisms, and public complaints. 2015. This is in line with the commitment to achieve the Millennium Development Goals (MDGs). During this period, the target participants will gradually be increased to cover all very poor households with children of primary education age and pregnant/postpartum mothers. In 2008, the implementation of the Family Hope Program was expanded to 13 provinces. The six additions are: Nanggroe Aceh Darussalam, North Sumatra, Special Region of Yogyakarta, Banten, West Nusa Tenggara, and South Kalimantan. The Family Hope Program has been implemented in 72 districts in 13 provinces, receiving 700 thousand very poor households in 2008.

The Family Hope Program has actually been implemented in various countries, especially Latin American countries with various program names. But conceptually, the original term is Conditional Cash Transfers (CCT), which translates to Conditional Cash Transfers. This program is "not" intended as a continuation of the Direct Cash Subsidy program, which is given in order to help poor households maintain their purchasing power when the government adjusts the price of fuel oil. The Family Hope Program is more intended to build a social protection system for the poor. The Family Hope Program is a program that provides cash assistance to Very Poor Households, which is a government program as set out in the 2005 to 2025 Long Term Development Plan (Law Number 17 of 2007).

Relationship between Policy Evaluation and Family Hope Program for People with Disabilities

Persons with disabilities are part of Indonesian citizens who are also entitled to the same position, rights, obligations, and roles to achieve and obtain education to learn, have the right to a decent life, and have the ability to work, produce a work that has a selling value to be marketed. This is as mandated in the 1945 Constitution in article 27 paragraph 2, namely: "Every citizen has the right to work and a decent living for humanity". Problems faced by persons with disabilities in Indonesia include lack of access to information about the importance of doing rehabilitation, lack of public facilities that make it easier for persons with disabilities to carry out daily activities and lack of access to work for Persons with Disabilities, Health and Social Welfare for Persons with Disabilities (Sugi, 2012).

Global trends show that people with disabilities tend to have a high vulnerability to experience exclusion in development. The exclusion is not only from the opportunity to enjoy the results of development, but also the opportunity to actively participate in development. Consequently, people with disabilities tend to have a lower quality of life than non-disabled people: lower levels of education and health, as well as more limited job opportunities and access to public facilities. In addition, households with people with disabilities are more likely to be found in the low welfare group. These conditions ultimately marginalize the opportunities for persons with disabilities to participate actively and meaningfully in development.

Various efforts have been made by the government to provide various services for persons with disabilities in order to enjoy a prosperous life, including Social Rehabilitation, Social Protection, Social Security, and Social Empowerment. One of the policies to accommodate this is the Family Hope Program policy.

At the beginning of its implementation in 2007, the Family Hope Program was intended as a form of long-term investment to create strong and quality human resources by focusing on health and education aspects. Then in 2016, a focus was added to the aspect of social welfare where the components of assistance recipients were vulnerable groups such as elderly family members (elderly) aged 70 years and over and persons with disabilities. The expansion of the component of the Family Hope Program aims to reduce the burden on families

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of the Family Hope Program, which supports the elderly and severely disabled so that these families can shift the costs of meeting their needs to more productive consumption or at least maintain their level of consumption.

A strong commitment from the government to reduce poverty, improve the quality of human resources and improve the welfare of the community through social security, therefore it is important to evaluate the policy program of the Family Hope Program. This evaluation of the Family Hope Program is needed to see the gap between "hope" and "reality" in this program.

Policy implementation is the application of public policies that have been formulated, and leads to results that can be in the form of the policy itself or the benefits that can be felt by the users, so that policy implementation needs to be studied more deeply whether the implementation is successful in accordance with the objectives or impacts of the policy because implementation is a an important aspect of the overall policy process that produces outputs concerning how much change is achieved from the programmed goals and these changes are easily measured (Kiwang: 2018).

To examine the policy evaluation of the Family Hope Program for the social welfare of persons with disabilities in Kupang City, this study uses the theory of public policy evaluation measurement proposed by Bridgman & Davis (2000: 130), which generally refers to four main indicators, namely:

1. Input indicators focus on assessing whether supporting resources and basic materials are needed to implement the policy. This indicator can include human resources, money or other supporting infrastructure.
2. Process indicators focus on assessing how a policy is transformed in the form of direct services to the community. This indicator covers aspects of the effectiveness and efficiency of the methods or methods used to implement certain public policies.
3. Outputs indicators (outcomes) focus the assessment on the results or products that can be generated from the system or public policy process. This outcome indicator is, for example, how many people have succeeded in joining a particular program.
4. Outcomes (impact) indicators focus on the question of impacts received by the wider community or parties affected by the policy.

RESEARCH METHODOLOGY

The type of research used by researchers in this study is descriptive research with a qualitative approach and will be conducted in Kupang City. Furthermore, the determination of informants can be presented in the table below.

Table 5: Research Informants

No.	Informants	Total	Informant Determination Technique
1	Kupang City Hope Family Program Coordinator	1	*Purposive sampling*
2	Family Hope Program Companion	6	*Purposive sampling*
3	Beneficiary Families of the Hopeful Family Program	10	*Purposive sampling*
Total		**17**	

Source: Primary Data (2021)

Sources of data in this study are primary data and secondary data with data collection techniques in the form of interviews, observation and documentation, then the data analysis technique used according to Sugiyono (2013) is a qualitative analysis process, which begins by examining all available data from various sources, namely interviews, observation and documentation. The results of the data acquisition are analyzed appropriately so that the correct conclusions can be drawn.

RESULT

Input Indicator Analysis

Input indicators are the supporting resources needed in the implementation of the Family Hope Program program for the Social Welfare component of persons with disabilities in Kupang City. In this indicator, the management human resources, budget availability, information availability, availability of supporting facilities and program recipient communities are examined.

There are 45 people who manage the Family Hope Program program in Kupang City, consisting of 1 coordinator, 2 Database Administration people, and 42 field assistants who work in urban villages in Kupang

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City. In terms of formal education, the HR program manager for the Family Hope Program in Kupang has a minimum education of Diploma 3 (D3) to Strata 1 (S1). In addition to formal education, HR managers receive non-formal education, namely Education and Training as well as Guidance and Consolidation. Specifically for the development of human resources for managers related to the social welfare component, non-formal education is provided, namely the Family Capacity Building Meeting for the Hopeful Family Program.

This is as conveyed by Gratiana Thani as the coordinator of the Kupang City Hope Family Program in an interview with the author.

"There were 45 of us, and before we went to the field we were given a kind of training and guidance, namely the Family Capacity Building Meeting for the Hopeful Family Program. The purpose of the Family Capacity Building Meeting for the Family Hope Program is to make assistants understand the variety of severe disabilities, their rights and appropriate services."

Quantitatively, this number is adequate to manage the Family Hope Program in Kupang City, although the number of field assistants is 42 people, not proportional to the number of existing urban villages, namely 51 villages, but the distribution of field assistants is adjusted to the number of Beneficiary Families in each village. In terms of the quality of human resources managing the Family Hope Program in Kupang City with various formal educational backgrounds, they have different basic competencies, with Family Capacity Building Meeting; the HR managers of the Family Hope Program have more specific knowledge and skills in managing the Family Hope Program, especially the social welfare component of persons with disabilities.

In the next input indicator, namely the availability of Budget and the recipients of the Family Hope Program, the Family Hope Program component for people with severe disabilities is the provision of assistance to families who have family members with severe physical/disability or mental limitations with the aim of reducing the expense burden. In Kupang City there are 164 Beneficiary Families with severe disabilities, the nominal assistance provided is IDR. 2,400,000 per Beneficiary Family in a year, which is divided into 4 acceptance terms.

The Director of Family Social Security at the Ministry of Social Affairs of the Republic of Indonesia determines the number of prospective Beneficiary Families and the nominal amount. This is also related to the availability of information on the Family Hope Program, where the location and number of Beneficiary Families are sourced from the Integrated Social Welfare Data. The Kupang City Government also provides an application so that the community can check the data on the recipients of the Family Hope Program assistance through the website http://bansos.kupangkota.go.id.

The results of the observations found that the facilities used in the management of the Family Hope Program in the city of Kupang were 2 units of Personal Computers (PCs) and printers used by PPE in data management in the DTKS application, while the facilities for administrative purposes and socialization to the community from field assistants had not been provided so that they use their own facilities in carrying out their duties.

This is as the result of an interview with the field assistant for the Family Hope Program in the Liliba sub-district, Rocky Kopa.

"The obstacle we face in the field is the limited media in providing socialization. We have been given training on Family Capacity Building Meetings and modules but in providing socialization to Beneficiary Families during a pandemic like today, we are limited by space and time. Usually 20 Beneficiary Families are given socialization for 2-3 hours, now it is limited to only half and is regulated by distance. We need loudspeakers. The administration also uses a personal laptop."

In addition, the result of observations in the Secretariat room of the Kupang City Family Hope Implementation Unit has an area of approximately (±) 4x6 meters and the room is an asset of the Kupang City Government Social Service. The Family Hope Program is a central government program but in its implementation it must take shelter in the regional social service, therefore the Secretariat of the Kupang City Family Hope Implementation Unit is located at the Kupang City Social Service.

Referring to the theory of public policy evaluation according to Bridgman & Davis (2000: 130), that the measurement of public policy evaluation generally refers to one of the main indicators of the theory of public policy evaluation, namely the input indicator (input), and all the components in the input indicators that have been mentioned. The above is a reference for reviewing the process/implementation of the Family Hope Program in Kupang City.

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Process Indicator Analysis

The process indicator is an activity for implementing the Family Hope Program for the social welfare component of persons with disabilities in Kupang City. These indicators can include Bureaucratic Efficiency, Coordination and Supervision.

In the process of determining the Beneficiary Families of the Family Hope Program for the social welfare component of persons with disabilities originating from DTKS, the field assistant will validate by matching the data on the prospective Beneficiary Families of the Expected Family Program with evidence and facts of current conditions before being designated as Beneficiary Families. This means that field assistants are required to check the prospective Beneficiary Families of the Hopeful Family Program door to door and ensure that the Beneficiary Families of the Hopeful Family Program meet the requirements. The requirements for the Family Hope Program for the social welfare component of persons with severe disabilities are that their disability cannot be rehabilitated, cannot carry out activities of daily living and/or depend on the help of others for the rest of their life, and is unable to support themselves.

The city of Kupang consists of 51 urban villages, when compared with the ratio of the number of field assistants for the Family Hope Program, which is 42 people, it is deemed inefficient, but the distribution of field assistants is adjusted to the number of Beneficiary Families in each urban village.

The Family Hope Program field assistant in providing assistance to Beneficiary Families concurrently includes all components, namely education, health and social welfare, including people with severe disabilities. There are 2 types of assistance in the social welfare component of persons with disabilities, namely education in the management of assistance and education in services for persons with severe disabilities. For Beneficiary Families with severe disabilities, education will be delivered to parents or families who take care of the person with severe disability.

First, the Beneficiary Families of the social welfare component are given assistance in the amount of IDR 2.400.000, which divided into 4 receiving terms. Persons with severe disabilities who receive assistance will be represented by one of the families whose names are registered on the same family card as the person with severe disability. The field assistant will provide education on the management of the assistance so that it can be used for the needs of people with severe disabilities. This is as stated by the companion of the Bakunase 2 Family Hope Program, Agustina Moi, during an interview with the research team.

“The assistance to people with severe disabilities is IDR 2,400,000 which is given quarterly, so they receive IDR. 600,000. We give the understanding that the money is to help the needs of people with disabilities such as basic needs, milk and vitamins. We not only convey it but also go to the field to check whether the aid is used for these things or not.”

Second, at the beginning the social welfare component was included in the Family Hope Program assistance, field assistants found it difficult to provide assistance to people with severe disabilities. People with disabilities who receive the Family Hope Program have a variety of different disabilities, so special skills and different services are needed for each type of disability. The existence of P2K2 with its module Social Welfare for Disabilities and the Elderly, the Family Hope Program field assistant can find out the right service for each type of severe disability experienced and socialized to Beneficiary Families. This socialization is not only education in services or special treatment for persons with disabilities but also the same treatment and rights as citizens.

The community's stigma in viewing people with disabilities provides obstacles for them in social interaction and access in society, the Family Hope Program facilitator also provides socialization on how to view people with disabilities not as a "burden" but as a gift. Socialization by the Family Hope Program facilitator generally comes from material in the Social Welfare module for Disabilities and the Elderly, but there are material limitations in approaching people with severe disabilities, especially those with mental disorders. In this case, the Family Hope Program facilitator has the initiative to look for approaches to people with severe disabilities from other references.

This is according to the results of interviews with the research team with two field assistants for the Family Hope Program, Novita Hawu and Emilia Banase.

“In the P2K2 module as our guide for conducting socialization, we convey and explain to Beneficiary Families that the rights of persons with disabilities have the same rights as citizens. They have the right to have a certificate, ID card and also cannot be isolated. In general they are referred to as persons with disabilities, but we view them as special children. We also emphasize on the spiritual approach that it is a gift. We continue to convey that to the Beneficiary Families in every P2K2 activity” (Novita Hawu, 2021).

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“There are two beneficiary families that I assist with severe disabilities, one of whom has a mental disorder, we have to go to the field to ensure that P2K2 material is applied to people with disabilities. We also exchange ideas with parents how to take care of people with severe disabilities. We also look for reading materials on how to deal with disability from other references.” (Emilia Banase, 2021).

To ensure that the Beneficiary Families can apply the education conveyed, the Family Hope Program facilitator continues to monitor each Beneficiary Family's house. In this regard, the Family Hope Program facilitator complained that the P2K2 material module was only given to facilitators and there was no handbook for Beneficiary Families so that the materials presented were often ignored or not applied by Beneficiary Families. The companion of the Family Hope Program, Bruno Dasor, conveyed this.

"The assistance we provide includes education and checking directly at the homes of the beneficiary families, but this is a problem because the beneficiary families are not given handbooks."

The proposal for a handbook for Beneficiary Families has been proposed by HR managers of the Family Hope Program but has not been accommodated. The coordinator of the Kupang City Family Hope Program, Gratiana Thani, also shares this.

“I have proposed this handbook for Beneficiary Families, I have also calculated the handbook budget based on the number of Beneficiary Families but it has not been accommodated. Hopefully in the future it can be accommodated so that it helps us on the field”.

Coordination and supervision in the implementation of the Family Hope Program refers to the Regulation of the Minister of Social Affairs Number 1 of 2018 concerning the Family Hope Program. Coordination between ministries/agencies and synergy between the central and local governments are key factors for the successful implementation of the Family Hope Program. Therefore, it is necessary to have central and regional institutional support as well as budgeting sourced from the APBD to support the implementation of the Family Hope Program in areas that has not been budgeted for by the central government.

Based on the Regulation of the Minister of Social Affairs Number I of 2018 concerning the Family Hope Program, the technical coordination team for the City Hope Family Program consists of, Chairman: Head of the City Regional Development Planning Agency and Secretary: Head of the City Regional Social Service as determined by the mayor's decision. The Family Hope Program technical coordination team for the city area is tasked with: 1) formulating programs and activity plans for the City-wide Family Hope Program; 2) Commitment to providing a budget for the participation of the Family Hope Program as support for strengthening the implementation of Family Hope Program (eg facilitation of socialization, facilitation of P2K2, monitoring, assistance in accelerating the empowerment program for Beneficiary Families of the Hopeful Family Program, etc.) local governments can provide budgets and APBD refer to at Ministry of Home Affairs number 050-3708 of 2020 regarding the affairs of social protection and security programs; 3) Provision of education and health service facilities; 4) Coordinate with related regional work units and vertical agencies/institutions in urban areas; 5) Monitoring and controlling the activities of the Family Hope Program; 6) Resolve problems that arise in the implementation of the Family Hope Program in the field; and 7) Prepare and submit reports on the implementation of Family Hope Program activities to the regional head, to the provincial Implementers of the Family Hope Program, and to the Central Implementers of the Family Hope Program.

The implementer of the Urban Hope Family Program is the city's social service which consists of, the Chairperson: Head of the Division of Social Assistance and Security Affairs; and Secretary: Section Head of Social Assistance and Security. Implementing the Family Hope Program in the city area has the following duties: 1) Responsible for providing information and socialization of the Family Hope Program in the sub-district/ urban village; b) Supervising, supervising, and fostering the implementation of the Family Hope Program in the sub-district/ urban village; c) Ensuring the implementation of the Family Hope Program is in accordance with the plan; d) Resolving problems in the implementation of the Family Hope Program; e) Building networks and partnerships with various parties in the implementation of the Family Hope Program; and f) Report on the implementation of the Family Hope Program in the city area to the Implementer of the Implementing Family Hope Program at the Center with a copy to the Implementer of the Provincial Implementer of the Family Hope Program.

Another thing in coordination, currently there is no coordination with the private sector or NGOs in relation to the Family Hope Program for the social welfare component of people with severe disabilities. Coordination with the private sector and NGOs only exists in the Family Hope Program, the Education and Health component. However, many Beneficiary Families of the Family Hope Program are classified as mild and

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moderately disabled by this coordination. People with mild and moderate disabilities are accommodated in the Family Hope Program, the Education and Health component.

Based on the results of researcher interviews with all informants, it shows that the indicator of the process, namely bureaucratic efficiency is considered good based on the Kupang City Family Hope Program human resources carrying out tasks in the data validation process from DTKS, the Family Hope Program assistant door to door to check the current economic conditions of candidates Beneficiary Families of the Expected Family Program before being designated as Beneficiary Families and providing assistance to educate in the management of assistance and to educate on how to provide services for people with severe disabilities to families who take care of them. Meanwhile, other process indicators, namely coordination and supervision based on Minister of Social Affairs Regulation Number 1 of 2018 concerning the Family Hope Program are considered quite good, in which coordination with parties outside the new government agency includes the Family Hope Program for the Education and Health component.

Output Indicator Analysis

The output indicator is the direct achievement of the Family Hope Program, the Social Welfare component of people with severe disabilities in Kupang City. The Family Hope Program assistance aims to reduce the burden on family expenditures for the Family Hope Program, which supports people with severe disabilities so that the family can shift the cost of meeting their needs to more productive consumption, or at least maintain their level of consumption. The assistance provided is IDR. 2,400,000 a year which is divided into 4 nominal terms of receipt and the mechanism of receipt has been determined by the Director of Family Social Security, Ministry of Social Affairs of the Republic of Indonesia. In nominal terms, the assistance is considered small in helping the economy of the Beneficiary Families, but the Beneficiary Families do not only receive assistance from the Family Hope Program, there are other complementary assistance received by KPM. This was stated by the Coordinator of the Kupang City Family Hope Program, Gratiana Thani during an interview with the research team.

"The Family Hope Program assistance is only to stimulate changes in the behavior of the Beneficiary Families in terms of education, health and also the economy. Beneficiary Families also receive other complementary assistance that supports Beneficiary Families to change their behavior."

Persons with severe disabilities are unable to carry out activities of daily living and/or depend on other people's assistance throughout their lives, and are unable to support themselves so that they need a higher cost of living. The assistance provided is intended to assist in meeting the needs of persons with severe disabilities. This is where the role of the Family Hope Program facilitator is to educate Beneficiary Families in managing the assistance they receive. In addition, in the current pandemic situation where all activities are limited, the economic vulnerability of the Beneficiary Families increases. In response to this, the Family Hope Program assistance was increased by 25% and rice assistance for 3 months was given in August-October 2021.

Based on the results of the researcher's interviews with all informants, it shows that the output indicator (direct result of the process), namely the assistance provided is IDR. 2,400,000 a year which is divided into 4 terms of receipt and in the current pandemic situation an increase of 25% and rice assistance for 3 months given in August - October 2021.

Outcomes Indicator

Outcomes (impact) indicators are the benefits obtained by Beneficiary Families from the Family Hope Program, the Social Welfare component of persons with severe disabilities. Based on field research, people with severe disabilities need extra money for basic needs and other necessities. With the assistance of the Family Hope Program, short-term benefits are felt by the Beneficiary Families of the Family Hope Program, the Social Welfare component of people with severe disabilities, namely they are helped economically.

While the long-term benefits, the Beneficiary Families change their economic behaviors patterns and are self-graduated. This means that the participation of the Beneficiary Families of the Family Hope Program ends because the socio-economic status has increased. Currently, the long-term benefits of the Social Welfare component of the Family Hope Program for people with severe disabilities have not been felt because the Kupang City Family Hope Program is currently recertifying the Beneficiary Families of the Hopeful Family Program. Another long-term benefit is changing people's thinking patterns in negative labeling or stigma against persons with disabilities from education by the Family Hope Program facilitator.

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CONCLUSION

Based on the description of the research results above, the authors provide the following conclusions: 1). There are 45 people who manage the Family Hope Program in Kupang City, consisting of 1 coordinator, 2 Database Administration people, and 42 field assistants who work in urban villages in Kupang City. In terms of quantity and quality of human resources, the Family Hope Program is adequate to manage the Family Hope Program in Kupang City, 2). Availability of budget and community recipients of the Family Hope Program, the Family Hope Program component of people with severe disabilities, namely providing assistance to families who have family members with severe physical/disability or mental limitations with the aim of reducing the expense burden. In Kupang City there are 164 Beneficiary Families with severe disability components, the nominal assistance provided is IDR 2,400,000 per Beneficiary Family in a year, which is divided into 4 acceptance terms. The Director of Family Social Security at the Ministry of Social Affairs of the Republic of Indonesia determines the number of prospective Beneficiary Families and the nominal amount. The current facilities are used for data management purposes at DTKS, while for the purposes of administration and assistance to Beneficiary Families by the Family Hope Program Facilitator, they still use their own facilities, 3). The HR of the Beneficiary Family of Kupang City performs tasks in the data validation process from DTKS, the Family Hope Program assistant door to door to check the current economic condition of the prospective Beneficiary Family of the Expected Family Program before being designated as the Beneficiary Family and mentoring to educate in the management of aid and educate how to services for people with severe disabilities to families who take care of them, 4). Coordination with parties outside government agencies includes Beneficiary Families of the Education and Health component and does not include Beneficiary Families of the social welfare component of persons with severe disabilities, 5). During the pandemic, the Family Hope Program assistance component of social welfare for persons with severe disabilities was Rp. 2,400,000 per Beneficiary Family, an increase of 25% and rice assistance for 3 months provided in August - October 2021. Short-term benefits felt by Beneficiary Families The Family Hope Program is a Social Welfare component for people with severe disabilities, namely they are helped economically. While the long-term benefits, the Beneficiary Families change their economic behaviors patterns and are self-graduated. This means that the participation of the Beneficiary Families of the Family Hope Program ends because the socio-economic status has increased. Currently, the long-term benefits of the Social Welfare component of the Family Hope Program for people with severe disabilities have not been felt because the Kupang City Family Hope Program is currently recertifying the Beneficiary Families of the Hopeful Family Program. Another long-term benefit is changing people's thinking patterns in negative labeling or stigma against persons with disabilities from education by the Family Hope Program facilitator.

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IMPLEMENTATION OF STUNTING PREVENTION PROGRAM IN EAST FLORES REGENCY

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ABSTRACT
This study aims to examine stunting prevention policies in East Flores. This research is descriptive research. The results of the study indicate that the stunting prevention policy has not shown optimal results. This is caused by the low performance of the implementer at the street level implementation. The low performance at this level is caused by the input process of officers who have not been carried out transparently and the orientation of officers at the village level is more to the success of their institutional programs. In addition, communication and coordination between related institutions has not been carried out in an integrated manner so that it seems partial and the unavailability of funds specifically allocated to support the optimization of stunting prevention and treatment program performance in this area. Furthermore, it is suggested that in addition to coordination at the district government level, it is necessary to carry out intensively, it is also hoped that there will be financial support to each agency directly involved in this policy as well as improving the capacity of field officers in order to introduce this program to the target group.

***Keywords**: Implementation, Stunting Prevention*

PENDAHULUAN
Indonesia is included in the top five most stunting events in children under five, a total of 7.8 million children (UNICEF, 2009). This condition prompted the Minister of Health of the Republic of Indonesia to issue Regulation Number 49 of 2016 concerning Guidelines for the Implementation of the Healthy Indonesia Program. The Healthy Indonesia Program is implemented to improve the health status of the community through health efforts and community empowerment supported by financial protection and equal distribution of services. To implement the Healthy Indonesia program, it is carried out through a family approach that integrates individual and community health efforts. The Healthy Indonesia Program with a family approach in article 2 has 4 priority areas: 1) reducing maternal and infant mortality; 2) decreasing the prevalence of stunting under five; 3) control of infectious diseases; 4) prevention of non-communicable diseases.

To support development in the health sector, the Minister of Finance of the Republic of Indonesia issued Regulation Number 61/PMK.07/2019 concerning Guidelines for the Use of Transfers to Regions and Village Funds in the implementation of integrated stunting prevention intervention activities. Article 1 states that Transfers to Regions and Village Funds are part of state expenditure allocated in the State Budget to regions and villages such as stunting prevention intervention activities which include adequate food intake, feeding, care and parenting and treatment of infections/diseases. and sensitive interventions that include increasing access to nutritious food, increasing awareness, commitment and practice of mother and child care, increasing access and quality of services and health and providing clean water and sanitation.

East Nusa Tenggara Province is one of the provinces with the highest stunting rate in 2013, the percentage of stunting reached 51.7%. Through various handling and prevention efforts so that in 2018 East Nusa Tenggara experienced a decline in stunting to 42.6%, but this decrease made East Nusa Tenggara an area with a high stunting rate. In connection with these facts, the East Flores Regency Government has set its regional development vision, namely: East Flores Prosperity Within the Frame of Villages Building City Management. This vision is further defined as missions: (1) saving young people, (2) saving infrastructure, (3) saving people's crops, (4) saving the East Flores sea, (5) bureaucratic reform.

In East Flores Regency, handling stunting prevention is one of the duties and responsibilities of several Regional Apparatus Organizations regulated in the Decree of the East Flores Regent Number 59/2020 which includes Bappeda, the Health Office, the Population Control and Family Planning Service, Women's Empowerment and Protection. Children, Youth and Sports Education Office, Public Works Service, Social Service, Agriculture and Food Security Service.

Furthermore, by referring to the development vision of East Flores Regency, especially related to the first vision (save young people), the inter- Regional Apparatus Organizations team is expected to work together to implement stunting prevention policies in this area. The following is data on stunting in East Flores Regency.

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Table 1: Data for Stunting Toddlers on ePPGBM Results by Health Center Per District in East Flores Regency (August 2020 Period)

Sub-district	Public Health Center	∑ ds kel	Total Toddler Measured	Status				%Total stunting toddler
				very short	short	normal	tall	
Wulanggitang	Boru	11	1048	37	236	775	0	26,0
Ile Bura	Ilebura	7	482	28	104	350	0	27,4
Titehena	Lato	7	449	21	123	305	0	32,1
	Lewolaga	7	452	37	194	670	0	19,2
Demon Pagong	Demon pagong	7	292	4	68	220	0	24,7
Lewolema	Lewolema	7	678	24	119	534		21,1
Larantuka	Oka	10	927	23	114	790	0	14,8
	Nagi	10	1071	48	240	1705	5	14,1
Ilemandiri	Waimana	8	702	22	128	551	1	21,4
Tanjung Bunga	Waiklibang	15	1.189	86	1049	42	8	27,7
West Adonara	Waiwadan	18	1055	53	225	777	0	26,4
Adonara	Sagu	8	850	49	199	602	0	29,2
Midle Adonara	Lite	13	765	66	168	530	1	30,6
Klubagolit	Lembunga	12	811	28	146	635	2	21,5
Witihama	Witihama	16	1208	44	151	1013	0	16,1
Ile Boleng	Ile Boleng	21	1123	27	163	933	0	16,9
Wotan Ulumado	Baniona	12	830	49	286	1193	0	27,7
East Solor	Menanga	17	1050	38	181	830	1	20,9
West Solor	Rita Ebang	15	605	34	110	459	2	23,8
South Solor	Kalike	7	427	13	96	317	1	25,5
East Adonara	Waiwerang	22	1578	49	286	1193	0	21,9

Source: East Flores District Health Office (2020).

The information that can be conveyed is that seen from the number of villages, the number of Toddlers and Toddler status and the percentage of stunting Toddlers per sub-district/Puskesmas are varied and relatively low when viewed from the percentage of stunting in NTT based on BPS data, Toddler stunting in NTT in 2018 = 42, 6%.

Based on the research group interview with the head of the family planning division, the head of the women's empowerment sector stated that although institutionally, they already had clear lines and descriptions and job descriptions and responsibilities, but in the form of concrete actions, especially related to cooperative relationships and coordination with other relevant agencies sometimes not yet matched, especially with regard to commitment, understanding of program goals and objectives, administrative system, schedule of activities and on the other hand directly related to field extension workers and the target group itself. In relation to field extension workers, it seems to dwell on issues of motivation, incentives, work culture and discipline, level of obedience, methods and schedules of activities as well as other field administration. Meanwhile, directly related to the target group, the main issues revolve around the mindset of stunting, culture and behavior. Furthermore, it is said that in the implementation of the stunting program, one of the determining factors for its success is the performance of field workers, especially those who are in direct contact with the community (target group). Usually there are various variations and obstacles encountered in the field; both with regard to attitudes and behavior, strictness, determination and perseverance, schedule and material for activities, mentoring and supervision.

The results showed that the implementation of the stunting prevention program was open to failure. For that, perhaps it is necessary to follow van Meter and van Horn's line of thought which is known as a model of policy implementation process. Furthermore, it is said that change, control and compliance act are important concepts in implementation procedures.

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LITERATURE REVIEW

State of The Art in The Researched Field

Pressman and Wildavsky said that implementing it should be directly related to policies, so the process for implementing policies needs to get careful attention and therefore it is wrong to assume that the implementation process will automatically run smoothly. Based on this thought, it may have prompted van Meter and van Horn to formulate implementation as "those actions by public or private individuals (or groups) that are directed at the achievement of objectives set forth in prior public decisions". Furthermore, Mazmanian and Sabatier (Abdul Wahab, 1990: 51) explain the meaning of implementation by saying: understanding what actually happens after a program is declared valid or formulated is the focus of attention on policy implementation, namely events and activities that arise after the enactment of the guidelines. guidelines for state policies, which include both efforts to administer them and to cause real consequences/impacts on society or events.

Stunting

Stunting is a term for nutritionists to refer to children who grow not according to their proper size (short babies). Stunting is a condition where the height based on age is low, or the condition of the child's body is shorter than other children his age. Stunting is a lack of height for age (≤ 2 SD such as when a toddler is one year and eleven months old with a weight of 8.8 kg and a height of 77 cm, these characteristics indicate that the baby has a deficiency status) is also characterized by delayed growth children that result in failure to achieve a normal and healthy height according to the child's age.

1. Process Causes Stunting

Syafiq et al 2015 in Fikawati (2017) said that the direct cause of stunting is the lack of substance intake from the time of the fetus and continues until the baby is born and enters the child-to-adolescent phase, as well as infectious diseases that often suffer from infants or children, but behind the simple direct causes there are complexities. different causes. A qualitative study using in-depth interviews and observations of children with stunting conducted in Maluku showed that stunting at the level of indirect causes could arise due to different situations. Stunting occurs from pre-conception when a teenager becomes a deficient and anemic mother.

Stunting is caused by several factors, namely (1) low birth weight of the baby; (2) lack of environmental hygiene that causes children to be contaminated with bacteria; (3) the fetus lacks nutritional food intake during pregnancy; (4) skipping immunizations can lead to repeated infections in children; (5) not getting exclusive breastfeeding causes malnutrition in children.

2. Stunting Prevention Efforts

Stunting is one of the targets of the Sustainable Development Goals (SDGs) which is included in the 2nd sustainable development goal, namely eliminating hunger and all forms of malnutrition by 2030 and achieving food security. Based on the Regulation of the Minister of Health Number 39 of 2016 concerning Guidelines for the Implementation of the Healthy Indonesia Program with a Family Approach, the efforts made to reduce the prevalence of stunting include: (a) pregnant and maternity women; (1) intervention on 1000 HPK. The first 1000 days of life are the beginning of the process of human life starting from pregnancy, infancy to 2-year-old children. In order for the situation at 1000 HPK to be optimal, it is necessary to pay attention to: (i) at the time before pregnancy. When a mother-to-be is planning a pregnancy, she needs to ensure optimal conditions and health; (ii) when the mother is pregnant. During the mother's pregnancy, it is important to pay attention because the condition when the mother is pregnant greatly determines the health status of the mother and the process of growth and development of the fetus she contains; (iii) when the baby is 0-6 months old. The age of 0-6 months is a period of very rapid growth and development. (iv) when children are 6 months – 2 years old, it is a critical period because children are introduced to several complementary foods for breastfeeding (MP-ASI). (2) Strive for integrated Ante Natal Care (ANC) quality assurance through: (i) increasing deliveries in health facilities is one of the regulations issued by the Minister of Health so that pregnant women are obliged to give birth assisted by health workers and health facilities that can help mothers and babies to be safe during the delivery process. (ii) administering high-calorie, protein, and micronutrient feeding programs. b. Toddlers: (1) Toddler growth monitoring is an activity to check regularly on Toddlers, (i) organize PMT activities for Toddlers, (ii) organize early stimulus for child development. c. Young women: 1) Counseling on clean and healthy living behavior, balanced pattern, not smoking and not taking drugs, 2) Reproductive health education.

3. Stunting Prevention Policy

Efforts to accelerate repairs are global efforts, especially countries that have stunting problems. This effort was initiated by the 2012 World Health Assembly. The targets that have been set include: reducing the prevalence of stunting, wasting and preventing overweight in children under five, reducing the prevalence of anemia in

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women of childbearing age, reducing the prevalence of low birth weight babies, increasing coverage of exclusive breastfeeding. . As a member country of the United Nations with a high prevalence of stunting, Indonesia also strives and is committed to accelerating the improvement of community scaling up nutrition (SUN). Furthermore, Health Law Number 36 of 2009 concerning Health states, the direction of improvement is to increase the quality of individuals and communities through improving food consumption patterns in a balanced manner; improvement of conscious behavior, physical activity, and health; increasing access and quality of services in accordance with advances in science and technology; and improvement of the food alert system and . In line with the two laws, the Law on Food Number 18 of 2012 was also issued which stipulates policies in the food sector to improve the status of the community. The Government and Regional Governments prepare a Food Action Plan and every 5 (five) years.

Based on Government Regulation Number 83 of 2017 concerning Strategic Food Policy and which confirms the preparation of the National Action Plan for Food and (RANPG) and Regional Action Plan for Food and (RAD-PG) to realize quality and competitive human resources in food development and . Furthermore, Presidential Instruction Number 1 of 2017 concerning the Healthy Living Community Movement is expected to be able to improve education regarding balanced and healthy food provision and accelerate improvement. Followed by Presidential Regulation Number 12 of 2019 as an Amendment to Presidential Regulation Number 42 of 2013 concerning the National Movement for Improvement on the basis of implementing regulations: 1) strategies for accelerating stunting reduction; 2) guidelines for implementing integrated stunting reduction interventions in districts/cities; 3) funding guidelines, monitoring and evaluation of stunting reduction acceleration performance.

In the context of stunting prevention, the government generally uses strategies that include sensitive intervention strategies and specific intervention strategies as presented in tables 2 and 3 below.

Table 2: Types of Interventions and Programs of Intervention Activities

Type of Intervention	Intervention programs/activities
Improved supply of drinking water and sanitation	access to safe drinking water
	access to proper sanitation
Increasing access and quality of services and health	access to family planning services
	access to health insurance
	access to cash assistance for poor families
Raising awareness, commitment and practice of parenting and mother and child	dissemination of information through social media
	provision of interpersonal behavior change counseling
	providing parenting counseling for parents
	access to early childhood education and monitoring of child development
	provision of reproductive health counseling for adolescents
	women empowerment and child protection
Peningkatan akses pangan ber	access to non-cash food assistance for underprivileged families
	access to fortification of main food ingredients (salt, wheat flour and cooking oil)
	access to sustainable food house area activities
	strengthening regulations regarding food labels and advertisements

Source: Village Stunting Pocket Book (2019).

Table 3: Target Groups, Priority Interventions, Important Interventions and Conditional Interventions

Target Group	Priority intervention	Important interventions	Intervention according to conditions
Adolescents and fertile women	Supplement tablets add blood		
Pregnant mother	Providing additional food for pregnant women with Chronic Energy Deficiency.	Calcium Supplements	

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	Supplement tablets add blood	Pregnancy test	
Mother breastfeeding children 0-23 months	Breastfeeding promotion and counseling	Vitamin A capsule supplementation	Worm prevention
	Promotion and counseling Infant and Child feeding	Taburia supplementation	
	Acute bad management	Immunization	
	Provision of supplementary food for recovery for children who are less acute	Zinc supplementation for the treatment of diarrhea	
	Growth monitoring	Integrated Management of Sick Toddlers	
Children aged 24-59 months	Acute bad management	Vitamin A capsule supplementation	Worm prevention
	Provision of supplementary food for recovery for children who are less acute	Taburia Supplementation	
	Growth monitoring	Zinc supplementation for the treatment of diarrhea	
		Integrated Management of Sick Toddlers	

Source: Village Stunting Pocket Book (2019).

4. Stunting Impact

Stunting in childhood has an impact on short height and decreased income as adults, lower school enrollment rates and reduced birth weight of their offspring (Victoria et al., 2008). The World Bank in 2006 also stated that stunting, which is chronic malnutrition that occurs in the womb and during the first two years of a child's life, can result in low intelligence and decreased physical capacity which in turn results in decreased productivity, slowing economic growth, and prolonging poverty. In addition, stunting can also have an impact on a weak immune system and susceptibility to chronic diseases such as diabetes, heart disease and cancer as well as maternal reproductive disorders in adulthood (Fikawati, 2017). The following are four theoretical impacts of stunting, namely: (1) weak cognitive and psychomotor inhibition, evidence shows that children who grow up with stunting experience cognitive and psychomotor development problems. (2) difficulty mastering science and excelling in sports, (3) more susceptible to degenerative diseases, (4) low-quality human resources.

5. Policy Implementation Focus

In the study of policy implementation there is no single agreement on the focus of implementation among policy experts. The absence of a single agreement is more or less influenced by the character of the policy problem, the scope of the policy problem, social, economic and political conditions, as well as the perspective of each expert. As stated, this research uses the idea of implementing the policies presented by van Meter and van Horn, as follows.

(1) policy measures and objectives; which explains the detailed objectives of the policy decision as a whole. Understanding of policy standards and objectives is one of the determinants of the entire policy implementation process. The results of Febriana's research entitled Risk Factors for Stunting in Newborns at Wonosari Hospital, Gunung Kidul Regency; showed that hypertension in pregnancy, anemia, risk of CED and maternal height were associated with the incidence of stunting in newborns. The results of this study actually also show that the problem of stunting is not solely caused by a single factor but involves various factors that also determine. This requires a deep understanding and agreement on policy objectives, especially between policy makers and implementers.

(2) policy sources: in several literatures it is stated that policy sources are related to various regulations and policy decisions that govern the implementation of the policy process. In connection with this focus, the results of Roja's research (2017) entitled Regional Government Policy in Handling Bad in Sikka Regency, NTT Province, one of the conclusions stated that the Regional Government in handling bad cases was not optimal because classified regulatory support was not sufficient and the condition of health infrastructure was not yet optimal. adequate, including the quality of the human resources of the Sikka community which is classified as low.

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(3) the characteristics or nature of the implementing agency/agencies. One of the fundamental questions related to this focus is what are the barriers to introducing change and how effective the control mechanisms are at each level of the structure. In connection with this focus, Sri Hajijah's research entitled Analysis of Stunting Reduction Policy Implementation in Secanggang Village, Langkat Regency, one of the conclusions stated that the Stunting Reduction program in Langkat Regency lies in not being implemented optimally such as exclusive breastfeeding and early breastfeeding initiation.

(4) related inter-organizational communication and implementation activities; As stated by Hood (1976) related to this focus is that in order to achieve perfect implementation it may be necessary to have a single administrative unit system (unitary administrative system). This single administrative system is meant to avoid the practice of exercising excessive power.

(5) the attitude of the implementing apparatus. One of the obstacles in policy implementation is related to control and compliance action. The attitude and behavior of the implementing apparatus is usually expressed in a supportive, refusing or neutral attitude. The results of the research by Jati, et al (2015): Implementation of the Innovation Program for Community Economic Development in Increasing the Income of Micro and Small Enterprises in East Flores Regency, one of the conclusions is that the low innovation in implementing policies to build community economics in East Flores Regency is a lack of understanding of implementers both in terms of institutional as well as at the street level implementation of the objectives and benefits of the policy; this condition results in low coordination between agencies which in turn leads to a lack of understanding of business groups towards the objectives of community economic empowerment; also seen in the weakness of the monitoring and supervision system of the implemented policies.

(6) economic, social and political environment. The economic, social and political environment is one of the determinants in supporting the performance of policy implementation. This statement actually shows that in a stable economic, social and political situation, policy performance will be achieved.

RESEARCH METHODOLOGY

This research includes descriptive research regarding aspects of public policy implementation. Descriptive research is generally intended to explain the causes of the occurrence or non-occurrence of something (outcome) as expected, besides intending to explain --- this type of research also intends to examine the implementation capacity and level of compliance of the implementers (street level implementation) and the target group. against the program. This study uses a qualitative approach. With regard to the focus and subfocus in this paper, it will be presented as a unit with the results of the research and further discussion. The overall observations include the implementing agencies of the policy: Bappeda (1 person), DPPKB-PP&PA, Health Service, PKO Service, Social Service, Public Works Service, Department of Agriculture and Food Security, each 1 person = 7 people; Heads of Puskesmas in 8 sub-districts = 8 people, Family Planning Counselors in 8 Districts = 8 people, BKB Group = 8 people, BKB EMAS (Family Development for Toddlers to eliminate stunting problems) = 8 people, KB village leaders = 8 people, BKR group of teenagers) = 8 people, PIKR (youth information & counseling center) = 8 people, KK with stunting children = 16 people (2 families from 8 sub-districts) village head = 8 people.

Interviews were conducted using a list of structured interviews with OPD leaders, interviews with street level implementation and in-depth interviews with families who have stunting children. Furthermore, observations were made at the location of group activities and Posyandu. The data collected is then categorized and analyzed according to the research objectives.

RESEARCH RESULTS AND DISCUSSION

Description of the Stunting Program Implementation in East Flores Regency

There is an awareness of the East Flores Regency Government regarding the relationship between poverty and stunting so that in handling it requires systematic, integrated and comprehensive steps and approaches through equitable and sustainable development for the creation of community welfare. The real manifestation of this government awareness is further stipulated in the Decree of the Regent of East Flores, Number 159 of 2020 concerning the Determination of Stunting Locus of Villages/Urban village in East Flores Regency in 2021.

Table 4: The Goals and Targets of the East Flores Regency Stunting Program

General Purposes	**Subfocus**
reduce poverty	percentage of poor people
improve community welfare	
Special Purpose	

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the realization of healthy and intelligent human resources	stunting percentage
Target	
handling stunting in a systematic, integrated and comprehensive manner in the village/urban village	families of couples of childbearing age, families of stunted children and groups of teenagers

Source: East Flores Regent Decree Number 159 of 2020 concerning Determination of Stunting Locus Villages/Kelurahan in East Flores Regency in 2021

Furthermore, organizationally a Coordination Team at the district level has been formed with the following tasks: (a) formulating technical policies for the management of stunting prevention programs; (b) disseminate the Technical Guidelines for the Management of Stunting Prevention Programs at the sub-district level; (c) carry out technical guidance in order to increase the capacity of implementers at the sub-district level (d) conduct periodic evaluations every three months and/or at any time if needed and report the results to the Regent.

REGENCY COORDINATION TEAM	
1. Regional Secretary	5. Social Agency
2. Development Planning Agency at Sub-National Level	6. Department of Agriculture and Food Security
3. Health Departement	7. Department of Education, Youth and Sports
4. Department of Population Control, Family Planning, Women Empowerment And Child Protection	8. Public Works Department

SUBDISTRICT LEVEL COORDINATION TEAM	
1. Subdistrict Head	2. Other Related Elements
3. Head of Service Technical Implementation Unit	

VILLAGE/URBAN VILLAGE LEVEL IMPLEMENTATION	
1. Village Head as Budget User	3. Family Planning Program Field Extension Officer
	4. Target Group 5. Teenage girl group
2. Family Hope Program Facilitator, Service Technical Implementation Unit	6. Public health center / integrated service post

Picture 1

Organizations Implementing Stunting Prevention Programs

The coordination team at the sub-district level has the following tasks: (a) socializing the stunting program at the village/kelurahan level with the relevant agencies; (b) provide assistance, guidance and monitoring of stunting prevention activities and (c) submit monthly progress reports on program implementation to the district level Coordination Team. Meanwhile, the village head/lurah as the implementing element has the following duties: (a) responsible for editing prevention activities at the village/kelurahan level; (b) carry out and lead village/kelurahan meetings/deliberations related to the management of activities starting from the planning stage to accountability for program management; (d) the village head stipulates village regulations and the lurah ratifies the results of the kelurahan deliberation governing the Stunting Program; e) monitoring, mentoring, and evaluating every week on the implementation of stunting activities and in the target group.

Description of the Implementation of the Stunting Program at the Village/Kelurahan Level by Regional Apparatus Organizations in East Flores Regency

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Based on the Decree of the Regent of East Flores Number: 159/2020 concerning the Determination of Stunting Locus Villages/Kelurahan In East Flores Regency in 2021, there are 250 villages/kelurahan in 19 sub-districts. The implementation of stunting prevention programs at the village/kelurahan level in East Flores Regency is carried out every month according to the schedule of Posyandu implementation/activities. In the implementation of Posyandu, stunting handling and prevention activities are in the order of the second to the ninth table as follows: (1) registration by Posyandu cadres, (2) weighing by Posyandu cadres, (3) recording by Posyandu cadres, (4) counseling by Posyandu cadres, (5) health services by Posyandu cadres, (6) Family Planning Counselors by village family planning assistants, (7) village family welfare development team, (8) agriculture, (9) parenting. Generally, the activities that take place from the first table to the sixth table are carried out by the health worker, meanwhile the activities that should be carried out by related agencies such as the Education, Youth and Sports Office, Public Works Office, Social Service, Population Control Service, Family Planning, Women Empowerment and Child protection). Based on the results of interviews with health workers at several health centers, it was said that so far the officers who came from the service were invisible --- sometimes the only ones present were the Family Planning Counselors from the Office of Population Control, Family Planning, Women's Empowerment and Child Protection. Meanwhile, related to counseling activities for families with stunting children, pregnant/postpartum mothers and breastfeeding mothers as well as mothers with toddlers aged 1000 days, only the health workers at Posyandu. For more details are presented in several points below:

1. Department of Population Control, Family Planning, Women's Empowerment and Child Protection

One of the activities in preventing stunting in the village is the Integrated Service Post. The targets of this activity are infants and families with babies and pregnant and lactating mothers. The focus of services for babies is other than their health which is monitored through the card towards health. Babies are also monitored through child development cards. Families with babies are given advocacy related to parenting, implementation of 8 family functions, healthy living behavior, nutritious food including local food, using Alokon to avoid 4 Too (4T) and others. In fact, Posyandu activities are more focused on children's health matters, while monitoring of child development is carried out on Toddler family development activities. In East Flores, the activities of Community Development for Toddlers and Integrated Service Posts are integrated because they remember the similarity of goals, final goals/goals and time. In addition to the Integrated Service Post, stunting prevention methods are also carried out through Youth (health) activities and advocacy to the youth community through the Family Life Preparation for Teenagers group. So far, the implementation of youth activities and the preparation of family life for teenagers in several villages in East Flores has been combined, while in a number of other villages these two activities have been carried out at different times. In the Preparation for Family Life for Teenagers, the advocacy themes discussed included preparing for family life, sexuality, Narcotics, Alcohol, Psychotropics, and Other Addictive Substances as well as adolescent reproductive health. The facilitators for this stunting prevention activity, apart from health workers, also come from Family Planning Extension Officers and are also involved with cadres of rural community institutions.

2. Health Departement

Stunting prevention efforts carried out by the Health Office are through the Focused Love Cart program. This program is more focused on efforts to improve the quality of future generations with a sub-focus on the status of pregnant women and toddlers. Based on the fact that there is a problem of growth and development disorders in infants and baduta as well as pregnant women with chronic energy deficiency status which is quite serious. As a reference in the implementation of the "Focused Love Cart" supplementary food based on local food ingredients for stunting toddlers and pregnant women with chronic low energy status, mothers with low fetal weight interpretations and or pregnant women with anemia. In this context, efforts were made with the aim of providing information on the basic principles of complementary feeding Focused on the Cart of Love; implementation of supplementary feeding. Recovery based on local food ingredients for stunting, wasting and chronically deficient under-five children, pregnant women with low fetal weight interpretation and pregnant women with anemia, reducing malnutrition rates and reducing low birth weight babies. Furthermore, the target of this activity is stunting and wasting toddlers, through the action of providing additional recovery food for stunting and wasting toddlers aged 6-59 months. Puskesmas personnel are required to validate the nutritional surveillance data from each Posyandu every month to determine the priority targets for providing additional food for recovery and Toddlers after malnutrition who are undernourished. Meanwhile, for pregnant women who are chronically lacking in energy, pregnant women with low fetal weight interpretation and or pregnant women with anemia, additional food for pregnant women is given to pregnant women who are at risk of chronic lack of energy and or anemia with the results of laboratory tests. There are several principles in the implementation of focused complementary feeding of the Love Cart, including: (1) the provision of additional

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food Focused on Carts of Love is given in the form of food or local food ingredients not given in the form of money to the target parents (2) shopping for dry foodstuffs such as rice and wet foodstuffs such as fish and vegetables is carried out in the village with the aim of this program being able to increase the income of local villagers (3) shopping for wet and dry food ingredients is prioritized for Posyandu cadres as a reward for their service so far (4) shopping for food ingredients used is prioritized for local foods, namely sorghum, moringa and fish and quail eggs cultivated by young people East Flores (5) was cooked by the target parents and cadres as assistants so that the target parents would know how to cook properly with the existing menu so that they could be followed up at home. Even target parents can understand which food menu their child likes the most (6) before eating the 1000 Patient Rights Out campaign so that parents understand the purpose of the Focused Love Cart program, parents are expected to actively participate (7) before eating pray so that children get used to gratitude for their sustenance today (8) before eating, wash hands with soap so that children get used to a clean and healthy lifestyle (9) the provision of additional food Focused on the Love Cart is consumed by toddlers and pregnant women who are chronically lacking in energy, namely 2 times a day for main meals and 1 time a day for snacks for 90 consecutive days from the non-physical special allocation fund and 30 days of eating from the general allocation fund. With details for Baduta to receive financial support. Health operational assistance at their respective Puskesmas and for Toddlers and pregnant women to receive support from general allocation funds (10) the provision of additional food Focused on the Love Cart is intended to meet the growing needs of Toddlers and targeted pregnant women as well as a process learning from means of communication between mothers and children under five targeted (11) supplementary feeding Recovery is an activity outside the Puskesmas building with a community empowerment approach that can be integrated with cross-program activities and other related sectors (12) supplementary feeding Recovery is financed from the Revenue and Expenditure Budget Regional Health Office of East Flores Regency and special allocation funds for Non-Physical (13) provision of supplementary food Recovery is given to stunting, wasting and pregnant women with chronic energy deficiency, pregnant women with Low Fetal Weight Interpretation and/or pregnant women with anemia. Financing Components Focused supplementary feeding activities The Cart of Cinta can be used to purchase groceries and/or local food including fuel to prepare additional food for cooking together. Transport of Puskesmas officers and/or cadres in the context of providing supplementary food. Recovery can use Posyandu operational funds/non-physical special allocation funds/Village Funds.

3. Public Works Service

The performance of the Public Works Department in supporting stunting prevention performance is basically integrated with the Pamsimas program. This program has two main achievement sub-focuses, namely: the coverage of Neighborhood Associations that have safe drinking water (%) and the coverage of Neighborhood Associations that use proper sanitation (%). Next relates to funds; based on the results of an interview with the office secretary, it was said that so far there are no operational funds available to support stunting prevention efforts --- the funds used so far are funds sourced from the central government. As many as 130 villages already have Pamsimas (out of 250 villages/kelurahan). The contributing factors include: cooperation between village governments in managing water sources; understanding of traditional values about water by the community, as well as technological factors (considering the hilly location with a high level of steepness/slope). Meanwhile, with regard to human resources specifically prepared by the agency in the context of stunting prevention efforts, it is said that those involved are staff from the technical implementation unit of the service at the sub-district level whose activities are only limited to recording information from village governments whose people have difficulty in water availability. clean both for consumption and for toilet/sanitation needs.

4. Youth and Sports Education Office

The performance of the Youth and Sports Education Office in implementing stunting prevention is carried out through a supplementary feeding program at the Early Childhood Education level. At the time of providing additional food at the Early Childhood Education level, socialization about family education and parenting was also carried out. This activity was carried out by early childhood education educators together with early childhood education mothers at the village level. Regarding the budget for the implementation of activities, it is charged to the operational assistance fund for the implementation of the Youth and Sports Education Office. Meanwhile, related to obstacles in supporting the implementation of stunting prevention, it was said that apart from funds, it was also related to children's health, child hygiene, children's learning environment and children's learning time including the availability of educational game tools.

5. Social Services

The Social Service is recorded in the Decree of the Regent of East Flores Number 159 of 2019 concerning the Implementation of Stunting Prevention. The performance of this service in implementing stunting prevention policies has not been carried out. Based on an interview with the Acting Office, it was said that this policy was

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integrated with the policy for the family of hope program, but when confirmed with the coordinator of the family of hope program in East Flores Regency, it was said that this program had not been implemented recently (end of September 2021). accepted.

6. Department of Agriculture and Food Crops

Based on the results of interviews with the field of food security, it is said that so far the involvement of this Regional Apparatus in optimizing policies related to stunting prevention is related to the duties and functions of Regional Apparatus Organizations. Therefore, this Regional Apparatus Organization uses a stunting prevention subfocus using a convergence subfocus in accordance with the Regional Apparatus Organization's Functions, namely the scope of households implementing sustainable food household areas or sustainable food yards. Furthermore, it was said that the implementation of this Tupoksi was entrusted to the field extension officers. Furthermore, it was stated that there were no funds specifically allocated from the general allocation fund --- fully funded from the agency's operational funds.

7. Regional Development Planning Agency, Research and Development

As a regional apparatus organization entrusted with coordinating the implementation of stunting prevention in East Flores Regency, Bappeda always acts as a coordinator in holding meetings/meetings with other relevant regional apparatus organizations. It is said that so far coordination meetings have been held within a period of three months. In these meetings, the point is that only reports related to stunting development/status at the village level are carried out --- the information is more accurately conveyed by the Health Office; While reports/information from other relevant regional apparatus organizations only follow reports from the Health Office, this is what makes it difficult to find solutions in implementing stunting prevention.

Development of Stunting Prevention Program Implementation in East Flores Regency

In accordance with the Regent's Decree Number 159 of 2020 concerning the Determination of Stunting Locus Villages in East Flores Regency in 2020, and according to the data on the implementation of the stunting program within the last 3 (three) years, it can be seen in the following table.

Table 5: Data on Toddler Stunting Integrated Stunting Reduction Intervention in 2018/2019/2020 in East Flores Regency by Subdistrict

No.	Sub-district	Dual System Education August 2018			Dual System Education August 2019			Dual System Education August 2020		
		Number of Toddlers	Stunting Toddler	%	Number of Toddlers	Stunting Toddler	%	Number of Toddlers	Stunting Toddler	%
1	Wulanggitang	1004	343	34.16	1009	378	29.41	1048	273	26.05
2	Ile Bura	478	76	15.90	448	180	40.18	482	132	27.39
3	Titehena	791	354	44.75	856	304	35.51	901	231	25.64
4	Demon Pagong	234	84	35.90	283	94	33.22	292	72	24.66
5	Larantuka	2711	606	22.35	1976	439	22.22	1998	288	14.41
6	Ile Mandiri	631	174	27.58	661	143	21.63	702	150	21.37
7	Tanjung Bunga	1134	410	36.16	1079	429	39.76	1189	329	27.67
8	Lewo Lema	600	202	33.67	657	202	30.75	678	143	21.09
9	West Solor	687	235	34.21	568	146	25.70	805	144	23.80
10	East Solor	1015	395	38.92	993	410	41.29	1050	219	20.86
11	South Solor	264	124	46.97	408	132	32.35	427	109	25.53
12	West Adonara	1041	566	54.37	1036	389	37.55	1055	278	26.35
13	Midle Adonara	735	278	37.82	661	208	31.42	765	234	30.59
14	East Adonara	1458	270	18.52	1125	394	35.02	1528	335	21.92
15	Klubagolit	803	343	42.71	695	167	24.03	811	178	21.45
16	Adonara	774	296	38.24	707	254	35.93	850	248	29.18
17	Ile Boleng	1063	420	39.51	1066	242	22.70	1123	190	16.92
18	Witihama	1175	153	13.02	1126	252	22.38	1208	195	16.14

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19	Wotan Ulumado	629	224	35.61	738	236	31.98	830	230	27.71
	Total	17227	5553	32.23	16092	4999	31.07	17542	3974	22.7

Source: East Flores Regency Health Department (2020)

It is read that the policy implementation approach in this study uses a top-down approach. Meanwhile, for the analysis using the ideas put forward by van Meter and van Horn (1975) in which each focus is presented as follows:

1. Focus on Policy Measures and Objectives

Supporting regulations	Standard Operating Procedure	Target group	Organizational structure	Group administration	Management
Village regulations, decisions/regulations of the Village Head, financial assistance.	Counseling, psychological and medical services	Group management requirements, terms/norms, mechanisms are made and agreed upon by the group and its members	Chairman/deputy, treasurer, members. Special coaching program for assisting pregnant women and adolescent girls and strengthening Gender Mainstreaming institutions	Guidance on group administration system, recording system, reporting system	Assistance and coaching by relevant agencies

Information that can be conveyed is as follows: 1) at the village/kelurahan level in East Flores Regency, in general it can be said that there are only two institutions that have set rules as guidelines for stunting prevention, namely the Health Service (Gerobak Cinta Terfokus) and the Population Control Service. , Family Planning, Women's Empowerment and Child Protection (Bina Keluarga Toddler), meanwhile there are no village regulations or village head decisions regarding efforts to strengthen stunting prevention, especially with regard to funds sourced from Village Original Income (only about 4 villages have allocated funds village for the purpose of stunting prevention through the Village Regulation; 2). Meanwhile, it is related to the SOP for counseling, medical and psychological services for families with stunted children, pregnant women, mothers giving birth/postpartum, mothers with toddlers 1000 the first day of life, and groups of adolescent women until this research activity has not been made/owned by the government. village as well as by field officers; 3) on the other hand, regarding the requirements of the target group, namely adolescent women, it turns out that so far it has only been informed that an organization for adolescent women will be formed to support stunting prevention policies; 4) furthermore, there is no organizational structure specifically related to who accompanies whom and how to assist pregnant women, breastfeeding mothers and families with toddlers 1000 in the first day of life as well as assistance to groups of adolescent women at the rural level in the context of early stunting prevention; What happens is that only consultation and advocacy are carried out during activities at Posyandu 4) group administration can be said to have no group administration at all, especially with regard to the schedule of visits, mentoring, socialization and stunting prevention socialization materials for pregnant women, breastfeeding/postpartum mothers, families who having Toddler the first 1000 days of life as well as for the group of adolescent girls; What was found was only measuring mats during Posyandu activities, while leaflets, brochures and billboards containing material on stunting prevention were not found at the village head office, Puskesmas or at the integrated service post location.

The results of the interview with the head of Kalike Village in South Solor District, it can be conveyed: that the village government does not yet have the courage to make regulations governing stunting prevention in their village, besides that the community does not view stunting as a health or generative problem --- the community considers stunting to be just a cases in domestic life caused by errors in carrying out traditional rituals. In line with the statement above, it is different from that statement by one of the Waiklibang Health Center officers that public health behavior is actually a trigger for stunting, such as parenting patterns (which are entrusted to their grandmothers while their parents work in the garden), intake patterns, and cultural factors.

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2. Policy Resource Focus

Strengthening	Empowerment	Training/ accompaniment	Obedience	Penalty
Group management rules/agreements and target group member agreements, provision of supporting facilities, financial assistance, incentives, target group service coverage	Expansion of target reach, training & mentoring	Schedule of training & mentoring as well as group monitoring, member supervision	Group discipline guidelines, awareness building for group members	Punishment and Praise

The policy resources in this study include: 1) regarding the agreement of group management and the agreement of target members which are expected to be a source of strengthening activities and mechanisms of group life in the context of preventing and handling stunting at the village level; the results of the study indicate that there are no group rules which are the result of an agreement between group administrators and between group administrators and target members as well as between target members, 2) procurement of supporting facilities, it can be said that there are no supporting facilities for stunting prevention activities/efforts at the village level; this happened as a result of the absence of activities carried out by group administrators or field officers assigned to stunting prevention programs, especially officers from the population control service, family planning, women's empowerment and child protection. The facts found were only carried out by the Health Office such as antenatal services, giving vit. A, basic immunization and complete immunization and zinc supplementation for toddlers with diarrhea; which is more of a handling nature, 3) regarding financial assistance and incentives, it can be said that there is no financial assistance sourced from other institutions such as NGOs or other private parties who have concern for stunting prevention 4) target group service coverage; basically shows the various community groups that are the targets of stunting prevention efforts (such as church youth groups, church youth youth groups, mosque youth, village youth organizations); The research data shows that stunting prevention efforts at all involve potential groups, as mentioned, there is only a group of junior high school students, but this group is only mentioned and there is no fact that there is a group of school youth students found.

In relation to the sub-focus of empowerment, especially regarding the expansion of the target range, training and mentoring, it can be stated that the target group for stunting prevention at the village/kelurahan level is only guided by the target group regulated in the Decree of the Minister of Health. Meanwhile, with regard to training and assistance for the target group, it can be conveyed that in fact there has never been given training or assistance to the target group or families who have stunting toddlers or groups of teenagers. Supporting officers are even very difficult to find at Posyandu locations; this can be understood as a consequence of the recruitment process for assistant officers instead of going through a transparency mechanism and seems full of collusion and nepotism.

Training/assistance, which includes training and mentoring schedules as well as group monitoring and member supervision. This subfocus is recognized that although it is found that the target group (especially KIT ready to marry) has a tablet/HP with certain specifications, but the application of this system is still difficult to operate by KIT participants ready to marry.

Compliance will always be read in the group discipline guidelines as well as fostering disciplined awareness of members which is manifested in an attitude of obeying group rules and agreements. The results of an interview with one of the informants from Wai Bao Village, Tanjung Bunga Subdistrict, can be broadly conveyed: that so far there has never been an activity held by the facilitator in relation to fostering awareness of group members ---- so far as a member they are only reminded to attend At the Posyandu location at the time of the implementation of health service activities from the Puskesmas there has never been a guideline that regulates group members to conduct activities/meetings at certain times to talk about financial matters relating to efforts to prepare/maintain the health of adolescents, pregnant women/breastfeeding mothers/postpartum , raise stunting children and behave in a healthy life, especially with regard to sanitation, especially the use of MCK facilities. So far, what happened when the Posyandu was held, at that time the faces of the stunting assistant officers only appeared otherwise we didn't recognize them

Sanctions, punishments and rewards; it can be said that the rules governing the behavior of group members have not yet been found; especially with regard to efforts to enforce healthy living behavior and obedience in every meeting, especially activities at the Posyandu as well as matters relating to the provision of incentives and

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praise for mothers and children under five whose KMS chart is positive and stunting children who are getting healthier and experiencing more growth. good according to the results shown by the measuring mat.

3. Focus on the characteristics or characteristics of the Implementing Agency/Agency

Strengthening	Empowerment	Training/ accompaniment	Obedience	Penalty
Guidance on rules/agreements of group administrators and agreement of target group members, provision of incentives, workshops/seminars	Expansion of reach of targets and partners, participants & NGOs	Schedule of training and mentoring	Group guidelines, group awareness building	Punishment and Praise

The sub-focus of the guidelines/rules/agreements for group management can be conveyed that so far there has not been a guideline governing group management --- although several supporting organizations have been formed at the village level --- but the groups formed do not yet have an agenda of activities which is a reference for the involvement of the management. groups in fostering group life together. Based on the results of interviews with the Kalike Village Head and Wai Bao Village Head: that most of the family planning field extension workers and the family planning field extension staff are not native to the village, they are generally residents of the sub-district. Based on the information from these two village heads, it can be commented that this is indeed a natural condition if there is no agreement/guideline for group management because both the Family Planning Field Extension Officer and the Family Planning Field Counselor are residing outside/other villages.

Furthermore, the sub-focus on empowering groups that have been formed at the village level in the form of expanding target groups, partners, NGO participation; it can be said that based on the data it can be said that so far no efforts have been made to expand the target group (such as mosque youth groups, or ecclesiastical youth groups or village youth organizations. Likewise with NGOs, until now this research was conducted based on interviews with several The head of the sample village as well as the Family Planning Field Extension Officer and the assistant for the Family Planning Field Extension Officer in Larantuka District said that until now the stunting prevention efforts in East Flores Regency had never involved NGO or organizations.

In relation to the mentoring training sub-focus, especially related to the mentoring training schedule. The results of interviews with Family Planning Field Extension Officers and family planning field extension assistants can be conveyed that so far there has not been any training on mentoring target groups --- what so far has been mentoring training is only related to activities related to family planning.

The last sub-focus, namely the characteristics of the implementing agency, especially regarding the provision of punishment and giving praise, it can be said that based on the results of interviews with Family Planning Field Extension Officer and the assistants of the Family Planning Field Extension Officer who served in Ile Mandiri District, it can be stated that so far there has never been a sanction either in the form of punishment or to the Extension Officer. Family Planning Field and assistants of Family Planning Field Extension in carrying out their duties. The results of this interview when confirmed with the Head of Population Control and Family Planning that the supervision of the Family Planning Field Extension Officer and assistants of the Family Planning Field Extension Officer that has been carried out so far has been entrusted to village heads; The village head should have conveyed the results of his supervision to the office but this was never done --- this condition can be understood as a consequence of the presence of the Family Planning Field Extension Officer assistant due to nepotism in their recruitment.

4. Focus on Communication between Related Organizations and Implementation Activities

Strengthening	Empowerment	Training/assistance	Management
Standardization of communication and coordination system	Guidance and education of information, exhibitions and leaflets and banners	Technical and non-technical skills training/assistance	Monitoring implementation

With regard to this focus can be explained through several indicators as presented below. The communication system that is built or developed in the relationship between implementing organizations in the context of implementing stunting prevention policies can be said to take the form of two levels, namely between organizations at the district government level, especially between related institutions. Communication between implementing organizations is usually in the form of coordination meetings.

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This coordination meeting is held within 3 months but during 2020 it will only be held twice while in 2021 it will be held once. This coordination meeting is chaired directly by the regional secretary; Based on the results of an interview with the Head of Planning for Family Affairs, it was stated that this coordination meeting was not fully attended by the institution and its main activity was only reporting on stunting developments recorded in all target villages. Furthermore, based on the results of interviews with Family Planning Extension Assistants in Larantuka District, it can be said that generally the implementation of stunting prevention at the village level is only carried out by the Health Service through Posyandu activities and the Office of Population Control, Family Planning, Women Empowerment and Child Protection, while other institutions have not shown their existence. during Posyandu activities. communication between implementing organizations at the village level, it can be conveyed that when Posyandu activities are carried out communication is only found between officers from the Health Service and officers from the Office of Population Control, Family Planning, Women's Empowerment and Child Protection.

5. Focus Attitude of Implementers

Strengthening	Empowerment	Training/assistance	Management
Standardization of relations between groups of activities	Quality development of counseling and mentoring), management training,	Technical, counseling and psychological skills training/assistance	Implementation of children's day celebrations, children's forum activities, healthy toddler competitions to develop women's & youth organizations.

The attitude of the implementers in implementing the stunting prevention program can be seen in the expression of attitudes in the form of group cohesiveness/group attachment as well as between groups in implementing the said policy. Cohesiveness between groups and between groups will generally take place in a harmonious, continuous and lasting manner if they have an agreed pattern of relationships. Based on the results of observations in the field, it can be conveyed that there has not been a kind of joint guideline to regulate the relationship between implementing groups and between implementing groups and other supporting functional groups at the village level. This condition is also supported by the perception of family planning extension assistants whose work orientation is only on family planning performance. In general, family planning instructors and family planning instructor assistants have the perception that they are technical staff of the Office of Population Control, Family Planning, Women's Empowerment and Child Protection, so that in carrying out their duties in the field they are only bound to efforts to reduce birth rates and health cards.

Furthermore, it is related to the sub-focus of empowering implementing groups in the form of quality coaching, counseling and mentoring, as well as management training. Based on the results of interviews with family planning instructors and family planning instructors in Boru Village, Wulanggitang District, it can be seen that so far there have been no empowerment activities related to the quality development of counseling for field officers, meetings between field officers and related agencies have actually never been carried out, what has happened is just a kind of socialization when they are accepted as assistants for Family Planning Extension. It was further stated that at the time of the meeting the information provided by the service generally contained work mechanisms and procedures in the field. Observing some of the things conveyed, it can be commented that the consequence of not empowering field officers/implementers is that field workers in carrying out their duties only act as routine administrators, meaning that they only play a role and act regarding matters related to routine mechanisms and procedures that have been regulated in the SOP.

Regarding the sub-focus of technical, counseling and psychological skills training; It can be said that even this indicator is no different from the sub-focus on empowering implementing groups in the form of quality coaching, counseling and mentoring, as well as management training. As a result of not implementing this sub-focus, it can then be said that field officers have remained apathetic/ignorant towards families with children. stunting and not providing assistance to pregnant women, breastfeeding/postpartum mothers. group of teenage girls and the Golden Toddler Family Development.

The attitude of the implementers in implementing the policy can also be seen in the management display of the implementation of activities such as children's day celebrations, children's forum activities, healthy toddler competitions, fostering women's and youth organizations. Based on the results of interviews with village heads in Solor Selatan Subdistrict and village heads in Lewolema Subdistrict, it can be stated that some of these activities have never happened/conducted at the village level or at the sub-district level; there is no committee or sponsor who designed the above activities. The results of the interviews with the two village heads above can be

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commented on that until now there has not been a form and implementation of management at the village and sub-district levels to motivate target groups related to involvement in preventing stunting at the village level.

6. Focus on Economic, Social and Political Environment

In examining this focus, more emphasis is placed on the support of several sub-focuses, such as the sub-focus of strengthening the economy (market information, support from traditional institutions, and support in the form of participation in education), in addition; support in the social sector with regard to efforts to empower local commodities in the context of consumption/intake for pregnant women, breastfeeding/postpartum mothers, children under five, stunting children, and groups of adolescent girls, furthermore regarding political support will be read in matters relating to the efforts of stakeholder groups. interests in facilitating the availability of clean water, the use of MCK, as well as activities to build MCK which are located within or at least close to the residence, which is then followed by monitoring activities on the implementation of their activities.

Strengthening	Empowerment	Accompaniment	Management
Market information, customary institutions, educational participation	Development of local commodities, training on the use of health facilities, access to health facilities,	Technical and non-technical skills assistance	Monitoring implementation

In accordance with the sub-focus that has been presented above, the results of observations and interviews in the research locations can be conveyed as follows: the sub-focus of economic support related to market information is intended to provide information on the prices of local commodities that can be traded by local residents, especially families who have children who are breastfeeding, toddlers, pregnant women / postpartum, families who have stunting children to increase their income so that they can buy and consume nutritious and varied intakes as well as train and assist families, breastfeeding mothers / postpartum mothers, pregnant women and families with stunted children in processing food nourishing locale; Meanwhile, it relates to the sub-focus of social support in the form of efforts made in order to improve specific and sensitive nutrition. Based on the results of interviews with family planning field officers and family planning extension workers, it was said that so far nothing like this interview had been done (market information, the role of traditional institutions, participation in education, training and assistance in processing local commodities). Furthermore, with regard to the sub-focus of political support, it can be said that based on the results of field observations, it can be said that almost most of the villages in East Flores Regency are always in a condition of lack of clean water; building for Bathing, Washing, Outhouseare generally quite far apart from residential buildings and quite a number of families do not yet have building for Bathing, Washing, Outhouse. This condition by itself will directly affect the behavior of healthy living and health itself (both for the individual and the environment). This fact was not responded to by stakeholders at the village level.

CONCLUSION

Based on the research data that has been presented, the following are some of the conclusions of this research.

1. Overall, the implementation of stunting prevention policies in East Flores Regency seems to rely too much on a top-down approach with a pattern of emphasis on routine administrative procedures and very little attention to performance level implementation.
2. With regard to the focus of policy measures and targets that supporting regulations/common agreements have not been found among implementers regarding the range of changes and targets to be achieved in the stunting prevention implementation process; particularly related to the mechanisms and procedures as well as administrative implementors, as well as resources in this case related to street level implementation agreements in regulating the implementation process, regulating behavior of both implementers and target group behavior and efforts to empower target groups can be said to be classified as very lacking.
3. The focus on the characteristics or nature of the implementing agency can be conveyed that no agreement has been found in the implementation of stunting prevention policies; on the other hand the focus of inter-organizational communication concerned; shows that it only takes place in the form of coordination meetings at the district level, especially between related institutions.
4. The focus of the attitude of the implementers can be conveyed that there is no standardization of the relationship between implementers in the field, which results in stunting prevention efforts being more partial to institutional and never conducting activities related to coaching and counseling among field officers.

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5. Focus on economic, social and political support; It can be said that there is no visible economic, social or political support for the implementation of stunting prevention policies.

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MEANING OF INDONESIAN DEMOCRACY FROM THE BORDER OF THE UNITED STATE OF THE REPUBLIC OF INDONESIA - THE DEMOCRATIC REPUBLIC OF TIMOR LESTE

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ABSTRACT
Strengthening the spirit of nationalism and maintaining the sovereignty of the Republic of Indonesia is closely related to the extent to which border communities feel that they enjoy the nature of freedom and democracy in Indonesia. One measure that can be used to measure the quality of democracy is to see how people in border areas interpret democracy. The purpose of this paper is to find out and describe the meaning of democracy for people in the border areas of Indonesia and Timor Leste. The method used in this paper uses a qualitative descriptive method. In the aspect of Representative Government, people in border areas have the same rights as citizens to participate in the election process, but many citizens have not become rational voters due to the relatively low level of political education and formal education and the strong patron-client culture in Indonesia. the middle of society. Meanwhile, in the aspect of human rights, some people question the development which is dominated by infrastructure, but it is not optimal in human resource development. There are many basic needs that the government has not paid attention to. In the dimension of effective supervision of the government, the public considers the legislative performance to be less effective. People's representatives are even considered less able to communicate the aspirations of the people to the government as policy executor. In the aspect of Impartial Administration, the problem of smuggling that occurs in border areas is in fact still very widespread. One of the reasons is because they are supported by elements of the security forces in the border areas. In addition, the issue of maritime boundaries between Indonesia and Timor Leste is not clear. While the aspect of participatory involvement, civil society participation in activities in the village is fairly active because the community is directly involved in every activity. But on the other hand there is still money politics at the time of the democratic party because of shallow political understanding and public distrust of people's representatives.

Keywords: *Democracy, National Border, Border area.*

FOREWORD
Democracy has become a central issue in the last decade, related to the dynamics of social and constitutional changes in Indonesia. The public has high hopes for improvement as a result of the development of democracy in Indonesia. On the other hand, there are still some debates regarding the substance and implementation of democracy itself.

Results of a survey conducted by Sharma (2010)[1] found the understanding of democracy in Indonesian society: 38% of people associate it with freedom, 41% say they don't know and 4% say harmony, 2% about individual opportunity, and power in the hands of the people as much as 2%. Those who say they don't know about democracy mostly come from lower secondary education levels. There are several opinions about democracy in Indonesia. 74% believe that Indonesia is a democratic country, 15% say Indonesia has a democratic and undemocratic side, 6% say it is not democratic and 5% say they don't know. 72% of Indonesians say they prefer democracy, 20% say the type of government doesn't matter to them, and 4% say non-democratic government is sometimes better, and 4% say they don't know. This shows that most people support and have high hopes for democracy.

However, according to some parties, the democratic values that are understood by most people often show pseudo-democracy or even completely different from the expected democracy. Haynes in Sofyan[2] illustrates that in most third world countries, democracy shows more of a formality side, which is centered on procedures and institutional arrangements, and more specifically focused on elections. In Indonesia, democracy has experienced various kinds of obstacles which sometimes contradict the spirit of democracy itself. Marcus

[1] Sharma, Rakesh Lauren Serpe, and Astri Suryandari (2010), Indonesia Electoral Survey 2010 November 2010, IFES (International Foundation for Electoral Systems) for the Australian Agency for International Development

[2] Sofyan, A. (2013). Pemaknaan Demokrasi di Era Reformasi (Opini Masyarakat Jawa Tengah Terhadap Demokrasi Saat Ini). *Politika, 4*(2), 5-13.

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Mietzner[1] noted that democratization in Indonesia shows the face of the popularity of figures in front of the people. The meaning of democracy is far from a matter of political performance, but leads to individual performance. People have high hopes for a leader figure to uphold democracy rather than the political system and the performance of political parties.

Some experts classify democracy into formal/procedural and substantial democracy. Formal democracy is oriented towards institutionalization, the process, especially general elections and participation in elections. Substantial democracy is more focused on the nature of democracy itself, prioritizing values. According to Hayne[2] democracy in most third world countries is a formal democracy.

In the last decades of the 20th century and the beginning of the 21st century, Indonesia, like other nations in various parts of the world, faced a huge wave of increasing demands for democratization, decentralization, and globalization. This condition is a natural thing, because in the history of humanity and human civilization it has never been stagnant, never static, but always active and progressing. So this deserves to be a demand for the progress of the times. The Republic of Indonesia as an archipelagic country has more than 17,504 islands, with a coastline of more than 80,290 km, and borders with 10 neighboring countries. On land, Indonesia is bordered by 3 countries, namely Malaysia, Papua New Guinea and Timor Leste, while at sea it is bordered by 10 countries, namely India, Thailand, Malaysia, Singapore, Vietnam, Philippines, Palau, Papua New Guinea, Australia and Timor Leste. . However, national development has not been spread evenly to remote islands in border areas. (Harsen Roy Tampomuri, 2010:1-2).

Indonesia's borders are still apprehensive in many ways. Many border areas experience economic backwardness due to the absence of government and private programs and projects. The length of the border line both on land and sea is very difficult to be monitored regularly by security forces. As a result, violations of border areas, smuggling, and other illegal cross-border activities often occur. In some areas far from Indonesian government offices, people on the border actually receive many administrative facilities and public services from neighboring countries, splitting their nationalism. Access to communication and information is also often easier to obtain from neighboring countries that have advanced their border areas. If the border area is not managed properly and effectively, of course the sovereignty of the country will soon be at stake. So far, the government and the wider community have only been struck by the seriousness of the border problem when several Indonesian territories have been lost due to defeat in international courts, or because of unilateral claims to Indonesian territory from neighboring countries.

In addition, due to poor welfare and infrastructure in border areas, many residents in border areas have more emotional closeness and socio-economic interaction with the people of neighboring countries. It is not uncommon for them to experience a crisis of national identity due to our country's low attention to their fate and regional development.

The condition of the border areas in NTT Province which is located in Belu Regency, North Central Timor Regency and Kupang Regency has not shown an ideal picture. The basic problems faced by people in the NTT border area include:

1. The low level of community welfare in border areas.

The 3 districts are characterized by low community income and limited business opportunities because most of the area is dry land. This is exacerbated by the lack of skills in managing dry land resources and limited capital facilities to build investments in the plantation sector, the low level of public health which is marked by high infant and maternal mortality rates, cases of malnutrition, increasing HIV-AIDS from year to year. years, as well as the unavailability of healthy housing and inadequate supply of clean water.

2. Inadequate facilities and infrastructure for education, health, transportation, information and communication, causing residents in border areas to be isolated.
3. Environmental damage as a result of the conversion of forest functions to agricultural land. Taking manganese, marble and C excavations that do not pay attention to environmental sustainability, as well as low community awareness in managing watersheds (DAS) at the border.

[1] Mietzner, M. (2009). Political Opinion polling in post-authoritarian Indonesia catalyst or obstacle to democratic consolidation? *Bijdragen tot de Taal-Land- en Volkenkunde, 165*(1), 95-126.

[2] Heynes, J. (2000). *Demokrasi dan Masyarakat Sipil di Dunia Ketiga: Gerakan Politik Baru Kaum Terpeinggir.* (P. Soemitro, Penerj.) Jakarta: Yayasan Obor Indonesia.

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4. Order and border security still show high dynamics. There are still disputed land issues related to the unfinished state boundary line, and the non-compliance with cross-border regulations that lead to illegal border crossings.
5. Problem solving in the NTT border area seems ineffective. This is due to the variety of development actors, including the government, non-governmental organizations (NGOs), and the business world, which have different priorities, are ego-sectoral, and are not supported by a good coordination system. Then also because of the inadequate capacity of the apparatus at the sub-district and village levels as the main development actors on the front line of the border, the limited authority of local governments in dealing with the border, and the limited budget allocation for the development of border areas..

In managing borders, there are several approaches used, including traditional and non-traditional approaches[1]. The traditional approach is more focused on efforts to build the security of the country's territory by relying on the power of arms. The military is deployed to guard the border line so that various threats to state sovereignty such as smuggling, illegal border crossings and the like can be eliminated. While the non-traditional approach focuses more on strengthening individual security as the main capital in managing borders.

Efforts to fulfill basic human needs such as the need for food, decent housing, quality education and health services, infrastructure development and so on are the main targets. Each of these approaches will lead to different political strategies to realize the country's goals. The strategy used is of course moving from the state's perspective on the border, whether the border is placed at the forefront or at the back of the country.

Strengthening the spirit of nationalism and maintaining the sovereignty of the Republic of Indonesia is closely related to the extent to which border communities feel that they enjoy the nature of freedom and democracy in Indonesia. Therefore, in order to maintain the integrity of the Unitary State of the Republic of Indonesia and maintain the spirit of nationalism, it is very relevant and important for the government to pay special attention to border areas and small islands in the outermost regions of the archipelago with democracy as a strategy to achieve the nation's goals through border management.

Based on the above background, the formulation of the problem in this research is, "What is the meaning of democracy for people in the border areas of Indonesia and Timor Leste." The purpose of this research is to find out and describe the meaning of democracy for people in the border areas of Indonesia and Timor Leste.

THEORY AND CONCEPTS

Democracy

Several terms in this paper need to be clarified in their intended meaning in order to minimize errors in understanding the subject matter that needs to be elaborated further. In ancient Greece, democracy was intended to give meaning to a republican government, whereas a monarchy was not considered a democratic government. This would be inappropriate if used at this time because in reality there are many republics in which there are governments that lead with an authoritarian and totalitarian iron fist. On the other hand, there are also many forms of royal government (monarchy) whose leadership style is in wise and aspirational ways.

In its development, democracy has undergone changes in terms of its meaning and application in the political arena. The concept of democracy as a form of government originates from Greek philosophers, but the use of this concept in modern times dates back to the revolutionary upheaval in Western society in the late 18th century. In that long period of time, the concept of democracy has been translated into various treasuries of thought.

Democracy as a system has been used as an alternative in various social and national activities in several countries. As acknowledged by Moh. Mahfud MD, there are two reasons for choosing democracy as a system of society and state. First, almost all countries in the world have made democracy a fundamental principle; Second, democracy as a principle of state has essentially provided direction for the role of the community to organize the state as its highest organization. Therefore, proper knowledge and understanding of citizens about democracy is needed.

Understanding democracy can be seen from a review of language (epistemological) and terms (terminological). Epistemologically "democracy" consists of two words derived from Greek, namely "demos" which means the people or residents of a place and "cretein" or "cratos" which means power or sovereignty. So in language

[1] Buzan, B., Waever, O., & Wilde, J. d. (1998). *Security: A New Framework for Analysis.* London: Lynne Reinner Publisher.

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"demos-cratein" or "demos-cratos" is a state condition where in the system of government sovereignty is in the hands of the people, the highest power is in a joint decision of the people, the people in power, the government of the people and by the people.

Meanwhile, the definition of democracy in terms as put forward by experts is as follows:

a. According to Joseph A. Schemer[1] Democracy is an institutional plan to reach political decisions in which individuals gain the power to decide how to compete competitively for the people's vote.

b. Sidney Hook[2] Democracy is a form of government in which important government decisions are directly or indirectly based on the free consent of the majority of the adult people.

c. Philippe C. Schmitter and Terry Lynn Karl[3] Democracy as a system of government in which governments are held accountable for their actions in the public domain by citizens, who act indirectly through competition and cooperation with their elected representatives.

d. Henry B. Mayo[4] stated that democracy as a political system is a system that shows that public policies are determined on a majority basis by representatives who are effectively supervised by the people in periodic elections based on the principle of political equality and held in an atmosphere of guaranteed political freedom.

The conclusions from some of the opinions above are that the nature of democracy as a system of society and state and government emphasizes the existence of power in the hands of the people, both in the implementation of being in the hands of the people, which means three things, namely:

a. Government of the people (government of the people) Contain understanding related to government that is legitimate and recognized (ligimate government) in the eyes of the people. On the other hand, there is an illegitimate and unrecognized government. A recognized government is a government that gets the recognition and support of the people. The importance of legitimacy for a government is that the government can run the wheels of the bureaucracy and its programs.

b. Government by the people Government by the people means that a government exercises power on behalf of the people not on its own impulse. Supervision carried out by the people (social control) can be carried out directly by the people or indirectly (through the DPR).

c. Government for the people (government for the people) implies that the power given by the people to the government is carried out for the benefit of the people. The government is required to guarantee the widest possible freedom to the people in expressing their aspirations either through the press or directly.

Various Theories of Democracy

1. Substantive Theory of Democracy

Defining democracy in terms of "the will of the people; the common good and the public good. Thus democracy is seen from the source and destination side. Democracy will not be effective and sustainable without the substance of democracy, in the form of; spirit, culture or democratic ideology that characterizes the internal organization of political parties, government institutions, and community associations. Democracy will be realized if the people agree on the meaning of democracy, understand how democracy works and the uses of democracy for their lives. This substantive democratic theory is normative, rationalistic, utopian and idealistic.

2. Schumpeterian Theory of Democracy

The view of substantivist (classical) democracy which emphasizes the dimensions of the source and purpose received rebuttal from Joseph Schumpeter in his book entitled "Capitalism, Socialism and Democracy" which was published in 1942. In democracy it is formulated as an institutional procedure to reach political decisions in

[1] Schemer, J. A. (1950). *Capitalism, socialism, and democracy.* New York: Harper

[2] Hook, S. (2002). *Pragmatism, Democracy and Freedom: The Essential Essays.* New York: Prometheus Books.

[3] Schmitter, P. C., & Karl, T. L. (2000). *How to Democratize the European Union and Why Bother?* Maryland: Rowman & Littlefield Publishers.

[4] Mayo, H. B. (1960). *Introduction to Democratic Theory.* Oxford: Oxford University Press.

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which individuals gain the power to make decisions. make decisions through competitive struggle in order to gain the people's vote.

Based on this reality, democracy is then understood as public participation in various state policy-making processes. The International Institute for Democracy and Electoral Assistance (IDEA) states that there are six main frameworks for assessing democracy (Beetham, et al., 2009).

The first framework focuses on the extent to which efforts to enforce human rights are comprehensive. This is especially so by the United States and organizations and institutions such as Amnesty and Fredom House.

The second framework places its priority on governance, including elections, but especially on the rule of law and accountability. Such studies are often sponsored by government agencies, aid agencies and colleagues such as the Indonesia Partnership for Governance Reform, in order to evaluate their support for institutional development.

The third framework refers to the "democracy index" conducted by researchers who link democratic rights and elections to "independent factors" such as development and conflict. Fourth, there is also a democracy audit model conducted by government institutions, some academics and civil society organizations in northern countries to find and lay the basis for public discussion regarding the strengths and weaknesses of various dimensions of democracy. The fifth framework is an assessment of economic and social conditions carried out by governments and international organizations to evaluate democratic outcomes and to provide support for efforts to improve structural conditions. The sixth, is the framework developed by IDEA itself. This framework has been applied by government colleagues, international institutions, including NGOs and some academics.

3. IDEA's International Democratic Theory

International IDEA, an international organization that supports sustainable democracy worldwide, defines democracy as "people's control over policy makers and political equality for those who exercise that control". More specifically, the ideal democracy "attempts to guarantee equality and fundamental freedoms; empowering the common people; resolve disputes through peaceful dialogue, respect differences; and bring about political and social reform without conflict." Therefore, democracy is understood in a broader sense than just free elections. Democracy is a concept with many dimensions, including civil and political rights, social and economic rights, democratic governance and the rule of law.

This understanding of democracy is intertwined with aspects of democratic thought, such as electoral democracy, liberal democracy, and participatory democracy. The concept of democracy reflects a core value enshrined in Article 2 of the Universal Declaration of Human Rights that the will of the people is the basis for the legitimacy and authority of a sovereign state. It combines a common and universal desire for peace, security and justice. Democracy reflects the basic ethical basis of equality and human dignity, and therefore cannot be separated from human rights.

These principles are open to context-sensitive application of universal standards of democratic governance. In short, a democratic system can be classified in various ways, and countries can build their democracy in different ways, and therefore can fulfill these principles to different degrees.

Parameters of Democracy

To measure the implementation of democratic governance, it is necessary to pay attention to several parameters of democracy. In Dahl's[1] work, Dahl presented six indicators of a Democratic system:

1. Control on policy makers is exercised by elected public officials;
2. Elections for public officials are held through regular, fair and free elections;
3. Every citizen has equal rights to be elected in elections;
4. Guarantees of basic and political freedoms;
5. The existence of alternative information channels that are not monopolized by the government or groups;
6. There is a guarantee to form and join organizations, including political parties and interest groups.

Meanwhile, Global/International Democracy Theory measures Democracy based on 5 (five) GsoD Par Parameters/attributes [1]:

[1] Dalh, R. A. (1989). *Democracy and Its Critics.* New Heaven: Yale University.

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1. Representative Government, covering the extent to which access to political power is free and equal as demonstrated by competitive, inclusive and periodic elections. This dimension, with regard to the concept of electoral democracy, has four sub-dimensions: clean elections, inclusive suffrage, free political parties, and elected government.
2. Human Rights, captures the extent to which degrees of civil liberties are respected, and whether people have access to the basic resources that enable them to actively participate in the political process. This dimension, which significantly overlaps with international human rights covenants, has three subdimensions. Two of them relate to the concept of liberal democracy (access to justice and civil liberties) and one to the concept of social democracy (social rights and equality).
3. Government Oversight, measuring effective oversight of executive power. It has three subdimensions related to the concept of liberal democracy: judicial independence, effective parliament and media integrity.
4. Impartial Administration is concerned with how political decisions are implemented in a fair and predictable manner, and therefore reflects a key aspect of the rule of law. This dimension relates to the concept of liberal democracy, which dictates that the exercise of power must comply with rules and be predictable. This dimension has two sub-dimensions: the absence of corruption and predictable law enforcement.
5. Participatory involvement is related to the extent to which political engagement tools are available and to what degree citizens use them. It is related to the concept of participatory democracy and has four subdimensions: civil society participation, electoral participation, direct democracy and subnational elections.

Border Area

According to the definition from the health service, border areas are areas within the territory of the Republic of Indonesia which are directly adjacent to the sovereign territory of neighboring countries, both land and sea borders. Border and remote areas are still underdeveloped. The border areas, including the outermost small islands, have considerable natural resource potential, and are very strategic areas for national defense and security. Regulation of the State Minister for People's Housing of the Republic of Indonesia number 17/PERMEN/M/2006 concerning implementation instructions for the implementation of housing development in border areas, border areas/areas are part of the territory within a province and/or district/city bordering other countries, whether located on land borders as well as maritime borders[2].

Dr. Dave Lumenta in the Diplomacy tabloid of the Directorate of Public Diplomacy, Ministry of Foreign Affairs, R.I. (08:2009) stated that so far the border is defined as a collection of imaginary lines on a map that are considered sacred, standard and have legal-formal power to separate territorial, political, economic and legal sovereignty that distinguishes one country from another. Culturally, the border line is considered as a differentiator of the national identity of one country's people from another. The border areas referred to in this paper specifically look at the border areas within the unitary sovereignty of the Unitary State of the Republic of Indonesia, both sea and land borders.[3]

RESEARCH METHODOLOGY

This study took the research location in the border area of Indonesia and Timor Leste, namely at the borders of Motoain, Motamasin and Wini. The main factor in determining these locations is because these three areas are directly adjacent to the State of Timor-Leste.

Based on the subject matter to be studied, this research uses a qualitative approach, qualitative research has the main characteristics that are concerned with meaning, and the context in society. While the type of research used is descriptive, descriptive research is research that is used to describe the current state of the subject or object of research based on the facts that occur in the field.

[1] International Institute for Democracy and Electoral Assistance (International IDEA), Global State of Democracy (Mengkaji Ketahanan Demokrasi)

[2] Sofyan, A. *Op.Cit*

[3] Sofyan, A. *Op.Cit*

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According to Sugiyono[1] qualitative methods are used to examine the condition of natural objects where the researcher is the key instrument. Qualitative methods can also be used to uncover and understand something behind a completely unknown phenomenon and can also be used to gain insights that are only little known and to reveal the meaning contained in the data that has been collected both from observation data, interview data, and especially documentation data[2]

In collecting data the researchers used the following techniques:

a. Observation, namely data collection techniques by making direct observations at the research site on all phenomena that are considered relevant to the purpose of this study.

b. An interview is a conversation with a specific purpose carried out by two parties, namely the interviewer (interviewer) as the questioner and the interviewee (interviewer) as the answerer to the questions posed by the interviewer. The purpose of conducting interviews as emphasized by Lincoln and Guba include: constructing about people, events, organizations, feelings, motivations, demands, concerns and commitments, reconstructing roundness as expected in the future; verify, modify and expand information obtained from other people, both human and non-human.

c. Documentation Documentation technique is a way of collecting data that produces important notes related to the problem under study, so that complete, valid and not based on estimates will be obtained. This technique is used to collect data that is already available in document records.

d. To obtain a clear picture and information regarding the meaning of democracy for the people in the border areas of Indonesia and Timor Leste, the researchers have selected and determined the research subjects. The subjects in this study are people who already have experience, knowledge, and skills related to the theme of this research, and have the information needed by researchers regarding data and documents.

e. Determination of the subject of this research using purposive sampling technique (sampling technique aims) namely the selection of research subjects based on certain criteria considerations.

Dalam penelitian ini, peneliti menggunakan teknik analisis data induktif. Peneliti melakukan penarikan kesimpulan yang berangkat dari fakta-fakta khusus, peristiwa-peristiwa yang konkret, kemudian dari fakta atau peristiwa tersebut ditarik kesimpulan yang umum yaitu dengan cara menganalisis dan menyajikannya dalam bentuk data deskriptif.

Karena penelitian ini merupakan penelitian deskriptif dengan pendekatan kualitatif. Maka teknik analisis data yang digunakan dalam penelitian ini adalah analisis deskriptif. Adapun langkah-langkah analisis data pada penelitian ini dilakukan dengan beberapa tahapan sebagai berikut: reduksi data, unitisasi dan kategorisasi data, display data atau pemaparan data, pengambilan kesimpulan dari data yang didapatkan dan verifikasi.

MEANING OF INDONESIAN DEMOCRACY FROM THE BORDER OF THE UNITED STATE OF THE REPUBLIC OF INDONESIA - THE DEMOCRATIC REPUBLIC OF TIMOR LESTE

Overview of Research Sites

1. Silawan Village

Silawan Village is one of the villages directly adjacent to the State of Timor Leste. In this village there is also the Motaain Border Crossing Post (PLBN), which is the main crossing post to and from Timor Leste. Silawan Village is one of the villages in East Tasifeto District, Belu Regency, East Nusa Tenggara Province. East Tasifeto District consists of 12 villages. Silawan village itself is divided into 10 hamlets, including: Webenahi, Nanaeklot, Adubitin, Maninu, Halimuti, Beilaka, Motaain, Halibada, Motabenda, Aisik Aiseban hamlets with 10 RW and 27 RT and 1,022 families, with a village area of 42 km^2.

The majority of the people in this village are natives of the Belu district and some are migrants who were exodus from East Timor after the 1999 referendum. The majority of the population speak tetun (the native language of the Belu people). There are a few who speak kemak and bunak. The livelihoods of the people in this village are diverse, but most of them work as field farmers and ranchers.

[1] Sugiyono. (2010). *Metode Penelitian Pendidikan Pendekatan Kuantitatif, Kualitatif dan R&D* . Bandung: Alfabeta.

[2] Basrowi, & Suwandi. (2008). *Memahami Penelitian Kualitatif.* Jakarta: Rineka Cipta.

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The geographical location of Silawan Village is a hilly area. One part of Silawan Village is directly adjacent to the State of Timor Leste, as well as being the main cross-border post to Timor Leste. The following are the boundaries of the Silawan Village area, namely:

Table 1: Silawan Village Boundaries

Boundary	Village/Urban Village	Sub-district
North	Timor Sea	-
South	Tulakadi	East Tasifeto
East	RDTL	RDTL
West	Kenebibi	Kakuluk Mesak

Source: Silawan Village Office (2021)

The population of Silawan Village reaches 3,934 people with 1,983 men and 1,951 women. The number of family heads is 1,022 families. With a large population, Silawan Village is one of the villages in East Tasifeto District which is densely populated with people of various age groups.

The people of Silawan Village generally make a living from farming and raising livestock. This situation makes every family in this village only able to send their children to high school level and there are a small number who continue their studies to universities both inside NTT and outside NTT. This is because the economic income of each family is mediocre, making this border area sell their agricultural and livestock products to a neighboring country, namely Timor Leste, with a fairly large price difference. Besides that, local people often take advantage of this economic situation to carry out illegal transactions by smuggling into the State of Timor Leste, such as fuel oil, cigarettes and others.

For the availability of facilities, Silawan Village has adequate health facilities, as well as educational facilities. Because this village is directly adjacent to the State of Timor Leste, there is also a State Border Post or PLBN Motaain. The following researchers attach the existing facilities in Silawan village which are spread over 10 hamlets are:

- Educational facilities, totaling 8 school buildings
- Health facilities in this village have 1 health center complete with 2 inpatients and 4 outpatients which are next to the Silawan village office and in each hamlet there is a village maternity home.

Silawan Village has educational facilities from kindergarten to high school level so that the average community in this village sends their children to schools that are not out of this village.

2. Kenebibi Village

`Kenebibi Village is one of six villages located in the administrative area of Kakuluk Mesak District, Belu Regency. The area of Kenebibi Village is 2,704 km^2 with a layout in the west bordering Jenilu Village, east bordering Silawan Village, north bordering Ombai Strait, and south bordering Kabuna Village. Because the area is bordered by the village of Silawan (Border Village), the village of Kenebibi and several surrounding villages are referred to as border buffer villages.

Kenebibi village consists of hills and sea areas so that many people work as farmers and fishermen. Currently, in the agricultural sector, people grow various types of vegetables and tubers. Meanwhile, in the marine sector, fishermen use the sea as land to find fish. In fact, it is not uncommon for illegal smuggling by sea to and from Timor Leste to be carried out from Kenebibi village because of its location on the coast.

The distance to Kenebibi Village is 26 kilometers from the capital city of Belu Regency and 10 kilometers from the sub-district town. It can be accessed by using a motorized vehicle or car. Kenebibi village is a suburban village so that access to facilities in the city can be easily reached.

Administratively, the population in Kenebibi Village is 3,256 people, consisting of 1,628 men and 1,628 women. Kenebibi Village has 4 RWs and 12 RTs spread over four sub-villages which are divided into sub-villages with their respective hamlet names, including: Hamlet A: Fatukmetan; Hamlet B: Makfaho; Hamlet C: Talilaran; Hamlet D: Weain.

From the aspect of education, Kenebibi Village is still dominated by elementary school graduates. Where can be seen as follows: 769 people graduated from elementary school/equivalent, 546 people graduated from junior high school/equivalent, 339 people graduated from high school/equivalent, 18 people graduated from D-

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3/equivalent, and 32 people graduated from S-1. This condition also affects the quality of human resources in Kenebibi Village and determines the type of work chosen.

The types of jobs owned by the residents of Kenebibi Village are mostly traditional field farmers, followed by the fishing profession because of the location of the village which is located on the beach. After that, it was followed by other types of work. The types of work in question can be broken down as follows: farmers 561 people, fishermen 152 people, civil servants 52 people, Indonesian National Army/Police of the Republic of Indonesia 9 people, entrepreneurs/traders 35 people, retired civil servants 69 people, private employees 52 people, while other sectors are 1501 people . This data explains that the number of jobs as farmers is more than other jobs. So it can be said that the agricultural sector is the leading sector of Kenebibi Village.

Meaning of Democracy From the Border

The state border area is a strategic area as the front porch of the state in relation to other countries. The Unitary State of the Republic of Indonesia has very broad national boundaries including land, sea and air boundaries. On land, Indonesia is bordered by 3 countries, namely Malaysia, Papua New Guinea and Timor Leste, while at sea it is bordered by 10 countries, namely India, Thailand, Malaysia, Singapore, Vietnam, Philippines, Palau, Papua New Guinea, Australia and Timor Leste. . The maritime border areas are generally in the form of the outermost islands, totaling 92 islands, including small islands. Indonesia's vast and diverse border area is a challenge in its management, especially in building the unity and integrity of the nation.

Complicated and complex border issues even since Indonesia's independence require serious handling if the territory and citizens do not want to switch status to belong to another country. The Sipadan and Ligitan areas, for example, which were later claimed to be the property of the Malaysian state, are evidence that the problem of mismanagement of border areas can have fatal consequences for the integrity of the Unitary Republic of Indonesia. The tug-of-war between the center and the regions related to the handling of border areas is also often a separate issue that is difficult to unravel, while on the other hand it is the people at the border who have to accept the consequences of mismanagement of the state.

Therefore, in addition to having to take care of territorial boundaries strictly, the state must also be able to guarantee the rights of citizens at the border. The concept of a democratic state that is just for all Indonesian people must also be felt up to the border areas.

This basis then encourages researchers to explore the extent of the meaning of community democracy in border areas, especially in the southern part of Indonesia's land border, namely the border of the Republic of Indonesia-Timor Leste, more precisely in the Silawan Village area which is directly adjacent to Timor Leste, and the village of Silawan. Kenebibi which is a Border buffer village which is located next to Silawan Village.

To dissect the meaning of Democracy, the researcher uses Global/International Democracy Theory which measures Democracy based on 5 GsoD Parameters/attributes, including: Representative Government, Human Rights, Government Oversight, Impartial Administration, Participatory Involvement.

a. Representative Government

One of the measuring tools used by a country to ensure the realization of a democratic system is the implementation of dynamic elections (electoral democracy). This is in line with the concept of political reform in Indonesia which seeks to return procedural democracy to its corridors where political power is free and equal as demonstrated by competitive, inclusive and periodic elections. The election mandate is also returned to the sovereignty of the people by direct elections without going through representatives.

Electoral democracy which has four sub-dimensions: clean elections, inclusive suffrage, free political parties, and an elected government, is also a reference for people at the border in determining their political rights as part of a sovereign citizen.

For the people on the border of Indonesia and Timor Leste, electoral democracy which is manifested in the form of elections is part of their participation as citizens. In practice, the community is directly involved in the election process, from the beginning to the decision to determine the leader. People in border areas also get the same rights as citizens, where they also have the opportunity to vote and be elected.

The dynamics of community participation in border areas in election events is also interesting to study, considering that not all election moments attract public interest to be actively involved in determining candidate leaders, both at the national and regional levels. The quality of elections for people on the border is very dependent on the emotional bond between voters and the elected. People tend to be more interested in participating and actively involved in election events to choose figures they know and have a direct impact that

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they can feel. Therefore, they are more enthusiastic in the Regional Head Elections, Legislative Elections at the Regency level and Presidential Elections. Meanwhile, the Legislative Elections at the Provincial and Central Legislative levels are not very attractive, because they do not feel they know the candidates. This also explains that political socialization by parties and candidates from the center and the province is still low. It should be noted that the people on the border are mostly inhabited by former East Timorese who were exodus after the popular consultation in 1999. This condition also affects the dynamics of local politics that occur in society. Issues related to changing the fate of the former East Timorese have become one of the main demands of the people at the border.

Meanwhile, for a clean election, the public assumes that there are still money practices in election transactions. In all stages of the election, the community has not used their right to participate actively. What is meant here is to be a rational and responsible voter. This condition is due to the relatively low level of political education and the strong patron-client culture in the community, especially for ex-East Timorese. This makes it easier for money political transactions and political choices to be mobilized by local leaders.

The involvement of political parties in all stages of elections in border areas is still far from expectations. The existing political parties only take advantage of the momentum of the five-year general election to get down to the community. It also only promotes the parties and candidates who are nominated, without ever providing a good political education to the local community. Parties tend to only take advantage of the election momentum for campaigning and political safaris in order to win the candidate they are carrying. Apart from that, the party does not carry out its function properly. Therefore, all elements must collaborate and take responsibility according to their respective portions in order to form an ideal representative government. The community as part of the citizenry must take the responsibility of participating in practical politics in a healthy manner, and the task of the state is to provide socialization and a good understanding of the substance of politics and democracy. So that in turn the people are enlightened and the quality of democracy for the people on the border can increase the spirit of nationalism for the people.

b. Human Rights

In this aspect, the researcher looks at the meaning of democracy for the people in the border area of the Republic of Indonesia-Timor Leste by measuring the degree to which civil liberties are respected, and whether the people have access to basic resources that enable them to actively participate in the political process. The indicators measured from the human rights aspect here are access to justice and civil liberties, as well as social rights and equality in society.

Human rights in border areas are interpreted in various ways. There are some who view that there are no human rights issues that occur in the border areas, because they feel that their lives at the border are fine. The majority of those who presented this argument were because they did not understand the substantive meaning of human rights. Perspectives are still very much influenced by the understanding that what is meant by Human Rights Issues is only limited to issues of humanitarian conflict, such as what occurred during the 1999 East Timor ballot. However, there are also those who give different opinions. They consider that the government's contribution to the fulfillment of human rights has not fully answered the problems of the people in the border areas.

In general, the people at the border are quite appreciative of the development carried out by the government in the border area, in order to make the face of the border as a gateway for the country to face the State of Timor Leste. The developments in question include: the construction of a PLBN tower, wide access roads to the border and other buildings on the border which are quite majestic for the size of the people on the border. However, this attention has not yet touched on the root of the problem, where the people at the border need not only infrastructure development, but also basic assistance such as economic empowerment, which is more needed by the residents. What's more, the majority of people at the border work as dry land farmers who only hope for water in the rainy season. In addition, another problem is the disconnected communication between the community and the government, so that the government's main needs have not been fully conveyed and answered.

Another problem is that the government is considered unable to resolve the issue of equality of decent living rights for people in border areas. Development is still dominated by infrastructure, but has not been maximized in developing human resources and fulfilling the basic rights of citizens. Such as decent housing and land for ex-East Timorese who live on the border, clean water and sanitation problems, as well as the problem of poor nutrition that still haunts people in border areas. This can have an impact on social conflict in the community if it is not immediately addressed.

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There are many humanitarian issues in border areas that need to be taken seriously by the state, including preparing for empowerment and jobs that can be accessed by people at the border according to their level of education and expertise. Communities at the border must be seen specifically regarding the fulfillment of their rights as citizens. Because humanitarian issues that are not managed properly can have an impact on the erosion of the value of nationalism for people at the border. We should be grateful because until now the country of Timor Leste is still far behind from Indonesia economically. But the potential for changes in the future that cannot be predicted must be anticipated by the state if the nationalism of society is not to be divided.

c. Government Oversight

In this aspect, the researcher explores the meaning of democracy for people in the Indonesia-Timor Leste border region by measuring the effective oversight of executive power. The executive, in this case the government both at the central and regional levels, plays a key role in carrying out the role of the state in executing every policy that applies in society. Including the policy on the Indonesia-Timor Leste border area in Silawan Village and Kenebibi Village. Every policy taken has implications for society. Therefore effective control of various elements becomes absolutely necessary. This dimension involves an effective legislative role and the integrity of the media.

In the dimension of effective supervision of the government, technically, it gets various responses from the community. On the one hand, the public appreciates the performance of the legislature, where at a certain stage, the legislature contributes effectively in assisting people at the border in guarding government policies to build a proper National Border Post (PLBN). The construction of a magnificent PLBN on the Motaain border also helps to improve the economy of the surrounding community because it absorbs labor while reducing unemployment in the border area.

But on the other hand the legislative performance is still less effective, even slow to control government policies as an extension of the people's hand in improving the welfare of the people at the border. The control function as a government partner has not been carried out optimally by the Legislature. This has resulted in lax policies and even neglect of humanitarian issues at the border. This condition becomes more complicated because the role of actors as representatives of the people who must absorb the aspirations of the people, is not played by members of the legislature. The control of the people's representatives is weak resulting in the people's aspirations not being able to be carried out properly by the government.

People's representatives are even considered less able to communicate the aspirations of the people to the government as the executor of policies in the regions. This can have a negative impact on border communities that are prone to conflict, especially border conflicts with neighboring Timor Leste. The low control function has the potential to reduce the level of public trust in people's representatives sitting in the legislature.

In addition to legislative control, government supervision is also seen from the role of the media. Good media control over the government can harmonize and balance the quality of democracy in society in a region. In the border area of Indonesia and Timor Leste, the function of media control is not considered balanced. The media tend to only publish positive news about border areas, without daring to raise the concrete reality of issues at the border. The media (local media) have not been able to carry out their function properly, namely as a funnel to report facts and data to the public. The news about the border areas only reaches a positive image, without touching the essence of the problems of the people in the border areas. The function of the media as one of the pillars of democracy has not been able to be carried out by its members. The function of control over power is weakened because media coverage is still intimidated by the interests of the ruling actors, including the military in border areas. Finally, information about the border only stops at positive imaging.

d. Impartial Administration

Impartial Administration is concerned with how political decisions are implemented in a fair and predictable manner, and therefore reflects a key aspect of the rule of law. This dimension relates to the concept of liberal democracy, which dictates that the exercise of power must comply with rules and be predictable.

The application of law in border areas is still an obstacle for the community. The applicable legal rules are considered to be selective in their application. The community is placed as the object of political decisions without being involved in providing their aspirations.

The problem of smuggling that occurs in border areas is in fact still very rampant, whether it is the smuggling of fuel, cigarettes and basic necessities. According to the local community, the rampant illegal activities were supported by elements of the security forces in the border areas. People are used as couriers with large rewards

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so that people whose sources of income are not permanent become interested and do so without considering the legal consequences that will be obtained if caught.

In addition, the issue of the maritime boundary between Indonesia and Timor Leste is not clear, so many fishermen are arrested for crossing the sea border of Timor Leste. This, of course, should be the government's attention to provide clarity on the sea border area so that Indonesian fishermen can obtain legal certainty on the sea border. Therefore, the existence of the state is very much needed as the main agent for the creation of justice, comfort and security for the community. The state must be present to provide concrete solutions for the implementation of legal justice.

Another interesting thing in law enforcement based on local wisdom that exists in communities at the border is the formation of HPD (Village Peace Judges) consisting of community, religious, village government leaders and involving TNI and Polri officers (Babinsa and Babinkamtibmas) whose task is to resolve social conflicts. at the village level, so that the conflict did not reach the trial stage. If there are parties who are dissatisfied and want to report to the police, they must bring a certificate from the HPD, that the problem has not been resolved at the village level. but until now all social problems can be solved by HPD so that people feel that the existence of HPD is very important to bring about justice for the local community.

The resolution of social conflicts by means of deliberation and consensus is a settlement model that has long been abandoned by society in the modern era and has been eroded by the times, but in border areas it is still visible and needs to be applied by other villages as examples of conflict resolution at the local level without prolonging the problem for the sake of creating harmony. between communities.

e. Participatory Engagement

Participatory involvement is related to the extent to which political engagement tools are available and to what degree citizens use them. It relates to the concept of participatory democracy and has four sub-dimensions: civil society participation, electoral participation, direct democracy and subnational elections.

Democracy is an important topic of discussion and one that is constantly being fought for. The concept of "democracy is essentially a principle that places the people at the center of decision-making in a country, especially in social change. Today the meaning of democracy has lost its substantial meaning, namely the sovereignty of the people, which is more used as a means of legitimizing power. Currently, what has developed in the discourse of discussion and debate about democracy is the need for the principle of “clean government” and “civil society” to participate in political decision-making. The problem is that the essence of participation has shifted its meaning so that the meaning of public involvement in the participation process is different from sharing in power.

In the administration of the state, public participation is the main power of the government in formulating policies. But in reality the border areas are seen as political capital to get votes when elections are held. Furthermore, actors who have gained power no longer cooperate with the community to run the government. Society is placed as an object of policy that only benefits the rulers.

People's aspirations, which should be the main source of policy formulation, are no longer in the position they should be. Participation is an important aspect of democracy. The underlying assumption of democracy is that the person who knows best about what is good for himself is the person himself. Therefore, what is meant by political participation is the participation of ordinary citizens in determining all decisions concerning or affecting their lives.[1]

Community involvement in every election event, both the The House of Representatives of the Republic of Indonesia, Regional People's Representative Assembly, Regional Representative Council, Regional Head Election and presidential elections shows a high level of participation. The community has the awareness to use their voting rights in determining their future leaders. There were also local people who participated in running for the legislative body election, but did not get a significant vote to represent the people on the border. This is because money politics is rife in the election process. Many people in the community are interested in voting because of the fees they receive from certain elements. Therefore, the consciousness that is formed is very transactional.

The existence of money politics in the border areas at the time of the democratic party was due to people's thinking that the existence of legislative candidates did not bring much change in their survival. Whoever is

[1] Ramlan Surbakti, Memahami Ilmu Politik, Jakarta: PT Gramedia Widiasarana Indonesia, 2010, Hal. 179

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elected by the community in reality does not have a real contribution to change in the life and socio-economics of the community. People feel they are only used as objects to get votes but the function of representation that should be is only an illusion.

Civil society participation in activities in the village is quite active because the community is directly involved in every deliberation activity at the hamlet level up to the village Musrembang. One of the ways used by village officials to increase community participation is by dividing the community into several groups to express their aspirations; including men's proposals, women's proposals and mixed proposals. Each group is also subdivided into smaller groups, according to their employment status. This is intended to maximize community participation and their proposals can be brought to the Village Deliberation. Even the village also facilitates the participation of disability groups (such as buying wheelchairs, hearing aids).

Citizens' political awareness is a determining factor in people's political participation, meaning that various things related to knowledge and awareness of rights and obligations related to the community environment and political activities become a measure and level of someone involved in the process of political participation.

The orientation of electoral political participation based on money is influenced by factors of socioeconomic status, education and political affiliation. Therefore, the relationship of these factors can be described as follows: socioeconomic status, education and political affiliation, are independent variables. While political participation is the affected variable (dependent).

CONCLUSION

The border area is the gateway to the state. Therefore, it is necessary to get special attention from the state, not only in terms of infrastructure development, but also regarding the development of human resources. Indonesia as a country that has many border areas (land, sea and air) should place border issues as a priority issue, because it involves the sovereignty of a nation that is sensitive to conflict with neighboring countries.

As a nation that adheres to a democratic system, justice and people's welfare are the main keys to development, including for people living in border areas. To measure the quality of an ideal democracy, democracy must be placed on public awareness in interpreting its essence as an independent citizen in all respects, in line with the applicable constitution. One of the measures used is to measure the meaning of democracy for the people on the border between Indonesia and Timor Leste.

The indicators used in interpreting democracy for people at the border are: Representative Government, Human Rights, Government Oversight, Impartial Administration, and Participatory Involvement.

Findings in the field indicate that in the aspect of Representative Government, people in border areas recognize that they have the same rights as citizens, where they also have the opportunity to be involved in the electoral process, including to vote and be elected. However, in the electoral process, people in border areas have not used their right to participate properly. They have not become rational and responsible voters. This condition is caused by the relatively low level of political education and formal education and the strong patron-client culture in the community, especially for ex-East Timorese who live in border areas.

Meanwhile, in terms of human rights aspects, people in border areas have various interpretations. There are some who view that there are no problems, but there are also those who question the development which is still dominated by infrastructure, but has not been maximized in developing human resources for people at the border. There are many basic needs of the community that have not been considered by the government, especially food and housing. This can have an impact on social conflict in the community.

On the dimension of effective supervision of the government, technically in the field, it also received various responses from the community. There are those who appreciate the performance of the legislature in controlling the government, especially in the development of border infrastructure. However, there are also people who consider the performance of the legislature to be less effective. People's representatives are even considered less able to communicate the aspirations of the people to the government as the executor of policies in the regions.

In the aspect of impartial administration, the problem of smuggling that occurs in border areas is in fact still very widespread. One of the reasons is because they are supported by elements of the security forces in the border areas. In addition, the issue of the maritime boundary between Indonesia and Timor Leste is not clear, so many fishermen are arrested for crossing the sea border of Timor Leste.

While participatory involvement, civil society participation in activities in the village is fairly active because the community is directly involved in every deliberation activity at the hamlet level to the village Musrembang. One of the ways used by village officials to increase community participation is by dividing the community into

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several groups to express their aspirations. On the other hand, border areas are seen as political capital to get votes during elections. The existence of money politics in the border areas at the time of the democratic party was due to people's thinking that the existence of legislative candidates did not bring much change in their survival.

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PATTERNS OF COMMUNITY EMPOWERMENT THROUGH THE UTILIZATION OF VILLAGE FUNDS IN MATA AIR VILLAGE, CENTRAL KUPANG DISTRICT, KUPANG REGENCY

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ABSTRACT

Purpose: *This research is intended to examine the pattern of community empowerment through the use of village funds in Mata Air Village, Central Kupang District, Kupang Regency.*

Research Methodology: *The type of research used in this research is descriptive research with a qualitative approach. The location of this research is in Mata Air Village, Central Kupang District, Kupang Regency with community informants, village/district officials and community leaders of Mata Air Village. In addition, the village and sub-district governments are also used as informants to obtain valid data. Sources of data in this study obtained through primary sources and secondary sources. Data collection was done by means of observation, interviews and document searches. The data collected was then analyzed using the analytical method from Creswell.*

Finding: *The findings in this study are that village funds are used for various developments for the welfare of citizens and residents are also actively involved in managing village funds so that by themselves it will increase community capacity at the micro level.*

Limitations: *This research was conducted during the Covid-19 pandemic so that researchers could only collect information from a few people.*

Contribution: *This research can be used as an evaluation material for Mata Air Village and also as an academic reference for students.*

Keywords: *Village, Empowerment, Fund and Community.*

1. INTRODUCTION

The village is a legal community unit that has an original structure based on special origin rights. The rationale for village governance is diversity, participation, genuine autonomy, democratization and community empowerment (Widjaja, 2003:3).

The enactment of Law Number 6 of 2014 concerning Villages is a reflection of village strategy in national development. The village as an autonomous government organizational unit in Indonesia is undergoing a repositioning of governance administration in accordance with the paradigm shift from building a village to a developing village. Decentralization gives local governments the authority to manage their own budgets in accordance with the potential and local wisdom of each region and village as the lowest autonomous government unit.

The village as the lowest autonomous government unit in Indonesia is undergoing a repositioning of governance administration in accordance with the paradigm shift from developing a village to a developing village. Decentralization gives local governments the authority to manage their own budgets in accordance with the potential and local wisdom of each region and village as the lowest government unit.

In Government Regulation No. 72 of 2005 it is stated that decentralization is not only limited to the district level but also to the village level which can be seen as a legal entity, with territorial boundaries, given the authority to regulate and manage the interests of local communities based on local origins and recognized and respected customs. Likewise in Law no. 6 of 2014 concerning Villages emphasizes that villages have primary rights and traditional rights to regulate and manage the interests of local communities and play a role in realizing the ideals of independence based on the 1945 Constitution of the Republic of Indonesia.

The village was originally a local community organization that had territorial boundaries, was inhabited by several residents, and had to manage their own customs. In the development of development in the village, although there are statutory regulations that guarantee the independence of the village to regulate itself, along the way there are still many villages that have not succeeded in development and are still in poor and powerless conditions. Many factors make people suffer and are forced to live with a low quality of life so that they are disadvantaged, systematic poverty, which often causes various problems, both in terms of education, health and economy. This is illustrated by the number of development programs that fail to eradicate poverty which has an

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impact on the lives of some rural communities, therefore these communities need to empower themselves, increase their capacity to face the challenges of an increasingly complex life.

In its implementation, the central government allocates transfer funds to the regions and these funds give greater authority to villages and the annual budget, which is legalized through Village Law Number 6 of 2014 and is referred to as the Village Fund. Through the Village Fund the central government allocated around IDR 628 million (~USD 48,300) per village in 2016. This allocation increased in 2017, where the allocation will be around IDR 1 billion (~USD 76,900), albeit based on the 2017 budget plan. Each village will only get around IDR 800 million (~USD 61,538) in total (Watts et al, 2019).

In Government Regulation Number 60 of 2014 concerning Village Funds which states that the source of village funds comes from the APBN (State Revenue and Expenditure Budget) which is intended for villages which is transferred through the Regency/City APBD (Regional Revenue and Expenditure Budget) and is used to finance government administration, implementation of development, community development and community empowerment. The village fund management process in question starts from planning, implementation, administration, reporting and accountability. All village fund management processes must be based on the principles of transparency, participation and accountability.

One of the reasons for the need for village funds is because the village fund policy is in line with the regional autonomy agenda, where the village is the basis for decentralization. The village fund policy is very relevant to the perspective that makes the village the basis for participation. Because the village is in direct contact with the community and community control is stronger, decentralization to the village level can improve government functions according to community needs. Good, responsible and transparent use of village funds will greatly help rural communities to get out of poverty and vice versa.

The objectives of village funds that are channeled to rural communities include; (1) Helping to overcome economic problems in the village, reducing poverty, reducing unemployment, inhibiting urbanization and reducing inequality; (2) Contribute to the economic strengthening of rural communities, contribute to equitable development and its results, build infrastructure and create new job opportunities and opportunities; (3) Besides being used for village development, but also for the creation of human resources (HR) in the village, such as training, counseling, mentoring and monitoring that are more organized and networked; (4) Strengthening coordination, consolidation, and synergy in the implementation of priority village development programs by the central, regional, sub-district, and village governments; 5. Build public service infrastructure and facilities as well as strengthen and develop the economy of rural communities while the benefits of the Village Fund will be used primarily to finance community development and empowerment to improve the welfare of rural communities, quality of life and poverty alleviation, as stated in the government work plan from the village.

The village has the power in the form of very strong social capital. This is strength for village development. Village communities have various social ties and strong social solidarity, as important assets for government, development and community activities.

Mutual cooperation and the strength of local values are assets of rural development that aim to accelerate rural economic development. Independence and mutual cooperation have proven to be the most important pillars for true village autonomy, although on the one hand the wealth of social capital is inversely proportional to economic capital. The social capital of rural communities consists of social ties (social bridges) and social networks (social ties). To free these limited social ties, an independent movement from the village community is needed. In addition to strengthening social capital, villages must also strengthen economic capital (financial capital), knowledge capital and human capital.

However, there are still many weaknesses that arise when the funds are used for empowerment and development purposes. This weakness creates problems such as misappropriation of funds, so that their use is not as effective as expected. This is due to the fact that fund managers do not yet have sufficient competence to manage these funds. This condition causes many government empowerment programs to fail in their implementation, one of which is in Mata Air Village, Central Kupang District, Kupang Regency. In general, the distribution of village funds in each region, as well as the implementation of the use of village funds that are still not effective, are still obstacles faced in implementing the policy of distributing village funds (Bustomi et al, 2020).

In its implementation in the Mata Air Village, activities financed from the Village Fund are guided by technical guidelines set by the Kupang Regent regarding activities financed from Village funds and preferably carried out self-managed using local resources/raw materials and strived to absorb more labor from the community. The

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Spring Village itself. Village funds disbursed for the Mata Air Village can be used to finance activities that are not included in the priority use of Village funds after obtaining approval from the Kupang Regent by ensuring that the allocation of Village funds for priority activities has been fulfilled and/or community development and empowerment activities have been fulfilled.

The community of Mata Air Village in the Central Kupang District, Kupang Regency, East Nusa Tenggara Province correctly understands the basis of Law No. 6 of 2014 concerning Villages, and how to describe it to improve community welfare. Many factors are the cause of the emergence of economic problems for the people of this spring village, such as the high unemployment rate, the lack of human resources, and the lack of creativity of the village community in processing natural resources. However, with the existence of this Village Fund, the people of Mata Air Village are well aware that they can actually get out of their situation of helplessness towards a better situation by utilizing abilities that they have not been aware of. Pre-research data obtained from the village head of Mata Air, Benyamin Kanuk, during his tenure from 2017, he has budgeted village funds to be managed by Village Owned Enterprises (BUMDes). Benyamin said the village funds obtained must be managed by utilizing the potentials that exist in the village in order to improve the economy of the people of Mata Air Village.

2. LITERATURE REVIEW

2.1. Community Empowerment

Empowerment is a concept that was born as part of the development of the mind of western society and culture, especially Europe, literally empowerment means "to give power or authority to act" which means to give power or transfer power and "to give ability to or enable" which is defined as an effort to give ability or empowerment. In line with the above, Prijono and Pranaka (1996:44-45) state that the concept of empowerment may be seen as part or soul of the currents in the second half of the 20th century which are now widely known as postmodernism, with an emphasis on attitudes and opinions whose orientation is anti-system, anti-structure and anti-determinism which is applied to the world of power. Meanwhile, Paul in his book on restructuring and organizational empowerment (Sedarmayanti, 2000:78) also states that empowerment means an equitable sharing of power so as to increase political awareness and power of weak groups and increase their influence on development processes and outcomes.

Empowerment is a strategy or a development paradigm that is implemented in community development activities, especially in developing countries. This empowerment arises because of the failure experienced in the process and implementation of development that tends to be centralized, such as community development or community development. This model does not provide direct opportunities for the people to be involved in a development process, especially in the decision-making process concerning the selection of officials, planning, implementation and evaluation of development programs.

As mentioned above, the notion of community empowerment actually refers to the word "empowerment" as an effort to actualize all the potentials possessed by the community. Kartasasmita (1996:3) states that community empowerment is a concept of economic development that encapsulates social values so that within that frame of mind, efforts to empower communities can be seen from three sides, namely:

d. Creating an atmosphere or climate that allows the community's potential to develop (enabling). Here the starting point is the recognition that every human being, society has potential that can be developed. That is, no society is completely without power. Empowerment is an effort to build that power, by encouraging, motivating and raising awareness of its potential and trying to develop it.

e. Strengthening the potential or power possessed by the community (empowering). This strengthening includes concrete steps and the provision of various inputs as well as opening access to various opportunities (opportunities) that will make the community more empowered. For this reason, it is necessary to have a special program for people who are less empowered, because general programs that apply to all, do not always reach this level of society.

f. Empowering also means protecting. In the process of empowerment, the weak must be prevented from becoming weaker, because they are less empowered in the face of the strong. Therefore, protection and siding with the weak are very basic in the concept of community empowerment. Protecting does not mean isolating or covering oneself from interaction. Protecting must be seen as an effort to prevent unequal competition and exploitation of the strong over the weak.

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Based on this opinion, it can be said that the empowerment strategy in community development is an effort made to improve and become independent and self-supporting of the community in accordance with the potential and local culture it has as a whole and comprehensively so that the dignity of the layers of society whose conditions are unable to escape from poverty. and retardation. Empowerment does not only include strengthening individual members of the community but the existing living institutions in society need to be empowered. Through this empowerment strategy, community participation in implementing development will increase. Thus, the scope of empowerment is not only increasing the capacity of individuals, but also groups and institutions that exist and grow in the community. Community empowerment does not make the community more dependent on various programs of giving.

Such an empowerment approach is expected to give roles to individuals not as objects but as actors who determine their own lives. This human-centered approach to community empowerment (people centered development) then underlies the insight of local resource management (community based resource development), which is a people centered development planning mechanism that emphasizes social learning technology (social learning) and program formulation strategies. Whatever the goal to be achieved is to increase the community's ability to actualize its capabilities (empowerment).

Mitchell (1995:45) explains that empowerment means removing the bureaucratic boundaries that compartmentalize people and making them use their skills, experience, energy and ambition as effectively as possible. This means allowing them to develop a sense of belonging to the parts of the process, especially their responsibility. While at the same time demanding that they accept a wider share of responsibility and ownership of the whole process.

Hikmat (2004:4) explains that the concept of empowerment in the discourse of community development is always associated with the concepts of independence, participation, networking and justice. Wahyono et al (2001:8) states that the community empowerment approach emphasizes the importance of self-reliant local communities as a system that organizes them.

People who are being empowered generally have limitations in developing themselves. Therefore, a companion is needed to guide them in an effort to improve their welfare. Assistance in the concept of empowerment is very essential and its function is to accompany the process of forming and administering community groups as facilitators, communicators or dynamists and to help find ways to solve problems that the community itself cannot do.

2.2 Disaster Management

According to Mardikanto (2014:202), there are six goals of community empowerment, namely:

g. Better institutions

The increase in activities/steps taken is expected to lead to institutional improvement, including the development of business partnership networks.

h. Business Improvement (Better Business)

Improvement of education (spirit of learning), improvement of business accessibility, activities and institutional improvement, are expected to improve the business being carried out.

i. Improved Income (Better Income)

With the improvement of the business carried out, it is hoped that it will be able to improve the income it earns, including family and community income.

j. Improvement Of The Environment (Better Environment)

Income improvement is expected to improve the environment (physical and social), because environmental damage is often caused by poverty or limited income.

k. Better Living

The level of income and improved environmental conditions are expected to improve the living conditions of every family and community.

l. Community Improvement (Better Community)

A better life, supported by a better (physical and social) environment, is expected to lead to a better community life.

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2.3 Village

In the General Indonesian Dictionary, it is stated that a village is (1) an area inhabited by a number of families that have their own government system (headed by the village head), (2) a group of houses outside the city which are a unitary village, hamlet, (3) backwoods or hamlet (in the sense of the interior or the opposite of the city), (4) place, land, area (Poerwadarminta, 2007: 286).

The village is one of the autonomous regions that is at the lowest level of the regional autonomy hierarchy in Indonesia, as stated by Nurcholis that, "the village is the lowest government unit". One form of village government affairs that is under the authority of the village is village financial management. Village finances are all village rights and obligations that can be valued in money, as well as everything in the form of money or goods that can be used as village property in connection with the implementation of rights and obligations (Hanif, 2011:81).

Villages based on the provisions of Article 1 point 1 of Law Number 6 of 2014 concerning Villages are defined as traditional villages and villages or what are called by other names, hereinafter referred to as villages, are legal community units that have territorial boundaries that are authorized to regulate and manage government affairs, the interests of the local community based on community initiatives, origin rights, and/or traditional rights that are recognized and respected in the government system of the Unitary State of the Republic of Indonesia.

Kartohadikoesoemo (1984:280) states that the village is a legal entity where a ruling community resides and the community holds its own government. While the definition of village according to Ndraha (1981:33) is the lowest unit of government organization, has certain territorial boundaries, is directly under the sub-district, and is a legal community unit that has the right to organize its household.

Handono (2005:132) states that the village is always associated with two main images, namely: (1) the village is sociologically seen as a community in a certain geographical unit which they know each other well with a relatively homogeneous life style and many depend directly on the community, so that most of the people are still very dependent on nature, and (2) villages are often identified with power organizations. Through this lens, the village is understood as a power organization that politically has certain authority in the structure of the state government.

Based on the definitions of the village above, the village has its own autonomy and territorial boundaries to regulate and manage the interests of the village community itself. With the enactment of Law Number 6 of 2014 concerning Villages, villages are required to be independent in carrying out their government affairs, especially in managing village finances. The source of village income that comes from village original income is a form of village independence in managing finances. Thus, the village is not dependent on transfers of funds from the local government or the central government.

Sukriono (2008:1) expressed his opinion that the lowest government unit in the State of Indonesia is the village. The concept of the village as a social entity is very diverse, namely according to the intent and point of view that will be used in viewing the village. The term village can be a concept without political meaning, but it can also mean a political position and at the same time the quality of the position against other parties or forces.

According to Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages, the village government consists of the village government and village consultative bodies. The village government consists of the village head and village officials. The village head has the task of carrying out government, development and community affairs.

Sukriono (2010: 189) defines village government as village heads and village officials as elements of village administration. This formulation is different from Law Number 5 of 1979, which states that the village government consists of the village head and Village Mediation Institution. Village Mediation Institutionis a kind of village representative body. However, because the village head leads the Village Mediation Institution, its position, role, function, and main tasks are not clear as an institution with legislative or executive functions. Law No. 22/1999 clearly distinguishes the roles of the village head and the Village Consultative Council. The village head is the implementer of the policy while the Village Consultative Council the policy-making and supervisory institution (village regulations). So, Village Consultative Council is an institution like the People's Representative Council in the village.

The village has its own government, which is called the village government. This village government is the implementation of government affairs by the village government and village consultative bodies in regulating and managing the interests of the local community based on local origins and customs that are recognized and respected in the system of the Government of the Unitary State of the Republic of Indonesia. The

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implementation of village government is a subsystem of the government administration system, so that the village has the authority to regulate and manage the interests of its people.

Article 18 of Law Number 6 of 2014 concerning Villages explains that village authority includes authority in the field of village administration, implementation of village development, village community development, and village community empowerment based on community initiatives, origin rights, and village customs. Furthermore, Article 19 explains "Village authorities include: authority based on origin rights; village-scale local authority; authority assigned by the government, provincial regional government, or district/city regional government". The implementation of authority based on the right of origin and local authority at the village scale as regulated and managed by the village. The implementation of the assigned authority and the implementation of other task authorities from the government, provincial regional government, or district/city regional government are managed by the village.

2.4 Village Fund

Based on Law Number 6 of 2016 concerning villages, villages are given the authority to regulate and manage their authority according to their needs. This means that village funds will be used to fund the overall village authority in accordance with the needs and priorities of the village funds. Village funds are funds sourced from the state revenue and expenditure budget intended for villages which are transferred through the district/city regional income and expenditure budgets and are used to finance government administration, development implementation, community development and community empowerment. The government budgets village funds nationally in the State Revenue and Expenditure Budget every year. Village funds are sourced from government spending by making village-based programs more effective and equitable (Saibani, 2014).

The Ministerial Regulation also stipulates that village funds are prioritized to finance the implementation of local village-scale programs and activities in the field of village development and village community empowerment. Priority for the use of village funds is based on the principles: first, justice by prioritizing the rights or interests of all villagers without discriminating, second, priority needs, by prioritizing village interests which are more urgent, more needed and directly related to the interests of the majority of village communities (Indrawati, 2017:4).

In order to realize orderly, transparent, accountable and quality management of village funds, the Government and districts/cities are given the authority to be able to impose sanctions in the form of delaying the distribution of village funds in the event that reports on the use of village funds are late/not submitted. In addition, the government and districts/cities can also impose sanctions in the form of reducing village funds, if the use of these funds is not in accordance with the priority of using village funds, general guidelines, technical guidelines for activities or there is money storage in the form of deposits for more than 2 (two) months. The budget allocation for village funds is set at 10% (ten percent).

The purpose of the village fund is based on Law no. 6 of 2014 concerning inner villages (Indrawati, 2017: 4), namely:

f. Improving public services in the village.

g. Eradicating poverty.

h. Promote rural economy.

i. Addressing the development gap between villages.

j. Strengthening the village community as the subject of development.

3. RESEARCH METHODOLOGY

The research method used in this research is descriptive research method with a qualitative approach. Descriptive method is a method of researching the status of a human group, an object, a condition, a thought or a class of events at the present time with the aim of making a systematic, factual and actual description, picture or painting of the facts, characteristics and the relationship between the phenomena investigated (Nasir, 2005:54). Sources of data in this study obtained through primary sources and secondary sources. At the initial stage, the informant was determined purposively and then determined by rolling and expanding (snowball sampling) to the next informant until data/information saturation was obtained. Data collection is done by triangulation technique. Triangulation technique is defined as a data collection technique that combines several data collection techniques and existing data sources, in this case, researchers use different data collection techniques to obtain data from the same source. Researchers used participatory observation, in-depth interviews

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and documentation for the same data source simultaneously (Sugiyono, 2012:241). The value of the data collection technique with triangulation is to find out the data obtained is convergent (extensive), inconsistent or contradictory. Therefore, with triangulation, it is hoped that the results obtained can be more consistent, complete and certain.

In analyzing the data, the data obtained by the researcher used the data analysis technique proposed by Creswell (2016). One of the reasons the author uses the Creswell data analysis method is because this data analysis technique can provide an overview and exploration of the data that is appropriate and relevant to the data collected. Creswell's data analysis technique is considered more detailed and well structured in compiling the data stages so that it can form a very comprehensive and in-depth discussion, besides that there is a visualization stage that presents the data. In this spiral data analysis technique, there are stages of data description, clarification and interpretation of data that can compose a comprehensive discussion. Because the explanations presented step by step in this method are explained in a concrete way and clearly what the author must do, of course this is the reason for the author to use the analytical technique described by Creswell.

The explanation of each data analysis step proposed by Creswell (2016:264-268) related to the terminology used by the researcher is as follows:

g. Researchers begin to process and prepare data for analysis. This step involves transcribing interviews, scanning material, typing field data or sorting and organizing the data into different types depending on the source of information.

h. The second step is to read the data as a whole. The first step is to build a general sense or information obtained and reflects on its overall meaning. At this stage sometimes the researcher writes small notes and makes memos (small notes) about the data that is considered important

i. The next step is to start coding all the data. Coding is the process of organizing data by collecting chunks (text or images) and writing categories within boundaries. The codes are grouped into three categories, namely:

4) Codes related to the main topic are already widely known by the general reader, based on previous literature and common sense.

5) Surprising and unexpected codes at the start of the study.

6) The codes are odd and have some conceptual interest for the reader.

j. Next, apply the coding process to describe the setting (field), people (participants), categories and themes to be analyzed. This description involves the delivery of detailed information about the person, location or event

k. The fifth step is for the researcher to describe the themes mentioned above and restate them in a qualitative narrative/report. This approach includes the chronology of events, themes (sub-themes, special illustrations, perspectives and quotes), relationships between themes, visuals, pictures or tables.

l. The last step is making interpretation (interpretation in qualitative research) or interpreting the data. This helps researchers uncover the essence of an idea. Interpretation can be in the form of meaning that becomes a comparison between research results and information from literature or theory. In this case, the researcher confirms whether the results of the study confirm or deny the previous information. The researcher describes how the final narrative results will be compared with general theories and literature.

4. RESEARCH RESULT

As mentioned earlier, community empowerment is basically a process of change towards a better condition, more empowered. This better condition of life can concretely be referred to as an increase in the standard of living of the community. Hikmat (2004:4) explains that the concept of empowerment in the discourse of community development is always associated with the concepts of independence, participation, networking and justice. Wahyono et al, 2001:8) states that the community empowerment approach emphasizes the importance of self-reliant local communities as a system that organizes them. In this process, synergy is needed from all

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elements of society to face changes in the direction of a better life. The changes referred to here are changes towards an increasingly mature society, responding to their needs and potentials.

The collective action that exists in the community must be sustainable and realized in the form of a pattern of joint activities that have been institutionalized, appreciated and become part of the community's activities that grow in the empowerment process. In other words, this activity will automatically increase community capacity at the micro level. This is further strengthened by the enactment of Law Number 6 of 2014 concerning Villages where villages are required to be independent in carrying out their government affairs, especially in managing village finances, one of which is village funds.

Village funds are prioritized to finance the implementation of local village-scale programs and activities in the field of village development and village community empowerment. Priority for the use of village funds is based on the principles: first, justice by prioritizing the rights or interests of all villagers without discriminating, second, priority needs, by prioritizing village interests which are more urgent, more needed and directly related to the interests of the majority of village communities (Indrawati, 2017:4). The government budgets village funds nationally in the APBN every year which comes from government spending by making village-based programs more effective and equitable (Saibani, 20145:4) with the aim of increasing community capacity through empowerment.

This community capacity building is also inseparable from the community's willingness to actively participate in every effort made. To mobilize community participation in village development, a special approach or pattern is needed to build public awareness that they actually have the potential and opportunity to be actively involved in the village development process. This is what the motivator, facilitator, and does, namely knowing the potential of the community, entering into village policy and entering into the local wisdom of the village community. With the enactment of Law Number 6 of 2014 concerning Villages, villages are required to be independent in carrying out their government affairs, especially in managing village finances. What it does is touch what the community needs. This is done to hear and find out what the needs of the people of Mata Air Village are.

One of the factors that influence the success of rural community development and development programs is community participation which not only involves the community in decision making in every development program, but also the community is involved in identifying problems and potentials that exist in the community. In the use and management of village funds, community involvement is very important so that its use and management can be targeted and the benefits are in accordance with the real interests of the community (Diatmika and Yuniart, 2020).

In response to this statement, the first step was to establish village discussion forums in each hamlet based on groups, ranging from children, youth, women, people with disabilities and the elderly. All of them are involved in discussions to hear the needs of each group. This forum is held in each hamlet with the aim that all communities can be actively involved in it which according to Mitchell (1995:45) that empowerment means removing bureaucratic boundaries that compartmentalize people and make them use them effectively maybe his skills, experience, energy and ambition. This means allowing them to develop a sense of belonging to the parts of the process, especially their responsibility. While at the same time demanding that they accept a wider share of responsibility and ownership of the whole process.

In order to invite the community to be involved in development, they must first develop their self-confidence. Wahyono et al, 2001:8) states that the community empowerment approach emphasizes the importance of self-reliant local communities as a system that organizes them. Make the community aware that in fact they are capable of participating in the process of development activities. When the awareness and confidence of the noble community grows and is given the space or opportunity to be involved in every process, the community feels belonging and valued.

For the disability group, the village government and the community agreed to use the village fund budget of Rp.135 million to build an Integrated Service Post for disability. This Integrated Service Post built and started operating in 2019 Residents who have physical limitations, he continued, have not received adequate health services, so his party presents the special Integrated Service Post facilities for disabilities. The Village Fund allocation for this Integrated Service Post is used to procure several assistive devices for people with disabilities such as wheelchairs, glasses, hearing aids and crutches. In collaboration with health workers from the Tarus Public Health Center, this Integrated Service Post provides health checks and supplementary feeding services for people with disabilities. This Village Fund is also set aside for urgent needs of people with disabilities if one day it is needed. In addition to services at the Integrated Service Post, the village government and the

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community also establish a compassionate care forum that routinely with health workers provides health services to people with disabilities who because of their circumstances cannot come to check their health at the Integrated Service Post.

The needs of each community group are different; therefore the approach used to capture each need must also be appropriate. The needs of children's groups are different again. Through these discussion groups they are familiarized and given space to express their needs. Likewise with other groups such as women's groups with the need for productive businesses such as making VCO, making snacks such as corn chips, sweet potatoes, cakes from local food to increase household income. Youth groups in Mata Air village, who do not yet have jobs need productive businesses such as barbershops, tire repairs and other businesses. Other groups of farmers have more needs. The need that they expressed in the discussion forum was to open a road in the rice field area so that they had access to transport their unshelled grain to be sold to the market.

The pattern of approach used by the village head in order to be able to capture the needs needed by the residents is that the proposals for the needs of the villagers are then brought to the Community-level Development Planning Deliberation and continued to the Village Development Planning Meeting. At the Village Development Planning Meeting stage, it is identified which activities are funded through community self-help, allocation of village funds or Village Funds. To meet the needs of the program proposed by these groups, allocation of village funds and the Village Fund finance it. Village development through community empowerment also raises awareness of the potential, both in terms of human resources and natural resources. Other potentials of the Mata Air village found in the village discussions identified that the spring village has potential in the fields of agriculture and tourism that can increase economic growth and the welfare of the village community. This approach needs to be taken because the Government has a big role in building the country's economy, especially to build the local economy for villagers (Matridi et al, 2019).

In addition, there is a Village-Owned Enterprise with the name Ina Huk taken from the Timorese vocabulary, which means One Mother. So it is hoped that this Village-Owned Enterprise will become the "mother" for the people of the Mata Air village. The agricultural sector unit of this Village-Owned Enterprise is engaged in the provision of fertilizers, medicines and the provision of animal feed and fish feed. Businesses in the tourism sector are developed Sulamanda beach object as mainstay tourism. Since 2017 until now, the Mata Air Village Government has disbursed funds from the Village Fund of more than IDR 200 million as capital participation in the Ina Huk Village Owned Enterprise for the management of the two potential villages. Used to build various facilities at Sulamanda beach resorts such as residents' stalls, toilets, trashcans, photo spots, and others.

Other income sourced from this tourist attraction is toilet rental of IDR. 2000 one-time use and vehicle parking fees, namely for motorbikes, the tariff is IDR. 2000 and for cars, the tariff is IDR. 5000. Other income comes from the rental of *lopo* by groups of visitors. The results of this parking income are deposited into the village treasury as Village Original Income. Village officials to manage parking at the tourist attraction gave the youth group. In addition, there are several cafes managed by the Mata Air youth group.

Another business development of Ina Huk Village-Owned Enterprises is from the agricultural sector, which is able to become a rice barn for the people of Mata Air Village. With good irrigation arrangements, the people of Mata Air village harvest rice 2 times a year. The village community's harvest is also purchased by the Village-Owned Enterprises at a price of IDR. 10,000/kg of grain.

From what has been described above, it can be seen that this participatory pattern is able to foster self-confidence from the community and make the community aware of the capacity they have in developing villages. This is necessary because the village government has a considerable responsibility in managing human resources to generate regional economic benefits (Zeho et al, 2020). This finding is in line with the findings of Bere et al (2020) that the village community is already quite actively involved from the decision-making stage to enjoying the results.

In a participatory manner, the community is formed in groups to provide their own courage to express opinions and play a role in the decision-making process. Because to become a person or group of people who are empowered/have power other than money, knowledge, and the group also has an important role. A group of people will give power and that power will give power to that person or group.

Another approach used by the head of Mata Air Village in the community development process is to build networks with other parties such as the Bengkel Appek NGO and the Rumah Perempuan NGO in terms of institutional strengthening, in collaboration with universities (Nusa Cendana University and Kupang State Agricultural Polytechnic) in in terms of freshwater fish cultivation and the National Population and Family

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Planning Agency in terms of education for healthy and prosperous families and the networks built personally by the village head. Networking with other parties is very helpful in increasing the capacity of groups and individuals who want progress. In addition, by building a network can help individuals in developing group effectiveness in finding new ideas.

By building networks with other parties, the community will not only benefit from the economic aspect, but also from other social aspects. Networking with other parties also actually reduces the financial costs that must be incurred by the group. It is because the social network that is built can reduce the cost of paying for experts. One of the advantages of networking is that it triggers the community to foster a sense of solidarity between them. The network built in community empowerment not only brings financial benefits but also social benefits such as the growing sense of solidarity among village communities.

In a theoretical framework, the people of Mata Air village have proven that this step will help individuals to gain knowledge, understanding, and strength to avoid apathy. This step was taken because there is no standard formula for mobilizing participation from where to start. If this step is the initial phase, then the mobilization of community participation will be slow and can develop according to the process. This is due to individual differences that affect the mobilization process for community participation. The differences in question include differences in knowledge, differences in attitudes, and differences in behavior. Departing from the existing differences, the government can try to create a community forum so that existing differences can be resolved through deliberation and consensus. The public space (community forum) which is formed based on the needs of the community based on the results of identification through this social group has its own charm for the community, so that the community can participate without realizing it because the essence of empowerment is an equitable sharing of power.

Based on this opinion, it can be said that the empowerment strategy in community development is an effort made to improve and become independent and self-supporting of the community in accordance with the potential and local culture it has as a whole and comprehensively so that the dignity of the layers of society whose conditions are unable to escape from poverty and retardation. Empowerment does not only include strengthening individual members of the community but the existing living institutions in society need to be empowered. Through this empowerment strategy, community participation in implementing development will increase. Thus, the scope of empowerment is not only increasing the capacity of individuals, but also groups and institutions that exist and grow in the community. Community empowerment does not make the community more dependent on various giving programs.

5. CONCLUSION

Based on the analysis and discussion previously discussed, it can be concluded that 1). The benefits of the village fund are prioritized to finance development and community empowerment in order to improve the welfare of rural communities, the quality of human life, as well as poverty alleviation, as outlined in the Village Government Work Plan, 2). Participatory collective action that exists in the community must be sustainable and realized in the form of a pattern of joint activities that have been institutionalized, appreciated and become part of community activities that grow in the empowerment process. In other words, this activity will automatically increase community capacity at the micro level and 3). Networking with other parties is very helpful in increasing the capacity of groups and individuals who want progress. In addition, by building a network can help individuals in developing group effectiveness in finding new ideas.

Suggestions that can be given based on the findings and conclusions of the study are 1) For the Mata Air Village government to further explore and utilize the untapped potential of the village such as the potential for ecotourism so that more and more community groups are involved in the village development process, 2). To the Mata Air Village Community, the habit of discussing and building networks in groups that have been formed should be maintained and improved so that more groups are formed and 3). The sub-district and district governments should pay more attention to some of the development issues that exist in Mata Air Village, especially those related to community development.

LIMITATION AND STUDY FORWARD

The limitation of this research is that this research must be carried out during the Covid-19 pandemic so that researchers can only meet a limited number of people in order to maintain the applicable health protocols. For further researchers, it is recommended to explore further about the broad use of village funds so that it can be seen in detail how village residents use village funds for the common good.

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POLICY STUDY ON THE USE OF NTT MOTIF WEAVING UNIFORMS IN THE SCOPE OF THE EAST NUSA TENGGARA PROVINCIAL GOVERNMENT TOWARDS MULTICULTURALISM AWARENESS IN THE BUREAUCRACY

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ABSTRACT
The policy that regulates the use of the latest national ASN uniform is regulated in the Minister of Home Affairs Regulation Number 11 of 202 concerning State Civil Apparatus Service Clothing in the Ministry of Home Affairs and Regional Government. The multicultural policies above are then passed down at the regional level. The Province of NTT regulates it in the Regulation of the Governor of NTT Number 12 of 2016 concerning Clothing for State Civil Apparatus Employees in the Government of the Province of East Nusa Tenggara. The purpose of the policy on the use of the ikat sarong in NTT is to preserve cultural values, as well as to encourage tourism promotion and regional economic growth through the community craft industry. This study uses a qualitative approach and is located in several Regional Apparatus Organizations (OPD) within the scope of the NTT Provincial Government with Informants are sall ASN are policy implementers, but only a few who meet the criteria of informants will be selected. Data collection techniques and procedures in this study were interviews, observation and documentation. Activities in data analysis use the theory of Milles and Huberman, 1984 in Sugiyono, (2014: 335).

The results showed that By acknowledging the existence of all ethnic groups in NTT, respecting them, and appreciating the differences between each ethnic group, ASN within the NTT Provincial Government has created a passive representation of multiculturalism. This policy has proven to be able to give birth to a sense of pride in NTT as a unit, building inter-ethnic communication which previously tended to be rigid and lame because of a very high ethnic ego. In addition, this policy is also able to arouse a sense of brotherhood between ethnic groups because each ASN wears a uniform woven with motifs from different ethnicities so that they are able to accept and establish good relations and cooperation with all ethnic groups in NTT. The process of bringing awareness of multiculturalism continues so that the results can be sustainable and collective.

Keywords: Policy, Ethnic, Weaving and Motive

1. PRELIMINARY

Indonesia is a multicultural country that was born and formed based on an awareness of pluralism, of differences that do not destroy but unite. The plurality and heterogeneity reflected in Indonesian society are united in the motto Bhineka Tunggal Ika, which is different but still one. According to Nasikun (2007:33) that the plurality of Indonesian society can be seen at least from its two unique characteristics, first horizontally, it is marked by the fact that there are social units based on differences in ethnicity, religion, customs, as well as regional differences and secondly by vertical is marked by the vertical differences between the upper and lower layers which are quite sharp. So that in addition to uniting, Indonesia's pluralism can also be a threat to the Indonesian nation, because pluralism can be a source and potential for conflict that can disrupt and even threaten the unity and integrity of the nation. Globalization and friction conflicts that occur between ethnic, cultural, religious, social, political and economic conflicts often occur. Therefore, this threat needs to be managed as well as possible. One of them is by building awareness of multiculturalism in the social order. . The government's role is important in producing this policy. This policy is expected to be able to increase love and respect for the nation and appreciate the differences that are part of the Indonesian nation. This threat needs to be managed properly. One of them is by building awareness of multiculturalism in the social order. . The government's role is important in producing this policy. This policy is expected to be able to increase love and respect for the nation and appreciate the differences that are part of the Indonesian nation. This threat needs to be managed properly. One of them is by building awareness of multiculturalism in the social order. . The government's role is important in producing this policy. This policy is expected to be able to increase love and respect for the nation and appreciate the differences that are part of the Indonesian nation.

The multicultural policy is part of the national policy initiated by the government since the 1970s. The Ministry of Religion in 1970 had made a multicultural policy with the aim of realizing harmony in the midst of existing differences. The purpose of this policy is to build multicultural awareness, which is the ability to recognize cultural differences and similarities and the ability to view differences as diversity. The fifth Governor of NTT from 1993 to 1998, Major General TNI (Ret.) Herman Musakabe, was the originator of the initial policy of

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using NTT motif weaving as the uniform of the State Civil Apparatus (ASN) or better known at that time as the woven motif uniform which must be used by ASN every year. Thursday and Friday.

The policy that regulates the use of the latest national ASN uniform is regulated in the Minister of Home Affairs Regulation Number 11 of 202 concerning State Civil Apparatus Service Clothing in the Ministry of Home Affairs and Regional Government. Article 4 mentions the types of Daily Service Clothing (PDH) in the form of batik/weaving/striated or regional specialties. This regulation also states that the criteria for ASN official attire are not only simple, comfortable to wear, harmonious, polite and humanistic model designs must also be able to support the smooth implementation of tasks and functions, pay attention to gender, prioritize domestic production, encourage national strengthening and strengthen the nation's culture.

The policy objective of using the ikat sarong in NTT is to preserve cultural values, and to encourage tourism promotion and regional economic growth through the community craft industry. This goal is in line with the mission of the NTT Provincial RPJMD for the 2018-2023 period. Regional autonomy requires each region to prepare a development plan that is tailored to the potential and needs of each. Therefore the Regional Medium-Term Development Plan (RPJMD) which is a regional planning document for 5 years containing official guidelines for the Regional Government, DPRD, private sector and community in carrying out development, for the 2018-2023 period is regulated in the Regional Regulation of the Province of East Nusa Tenggara Number 4 year 2019.

Based on the description of the problem above, the authors are interested in focusing the research on "Study of Policy on the Use of Uniform Weaving Motifs of NTT in the Scope of the Government of East Nusa Tenggara Province Towards Awareness of Multiculturalism in the Bureaucracy".

2. LITERATURE REVIEW

a. Public policy

Public policy is described by Robert Eyestone in The Threads of Public Policy (1971:18) briefly and broadly as "…the relationship of governmental unit to its environment." Thomas Dye (1992: 2) describes public policy as "…what governments do, why they do it, and whats difference it makes." It can be concluded that public policy is work carried out by the government with the aim of solving problems, increasing human resources or whatever that is then able to produce something. This definition is too broad according to Subarsono (2016: 2) because it also explains that policy includes all government choices to implement or not to implement.

James E. Anderson (1979:3) defines public policy as a policy set by government agencies or apparatus. However, it is realized in reality that public policy can be influenced by actors and factors from outside the government. David Easton explains in depth that when the government makes public policies, at the same time the government allocates values to the community, because every policy contains a set of values in it (In Dye, 1981).

In line with David Easton, Harrold Lasswell and Abraham Kaplan argue that public policy should contain goals, values, and social practices that exist in society (In Dye, 1981). This means that public policies must not conflict with the values and social practices that exist in society. When public policy contains values that are contrary to the values that live in society, then the public policy will get resistance when implemented (Subarsono, 2016: 3).

Many problems, symptoms, or phenomena that exist in society are tried to be resolved through policy. Some have succeeded but many have failed. There are parties who agree that the right public policy is able to overcome all problems, symptoms and phenomena that occur in society, but there are even those who are apathetic towards public policies which they consider more beneficial to certain parties. There are several considerations in studying public policy, namely the first is scientific considerations (scientific reasons) which according to James E. Anderson (1990), Thomas Dye (1992) and Moran, Rein, & Goodin (2006) in Agustino (2017: 3) study policies in order to gain more in-depth knowledge of the "policy process". The second is professional considerations (professional reasons) described by Don K. Price (1965, in Agustino 2017:4) as a further step from scientific considerations. According to him, the scientific considerations used in studying public policy are quite important, but it is not wise to just study and stop at the enrichment of knowledge. Problems, symptoms, or phenomena whose root causes are known, must be taken immediately to resolve them. Third, political reasons explain that public policies are studied so that every law and regulation produced by political decisions can be appropriate to achieve the targeted goals (Agustino, 2017:5). According to him, the scientific considerations used in studying public policy are quite important, but it is not wise to just study and stop at the enrichment of knowledge. Problems, symptoms, or phenomena whose root causes are known, must be taken immediately to resolve them. Third, political reasons explain that public policies are studied so that

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Analytical activities in public policy are basically open to the participation of other disciplines. Therefore, in public policy, there will be a picture of the synthesis of various disciplines in one package of togetherness. Based on the public policy approach, it will be integrated between practical reality and theoretical views together (Anggara, 2018:13).

3.2 Policy on the Use of Motif Weaving Uniforms in NTT

Meaning (2018:12-13) explains more specifically about the relationship between administrative science and anthropology which studies human behavior in society, including cultural differences that exist within nations and also between nations. How we behave is a function of our culture and this is a contribution to the field of administration. Anthropology gives consideration in making public policy. The government will know more about the cultural life of the local people, so that the development policies that are rolled out will be more accurately targeted.

The policy on the use of NTT motif woven uniforms was initiated by the fifth Governor of NTT from 1993 to 1998, namely Major General TNI (Ret.) Herman Musakabe. The use of NTT motif weaving as a Civil Servant (PNS) uniform or better known at that time as the woven motif uniform must be used by PNS every Thursday and Friday. This policy had a wide impact nationally because it was followed by other provinces which used their respective traditional cloths as ASN uniforms.

The use of traditional cloth in each region is then regulated in national policy. The policy that regulates the use of the latest national ASN uniform is regulated in the Minister of Home Affairs Regulation Number 11 of 2020 concerning State Civil Apparatus Service Clothing in the Ministry of Home Affairs and Regional Government. Article 4 mentions the types of Daily Service Clothing (PDH) in the form of batik/weaving/striated or regional specialties.

In NTT this policy is regulated in several policies, namely:

4. Regulation of the Governor of NTT Number 12 of 2016 concerning Clothing for State Civil Apparatus Employees within the Government of the Province of East Nusa Tenggara;
5. Circular Letter Number BO.065/24.a/III/2019 concerning the Use of Sarong Ikat Ikat Clothing in the East Nusa Tenggara Region for State Civil Apparatus (ASN) Employees in the East Nusa Tenggara Provincial Government;
6. Circular Letter Number 025/30/BO2.1 concerning Amendments to Circular Letter Number BO.065/24.a/III/2019 concerning the Use of Sarong Ikat Motifs in the East Nusa Tenggara Region for State Civil Apparatus (ASN) Employees in the Provincial Government East Nusa Tenggara.

These policies regulate the use of woven uniforms with NTT motifs, whether used as uniforms used on Thursdays or used in their entirety (not sewn) every Tuesday and Friday. This policy is limited to ASN within the NTT Provincial Government, but almost all districts/cities in NTT also regulate the use of motif weaving uniforms in their regional policies.

NTT motif weaving itself is very well known at the national and even international level. This fabric is known for its attractive and varied colors and motifs. Jes A. Therik in his book entitled Woven Speech: The Language of Decorated Textiles in Southeastern Indonesia (2018: 13) explains that:

"…traditional woven fabrics reflect, and derive meaning from, the culture and society within which the weavers create their fabrics. These works originate from a complete immersion in the culture of the ethnic group, especially in its religious outlook. Textile images give life tribal religions and beliefs, which may differ from place to place. These ornaments often have multiple meanings—or contain meanings that are difficult to express verbally or analyze rationally, even by the weavers, themselves."

The weaving of traditional motifs reflects and explains the meaning of the culture and society in which the cloth is woven. These works were born from the perfect blending of certain tribal cultures, especially their religious views. The images on the weaving motifs bring to life the religions and beliefs of different tribes in each place.

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These images have many meanings that are difficult to express verbally and difficult to analyze rationally even by the weavers themselves. This is what makes NTT motif weaving very rich in colors and motifs.

This is also explained by Van Peursen (2005: 10) that culture is a sediment of human activities and works. As the 'sediment' of human activities and creations, of course, culture at least also presents humans as creators. One of the cultural products is motif weaving. Leuape in his journal entitled Dialetics of Ethnographic Communication Emik-Emik on Woven Fabrics (2017) explains that woven cloth is more than just a function of clothing, namely as a representation of its symbolic meaning, including its visual appearance. Weaving as clothing can actually be used as a 'social skin and human culture'. Because the weaving of the NTT motif is a symbol of the social and cultural life of the NTT people, the policy of using this patterned weaving uniform was born.

3. METHOD

This study uses a methodology with a qualitative approach. The location of this research is atseveral Regional Apparatus Organizations (OPD) within the scope of the NTT Provincial Government, namely; Organization Bureau; Department of Education and Culture; Department of Tourism and Creative Economy; Department of Industry and Commerce; Regional Development Planning, Research and Development Agency; Regional Human Resources Development Agency; Regional Civil Service Agency. Informants in this study came fromWithin the scope of the NTT Provincial Government, there are 39 OPDs with a total of 14,381 ASN people (data as of December 2020). All ASN are policy implementers, but only a few who meet the criteria of informants will be selected. Data collection techniques and procedures in this study were interviews, observation and documentation. Activities in data analysis using the theory of Milles and Huberman, 1984 in Sugiyono, (2014: 335) stages of data collection, data reduction, data display and conclusion drawing/verification (in Sugiyono, 2014: 335), namelyData Collection (Data Collection), Analyzing Data (Data Reduction), Presentation of Data (Data Display), Drawing Conclusions and Verification (Conclusion Drawing/Verification).Validity testing is based on the certainty of whether the research results are accurate from the point of view of researchers, participants or readers in general (Sugiyono, 2014:121) including; Trust (Credibility), Transferability (Transferability), Dependence (Depenability), Certainty (Confirmability).

4. RESULTS AND DISCUSSION

The results of the research will be presented based on indicators (1) recognition of abundant cultural diversity, namely when the ASN knows thoroughly and completely about the various ethnic groups in NTT; (2) respecting differences, namely when ASN considers that all ethnic groups in NTT have similarities and differences which are the characteristics of each ethnic group; (3) acknowledging, namely when ASN is able to give equal appreciation to all ethnicities and provide space for each to carry out their own habits or characteristics without any protests or restrictions; (4) empowering (empowering), namely when ASN with its authority in the bureaucracy also supports the development of ethnic groups with development programs or through their duties and functions within the bureaucracy in the form of formulating a vision, mission and other public policies; and (5) celebrating (celebrating) differences to create unity, when ASN is able to work together with other ethnic groups in decision-making forums or other public forums in order to formulate development programs with respect and tolerance. If indicators 1, 2, and 3 are met, a passive representation of multiculturalism is achieved. Meanwhile, if indicators 4 and 5 are met, the representation of multiculturalism is actively achieved. when ASN is able to work together with other ethnic groups in decision-making forums or other public forums in order to formulate development programs with respect and tolerance. If indicators 1, 2, and 3 are met, a passive representation of multiculturalism is achieved. Meanwhile, if indicators 4 and 5 are met, the representation of multiculturalism is actively achieved. when ASN is able to work together with other ethnic groups in decision-making forums or other public forums in order to formulate development programs with respect and tolerance. If indicators 1, 2, and 3 are met, a passive representation of multiculturalism is achieved. Meanwhile, if indicators 4 and 5 are met, the representation of multiculturalism is actively achieved.

6. RECOGNITION

In this indicator, the measure used is that the ASN knows and is able to distinguish the woven uniforms of the NTT motif based on the ethnic origin of the fabric. This knowledge includes the introduction of motifs and colors, the distribution of motif weaving types based on gender and level of custom, the use of motif weaving based on needs such as special events, mourning, proposals, and others as well as how to use them. In addition, knowledge about the weaving of NTT motifs is explored more deeply in the philosophical story behind the motifs and colors in weaving.

Abundant cultural diversity is when ASN knows thoroughly and completely about the various ethnic groups that exist in NTT where the results show that 20% of ASN have knowledge and are able to distinguish "all"

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NTT motif weaving according to ethnic origin and fall into the "Very Good" criteria. . This percentage is an accumulation of 21% of ASN originating from NTT and 14% of ASN originating from outside NTT. 49% of ASN that fall into the "Good" criteria consist of 57% of ASN from NTT and 14% of ASN from outside NTT. They know and are able to distinguish “most” of NTT motif weaving according to ethnic origin.

The next criterion is "Enough" where ASN knows and is able to distinguish "a small part" of NTT motif weaving according to ethnic origin. ASN according to this criteria is 29% with 21% ASN from NTT and 57% ASN from outside NTT. 3% of ASNs who only know and are able to distinguish motif weaving from their ethnic origin and where they are domiciled are ASNs from outside NTT as much as 14%.

From the percentages and information above, it can be concluded that most ASN (49%) know and are able to distinguish most of the weaving motifs according to ethnic origin, from Flores, Sumba, Timor, Alor, Rote and Sabu. As many as 29% of ASN only know about weaving motifs from a small number of ethnic groups in NTT and most of them are ASN from outside NTT. This shows that by implementing this policy, ASN who are not from NTT are finally able to recognize the weaving of NTT motifs as an invaluable wealth and heritage of their ancestors. In fact, there are 14% of non-NTT civil servants who know and know comprehensively about NTT motif weaving from all ethnicities.

However, the knowledge possessed by ASN is still limited to the introduction of motifs and colors, the distribution of motif weaving types based on gender and level of custom, the use of motif weaving based on needs such as special events, mourning, proposals, and others and how to use them, while knowledge of philosophical stories in behind the motifs and colors in weaving is still very low because only 11% or 4 ASN have knowledge of the philosophical story of motifs and colors from certain ethnicities. This is due to the field of work carried out and interest in NTT motif weaving.

Carla Fernandez Duran and Lorena Pacheco say that multiculturalism begins with the recognition of the right to be different and from respect for cultural diversity. It is limited to the coexistence of diverse cultures sharing the same space and time and, to some extent, expecting that harmony will grow from the acceptance of the other. Multiculturalism is a situation where all different cultural or racial groups in a society have the same rights and opportunities, and no one is ignored or considered unimportant (in Bakry, 2020:5).

Based on the theory and research results showing that recognition of diversity has been carried out well in ASN within the scope of the NTT Provincial Government, as well as comparisons with other journal references, the researcher concludes that the indicators of recognition of diversity have been met. This recognition of diversity is the beginning of the birth of awareness of multiculturalism in a community or organization, including in the bureaucracy. The aspects in diversity are many but with time, this process will work out well. With this acknowledgment, an attitude of acceptance of one another between ethnic groups will be born which is able to generate collective multicultural awareness within the bureaucracy, especially within the scope of the NTT Provincial Government.

7. **RESPECT DIFFERENCES**,

In this indicator, the size used is that ASN wears a woven uniform with a NTT motif according to gender and the origin of the motif, which of course has its own characteristics. With the knowledge they have, ASN wears the NTT motif woven uniform according to their knowledge. Each ethnic group in NTT has similarities and differences in the way of use which is the hallmark of each ethnic group. The correct use includes the selection of motifs and colors, gender and level of custom, needs such as special events, mourning, proposals, and others.

From the explanation of the research results and observations at the research location, it can be said that more than half of the ASN in the NTT Provincial Government have been able to respect the ethnic groups in NTT. This result is also explained by Gregor Neonbasu (2020:292) that multiculturalism develops in tune with people's concerns (researchers, analysts) for complete respect or attention to minority groups and recognition of socio-cultural diversity in multidimensional human life. Although NTT does not have an ethnic majority and a minority, an attitude of respect or respect still needs to be fostered in the multidimensional diversity of NTT, including multi-ethnicity.

The attitude of respecting diversity, especially local culture, was also explained by a previous journal entitled The Challenge of Multiculturalism in Development by Irwan Abdullah (2006) that the effort to find a national culture has become a futile effort which has caused us to deny local culture. National culture is by no means the pinnacle of regional culture, it must be a natural synthesis of regional culture. Respecting culture means respecting the ethnicity from which the culture originates. The use of woven uniforms with NTT motifs from various ethnic groups in NTT is a natural synthesis that forms the awareness of multiculturalism in NTT.

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Based on the results of the study and based on theories and other journal references, the researchers conclude that the indicators of respect for diversity have been met. Respect for diversity goes hand in hand with the birth of collective multiculturalism awareness in a multidimensional community or organization including in the bureaucracy, especially in the scope of the NTT Provincial Government.

8. **APPRECIATE (ACKNOWLEDGMENT)**

In this indicator, the measure used is that ASN is able to give equal appreciation to all ethnicities by means of not only wearing NTT motif woven uniforms that come from their own ethnic origin, but also wearing NTT motif woven uniforms from other ethnicities without any protests or restrictions. ASN does not limit each other in the use of woven uniforms with NTT motifs from any ethnicity. This means that ASN who come from Timorese ethnicity, not only have NTT motif woven uniforms from Timor, but also NTT motif woven uniforms from other ethnic groups such as Flores, Sumba, Alor, Rote, and also from the Sabu ethnicity.

At this stage, ASN learns to work together with other ethnic groups (learn to live together). In addition, when an ASN of Timorese ethnicity uses a woven uniform with a Sumba motif, he of course indirectly becomes a Sumbanese. Likewise, when ASN of Alor ethnicity wear Rote motif woven uniforms, they indirectly become Rote people. This is a process of learning to be or positioning yourself in the position of ASN with different ethnicities.

The results of research related to this indicator can be presented in the following table:

TABLE 1.1 USE OF NTT MOTIF WOVEN UNIFORM BY ETHNIC ORIGIN

ASN	% SERAGAM KAIN TENUN						Jumlah ASN
	Flores	Sumba	Timor	Alor	Rote	Sabu	
Flores		90	100	60	60	50	10
Sumba	100		100	67	100	100	3
Timor	100	100		57	57	57	7
Alor	100	100	100		0	100	1
Rote	100	60	100	20		100	5
Sabu	100	100	100	100	100		2
Non NTT	100	100	100	43	86	100	7
Rata-rata	84						35

Source: Research data (2021)

The motivation to choose NTT motif weaving used as a uniform is because of a sense of pride in NTT motif weaving as much as 46%, taste or liking for fabric colors, motifs and also the quality of NTT motif weaving (fashion) as much as 20%, as many as 14% choose motif weaving because affordable prices and available in the market, 6% chose it because there was an element of proximity to motif weaving (domicile/marriage marriage), and the remaining 3% chose cloth because of the regulations that required it. The results of this study prove that 97% of the motivation to use NTT's woven uniforms from other ethnicities is without coercion but on personal choice. This shows a balanced attitude of respect for all ethnic groups in NTT.

Gina Lestari in her journal Bhinneka Tunggal Ika: Indonesia's Multicultural Treasures in the midst of SARA's Life explains that diversity is a gift from God that cannot be separated from the challenges that often arise in people's lives. Responding to differences with intolerance, distinguishing differences, contradicting other people who are not the same as him, and even committing acts of violence that trigger mass conflict. This is very vulnerable to occur in Indonesian society (2015). This is also vulnerable to occur, especially in NTT with its abundant diversity.

So with a percentage of 84% who have NTT motif woven uniforms from other ethnic groups from Flores, Sumba, Timor, Alor, Rote and Sabu and 97% of ASN use it without any restrictions or coercion and purely on personal motivation, it can be interpreted that most ASN already have an attitude of respect for other ethnicities with all the similarities and differences without anyone being superior or inferior to one another. By being able to appreciate cultural differences, the researcher concludes that the indicators of acknowledgment in the bureaucracy within the Provincial Government have been very well fulfilled. ASN has a collective awareness of multiculturalism in the bureaucracy within the NTT Provincial Government.

9. **Empowering**

In this indicator, the measure used is that ASN with its authority in the bureaucracy also supports the preservation and development of culture, including the weaving culture of NTT motifs with development

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programs or through their duties and functions within the bureaucracy in the form of formulating a vision, mission and other public policies. Research on this indicator is prioritized on informants who are echelon as policy makers, namely the Head of the Office/Agency or the Secretary of the Service/Agency. The results show that all informants make policies, in the form of development programs and activities in accordance with their duties and functions in accordance with regional and national development policies. Thoha (2002) explains that our bureaucracy is a Pancasila bureaucracy where the style and behavior is Pancasila inspired. In the fifth (fifth) precept,

Development programs and activities are based on national and regional development agendas. The development of tourism and all its supporting sectors is one of the development agendas in the 2019-2023 NTT Provincial RPJMD (prime mover) so that each sector does its part in supporting this development agenda. The purpose of this policy is to preserve cultural values, encourage tourism promotion and regional economic growth through the community craft industry.

This policy on the use of NTT motif woven uniforms supports the achievement of 4 (four) of the 5 (five) development agendas in the 2018-2023 period. Empowerment carried out through programs and activities that support so that all ethnicities can have equal and balanced opportunities in development occurs not because of personal intentions or motivation but is the impact of carrying out duties and functions within the bureaucracy.

According to Weber, the Father of World Bureaucracy, in the bureaucracy authority is said to exist when obedience is given on the basis of belief in the legitimacy or validity of the order. In the government system, where the relation with the rules is a fixed price that must be obeyed by all bureaucrats in the administration of public services (Weber, 1947). RPJMD is an order made in binding rules so that it must be obeyed and implemented by ASN as development actors (bureaucrats) in the organization. Rewansyah (2010) also explained that the reforms carried out in the bureaucracy aimed at building public trust and eliminating the negative image of the government bureaucracy by forming a proportional state apparatus.

In line with that, Peters in Bureaucracy and Democracy (2010) also expresses his opinion regarding the bureaucracy that public bureaucracy is needed for the administration of public programs, but does not pay too much attention to the individual needs of the community. In addition to its hierarchical and authoritarian nature, the bureaucracy is expected to be able to guarantee fair or equal treatment of citizens. On the other hand, the bureaucracy is considered responsive to public wishes and seeks to map priorities that have a positive impact on citizens (2010).

On the other hand, the researcher found that the policy on the use of NTT motif woven uniforms that had been running so far, with 2 (two) modification models described in the policy description, it can be concluded that leadership plays a major role in the success or failure of this policy in creating awareness of multiculturalism. in the bureaucracy. This policy was carried out in phase I where the leadership was held by military forces so that control and command were carried out with firmness and personal motivation or personal choice did not exist at all. In phase II, this policy is designed a little differently by not eliminating the previous model but motivation and choices are provided as long as they are used correctly.

In phase I, the policy on the use of NTT motif woven uniforms is still material, namely the policy described by Anderson (1990:15) as "…either provide concrete resources and substantive power to their beneficiaries or impose real disadvantages on those adversely affected". In other words, material policy is a policy that provides tangible material sources for those who are entitled to receive it, such as policies related to the regulation of the use of motif weaving uniforms for all ASN in the scope of the NTT Provincial Government in order to increase the production and income of weavers, tailors, and craftsmen. fabric collectors and entrepreneurs who sell woven fabrics either individually or in groups.

Weaknesses in the policies of the previous period were observed by the phase II leadership. The reason, as explained earlier, is that 1 sheet of woven fabric can be sewn into 1 or more pieces of work clothes because it can be modified with other types of fabric so that the expenditure on woven fabrics is not so significant. The introduction of the fabric motif is not very clear because it has been modified with a different type of fabric. In addition, the use of woven cloth uniforms in the form of sarongs is used as the way of wearing inherited by ancestors that needs to be passed on by NTT people. The use of woven cloth uniforms in the form of sarongs 2 times a week has an impact on increasing woven cloth purchases because they cannot be modified.

This policy in phase II does not just stop as a material policy but becomes a symbolic policy. Symbolic wisdom is more about respecting certain values than giving in tangible forms. For example, the public housing policy is a material policy formulated by the government with the aim of creating national integration (a symbolic

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policy). Therefore, material and symbolic policies must be seen as a continuum (Agustino, 2017: 23).

The way of wearing or wearing a woven cloth uniform with a sarong model, in addition to increasing the income of weaving craftsmen, also preserves the culture handed down by ancestors in the form of colors, motifs, and stories of each woven cloth used. This is also explained by Peursen (2005:10) that culture is a sediment of human activities and works. As the 'sediment' of human activities and creations, of course, culture at least also presents humans as creators. One of the cultural products is woven cloth.

Leuape in his journal entitled Dialetics of Ethnographic Communication Emik-Emik on Woven Fabrics (2017) explains that woven cloth is more than just a function of clothing, namely as a representation of its symbolic meaning, including its visual appearance. Weaving as clothing can actually be used as a 'social skin and human culture'. NTT woven cloth is a symbol of the social and cultural life of the NTT community so that the policy on the use of woven cloth uniforms is developed to be more varied by using it as a sarong and shirt for 3 (three) days in 1 week.

Dunn (2003:237) explains that the practical weakness of the symbolic model is that the results may not be easy to interpret, even among specialists, because the assumptions may not be adequately stated. Based on the results of the research, most of the informants are trapped in the material paradigm of policy and have not looked deeper into the symbolic meaning of this policy. The value to be built, from the diversity of NTT, this policy leads ASN to an awareness of multiculturalism indirectly.

Judging from the RPJMD development agenda for the 2018-2023 period, which is a policy that 4 (four) of the 5 (five) agendas support the growth and development of NTT motif weaving from various aspects and automatically the success of the policy on the use of motif weaving uniforms by empowering all existing resources in order development of local culture, this proves that the leadership owned by NTT is a leader who has high multicultural awareness so that he is sensitive and able to formulate a development agenda that prioritizes the management of diversity in NTT and protects it from the influence of globalization.

10. **Celebrate (celebrate)**

In this indicator, the measure used is that ASN is able to process differences to create unity, is able to cooperate with ASN from other ethnicities in carrying out bureaucratic tasks and creates a conducive, comfortable and neutral work environment for all ASN from various ethnicities. In various matters that differ between ethnicities, it is necessary to explore what things are able to unite all of them.

This means that the policy of using patterned weaving uniforms is based on the spirit of unity. Collective identity as NTT people is formed from the overall synthesis process of local culture. Bekker & Leide (2003) explain multiculturalism which is not only limited to describing the existing reality, but also a kind of way of thinking or a paradigm that believes or believes that various cultures instead of one culture (monoculture) can coexist peacefully in a country. In other words, this paradigm also has political implications, namely encouraging or legitimizing the incorporation of cultural diversity in the wider community.

Based on interviews with informants, researchers found several changes that occurred in the work environment related to the implementation of the policy on the use of NTT motif weaving uniforms. The policy in question is the policy on the use of motif weaving uniforms in stages I and II. There are those who feel there is a change, but there are also those who feel that there is absolutely no change in their perspective, mindset and behavior and that of their colleagues as policy implementers.

With the implementation of the policy on the use of NTT motif weaving uniforms, there has been a change that is felt by ASN as a felt impact. The changes include increasing pride, opening up inter-ethnic communication, establishing inter-ethnic cooperation and increasing a sense of brotherhood. Caleb Rosado explains that the essence of multiculturalism is being able to celebrate with other ethnicities by transcending all barriers and bringing unity in diversity (1997). These 4 (four) changes are the main capital in creating unity among differences. So based on the results of the research findings in the field, it shows that the indicators of celebrating (celebrate) diversity in forming unity are starting to work well. The researcher concludes that the fulfillment of this indicator is in progress, while the process of changing behavior or mindset is not an easy thing and takes a long time. is the forerunner of the birth of a real multiculturalism awareness in the bureaucracy.

5. CONCLUSION

By acknowledging the existence of all ethnic groups in NTT, respecting them, and appreciating the differences between each ethnic group, ASN within the NTT Provincial Government has created a passive representation of multiculturalism. This was born because of the diversity within the bureaucracy and grew even more with the

policy of using the NTT motif woven uniform as one of the unifying elements among the existing differences. By implementing this policy, like it or not, like it or not, ASN slowly opens up and begins to learn about the uniqueness of each existing ethnic group. By knowing him properly and correctly, a sense of respect and appreciation arises by itself.

It does not stop at passive representation, this policy is able to grow the basic strengths needed to achieve active representation of multiculturalism. The policy of using the NTT motif woven uniform was able to bring about changes that became a strength in managing a bureaucracy with ethnic diversity like NTT. This policy has proven to be able to give birth to a sense of pride in NTT as a unit, building inter-ethnic communication which previously tended to be rigid and lame because of a very high ethnic ego. In addition, this policy is also able to arouse a sense of brotherhood between ethnic groups because each ASN wears a uniform woven with motifs from different ethnicities so that they are able to accept and establish good relations and cooperation with all ethnic groups in NTT. The process of bringing awareness of multiculturalism continues so that the results can be sustainable and collective. These forces are the main capital in maintaining the awareness of multiculturalism in the bureaucracy within the NTT Provincial Government.

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GENERATION MECHNISM OF FALLING – TONE CHORUS EMISSIONS USING BACKWARD WAVE OSCILLATOR (BWO) THEORY

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ABSTRACT
In this paper, some discrete falling – tone (VLF) chorus emissions observed at low latitude ground station Jammu (geomagnetic lat. = 22^0 $26^/$ N, L = 1.17) on 4^{th} May 1998 during night time period are reported. The spectral analyses of these emissions and their characteristics phenomenon have been discussed. These events observed during the strong geomagnetic storm. We have computed the sweep rate, repetition period, source region and drift rate for the individual falling tone emissions. It is found that the sweep rate increasing with time. A possible generation mechanism has presented using backward wave oscillator (BWO) regime in the magnetospheric cyclotron maser. According to this model, we also computed some chorus emission parameter as well as magnetospheric parameters relevant to the generation process. Finally, compare the computed and observed magnetospheric parameters are presented.

Keywards: *VLF emissions, whist-mode waves, geomagnetic storm, backward wave oscillator.*

INTRODUCTION
Chorus emissions usually consist of a succession of discrete elements with rising/falling frequency having repetition period of T ~ 0.1 – 1 second and typical duration of chorus emission is o.5 – 1hour (Helliwell, 1965). These events are normally generated in the near equatorial region by the cyclotron instability of radiation belt electron by the cyclotron instability of radiation belt electron (Helliwell, 1967; Sazhin and Hayakawa, 1992). The name chorus for the discrete emissions observed on the ground was first suggested by K. W. Tremellen in England (Isted and Millington, 1957).The early observations of chorus came from mid and high latitude. Latter on satellite observations covered from low latitudes to high latitudes. The latitudinal distribution of chorus emission is grouped under polar chorus, auroral chorus, mid-latitude chorus and low latitude chorus. Although it is generally accepted that the generation mechanism of chorus emissions is connected with the cyclotron instability of whistler-mode waves and radiation belt electrons (Helliwell, 1967), the generation mechanism of these emissions and formation of spectrum of separate elements are still a subject of active experimental and theoretical research (Smith et al., 1996; Trakhtengerts, 1999; Singh et al., 2000; Lauben et al., 2002, Santolik and Gurmett, 2003; Titova et al., 2003; Singh and Singh, 2004; Santolik, 2008, Bortnik et al., 2008; Omura et al., 2008; Singh et al., 2009 and references there in).

The non-linear cyclotron resonance instability interaction between whistler mode wave and counter streaming electrons is most widely used theory (Trakhtengerts, 1999; Singh et al., 2000; Titova et al., 2003; Singh and Patel, 2004 and references there in). During the development of cyclotron instability, step like singularity form on the distribution function which serve the boundary in velocity space between resonant and non-resonant electrons. When the resonant region is small, the phase effects become important and backward wave oscillator regime is realized and discrete emissions like chorus is generated. Singh and Patel (2004) described generation mechanism of chorus emissions observed at Indian Antarctic Station, Maitri using backward wave oscillator theory. The generation mechanism of chorus emissions has been studied experimentally (Burton and Holzer, 1974; Goldstein and Tsurutani, 1984; Hattori and Hayakawa, 1994) and theoretically explain by (Nunn, 1974; Bespalov and Trakhtengerts, 1974; Curtis, 1978). Most of researchers are reported satellite data of chorus emissions (Cornilleau-Wehrlin et al., 1978; Hattori et al., 1991; Santolik and Gurnett, 2003) or high latitude stations. The observations of chorus emissions at low latitude ground station Jammu is very useful data for scientific work because falling tone chorus emissions were rarely reported at any low latitude ground stations.

In the present paper, we present a detailed spectral analysis of the falling tone chorus emissions observed at low latitude ground station Jammu (geomagnetic lat. = 22^0 $26^/$ N; L = 1.17). We also present the generation mechanism of these emissions using backward wave oscillator regime in the magnetospheric cyclotron maser (Trakhtengerts, 1995; 1999). An attempt has been made to determine various parameters of these events as well as magnetospheric parameters to the relevant to the generation process. Finally, derived and estimated parameters are compared and discuss the results.

EXPERIMENTAL DATA AND ANALYSIS
A discrete falling-tone chorus emissions recorded at low latitude ground station Jammu (L = 1.17) using T-type antenna, pre and main amplifiers and tape recorder having band width of 50 Hz to 15 kHz. The VLF data were

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stored on the magnetic tapes, which were analyzed using a Raven Software. This software is developed under Cornell Laboratory of Omithology bioacoustics research program, USA for the acquisition, visualization measurement and analysis of the sounds. The dynamic spectrum of the discrete falling – tone chorus emissions are shown in figure 1. During the observation of these emissions, geomagnetic storm was very high. At particular date and time the disturbed storm time was (D_{st} – index = - 204 nT) and magnetic activity was highest (ΣK_P – index = 43). The emissions were recorded in recovery phase of geomanetic storm period. Discrete VLF emissions (fallers) in sufficient numbers in the frequency ranges 2.5 kHz to 5.5 kHz were observed for about 1 hour. The sweep rate of these emissions df/dt, increases with increasing frequency. The repetition period of these events are not equal everywhere but increases with increasing time. Figure 1 shows the falling tone chorus emissions observed in four different stage of time. Figure 1a shows the chorus emissions in the beginning of the observation at 22:50:00 hour IST. Figure 1b shows chorus emissions at 22:50:47 hour IST with the increased chorus emissions and repetition time. Figure 1c shows at 22:50:54 hour IST and figure 1d shows at 23:01:01at hour IST.

In figure 1(a) shows about forty discrete falling - tone VLF chorus emissions observed at 22:50 hrs IST. The observed events have the following parameters f_{min} = 3.2 kHz, f_{max} = 4.6 kHz, average f_{UC} = 4.4 kHz, average duration of each events T = 0.23 sec and average frequency sweep rate df/dt = - 10 kHz/sec. From figure 1(b) shows about 32 events observed at 22:50:47 hrs IST in the frequency range of about 2.8 – 5.4 kHz. In this case f_{min} = 3.3 kHz, f_{max} = 5.1 kHz, average f_{UC} = 5.0 kHz, average frequency sweep rate df/df = - 7.6 kHz/sec and average duration of each emissions T = 0.21 sec. In the third case shown in figure 1(c), frequency-time spectrogram of these events about 33 falling – tone chorus emissions at 22:50:54 hrs IST in the frequency range of about 3.2 – 5.3 kHz, average f_{UC} = 4.8 kHz, average frequency sweep rate df/dt = - 4.4 kHz/sec and average duration of each chorus emissions T = 0.20 sec. From figure 1(d) shows the chorus emissions which are in the frequency range of 3.5 – 5.7 kHz. The observed events for the set have the following parameters: f_{min} = 3.5 kHz, f_{max} = 5.7 kHz, average f_{UC} = 5.5 kHz, average frequency sweep rate df/dt = - 7.3 kHz/sec and average duration of each emissions T = 0.19 sec.

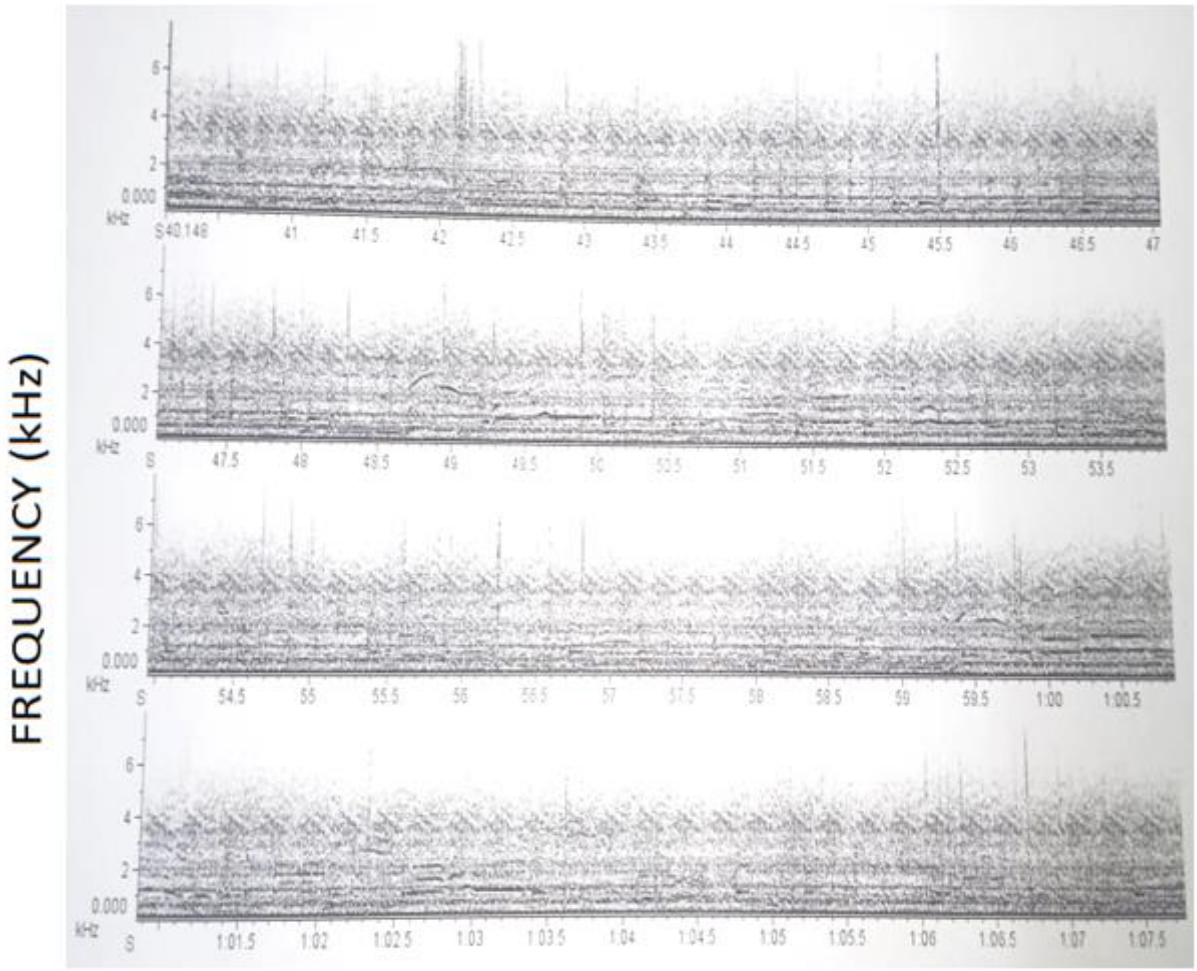

Figure 1: Dynamic characteristics of discrete falling – tone chorus emissions observed at Jammu on 4th May 1998 at 22:50:00 hrs IST

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GENERATION MECHANISM OF FALLING-TONE CHORUS EMISSIONS

A new theory for the generation of magnetospheric cyclotron maser (MCM) have been proposed Trakhtengerts (1995; 1999). The backward wave oscillator (BWO regime developed in electronic devices Jhonson (1995). Certain conditions have to be satisfied for a generator to operate in the BWO regime. The first condition requires that the interacting wave phase velocity component along the magnetic field should be opposite to the direction of the electron motion. The cyclotron resonance condition is written as

$$\omega - {}^{\omega_H}/_{\gamma} = kV_{||} \quad (1)$$

where ω and k are the wave frequency and wave vector of the whistler waves, k = |k|, ω_H is the electron gyro-frequency, $v_{||}$ is the field aligned component of the electron velocity, $\gamma = (1 - v^2/c^2)^{-1/2}$ is the relativistic factor, v and c is the interacting particle velocity and light velocity in free space. The second condition is the existence of well organized electron beam with small velocity dispersion in the region of discrete emission generation. The step-like deformation of energetic electrons distribution function ensure large growth rate (γ_{HD}) of whistler waves and transition to the BWO regime. For a dipolar field line, the interaction length l between the whistler waves and energetic electrons in limited conditions is given by (Helliwell, 1967; Trakhtengerts, 1999),

$$l_{min} < l < l_{max} \quad (2)$$

where, $$l_{min} = \left(\frac{R_e^{2/3} L^{2/3}}{k^{1/3}}\right) \quad (3)$$

and $$l_{max} = \frac{2\sqrt{2}}{3} LR_e \left[\left\{1 + \frac{4(f_{UC} - f_{LC})}{f_H}\right\}^{1/2} - 1\right]^{1/2} \quad (4)$$

where L is the Mcllwain parameter, R_e is the Earth radius, f_{UC} and f_{LC} is the upper and lower cut – off frequency of the discrete chorus emission, wave number k is given by the whistler dispersion relation

$$k = \left[\frac{(\omega_P\, \omega^{1/2})}{c\,(\omega_H - \omega)^{1/2}}\right] \quad (5)$$

where c is the velocity of light. The growth rate of BWO regime with periodic modulation, which is connected with the repletion period of discrete VLF chorus emissions is estimated as (Trakhtengerts, 1995),

$$\gamma_{BWO} = \frac{2p\,(p-1)}{T} \quad (6)$$

here $$T = 1.5\, l \left(\frac{v + v_g}{v\, v_g}\right) \quad (7)$$

and $p \approx 2$

The BWO generation regime starts when a quasi-monochromatic wavelets from the equatorial region and interacts with energetic electron in the beam may trigger signal with a rising (falling) frequency (Trakhtengerts, 1999). According to theory of Omura et al (1991) and Trakhtengerts (1999), maximum value of the non-linear growth rate can be written as

$$\frac{df}{dt} = \frac{\omega \Omega_{tr}^2}{2\pi(\omega_H + \omega)} \left[2S + \frac{3|vm|}{\Omega_{tr}^2} \frac{d\omega_H}{dz}\right] \quad (8)$$

where the value of inhomogeneity factor S corresponding the maximum value of the non-linear growth rate lies between $0.2 \leq |S| \leq 0.8$. and trapping frequency Ω_{tr} is written as

$$\Omega_{tr} = (ku\omega_H b)^{1/2} \quad (9)$$

Here $b = B_{\sim}/B_L$, where $B_{\sim}$ is the whistler wave magnetic field amplitude, B_L is the geomagnetic field line and u is the electron velocity component across the geomagnetic field line. We can estimate the wave amplitude $B_{\sim}$ from the relation which is valid in the case of an absolute instability (Trakhtengerts, 1984)

$$\frac{\Omega_{tr}}{\gamma_{BWO}} \cong \frac{32}{3\pi} \quad (10)$$

From equation (9) and (10), we can estimate the amplitude $B_{\sim}$ as,

$$B_{\sim} = \left(\frac{32}{3\pi}\right)^2 \frac{\gamma_{BWO}^2 B_L}{ku\omega_H} \quad (11)$$

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In our case the generated wave propagates along the geomagnetic field line from the equator towards the increasing magnetic field, so S < 0 (Omura et al., 1991). Putting S = 0.5 and substituting into equation (9) the value of Ω_{tr}, we get the frequency sweep rate as (Trakhtengerts, 1999)

$$\frac{df}{dt} = 1.5\ \frac{\omega\gamma_{BWO}^2}{\omega_H + \omega}\ (1 + S_0) \qquad (12)$$

where

$$f = {}^{\omega}/_{2\pi}, S_0 = \left(\frac{v}{\gamma_{BWO}^2}\right)\left(\frac{\partial\omega_H}{\partial z}\right)$$

Using the above given equations (1) to (12), we have calculated various parameters of discrete chorus emissions and compared with our observations.

DISCUSSIONS AND RESULTS

The dynamic spectrum of falling – tone chorus emissions observed at low latitude ground station Jammu shows the occurrence rate of these events is low and sporadic. We have followed the upper boundary frequency (UBF) method developed by Smirnova (1984) to find out the location of source for the chorus (riser/faller) events. The upper boundary frequency of the ground based observation of discrete chorus events is determined on the assumption of dipolar geomagnetic field configuration, by the half equatorial electron gyrofrequency in the generation region, irrespective of the latitude of the observation station. Using Smirnova (1984) method, the L – value of the discrete VLF chorus emission source is written as

$$L = \left(\frac{440}{f_{UC}}\right)^{1/3} \qquad (13)$$

Where, f_{UC} is the upper cut of boundary frequency of the observed chorus emissions in kHz. Using eq. (13), the L – value of the source region for the observed events is found to be L_{Source} = 4.54. The higher L – value of the source region compared to the observation station Jammu (L = 1.17) shows that the wave may have propagated towards significantly lower latitude (Smirnova et al., 1976).

To examine the generation mechanism of discrete falling – tone chorus emissions, we have computed various parameters of these emissions using given equation (1) to (12). The discrete chorus emissions observed at low latitude Jammu, which is shown in figure 1 (a,b,c,d) and the equatorial electron frequency is f_H = 8.91, 9.99, 9.61 and 11.1 kHz respectively for the set (a,b,c,d). According to Carpenter and Anderson (1992), empirical equatorial electron density profile model the density is taken is ~ 16 electrons cm^{-3} and the corresponding plasma frequency is f_P ~ 36 kHz. Considering a frequency f = f_H/3, we find the dispersion relation k ~ 0.53/km. Using equation (3) – (5), the interaction length lies between l_{min} =1016 km, 989 km, 987 km and 950 km and l_{max} = 13468 km, 14323 km, 14379 km and 14253 km for figure 1(a,b,c,d) respectively. Singh and Patel (2004) have reported maximum value of interaction length 1000 km and 14000 km for the Gulmarg and Maitri station Antarctica respectively. From equation (1), Using the resonance condition we obtain the group velocity $v_g \sim 2\omega^2/(\omega_H k) \sim 2.31 \times 10^7$m/s, 2.35×10^7 m/s, 2.31×19^7 m/s and 2.55×10^7 m/s, which is lower than the resonant electron velocity v ~ 6.01×10^7 m/s, 7.05×10^7m/s, 6.91×10^7 m/s and 7.65×10^7 m/s respectively for the set (a,b,c,d). The modulating period which determines the repetition period of the discrete chorus events is found to lie between T = 0.09 sec and 1.21 sec for the first set, 0.08 sec and 1.22 sec for the second set, 0.06 sec and 1.25 sec for the third sec and for the fourth set, T = 0.07 sec and 1.12 sec respectively. Our experimental value of T = 0.23s, 0.21s, 0.2s and 0.19sis in this interval and suggest that the real interaction length is around 2400 km, 2100 km. 2000 km and 1800 km respectively. Using the value of T = 0.23, 0.21, 0.20, 0.19 sec and p = 2 for every case in equation (6), we find the growth rate γ_{BWO} = 17.4, 19.1, 20 and 21.1 /sec respectively. Using equation (8) for computing the frequency sweep rate df/dt and considering S = 0.2 and 0.8, it is find lie between 125 kHz/sec and 187 kHz for first case, 140.51 kHz/sec and 211.17 kHz for the second case, 143 kHz/sec and 214 kHz/sec for the third case and 165.53 kHz/sec and 245 kHz/sec for the last case, which is some larger than the observed value of 10, 7.6, 4.4 and 7.3 kHz/sec respectively. Using equation (11), we can compute the amplitude of the observed emissions, by putting γ_{BWO} = 17.4, 19.1, 20 and 21.1 /sec for L = 4.57, 4.5=38, 4.44, 4.25 as $B_{\sim}$ = 0.89, 0.98, 1.21 1nd 1.39 mγ for figure 1(a,b,c,d) respectively.

CONCLUSIONS

In this paper, we have reported discrete falling – tone chorus emissions recorded at low latitude ground station Jammu. The generation mechanism for various temporal and spectral features of these emissions is presented on the basis of backward wave oscillator (BWO) regime operating in the magnetosphere. On the basis of BWO theory, various discrete chorus emissions parameters as well as some magnetospheric parameters are computed.

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These theoretical computed results are comparable to the observed values, which support the diagnostics of the state of the magnetospheric plasma properties during the sub storm period.

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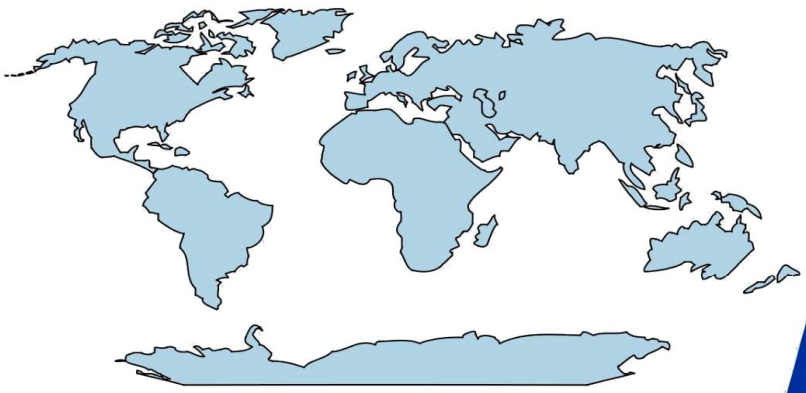

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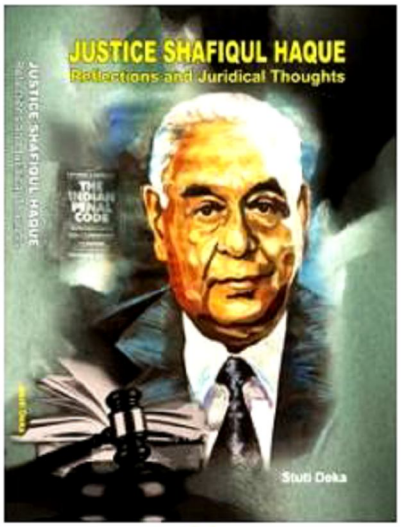

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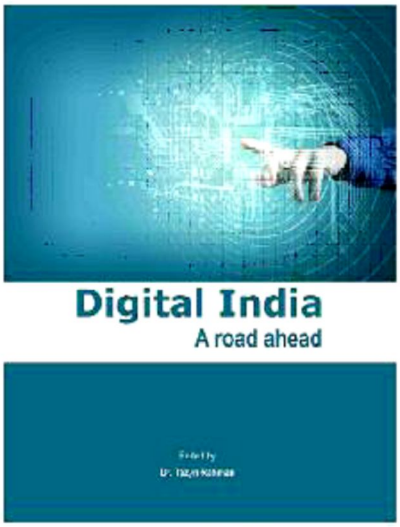

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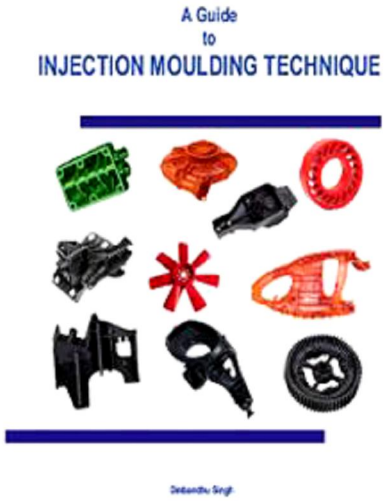

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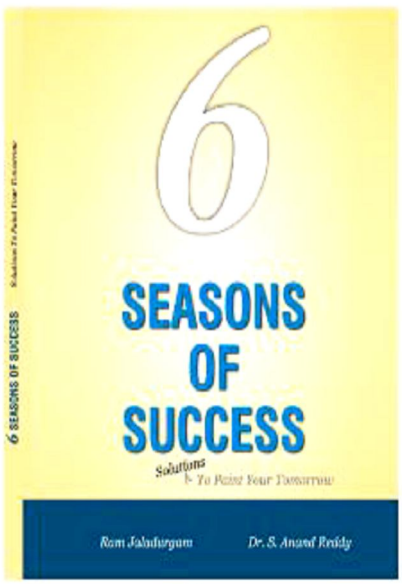

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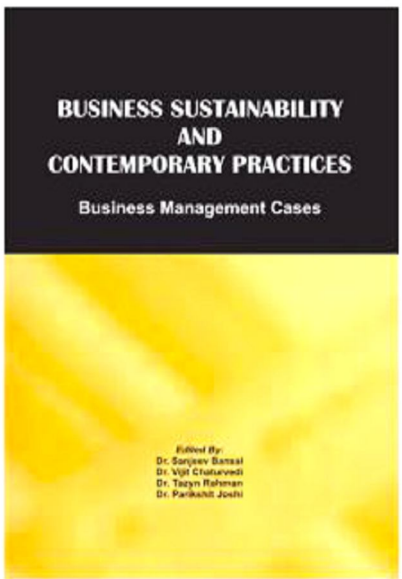

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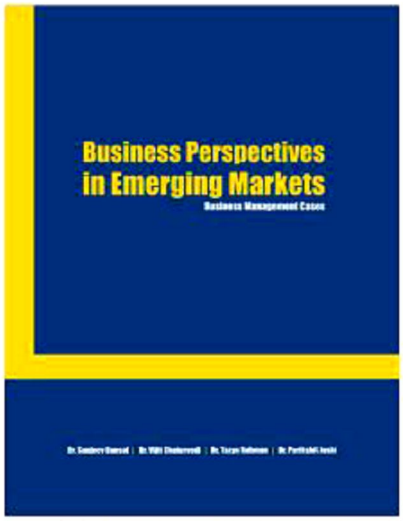

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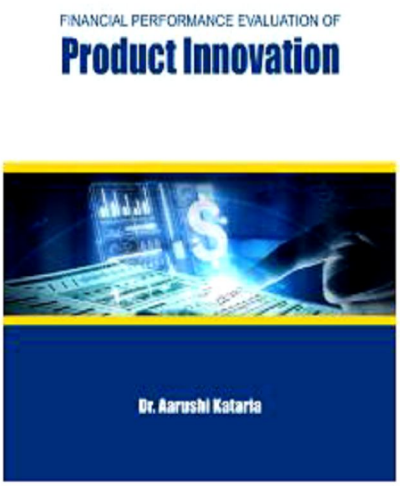

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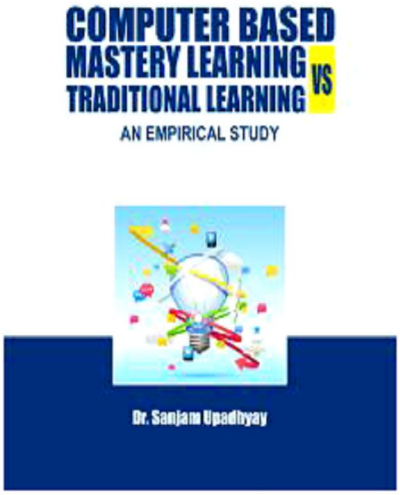

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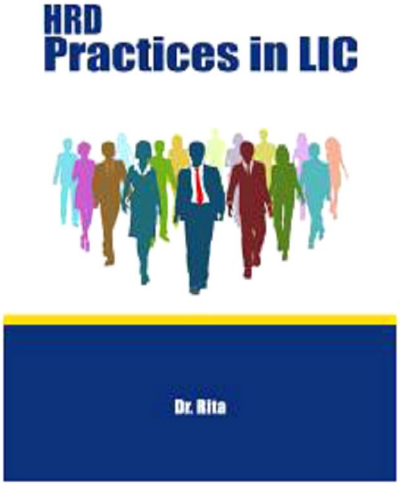

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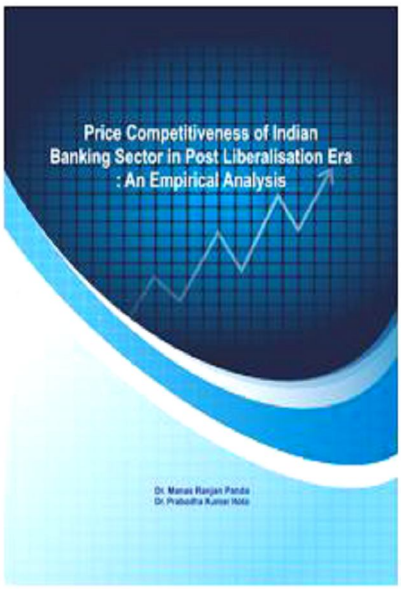

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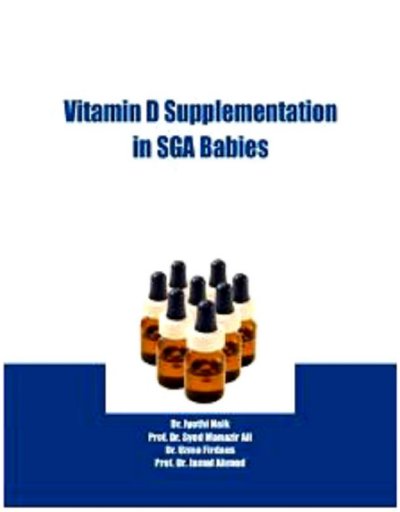

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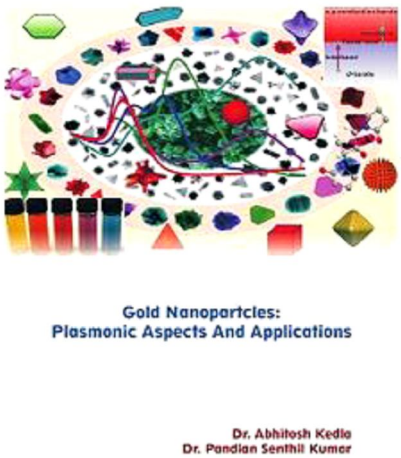

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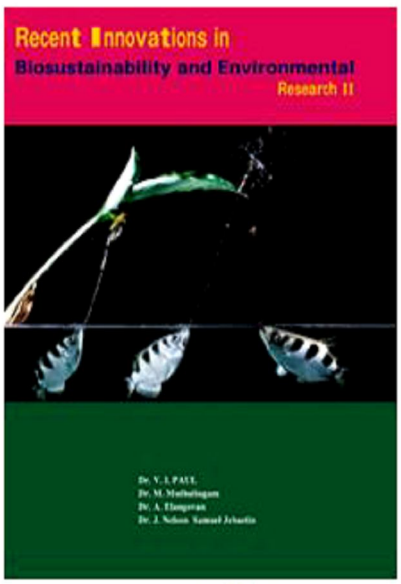

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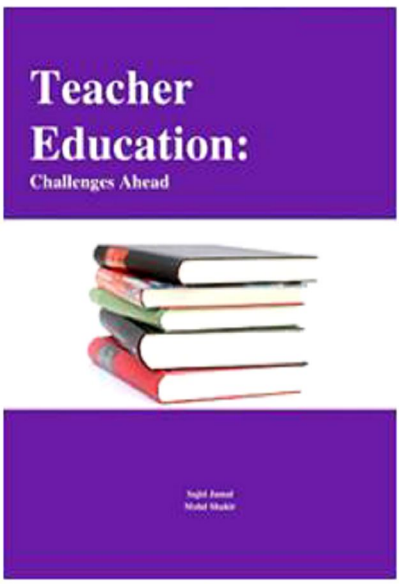

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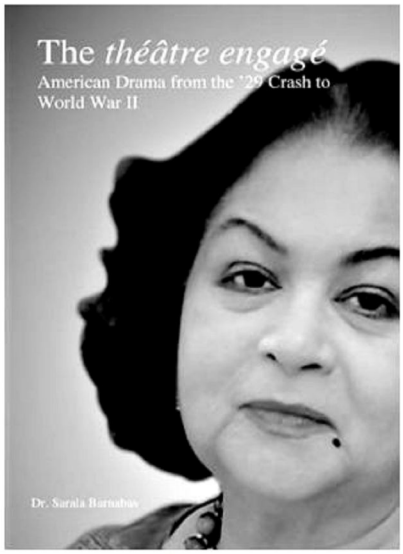

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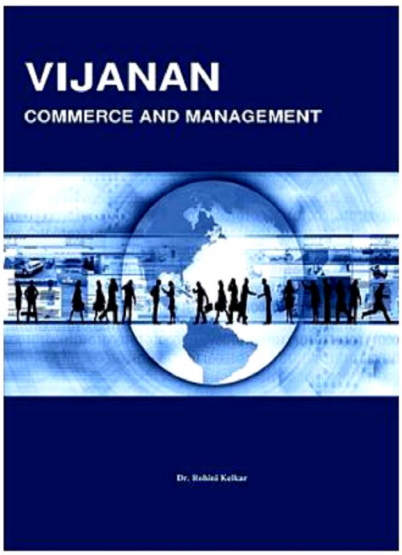

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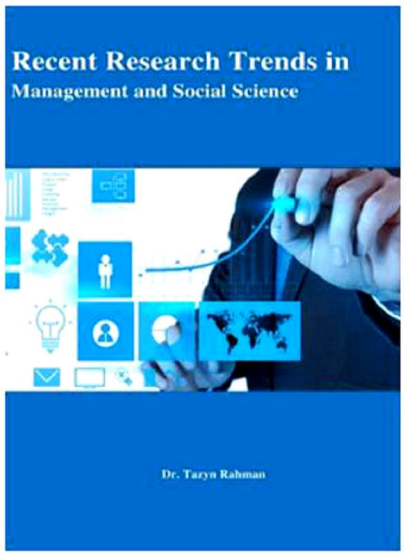

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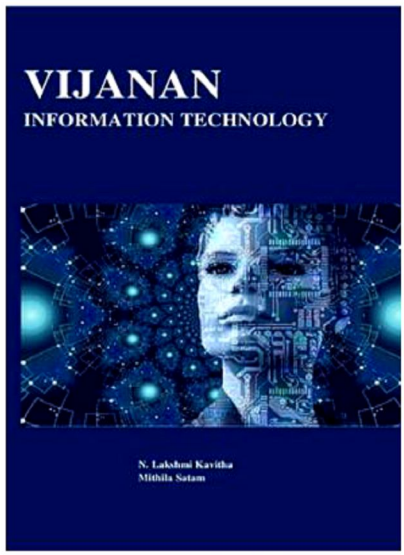

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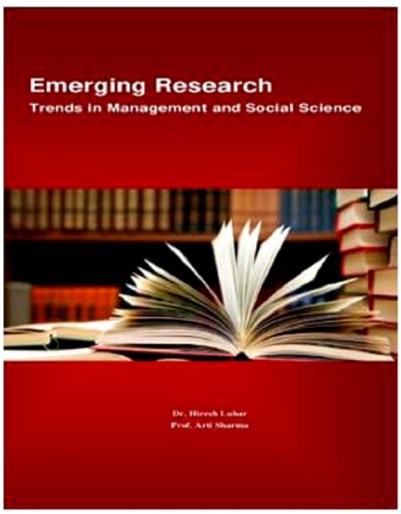

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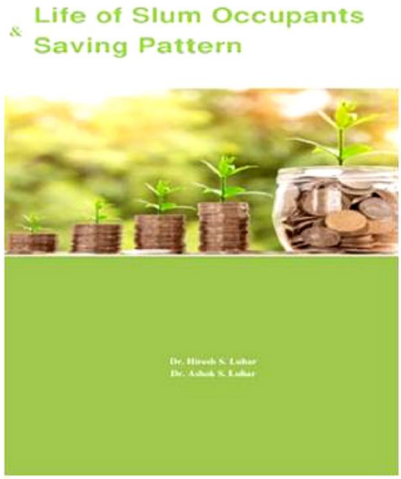

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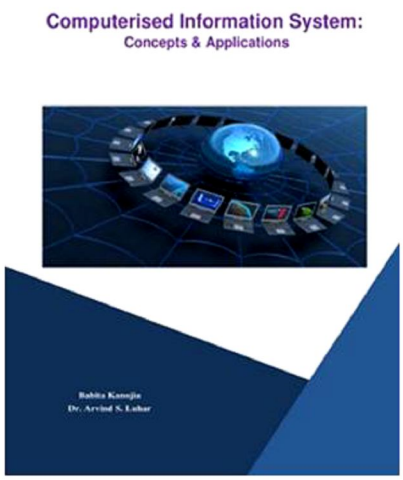

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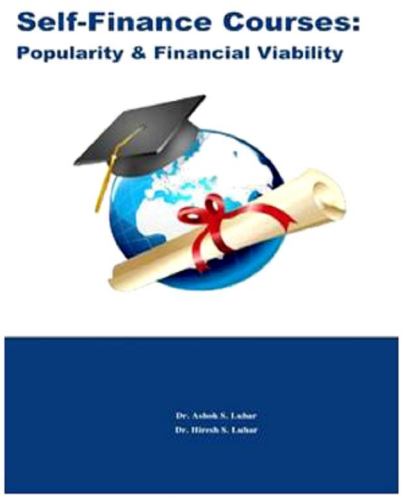

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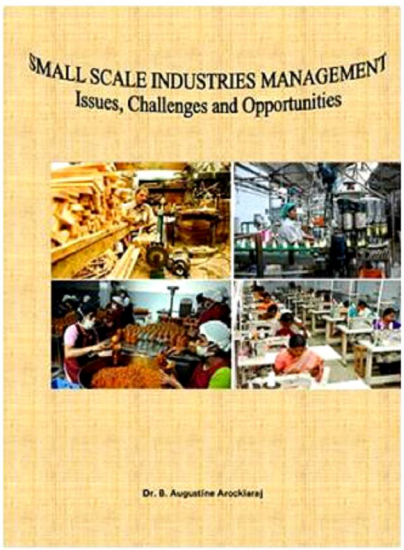

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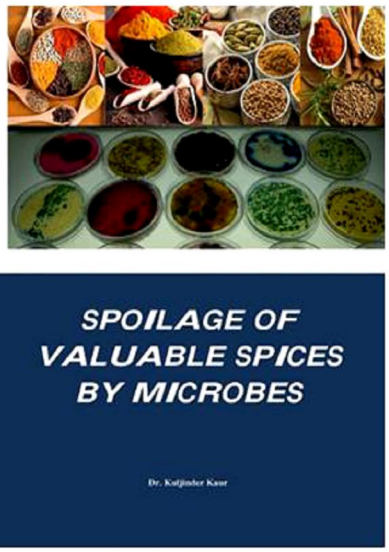

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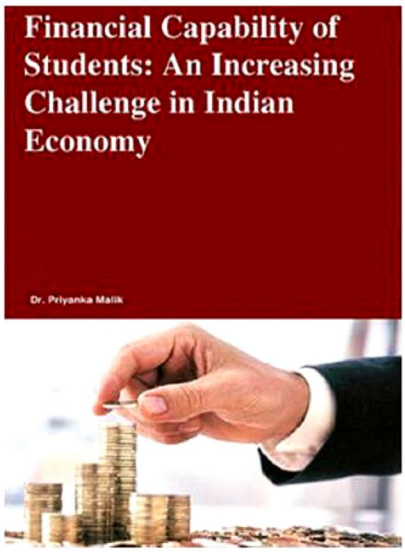

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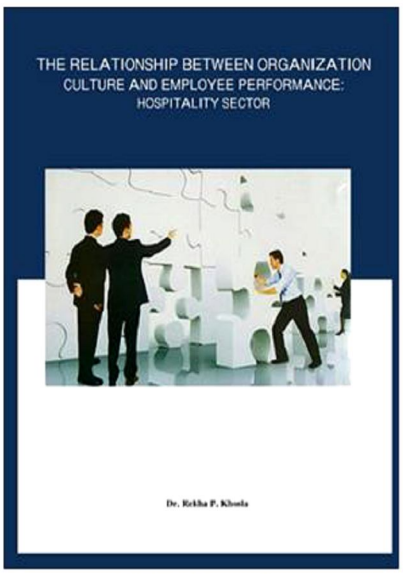

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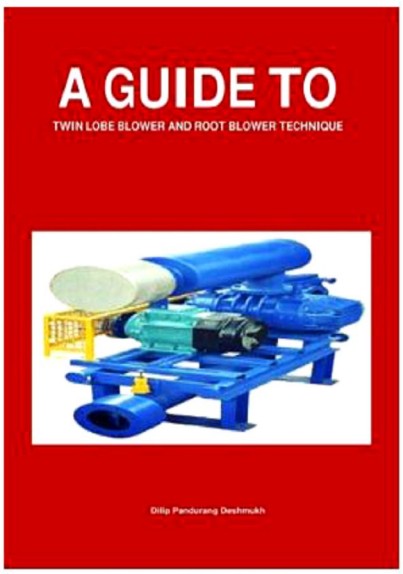

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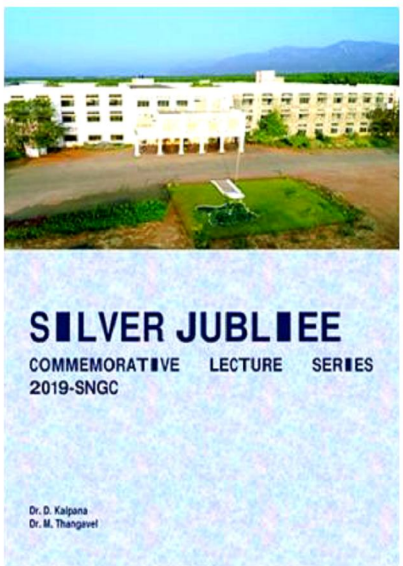

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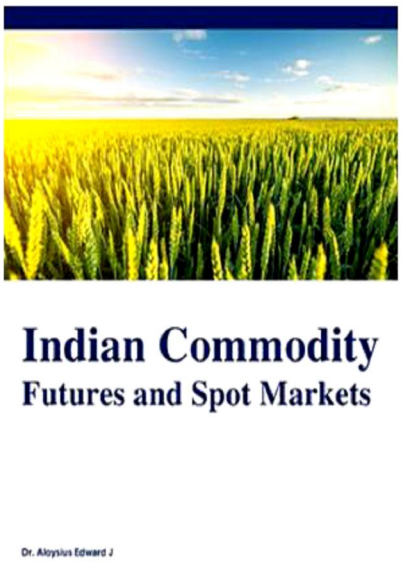

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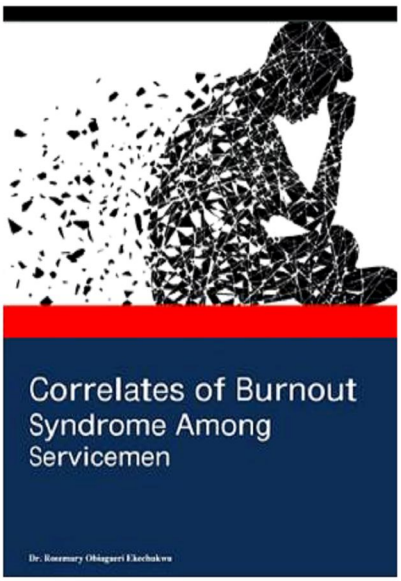

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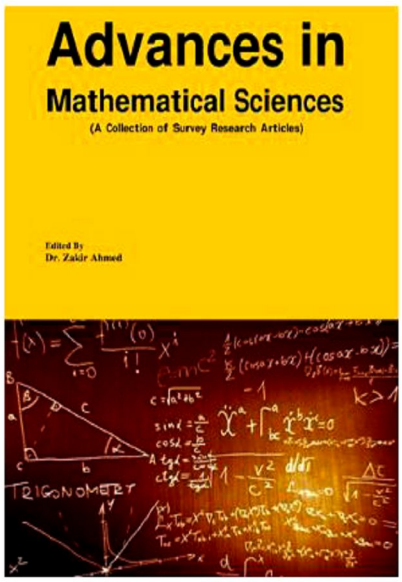

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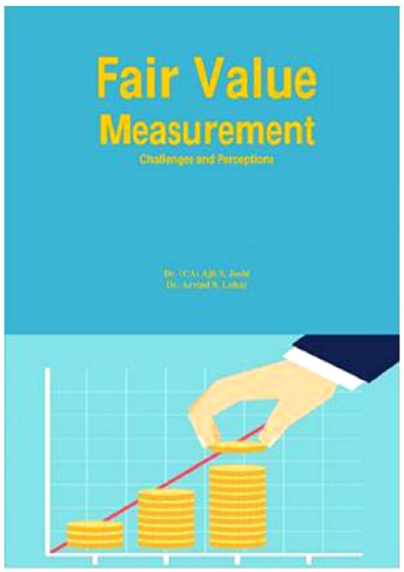

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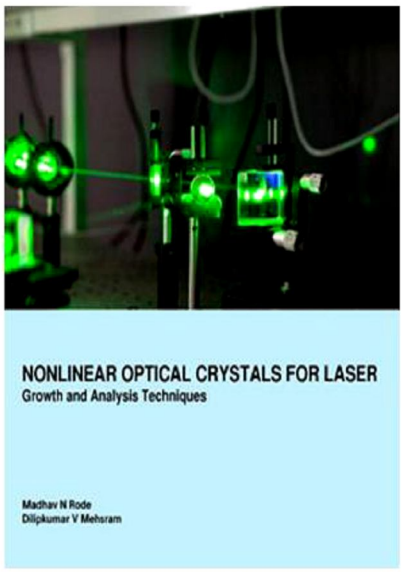

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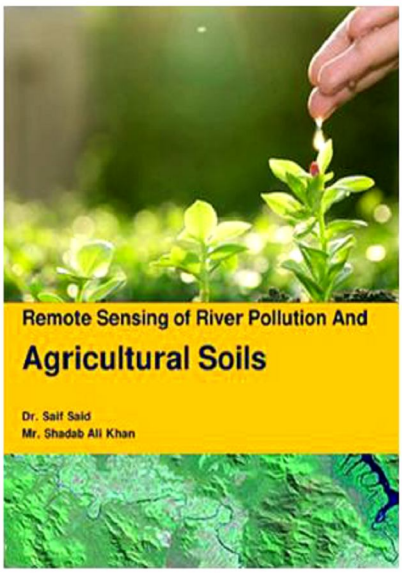

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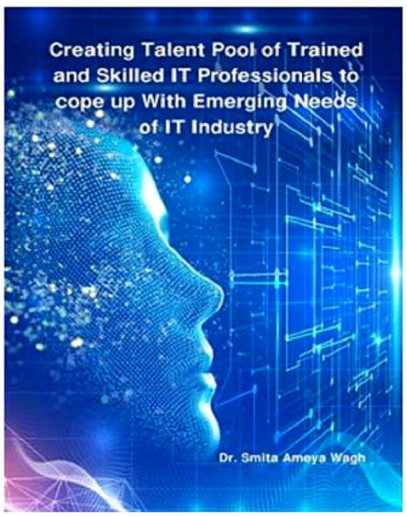

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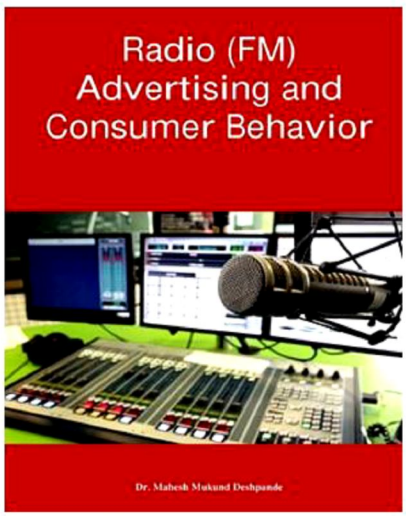

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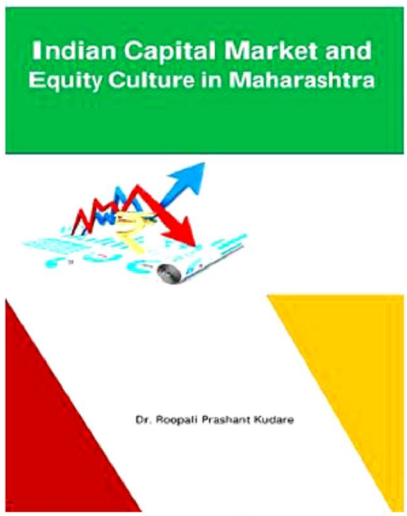

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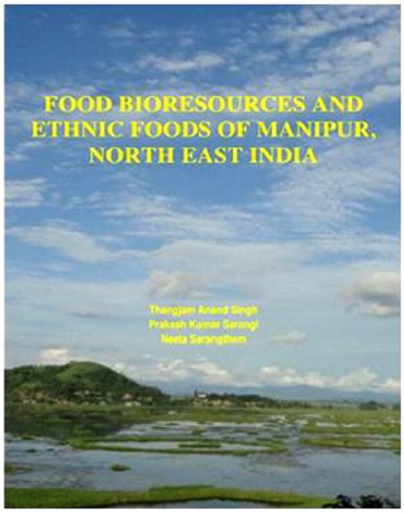

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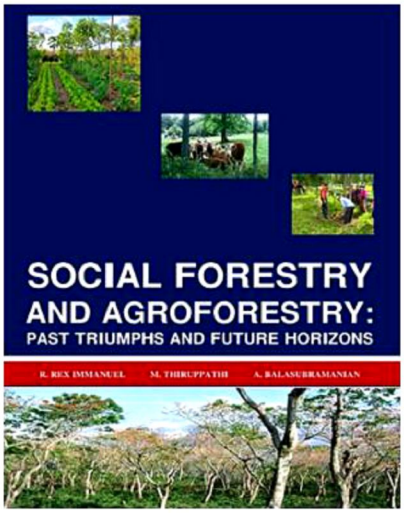

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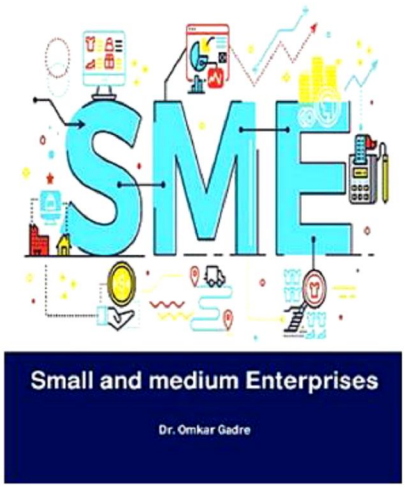

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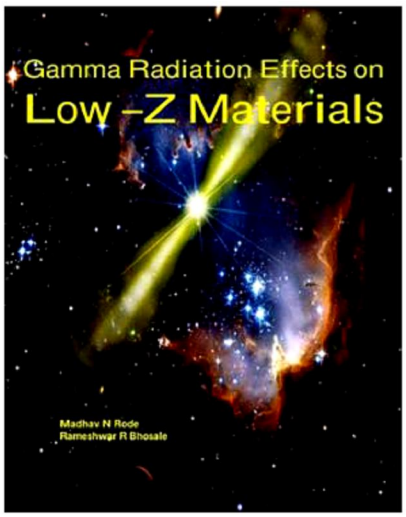

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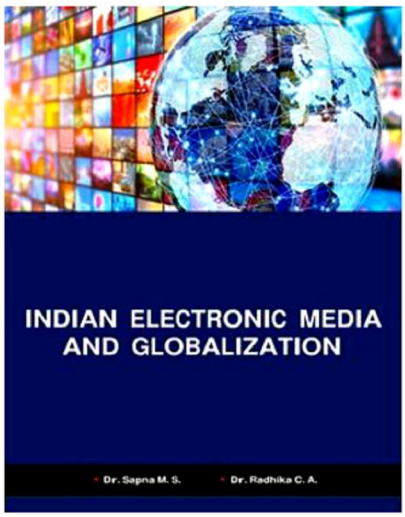

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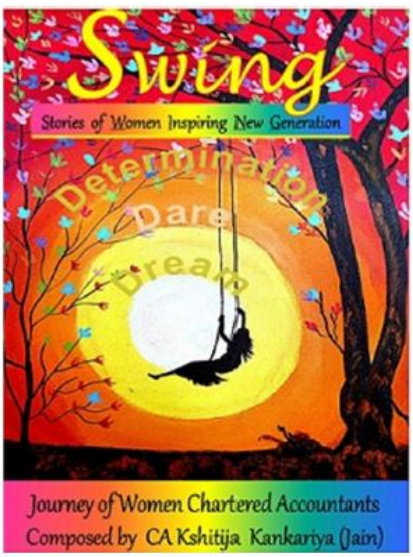

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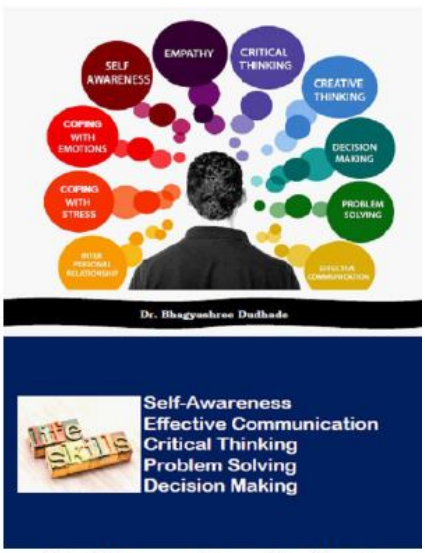

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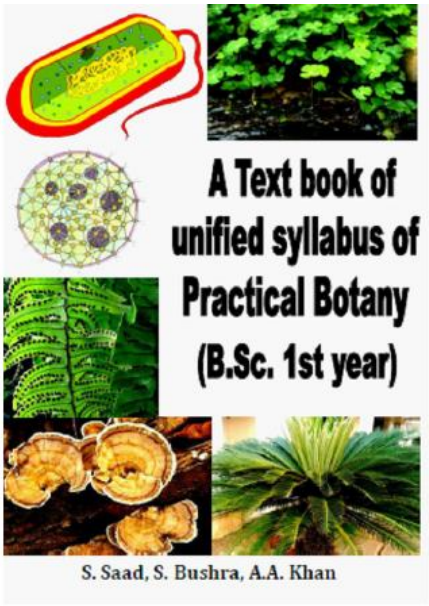

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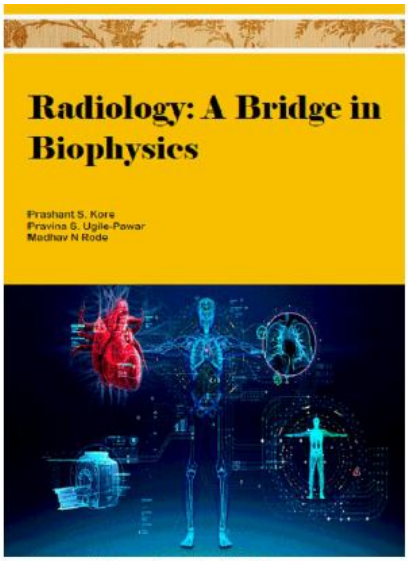

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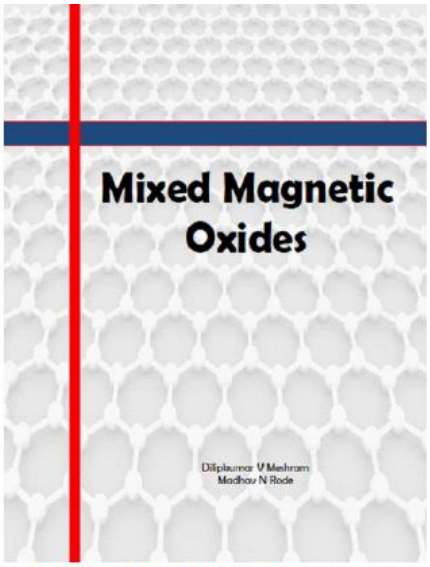

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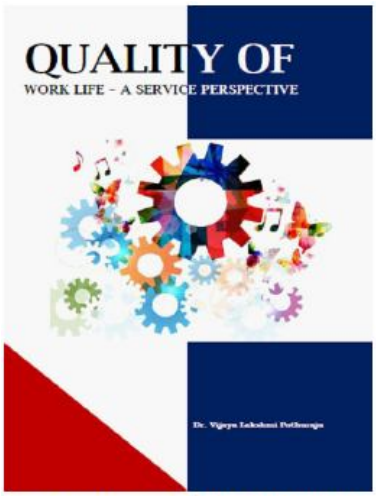

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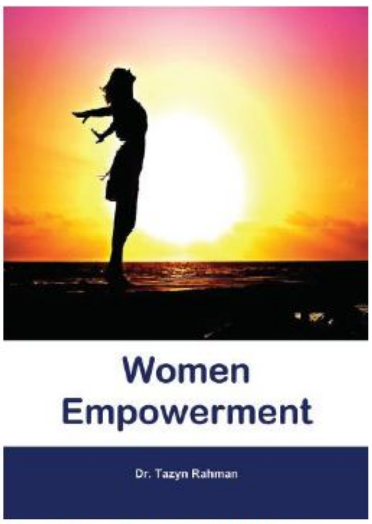

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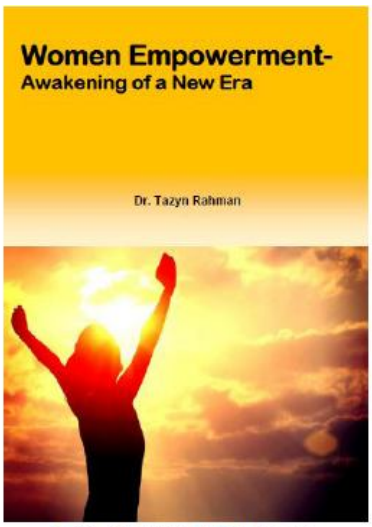

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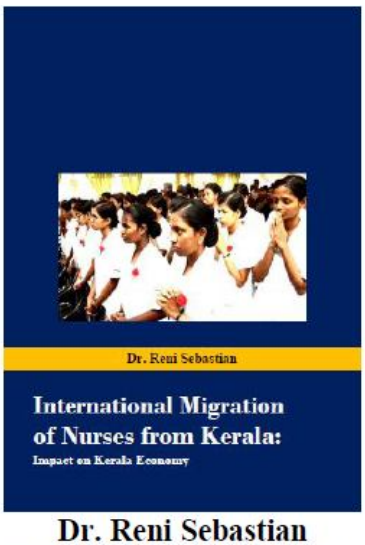

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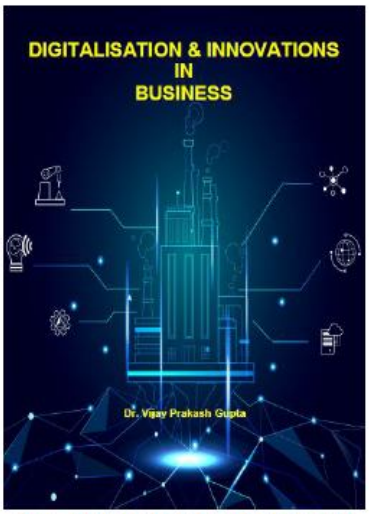

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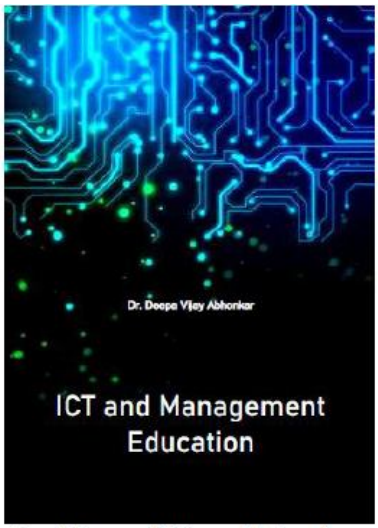

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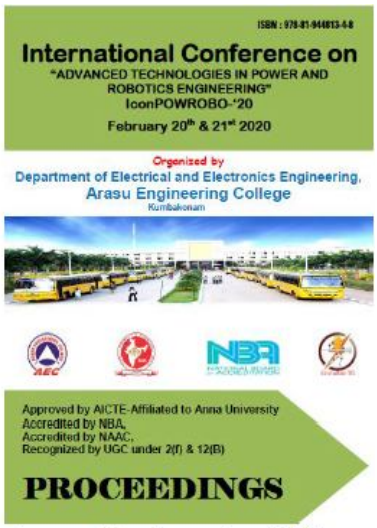

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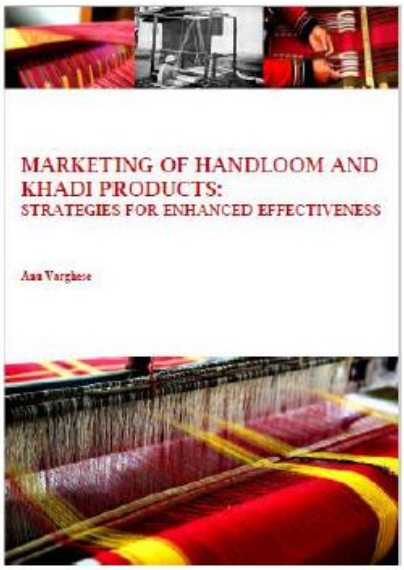

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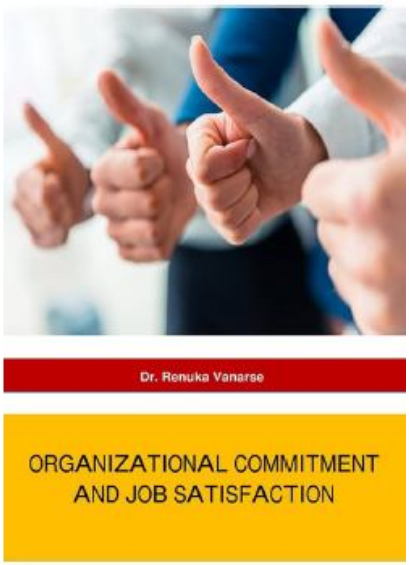

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