ISSN 0971 – 3212

RELIGION

AND

LAW REVIEW

Volume XXX: No. 2
[2021]

Editor
Prof. M. Afzal Wani

Institute of Objective Studies

RELIGION AND LAW REVIEW

Volume XXX: 2021

ISSN 0971 – 3212

Declaration

Place of publication	:	New Delhi, India
Periodicity	:	Bi-annual/Annual
Language	:	English only
Editor	:	Prof. M. Afzal Wani
Owner, Publishers & Printers	:	**Institute of Objective Studies** 162, Jogabai Main Road, Jamia Nagar, New Delhi – 110025

TRUTH OF THESE PARTICULARS IS CERTIFIED
SECRETARY GENERAL, IOS

Computer setting by Mohammad Naseem, New Delhi

Printed at: Bharat Offset Press, 2035, Gali Qasim Jaan, Delhi-110006

Religion and Law Review

Volume XXX: No. 2 **2021**

CONTENTS

- IOS on-line lecture on Philosophy of Science and Human Evolution (August 21, 2021)
- IOS On-line Lecture on Growth-oriented Optimisation of Personal and Professional Life (August 28, 2021)
- IOS organizes virtual condolence meet on the demise of Prof. Abdul Hamid A. Abu Sulayman (August 31, 2021)
- IOS and CDPP jointly organises webinar on Growth of the Muslim Middle Class in India(September 17, 2021)
- IOS On-line lecture on The Way to Economic Recovery after the Scourge (September 20, 2021)
- IOS online Lecture on "Impact of Changing Lifestyle due to Covid-19 Pandemic in India and its Management in Islamic Perspective" (September 25, 2021)
- A two-day National Conference on "Inter-Religious Understanding: Its Implications for Human Rights" was jointly organised by the Institute of Objective Studies and Punjabi University at Patiala (September 29-30, 2021)
- IOS Kolkata Chapter organises Panel Discussion on "Economic Empowerment of Muslim Women: Issues and Opportunities" (October 30, 2021)
- IOS organises two-day online international conference on "Environment, Social, and Religious Consequences on Human Evolution" (November 20-21, 2021)
- IOS Online Lecture on Covid-19 Pandemic and Economy in India– Challenges and Opportunities (November 27, 2021)
- IOS-MANUU jointly organises seminar on "Human Rights in Islamic and Modern Perspective" (December 8, 2021)

INDIAN LEGISLATIVE EFFORTS TO DETERMINE AGE OF MARRIAGE: A REVIEW OF THE PAST CENTURY EFFORTS

Prof. M. Afzal Wani*

I. Background

In the preceding century, prominently, many strategic legislative attempts have been made in India to check the practice of child marriage, yet these legislations have not achieved their desired results. It is also clear that the first effort in this direction was made by the government in the year 1860 when, through regulation, the minimum marriageable age of a girl was fixed 10 years. Another regulation was passed in the year 1891, according to which the minimum marriageable age of girl was fixed 13 years. Later in the year 1925, when the problem of child marriage had got well identified, Rai Saheb Harvilas Sharda presented a Bill in the central legislature with a hope of better results. Meanwhile in the year 1928, the Age of Consent Committee strongly opposed child marriage and pointed out that the legislations passed till then on this subject did not produce the desired results and most of the people did not even know of such laws. The bill, presented by Sharda, was passed in 1929 with the name of Sharda Act, officially called the Child Marriage Restraint Act, 1929. According to this Act, the minimum marriageable age of boys and girls was fixed 18 years and 14 years respectively. Now the marriageable age under the Act has been raised to 21 years and 18 years for boys and girls respectively. In the year 1954, Special Marriage Act was passed, which fixed the marriageable age for the boys and girls as 21 years and 18 years respectively. The Hindu Marriage Act was passed in the year 1955, which fixed the age of marriage for the boys and girls at 18 years and 15 years, respectively.

---

* Professor of Law, GGS Indraprastha University, Delhi-110078. The article is based on earlier research and works of the author.

Later the Act was amended in 1978 to prescribe 21 years minimum age for boys and 18 years for girls.

It may be observed that, in this direction, the earliest measures were initiated by Lord William Bentick and for these measures Raja Ram Mohan Roy created a favourable atmosphere by the reformation movement. Regulation No. 17 of 1929 prohibited the custom of *sati* in Bengal. The Regulation mentioned that:

> "The Governor-General in his council without intending to depart from one of the first and most important principles of the system of the Government in India that all classes of people be secure in the observance of their religious usages so long as that system can be adhered to without violation of the paramount dictates of justice and humanity".

The regulation, though apparently permissive of the traditional systems, contains a latent but dominant element in favour of reformation of these systems, to favour justice and dignity. As a result of this policy various legislations were passed. Out of them the Child Marriage Restraint Act, 1929 is most important.

II. The Act of 1929

The central legislature, as mentioned above, enacted the Child Marriage Restraint Act in 1929. When the Bill was introduced in the legislature in 1925*,* its purpose was to prohibit child marriages altogether in regard to all the communities of India. It was, however, opposed by orthodox elements among Hindus and Muslims who regarded it as conflicting with their religious laws. Memoranda were sent to the government by various organisations opposing the Bill. Eventually the Bill was reduced to a penal measure providing for punishment of those responsible for child marriages, leaving their validity intact. In spite of opposition of the Bill by the Hindus and Muslims, no community was exempted from its application as finally enacted.

The courts in the course of interpretation of the provisions of the Act also held that the validity of a child marriage was "beyond the scope" of the Act.[1] The Act, according to the courts, was designed to restrain the solemnisation of child marriages and did not affect the validity of such a marriage after it was solemnised.[2]

The Act (as amended last) defined 'child' as a boy below the age of 21 or a girl below the age of 18 years.[3] It was originally a girl below 14 and a boy below 18. A "child marriage" under the Act meant a marriage where the bride or bridegroom was a child according to the given definition.[4]

Section 12 of the 1929 Act, empowered the court, if it was satisfied from information laid before it, through a complaint or otherwise that a child marriage was about to be solemnised, to issue an injunction—prohibiting the same. The injunction could be addressed to any or all of the following persons:

(i) the bridegroom (if above 18 years of age);

(ii) the persons involved in performing, directing, or conducting the marriage; and

(iii) the person in whose charge the child being given in marriage had been.

If any of these persons vio1ated the injunction, he would be liable to imprisonment (of either description) lasting for 3 months or less or to fine extending to Rs. 1,000 or to both. Women were liable to pay only the fine.[5] The injunction could, however, be issued against a person only after giving him notice and an opportunity to show cause against it.[6] The injunction once issued could also be rescinded.[7]

---

1 *Munshi Ram v. Emperor,* AIR 1936 All 11.
2 *Ram Baran v. Sital,* AIR 1939 All 340.
3 Section 2(a), Child Marriage Restraint Act, 1929.
4 Section 2(b), *Ibid.*
5 Sections 3 to *6*.
6 Section 12(5).

Apart from the above provision meant to prevent an intended child marriage, the Act also prescribed penalties for various persons responsible for a child marriage, if such a marriage was solemnised with or without the knowledge of the court. The penalties prescribed for this purpose were as follows:

(i) the bridegroom of an age between 18 and 21 years could be punished with simple imprisonment up to 15 days or fine up to Rs. 1,000 or both.[8]

(ii) the bridegroom of above 21 years could be punished with a simple imprisonment up to 3 months and fine.[9]

(iii) the person "performing", "conducting" or "directing" the marriage (unless he had reason to believe that it was not a child marriage) could be punished with a simple imprisonment up to 3 months and fine.[10]

(iv) the person in lawful or unlawful charge of the child (whether as parent, guardian or otherwise) could be punished with a simple imprisonment up to 3 months and fine, if a man; only fine, if a woman.[11]

In the case of the person in charge of the child, punishment could be imposable even if the person concerned negligently failed to prevent the marriage from being solemnised. Negligence could be presumed only till it was disproved by contrary evidence.[12]

Only a metropolitan magistrate or a magistrate of the first class could take cognisance of an offence under the 1929 Act[13], the provisions of the Criminal Procedure Code notwithstanding.[14] All these offences

---

7 Section 12(2).
8 Section 12(3).
9 Section 3.
10 Section 4.
11 Section 5.
12 Section 6(I).
13 Section 6(2).
14 Section 8.

were then declared as cognisable under the general rules of the Code: (a) for the purpose of investigation of such offences, and (b) for the purposes of matters other than those referred to in section 42 of the Code and the arrest of person without a warrant or without an order of a Magistrate.

Under the 1929 Act the state governments were empowered to appoint child marriage prevention officers and non-official advisory bodies to assist them for the prevention of child marriages and for the collection of evidence for effective prosecution of the offenders.[15]

During the course of interpretation of the Act, the courts applied its penal provisions rather strictly. The Patna High Court held that even abetment of an offence under the Sharda Act would be punishable under the general provisions relating to abetment under the Indian Penal Code.[16] A contract for lending money for the purpose of a marriage in violation of the Sharda Act was deemed by the Bombay High Court to be void for illegality of consideration under the Contract Act.[17]

As mentioned above, the prosecution or conviction of any person under the Sharda Act for the violation of its provisions did not in any way affect the legal status of the marriage, which remain valid. This had been consistently maintained by the courts.[18]

III. Role of Judiciary

The role of judiciary in controlling child marriage, as is evident from the judicial decisions under the 1929 Act, has not been effective. One of the reasons for that is non-sustainability of prosecution in cases related to child marriages just for technical reasons. Since section 9 of the Child Marriage Restraint Act, 1929 has laid a blanket restriction on taking cognisance of any offence under that Act after one year of

15 Section 13.
16 *Nanak Lal v. Baqnarh,* AIR *1935* Pat 474.
17 *Rambhau v. Rajaram,* AIR *1956* Bom 250.
18 *Birupakshya v. Kunja,* AIR *1961* On 104.

the commission of the offence; the courts frequently quash prosecutions on that ground defeating the objectives of the legislation. The trend is evident from the Supreme Court decision in *Krishna Pillai v. T.A. Rajendra.*[19] In that case the accused challenged the continuance of prosecution before magistrate, by filing an application under section 482 Cr. P.C. before high court, on the ground that cognisance in the case was barred under section 9 of the Child Marriage Restraint Act. The high court did not entertain that argument and the matter came for consideration before the Supreme Court. In appeal the Supreme Court ruled that since cognisance in the case was taken by the magistrate after more than a year of commission of the offence the magistrate was not competent to take such cognisance in view of the bar under section 9. The court accordingly quashed the prosecution proceedings. The Supreme Court did not accept the contention that since the complaint had been filed within a year from the commission of the offence, that could mean that the cognisance was taken on the date of filing of the complaint. The court observed that in our criminal jurisprudence the term cognisance has assumed a special meaning. To explain that it referred to a judgment by a five-judge Bench of the court in *A.R. Antulay v. Ramdas Sriniwas Nayak*[20] in which it was held that the filing of a complaint does not amount to taking cognisance and what exactly constitutes cognisance is different from filing of a complaint. The court, therefore, relied on the following observation made by it in *Antulay:*[21]

When a private complaint is filed, the court has to examine the complainant on oath save in the cases set out in the proviso to Section 200 Cr. P.C. After examining the complainant on oath and examining the witnesses present, if any, meaning thereby that the witnesses not present need not be examined, it would be open to the court to judicially determine whether a case is made out for issuing process. When it is said that court issued process, it means the court has taken cognisance of the offence and has decided to initiate the

---

19 1990 (Supp.) SCC 121.

20 1(1984) 2 SCC 500.

21 *Id.* at 530.

proceedings and a visible manifestation of taking cognisance process is issued which means that the accused is called upon to appear before the court.

In another case[22], the Supreme Court held the issuance of process by a magistrate, without holding preliminary inquiry under section 202 Cr. P.C., as illegal. In this case, the complainant had given about the incident a sworn statement before the magistrate and thereafter summons had been issued to the accused persons. The accused challenged the issuance of summons before the high court in a petition under section 482 Cr. P.C. on the ground that no case was made out against them and the magistrate had not conducted any enquiry into the offence as contemplated by section 10 of the Child Marriage Restriction Act and section 202 Cr. P.C. Under these sections, for issuing process, "the magistrate should be satisfied *prima facie* that the accused have committed the offence". As in the case of *Krishna Pillai,* this plea was not accepted by the high court. However, on appeal the Supreme Court observed that section 10 of the Child Marriage Restriction Act specifically provided that for issuing process there should be first an enquiry under section 202 Cr. P.C. In the instant case, from the sworn statement of the complainant and the records, which were produced by the complaint, the court was not satisfied that a proper inquiry was conducted by the magistrate. The court, therefore, remitted the matter back to the magistrate to conduct the contemplated preliminary enquiry afresh and accordingly proceed against the accused persons.

The above mentioned decisions of the Supreme Court show that the prosecution has been rendered ineffective in proceedings related to child marriages merely on technical grounds. This kind of approach may not be desirably continued in matters dealing with social evils like that of child marriage.

In Gujarat, section 10 of the Act was deleted through state amendment and provisions were added for the appointment of child marriage prevention officers, requiring that each such officer should:

---

22 *Muzaffar Ali Sajjad v. State of A.P.* (2004) 4 SCC 764.

(i) prevent child marriages by taking befitting actions; (ii) collect evidence for the effective prosecutions of persons making contraventions; and (iii) discharge such other functions as assigned by the state government. The state government was empowered to invest the child marriage prevention officers with necessary powers of a police officer also.

The state government could associate with each child marriage prevention officer a non-official advisory committee of not more than five social welfare workers, of whom at least two could be women workers, for the purposes of advising and assisting him in the performance of his functions.

Certain judgments of high courts on matters about child marriage are also significant and have a bearing on the effectiveness of legislation on the subject. The courts have adopted a general trend about child marriages upholding the view that the Child Marriage Restraint Act only aimed at the restraint of performance of child marriages and the question of validity of those marriages was beyond the scope of that Act.[23]

It has been rightly held that husband's obtaining possession of wife below prescribed age is against the policy of the provisions of the Act. His right to possession may be enforced by recourse to the court but not by use of force.[24] This is a healthy trend and should be followed in such cases. It has been clearly held by the Calcutta High Court that there is no rule of Hindu law sanctioning early marriage. Sanction by usage also is disapproved by the Act. [25]

In an earlier case, where mother of a Rajput girl (7 years old), the bridegroom and the priest had been convicted under sub-sections 6,4 and 5 respectively, the Act had been challenged on the ground that the previous sanction of the Governor General in Council had not

---

23 *Munshi Ram v. Emperor,* AIR 1936 All 11; *Ram Baran Upadhiya v. Sital Pathak,* AIR 1939 All 340; *Moti v. Beni,* AIR 1936 All 852; and *B. Sivanandy v. P. Bhagavathyamma,* AIR 1962 Mad 400.

24 *Nanku v. Empeor,* AIR 1935 All 916.

25 *Ram Jash Agarwal v. Chand Mandal,* ILR (1937) 2 Cal 764.

been given to the Bill as passed. Adopting a positive approach, the Patna High Court, however, held that since the contracting parties came within the scope of the original Bill also, the changes made in that by the select committee did not render inadequate the "previous sanction" accorded to that by the Governor General in Council.[26]

Unfortunately, the courts have in certain cases, undesirably adopted liberal attitude as the Patna High Court in a case under this Act held that the court should not apply strictly the principles with regard to setting aside of acquittals. It should derogate from the usual practice of not setting aside acquittals except in exceptional cases.[27]

Even foreigners were covered under the Act. The Calcutta High Court held that this Act was a penal statute and was applicable to all crimes committed under it in India. The fact that the accused were foreigners made no difference even if such an act was not an offence in the foreign place.[28]

The plea of non-consummation of marriage or *gauna* could be allowed to prevent action under the Act because consummation or *gauna* is not a part of marriage ceremony. Since the marriage becomes complete before consummation, a person could be convicted under this Act though consummation has not taken place.[29]

To avoid delay in trial, correct position has been taken with respect to the proof of age saying that the certificate of birth of a person is conclusive evidence of his age so long as it is not disproved by evidence of the party denying its correctness.[30] Madras High Court has laid down a very positive rule in the context of section 5 contemplating that the *purohit,* who solemnises marriage should make some reasonable enquiry regarding age of the parties and satisfy himself that neither of them is a child.[31] Section 5 prescribed

---

26 *Jalri Kaur v. Emperor,* AIR 1933 Pat 471.
27 *Nanhak Lal v. Bazjnath Agarwala,* AIR 1935 Pat 474.
28 *Public Prosecutor v. Thammanna Rattayya,* (1936) 37 Cr LJ 757 (Cal).
29 *Munshi Ram, Supra* note 23.
30 *Supra* note 27.
31 *Supra* note 28.

punishments for those who would perform, conduct or direct any child marriage. Allahabad High Court laid down a strict rule that if the person conducting the marriage of minor acted upon the certificate about the age from a person of qualifications lower than that of a civil surgeon, it could not be said that the person acted in good faith.[32] The Patna High Court has rightly ruled that the sentence upon the priest or other celebrant should be deterrent.[33]

The words 'perform, conduct or direct' in Section 5 of the 1929 Act meant as "completing the union" and indicate solemnisation of marriage. Following this view, a woman attending child marriage as a guest, escorting bride to marriage spot and reminding women present to raise customary chorus could not be, in the opinion of court, said to 'perform, conduct or direct' marriage.[34] This opinion should now change. Any kind of the active participation in the performance of child marriages should be made punishable. Similarly, the earlier view that the negotiation, preparation or any other preliminary acts did not come within the mischief of section 5 should also be overruled.[35] There are certain other opinions, which need a change. These include: (a) mere participation by parent by *kanyadan* is not an offence under the Act; (b) merely applying for permission for conducting festivities on occasion of marriage does not amount to "performing, conducting or directing a child marriage"[36], and (c) merely advancing money to enable infant to marry in violation of the Act is not by itself punishable either under section 5 or section 6.[37]

A case under section *5* of the Child Marriage Restraint Act could be tried summarily. The fact that the offences were to be tried only by the magistrate mentioned therein did not bar a summary trial.[38] It had been held that the prosecution to succeed in persuading the court to

32 *Supra* note *26*.
33 *Ibid.*
34 *Emperor v. Fulabhai Bhalabhai Joshi,* AIR 1940 Bom 363; and *Ayya Pillai v. Manickam Pillai, 1965* (2) Cr LJ 167 (Mad).
35 *Sheikh Haider v. Syed Issar,* AIR 1938 Nag 235.
36 Emperor *v. Fulabhai Bhalabhai Joshi, Supra* note 34.
37 *Bachchu La! v. Emperor,* AIR 1936 Oudh 311.
38 *Supra* note 25.

issue summons against accused person, might *prima facie* establish that the marriage had duly been performed in accordance with the essential religious rites applicable to the form of marriage gone through by the parties and the said marriage might be valid according to law applicable to them.[39] Such a decision could open an escape rout for persons contravening the provisions of the Child Marriage Act and generally render girls helpless on getting the marriage declared as a nullity.

The opinion that section 6 could come into play only when a child marriage had been performed and not before not technically sound.[40] An intention to give a child in marriage in contravention of the Act was an "unlawful purpose"[41] within the meaning of section 361, Indian Penal Code.[42] It is correct to say that section 6 alone applied to parents who promoted child marriage or permitted it or negligently failed to prevent it.[43] The parent or guardian could be liable for the marriage of the minor even if the minor child has not directly entered into the agreement for the marriage and the agreement and arrangement had been made by some other person.[44] When the father was alive and was in charge of the minor daughter, the grandfather could be convicted for her marriage. The mother of a minor bridegroom not in actual charge of the minor and not able to prevent the marriage committed no offence by mere participation.[45]

It is very interesting to note that courts have declared the lending of money to a guardian for the marriage of her minor child not only prohibited by law but also an offence under sections 5 and 6 of 1929 Act. The very purpose of such borrowing was unlawful and against

---

39 *Jawala Prasad v. Emperor,* AIR 1934 All 331 and *Oparisa Raghavulu v. Borra Kotayya,* AIR *1956* AP

40 *State of Mysore v. Shankatrappa Satteppa Ird.,* 1971 Cr LJ 1821.

41 *Supra* note 31.

42 *Jati v. Daijit Singh,* AIR 1957 Raj *359*.

43 *KhalilurRahman v. Emperor,* AIR 1933 Rang 98.

44 *L. Bhagwat Singh v. Emperor,* AIR 1945 All 306.

45 *Supra* note 31.

the public policy.[46] Also if a minor's estate is in the hands of a receiver, the court could not sanction expenditure, even if the marriage was in contravention of the Act may be performed at a place where it was not prohibited.[47] Likewise, the mortgage effected by the manager of a joint Hindu family for the performance of the marriage of a minor could not be said to be for a necessary purpose and hence not binding on the minor.[48] However, a creditor who had lent money without being aware of the purpose for which the debt was contracted was not affected by the illegality.[49]

The courts have taken the view that Section 12 of the 1929 Act, which dealt with power to issue injunction prohibiting child marriages was a self-contained provision and its main object was prevention, that is to prevent child marriages from being performed.[50] But unfortunately, in a proceeding under Section 12 the magistrate could compel the person complained against to put in his personal appearance as he was allowed to appear either personally or by a pleader.[51] Also, if a father gave his minor daughter in marriage after an injunction of the court, he was entitled to an opportunity to show that he had no notice of the injunction before he was punished.[52]

Section 12 (2) did not contemplate injunction prohibiting child marriage generally irrespective of such marriages being under contemplation or not. Once a child marriage was prohibited under Section 12 (1) and was not celebrated in pursuance of an injunction the matter only ended there. If subsequently again a child marriage was arranged or was about to be solemnised a fresh cause of action could arise and the court was competent to issue a fresh injunction prohibiting such a marriage. The Act did not envisage the issue of an

---

46 *Chandra Sreenivasa Rao v. Korrapati Raja Rama,* AIR 1952 Mad *579; Rambhau Ganjaram v. Rajaram,* AIR *1956* Bom 250; and *Hansraj Bhuteria v. Askaran Bhuteria,* AIR 1941 Cal 244.

47 *Hansraj; Ibid.*

48 *Emperor v. Fulabhai Bhulabha Joshi,* 1941 Nag LJ 282.

49 *Duggirala S. Vittal v. Bolla Battain,* AIR 1958 AP 145 and *Pisipati Punnakotiah v. Kallapalli Kolikamba,* AIR 1967 Andh Pra 83.

50 *Supra* note 47.

51 *Ibid.*

52 *Basanta Kumar Das v. Nagendra Nath Pal,* AIR 1932 Cal 719.

injunction generally to prohibit any marriage at any time. Thus, while issuing an injunction prohibiting child marriage, a court could not issue a direction of the kind that the marriage of the child could not be brought about within a specified period of time (say six to eight years) in future.[53]

Difficulties in finding the proof of a marriage solemnisation was one of the main hurdles in the enforcement of the Child Marriage Restraint Act. Generally, the fact that a marriage was being denied by the parties and it would become impossible, especially in the absence of cooperation by the civil society, to prove the marriage. In an interesting case, *Ammasi v. State*[54], decided by the Madras High Court, the father of the bridegroom of 19 years was himself the complainant but the son deposed in the trial court that he had only a love affair with the bride and no marriage had taken place between him and the bride. The trial court acquitted the accused and the high court refused to interfere in the matter.

Actually it appears that the court did not play an effective role in controlling child marriage. Some of the decisions are appreciable but the impact has been very little. Socio-economic development, cultural advancements and education have played a more effective role. The *Ammasi* case raises a question that if an under-aged boy or girl is desirous to contract marriage for any reason, would it be admissible to stop them from doing so. The question involves many cultural and legal issues, which would have to be addressed by the academics, judiciary and the legislature afresh.

IV. Prohibition of Child Marriage Act, 2006

The Prohibition of Child Marriage Act, 2006 has been enacted to prohibit solemnisation of child marriages in a more effective manner. It repealed the earlier enactment, the Child Marriage Restraint Act, 1929. The Act defines "child" as a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age. For the purposes of the Act "child

53 M*uthrilal v. Bhup Singh,* 1965 (2) Cr LJ 836.
54 1997 Cr LJ 1891.

marriage" means a marriage to which either of the contracting parties is a child and "contracting party", in relation to a marriage, means either of the parties whose marriage is or is about to be thereby solemnised. [55]

Status of child marriage

The Act declares a child marriage as voidable at the option of either contracting party who was a child at the time of the marriage. A petition for annulling a child marriage by a decree of nullity can be filed in the district court only by such contracting party. In case of minor, he can file a petition through his or her guardian or next friend along with the Child Marriage Prohibition Officer. The petition, however, can be filed at any time but before the petitioner completes two years of attaining majority. While granting a decree of nullity, the district court has to make an order directing both the parties to the marriage and their parents or their guardians to return to the other party, his or her parents or guardians the money, valuables, ornaments and other gifts received on the occasion of the marriage by them from the other side, or an amount equal to the value of such valuables etc. Before passing any such order the concerned parties should be given an opportunity to appear before the district court and show cause why such order should not be passed.[56]

While granting a decree of nullity, the district court may also make an interim or final order directing the male contracting party to the child marriage or, if he is a minor, his parent or guardian to pay maintenance to the female contracting party to the marriage until her remarriage. The quantum of maintenance should be determined by the district court having regard to the needs of the child, the lifestyle enjoyed by such child during her marriage and the means of income of the paying party. The amount of maintenance may be made payable monthly or in lump sum. In case the party making the

---

[55] Section 2.

[56] Section 3.

petition is the female contracting party, the district court may also make a suitable order as to her residence until her remarriage.[57]

Protection of children of child marriages

Where there are children born of the child marriage, appropriate orders have to be passed by the district court for the custody of such children with welfare and best interests of the child being the paramount consideration. Any such order may also include appropriate directions for giving to the other party access to the child in such a manner as may best serve the interests of the child. The court may pass any other orders also in the interest of the child, as it may deem proper. The district court may also make an appropriate order for providing maintenance to the child by a party to the marriage or their parents or guardians.[58] Any such orders can be changed with change in circumstances.[59]

Legitimacy of children of child marriage

If a child marriage has been annulled by a decree of nullity, every child begotten or conceived of such marriage before the decree is made is deemed to be a legitimate child for all purposes.[60]

Punishments

A male adult, above eighteen years of age who contracts a child marriage can be punished with rigorous imprisonment up to two years or with fine upto one lakh rupees or with both.[61]

Punishment of any person for solemnising a child marriage, i.e., who performs, conducts, directs or abets any child marriage is rigorous imprisonment, which may extend to two years and fine which may extend to one lakh rupees. However, no punishment may be awarded

---

57 Section 4.
58 Section 5.
59 Section 7.
60 Section 6.
61 Section 9.

if he proves that he had reasons to believe that the marriage was not a child marriage.[62]

As regards punishment for promoting or permitting solemnisation of child marriages the Act provides that wherever a child contracts a child marriage and the person, having charge of the child, does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, including attending or participating in a child marriage, is with rigorous imprisonment up to two years and fine up to one lakh rupees. Such, a person may be a parent or guardian of the child or any other person in any capacity, lawful or unlawful, including any member of an organisation or association. The Act prohibits punishing woman with imprisonment, however. The burden of proof lies on the person who pleads no guilty. Thus, for the purposes of this liability, it shall be presumed that unless and until the contrary is proved the person having charge of such minor has negligently failed to prevent the child marriage from being solemnised.[63]

Marriage when void

The child marriage would be null and void if the child concerned is taken or enticed out of the keeping of the lawful guardian or by force compelled, or by any deceitful means induced to go from any place or is sold for the purpose of marriage and made to go through a form of marriage and after that sold or trafficked or used for immoral purposes. [Section 12]. Any child marriage solemnised in contravention of an injunction order issued by court, whether interim or final, would be void *ab initio*. Section 13 of the Act deals with issuance of injuctions to prevent child marriages.[64]

Issuance of injunction for prohibiting child marriages

An injunction can be issued by a Judicial Magistrate of the first class or a Metropolitan Magestrate against any person including a member

---

62 Section 10.
63 Section 11.
64 Section 14.

of an organisation or an association of persons for prohibiting solemnisation of a child marriage on an application of the Child Marriage Prohibition Officer or on receipt of information through a complaint or otherwise from any person. The Magistrate should, of course, be satisfied that a child marriage in contravention of this Act has been arranged or is about to be solemnised. A complaint to that effect may be made by any person having personal knowledge or reason to believe or by a non-governmental organisation having reasonable information, relating to the likelihood of the solenmisation of a child marriage.[65]

The Magistrate may also take *suo motu* cognisance on the basis of any reliable report or information.[66]

To prevent solemnisation of mass child marriages on certain days such as *Akshya Trutiya*, the District Magistrate is deemed to be the Child Marriage Prohibition Officer with all powers as are conferred on a Child Marriage Prohibition Officer by or under the Act. He has also additional powers to stop or prevent solemnisation of child marriages and take all appropriate measures and use the minimum force required.[67]

Any such injunction can be issued only if the court has previously given notice to the person concerned or members of the organisation or association, as the case may be, and has offered him/them an opportunity to show cause against the issue of the injunction. But in case of any urgency, the Court can issue an interim injunction without giving any such notice. The injunction may be confirmed or vacated after giving notice and hearing the party against whom the injunction was issued.[68] Also, the court may, either on its own motion or on the application of any person aggrieved, rescind or alter an injunction issued to prevent a child marriage.[69]

---

65 Section 13(1) and (2).
66 Section 13(3).
67 Section 13(4) and (5).
68 Section 13(6) and (7).
69 Section 13(8).

On receiving an application for injunction the court is required to give the applicant an early opportunity of appearing before it either in person or by an advocate. If the court after hearing the applicant, rejects the application wholly or in part, it has to record in writing its reasons for so doing.[70]

If anyone, knowing that an injunction has been issued against him, disobeys such injunction, he shall be punishable with imprisonment of either description for a term which may extend to two years or with fine which may extend to one lakh rupees or with both. In this case also no woman can be punishable with imprisonment.[71]

The offences punishable under the Prohibition of Child Marriage Act are cognisable and non-bailable.[72]

Child Marriage Prohibition Officers

Section 16 of the Act requires the state government to appoint, for the whole state or a part thereof, Child Marriage Prohibition Officer/s having jurisdiction over the area or areas specified in the notification. A state government may also request a respectable member of the locality with a record of social service or an officer of the Gram Panchayat or Municipality or an officer of the government or any public sector undertaking or an office bearer of any non-governmental organisation to assist the Child Marriage Prohibition Officer and such member, officer or office bearer, as the case may be, shall be bound to act accordingly.

The duty of the Child Marriage Prohibition Officer is: (a) to prevent solemnisation of child marriages by taking such action as he may deem fit; (b) to collect evidence for the effective prosecution of persons contravening the provisions of this Act; (c) to advise either individual cases or counsel the residents of the locality generally not to indulge in promoting, helping, aiding or allowing the solemnisation of child marriages; (d) to create awareness of the evil which results

70 Section 13(9).
71 Section 13(10).
72 Section 15.

from child marriages; (e) to sensitise the community on the issue of child marriages; (f) to furnish such periodical returns and statistics as the state government may direct; and (g) to discharge such other functions and duties as may be assigned to him by the state government.

The state government can also invest the Child Marriage Prohibition Officer with such powers of a police officer as may be specified in the notification and such Officer is supposed to exercise such powers subject to such conditions and limitations, as may be specified in the notification.

The Child Marriage Prohibition Officer has the power to move the court for an order of maintenance in favour of female contracting party under section 4, for custody and maintenance of children of child marriage under section 5*,* for injunction to prevent child marriage under section 13 and 3 to get a child marriage declared as a nullity under section 3.[73]

The Prohibition of Child Marriage Act, 2006 amends the Hindu Marriage Act, 1955 and replaces clause (a) of section 18 with a new clause providing for punishment of two years rigorous imprisonment or fine up to one lakh rupees, or with both for contravening the requirements of age for marriage under that Act (which is the same as under this Act.[74]

III. Hindu Marriage Act, 1955

The Parliament enacted the Hindu Marriage Act in 1955 to regulate marriage and divorce among Indian citizens, including everyone other than those professing Islam, Christianity, Judaism or Parsi religion.[75] It has, thus, become the major marriage law of India, governing the marriages of all such Indians who are presumed to be Hindus.

---

73 Section 16.

74 Section 2o.

75 Section *2,* Hindu Marriage Act, 1955.

Position before 1976

The Act earlier provided that at the time of marriage, the bridegroom ought to have completed 18 years and the bride 15 years of age[76] and that where the bride was still below 18 years of age, her guardian's consent ought to have been obtained.[77] The Act furnished a list of marriage-guardians and provided that if none of them, capable of giving a valid consent, was living, the requirement as to the guardian's consent would be dispensed with.[78]

The 1955 Act superseded all principles of the Hindu law as in force before its enforcement and this overriding effect extended to any text, rule or interpretation of Hindu law or any custom or usage as part of that law.[79]

By virtue of this provision all principles of the Hindu law relating to minors' marriages, which we noted earlier while discussing traditional beliefs and practices, stood abrogated and replaced by the new rules relating to marriage-age found in the Hindu Marriage Act.

The Act of 1955 did not exclude application of the 1929 Act to the Hindus and others governed by it. Therefore, both the Hindu Marriage Act, 1955 as well as the 1929 Act simultaneously regulated marriage-age among the Hindus, Buddhists, Sikhs and Jains. However, according to another provision of the Hindu Marriage Act, "any other law" in force in 1955, if inconsistent with the said Act, was to cease to apply to Hindus.[80] A question, therefore, arose as to whether there was any inconsistency between the provisions of the Sharda Act and the Hindu Marriage Act, 1955.

The marriage-age requirement in the Hindu Marriage Act, referred to above, was found in section 5 along with some other conditions for the solemnisation of a Hindu marriage, namely (a) monogamy, (b)

---

76 Section 5(iii).
77 Section 5(vi).
78 Section 6.
79 Section 4(a).
80 Section 4(b).

absence of *sapinda* and other prohibited relationship; and (c) sanity. The consequences of the violation of these conditions were mentioned in sections 11, 12, 17 and 18. The section 11 contains the provisions about void marriages and the provisions of the section 12 are related to voidable marriages. The sections 17 and 18 prescribe the penalties.

In section 11, which specifically said that marriage in violation of specified conditions would be void, reference was made to the violation of the conditions of monogamy, *sapinda* and other prohibited relationships (unless protected by custom). Sanity or marriage-age was not referred to in this regard. In section 12, which referred to voidable marriages, only one of the conditions from amongst those specified in section 5, namely, sanity was mentioned.[81] However, this section said that if the consent of either party to a marriage or the consent of the guardian where the bride was under 18 years of age, was obtained by force or fraud, the marriage would be voidable at the option of the "aggrieved party"[82], which could mean the bride or bridegroom whose consent was so vitiated or the guardian whose consent was essential under the provisions of section 5(iii).[83] By implication, this provision meant that a consenting mind was under the Act, necessary for a marriage. The Act, however, did not make it expressly manifest, and it was not clear also whether consenting mind, if necessary, and the marriage-age as mentioned in section 5 of the Act, had any relevance to one another.

As mentioned above, sections 17 and 18 of the Hindu Marriage Act constituted a 'penalty clause'. Section 17 extended to bigamous marriages among the Hindus application of the punishment for bigamy as laid down in the Indian Penal Code. Section 18 provided specific punishment for some other conditions mentioned in section 5, namely:

---

81 Other cases of voidable marriages are impotency of either party, pregnancy of the bride by another man at the time of marriage, and consent obtained by force or fraud.

82 Section 12(1) (c).

83 Conditions for exercise of this option are given in Section 12(2) (a)(i) and (ii).

(i) absence of *sapinda* or other prohibited relationship; and

(ii) marriage-age and guardian's consent for a minor bride.[84]

The punishment for violation of the latter condition was as follows:

(a) where the bride was under 15 or the bridegroom under l8 years of age — simple imprisonment up to 15 days or fine up to Rs. 1,000 or both.[85]

(b) where the bride was under eighteen and her guardian's consent (unless liable to be dispensed with)[86] was not obtained — fine up to Rs. 1000.[87]

By the Prohibition of Child Marriage Ac, 2006 the punishment of rigorous imprisonment up to two years or fine of rupees one lakh has been prescribed or both.

As regards the question whether the penalties so mentioned in the Hindu Marriage Act (which remained same though the age specifications had been changed) were consistent with the provisions of the 1929 Act, the following points are to be noted:

(i) Under the 1929 Act, a minor bride was not punishable, whereas there was no such exemption in the Hindu Marriage Act.

(ii) Under the 1929 Act, a bridegroom under 18 years of age was also not punishable; but he too enjoyed no exemption under the Hindu Marriage Act;

(iii) Under the 1929 Act, different punishments were prescribed for bridegrooms below 21 years and above that age; the Hindu Marriage Act does not have any such distinction.

---

84 Section 18(a) and (b).

85 Section 18(a).

86 Section 6.

87 Section 18(c).

All the above provisions of the 1929 Act, which were in consistent with the corresponding provisions of the Hindu Marriage Act, could be deemed to have ceased to be applicable to Hindus by virtue of section 4(b) of the Hindu Marriage Act. In such cases, punishments laid down in the Act of 1955 could be awarded. It should, however, be noted that persons other than parties to a child marriage, responsible for it, where liable to punishment under the 1929 Act, could still be punishable under that Act, since the Hindu Marriage Act is silent about them and this could be regarded as an inconsistency between the two Acts.

No provision of the Act of 1955 declares a minor's marriage in violation of the age requirements of the Hindu Marriage Act as void under the Act. Even then the persons responsible for such marriage and the parties thereto could have been liable to punishments laid down in the Act of 1929 or/and in the Hindu Marriage Act, 1955.

In *Smt. Naumi v. Narotam,*[88] the Himachal Pradesh High Court, on a scrutiny of the relevant provisions of the Act of 1955, held that a minor's marriage would not be void under the Act. As regards guardian's consent for a minor girl's marriage, in *Kunta Devi v. Kalzu Ram*[89]*,* the Punjab High Court had held that the requirement of guardian's consent in this connection, was mandatory and its violation could not be cured by applying the doctrine of *factum valet* except where the parties had after marriage cohabited voluntarily.

In *P.A. Suramma v. G. Ganapatlu*[90] the Andhra Pradesh High Court specifically deviated from *Smt. Naumi v. Narotam*[91] and held that a marriage in violation of the statutory age requirements will be absolutely void.[92] The court held that since the object of these requirements was to eradicate the evil of child marriage, a marriage violating them could not be held to be valid. This judgment was generally hailed in view of its salutory effect on the custom of child marriage.

---

88 AIR 1963 HP *15*.
89 AIR 1963 Punj *235*.
90 AIR 1975 AP *193*.
91 *Supra* note 88.
92 *Ibid.*

However, in a later case, *P. Venkata Raman v. State*[93], a Full Bench of the same court dissented from this judgment and held that a marriage in violation of the age requirements would be neither void nor voidable. Now, section 3 of the 2006 Act has declared child marriage as voidable at the option of the contracting party being a child.

After 1976

The Marriage Laws (Amendment) Act, 1976 modified many provisions of the Hindu Marriage Act, but it left its rules relating to marriage-age unaltered. However, it introduced the concept of 'Option of Puberty' into the Hindu law. Under a newly added provision it was laid down that a girl who was given in marriage before she attained the age of 15 years could seek a decree of divorce after attaining the said age[94], but before attaining the age of 18 years. The insertion of this new provision made it clear beyond doubt that the marriage of a person in violation of the age-rules was not intended by the legislature to be regarded as void.

Later, the Child Marriage Restraint (Amendment) Act, 1978 raised the marriage-age as laid down under the Hindu Marriage Act, 1955 from 18 to 21 and from 15 to 18 years for boys and girls respectively.[95] After such modification, the provisions of the Hindu Marriage Act regarding marriage guardians, whose consent was required for the marriage of girls in the age-group of 15-18 became wholly redundant. All the provisions had, therefore, been dropped. After that no girl below the age of 18 years and no boy below the age of 21 years could lawfully marry under the Hindu Marriage Act. However, such a marriage, if solemnised, still remained and was only punishable under the penal provisions of the Hindu Marriage Act and the Child Marriage Restraint Act.[96] The Prohibition of the Child Marriage Act, 2006 has changed the position making child marriage voidable at the option of the child contacting party under section 3,

93 AIR 1977 AP *43*.

94 Section 13 (2) (iv), Hindu Marriage Act as amended by the Marriage Laws (Amendment) Act, 1976.

95 Section 5(iii) as after 1978 modification.

96 See *V. Mallikarjunaiah v. H.C. Gowaramma,* AIR 1997 Kant 77.

and also null and void in cases of exploitation of child by deceitful means or is sold, trafficked or use for immoral purposes under section 12 of the Act. The punishment for contravening the provisions about age of marriage under section 5(iii) of the Hindu Marriage Act has been now fixed up to 2 years imprisonment.

IV. Special Marriage Act, 1954

Under the Special Marriage Act, 1954 the bridegroom must have completed 21 years, and the bride 18 years of age at the time of the marriage if it is to be solemnised under the said Act.[97] Unlike personal laws, there is no provision, under which the guardian's intervention could make a minor's marriage possible. The Act also provides that if a civil marriage has been solemnised without fulfilling the age requirement under the Act, the marriage shall be void.[98] It is notable that a civil marriage in violation of the statutory rules can be procured only by concealment of age because if the true age is declared and it is found to be below the legal age, the marriage officer shall refuse to solemnise the marriage. In addition to the marriage being void under the Special Marriage Act, in such circumstances it seems that the marriage shall also be subject to the penal provisions of the Prohibition of Child Marriage Act, 2006 as it was so under the Child Marriage Restraint Act, 1929.

This is the position with respect to a civil marriage which is originally solenmised under the Special Marriage Act, 1954. As we know, a marriage solemnised under any of the personal laws can later be registered as a civil marriage under the Special Marriage Act.[99] For such registration, one of the conditions laid down by the Act is that both parties should have completed 21 years of age.[100] Section 24(2) of the Act says that if any such marriage is registered in contravention of any of the conditions for the registration of civil marriages, the registration may be cancelled. The marriage will, however, remain valid under the personal law or any provision under which it was

---

97 Section 4(c), Special Marriage Act, 1954.

98 Section 24.

99 Sections 15 and 18.

100 Section 15(d).

solemnised provided that it is not hit by any other provision of that personal law or any provision of the Prohibition of Child Marriage Act, 2006 regarding voidability or nullity of such marriage.

V. Muslim Law

A study of the classical Muslim law on marriage-age and the related matters has already been covered in the preceding parts of this book, which indicate that there is no absolute bar to child marriages but it can be contracted only through a marriage guardian. This classical principle has in the recent past been reformed in some Muslim countries. In most of these countries the normal marriage age for boys and girls has been fixed by law and the courts have been given power to relax these rules in exceptional cases with the consent of guardians. The marriage-age for boys is now 18 years in Lebanon, Egypt, Syria, Morocco, Iraq, Iran, Pakistan and Bangladesh. It is 17 years in Turkey and 20 years in Tunisia. For girls the marriage age is 17 years in Jordan, Syria and Tunisia, 18 years in Iraq, 16 years in Egypt, Pakistan and Bangladesh, and 15 years in Turkey, Iran and Morocco. These limits for boys and girls are relaxable by one or two years by courts on grounds of "good reasons", "adequate maturity" or "medical fitness" for marriage in Turkey, Lebanon, Jordan, Syria and Iraq.[101]

In India, the classical Muslim law of the *Hanafi* and *Shia* schools relating to age of marriage remains unchanged. There has been a specification in one respect as we have referred earlier to the traditional principle of "option of puberty" under which a boy or girl below the age of puberty, if given in marriage by his or her guardian *other than father or father's father,* can repudiate the marriage (if unconsummated) on coming of age and within a reasonable time. The puberty of the minor for this purpose is, under the traditional law, a biological fact to be proved by evidence. Only in the absence of evidence to the contrary, it is presumed to have been attained the age of 15 years. The Dissolution of Muslim Marriages Act enacted in

---

101 See for details M. Afzal Wani, "Maintenance of Women and Children under Muslim Law: Legislative Trends in Muslim Countries", 45, *Journal of Indian Law Institute* (July-Dec., 2003).

India in 1939 reformed this principle of the classical law in that the minimum age of puberty for the purpose of exercising the "option of puberty" would be invariably 15 years. Further, according to the said Act, this option can be exercised at any time before the girl attains the age of 18 years, provided that the marriage has not been consummated after she completed her 15th year. Also, the option is exercisable in all cases irrespective of whether the person who gave her in marriage was *the father or grandfather* or any other guardian. These new rules introduced by the Dissolution of Muslim Marriages Act, 1939 have substantially made the traditional law of "option of puberty" specific in its application to Muslim girls in India. In view of this the marriage of a minor Muslim girl, in India, is voidable at her option when she completes her age of 15 years and it remains so thereafter till the marriage is consummated or till she completes her age of 18 years, whichever is earlier.

The Jammu and Kashmir Dissolution of Muslim Marriages Act, 1942 retains the classical law about *marriages contracted by the father or grandfather of the bride* and allows repudiation of such marriages only if the same is to her manifest disadvantage.[102] With respect to other guardians the position is same as outside Jammu and Kashmir under the Act of 1939. Recently, in an interesting case, *Abdul Ahad v. Mst. Shah Begum*[103], the Jammu and Kashmir High Court has taken a note of the realities and upheld the interests of children given in marriage during their childhood. The court well appreciated the possibilities of exploitation of the girl child in the existing social milieu. In the instant case a girl of 8th class, aged 14 had been given in marriage without any guardian by winning over her mother. The court by holding the marriage as void *ab initio,* refused to grant a decree of restitution of conjugal rights. The main issues, which have a bearing on child marriage and were settled in the case are:

(a) No marriage is concluded where it takes place by force and by taking an undue advantage of the minority of a girl.

---

102 Section 2, the J&K Dissolution of Muslim Marriages Act, 1942

103 AIR 1997 J&K 22; See M. Afzal Wani, "Muslim Law" XXXIII-IV, *ASIL (Annual Survey of Indian Law, ILI)* (1997-98).

(b) Mere assertions in the absence of proof (cogent proof), that the marriage was entered into the register of marriages and the husband resided as a khanadamad in the house of the mother-in-law cohabiting with the girl during a period of time have no bearing on the status of the 'marriage'.

(c) Where a minor is given in marriage by a so called '*wali*' (not an authorised guardian), no formal repudiation of the marriage is needed because of it being invalid in itself.

(d) A girl given in marriage during minority even by a '*wali jayiz*' (lawful guardian), can repudiate the marriage on attaining puberty.

(e) A major girl cannot be given in marriage against her will by any one, not even by her father.

VI. A Compact View of Marriage-Age

An analysis of the various personal laws and enactments related to determination of age of marriage leads to the conclusion that the marriage-age for boys and girls now under Hindu law and Christian law is 21 and 18, under Parsi law 21 and 21, under Muslim law 15/12 and 15/9 and under Penal law (applicable to all communities) 21 and 18 respectively.

Thus, the legal position with respect to Hindus is that a child marriage, whether of a boy or of a girl, is punishable. It was neither void nor voidable; but punishable under the Hindu Marriage Act, 1955 and the Child Marriage Restraint Act, 1929, but it has been made voidable under the Prohibition of Child Marriage Act 2006. The child marriage of a Muslim girl is voidable at the option of the girl under section 2 of the Dissolution of Muslim Marriages Act, 1939 and was punishable under the Prohibition of Child Marriage Act, 2006. The child marriage of a Muslim boy if solemnised by a father or grandfather is valid under classical Muslim law, but punishable under the 2006 Act. If solemnised by any other guardian, it is voidable under the 2006 Act. If solemnised by any other guardian it is voidable, under classical Muslim law and punishable under the 2006 Act.[104] A Christian child marriage cannot be solemnised by any of the marriage officials as directed by the Christian Marriage Act, I872[105] and will be punishable under the 2006 Act. A child marriage is invalid under Parsi law[106], and punishable under the 2006 Act. In the law of civil marriages[107], a child marriage is not possible except by fraudulent concealment of age, in which case it will be void under the civil marriage law and punishable under the 2006 Act.

VII. Status of Enforcement of the Laws

Child marriage virtually deprives children of their human rights and brings ruins to their happiness. Rai Saheb Harvilas Sharda, after whom the Child Marriage Restraint Act, 1929 was popularly referred to has observed:[108]

Child marriage is a crime which sometimes results in the death of the victim, the bride and sometimes maiming her for life .... The Act primarily deals with a crime, a grave crime against girls. It is an attempt by indirect means to put a stop to the inhuman acts which go unpunished behind the screen of social religious validity. The Child Marriage Restraint Act is a measure which tackles an evil much more grave than *sati,* because it is far more devastating in its consequences and more insidious in its working.

The legislation had, therefore, been adopted with high expectations. The experience of its implementation was, however, been not so encouraging. The position was so even when better implementation of policy would have proved helpful as a strategy against many evils. Initially the Act was not made applicable to marriages performed in all parts of India. It saved marriages contracted outside British Indian Territories. The result was that many parents solemnised child

104 The Dissolution of Muslim Marriages Act, 1939 modifies the classical law only with respect to girls.
105 See sections, 4, 15 16, 19, 20, 42 and 60, Christian Marriage Act, 1872.
106 Section 3(c), Parsi Marriage and Divorce Act, 1939.
107 Section 24, the Special Marriage Act, 1954.
108 Now replaced by the Prohibition of Child Marriage Act, 2006.

marriage in those territories where the Act was not in force. Some Native States even derived revenue by imposing a tax on such child marriages. This lacuna in the Act was removed by the Child Marriage Restraint (Second Amendment) Act, 1938.

The offences under the Act were not earlier made cognisable giving reason that the police would harass the parties and that would breed corruption.

Fixation of the period of limitation for taking cognisance, was a hurdle in the implementation of the Act. Section 9 of 1929 Act provided:

No court shall take cognisance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed.

The immunity of women from the punishment of imprisonment was and is also a reason to be counted in this respect. The offences under the Act were made cognisable first by Gujarat Government. It also made a provision for the appointment of Child Marriage Prevention Officers to prevent child marriages and for the effective prosecution of persons solemnising child marriages.

Experiences suggest that for the enforcement of social reform legislations, it is highly desirable to secure the cooperation of the voluntary agencies. The Gujarat amendment contained a specific enabling provision in this regard. Section 13(b) of the Gujarat amendment stated:

The State Government may associate with each Child Marriage Prevention Officer a non-official advisory body consisting of not more than five social workers, of whom at least two shall be women workers, known within the area of jurisdiction of the officer for the performance of his functions under the Act.

The Parliament in 1978 amended the 1929 Act to make the offence cognisable for certain purposes. Section 7 of the 1929 Act, as explained above, provided that the Code of Criminal Procedure 1973 would apply to offences under this Act, as if they are cognisable offences, (a) for purpose of investigation of such offences, and (b) for the purpose of matters other than— (i) matters referred to in section 42 of that Code, and (ii) the arrest of the person without warrant or without an order of a magistrate.

Since the 1929 Act did not declare child marriages as invalid, this was considered as a cause of its ineffectiveness. But it needs to be pointed out here that invalidation of child marriages by legislation could lead to many more social and legal problems. The other prescriptions under the Act could be better enforced, but that was not done.

As regards the enforcement mechanism there existed an inadequacy of accessory facilities. The Child Marriage Prevention Officers were not provided with transport facilities, which is detrimental to the basic operational mechanism. Child marriage restraint has to be a quick process. Any delay in it spoils the rot. The extent of the duty of the Child Marriage Prevention Officers should have been well specified to make them have better focus on their assignments. They should have been themselves protected from political interferences. As mentioned above. Now the Prohibition of Child Marriage Act, 2006 has made child marriage voidable at the option of the child contracting party and void in circumstances like use of deceitful means or putting a minor to sale, trafficking or used for other purposes.

It is advisable prescribing of heavy punishments for offences under the child marriage prevention laws. However, it has been generally observed that where heavy punishments are prescribed, the conviction rate is low.

The policy of 'no imprisonment' of female offenders under the Act needs a review. There will be no harm in making a woman punishable with some kind of confinement when her involvement in a child marriage is of a primary nature.

For making the 2006 Act effective, the issue of compulsory registration of marriages needs a thorough and positive consideration. This will be in line with the recommendation of the Age of Consent Committee and the Supreme Court decisions about at least compulsory notification of marriage. The Committee on Status of Women Report has also pointed out that compulsory registration of marriages "operates as an effective check on child and bigamous marriages and also offers reliable proof of marriage", the parties may though be free to choose the pattern to soleminise a marriage in any customary or traditional form. Entry 5 of the Concurrent List in the Seventh Schedule of the Constitution already mentions 'marriage and divorce' which can provide a basis for any legislative action in that direction. The greatest force behind the practice of child marriage was the superstition, having ideas based on false or non-essential religious beliefs. It had become, by the first and second century B.C., an integral part of the Indian psyche that girls should be married before the commencement of their menstruation. As pointed out earlier, according to the author of *Brahma Purana,* a girl can be married at any time after she attains the age of 4 years. *Yajnavlakiya* is of the view that the marriage of a girl should be solemnised before the commencement of the menstruation. This mind-set, wherever exists, has to be changed.

Because of inefficient legal mechanism very seldom complaints are being made regarding the solemnisation of child marriages. Even if there is a complaint, the process of legal action is so complicated that it entails or involves so much delay that before an action is actually taken, the marriage is already solmenised.

In any case the practice of child marriage is now on a decline, the traditional supportive factors notwithstanding. The fact remains that the reason for the decline is not mainly the legislation to which a symbolic value, however, cannot be denied. The main responsible factors, which would need more focus, are the changing family patterns, universalisation of education, increase in individual freedom, and the ever-expanding spectrum of modernity. The symbolic and the enabling role of law can in no case be underestimated.

ROLE OF INDIAN JUDICIARY IN PROTECTION OF CONSUMERS THROUGH EVOLVING AND BREAKING NEW GROUNDS WITH SPECIAL REFERENCE TO THE TELECOM INDUSTRY

M. Rafiq Dar*

Introduction

The Consumer Protection Act, 2019 was enacted to provide for better protection of the interest of the consumers and for the purpose to make provisions for the establishment of Consumer Councils and other authorities in the settlement of consumer disputes and for matters connected therewith. It seeks, inter-alia, to promote and to protect the rights of consumers such as protection against marketing of goods which are hazardous to life and property, the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumers against unfair trade practices, the right to be assured, wherever possible, access to variety of goods at competitive prices, the right to be heard and to be assured that the interest of consumers will receive due consideration at appropriate forums, the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers and right to consumer education. "An Act to provide for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers' disputes and for matters connected therewith or incidental thereto".

The long title of the new Consumer Protection Act, 2019 ("2019 Act") in the least number of words explains the whole and sole purpose of the Act. While the Consumer Protection Act, 1986 had nearly the same long title, but being around three decades old, did not inculcate the needful things that would have solved the problems

* Assistant Professor, Vitasta School of Law and Humanities, Srinagar, Kashmir.

of the modern and technology-dependent consumers, which is why a need was felt to replace the whole Act with a new one and bring a fundamental change. The object is also to provide speedy and simple redressal to consumer disputes quasi-judicial machinery is sought to be set up at District, State and Central Levels. These quasi-judicial bodies are to observe principles of natural justice and have been empowered to give relief of specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of orders given by quasi-judicial bodies have also been provided.

Unlike the Constitutions of Australia, Canada or the U.S.A., the Constitution of India has an elaborate Preamble. The Constitution makers gave to the Preamble the place of pride. It embodies in a solemn form all the ideals and aspirations for which the country had struggled during the British regime.[1] The Preamble to the Constitution lays down the goals of politico-socioeconomic democracy for the citizens of India. The Preamble emphasises that India should be a Sovereign Socialist Secular Democratic Republic. The Preamble further states that the people of India have given the Constitution to themselves to secure all its citizens justice social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity and fraternity assuring the dignity of the individual.

Consumer Protection Law is a state or federal law designed to protect consumers against improperly described, damaged, faulty, and dangerous goods and services as well as from unfair trade and credit practices[2] government protection is absolutely necessary and consumer protection is one of them. An ordinary consumer has the right to a sense of security about the products and services purchased in the marketplace. Companies usually do not produce inferior goods on purpose. However, manufacturers may be tempted to use low-quality material in making certain appliances, causing them to be defective. This type of production can only be prevented if a

1 Shelat and Grover, JJ. in *Keshavananda Bharati v. State of Kerala,* AIR 1973 SC 1461.

2 Webster's New World Law Dictionary, 2010.

consumer protection complaint is filed. Awareness here lies on the part of consumers to understand what constitutes a complaint, and how to file a case. A successful complaint can cause a manufacturer to stop production.

Role of Supreme Court and Consumer Courts in Consumers' Protection

The Indian judicial system is independent and impartial. Rather, this is the only pillar of Indian democracy in which all Indians have full faith and confidence. This faith is amply demonstrated by the fact that every day many new cases are being brought in courts all over the country. The Indian judiciary is thus one of the strongest pillars of Indian democracy.[3] An impartial judiciary is a *sine-qua-non* for the smooth functioning of a political system. It is the third organ of the government and is charged with the responsibility of deliverance of justice to the aggrieved party. The judiciary does not have a substitute in the present society.

In modern democratic political systems, the judicial system is known as open, impartial, consistent, stable and predictable. The judiciary operates in accordance with the prescriptions of the Rule of Law. Such judicial system believes in the fairness and openness of proceedings. Under our Constitution, we have a single integrated system of courts for the Union, as well as, the states which administer both Union and state laws. The Indian judiciary is independent and separate from the government and the legislature. The judges of Indian courts have maintained very high standards of judicial integrity. This fact has also been recognised by the international business community. This is one of the main reasons that multinational corporations have been entering into joint ventures with Indian businesses and are investing billions of dollars in India to

---

3 *"The Judiciary: A Pillar of Indian Democracy... In Dire Need of Reform",* Prof. Rajiv Khanna, March 1, 2010. http://www.biztechreport.com/story/443. retrieved on 15.04. 2021.

set up not only huge industrial units and develop town-ships, but also develop India's infrastructure.[4]

> *"The interest of the consumer has to be kept in the forefront and the prime consideration that an essential commodity ought to be made available to the common man at a fair price must rank in priority over every other consideration".*[5]

At the apex we have the Supreme Court, below the Supreme Court we have the High Courts of the different states and under each High Court there is a hierarchy of other courts which are called Subordinate Courts. These are the courts which are subordinate to and under the control of the High Court. The role of Indian judiciary has also been constructive in protecting the rights of consumers. A three tier mechanism has been provided in the Consumer Protection Act, 2019. At district level there is District Consumer Forum, at state level, there is State Commission. At the national level we have National Commission. Various types of 'services' provided or availed for consideration come within the scope of the Consumer Protection Act, 2019.

The courts have always had the power at general law to decline to enforce legal rights where it would be outrageous or offend good conscious to do so. The approach of the legal system to unconscionable conduct was demonstrated in *Commercial Bank of Australia LM v. Amadio*[6] in that case, a bank had taken security over the home of the parents of one of the bank's customers. The bank knew that the customer had approached his parents for help but had not explained the real risks of giving security to the bank. The bank also knew that the parents were not commercially sophisticated and that they did not have a good grasp of English. The court held the bank was not permitted to enforce its legal rights under the security arrangement because it would offend good conscience to do so. Mason J. explained:

---

4 *Ibid.*

5 Y.V. Chandrachud, J. in *Prag Ice & Oil Mills v. Union of India*, (1978) 3 SCC 459

6 (1983) 151 CLR 447.

> *"Relief on the ground of unconscionable conduct will be granted when unconscientious advantage is taken of an innocent party whose will is overborne so that it is not independent and voluntary, just as it will be granted when such advantage is taken of an innocent party who, though not deprived of an independent and voluntary will, is unable to make a worthwhile judgment as to what is in his best interest".*

The concept of social justice is an ideal which can be achieved if conditions of the social organisation permit the authorities to adopt the necessary measures to secure the ideal. Hence, the legal and constitutional character of the state contributes a lot to the attainment of the ideal of social justice. If the state is founded upon the idea of the welfare of the people then the authorities are duty bound to implement the idea of welfare and thus achieve the idea of word social justice.[7] A welfare state is a positive state. This means that, unlike the 'laissez faire' of classical liberal political theory, the welfare state does not seek to do only the minimum necessary to maintain law and order. The welfare state is an interventionist state and actively uses its considerable powers to design and implement social policies for the betterment of society.[8]

The courts recognised that a consumer could sue the manufacturer of negligently manufactured goods in *Donoghue v. Stevenson*.[9] In that case; a person purchased a bottle of drink from a retailer which had been manufactured by someone else. The drink contained an impurity - a snail that had somehow made its way into the bottle during the course of the manufacturing process. The ultimate consumer of the drink became ill after drinking the contents of the bottle. Prior to the decision in Donoghue, a consumer who was injured by negligently manufactured products could only sue the person with whom he or she had a contract - such as the retailer. Donoghue permitted actions to be brought against the manufacturer. The decision in this case and

---

7 "*Social Legislation and Legal System*", Shikha Singh; kouniv.ac.in/site/ writereaddata/siteContent/ 202004120812185352 shikha_singh_Social_ Legislation.pdf. visited on 25.4.21.

8 *Ibid.*

9 [1932] AC 562.

the product liability regime recognised implicitly that the consumer and the retailer are not necessarily in a good position to assess and manage the risk associated with defective goods. These types of regulations have been justified on the grounds of public policy and 'dignity of profession'. In *Morgan Stanley Mutual Fund v. Kartick Das*[10] the Supreme Court stated the meaning of the expression "consumer" in the following words:

> *"The consumer, as the term implies, is one who consumes. As per the definition, consumer is the one who purchases goods for private use or consumption. The meaning of the word 'consumer' is broadly stated in the above definition so as to include anyone who consumes goods or services at the end of the chain of production. The comprehensive definition aims at covering every man who pays money as the price or cost of goods and services. The consumer deserves to get that he pays for in real quantity and true quality. In every society, consumer remains the centre of gravity of all business and industrial activity. He needs protection from the manufacturer, producer, supplier, wholesaler and retailer".*

A person who buys goods or hires services for resale or commercial purpose does not fall within the definition of consumer. The Supreme Court[11] summarised the position as under:

> *"The intention of Parliament is to exclude from the scope of definition, the persons who purchase goods for resale and also those who purchase goods with a view to use them for carrying any activity for earning. The immediate purpose as distinct from the ultimate purpose of purchase, sale in the same form or after conversion and a direct nexus with profit or loss would be the determinants of the character of transaction-whether it is for commercial purpose or not. Thus buyers for commodities or goods for self-consumption in economic activities in which they are engaged would be consumers as defined in the Act".*

---

10 (1994 (4) SCC 225).

11 *Madan Kumar Singh v. Distt. Magistrate Sultanpur & Ors.* 2009(7)SCJ 558. (2009)9 SCC 79.

The consumer, as the term implies, is one who consumes. As per the definition, consumer is the one who purchases goods for private use or consumption. The meaning of the word 'consumer' is broadly stated in the definition so as to include any one who consumes goods or services at the end of the chain of the production. The comprehensive definition aims at covering every man who pays money as the price or cost of goods and services.[12] In *Lucknow Development Authority v. M.K. Gupta*[13] the Supreme Court noted that the word "consumer" is a comprehensive expression. It extends from a person who buys any commodity either as eatable or otherwise from a shop, business house, corporation, store, fair-price shop to use it for private use or consumption and not for commercial purpose. For example, a licensee to run a phone is not a consumer.[14] The beneficial consumer jurisdiction cannot be extended to lotteries and wagering transactions or consequential rights flowing from void contracts. A lottery ticket holder is not 'consumer' within the ambit of the definition of 'consumer' under the Act.[15] Shares before allotment do not come into existence and cannot be regarded as goods; debentures do not come within the purview of the definition of stock.[16] Debentures are neither stock nor shares, a share cannot be held to have been issued unless a share certificate is given to the concerned person.[17] Shares before allotment have been held to be not in the category of goods.[18] An applicant who merely applies for allotment of shares is not a consumer.[19] Persons buying goods either for re-sale or for use in large scale profit making activity will not be 'consumers' entitled to protection under the Act.[20] The insurance company is not a consumer. Hence the consumer complaint by

---

12 Avtar Singh, *"Law of consumer protection, principles and practice",* IV edn., Eastern Book Company, Lucknow, U.P., p.19.

13 (1994) 1 SCC 243 at 253.

14 *Techno Combine Associates v. Union of India,* I (1194) CPJ 481: 1994 (I) CPR 298.

15 *Jagdish Chand v. Director, Sikkim State Lottery,* 1994 (I) CPR 213.

16 *Sri Gopal Jalan & Co v. Calcutta Stock Exchange Ltd*, AIR 1964 SC 250.

17 *Shree Gopal Paper Mills Ltd v. CIT*, (1970) 77 ITR 543.

18 *Morgan Stanley Mutual Fund v. Kartick Das,(*1994) 4 SCC 225 at 239.

19 *HG Bhatia v. ABC Computers Pvt. Ltd., 1994 (I) CPR 316.*

20 *Raj Kumar v. S.C. Verma,* 2001 (1) CPR 437.

insurance company is not maintainable.[21] The word 'person' as occurring in this definition has been held to include a 'company' incorporated under the Companies Act. The court cited section 3(42), General Clauses Act, 1897 stating that the word person includes any company or association or body of individuals whether incorporated or not.[22] The Electricity Act, 2003 and the Consumer Protection Act, 1986 run parallel for giving redressal to any person, who falls within the meaning of "consumer".[23] In case of inconsistency between the Electricity Act, 2003 and the Consumer Protection Act, 1986, the provisions of Consumer Protection Act will prevail.[24] "Frivolous matters are making the institution dysfunctional. These matters waste important time of the court, which could have been spent on serious matters, pan-India matters".[25]

Professional Services

Medical Profession

Lately, Indian society is experiencing a growing awareness regarding patient's rights. This trend is clearly discernible from the recent spurt in litigation concerning medical professional or establishment liability, claiming redressal for the suffering caused due to medical negligence, vitiated consent, and breach of confidentiality arising out of the doctor-patient relationship. The patient-centered initiative of rights protection is required to be appreciated in the economic context of the rapid decline of State spending and massive private investment in the sphere of the health care system and the Indian Supreme Court's

---

21 *Savani Road Lines v. Sundaram Textiles Ltd.,* AIR 2001 SC 2630.

22 *Karnataka Power Transmission Corpn. v. Ashok Iron Works (P) Ltd.* (2009) 3 SCC 240.

23 *U.P. Power Corporation Ltd. & Ors. v. Anis Ahmad* [2013(13) C.L.T. 226]

24 *Ibid.*

25 *Frivolous cases making institution dysfunctional, delaying matters of national importance*: SC, June 01.21 https://economictimes.indiatimes.com/news/india/frivolous-cases-making-institution-dysfunctional-delaying-matters-of-national-importance- visited on 07.06.21

painstaking efforts to constitutionalise a right to health as a fundamental right.[26]

The Supreme Court has cleared the position in landmark decision of *Indian Medical Association v.V.P. Shantha and Others*.[27] As a result of this judgment, medical profession has been brought under the Section 2(1) (o) of CPA, 1986 and also, it has included the following categories of doctors/hospitals under this Section:

1. All medical/dental practitioners doing independent medical / dental practice unless rendering only free service.

2. Private hospitals charging all patients.

3. All hospitals having free as well as paying patients and all the paying and free category patients receiving treatment in such hospitals.

4. Medical/dental practitioners and hospitals paid by an insurance firm for the treatment of a client or an employment for that of an employee.

It exempts only those hospitals and the medical/dental practitioners of such hospitals which offer free service to all patients.

A doctor undertakes to exercise reasonable care and a certain degree of skill. It may be different from the standard that shall be exercised by doctors with higher knowledge and greater advantages than him. Neither the highest degree of care nor the lowest is expected.[28] A doctor is held liable for negligence when he falls short of the reasonably skillful medical man.[29]

---

26 "*Medical negligence liability under the consumer protection act: A review of judicial perspective",* S. V. Jaga Rao; Indian Journal of Urology. 2009 Jul-Sep; https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2779962/ visited on 26.4.21.

27 AIR 1996 SC 550.

28 *Dr. T.T. Thomas v. Elisa,* A.I.R. 1987 Ker. 52.

29 *Bolam v. Friem Hospital Management Committee*, [1957]2 All E.R.ll8 at p.12l (Q.B.).

The Supreme Court in the case *of Indian Medical Association v. V.P. Shantha*[30] held:

> *"The fact, that medical practitioners belong to the medical profession and are subject to the disciplinary control of the Medical Council of India and/or State Medical Councils constituted under the provisions of the Indian Medical Council Act would not exclude the services rendered by them from the ambit of the Act".*[31]

Beside the patients, beneficiaries of a service also considered to be consumers. In the *Spring Meadows Hospital* case[32], the Apex Court held that: In the present case, we are concerned with clause (ii) of Section 2(1) (d). In the said clause a consumer would mean a person who hires or avails of any services and includes any beneficiary of such services other than the person who hires or avails of the service. When a young child is taken to a hospital by his parents and the child is treated by the doctor, the parent would come within the definition of consumer having hired the services and the young child would also become a consumer under the exclusive definition being a beneficiary of such services.The liability of a doctor for negligence can be gathered from the following observation of the apex court in *Dr Laxman Balakrishna Joshi v. Dr. Trimbak Babu Godbole*:[33]

> *"The duties which a doctor owes to his patients are clear. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties, viz., a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give or a duty of care in the administration of the treatment. A breach of any of those duties gives a right of action for negligence to the patient".*

---

30 (1995)3 CTJ 969 (SC).

31 *Id.* at 989-90.

32 *Harjot Ahluwalia v. Spring Meadows Hospital,* II (1997) CPJ 98 (NC).

33 A.I.R. 1969 S.C. 128 at p.132.

In this case a doctor performed a surgical procedure on patient's fracture without giving anaesthesia. The patient died due to shock. The doctor was held liable for negligence.

The Hon'ble Supreme Court[34] has mentioned that "on scrutiny of the leading cases of medical negligence both in our country and other countries specially United Kingdom, some basic principles emerge in dealing with the cases of medical negligence. While deciding whether the medical professional is guilty of medical negligence following well known principles must be kept in view:

> *"Negligence was the breach of duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.*
>
> *Negligence was an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.*
>
> *The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.*
>
> *A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.*
>
> *In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor was clearly not negligence merely because his conclusion differs from that of other professional doctor.*
>
> *The medical professional was often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because*

---

[34] *Kusum Sharma and Ors. v. Batra Hospital,* (2010, 3 SCC 480).

> *a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence.*
>
> *Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely, because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.*
>
> *It would not be conducive to the efficiency of the medical profession if no doctor could administer medicine without a halter round his neck."*

Status of Government Hospitals under Consumer Protection Act

As far as the settled law is concerned, the patients of the government hospitals cannot maintain a suit in the consumer forum under COPRA, as such services do not have any considerations for the service rendered as those are free of cost. A patient cannot claim of availing of paid medical services in a government hospital just because of the tax he pays. The patients, who approach for treatment in a government hospital are not entirely treated free of cost. There is cost for the bed, medicines and the food that is being offered to the patient and all surgeries done on a patient are not always free of cost. Only the services that a doctor renders as regular visits and checkups may be regarded as free of cost. But that do not imply that a patient is being treated without any consideration. But all the patients, who seek treatment in government hospitals, are considered to have availed medical services free of cost. They are not consumers under the COPRA as the service they are offered is not hired for consideration. A person who receives medical treatment in a government hospital is not a consumer under the Act.[35] However, the State Commission of Orissa held that a patient is a consumer being the beneficiary of services in as much as the State Government

---

35 *Consumer Unity and Trust Society v. State of Rajasthan*, (1991) I CPR 241.

is paying the consideration amount in the form of salary to the doctors and hospital staff.[36]

In the case of *Paramjit Kaur v. State of Punjab*[37] the patient was operated upon in Punjab Government Hospital free of charge for family planning. Subsequently, she conceived and gave birth to a girl child. She filed a suit against State of Punjab and the doctor, who performed the operation, to claim compensation of Rs. 2 lakh for negligence in performing the operation. The complaint was dismissed as she was treated free of cost.

The Rajasthan SCDRC has observed that a pensioner who avail the facility of free supply of medicines under Rajasthan State Pensioners' Medical Concession Scheme, by making a monthly contributions at the rate prescribed while in service, has hired the service in exchange for the contributions, and is, therefore, a consumer as per the Act.[38]

The services provided by Employees' State Insurance (ESI) Hospitals

The services provided by Employees' State Insurance (ESI) hospitals cannot be regarded as free service and persons who get treated over there under an insurance scheme are rightly qualified as consumers under COPRA as the issuer bears the charges. ESI scheme is an insurance scheme and contributes for the service rendered by the ESI hospitals/dispensaries, of medical care in its hospitals/dispensaries, and as such service given in the ESI hospitals/dispensaries to a member of the scheme or his family cannot be treated as gratuitous. Section 56 of ESI Act, 1948[39] is a specific section, which has

---

36 *Smt. Sukanti Behera v. Dr. Sashi Bhusan Rath,* II (1993) CPJ 633. See also, *Vinod Jain v. Santokba Durlabhji Memorial Hospital and others*; AIR 2019 SC 1143.

37 (II(1997) C.P.J.394).

38 *Treasury Office and Member Security Pensioner Medical Fund v. G. K. Joshi,* I (1996) CPJ22(Raj.SCDRC).

39 Section 56. ESI Act, 1948. Medical Benefit. — (1) An insured person or (where such medical benefit is extended to his family) a member of his family whose condition requires medical treatment and attendance shall be entitled to receive medical benefit. (2) Such medical benefit may be given either in the form of out-patient treatment and attendance in a hospital or dispensary, clinic

reference to the medical benefits available to an insured person or to his family member whose condition requires medical treatment and attendance and they shall be entitled to receive medical benefit. Section 59 of the same Act obligates the corporation to establish and maintain in a State such hospitals, dispensaries and other medical and surgical services as it may think fit for the benefit of the insured persons and their families. From the provisions of the ESI Act, it is clear that the corporation is required to maintain and establish the hospitals and dispensaries and provide medical and surgical services. Service rendered to the insured person or his family member in the hospital for medical treatment is not free, in the sense that the expense incurred for medical service rendered in the hospital would be borne from contributions made to the insurance scheme by the employer and the employee. It is a matter of common knowledge that the patients in a government hospital are regarded to be treated free of cost but as a matter of fact, the x-rays or other pathological

---

or other institution or by visits to the home of the insured person or treatment as in-patient in a hospital or other institution. (3) A person shall be entitled to medical benefit during any [period] for which contributions are payable in respect of him or in which he is qualified to claim sickness benefit or maternity benefit [or is in receipt of such disablement benefit as does not disentitle him to medical benefit under the regulations] :

Provided that a person in respect of whom contribution ceases to be payable under this Act may be allowed medical benefit for such period and of such nature as may be provided under the regulations :

[Provided further that an insured person who ceases to be in insurable employment on account of permanent disablement shall continue, subject to payment of contribution and such other conditions as may be prescribed by the Central Government, to receive medical benefit till the date on which he would have vacated the employment on attaining the age of superannuation had he not sustained such permanent disablement :

[Provided also that an insured person who has attained the age of superannuation, a person who retires under a Voluntary Retirement Scheme or takes premature retirement, and his spouse shall be eligible to receive medical benefits subject to payment of contribution and such other conditions as may be prescribed by the Central Government.]

Explanation. — In this section, "superannuation", in relation to an insured person, means the attainment by that person of such age as is fixed in the contract or conditions of service as the 62 age on the attainment of which he shall vacate the insurable employment or the age of sixty years where no such age is fixed and the person is no more in the insurable employment].

tests that are required to be performed are not done in the government hospital but the patients get those done from outside/private clinics. As has earlier been mentioned the medicines are not being provided free, which they need to buy from outside from dispensaries which is not free of cost. So, free of cost service is not actually free of cost.

In *Kishore Lal v. Chairman ESI*[40] the Supreme Court held that wherever charge for medical treatment are borne under an insurance policy, it would be a service rendered within the ambit of Section 2(1)(0) of the Act, it means that the services are not free of charge.

The Consumer Protection Act, 2019 ('CPA 2019') arrived in full glory and the Central government vide notification dated 15-07-2020[41] appointed 20-07-2020; and thereafter vide notification dated 23-07-2020[42] appointed 24-07-2020 to be the dates on which provisions of CPA 2019 shall come into force.

Lawyering Services

A career in the legal profession can be intellectually challenging, personally fulfilling and financially rewarding. Below are ten reasons to choose a career in the legal profession. Law and its practice is a professional responsibility. At the heart of the legal professional's role is client service. Whether you are a lawyer representing a multinational corporate client, a paralegal assisting abused women to obtain restraining orders or a law clerk researching a tax issue for a new business, the fundamental purpose of the legal professional is to help others resolve their legal problems.

The lawyers' calling is a profession as it has all the ingredients of a profession namely,

---

40 (2007) 4 SCC579).

41 https://consumeraffairs.nic.in /sites/default/files/Act%20into%20force.pdf visited on 26.4.21.

42 https://consumeraffairs.nic.in/sites/default/files/Provisions%20of%20 Act %20comes%20into%20force.pdf. Visited on 26.04.21.

- Collective organisation (the Bar);
- A spirit of service (a duty to the community often transcending the duty towards a particular client);
- Learning and status.

As a matter of fact, the profession of law has been characterised as 'noble profession' for good reasons. A case is won or lost as a result of the ability or inability of the lawyer to cope and tackle with the situation successfully by bringing his ingenuity, ability, mental resourcefulness, knowledge of law and advocacy to bear upon it. Though it may seem paradoxical, it is a hard fact that a noble profession like law which is expected to provide specialised services to its clients and champion their causes, is nowadays witnessing resentment amongst its consumers.[43] In the case of legal profession it is accepted worldwide that lawyers are duty bound to promote civil and political rights of individuals. "So the promotion of human rights is recognised in international conventions for promotion of human dignity".[44] Over the years courts have recognised 'Legal Service' as a 'service' rendered to the consumers and have held that lawyers are accountable to the clients in the cases of deficiency of services. In *Srinath v. Union of India*[45] Madras High Court held that, in view of Sec. 3 of Consumer Protection Act, 1986, Consumer Redressal Forums have jurisdiction to deal with claims against advocates. Sec. 2 (U) of Competition Act, 2002 defines the term 'service' along the lines of consumer protection Act, 1986. Thus it may be concluded that legal services are becoming subject of trade related laws where consumerism and market forces should be given adequate space .The judgement of the Supreme Court in *Lucknow Development Authority v.*

43 papers.ssrn.com/sol3/Delivery.cfm?abstractid=1553545 by S.M. Mehta - 2010) visited on 24.04.21.

44 See the International Covenant on Civil and Political Rights 1966; the European Convention for the Protection of Human Rights and Fundamental Freedom 1950.

45 (AIR 1996 Mad 427).

M. K. Gupta[46] may be cited as an illustration. In the instant case the Supreme Court while establishing the jurisdiction of the Consumer Disputes Redressal Agencies created under the Consumer Protection Act emphasised that the services provided by a private body or a statutory or public authority are within the jurisdiction of the Consumer Protection Act. In this context, the Supreme Court also laid down that any defect or deficiency in such service would be treated as unfair trade practice and would amount to denial of service.

Architect and Engineering services

The duties of an architect towards the client depend upon the terms of the contract either oral or written. Generally he is engaged for the purpose of advising, examining the site, preparing designs, drawings and plans and supervising and certifying constructions. The liability for breach of duty in connection with these functions depends upon the terms of the contract. In *M.D. Bhoopathy v. Mrs. Sarada*[47] the builders agreed to construct apartments and pent houses for the complainants. But they failed to construct the pent houses. The National Commission held that there was breach of contract. The builders were held liable. An architect is under obligation to carry on the construction as per the specifications given by the client. Any lapse will attract liability for breach of contract. Where the builders did not construct the house according to the specifications given by the complainants. The National Commission held that it amounted to breach of contract.[48] In *U.T. Chandigarh Administration and Anr. v. Amarjeet Singh and Ors.*[49] a clear cut assurance was made to the purchasers as to the nature and the extent of development that would be carried out by the appellant company as a part of the package under which sale of fully developed plots with assured facilities was to be made in favour of the purchasers for valuable consideration. To the extent the transfer of the site with developments in the manner

46 (1994) 1 SCC 243.
47 (1996) 1 C.P.J. 168 (N.C.).
48 *Deshbir Verma v. The Hamirpur Co-operative House Building Society Ltd.,* (1996) 3 CPJ 165 (HP S.C.D.R.C.).
49 (2009) 4 SCC 660.

and to the extent indicated earlier was a part of the transaction, the appellant-company had indeed undertaken to provide a service. Any deficiency or defect in such service would make it accountable before the competent consumer forum at the instance of consumers like the respondents. Whether the service provider is a private or a statutory body, it is amenable under consumer protection act and any deficiency in service is liable to be compensated by the service provider. In *Narne Construction Pvt. Ltd. & Ors. v. Union of India & Ors.*[50] the Court held that when a person applies for allotment of building site or for a flat constructed by development authority and enters into an agreement with the developer or a contractor, the nature of the transaction is covered by the expression "service" of any description. The housing construction or building activity carried on by a private or statutory body was, therefore, held to be "service" within the meaning of clause (o) of Section 2(1) of the Act as it stood prior to the inclusion of the expression "housing construction" in the definition of "service". In *I.B.A. v. E.M.1 and B.1. C. C.*[51] the sub-contractors who designed a television mast gave an assurance that it would not oscillate dangerously. But the mast collapsed. The House of Lords held them liable, without answering the question of the extent of contractual obligation. An architect shall carry out necessary examination of the site in terms of soil and other particulars before the inception of any building construction. The duty to carry out such test is imperative. In *Mohammad Ibrahim Mulla v. Hamid Aboobakar Memon* [52] the National Commission held that if a builder gave an area to the client less than agreed upon that would amount to deficiency in service. It follows that if due to the fault of an architect the space in the building gets reduced, he attracts liability for deficiency in service.

The Supreme Court and National Commission's decisions in banking, insurance, education and civic services-related cases are now as good as law and have gone a long way in guiding the consumer protection initiative. It may be concluded that there is no lacking of

50 (2012) 5 SCC 359.
51 [1980]14 Build. L.R. l (H.L.).
52 (1996) 1 CPJ 28 (NC).

legislation in India regarding consumer protection, but there are many hurdles which are to be crossed to achieve the object of these legislative measures. Consumer awareness has to be given the priority, since it is the lack of awareness of the rights in consumers which hinders the progress of achieving the object of the consumer protection legislation.

The distinct roles of the Indian judiciary and the legislature are well-defined. While the governments (or legislature) formulate laws, the judiciary has the job of interpreting them if any disputes arise. The Indian judiciary, suo moto, has taken cognizance of issues of public interest. Whether its environmental issues, human rights or consumer concerns, judicial decisions have had significant impact on how things are run in India. While giving interpretation to the Acts, laws and rules, courts do give due attention to the intention and purpose of the law that pertains to the case in question. In a number of judgments, the Supreme Court has underlined this observation while interpreting the law. A case law in point being the *National Insurance Company Ltd v. Laxmi Narayan Dhat*[53] the Supreme Court made it clear that the interpretation of the law should be made keeping in view the purpose of the Act. 'A statute being an edict of the legislature, in construing it, it is necessary to seek the intention of its maker', said the Supreme Court. There are situations where the law is silent and facts of the case demand that the meaning of particular clauses be elaborated upon. In such situations, the courts take many factors into account like the circumstances of the case and purpose of the law. This accompanied with the fundamental principle of natural justice is the basis of the interpretation. Such interpretations, when made by the judiciary, become a precedent for future cases of similar nature and if one can put it that way, they become law. Where the respondent Board of School Education declared the results after a period of one year and eight months of the scheduled time the court held that there was erratic functioning on the part of the opposite party and it had a callous attitude towards its students, which is the

53 (2007 [CP] 445).

deficiency in service on its part.[54] In *Sonal Matapurkar v. S. Niglingappa Institute*[55] admissions were made by the dental institute over and above the sanctioned seats as a result of which the students were not allowed to appear in the examination by the university. Since the students had paid huge donations and had also made an investment of time and energy, the National Commission held that there was the deficiency in service and the complainants were entitled to refund of the donation and compensation with interest and cost of the proceedings.

Due to misrepresentation about affiliation, the National Commission held, in respect of the recovery of the fees paid to the institute that the institute was liable to refund the fees, having lured the students to enroll in it through deceitful tactics.[56] The National Commission held that the supply of defective study materials by an institute can sustain a valid claim against it for deficiency of service.[57] However, the Supreme Court took a different view regarding statutory function in *Bihar School Examination Board v. Suresh Prasad Sinha*[58] that, the Consumer Protection Act, 1986 is not applicable with respect to statutory functions statutory bodies. The Board of School Education is a statutory body and conducting examination is in the exercise of discharging its statutory function. The National Commission observed that forfeiture of fees by the educational institute without imparting education amounts to unfair trade practice.[59] In *P.T. Koshy & Anr. v. Ellen Charitable Trust & Ors.*[60] the SC held that students are not 'consumers' and education is not a commodity and educational institutions are not rendering a 'service'. However, in the *P. Sreenivasulu & Anr. v. P.J. Alexander & Anr.*[61] the SC held that

---

54 *Secretary, Board of School Education, Haryana, Bhiwani v. Mukesh Chand of Palwal,* 1994 (1) CPR 269 (Har).

55 1997(2) CPJ 5 (NC).

56 *Bhupesh Khurana v. Vishwa Budha Parishad,* (2001) 2 CPJ 74 (NC).

57 *Jai Kumar Mittal v. Brilliant Tutorials,* 2005 SCC OnLine NCDRC 23 :(2005) 4 CPJ 156 (NC):(2006) 1 UC 43.

58 IV (2009) CPJ 34 (SC...).

59 *Birla Institute of Technology & Science v. Abhishek Mengi*, 2013 SCC OnLine NCDRC 394:(2013) 2 CPJ 681 (NC).

60 2012(3) CPC 615.

61 Civil Appeal Nos. 7003-7004 of 2015 (Supreme Court, 09/09/2015).

educational institutions would fall within the purview of the Consumer Protection Act and that education is a service. In another judgment in 2017 in the Anupama College of Engineering case, the SC reaffirmed the position laid down by the PT Koshy judgment. In doing so, it relied on a 2010 judgment in the Maharshi Dayanand University case, which examined in detail the jurisdiction of the consumer forums to entertain a complaint relating to educational institutions.[62]

The National Consumer Disputes Redressal Commission in *Manu Solanki v. Vinayak Mission University*[63]*,* wherein it was said that matters concerning educational institutions cannot be entertained by the Consumer forum. It was viewed, however, that coaching classes do not fall under the ambit of education as defined by the seven judge bench of the Apex Court in *P.A. Inamdar v. State of Maharashtra.*[64] They cannot be treated on par with educational institutions such as schools and colleges that are regulated by a regulatory authority where the students are conferred with a degree/diploma after the conduction of examinations. Hence, allegations of defect, unfair trade practice or deficiency against a service provider like a coaching centre would fall within the jurisdiction of the Consumer fora.

In *Anurag v. Byju's The Learning App.*[65] the consumer was provided with an option to discontinue the course after a trial period. When the consumer wanted to terminate the services of the company due to him not being able to afford to pay the instalments and communicated the same, the opposite party did not pay heed to them and continued to deduct amounts. The court found deficiency in service and unfair trade practice and ordered for the refund and litigation expenses to be paid. Suits against such practices have only been pursued in sparse cases and that too on limited grounds.

---

62 NCDRC: *Educational institutions out of Consumer Act purview* http://timesofindia.indiatimes.com/articleshow/73746340.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst visited on 27.04.21.

63 2020 SCC OnLine NCDRC 7.

64 (2005) 6 SCC 537.

65 Consumer Complaint No. 146 of 2019.

Educational Service

In a welfare state, education plays a very important role. It is the duty of the state also to provide necessary educational facilities to the common man. We have been guaranteed a very important right i.e., Right to life and personal liberty under Article 21 of the Constitution. The scope of Article 21 has been considerably expanded through judicial decisions and it has been held by our Supreme Court that right to education is also included within the scope of Article 21. In a landmark judgment in *Mohini Jain v. State of Karnataka*[66] the Supreme Court has held that the right to education is the fundamental right under Article 21 of the Constitution which cannot be denied to a citizen by charging higher fee particularly known as capitation fee. Right to education is drawn directly from right to life. It was emphasised by the court that right to education is concomitant to the Fundamental Rights enshrined under Part-III of the Constitution. The Fundamental Right to speech and expression cannot be enjoyed unless citizen has education. In the same manner, in subsequent decisions also the Supreme Court upheld the views expressed in earlier cases relating to right to education. Article 21A has been inserted in the Constitution (Eighty-Sixth Amendment) Act, 2002 where it is provided that the state shall provide free and compulsory education to all children of the age six to fourteen years. Further, in Directive Principle of state policy, Article 45 of the Constitution provides that the state shall endeavour to provide early childhood care and education for all children until they complete the age of six years. Further it is provided under Article 51A(k) that it shall be the duty of every citizen of India, who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

Neither the C.P. Act, 1986 nor the C.P. Act, 2019 mentions 'education' as a service. The Act of 2019 under Section 2(42) gives a long list of services whereby a consumer is armed to file a complaint in case of deficiency of services. But despite being a long list of services it does not include education as a service. There has been a

---

[66] [1992] 3 S.C.C. 666.

substantial and significant legal battle going on among the legal minds and the legal institutions like courts of law and consumer forums regarding the fact that whether education falls under the ambit of service. Conflicting opinions have been highlighted in various judgments regarding the same.

"Let's think of education as a means of developing our greatest abilities because in each of us there is a private hope and dream which fulfilled can be transformed into benefit for everyone and greater strength for our nation". These golden words of John F. Kennedy sufficiently reveal the importance of education in our lives both as individual and as a nation. There was a time when education was regarded as a great liberating and emancipating force. …teachers acted as spiritual as well as material guides of their students. But all this has changed so rapidly that we witness a transformation of education from a spiritual and cultural bondage to a commercial enterprise. With the result many unscrupulous elements crept into it with the motive only of money.[67] Unfair trade practices, deceptive advertisement are being used to lure the prospective students and not only robbing the hard earned money of their parents but playing with their career as well. It is still an unsettled question whether education falls under the purview of the 'service' as defined in C.P. Act, 2019.[68]

Various consumer forums across the country have taken different views regarding this. This is a great move in the direction of Consumer Protection as many five stars schools & colleges are mushrooming day by day. These claim of false affiliation with well-known universities in India as well as abroad and charge huge sums in the name of fees and other charges, which is unaffordable for the common man. Many of these institutions appoint unqualified staff and faculty to teach a particular stream and sometimes even such faculty is not available. Examinations are not held in time or results are not declared for months or even years, or certificates are not issued to them. With the result, the future of many students is at stake. An educational institution can also be held liable under the

---

67 Mehmood Ahmad Malik, *'Education as a service under Consumer Protection Act, 1986',* IV KJLS [2014]at p.246.ISSN:2250-2084.

68 Sec. 2(42).

Consumer Protection Act, 1986. Holding of exams., declaration of results are all services under the Act & can be looked into by the consumer courts. In many such cases, which have come before the National Commission, the apex consumer court has clearly held that providing education is a service and has compensated the aggrieved consumer. In a number of cases the non-supply of Roll Number, unexplained delay in deciding the application for admission, misrepresentation in advertisement and prospectus about the recognition of the college, non-refund of the initial payment as college fee etc. have been held as deficiency in service. The student is a consumer of service of educational institute.[69] Undue delay in declaration of examination result is obviously deficiency in service.[70] A student applying for revaluation of his result comes under the definition of a "Consumer".[71]

Various consumer forums across the country have taken different views vis a vis whether a candidate for examination, an applicant for reevaluation/rechecking of his answer-sheets is hiring a service, intend to be covered under the Act. A person who appears at an examination is not in a position of a person who has hired or availed of the services of the institution for a consideration. Examination, evaluation of answer-sheets, declaration of results and re-evaluation of answer-sheets do not constitute service within the meaning of section 2(1)(o) of the Act.[72]

In *Joint Secretary, Gujarat Sec. School Education Board v. Bharat Narottam Thakkar*[73] it was reiterated that in conducting the Secondary School Board Examinations, evaluating answer papers announcing the results thereof and thereafter conducting a re-checking of the marks of any candidate on application made by the concerned candidate, the board is not performing any services for hire and there is no arrangement of hiring of service involved in such a situation as is contemplated by section 2(1)(o) of the Act. The complainant in that

---

69 *Sushant Yuvaraj Rode v. Shri Ramdeobaba Engineering College*, 1993 (III) CPR 624.

70 *Secretary, Board of School Education, Haryana v. Mukesh Chand*, 1994 (I) CPR 269.

71 *Ram Kumar Aswani v. M/s A.K. Structural Foam Ltd.,* 1993 CPC 383.

72 *Kumari Seema Bhatia v. Registrar, Rajasthan University*, (1992) 2 CPJ 899 Raj.

73 (1994) 1 CPJ 187.

case was not, therefore, a consumer and no relief should have been granted in his favour as against the Board on the ground put forward by the candidate that there was delay in conducting the re-checking of the marks. This view was followed by various State Commissions in their decisions e.g., the Kerala State Commission in P.*M. Noushand v. University of Kerala*[74] and by the Delhi State Commission in *Ruchika Bhartia v. CBSE*[75] and in other cases. The consumer must be one who has hired services for consideration and to be a consumer the nexus of hiring of services for consideration must be established.[76]

The administrative aspects of the service of education could not be excluded from the definition of 'service' within the meaning of the Act. Failure to supply roll number to a candidate where he suffered loss of one academic year, because he could not take his examination. Compensation of Rs. 10,000 was awarded.[77] Refund of fee can be had according to the Rules of the institution. Where the candidate after taking admission on payment of fee could not continue because of the climatic conditions of the area, the institution was ordered to refund 2/3rd of the fee amount.[78] Where the classes were not started after the university received fee for less number of students (as it was not viable to run the course), the University was directed to refund the amount with costs.[79] In the case of *Guru Nanak Dev University v. Jagjit Singh*[80] where after accepting admission fee from complainant, the University revoked admission due to not having necessary qualification. The University was directed to refund the fee with interest. In *Registrar H.P. University v. Suresh Kumar*[81] the complainant could not get admission in M.A. class due to mistake of the University which wrongly declared him unsuccessful. The University was directed to pay compensation of Rs. 50,000 with costs to the complainant. Where a University delayed declaration of revaluation

74 (1995) 2 CPJ 334 Ker.

75 (1995) 2 CPJ 436 Delhi.

76 *Board of Examinations, Madras v. Mohideen Abdul Kader*, (1997) 2 CPJ 53 NC.

77 *Controller of Exams., HP University v. Sanjay Kumar, [2003] 1 CPJ 273 (NC).*

78 *Adarsha Residential v. Narayana Rao Noule, (1998) 2 CPJ 436.*

79 *Director, Mahatma Gandhi University v. Gopal Kumar, 1999(1) CPC 292.*

80 2005(1) CPC 490 Pb.

81 2007(2) CPC.

results so that the candidate had to appear in the supplementary and ultimately he passed both, an award of compensation was held to be justified.[82] Failure on part of the college to send in time the student's internal assessment which affected his career was considered to be a serious deficiency. The University was compelled to pay Rs. 2 lakhs as compensation for loss of one year.[83]

In *Bhupesh Khurana v. Vishwa Buddha Parishad*[84] a class action suit was filed by twelve students who had joined the BDS course offered by the Buddhist Mission Dental College run by Vishwa Buddha Parishad. The students' complaint was that the college, in its advertisement and prospectus inviting applications for the course, had given the impression that it was affiliated to Magadh University, Bodh Gaya and recognised by the Dental Council of India and was fully equipped to give the degree of Bachelor of Dental Science. However, after joining the college and attending classes, the students found to their dismay that the annual examinations were not being held because the college was neither affiliated to Magadh University, Bodh Gaya nor recognised by the Dental Council of India. As a result the students lost two precious academic years, but also spent money on fees, hostel charges, etc. Holding the college to be deficient the National Commission directed it to refund the admission expenses of all the twelve students along with interest of 12 percent.

In *Buddhist Mission Dental College & Hospital v. Bhupesh Khurana*[85] the Supreme Court laid down that the educational institutions offering courses by making false promise and assurance to prospective students through advertisement and prospectus regarding their affiliation with recognised universities and status of recognition shall have to pay huge compensation to the affected students if it was proved at a later stage and the said assurance and promise were falsely made. The court held that "Education is a service provided to the community; hence the university is an industry". The complainant

---

82 *Registrar, Bangalore University v. Farida Ansari*, (1993) 2 CPR 345 Kant.
83 *Brinder Nath v. V.C., University of Jammu,* (1995) 3 CPJ 464 J&K.
84 (2001) 2 CPJ 74 (NC).
85 (2009) 1 CPJ 25 (SC).

hired the services of the BMDCH for consideration and hence they are covered under the definition of 'consumer' under the C.P. Act, 1986. This was a case of total misrepresentation on behalf of the institute which tantamount to unfair trade practice. The act of the institute falls within the purview of 'deficiency' as defined in C.P. Act, 1986.

In *Sehgal School of Competition v. Dalbir Singh*[86] the complainant sought refund from the opposite party's coaching school after only one year of the two-year course on the ground that the coaching was not up to the mark. The District Forum directed refund of the fees and the opposite party's appeal was dismissed. In revision, the petitioner contended that payment of lump sum fees for two years was a condition (of the contract) and that no part of the fees could either be refunded or transferred under any circumstances. The Commission held that this condition was one sided and biased in favour of the opposite party, against natural justice and not a fair trade practice. The Commission also rejected the opposite party's plea that in *Homeopathic Medical College & Hospital, Chandigarh v. Miss Gunita Virk*[87] it was held that Consumer Fora did not have jurisdiction to declare any rule in the prospectus of any institution as unconscionable or illegal. Referring to its recent decision in *Nipun Nagar v. Symbiosis Institute of International Business*[88] it observed that the Commission had held that (under certain circumstances) it was unjust to collect fees for the total period of the course and dismissed the petition.

There has been a lot of ambiguity regarding the law related to educational institution under the Consumer Protection Act, 1986. In the recent development Hon'ble Supreme Court in *Maharshi Dayanand University v. Surjeet Kaur*[89]*,* relying upon all earlier judgments held that education is not a commodity. Educational institutions are not providing any kind of service, therefore, in matter of admission, fees etc., there cannot be a question of deficiency of service. Such

---

86 [III (2009) CPJ 33 (NC)].
87 I (1996) CPJ 37 (NC).
88 I (2009) CPJ 3 (NC).
89 2010(2) CPC 696 S.C.

matters cannot be entertained by the Consumer Forum under the Consumer Protection Act, 1986. Further Hon'ble Supreme Court in *Bihar School Examination Board v. Suresh Prasad Sinha*[90] observed that "the Education Boards & Universities are not 'Service Provider' and the complaints against them are not maintainable. The Hon'ble Apex Court in its recent judgment in *P.T. Koshy & Anr. v. Ellen Charitable Trust & Ors.*[91] has followed the above views. Under the guise of these judgments the Hon'ble District forums and State commissions started dismissing matters pertaining to educational institutions. The purpose of consumer protection is to provide cost effective remedies to consumer. Taking educational institution out of the purview of the C.P. Act, 2019 would mean excluding students from the purview of 'consumer' who need protection the most under the law. With the result, the private educational institutions who charge hefty fees and afford biggest lawyers can easily win legal battles in civil courts, while the needy students already burdened with hefty fees will be helpless. It is the need of the hour that the uncertainty in the consumer law regarding education must be cleared by the apex court of the country until and unless the ambiguity is cleared by legislature by including education in the definition of 'service'.

Insurance Service

Insurance is an arrangement by which a company or the state undertakes to provide a guarantee of compensation for specified loss, damage, illness, or death in return for payment of a specified premium, a thing providing protection against a possible eventuality.

In the present scenario, the insurance sector in India has come a full circle, from being as open competitive market to complete nationalisation and then back to a liberalised market. The coming of private companies in the Indian insurance market has changed the nature of competition and the vigorous campaigns of these companies. This has led to rapid increase in insurance business and a sizeable gain of this has also been reaped by Life Insurance Corporation of India (LIC). Life insurance in its modern form came to us from Europe, the

90 2010 (1) CLT 255 (SC).
91 2012(3) C.P.C. 615 (SC).

USA and England where modern forms of life insurance appeared in the 16th century and the first life policy providing temporary cover for a period of twelve months was issued as early as 1583 AD.[92] The business of life insurance was nationalised with the setting up of the Life Insurance Corporation of India on First September, 1956. The businesses other than life insurance was nationalised with effect from January, 1973. Under the impact of globalisation the organisation and structure of this sector underwent a sea change.

The Indian Parliament passed the Insurance Regulatory and Development Act, 1999 ("IRD Act") on December 2, 1999 with the aim "to provide for the establishment of an Authority, to protect the interests of the policy holders, to regulate, promote and ensure orderly growth of the insurance industry and to amend the Insurance Act, 1938, the Life Insurance Corporation Act, 1956 and the General Insurance Business (Nationalisation) Act, 1972". The IRD Act has established the Insurance Regulatory and Development Authority ("IRDA" or "Authority") as a statutory regulator to regulate and promote the insurance industry in India and to protect the interests of holders of insurance policies. The IRD Act also carried out a series of amendments to the Act of 1938 and conferred the powers of the Controller of Insurance on the IRDA. The members of the IRDA are appointed by the Central Government from amongst persons of ability, integrity and standing who have knowledge or experience in life insurance, general insurance, actuarial science, finance, economics, law, accountancy, administration etc. The Authority consists of a chairperson, not more than five whole-time members and not more than four part-time members. The Authority has been entrusted with the duty to regulate, promote and ensure the orderly growth of the insurance and re-insurance business in India. In furtherance of this responsibility, it has been conferred with numerous powers and functions which include prescribing regulations on the investments of funds by insurance companies, regulating maintenance of the margin of solvency, adjudication of disputes between insurers and

---

92 Sumninder Kaur Bawa, *'Life Insurance Corporation of India, Impact of Privatisation and Performance',* (2007), Regal Publications, New Delhi, p. 2.

intermediaries, supervising the functioning of the Tariff Advisory Committee, specifying the percentage of premium income of the schemes for promoting and regulating professional organisations and specifying the percentage of life insurance business and general insurance business to be undertaken by the insurer in the rural or social sector.

From State monopoly the insurance business was opened to private enterprise. The structure of this sector thus, changed and transformed into a joint sector where both the government undertakings and private entities are conducting insurance business. In the government segment of insurance sector, the existing corporations, viz., LIC and GIC with four subsidiaries continue to operate.[93] It is submitted that a well-developed and consumer friendly insurance sector is needed for economic development of the country as it provides long term funds for infrastructure development and at the same time strengthens the risk of taking ability. The biggest challenge for the industry today is the low levels of penetration and lack of consumer satisfaction. Insurance sector in India has come a long way from being a nationalised to a liberalised market. And for its growth there is a dire need to examine the key issues trends and challenges so that India can match international standards both in terms of market size and consumer satisfaction. The contract of insurance is of utmost good faith. The proposer for life insurance is under an obligation to disclose all material facts within his knowledge relating to the state of his health at the time of making the proposal form and the personal statements therein are the basis of the contract between the parties.[94]

Consumer protection laws in India enable you to dispute a case against an insurance provider if there has been a deficiency on their part. Deficiency in insurance services arises when there is a default or negligence on the provider's part to settle a claim. An unreasonable delay in making the payment on a claim also amounts to deficiency of service. In fact, the National Insurance Commission has defined a 'reasonable time frame' within which insurance providers must settle

---

93 Dr. Sajid Ali, Riyaz Mohammad and Masharique Ahmad, *'Insurance in India',* (2007) Regal Publications, New Delhi, p. 94.

94 *Life Insurance Corporation of India v. Kantaben,* (1996) I CPR 140 (NCDRC).

or repudiate a claim. Any delay beyond this reasonable time frame will attract the odium of insurance deficiency. Compensation awarded to a plaintiff in case of insurance deficiency not only covers the actual value of the cover, but also additional damages for the mental agony caused by the delay. In *United India Insurance Co. Ltd. v. M.K.J. Corpn.*[95] a two-Judge Bench observed: "It is a fundamental principle of Insurance law that utmost good faith must be observed by the contracting parties. Good faith forbids either party from concealing (non-disclosure) what he privately knows, to draw the other into a bargain, from his ignorance of that fact and his believing the contrary. Just as the insured has a duty to disclose, "similarly, it is the duty of the insurers and their agents to disclose all material facts within their knowledge, since obligation of good faith applies to them equally with the assured".

The definition of service provided under Section 2(1)(o) of C.P. Act, 1986 (Section 2(42) of C.P. Act, 2019) specifically mentions 'insurance' as service, and leaves no room for any ambiguity. Therefore, any person who avails the facilities in connection with insurance for consideration is a consumer. If there is deficiency in the service, it will be open to the aggrieved consumer to approach the consumer forums under the Act seeking appropriate relief. The repudiation of the claim by the insurance company on the ground that the driver was not holding a valid driving license at the time of the accident could not be termed as deficiency in service or negligence on the part of the insurance company within the meaning of Section 2(g) of the Act.[96] Where a policy is taken by the insured by suppressing the material facts that he was suffering from cancer and that he was taking treatment, therefore, it is liable to be vitiated and no claim is admissible under such a policy.[97] The Supreme Court in *Mitholal Nayak v. Life Insurance Corporation of India*[98] upheld the principle that when the contract is bad on the ground of fraud, the party who has been guilty of fraud cannot ask for the refund of the money paid under the contract. Thus, the complainant is not entitled of the

---

95 (1996) 6 SCC 428.

96 *New India Assurance Co. Ltd. v. Smt. Pushpa Yashwant Ghatge,* 1996 NCJ 195.

97 *Life Insurance Corporation of India v. Kantaben,* (1996) I CPR 140(NCDRC).

98 AIR 1962 SC 214.

refund of the premium paid under the policy taken by fraud. The burden to prove that the insured had given wrong answers, that is to say, there was positive presence of existence of any ailment, sickness or injury which may require medical attendance in immediate future, is on the insurer.[99]

When there is a delay in making the payment of claim under the insurance policy, it amounts to deficiency in service.[100] Similarly, non-settlement of claim under insurance policy within a reasonable period is a deficiency in service.[101] The insured cannot claim anything more than what is covered by the insurance policy.[102] If the contract is vague, the benefit should be given to the insured.[103] Further, compensation may be awarded for mental agony for delay in settlement of claim since the complainant is put to avoidable strain and tension.[104]

Where the driver of a truck handed over the control of his vehicle to the cleaner while its engine was running and the ignition key was in the ignition lock. In the absence of the driver, who had gone for bringing snacks the cleaner interfered with the vehicle which resulted in an accident. The contention of the insurance company–(i) that in view of the exclusion clause in the insurance policy the Insurance Company would not be liable if it was established that the accident occurred when an unlicenced person was at the wheels, (ii) that the exclusion clause is strictly in accordance with the statutorily permissible exclusion embodied in S.96(2)(b)(ii) of the Motor Vehicles Act, 1939, and (iii) that under the circumstances the appellant-company is not under a legal obligation to satisfy the judgments against the insured was rejected and the company was held liable.[105] In *Umedilal Agarwal v.*

---

99 *Smt. Draupadi Devi S. Chaudhari v. United India Insurance Company,* (1992) I CPR 155 (Guj. CDRC).

100 *Bharat Kumar C. Patel v. United India Insurance Co.,* (1992) I CPR 224 (Guj. CDRC).

101 *N. Laxmanbhai Savsani v. National Insurance Co*., (1993) II CPR 138 (Guj.CDRC).

102 *Oriental Insurance Co. Ltd. v. Sony Cheriyan* (1999) 6 SCC 451;

103 *Murli Agro Products Ltd. v. Oriental Insurance Co. Ltd*., (2005) I CPJ 1 (NCDRC).

104 *Vinod Kumar Nagrah v. United Insurance Co. Ltd*., (1996) I CPR 2 (NCDRC).

105 *Skandia Insurance Co. Ltd v. Kokilaben Chandravadan & Ors.,* 1987 SCR (2) 752.

United India Assurance Co. Ltd.[106] the complainant got the goods in his shop insured against fire. Later, the shop was gutted in fire (caused by short-circuit), and the goods in the shop were also burnt. When the insured claimed damages, the insurance company denied the claim leading to a breach of contract. The sufferer filed a lawsuit against the company. The National Commission observed that the insured was a consumer under the provision of Section 2(1) (d) (ii) of the Consumer Protection Act, 1986 and held the insurance company liable for paying the compensation to the insured.

The Hon'ble Supreme Court has observed in a recent judgment:

> *"It is common knowledge that a person who lost his vehicle may not straightaway go to the Insurance Company to claim compensation. At first, he will make efforts to trace the vehicle. It is true that the owner has to intimate the insurer immediately after the theft of the vehicle. However, this condition should not bar settlement of genuine claims particularly when the delay in intimation or submission of documents is due to unavoidable circumstances. The decision of the insurer to reject the claim has to be based on valid grounds. Rejection of the claims on purely technical grounds in a mechanical manner will result in loss of confidence of policy-holders in the insurance industry. If the reason for delay in making a claim is satisfactorily explained, such a claim cannot be rejected on the ground of delay. It is also necessary to state here that it would not be fair and reasonable to reject genuine claims which had already been verified and found to be correct by the Investigator. The condition regarding the delay shall not be a shelter to repudiate the insurance claims which have been otherwise proved to be genuine".*[107]

In *New India Assurance Co. Ltd. v. Pravin Krushna Takari*[108] Hon'ble National Commission observed:

> *"Contention, when vehicle was parked in open space and door had no lock, complainant ought to have appointed someone as security personnel*

106 (1989)3 Comp LJ 143 (NCDRC).
107 *Om Prakash v. Reliance General Insurance & Anr.,* IV (2017) CPJ 10 (SC).
108 I (2018) CPJ 80 (NC).

for vehicle - Not accepted - Theft took place during validity period of insurance policy and that incident was duly intimated to Insurance Company and an FIR was also lodged in concerned police station - Term 'reasonable care' cannot be construed to advantage of Insurance Company - No fundamental breach of any conditions stipulated in contract - Claim allowed on non-standard basis - Interest @ 9% p.a. awarded".

Telecommunication Service

The Indian Telecommunications network is the third largest in the world and the second largest among the emerging economies of Asia. Today, it is the fastest growing market in the world. The telecommunication sector continued to register significant success and has emerged as one of the key sectors responsible for India's economic growth. This rapid growth has been possible due to various proactive and positive decisions of the Government and contribution of both the public and the private sector.

Before the enactment of the C.P. Act, the subscriber could do no better than to approach the High Court for redressal of his grievances. This course of action is dilatory and expensive. The civil courts could do no better than direct the Telecom Department to appoint an arbitrator under section 7B of the Indian Telegraph Act, 1885, who would normally be their own officer. Understandably, this did not always inspire confidence in the aggrieved consumer. Moreover, the High Courts could also provide interim relief which is beyond the jurisdiction of either the Arbitrator or civil courts. But now the C.P. Act has come to the rescue of the aggrieved consumers to provide cheaper and expeditious remedy.[109] The contentions that subscriber was neither a 'consumer' nor could the facility provided by them be said to be 'service' raised by the telecom department, has been rejected by various consumer forums.[110]

---

109 Ahmad, Farooq, *Law on Consumer Services,* p. 228, Valley Book House, Srinagar. J&K.

110 *Union of India v. Nilesh Aggarwal*, (1991) 1 CR 203.

The National Commission in *District Mngr, Telephones, Patna v. Dr Tarun Bharthnar*[111] held:

> *"The C.P. Act gives the consumers an additional remedy besides those which may be available under other existing laws. The fact that disputes involving meter reading or excess billing can be settled under section 7B of Indian Telegraph Act does not, therefore, oust consumers from seeking relief under the C.P. Act. Evidentially, Parliament has considered it expeditious to do so for the better protection of the interests of consumers and for expeditious settlement of consumer disputes. The consumer disputes forum, therefore, have jurisdiction to decide disputes involving meter reading or excess billing even when such disputes might be covered under section 7B of the Indian Telegraph Act".*

The Haryana State Commission in *Jagdamba Rice Mills v. Union of India*[112] held that the provisions of section 7B of the Indian Telegraph Act are not at all a bar in seeking relief under the C.P. Act.

Providing relief to telecom customers, DoT said consumer courts have jurisdiction over disputes with operators. "The District Consumer Forums are competent to deal with the disputes between individual telecom consumers and telecom service providers", the Department of Telecom said in an official memorandum.[113]

Deficiency: Relevant Examples

Although there is a tremendous development with regard to the telecom sector in India, but still the consumers of telecom services are facing the brunt one way or the other. There is a plethora of complaints day in and day out regarding the deficiency of services against the telecom companies. It is only because of courts coming to the rescue of the poor consumers to save them from the exploitation at the hands of the big corporate houses, there is a long way to go

---

111 (1992) 1 CPJ 47 (NC).

112 (1993) 1 CPJ 273 (Har).

113 https://economictimes .indiatimes.com/industry/telecom/telecom-disputes-can-be-handled-by-consumer-court-dot/articleshow/29868639 visited on 26.05.21.

when it can be said of surely that there are ample means to curb this menace. To succeed in a complaint against services including telecom service, the complainant must establish that there was deficiency in service provided to him.[114] In *P.K.Goel v. G.M. Telephones, Jaipur*[115] it was held that it is a deficiency in service if the telephone which does not have STD facility shows STD calls. In *SDO Telephones v. Prem Raj Gaur*[116] the consumer was getting since installation bills averaging Rs. 300 but received a bill of Rs. 3267 during the period when he was mostly out of station, the District Forum allowed reduction by 2000 calls. A bill cannot be ordered to be reduced where no fault was established in the meter and check meter also showed the same average of calls, where the bill was reduced after verification of the consumer's complaints, an exemplary damage was held to be not justified.[117] In *B. L. Chakku v. District Telecom Engineer*[118] the J&K Divisional Forum observed:

> *"Our everyday experience tells us that the telephone department holds telephone consumers to ransom by having the unrestrained powers to disconnect the telephone at their end sometimes for no plausible reason whatsoever. Even petty telephone operators and those attending to complaints sometimes behave in the most unreasonable and vindictive manner. But here in our great country, it is the consumer who is at the utter mercy of these operators and officials of the telephone department. They have to tolerate the insult because they are afraid that they may not be deprived of whatever little telephone facility they are able to get. The Telephone authorities must take notice of this dangerous trend in a great democratic set up".*

Delay in shifting telephone service from factory site to residence was held to be a deficiency in service entitling the subscriber to recover compensation of Rs. 1000.[119] In *Iqbal Singh v. S.D.O., Phones*[120] the

---

114 Section 2(1) (g) of the C.P. Act, 1986.
115 (1992) 1 CPJ 69.
116 1993 CCJ 350 Chandigarh.
117 *MTNL v. Raja S. Bhosale*, (1993) 2 CPR 359 NC.
118 (1991) 1 CPJ 263 (J&K K. Div. Forum).
119 *Telecom v. United Engineers*, (1993) 2 CPR 600 Goa.
120 (1995) III CPJ 491 J&K.

SDO deliberately and willfully delayed reconnection to cause harassment to the subscriber who had deposited the amount demanded for reconnection. The subscriber was allowed Rs. 10,000 by way of compensation. A telephone connection was shifted to new premises. But it never worked at that place. The district forum ordered rectification and awarded Rs. 10,000 as compensation. The order was confirmed by the State Commission. On appeal, the National Commission found that the award of compensation was without any evidence.[121] If the husband and wife have separate telephone connections, disconnection of the phone of the wife for default in the payment of the bill of the telephone which was in the name of the husband, was deficiency in service.[122] Where a complainant, a practicing doctor, applied for shifting of telephone but the telephone was not shifted for three years and no sufficient ground for delay was given by the concerned department, it was held by the National Commission that the State Commission was right in observing that there was deficiency in service and that the delay caused great mental pain, suffering, financial loss and extreme hardship to the complainant and awarding Rs 10,000 as compensation.[123] Telephone getting frequently out of order is a deficiency in service.[124]

Judicial Interpretation of Certain Definitions

Consumer protection laws are designed to ensure fair competition and the free flow of truthful information in the marketplace. The laws are designed to prevent those businesses that engage in fraud or specified unfair practices from gaining an advantage over competitors and provide additional protection for the weak and those unable to take care of themselves. It provides a wide range of definitions which ensure that almost all complaints relating to the consumer grievances fall under the purview of the Act. The definitional part is an

---

121 *Divisional Engineer, Calcutta Telephones v. Malati Sinha,* (1997) 2 CPJ 126 (NC).

122 *Savitri Devi Tolasarai v. Union of India,* AIR 1998 Cal 531.

123 *G.M. Calcutta Telephones v. Dr. Timir Baran Bhattacharjee*, (2002) 1 CPJ 8 (NC).

124 *Gen. Manager, Calcutta Telephones v. Kamla Shankar Uphadyaya,* III (2003) CPJ 53 (NC).

important part of the Act, since it clearly demarcates the list of the matters falling under the purview of the Act. The unambiguous meaning assigned to different expressions makes it convenient for the Judiciary to uphold the rights of the consumers and redress their grievances. The 2019 Act is a much required change in favour of the consumers considering the current age of digitisation. It empowers them with clearly defined rights and dispute resolution process which will enable them to get their grievance addressed with a fast track mechanism. In order to have a better understanding of the concepts it is important to discuss some of the landmark judgments given by various Courts according to the Consumer Protection Act, 1986 which is now repealed but the guidelines laid down in those cases helped in framing the new Consumer Protection Act, 2019.

Consumer

Consumer Protection Act is for "Consumer". The Act itself gives the definition of Consumer and only those who fall into the definition of 'Consumer' given in Act can take benefit of the Act. This definition is somewhat different than dictionary/literal meaning. It also specifically excludes some kind of consumers from its preview.

In *Morgan Stanley Mutual Fund v. Kartick Das*[125] the Supreme Court stated the meaning of the expression "consumer" in the following words:

> *"The consumer as the term implies is one who consumes. As per the definition, consumer is the one who purchases goods for private use or consumption. The meaning of the word 'consumer' is broadly stated in the above definition so as to include anyone who consumes goods or services at the end of the chain of production. The comprehensive definition aims at covering every man who pays money as the price or cost of goods and services. The consumer deserves to get that he pays for in real quantity and true quality. In every society, consumer remains the centre of gravity of all business and industrial activity. He needs*

125 (1994 (4) SCC 225).

> *protection from the manufacturer, producer, supplier, wholesaler and retailer".*

The Supreme Court in *Madan Kumar Singh v. Distt. Magistrate, Sultanpur & Ors.*[126] summarised the position as under:

> *"The intention of Parliament is to exclude from the scope of definition, the persons who purchase goods for resale and also those who purchase goods with a view to use them for carrying any activity for earning. The immediate purpose as distinct from the ultimate purpose of purchase, sale in the same form or after conversion and a direct nexus with profit or loss would be the determinants of the character of transaction–whether it is for commercial purpose or not. Thus buyers for commodities or goods for self-consumption in economic activities in which they are engaged would be consumers as defined in the Act".*

The consumer, as the term implies, is one who consumes. As per the definition, consumer is the one who purchases goods for private use or consumption. The meaning of the word 'consumer' is broadly stated in the definition so as to include any one who consumes goods or services at the end of the chain of the production. The comprehensive definition aims at covering every man who pays money as the price or cost of goods and services.[127] In *Lucknow Development Authority v. M.K. Gupta*[128] the Supreme Court noted that the word "consumer" is a comprehensive expression. It extends from a person who buys any commodity either as eatable or otherwise from a shop, business house, corporation, store, fair-price shop to use it for private use or consumption and not for commercial purpose.

Defect definition and meaning

"Defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be

---

126 2009(7) SCJ 558. (2009)9 SCC 79.

127 Avtar Singh, *"Law of Consumer Protection, Principles and Practice",* IV edn., Eastern Book Company, Lucknow, U.P., p.19.

128 (1994) 1 SCC 243 at 253.

maintained by or under any law for the time being in force or [under any contract, express or implied, or] as is claimed by the trader in any manner whatsoever in relation to any goods.[129]

Lower mileage does not amount to manufacturing defect.[130] If vehicle is having any manufacturing defect there is no need to refer the vehicle to the third party.[131] A manufacturing defect is much more than an ordinary defect which could be cured by replacing the defective parts. Manufacturing defect is fundamental basic defect which creeps while manufacturing the machinery.[132] The Hon'ble National Commission held where Maruti 800 car had run only 75,000 km though 8 years old had observed that "at such early engine life the low engine compression is certainly sign of manufacturing defect in the engine and had order for the replacement of the engine[133]. Where the defects, found, had occurred within 12 days of the purchase of the tractor and those facts speak volumes for themselves. It was in those circumstances that it was held that no expert advice was required.[134] In *Tata Motors v. Rajesh Tyagi & Others*[135] it was held that it was the bounden duty of the manufacturer/dealer to attend to the defects and to make it a defect-free vehicle and if they are not in a position to do so, they should either refund the price of the vehicle or to provide a new vehicle to the consumer.

Commercial purpose

National Consumer Disputes Redressal Commission in *Crompton Greaves Limited v. Daimler Chrysler India Private Limited*[136] wherein it was observed that:

> *"If a car or other goods are purchased or the services are hired or availed by a company for the personal use of its directors or employees, the*

---

129 S.2(1)(f) C.P. Act, 1986.
130 *Swaraj Mazda Ltd. v. P.K. Chakrapur,* II (2005) CPJ 72.
131 *Nachiket P. Shrigaonlkar v. Pandit Automotive Ltd.*, II (2008) CPJ 308.
132 *Maruti Udyog Ltd. v. Hashmukh Lakshmi Chand,* III (2009) CPJ 229.
133 *Maruti Udyog v. Om Sahai Bhatnagar and Anr.,* III (2007) CPJ 459 (NC).
134 *M/s SAS Motors Ltd. v. Anant Haridas Choudhari,* 2013(4) CLT 96 (NC).
135 2014 (1) CLT 238 (NC).
136 2016 SCC OnLine NCDRC 2121.

> *purpose behind such acquisition is not to earn profits or to advance the business activities of the company. The acquisition of the goods or the hiring or availing of services, in order to bring the transaction within the purview of section 2 (1) (d) of the Consumer Protection Act, therefore, should be aimed at generating profits for the company or should otherwise be connected or interwoven with the business activities of the company. The purpose behind such acquisition should be to promote, advance or augment the business activities of the company, by the use of such goods or service".*

Unfair trade practice

The consumer courts have come to the rescue of poor consumers facing unfair trade practices e.g., "selling a second-hand car, in place of a new car, after accepting the full consideration price for a new car, inter alia constitutes 'unfair trade practice' under Section 2(1)(r) of the Consumer Protection Act".[137] A Consumer court in Hyderabad has directed 'More Megastore' to discontinue its unfair trade practice of arbitrarily imposing additional cost of carry bags (bearing its logo) on the consumer at the time of making payment. The District Consumer Disputes Redressal Commission, Hyderabad has held that using the Consumer as an advertisement agent at his cost tantamount to unfair trade practice.[138]

Misleading Advertisement

The Delhi High Court while examining the concept of advertisement[139] passed an interim order restraining Zydus from telecasting its advertisement comparing Complan to Horlicks on the grounds that the same was misleading and disparaging. The Court relied on various judgments on misleading advertisements,

---

137 *Shashank Shah v. Gurjeet Singh Maan*, Revision Petition No. 1205 of 2014, decided on 01-04-2021.

138 Supermarket charging cost for carry bags with company logo an 'Unfair Trade Practice': Consumer Forum, 22.02.21. https://www.livelaw.in/news-updates/supermarket-charging-cost-for-carry-bags-with-company-logo-an-unfair-trade-practice-consumer-forum-170214 visited on 26.04.21.

139 *Horlicks Ltd. v. Zydus Wellness Products Ltd.,* (2020) SCC Online Del 873.

disparagement and law governing publication of advertisements on television. Major decisions were: (*Dabur (India) Ltd. v. Colortek (Meghalaya) (P) Ltd.*, 2010 SCC OnLine Del 391)

The Delhi High Court culled out the principles governing disparagement in the advertisements and held:

On the basis of the law laid down by the Supreme Court, the guiding principles for us should be the following:

(i) An advertisement is commercial speech and is protected by Article 19(1)(a) of the Constitution.

(ii) An advertisement must not be false, misleading, unfair or deceptive.

(iii) Of course, there would be some grey areas but these need not necessarily be taken as serious representations of fact but only as glorifying one's product.

To this extent, in our opinion, the protection of Article 19(1)(a) of the Constitution is available. However, if an advertisement extends beyond the grey areas and becomes a false, misleading, unfair or deceptive advertisement, it would certainly not have the benefit of any protection.

In Pepsi Co.[140] it was held that certain factors had to be kept in mind while deciding the question of disparagement. Those factors were:

(i) Intent of the commercial,

(ii) Manner of the commercial, and

(iii) Story line of the commercial and the message sought to be conveyed.

---

[140] *Pepsi Co. Inc. v. Hindustan Coca Cola Ltd.,* (2003) SCC OnLine Del 802.

These factors were amplified or restated in the following terms:

> *"(1) The intent of the advertisement – this can be understood from its story line and the message sought to be conveyed.*
>
> *(2) The overall effect of the advertisement – does it promote the advertiser's product or does it disparage or denigrate a rival product?*
>
> *In this context it must be kept in mind that while promoting its product, the advertiser may, while comparing it with a rival or a competing product, make an unfavorable comparison but that might not necessarily affect the story line and message of the advertised product or have that as its overall effect.*
>
> *(3) The manner of advertising – is the comparison by and large truthful or does it falsely denigrate or disparage a rival product? While truthful disparagement is permissible, untruthful disparagement is not permissible".*

In *Connaught Plaza Restaurants Ltd. v. Kapil Mitra*[141] the complainant/ respondent had participated in Mc Donald's widely published scheme 'Mc Donald's Mein Khao Har Bar Prize Le Jao' by placing two separate orders worth Rs. 81. It was alleged by the complainant that Connaught Plaza Restaurants Ltd. (CPRL) a franchisee running Mc Donald restaurants has indulged in unfair trade practices by not giving the assured prizes as per the scheme, rather put the participants under the obligation to make a further purchase of a minimum Rs. 20 in order to avail free French Fries. Also, the complainant had to send two SMS giving the coupon numbers, for which Rs. 3 per SMS were charged. Moreover, the details of the entire scheme with its terms and conditions and the result of the winners were also concealed from the participating customers. Therefore, the complainant filed a consumer complaint before the District Forum praying to declare the scheme as unfair trade practice and that Connaught Plaza Restaurants Ltd. (CPRL) be directed to disclose the entire scheme and winners of the prizes. The District Forum allowed the complaint and awarded

141 2020 SCC Online NCDRC 192.

compensation and costs to the complainant of Rs. 10,000 and Rs. 2, 000.

Aggrieved CPRL filed an appeal before the State Commission, but the State Commission modified the order of the District Forum by enhancing the compensation and awarding punitive damages to the tune of Rs. 2,00,000 and Rs. 10,00,000. CPRL then appealed before the NCDRC. The NCDRC held that no proof had been filed by the complainant that CPRL had collected the SMS charges or that it had an agreement with the Telecom Company/Service provider on sharing of SMS charges. Thus, the order of the State Commission could not be sustained on those grounds. On the other hand, it held that it is also true that the scheme was an unfair trade practice followed by CPRL. This fact having been established by the concurrent findings given by the District and the State Commission. The complainant and other similar customers who may not have come forward to file a complaint need to be granted relief. Partly allowing the appeal, the NCDRC reduced the amount of compensation to Rs. 30,000 and costs to Rs. 70,000 respectively.

The National Consumer Disputes Redressal Commission (NCDRC) in the recent case of *Ernakulam Medical Centre P.R. Jayasree*[142] observed that:

> *"Releasing a dead body by a hospital to an unrelated third person unquestionably constitutes 'deficiency in service' within the meaning of Section 2(1)(g) and (o) of Consumer Protection Act, 1986".*

Recently, the Supreme Court in a judgment laid emphasis on the role of NCDRC in *Union of India v. N.K. Srivastava*[143] wherein the Court had dismissed an appeal which had aroused from an order of the National Consumer Disputes Redressal Commission. The complaint alleged medical negligence against Sarvodaya Hospital and Safdarjung Hospital. The NCDRC allowed the revision of Sarvodaya Hospital. While exonerating it of the finding of medical negligence, it held

142 2020 SCC Online NCDRC 490.

143 2020 SCC OnLine SC 636.

Safdarjung Hospital liable to pay the compensation of Rs. 2 lakhs imposed by the State Consumer Disputes Redressal Commission.

The District Forum had dismissed the consumer complaint stating that there was no deficiency on the part of Sarvodaya Hospital in referring the complainant to a specialised facility. An appeal was filed before the State Consumer Disputes Redressal Commission by the original complainant. The SCDRC, by its judgment concluded that Sarvodaya Hospital was guilty of medical negligence and directed it to pay a sum of Rs. 2 lakhs as compensation and costs quantified at Rs. 20,000. However, the complaint was held not to be maintainable against Safdarjung Hospital. A revision was filed against the judgment of the SCDRC by Sarvodaya Hospital before the NCDRC which allowed the revision and came to the conclusion that Sarvodaya Hospital was not guilty of medical negligence, however, the NCDRC elaborated on the question as to whether Safdarjung Hospital had been correctly exonerated. The NCDRC held that though the complainant had not filed a revision against the order of the SCDRC specifically holding that Safdarjung Hospital was not amenable to the jurisdiction of the consumer fora, he was not precluded from challenging a finding which was adverse to him in the revision petition. On these facts, the NCDRC sustained the finding of medical negligence against Safdarjung Hospital and directed it to pay compensation quantified at Rs. 2 lakhs.

Conclusion

The judiciary is the third organ of the government. It has the responsibility to apply the laws to specific cases and settle all disputes. The real 'meaning of law' is what the judges decide during the course of giving their judgments in various cases. From the citizen's point of view, judiciary is the most important organ of the government because it acts as their protector against the possible excesses of legislative and executive organs. Role of judiciary as the guardian-protector of the Constitution and the Fundamental Rights of the people makes it more respectable than other two organs. One of the major functions of the judiciary is to interpret and apply laws to specific cases. In the course of deciding the disputes that come before it, the judges interpret and apply laws. Every law needs a proper interpretation for getting applied to every specific case. This function is performed by the judges. The law means what the judges interpret it to mean. Where a law is silent or ambiguous, or appears to be inconsistent with some other law of the land, the judges depend upon their sense of justice, fairness, impartiality, honesty and wisdom for deciding the cases. Such decisions always involve law-making. It is usually termed as equity legislation. The judiciary has the supreme responsibility to safeguard the rights of the people. A citizen has the right to seek the protection of the judiciary in case his rights are violated or threatened to be violated by the government or by private organisations or fellow citizens. In all such cases, it becomes the responsibility of the judiciary to protect his rights of the people.

The judiciary acts as the guardian of the Constitution. The Constitution is the supreme law of the land and it is the responsibility of the judiciary to interpret and protect it. For this purpose the judiciary can conduct judicial review over any law for determining as to whether or not it is in accordance with the letter and spirit of the Constitution. In case any law is found *ultra vires* (unconstitutional), it is rejected by the judiciary and it becomes invalid for future. This power of the Court is called the power of judicial review. In the life of the citizens of a state, judiciary is a source of confidence and fearlessness. The common man depends upon judiciary for getting justice. Without a security of rights and freedom guaranteed by the judiciary, they cannot really hope to carry out their jobs and enjoy their living. They are more dependent upon judiciary than the legislature and the executive. Without judicial protection, their lives can become miserable. From citizens point of view judiciary is the most important organ of the government. The Indian judiciary, *suo moto*, has taken cognisance of issues of public interest. Whether its environmental issues, human rights or consumer concerns, judicial decisions have had significant impact on how things are run in India. While giving interpretation to the Acts, laws and rules, the Courts do give due attention to the intention and purpose of the law that pertains to the case in question. In a number of judgments, the Supreme Court has underlined this observation while interpreting the law. A case law in point being the *National Insurance Company Ltd v.*

Laxmi Narayan Dhat[144] the Supreme Court made it clear that the interpretation of the law should be made keeping in view the purpose of the Act. 'A statute being an edict of the legislature, in construing it, it is necessary to seek the intention of its maker', said the Supreme Court. There are situations where the law is silent and facts of the case demand that the meaning of particular clauses be elaborated upon. In such situations, the courts take many factors into account like the circumstances of the case and purpose of the law. This accompanied with the fundamental principle of natural justice is the basis of the interpretation. Such interpretations, when made by the judiciary, become a precedent for future cases of similar nature and if one can put it that way, they become law.

Indian judiciary has now come to play a very vital role in influencing the various aspects of the administration and governance of the country. At one time, it was thought that the role of judiciary is only to interpret the laws and regulations and provide judgments exclusively from the legal point of view. This perspective regarding the judiciary has undergone sea change in recent times. The Indian judiciary, particularly the apex court has done a significant job to protect the rights of consumers. The courts have time and again adopted a flexible approach with regard to cases related to the socio welfare legislations to deliver the justice to the common masses.

---

144 (2007 [CP] 445).

QUALITY CONTROL IN INTERNATIONAL CRIMINAL INVESTIGATION: AN INTRODUCTION

Dr. Saba Manzoor*

Abstract

The call for quality control in investigation, in international criminal justice, goes back, almost over a decade as it has been seen that serious war criminals have been acquitted because of faulty investigation. Quality Control in International Criminal Justice focuses mainly on core international crimes like war crimes, genocide, aggression and crimes against humanity. However, it also looks at other fact-rich, criminal cases such as serious fraud and organised crime (e.g., human trafficking) within local/national jurisdictions. The idea of Quality Control in criminal investigation works on the belief that there is room for improvement in the quality control of all investigations or preparations of fact-rich criminal cases, both at international and national levels. There are lots of things that the Indian Criminal Justice System can achieve by adopting mechanisms of Quality Control, in terms of organisation, in terms of reporting and management etc. There are, however, a lot of things we cannot do, considering the constraints we suffer from.

Key Words: *International Criminal Court (ICC), Office of The Prosecution (OTP), Core International Crimes, Fact-Rich Cases, Quality Control, Criminal Investigation, Preliminary Examination, Indian Criminal Justice System, Centre for International Law Research and Policy (CILRAP).*

Introduction

The need for quality control in Intentional Criminal Justice has been evidently growing over the past decade or so. Again and again, it has been seen that serious war criminals have been acquitted because of faulty investigation. One example in the not-so-distant past being that of Laurent Gbagbo, former president of Cote d'Iviore, who, on the 15th of January, 2019, was acquitted by the International Criminal Court (ICC) from all charges of crimes against humanity, allegedly

---

* Assistant Professor, University of Kashmir, Srinagar-190006.

committed by him between December 2010 and April 2011. Expert opinion criticises the Office of The Prosecutor (OTP) at the ICC for faulty investigation.

Honourable Justice Richard J. Goldstone[1] observed that "it cannot be doubted that mistakes have been made by organs of the ICC", and that the "challenge to the OTP is to expend greater effort in ensuring that cases brought to trial are fully investigated and supported by sufficient evidence".[2]

Patryk Labuda was very firm in his view that the response of the ICC Office of The Prosecutor (OTP) to the challenge of conducting effective investigation in the coming years will define the court's future.[3] Emphasising the implications for prosecutor's investigation methods and strategies, he called for a thorough evaluation of the prosecutor's performance in the Gbagbo acquittal.[4]

Quality Control: Genesis

Quality Control in International Criminal Justice focuses mainly on core international crimes like war crimes, genocide, aggression and crimes against humanity. However, it also looks at other fact-rich[5] criminal cases such as serious fraud and organised crime (e.g., human trafficking) within local/national jurisdictions. Violent crime cases in peace-time national jurisdictions-such as isolated murders or sexual

---

1 Richards J. Goldstone, "Acquittals by International Criminal Court", In *EJIL; Talk!* 18th January, 2019.

2 *Ibid.*

3 Patryk Labuda, "The ICC's Evidence Problem, The future of International Criminal Investigation. After the Gbagbo Acquittal" in Volkerrechtsblog, 18th Jan, 2019, Borrowing from a 2013 article by Christian M. De Vos, Labuda observed that the ICC has an evidence problem. See Christian M. De Vos, "Investigating from Afar: The ICC's evidence Problem", *LJIL,* Vol, 26, No. 4, pp. 1009-1024.

4 *Ibid.*

5 Fact-rich cases are generally those that involve many alleged incidents, acts, transactions, victims, perpetrators,witnesses and other potential evidence.

violations – normally lack the factual complexity to be considered fact-rich.[6]

The call for quality control in investigation, in international criminal Justice, goes back, almost over a decade. The idea of quality control implies a continuous knowledge base at the center of core international crimes cases that runs like a red line from preliminary examination until the end of trial. The idea also emphasises the need for investigation plans, which are essential in all core international crimes cases that are so large that a team is required. These investigation plans are to be developed before the opening of an investigation.[7]

It was the Centre for International Law Research and Policy (CILRAP)[8] and its other partners around the globe that conducted the Quality Control Project[9] between 2012-2020, with a three dimensional concern - looking at the three distant phases of fact-work prior to the criminal trial.

The first phase of the Project concentrated on the importance of fact-finding and documentation (Quality Control in Fact-Finding). The second phase focused on the stage of preliminary examination prior to the formal opening of a criminal investigation (Quality Control in Preliminary Examination). The third phase focuses on the investigation and case-preparation prior to the opening of trial (Quality Control in Criminal Investigation).

---

6 Morten Bergsmo, "Towards A Culture of Quality Control in Criminal Investigations", *FICHL,* Policy Brief Series, No. 97 (2019), Torkel Opsahl Academic Epublishers.

7 Morten Bergsmo, in his keynote presentation at the New Delhi Conference on 'Quality Control in Criminal Investigation, co-organised by the CILRAP, and The Indian Law Institute, in New Delhi on 22-23 Feb., 2019.

8 The CILRAP is incorporated as an International Non-Profit Organisation in Brussels, Belgium. It has an administrative office in Brussels and one in Florence as well. Its members include academics, professionals and students from around the world. The Director of the Centre being Morten Bergsmo.

9 The project is funded by Norwegian Ministry of Foreign Affairs.

The idea of Quality Control in Criminal Investigation works on the belief that there is room for improvement in the quality control of all investigations or preparations of fact-rich criminal cases, both at international and national levels.

Fact-rich cases require time and teams of investigators, analysts and lawyers to prepare for trial. They consume resources - sometimes millions of dollars. There is always a public interest in their efficiency and fairness. And they can always be improved. The theme of "quality control" reflects this fact. It is a general theme and does not point fingers at any specific institutions or individuals.[10]

All that the idea of quality control does is cause mobilisation around the question of "how can one do better in investigation or case preparation"?

Quality Control: Bottlenecks

Quality Control in international criminal investigation mainly focuses on quality control in the prosecution investigation and case-preparation in fact-rich, core-international crimes. The following bottlenecks are considered to be particularly bothersome in carrying out successful investigation.

1. **Overview of information**

   The loss or fragmentation of overview of information and potential evidence in the possession of the team during investigation or case preparation is a serious hindrance to a successful investigation. Such issues can lead to delays in the investigation or case-preparation, lack of awareness of gaps in the availability of potential evidence etc.[11]

---

10 Xabier Agirre Aranburo, Morten Bergsmo, et.al., *Qulaity Control in Criminal Investigation*, ii (Torkel Opseahl Academic Epublishers, Brussels, 2020).

11 Xabier Agirre Aranbura, Morten Bergsmo, "Investigating Bottlenecks and The Mindset of Quality Control", in Xabier Agirre Aranburo, Morten Bergsmo, et.al., *Quality Control in Criminal Investigation,* 5-9 (Torkel Opseahl Academic Epublishers, 2020).

2. Factual analysis

Inadequate analysis of factual propositions relevant to the prosecution's burden in the case and corresponding evidence can lead to misleading confirmation biases, poor evaluation of source credibility and reliability, factual errors etc.[12]

3. Evidence-review

Irregularity in the team's daily routine of assessing relevancy and possible weight of information or potential evidence is another serious bottleneck in carrying out successful investigation. The team can undermine the quality of the evidence-review and also can hamper the efforts to build the case steadily.

4. Formulation of responsibility

Vague or non-substantial formulation of criminal responsibility within the team after it has in its possession enough potential evidence another issue of concern. The problem is that the formulation is not properly informed by existing potential evidence. This problem can lead to non-prioritisation of team resources, slow down work process, lack of charity, prolong the fact gathering period etc.

5. Cumulative charging

Broad use of cumulative charging of crimes and modes of liability - often pursuant to a precautionary fear of acquittals caused by failure to include a classification, not only a desire to ensure accountability for the full range of criminal conduct engaged in. Diffusing the focus of the case can swell both the prosecution and defense cases and reduce the impact of the judgment.

6. Too much evidence

Excessive long exhibit and witness lists in the prosecution's part of the case. This also, is caused by various reasons, which may

12 *Ibid.*

include lack of focus in the framing of the case, weak quality control in selecting the best suited evidence, fear of not having evidence etc. Obviously, this practice also can delay proceedings significantly.

7. Disclosure

Prosecution disclosure to the defense of voluminous materials not clearly related to a central hypothesis of criminal responsibility can also hinder a successful investigation and trial. This problem generally raises questions of *de facto* fairness.[13]

Quality Control: Mechanisms

The fundamental quality control mechanisms inherent to criminal justice systems around the world are the work of the defense and the assessment and decision of the judges. Both have capacity to correct errors and expose weaknesses in the prosecution's investigation and case-preparation. Both are fundamental 'quality control mechanisms' for the outcome of the case as a whole.[14]

Another undeniably important quality control mechanism is prosecutorial professionalisation. Just as any other form of professionalisation in the public sector, prosecutorial professionalisation requires awareness on the part of prosecutorial leaders of the importance of self-improvement and self-questioning. This is a pre-condition for professionalisation to take proper hold in the practice of criminal justice teams.[15]

The right choice of skills and personnel is also very important. Fact-rich, core-international crimes cases require staff with higher level of education and knowledge. The gathering of information, sorting of relevant and non-relevant evidence, coupled with other diverse and

---

13 *Ibid.*, at p. 10.

14 Morten Bergsmo, Supra 6, p. 2.

15 Carsten Stahn, Morten Bergsmo and Chgn Icarus, "On the Magic, Mystery and Mayhem of Preliminary Examination" in Bergsmo and Stahn (eds.), *Quality Control in Preliminary Examination,* 3, Vol. 1, and quoted by Bergsmo in Supra 6.

complex responsibilities, calls for personnel who have the patience and acumen to closely study volumes of pages and to synthesise the primary important points, while also looking at alternative possibilities and hypotheses.

Another element of proactive quality control in criminal investigation is the extensive use of analysis, following the 'Intelligence-led model'[16], which entails the use of qualified methods and professionals with the support of higher-management and decision-making. This is also consistent with the notion of "evidence-based decision-making', which the International Organisation of Standardisation (ISO), identifies as one of the key "quality management principles, since facts, evidence and data analysis lead to greater objectivity and confidence in decision-making.[17]

Last but not the least, we have Investigation Plans which can greatly help to enhance the quality and efficiency of the investigation, not only in fact-rich cases but also in traditional, non fact-rich cases like murder, arson, sexual assault etc. The investigation plan is a written outline, a factual hypothesis and legal basis of criminal responsibility or innocence and is to be prepared immediately after the case has been opened. It comprises of a schedule which assigns responsibility within the investigative team for steps each team-member must take to bring the investigation to a conclusion, statutes identified to match with factual hypothesis to attach penal liability, factual questions that the investigation should aim to answer, etc. An investigation plan is supposed to be a living document throughout the investigation and it is the duty of OTP to make sure that this document is created and updated throughout the investigation.

---

16 This practice has been recommended as best practice among others, by the Organisation for the Security and Cooperation in Europe (OSCE) in its "Guidebook on Intelligence-Led Policing", 3 July, 2017.

17 International Organisation of Standardisation (ISO),*"Quqlity Management Principles"*, 2015, Supra 11.

Relevance of Quality Control in the Context of the Indian Criminal Justice System

Ideally, quality control in criminal investigation pertains only to international crimes cases such as war crimes, genocide human right violations etc. However, it has much relevance within local jurisdictions as well in so far as fact-rich cases are concerned. Issues of children and women being trafficked across borders, communal riots (which can also be called mass murders or genocide), issues of terrorism, drugs, cyber-crimes, pedophilia, serious fraud - these are all fact-rich crimes which have a huge impact on the Indian society and which need to be looked at in order to understand how these crimes need to be investigated and what is the quality control that is required for the investigation of these crimes. Some of them, of course, are international crimes as well. For example, the issue of human trafficking. It is a cross-border crime, involving several countries, transportation of a large number of woman and children (mostly) from one country to another and then from the second country to the third country.[18] How does one investigate this?

We have had communal riots in India, which have involved a large number of people. For example, the communal riots of 1984. It took about thirty four years to investigate and conclude the trial, deal with the appeals and finally find the guilty people behind the riots. Many accused people have died by now, many people who had lost near and dear ones in the riots have also died in the past thirty four years. We have had riots of a communal nature in the state of Gujarat in 2002. Again, 15-16 years ago. Hardly any progress in the trial, in many cases, probably, the investigation itself is not complete. Experience shows us that our criminal justice system lacks the expertise, manpower and sometimes even the technology, when it comes to the investigation of such fact-rich, complex cases.

---

[18] See Honourable Justice Madan B. Lokur's opening address at the New Delhi Conference on Quality Control in Criminal Investigation, co-organised by the CILRAP, and The Indian Law Institute, podcast from 22/2/19, available on cilrap.org.

We have organised crimes in India, drug peddling networks, pedophilia, cybercrimes - all are trans-border crimes. Then there is serious fraud – bank accounts being completely wiped out. These are all offences that have a large and serious impact on our society, hence the necessity of having thoroughly investigated, iron clad cases presented before the court. Quality control, in these cases, would be the first step towards a fair and successful trial. If the investigation itself is unfair, the chances are that the trial is going to be unfair, quality control is the basis of a fair investigation.

Quality control involves fact-finding, some sort of a preliminary inquiry, examination of witnesses, collection of evidence, sifting through the evidence (which is very important), in cases of this nature, which are fact-rich, which have a huge amount of information, running into a thousands of pages – how do you deal with such kind of evidence, how do you decide what evidence is relevant and what is not. Who are the witnesses who should come to the witness stand and who are witnesses who should not? That is a very onerous task for the prosecutor and the investigator as well.[19]

No doubt, quality control in investigation would be a first step towards a fair and successful trial in fact-rich cases, within local jurisdictions as well. However, fact-finding, preliminary inquiry, examination of witnesses, collection of evidence, sifting of the evidence – this all is an onerous task – one which the Indian investigation system, unfortunately – is ill-equipped to deal with.

Criminal investigation at the international level (ICC) is different in some fundamental ways from what we have in India. At the ICC, the fact-finding, preliminary examination, documentation, all is done by the Office of The Prosecution (OTP). In fact, under the OTP process, the preliminary inquiry itself is very robust and sometimes carried on for months and years (where the OTP understands the main prosecution story, examines information to determine which leads to follow and which to drop, which witnesses to summon and examine etc). If the OTP comes to the conclusion that there is

---

19 *Ibid.*

nothing to investigate, they close the case stating so, otherwise they commence with the next stage, that is, investigation, and when the investigation is complete, the matter goes to trial. We, however, do not have a preliminary inquiry provision under the Indian criminal justice system, what we do have is a mandatory investigation requirement, which stems from a 2013 Supreme Court decision (where the case showed that even after the information disclosing the commission of a cognisable offence were presented before a police officer, the FIR was not registered). So in India, we are at the other end of the spectrum, where we have to mandatorily investigate as soon as there is information relating to the commission of a cognisable offence, which, naturally, leaves no space for a preliminary inquiry. And not to forget that investigation under the Indian criminal justice system is carried on by the police and not the prosecutor's office. It is only when the police completes the investigation, compiles a Police Report, hands it over to the court, that the charges are framed by the court, trial begins and the prosecutor steps in.[20]

We do not have fact-specific investigation plans, like the ones which are devised at the beginning of a case by the OTP. Our investigations do not have the same kind of material or information available to them to plan the investigation in anticipation of what is to be done in the future. What we do have are general guidelines that possibly operate upon the investigating officer. These guidelines have come from laws, from statutes and possibly as inferences from judgments of High Courts and the Supreme Court.

Another point of difference between the two systems is the collection of evidence at the request of the defense. Under the Indian Criminal Justice System, at the stage of framing of charges, the Court will only

---

20 Usha Tandon and Shreeyash Uday Lalit, Use of Investigation Plans in Indian Criminal Justice: The Crime of Human Trafficking, The New Delhi Conference on Quality Control in Criminal Investigation, co-organised by the CILRAP, and The Indian Law Institute, podcast from 22/2/19, available on cilrap.org.

consider materials that are in the final police report u/s 173 CrPC[21]. This means that the court will not consider any other witness, any other material, any other evidence presented by the defense.

Some standard operating procedures have been brought out by various police departments over the years. One example being the guidelines brought out by the Orissa police, which has a kind of a checklist. The items on the checklist are numbered on the basis of priority - the top most items on the list are mandatory for the investigator to investigate and then he can move on with the other items on the checklist.[22]

So in India, we work on the basis of general guidelines as opposed to fact specific investigation plans, like at the OTP, that are devised at the beginning of a case. Even during investigation there is a lack of resources, so we do not want to commit investigators just for the purpose of devising a plan, rather than focusing on the investigation.

Hence, the role of the police is very important as far as quality control in investigation in India is concerned. The fact, however, remains that the state/union territory police forces are not well equipped to carry on investigations which meet all the standards of quality control. The primary cause is lack of resources. There is a lack of availability of resources to police forces at the state and union territory level.

Conclusion

There are a lot of matters we are lacking in, a lot of lacuna we are suffering from, so probably, quality control in criminal investigation might not be possible for India, for now, but necessarily, if a right

---

21 The Code of Criminal Procedure, 1973: Section 173, which among other things mandates that as soon as the investigation is completed, the officer in-charge of the police station shall forward to a Magistrate empowered to take cognisance of the offence on a police report, a police report in the prescribed manner, which shall contain, among other information, all documents or relevant extracts on which the prosecution proposes to rely.

22 Supra 20.

mechanism is brought out, then we may be able to increase the quality of our investigation mechanism, by ensuring that the investigators focus on the right thing by ensuring that they bring in the right kind of evidence, the right numbers of witnesses, which stands the annuals of a trial.

There are lots of things that we can learn from the OTP, in terms of organisation, in terms of reporting and management. There are, also, a lot of things we cannot do, considering the constraints we suffer from. One can only hope that there might come a time when quality investigation will not remain a distant dream for the Indian Criminal Justice System.

Abbreviations

ICC: International Criminal Court

OTP: Office of The Prosecution

CILRAP: Centre for International Law Research and Policy

EJIL: European Journal of International Law.

LJIL: Leiden Journal of International Law

FICHL: Forum for International Criminal and Humanitarian Law

THE SEARCH FOR SYNERGY: COMBATING CLIMATE CHANGE THROUGH INVESTMENT ARBITRATION

Dr. Ishita Chatterjee*

Introduction

The relational dynamics between investment arbitration and environmental law has been a subject of discussions among legal fraternity incessantly. The absence of precedential value in IIAs and umbrella defence mechanisms creates a vulnerable situation for host states pertaining environmental concerns. Deliberations initiated with *Methanex v. USA*[1] and *Myers v. Canada*[2]. Researchers endeavour to analyse counter claims in arbitration decisions in *Roussalis v. Romania*[3], *Burlington v. Ecuador*[4] and *Perenco v. Ecuador*[5]. The fear of regulatory chill wherein the developing countries restrain from using regulatory measures for its citizens due to the fear of incurring heavy compensation liabilities against large powerful MNCs also creates a situation of risk for efficient balancing of seemingly bipolar environmental and investment concerns. The wide gap now in existence, in balancing investment agreements with environmental concerns requires IIAs to be restructured in ways that environmental jurisprudence can be incorporated in public policy concerns when dealing with expropriation and Fair and Equitable Treatment (FET) clauses along with other instruments in such agreements.

---

* Associate Professor, School of Law, G.D. Goenka University, India.

1 *Methanex Corporation v. United States*, Final Award on Jurisdiction and Merits, (2005) 44 ILM 1345.

2 *SD Myers Incorporated v. Canada*, Order, 2004 FC 38, (2004) 244 FTR 161, IIC 252 (2004).

3 *Spyridon Roussalis v. Romania*, ICSID Case No. ARB/06/1, Award, 7 December, 2011.

4 *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Ecuador's Counterclaims (7 February, 2017).

5 *Perenco Ecuador Ltd. v. The Republic of Ecuador*, ICSID Case No. ARB/08/6, Interim Decision on the Environmental Counterclaim (11 August, 2015).

The interplay between Investment Arbitration and environment had been a subject matter of widespread debates and discussions over many years. In order to promote the ambit of free trade, the developing countries are always found at the receiving end, forced to compromise the principles of sustainable development giving due emphasis to environment protection along with economic development. The debate centred on this area is often focussed on the aspect as to whether a country can improve its environmental standards through Investor State Dispute Settlement mechanisms specifically designed to cater to this aspect.[6]

The Charter of Economic Rights and Duties of States pertinently lays down that a state has "full permanent sovereignty, including possession, use and disposal, over all its wealth and natural resources".[7] Environment law and Investment law can be categorised as two branches which have conflicting perspectives regarding the sovereign state's claim over natural resources. The international environment law perspective focusses on the equitable sharing of resources, the investment arbitration perspective focuses on the relinquishment of certain sovereign rights through Bilateral Investment Treaties (BITs) and investment agreements attracting FDI. It is a recent trend as seen in the Columbia's Model BIT, 2017 which specifically incorporates a reaffirmation to uphold investment and policy measures in accordance with the Environmental standards.[8] This could be more of an initiation stage for the future global environmental standards included in treaties.

From recent instances it could be said that non-commercial issues have also become an essential part of investment arbitration in implementation as well as development stages. The point which the researchers would like to put for through the paper is that if

---

6 (Rudolf Dolzerand & Christoph Schreuer, 2008).

7 Charter of the Economic Rights and Duties of States, GA Res. 3281(xxix), UN GAOR, 29th Sess., Supp. No. 31 (1974) 50, *available at:* https://www.aaas.org/sites/default/files/SRHRL/PDF/IHRDArticle15/Charter_of_Economic_Rights_and_Duties_of_States_Eng.pdf (last visited on November 1, 2020).

8 Columbia Model BIT, 2017, *available at*: https://www.mincit.gov.co/temas-interes/documentos/model-bit2017.aspx (last visited on Aug. 22, 2020).

investment tribunals permit the states to bring counterclaims against investors regarding environmental aspects, it would encourage the investors to follow environment standards and norms.[9]

Tracing the History

The disputes have mainly happened when the environment policies of the government has negatively impacted the economic aspects of the investor. In these cases, there exists a situation of direct conflict between the government policies and investor requirements in regard to assets.

The bilateral investment treaties and provisions of regional trade agreements provide the basis of legal claims between state and investors by laying down the state's prerogative to arbitrate.[10] So, in most cases, the analysis of the text of investment agreements is the best alternative to decide between foreign investment and environment concerns regarding natural resources. A close observation of the international investment treaties would reveal the fact that most of the BITs does not contain environment concerns. However, such references could often be found in Free Trade Agreements.[11] Environment concerns in BITs became more prevalent after 1980s.[12] It shall however, be noted that the implications of the same rely precisely on the countries and the custom and context of the incorporated provision.[13]

Such provision reflects three main themes starting with the recognition of environment protection as a treaty objective, progressing through the rights of states in regulating environment matters and ensuring the duty of each state to enforce and promote environment protection measures.[14] Another common area where we

9 (Kate Parlett and Sara Edward, 2020).
10 *Daimler Fin. Servs. AG v. Argentine Republic*, ICSID Case No.ARB/05/1, Award, 168 (Aug. 22, 2012).
11 (Christina L. Beharry, 2015).
12 *Ibid.*
13 *Ibid.*
14 (Katheryn Gordon, Joachim Pohl, 2020).

can find the references of environment protection is in the preamble of various treaties. An apt example of this could be found in the preamble of the 2012 US Model Bilateral Investment Treaty which laid down the objective of the treaty as:

> "Desiring to achieve these objectives in a manner consistent with the protection of health, safety, and the environment".[15]

The preamble of the treaties becomes relevant in the backdrop of Article 31 (1) (2) of the Vienna Convention on the Law of Treaties which states that it provides background on the objective and purposes of the treaty.[16] Apart from the aforementioned two categories of provisions incorporated, the third scenario deals with the right of the contracting parties to deal with environment concerns. The scope of these provisions differs widely and range from exceptions, exclusions and also carve outs. For instance, the Article 20 of the GATT (General Agreements on Tariffs and Trade) except measures for concerns regarding "human, animal, or plant life or health", "concerns exhaustible natural resources"[17] or "protection of national treasures of artistic, historical or archaeological value".[18]

Jurisprudential analysis

The reasonableness of measures for environment protection had always been analysed by the tribunals by focusing on various key issues. In the case of *S.D. Myers Inc. v. Canada,* the export of the compound polychlorinated biphenyl was designed to benefit the

---

15 2012 U.S. Model Bilateral Investment Treaty, Treaty Between The Government of The United States of America And The Government of [Country] Concerning The Encouragement And Reciprocal Protection of Investment, *available at:* https://ustr.gov/sites/default/files/BIT%20text%20for%20ACIEP%20Meeting.pdf

16 Vienna Convention on the Law of Treaties, 1969, Art. 31(2).

17 Bilateral Investment Treaty between the Government of the Hashemite Kingdom of Jordan and the Government of the Republic of Singapore, Art. 18(e).

18 Agreement between Japan and the Republic of Peru for the Liberalisation, Promotion, and Protection of Investment, Art. 19(1)(f).

hazardous waste disposal industry.[19] The measure was however, held to violate Canada's obligations under North American Free Trade Agreement under the aspect of nationality-based discrimination.[20] In the case of *Tecnicas Medioambientales Tecmed S.A. v. United Mexican States*[21], the court examined whether the Mexican government's decision to not renew the permit to operate a landfill to the company due to environment concerns is a reasonable decision or not. However, the tribunal in this case refused to accept the claims of the government and said that the refusal to grant permit is disproportionate considering the economic loss incurred upon the investor. From this, the approaches of the tribunal on a case to case basis varies from each other.

In the case of *Glamis Gold Ltd. v. United States*[22], the challenge was regarding Canada's mandatory landfilling which the tribunal did not consider. An entirely different approach was taken in the case of *Chemtura Corp. v. Canada*[23] where the court declined to consider if the chemical involved in production poses a threat to human health and environment. The decisions of the courts in this regard has never been uniform and this poses a threat to environment and sustainable development goals. In another case of *Urbaser v. Argentina*[24], the tribunal held that the investor is bound by the international human rights obligations concerning water.

It is quite clear that the environment concerns were raised in the tribunals by the claimants and respondents alike in many cases. But there is a limited number of cases wherein the claims are analysed comprehensively by the court. This is because the tribunals often find themselves placed in a dilemma wherein they have to decide the claims as well entertain counter claims overcoming the jurisdictional challenges that are existing in the current scenario.

---

19 *Supra* note 3 at 2.

20 *Ibid.*

21 *Tecnicas Medioambientales Tecmed S.A. v. United Mexican States,* ICSID Case No. ARB(AF)/00/2, Award (May 29, 2003), 19 ICSID Rev.FILJ 158 (2004).

22 *Glamis Gold Ltd. v. United States*, UNCITRAL, June 8, 2009.

23 *Chemtura Corporation v. Canada*, Award, IIC 451 (2010).

24 *Urbaser v. The Argentine Republic*, ICSID Case No. ARB/07/26.

Counterclaims in Investment Arbitrations

Counterclaims are often seen as a mechanism used to regulate the relationship between investor's rights and the regulatory as well as sovereign power of the states. The tribunals have always found difficulty in entertaining counterclaims because of the fact that these treaties are inherently asymmetrical in nature.[25] In the case of *Roussalis v. Romania*[26], the court did not entertain the counterclaim of the respondent as there was no consent from the part of the investor. The rationale of the court was that counterclaims fall outside the purview of the tribunals jurisdiction and what could be made applicable is the language specifically laid down in the bilateral investment treaty.[27]

Other than the jurisdictional claims another problem regarding the application of counterclaims was that it should have a close and factual connection with the primary claims that were raised in the case. In the case of *Burlington v. Ecuador*[28], and *Perenco v. Ecuador*[29], counterclaims were raised by Ecuador regarding the breach of environmental law by investors polluting soil and groundwater. The tribunals however, held that Ecuador was curtailing the investor to benefit from the investment. But it did recognise the fact that Burlington and Ecuador had a role to play in the deterioration of the Ecuadorian amazon. The Tribunal also made the following observations:

> *"Proper environmental stewardship has assumed great importance in today's world. The Tribunal agrees that if a legal relationship between an investor and the State permits the filing of a claim by the State for environmental damage caused by the investor's activities and such a claim is substantiated, the State is entitled to full reparation in accordance with the requirements of the applicable law. The Tribunal further recognises*

---

25 *Hesham T. M. Al Warraq v. Republic of Indonesia,* UNCITRAL, Final Award,15 December 2014.

26 *Supra* note 4 at 2.

27 *Supra* note 4 at 2.

28 *Supra* note 5 at 2.

29 *Supra* note 6 at 2.

> *that a State has wide latitude under international law to prescribe and adjust its environmental laws, standards and policies in response to changing views and a deeper understanding of the risks posed by various activities".*

If counterclaims should be used to further the goals of sustainable and eco-friendly development in the nearer future, then steps should be incorporated to lay down explicit provisions in the BITs and agreements so that the tribunals can *per se* take such claims. In the absence of such provisions, the courts would have to ponder on the jurisdictional claims too. This could ensure that the investors would invariably be held responsible for the environmental damage it causes to the host state. Such a development would help the developing states also to further economic development without compromising on their environmental aspects.[30]

For instance, Article 47 of the ICSID Convention specifies counterclaims. The other arbitration rules such as ICC Rules, LCIA Rules, and the UNCITRAL Rules of 2010 also give the option of seeking counterclaims to respondents.[31]

Challenges before the Tribunals

The bipolarisation of International Investment Agreements under Bilateral Investment Treaties has created a major setback to the goal of international community advocating integration of sustainability with development. The rift is ever-widening given the plethora of cases where the host states and investors remain ignorant of the risk potential posed by raising environmental concerns in an investment dispute.

The first major issue is the inconsistency of tribunals in adjudicating the 'legitimacy' of claims related to environmental concerns in the absence of any acceptable precedents standard in international

30 (Jesse Coleman 2017).

31 Rule 40(1) of the ICSID Arbitration Rules; Article 5 of the ICC Rules; Article 4 of the UNCITRAL Rules, 2010; Article 2 of the LCIA Rules; Articles 4.1(b) and 25.2 of the SIAC Investment Arbitration Rules, 2017.

investment arbitrations. Also, this points out to the fact that the gravity of environment concerns advocated by the host state to the tribunal may be easily dwarfed infront of an economic claim by an investor in an investment dispute as happened in *Santa Elena v. Costa Rica*.[32] The land development investment project was in this case, expropriated by the Costa Rican government under the premises of international obligation to save the wildlife and habitat of the region for environmental concerns. The dispute arose as to the amount of compensation paid in relation to the expropriation.

It was consequently held by the tribunal, with utter disregard to environmental concerns that the compensation payable would be the same irrespective of the international environmental obligation being cause for expropriation. The analysis of the above case in conjugation with *Peter A. Allard v. Government of Barbados*[33]*,* will perhaps complete the picture. Allard in this case was the investor who acquired estate property in Barbados under Canada-Barbados BIT for the purposes of eco-tourism as a sanctuary. With the later failure of South-Coast Development Plant and Government's lax attitude in closing the sluice gate resulted in drastic environmental degradation of the nearby areas to the sanctuary, Allard initiated arbitration proceedings under Canada-Barbados BIT under breach of FET (Fair and Equitable Treatment), FPS (Full Protection and Security) clauses and expropriation. The tribunal however, refused to draw any nexus to the closing of sanctuary and the government failure to protect and regulate the environment, further refusing to recognise any cross-jurisdictional issues.

Mataclad v. Mexico[34] was another dispute where Mataclad initiated investment proceedings against Mexico under minimum standards of treatment and expropriation, winning the case ultimately against state regulatory action for environmental concerns. The irony of legitimate expectation in an investment treaty against the regulatory action by

---

32 *Compañía del Desarrollo de Santa Elena SA v. Costa Rica*, Final Award, ICSID Case No ARB/96/1, IIC 73 (2000).

33 *Peter A. Allard v. The Government of Barbados* (PCA, Case No. 2012-06).

34 *Metaclad Corporation v. The United Mexican States*, ICSID, Case No. ARB (AF)/97/1.

host state as raised by investor for claiming awards could be conversely applied against the investor too. Shouldn't environmental concerns of host state be a similar legitimate claim against the investors who engage in environmentally hazardous investments?

In the same dimension is how state action loses grounds of legitimacy when even after recognising crucial environmental concerns in line with international obligations to save environment, the tribunals cannot help but consider such cases to be simply mundane issues of fact and law to be decided for between the parties. This was the case of *Marion Unglaube v. Costa Rica*.[35]

Almost always clauses of Expropriation, FET, MFN, FPS are used by investors to initiate arbitral proceedings against host states with regard to BIT violations. However, to see a change in this trend, if we look at the case of *Methanex v. U.S.A.*[36], we find how tribunals actually considered the concern of host state to phase out MTBE a legitimate ground for state action and denied to ensue expropriation charges against host state regulatory action.

Similar is the case of *Mesa Power Group LLC v. Canada*[37] wherein the state actually won the case wherein a FIT (Feed in Tariff) Programme was challenged by Mesa to be discriminatory as the programme required certain specific domestic component parts as its regulatory provisions for Ontario Electric System, a renewable energy initiative.

Putting this in perspective to another case of *Windstream Energy LLC v. Canada*[38], we find another situation where state practically halted an investment project on the precincts of scientific studies of the effects of energy project on the surrounding ecosystem. Arbitration proceedings were initiated on the pretext that the project was no longer left economically viable due to state regulatory action which amounted to expropriation. The state actually lost the arbitration but

35 *Marion Unglaube v. Republic of Costa Rica,* ICSID, Case No. ARB/08/1.

36 *Supra* note 2 at 2.

37 *Mesa Power Group v. Canada*, Award, PCA, Case No. 2012-17, IIC 776 (2016.

38 *Windstream Energy LLC v. Canada*, Award, PCA, Case No. 2013-22, IIC 896 (2016).

not on the grounds of expropriation but due to the breach of fair and equitable treatment clause of NAFTA due to lack of follow up and delays in scientific assessment.

In *Chemtura v. Canada*[39] dispute, the phase out of a product already banned by several countries, Lindane was initiated by Canada, later challenged by Chemtura on every possible ground of expropriation, MFN, FET, FPS and minimum standard of treatment. However, recognising the ban on Lindane and the phase out initiated by Canada on the same lines, the tribunal did not hold the state guilty and held that no substantial deprivation of property had taken place to lead to expropriation.

Undeniable is the fact that when tribunals lead on to determine the standards of conduct in compliance with international legal standards, it becomes an imperative question as to whether is it the host state to determine the question of appropriateness of sovereign regulatory measures or is it up to the tribunal to determine which alternative form of regulatory compliance norm would be more effective means of public policy in synergy with international legal standards, while determining an arbitral award. The fear of regulatory chill is evident in such cases where the risk of complying with environmental concerns and international environmental obligation may as well be in detriment to national interest, considering the possibility of claims by investors in an arbitral proceeding. The situation can be well conceived in reality through *S.D. Myers v. Canada*[40] dispute.

Investment arbitration and sustainable development machinery are still two seemingly parallel lines that hardly seem to intersect. The goals of sustainable development seem farfetched given the fact that the financial resources to achieve effective sustainability are mostly channelled through investment projects. The risk of BITs falling within the trap of various investor claims is further because of the broad provisions circumscribing investment projects which are later often used by investors to initiate arbitration. The clauses may even extend beyond the domestic law boundaries and sometimes even

---

39 *Supra* note 25 at 6.

40 *Supra* note 3 at 2.

break through sovereignty in situations of weak regulatory mechanism and poor enforcement in environment related matters. Many countries such as India have formed a revised BIT model (like Model BIT, 2015) which have for the first time introduced sustainability and tried to provide a broader regulatory ground of action to the government in order to address environmental concerns. It is here that we recognise the need to have a broad line of consensus to revisit and restructure investment arbitration in synergy with addressing environmental concerns.

A predictable framework mechanism to deal with environment concerns in relation with International Investment Agreements is thus the need of the hour.[41]

Extending scope of investment agreements to a multi-stakeholder approach

Before we understand International Investment Arbitration solely from the perspective of Investor-State perspective, it is important to appreciate the growing state-state perspective to Investment Arbitration as has been a recent global trend, increasingly substituting ISDS with SSDS.[42] The players are not restricted in an investment arbitration agreement and thus, in fact constantly changing. Thus, it is implicit to discuss that there may be a situation where the social cost of an investment becomes more important than an interest based or profit based or risk based assessment. At this juncture, we must understand what incorporates this social cost. Let us take for instance the environmental impact assessment policy we currently have for any developmental project. It certainly recognises the need for a 'public hearing' as an important and indispensable component of project assessment. Thus, the important dimension will of course include the component of public hearing and the component of government regulations specifically designed to incorporate and implement on ground environmental protection regulations. This regulation will include a variety of other aspects such as the respect

41 (Engobo Emesh 2013).
42 (Nathalie Bernasconi-Osterwalder, 2014).

for human rights and labour laws, something which the Netherlands Model BIT specifically incorporates. This might be one way the upcoming BITs may consider while they try to synchronise the investments and environment.

The component of Corporate Responsibility and Civil Society Role may also be indispensable with the new regulations in place, which although are currently soft laws but do have the capacity to be major pillars of ensuring human rights and environmental considerations in businesses and corporate practices, one of them being the Working Group on Business and Human Rights.[43] It will be interesting to see how these recent changes work in conjunction when the pressure groups play a responsible role as well to ensure accountability.

The complications start when these new found multi-stakeholder approach needs to be incorporated in an International Investment Agreement. What will be the desirable clauses as incorporations and what must a nation omit to ensure that the ISDS mechanism works well while balancing the environmental concerns. The point is when the nations incorporate a set of principles in the preamble of their Model Agreement, they must necessarily support it with necessary changes in the terms and conditions that determine expropriations and the standards that determine the Full Protections and Security of investments along with the comparative standards of Fair and Equitable Treatment clause. The risk profile of intended investment will have to be balanced with the profitability and this risk and return equation of assets involved in an investment agreement will have to incorporate the much neglected and scarcely considered, social and environmental cost' of a project. This new found cost will only find substance once we hold the multi-stakeholder approach to evaluate the market value of an investment asset and its adjoining property, which may perhaps be a natural reservoir of resources.

---

43 Working Group on the issue of human rights and transnational corporations and other business enterprises, *available at*: https://www.ohchr.org/en/issues/business/pages/wghrandtransnationalcorporationsandotherbusiness.aspx (last visited on Nov.3, 2020).

Varying interests and concerns of this approach will require a multi-dimensional understanding of the scope and ambit of Investments and the Agreements which facilitate, thus, with the changing global practices and continuously omitted investment clauses such as the MFN, FET, FPS and indirect expropriations along with the umbrella clauses, the road to a multi-stakeholder approach becomes more and more challenging to address concerns least considered as concerns such as the environment.

Restructuring International Investment Arbitration

It perhaps is difficult to ascertain the paradoxical situation as to how sustainability has been confused with economic growth when it comes to the Rio +20 Declaration using 'sustained economic growth' interchangeably with sustainable development.[44] Also, not to forget the very narrow scope to bring in the 'alien' concept of investment in the domain of environmental concerns in just a single principle 271, shows how Rio +20 has been a disappointing failure in this regard.[45] To understand what could possibly be a way forward, let us look backward to the failed attempt to create a Multilateral Investment Agreement (MIA) to address the environmental concerns of investment laws. Based on a three point pillar mechanism, MIA made an attempt to move in line with both Agenda 21 (using natural resource base for socio-economic development for sustainable development in conjugation with environmental concerns) and Rio +20 declaration.[46] In this respect both the polluter pays principle and the precautionary principles were used in derivative form to integrate investment with environment in BITs doing away with the vague provisions of sustainable development in NAFTA.[47]

Looking at the possibility of creating an IIA similar to MIA advocating a situation of no compromise with the obvious and crucial environmental concerns could be confronted with the same

44 *Id.* at 235.
45 *Ibid.*
46 (John Wickham, 2000).
47 *Id.* at 620.

questions as did the NAFTA Article 1114(2)[48], which advocated that host states, when it comes to investment concerns, must not lower their bars to attract investments in contravention to their public policy objectives. The questions were raised as to the truly 'green nature' of such 'not lowering of standards' in absence of any reasonable grounds and specific mention of such recognised standards of state action in this regard. The important questions are: Whether not lowering of standards is a viable alternative for developing countries already burdened with financial constraints and whether even if they do exercise their sovereign regulatory functions in this regard, will they be strong enough to advocate the said grounds in investment agreements through ineffective compliance standards. Perhaps 'not lowering standards' in conjunction with commercial viability of a project holds better ground to address this concern.

Non-binding agreements that provide for normative guidelines give neither the means nor any form of effective standards to deal with legitimate environmental concerns. Agreed there are reasons to consider that strict regulatory mechanism towards environmental concerns may sometimes indeed be counter-productive to both investor's viability in pursuing the project and host state's benefits derived therefrom. Also, the fact that revising all older BITs to make them 'green' would also be completely undesirable exercise; we need to understand that a case by case standard of visiting environmental concerns in every investment decision will definitely not be in furtherance with our objective towards 'green investments'.

---

48 NAFTA: Foreign Trade Information System, available at: http://www.sice.oas.org/trade/nafta/chap-111.asp (last visited on November 1, 2020).
Article 1114(2) Environmental Measures – "The Parties recognise that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that another Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement".

One way of finding a way forward is to use Article 31 of Vienna Convention of the Law of Treaties enlisting general rule of interpretation as an instrument, particularly including within 'good faith' in International Investments Agreements (IIAs). Moving a direction forward in synergising, there must be an attempt to incorporate investment agreements that include environmental concerns in their operative part. The expropriation clause is notoriously used in major investment disputes to initiate proceedings and the tribunals' decisions in numerous cases in this regard has clearly shown that investment arbitration is directed towards protecting the interests of investors, irrespective of the kind of investment made and the reason attached to the specific expropriation. In the recent BITs undertaken, environment has become a part of important exception to treaty clauses[49], sometimes even surfacing as important sub-components of the treaty in an attempt to synergise investment to environmental aspects[50]. With a lack of precedents standards in investment arbitration and a more case by case basis approach, the BIT components should be such that domestic laws find a place while negotiating an investment agreement, giving more level playing field for host states, thus addressing policy challenges. These exceptions may as well protect the host state from claims such as the standards of treatment under Fair and Equitable Treatment clauses by providing a regulatory space for the host state such that the standards of comparison fall in line with the expected framework for addressing public policy concerns in relation to a specific investment without creating a rift of implementation by using a similar framework in another BIT to form a ground for claim. The issues of sovereignty of the host state while also addressing trans-boundary harm to environmental concerns should be an important incorporation of any further BIT as this will directly address the domestic laws in compliance to which further IIAs will be initiated. The issues of transparency must also be addressed concerning the fact that any investment project

---

49 (Chazournes, Laurence 2017, 381).

50 As has been in case of FITs wherein foreign investment has been incorporated in green energy projects to create a possible synergy like in case of *Windstream Energy LLC v. Canada.*

development should comply with specific environmental standards in relation to the investment and an Environmental Impact Assessment (EIA) Report submission prior to the initiation of investment projects will ensure this compliance.

At this juncture, it is important to also look back at the way arbitration tribunals have been handling environmental concerns of host states when it comes to claims raised by the investors against such public policy initiations. As noted above, 'expropriation' clauses are generally used as a means to bring in these claims with regard to assets which were forcefully 'nationalised' creating a need for 'adequate compensation'. The fault lies in the way ISDS has become a tool against the environmental regulations rather than acting as a shield for it. The conundrum however, is the fact that how do we balance the ISDS mechanism in such a way that the host state may be able to protect its legitimate environmental concerns and the investors also do not loose grounds for holding their investments in the pretext of false and subversive public policy claims. This is an important and difficult impasse and a generalised mechanism may not be the solution. However, what we realise at this juncture is that it is perhaps the time that International Arbitration Courts and Tribunals realise that investments need to comply with certain standards which would have no negative implications over environment, no longer considering the environmental issues as 'less weighty' that other considerations such as Free and Equitable Treatment and Most Favoured Nations. In other words, the researchers believe that expanding the ambit and weight of 'sovereign responsibility' will go a long way in protecting our investments.

Information dissemination is of absolute necessity while undertaking investments and a global standard of viable information dissemination in this regard will be of great value in exploring the realm of investment. How we achieve this necessary pre-condition to facilitate future green investments will to a great extent depend on the way we deal with the present opaque form 'information secrecy' when it comes to declaring the kind of investment agreements a nation has undertaken and any further implications it may uphold for the nation, in specific regard, the terms and policy considerations that go into an arbitration agreement. Even with a lot of deliberations in this regard, the secrecy of investment arbitrations have often been a matter of debate and a problem that doesn't seem to end even with the ICSID, 2006 procedural reforms, which could not create much of a difference in the global investment realm in regard to achieving greater transparency. What considerations go into making an amicable settlement are determining factors when we look back at the 'history of Environmental clauses in investment agreements' that we have discussed above. These considerations and secret settlements can have fundamental impact when it comes to important and determining investments vis-à-vis environmental concerns. The implications on public policy, are thus, immense in such a situation. Thus, the initial impasse is to reach a certain level of transparency in ISDS mechanisms with specific procedural considerations in the ISDS mechanism itself.

Conclusion

Lack of explicit provisions in the agreements has led to non-uniformity in international investment agreements. The tribunals often find it difficult to strike a balance between legitimate environment concerns and economic viability of investments thus creating a situation of obvious rift between the bipolar regimes of investments and environment concerns. The jurisprudence of counterclaims in investment arbitration is also in a grey area right now because of the conflicting positions taken by courts in different cases. The problem is there is always a case by case analysis of environment concerns in absence of any accepted standards in the form of regulatory operative clauses in IIAs. As we have learned that the endeavour to create multilateral investment agreement utilising the existing NAFTA principles and OECD guidelines has led to an impractical model culminating into a failure. The idea of systematic integration of investment and environment is, therefore, not a viable one as almost always environmental protection fails to be integrated substantially.

While it seems unlikely that a model multilateral investment framework could be manufactured as an instrument to synergise investment and environment concerns, there are certainly aspects wherein integration is possible like including exceptional clauses and incorporating environmental concerns in the operative sections of agreements. Both transparency and non-compromising standards could be some pillars that would prevent legitimate environment concerns to be addressed as 'mundane issues of fact and law' by tribunals.

Investment projects in the renewable energy realm have shown the possibility of creating viable green investments by incorporating FIT (Feed in Tariffs) in investment agreements, empowering investors to commercially exploit such investments; also giving the host states premises to exercise regulatory provisions addressing public policy concerns in this aspect. It has been observed that sometimes, even when a dispute under ISDS machinery rests in favour of the host state, the litigation costs are so immense that the benefits derived from winning the claim for regulatory purposes is far surpassed by the costs incurred. Thus, the set up balancing structure in conflict clauses can play an instrumental role in this aspect, edging out the gaps in investment-environment conflict. Possibly, this can also address the aspect of regulatory chill.

It is crucial to develop a baseline of international standards of environmental protection within the regulatory domain in consideration to the problems faced by developing countries since we have learned that they are more susceptible to regulatory chill, given the need to compromise with international standards. Unless a system of reference incorporating risk factors associated to most vulnerable domains in developing countries is not developed, the risk of environmental degradation with every new BIT based investment project will never be completely addressed as these are the standards which will ultimately measure the authenticity of any claim or counterclaim by the host states. Article 1131 of NAFTA in this aspect shows how interpretation made by tribunals with reference to dispute resolution may be restricted on such international standards which correspond to this baseline approach.

Sometimes the answer to legitimate expectation must not only come from the point of view of investors who engage in environmentally detrimental projects but also from the host states which have the right to expect foreign investment projects that work in synergy with public policy domain's sensitive realms viz., environment and sustainability.

References

1. OHCHR (2009). Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights. Office of the United Nations High Commissioner for Human Rights, Geneva, Switzerland, Available at: http://www.ohchr.org/ EN/ Issues/HRAndClimate Change/Pages/Study.aspx.

2. Okubo Y. and A. Michaelowa (2010), Effectiveness of subsidies for the Clean Development Mechanism: Past experiences with capacity building in Africa and LDCs. Climate and Development 2, 30-49. doi: 10.3763/cdev.2010.0032.

3. Ostrom E. (1990), Governing the Commons: The Evolution of Institutions for Collective Action, Cambridge University Press, Cambridge, UK, ISBN: 978-0521405997.

4. Penalver E. M. (1998), Acts of God or toxic torts—Applying tort principles to the problem of climate change, *Natural Resources Journal,* 38, 563-601.

5. Peters-Stanley M., K. Hamilton, T. Marcello, and M. Sjardin (2011), Back to the Future: State of the Voluntary Carbon Markets 2011. Ecosystem Marketplace Bloomberg New Energy Finance, New York and Washington, DC., 78 pp. Available at: http:/ /www.forest-trends.org/documents/ files /doc_2828.pdf.

PROSPECTIVE RESEARCH DESIGNING FOR UNDERSTANDING TRADITIONAL KNOWLEDGE: A PERSPECTIVE FOR JUSTIFICATION AND PROTECTION

Dr. Mayank Kapila*

1.1 The Premise

With the development of commerce, trans-border business and international exchange of cultural traditions in the twenty-first century, we are experiencing synergy among the existing IP regime along with the plant genetic wealth, traditional knowledge (TK) and traditional cultural expressions (TCEs).

The most-developed economies of the world have primarily considered the physical resources, raw materials and other like assets available in the third-world countries as worthy resource for appropriation and had ignored the value of information/knowledge from such claims. Nonetheless, in the past few decades, these countries have understood the significance of TK as valuable assets which can be exploited for the purpose of IP and innovation. The big multi-national corporations (MNCs), in the wake of conducting investigative study of resources and explorations have been successful in acquiring the genetic-wealth and associated knowledge belonging to the local/traditional communities of the developing or third-world nations by deceiving them or even by exercising force. Such practices led to biopiracy or theft of TK and genetic-wealth. Presently, developed world continues to misappropriate TK belonging to the local/traditional communities of the developing or third-world nations and at the same time, these MNCs have abstained to recognise or acknowledge these communities and consequently have avoided their liabilities of benefit-sharing.

---

* Assistant Professor, Central University, Bihar. Based on extracts from author's doctoral thesis under the supervision of Prof. M. Afzal Wani, University School of Law and Legal Studies, GGSIP University, Delhi-78.

1.2 Research Problem

The most-developed economies of the world have constantly emphasised on the strict implementation of the intellectual property regime upon the developing and other third-world nations. Further, these developing and third-world economies have been alleged for not taking adequate measures towards the protection of intellectual property. However, now these third-world nations have countered such allegations by accusing most-developed economies and big MNCs for the theft of genetic-wealth and TK belonging to their local/traditional communities. The relationship between intellectual property regime and TK has surfaced-out as the major concern at various discussions and deliberations taking place before the international fora viz., the CBD, TRIPs and WIPO. In view of the deliberations held at the meetings of the member States/Parties to the CBD and during the sessions of the-Inter-governmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore‖ as established by WIPO, the representatives of the developing/third-world nations have approved the resolutions of these forums which opine that traditional knowledge and TCEs deserve protection since the existing IP regime has somehow facilitated its misappropriation.[1]

TK and TCEs may be considered to be protected by either adopting a 'positive' approach or in a 'defensive' manner. The positive approach requires the conferring of specific rights over the local/traditional communities with respect to their TK either under the existing IP regime or through a sui-generis model. Alternatively, it is argued that certain reforms may be incorporated in the existing IP system with a view to enable the Authorities established under the IP laws to reject applications relating to intellectual property claims over the TK and folklore. This will enable to protect the legitimate

---

1 Mayank Kapila, Understanding Traditional Knowledge in Post-TRIPs Regime, I *CLC SLR*, 133-134 (2013).

interests of the local/traditional communities by defending their TK against unauthorised third-party claims.[2]

The common perception regarding traditional knowledge is that TK belongs to a particular traditional community. It has been developed by communities through its use over a period of time. Since these local/traditional communities consider it as knowledge owned collectively by the community at large, there is no intention to claim exclusive rights over it. It is believed that such knowledge has evolved through regular practice by the communities living in close contact with nature and has accordingly passed inter-generations.[3]

Relying upon the above supposition, few people misconceive that it is a knowledge which is freely accessible to all. It is a knowledge that is in public-domain and is thus, open for public at large. This approach creates a problem for the TK holders. It has led to determining the true nature of TK so as to ascertain that whether it is owned collectively by the holder communities or it is shared freely being in public-domain. Arguments are given from both sides. Some argue in favour of privatisation of such knowledge by conferring certain positive rights upon the holder communities and on the contrary there is another sect which argues in favour of considering TK to be shared with public at large being in public-domain.

The creative-commons/open-source thinkers have advocated the advantages of public-domain and have revealed the hazards of privatisation. They strongly argue to make available the genetic-wealth and associated knowledge open for public at large. It is contended that TK has been under-utilised, since it has been practiced within a closed community. Therefore, by now making it available in public-domain will result in its optimum utilisation. It is further

---

2 Graham Dutfield, Protecting Traditional Knowledge and Folklore–A Review of Progress in Diplomacy and Policy Formulation, 1 *UNCTAD-ICTSD* 1 (2003).

3 Mayank Kapila, Traditional Knowledge: A Movement From Commons Towards Privatisation, IJAR, 354-357 (2015).

argued that TK being a 'knowledge' resource' is non-exhaustive and accordingly, it is not subject to depletion in case of its excessive use.[4]

TK being a collective-knowledge has been deliberately ignored to be protected by the Agreement on TRIPs, which has ultimately lead to the misconception about TK referring to the information which can be shared freely being already in public-domain. It is pertinent to mention that the concept of 'public-domain' have often been misused by the developed nations and their big MNCs, not only to reject the legitimate claim of the holder communities for protection of their knowledge as an intellectual property but also to facilitate its appropriation for bioprospecting activities as 'global-commons'. It is argued that the notion of 'global-commons' and considering TK in public-domain or in a state of res-nullius[5] is fallacious. Since TK is governed by a wide range of customary, cultural, traditional and religious norms within the respective communities, it cannot be considered to be open for any third party use. On the pretext of public-domain, developed world continues to misappropriate TK belonging to the local/traditional communities of the developing or third-world nations and at the same time, these MNCs have abstained to recognise or acknowledge these communities and consequently have avoided their liabilities of benefit-sharing. Today, the developing countries are demanding recognition of their TK by granting them exclusive-rights over their genetic wealth and knowledge. If positive rights are conferred upon such holder communities, it will facilitate in preventing the instances of misappropriation of TK in more effective manner and at the same time will enable them to seek compensation for the loss suffered due to any unauthorised act of third parties.[6] Hence, it is strongly asserted that 'global-commons' as a concept is not applicable to TK; though

---

4 A. Chander and M. Sunder, The Romance of the Public Domain, 92 CALIF. L. REV. 1345 (2004).

5 A thing which has no owner. A thing which has been abandoned by its owner is as much res-nullius as if it had never belonged to anyone. The first possessor of such a thing becomes the owner, res-nullius fit primi occupantis, http://legal-dictionary.thefreedictionary. com/ Res+nullius.

6 Mayank Kapila, Traditional Knowledge: A Movement From Commons Towards Privatisation, 3, IJAR, 354-357 (2015).

TK can be considered to be in limited- commons.[7] Accordingly, this would signify that the rights relating to TK should be conferred in favour of the concerned local/traditional community being the holder of such knowledge. Therefore, as an implication of the above rights, the members of the community will continue to enjoy using the knowledge within their community as per customary norms, however, if any third party wants to use such knowledge, they will be required to pay some price for getting such access.[8]

The instances of biopiracy/misappropriation of TK have highlighted several concerns that are required to be taken into consideration. In view of the above, the proposed study aims to examine the key concerns pertaining to TK in light of national and international legal developments, focusing particularly on India.

1.3 Research Hypothesis

- The unique challenges posed by traditional knowledge are not adequately addressed by the existing intellectual property regime.
- There are certain inherent characteristics of TK which makes it incompatible and prevents it to be protected with the existing IPR regime.
- A sui-generis system, specially designed for the purpose, can be a possible solution to address all the issues in appropriate way.

1.4 Research Questions

The present study will be guided by the following issues:

---

7 See A. Chander and M. Sunder, The Romance of the Public Domain, 92, CALIF. L. REV., 1358 (2004).

8 Carol M. Rose, The Several Futures of Property: Of Cyberspace and Folk Tales, Emission Trades and Ecosystems, 83, MINN. L. REV., 129 (1998) (proposing recognition and development of limited commons property regimes).

- What are the problems in defining traditional knowledge?
- Why protect traditional knowledge and genetic resources?
- What does protection mean?
- Who are the holders of TK?
- Whether traditional knowledge is community knowledge or knowledge in public domain?
- Whether traditional knowledge deserves protection under TRIPs as other IPRs?
- Does CBD offer effective protection to TK?
- Whether TK should be protected by sui-generis model of protection?
- What are the national measures adopted by the bio-diverse rich countries to protect their TK?
- What is the view point of different international and national measures on ABS mechanism?
- What are the essential characteristics to be incorporated in the Indian model legislation for the protection of TK?

1.5 Research Scope

The term—traditional knowledge or TK–is often referred as an abbreviation for the whole field of traditional knowledge and traditional cultural expressions/folklore (TCEs). The present study will be limited to the TK related to the genetic-resources in India and will focus primarily upon the viability of the alternatives available for the protection of TK in India either within or in addition to the existing intellectual property regime including the Indian Biological Diversity Act, 2002. The researcher seeks to emphasise upon the need to confer certain positive rights upon the traditional knowledge holders in order to prevent its misappropriation or unauthorised use across the world thereby proposing a sui-generis system for its protection.

1.6 Research Objectives

The study sets itself to achieve the following objectives in the above mentioned background:

1. To understand the concept and nature of traditional knowledge so as to study the key issues pertaining to it in the light of international legal developments.

2. To study the relationship between TK and formal IP regime and the challenges posed by existing IP regime for protection of TK. Further, to analyse the issues relating to misappropriation of TK and the problem of biopiracy.

3. To study ABS mechanisms and also assess the potential problems and difficulties relating to the implementation of the ABS arrangement in various bioprospecting agreements and case studies.

4. To study the international regime including the Convention on Biodiversity, TRIPs, Intergovernmental Committee reports of WIPO as initiatives towards the protection of TK at international level along with the national initiatives undertaken by bio-diverse rich countries like Africa, Brazil, Peru, Panama and Costa-Rica in the form of sui-generis models specially designed for the purpose of protection of their genetic wealth and traditional knowledge.

5. To critically analyse the adequacy or inadequacy of the measures adopted by India for protection of TK including Indian Biological Diversity Act, 2002 and to recommend a sui-generis model specially designed for protection of TK in India.

1.7 Literature Review

The researcher seeks to highlight some of the key concerns, challenges and issues identified by relevant academic authors, policy-makers and practitioners related to the issue of protecting TK.

In the year 1992, the Rio-Declaration on Environment and Development established Convention on Biological Diversity (CBD) with a view to advance the protection and preservation of biodiversity by ensuring its use in sustainable way and thereby mandating benefit-sharing in just, fair and equitable manner. TK associated to the genetic resources is recognised by CBD and the same is considered to be an essential component of this instrument. It recognises the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components.[9] Article 8, clause (j)[10] also mandates that member States shall endeavour to respect and protect TK and other practices of the local/indigenous communities that have been instrumental in conserving biodiversity, through its national laws, thereby offering flexibility to adopt sui-generis models for protection within their jurisdiction.

The WIPO also suggests that ―Traditional Knowledge is a horizontal, cross-cutting issue, the approach adopted by the different organisations takes a specific character, which is naturally a reflection of each organisation's particular mandate and objectives. Differences

---

9 The Convention on Biodiversity, 1992.

10 The Convention on Biodiversity, 1992, Article 8 (j)―Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices.

in perspective have helped enrich the debate and, more importantly, have stressed the need for collaborative and cooperative approaches – respecting each institution's respective mandate and areas of expertise – to finding operative and efficient ways of protecting TK, by using existing IP mechanisms, or by developing a new, sui generis one, or by adopting a combination of both.[11]

According to Carlos M. Correa, ―Intellectual Property Rights are considered as a potential tool for TK protection. Those who advocate the application of intellectual property regime to traditional knowledge find that there are many examples of TK that are or could be protected by the existing IP system, or by modifying certain aspects of the current forms of IPRs protection. Those who are reluctant or opposed to the idea of applying existing IPRs or creating a new form of IPRs to protect TK base their arguments on both practical reasons and principles, namely the essential incompatibility between the concepts of Western IPRs and the practices and cultures of local and indigenous communities. For some opponents, bringing communities and their resources into the fold of the market economy could overwhelm and ultimately destroy those societies. Others argue that, given the difficulties inherent in establishing IPRs protection for TK, national IPR legislations and international conventions should just ensure that such knowledge is not unduly appropriated and preserved outside the IPR system.[12]

Srividhya Ragavan opines that ―Sui-generis rights are alternate models created outside the prevailing intellectual property regime. Protection by such sui generis rights has been considered as an option to protect plant variety and traditional knowledge, though very little has evolved on account of the nature of the property sought to be protected. Article 27.3 of TRIPS allows countries to exclude plants and animals from patenting. This clause also provides

---

11 WIPO, Report on Fact-finding Mission on IP and TK–Framing Intellectual Property Needs & Expectations of TK Holders, 1998-1999 (April, 2001).

12 Carlos M. Correa, Traditional Knowledge and Intellectual Property- Issues and Options Surrounding the Protection of Traditional Knowledge–A Discussion Paper, Quaker UN Office (Geneva), 1999.

protection by sui-generis systems. The issue, however, is that the contours of sui-generis rights are unclear and the mechanism for enforcement uncertain.[13]

The WIPO-IGC as established in the year 2001, conducted study regarding the various concerns relating to TK thereby providing it a global perspective. The discussions and deliberations taking place at IGC have facilitated the Committee to consider the issue of protection of TK either by adopting a 'positive' approach through which certain specific rights/entitlements are recognised and conferred upon the knowledge-holders; or by defending the TK against unauthorised third-party IP claims.[14]

With a view to protect traditional knowledge throughout the world, the Committee has outlined certain policy-objectives along with core-principles. Accordingly, it has also paved way for the framing of draft legal instruments so as to protect TK against any unauthorised third-party use and also for the protection of traditional cultural expressions/folklore (TCEs). Committee further deliberated upon the fundamental provisions to be incorporated in the proposed sui-generis model specially designed for protecting TK. Considering various facets of sui-generis IP systems and sui-generis models for TK and genetic wealth, the Committee opined that –in order to identify the elements of a possible sui-generis system, several essential issues need to be considered to which any effective legal system for the protection of property rights must be able to respond satisfactorily including the policy objective of the protection; subject matter; eligibility criteria; ownership; rights; mode of acquisition of rights; administration and enforcement of rights; term for protection

---

13 Srividhya Ragavan, Protection of Traditional Knowledge, 2.2, MINN. IP L. REV. (2001).

14 The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) established by WIPO General Assembly in October 2000. See also Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions, WIPO Publication, 2015.

etc.[15] In furtherance of the deliberations at various sessions, the Committee at its Fortieth Session, held in June, 2019 has developed draft instrument titled as "The Protection of Traditional Knowledge: Draft Articles Facilitators' Rev."[16]

Stephen A. Hansen and Justin Van Feet have further suggested that ―a sui-generis system might consist of some standard forms of IP protection combined with other forms of protections. It is a system that can create legal rights associated with traditional knowledge and promote its access and benefit sharing.[17]

Tatiana Lopez Romero in his paper has argued that ―the intrinsic characteristics of TK, make it hard to fit in the conventional intellectual property law subject matters. What is more, its complexity goes beyond this aspect; the need of satisfying its holders' expectations is the ultimate challenge. TK has a holistic nature that existing IP law is unable to recognise and defend.[18]

Julia Honds in her scholarly research paper has further argued that ―the already existing intellectual property rights are not suitable for the protection of traditional knowledge. Compared with this, the implementation of safeguards within patent application proceedings seems to be more appropriate and effective. However, this approach turns out to be not comprehensive enough. Therefore, it is recommended that the protection of traditional knowledge by an intellectual property right sui-generis, specially designed for that purpose. This solution is favourable because it is the most complete

---

15 WIPO, Elements of a Sui-Generis System For The Protection of Traditional Knowledge, Report of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, Third Session, WIPO/GRTKF/IC/3/8 (2002).

16 Refer https://www.wipo.int/edocs/mdocs/tk/en/wipo _grtkf _ic_40/ facilitators_ text_on_tk.pdf (Visited on April 18, 2020).

17 Stephen A. Hansen and Justin Van Fleet, Handbook on Issues and Options for Traditional Knowledge Holders in Protecting their IP and Maintaining their Biological Diversity, (AAAS, Washington D.C. 2003).

18 Tatiana Lopez Romero, Sui-Generis Systems for the Protection of Traditional Knowledge, INTL. L. COL., 301-339 (2005).

one, is able to address all issues in an appropriate way, and can strike a balance between the involved conflicting interests.[19]

Ikechi Mcbeoji in his work 'Global Biopiracy' has indict patents on indigenous knowledge on the uses of plants and plant genetic patents as mechanisms for the appropriation of Third World resources and has demonstrated that contemporary patent systems of powerful States have been significantly manipulated and retrofitted to suit the interests of seed merchants and pharmaceutical companies. These factors operate within a social culture of prejudice and disrespect for non-Western forms of epistemology. Consequently, indigenous people and local communities have been exploited and impoverished both economically and culturally.[20]

Graham Dutfield opines that ―A popular view is that TK should be protected because pharmaceutical corporations and bio-prospectors are misappropriating it and making huge profits. It follows that if corporate-biopiracy was not taking place on a sufficient scale to require a legal response, there would be no reason to protect traditional knowledge at all. But if it turns out that corporate copying of TK is less common than commonly believed, should we simply abandon efforts to give legal expression to the demands and concerns of TK holders and their communities relating to extra-community use of their knowledge.[21]

Further argues that ―whether or not, in the words of Justice Peterson in a famous British copyright infringement case in 1916, what is worth copying is prima facie worth protecting,[22] there are various other reasons to protect TK than that corporations find it worthwhile to copy it and yet rarely have to compensate the knowledge holders. Those countries which seek legal solutions to the

19 Julia Honds, The Protection of Indigenous Traditional Knowledge by Intellectual Property Law, (GRIN Veriag, Germany, 2006).

20 Ikechi Mgbeoji, Global Biopiracy: Patents, Plants, and Indigenous Knowledge, 179 (Cornell University Press, New York, 2006).

21 Graham Dutfield, Protecting Traditional Knowledge, ICTSD, 15 (2006).

22 *University of London Press Limited v. University Tutorial Press Limited*, (1916) 2 Ch 601.

lack of TK protection should ideally seek a consensus on what the objective or objectives should be. The same applies to national legal protection. Without clear objectives, laws and policies to protect TK are unlikely to be effective. The following are various plausible reasons to protect TK viz., to improve the lives of TK holders and communities; to benefit national economies and to prevent bio-piracy.[23]

He further argues that –it appears that the Conference of the Parties is not looking to create new legal norms for the international-level legal protection of TK despite its encouragement of local, national and regional approaches. It remains to be seen what form the International Regime will take and how it will deal with TK.[24]

Further opines that —the WTO is not an appropriate venue for establishing new norms on positive traditional knowledge protection that would require the insertion of additional text to the TRIPS Agreement and the possible deletion of existing text. A modest amendment aimed at improving access to medicines involved a considerable amount of effort and it is hard to imagine the achievement of the more substantial revisions that positive TK protection would entail. However, this is not to suggest that disclosure of origin need not be discussed at the WTO. Indeed, the TRIPS Council has a clear mandate to do so and, compared to positive TK protection, the measures required are comparatively uncomplicated.[25]

The U.N. Declaration on the Rights of Indigenous Peoples, 2007 recognises that —indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity (Article 2). Article 31 provides that indigenous peoples have the right to maintain, control, protect and develop their Intellectual Property

---

23 Graham Dutfield, Protecting Traditional Knowledge, ICTSD, 15-17 (2006).
24 *Ibid*., at 28.
25 *Ibid*., at 34.

over such cultural heritage, traditional knowledge and traditional cultural expressions.[26] The declaration is frequently referred by WIPO.

Evanson C. Kamau and Gerd Winter in their work have opined that ―the need to regulate access to genetic resources and ensure a fair and equitable sharing of any resulting benefits was at the core of the development of the Convention on Biodiversity (CBD). CBD established a series of principles and requirements around access and benefit sharing (ABS) in order to increase the transparency and equity in the international flow of genetic resources, yet few countries have been able to effectively implement them and ABS negotiations are often paralysed by differing interests.[27]

A. Damodaran in his article has opined that ―the biodiversity legislations deal with the concept of traditional knowledge in a limited sense and largely view traditional knowledge as an associated feature of genetic resources. In bioprospecting agreements where both genetic resources and associated knowledge are sought to be accessed the issue regarding valuation becomes complicated since there is a need to segregate the value of genetic resources from its associated knowledge. In this regard, it has been observed that traditional knowledge is often likely to be devalued in comparison to the genetic resources being an associated feature. Further these legislations neither define the concept of traditional knowledge nor confer any specific rights on the knowledge holders. Therefore, it is argued that the biodiversity legislations fail to offer adequate protection to the traditional knowledge thereby emphasising upon formulation of sui-generis legislation or guidelines for protection of traditional knowledge at the national and global levels.[28]

---

26 The U.N. Declaration on the Rights of Indigenous Peoples, 2007.

27 Evanson C. Kamau and Gerd Winter (eds.), Genetic Resources, Traditional Knowledge and the Law: Solutions for Access and Benefit Sharing, (Earthscan, London, 2009).

28 A. Damodaran, Traditional Knowledge, Intellectual Property Rights and Biodiversity Conservation: Critical Issues and Key Challenges, 13, JIPR, 512 (2008).

However, the Nagoya Protocol as a supplementary agreement to the CBD—provides a transparent legal framework for the effective implementation of one of the three objectives of the CBD: the fair and equitable sharing of benefits arising out of the utilisation of genetic resources. The objective of this Protocol is the fair and equitable sharing of benefits arising from the utilisation of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to the technologies, and by appropriate funding, thereby contributing to the conservation of biodiversity and the sustainable use of its components.[29]

The Protocol under Article 7 mandates that ―each party State shall take appropriate measures, in accordance with domestic laws, with the aim of ensuring that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with the prior and informed consent or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established.[30]

Daniel F. Robinson in his work has reviewed the aims and intent of various biodiscovery projects and has studied their relevance under ABS mechanism in light of the relevant existing laws, the procedures followed for the access and different aspects of the PIC of local people and mutually agreed terms. He further analysed the benefit sharing agreement and how it aligns with the Annexe of the Nagoya Protocol and has reviewed its impact or potential impacts of monetary/non-monetary benefits for local conservation, research and local/traditional communities. It has been argued that ―indigenous people have right to basic things like land or resources or political representation. It is hard to imagine that communities can protect their knowledge and genetic resources that they use, if they do not have adequate recognition of their rights to land or sea areas. Indeed, States will find it hard to protect genetic resources supposedly under

[29] Article 1, Nagoya Protocol, 2010.
[30] Article 7, Nagoya Protocol, 2010.

sovereign control if they have not made efforts to involve indigenous and local communities in the design of their protections, including through the formal recognition of customary protocols and laws. According to him, the implementation of Nagoya Protocol has the potential to be one step in a larger empowering process of the indigenous population.[31]

Ms. Deepa Vardarajan opines that—deep differences between the purposes of traditional knowledge protection and the existing IP framework also raise concerns about the suitability of IP rights for traditional knowledge. Can such a regime be workable and enforceable at the international level and still respond to the concerns of traditional knowledge holders? To date, much of the scholarly literature suggests that traditional knowledge protection is largely incompatible with existing intellectual property doctrines and underlying justifications.[32]

In her article, it is argued that—the doctrinal and normative divide between traditional knowledge protection and intellectual property law has been overemphasised, and that trade secret law can help narrow it. First, in terms of doctrinal fit, trade secret doctrine offers a viable model for protecting a sub-set of traditional knowledge that is not already publicly available. Second, in addition to its practical import, the underlying justifications of trade secret law offer a useful normative guide for theorising traditional knowledge protection and linking it to the broader purposes of intellectual property law.[33]

Nonetheless, it is opined that—at present World Intellectual Property Organisation (WIPO) is unable to satisfactorily protect traditional knowledge from patenting. It has also failed to recognise the rights of traditional knowledge holders adequately. So national

---

31 Daniel F. Robinson, Biodiversity, Access and Benefit Sharing Global Case Studies 205, (Earthscan from Routledge, London, 2017).

32 Deepa Varadarajan, "A Trade Secret Approach to Protecting Traditional Knowledge", 36, YALE J. OF INTL. L., 371 (2011).

33 Deepa Varadarajan, "A Trade Secret Approach to Protecting Traditional Knowledge", 36, YALE J. OF INTL. L., 371 (2011).

level mechanisms and legal provisions are needed to prevent bio-piracy. Further, there is a need for development of an international mechanism for protecting traditional knowledge.[34]

The inadequacy of the legal system that address traditional knowledge has also been highlighted by Dr. Vishwas Kumar Chouhan and, therefore, it recommends ―only a sui-generis system of protection of traditional knowledge, which provides proprietary rights can ensure that market forces will operate to generate fairness and equity.[35]

Pamela Ananda emphasises that ―there is an urgent need for a legally binding international instrument in view of the fact that non-binding instruments, such as the UN Declaration on the Rights of Indigenous Peoples is too weak to provide adequate protection to TK. Regional and national initiatives for the development of a sui-generis system are already at an advanced stage but the main concern is that these initiatives have been constructed on the basis of the special needs of individual countries, depending upon their cultural and political conditions…[whereas] any international regime on the protection of TK has to take into account this diversity, prompted by individual countries needs and perceptions towards TK, and also address the more formidable aspects of its enforceability and monitoring.[36]

The UNEP report[37] suggests that ―one approach to protecting traditional knowledge involves the use or adaptation of the existing system of intellectual property rights (IPRs). The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS

---

34 Dr. Balavanth S. Kalaskar, Traditional Knowledge and Sui-Generis Law‖, 3, INTL. J. OF SC. & ENGG. RES., 1-8 (2012).

35 Dr. Vishwas Kumar Chouhan, Protection of Traditional Knowledge in India by Patent: Legal Aspect, 3, J. OF HUM. & SOC. SC., 35-42 (2012).

36 Pamela Ananda, Striking a balance between intellectual property protection of traditional knowledge, cultural preservation and access, 17, JIPR, 547 (2012).

37 UNEP, Study on How Tasks 7, 10 and 12 of the Revised Programme of Work on Article 8(j) and Related Provisions Could Best Contribute to Work under the Convention and the Nagoya Protocol, UNEP Meeting Document (UNEP/CBD/WG8J/8/INF/5), available at: https://www.cbd.int/kb/record/meetingDocument/95124?Subject=TKIP (Last Modified September 13, 2013.

Agreement) covers several areas of IPRs that could be relevant to this issue, including the protection of inventions through patents, copyright, and trademarks. Some States have reformed copyright acts (Australia) and patents (New Zealand) in efforts to extend protection to traditional knowledge and to avoid extending copyright or patent protections which may be offensive for indigenous and local communities, with some success.[38]

It is often argued that ―traditional knowledge is difficult to fit into the existing system of IPRs because it does not lend itself to the requirements of copyrights, patents, trademarks and designs of the intellectual property (IP) system.[39]

P. Lakshmanan and S. Lakshmanan have pointed out that―the WIPO negotiations to develop draft articles have chosen sui-generis model of protection for TK. The WIPO Draft Articles on TK; and the Consolidated document relating to Intellectual Property and Genetic Resources, as they stand now, prescribe disclosure mechanisms to prevent misappropriation of TK. Disclosure alone will not bring out justice to TK holders, even though disclosure requirement itself is not acceptable for many countries. Recognition of TK as a class of intellectual property on its own merit would be the long term solution for indigenous peoples and local communities. It might take time, but efforts have to be put in this direction to device new approaches to accord intellectual property protection to TK.[40]

Lisa P. Lukose has also suggested that ―the traditional knowledge rich countries can choose a suitable regime in order to confer protection to biogenetic resources and TK. Such a proposed legislation should recognise the rights of local/traditional

---

38 *Ibid.*

39 Oguamanam, Chidi, The Collection of Traditional Knowledge: Toward a Cross-Cultural Dialogue on Intellectual Property Rights, 15, AUS. IP J., 35 (2004).

40 Pushpa Kumar Lakshmanan, Shanmugamurthy Lakshmanan, Protecting Traditional Knowledge: Can Intellectual Property Rights Help, 1, ANCIENT SC. (2014).

communities, considering the intrinsic worth of TK along with the significant contribution made towards conservation. The proposed model should seek to transform the policy-objectives especially those incorporated in the Nagoya Protocol into such an instrument/ document which is obligatory on the parties being legally enforceable. It must establish a regime which recognises and protects the right/interests of each member of the concerned traditional/ indigenous community with respect to their knowledge thereby ensuring that all the benefits arising thereof be shared in fair, just and equitable manner.[41]

Understanding Traditional Knowledge

2.1 Primer

Traditional knowledge refers to the information which has developed over a period of time and continues to develop by the people within a given community, on the basis of their experiences and adaptations to the local culture and environment. TK is considered to be significant for sustaining the community by protecting its cultural ethos, customs and maintenance of genetic resources that are essential for the constant survival of community at large. It is that body of knowledge, which is inter-generational and has been built by the communities existing in close contact with nature and accordingly may include any system of classification, practical observations relating to the environment along with any exclusive self-management system governing the use of resources.

The term traditional knowledge refers to ―knowledge, possessed by indigenous people, in one or more societies and in one or more forms, including, but not limited to art, dance and music, medicines and folk remedies, folk culture, biodiversity, knowledge and protection of plant varieties, handicrafts, designs, literature.[42] It is

---

41 Pradeep Kumar Gangwar, Traditional Knowledge and IPRs: Relevance for Sustainable Development, 29 (Media House, Delhi, 2011).

42 T. Ramakrishna, Biotechnology and Intellectual Property Rights, 71(Distance Education Board, National Law School of India University, Bangalore).

often referred to as information, innovation or any practice of traditional/indigenous/local communities across the globe.[43] It includes traditional agricultural knowledge, traditional medicine, traditional environment management practices such as soil and water management, landscape management etc., traditional cultural expressions, customary practices and religious beliefs. The local/indigenous communities, during their constant interaction, observation and experiments with the environment, develop, preserve and maintain certain knowledge, information and set of practices, which is considered to be TK.[44] It is time tested, dynamic in nature, and developed by trial and error method. Few varieties of TK are often articulated in the form of a story, legend, folklore, ritual, song, painting, potteries, poetries etc. Some examples of TK may include 'plao-noi', which is used for curing ulcer mostly in Thailand; 'hoodia cactus', that is often used to starve-off hunger by the Bushmen of Africa; 'turmeric' being used by Indians for healing wounds and antiseptic; 'ayahuasca', which is used during sacred religious ceremonies by the local communities of the Amazon basin. It is pertinent to mention 'aflaj' and 'qanat', which are the traditional water management systems that are used for the purposes of sustainable irrigation in Oman, Yemen, and Iran respectively.[45]

Traditional knowledge thus reflects the interest of a community. Traditional/local community mostly depends upon TK for existence and survival. These groups of people build TK as 'collective-knowledge' and do not assert any individual right. Traditional knowledge is essentially a community property and has been developed with a view to benefit the whole community at large. It has developed in a particular community and owes its origin to that community.

---

43 Tejaswini Apte, A Simple Guide to Intellectual Property and Biodiversity and Traditional Knowledge 34 (Kalpavriksha Grain and IIED, Pune/Delhi, 2006).

44 P. Pushpangadan and K. Narayan Nair, Value Addition and Commercialisation of Biodiversity and Associated Traditional Knowledge in the context of the Intellectual Property Regime, 10, JIPR, 442 (2005).

45 WIPO, Intellectual Property and Traditional Knowledge, 5 (WIPO Publications, Geneva).

2.2 Nature of Traditional Knowledge

Humans have been engaged in generation, refining and passing on their knowledge across generations. TK has been considered to be one of the most-essential features and a symbol of cultural identity of a community. It also performs a significant part in day-to-day life of the majority population and also considered as vital for the purposes of food, medicine and means of survival in many countries. Specifically in developing nations majority depend on 'traditional-medicine' to meet-up their health requirements derived from traditional methods such as healing properties of plants.

TK mostly includes two kinds of knowledge – one referring to the knowledge/practices relating to medicinal uses of plants, and the other referring to the folklore/TCEs. It is applied in order to maintain these communities along with their cultural practices and also to conserve those resources, which are considered to be essential for their survival. These knowledge and cultural arrangements tend to offer handy solutions in the form of thoughts, guiding-principles, practice and procedure, which has the potential to provide a firm base for holistic development.

TK subsists in any knowledge, which has been passed over generations as legacy/cultural heritage of particular local/indigenous/ traditional communities. It is a diversified outlook for the purpose of effective management and conservation of environment and natural resources. TK is a vibrant concept since fresh knowledge keeps on adding to it. Hence, it is quintessential that TK Systems of developing/under-developed nations must not be eclipsed by the supremacy of cultures, which advance inequity and materialism. Typically, TK is knowledge/information/practice, which is traditional or conventional merely because its conception and exploitation is linked with the traditions/culture of the community/ group. The expression 'traditional' essentially, in all cases, does not imply that particular knowledge or practice being ancient and static. It means that such knowledge is build-up by the community as a result of their extensive understanding and familiarity relating to their locality, landscape or eco-system.[46] It represents the cultural ethics of the communities or its members and accordingly held as collective-knowledge and cannot be restricted only any one particular area of art and technology.[47]

Since TK includes various types of cultural-expressions or TCEs, its application to religious, cultural, customary practices, sacred arts and beliefs is undisputed. According to WIPO, "Intertwined within practical solutions, traditional knowledge often transmits the history, beliefs, aesthetics, ethics, and traditions of a particular people. For example, plants used for medicinal purposes also often have symbolic value for the community. Many sculptures, paintings, and crafts are created according to strict rituals and traditions because of their profound symbolic and/or religious meaning.[48]

It is relevant to understand that TK does not mean that it is local, restricted or informal as it might rule out certain formalised systems of TK, which are well-documented in the form of ancient-texts and are an important component of culture such as ayurveda, siddha, unani etc. Such a narrow approach would also be wrong. Thus, TK is to be considered in a broader sense so as to ascertain its true nature.

2.2.1 Aspects of Traditional Knowledge[49]

TK systems involve an integrated domain of knowledge, information and practices pertaining to diverse facets of human life.

---

[46] Sreenivasulu N.S., Intellectual Property Law Dynamic Interfaces, 71 (Universal Law Publishing, an imprint of Lexis Nexis, Gurgaon, 2017).

[47] Daniel J. Gervais, Spiritual but Not Intellectual? The Protection of Sacred Intangible Traditional Knowledge, 11, CARDO. JL.OF INTL. & COMP. L. (2003).

[48] WIPO, Report on Fact-Finding Missions on Intellectual Property and Traditional Knowledge - Intellectual Property Needs and Expectations of Traditional Knowledge Holders, 1998-1999 (April, 2001), 212, available at: http:// www.wipo.int/globalissues/tk/report/final/pdf/part1.pdf. (Visited on April 12, 2016)

[49] S. Ram Reddy, M. Surekha, et. al., Biodiversity, Traditional Knowledge, Intellectual Property Rights, 176 (Scientific Publishers, Delhi, 2016).

- Classification- It refers to the categoriszation of plants, animals, soil, water i.e., the local environment of any particular area.

- Agriculture- Agricultural and irrigation techniques, crop-systems, preparation of land, selection of crops, preparations relating to sowing and seedling, plant-protection and pest control, harvesting of crops, storage of seeds etc.

- Human-Health- Traditional usage of fruits, plants and animals as food and nutrients, disease classification system, identification of medicinal plants, preparation and storage of medicine.

- Animal Husbandry- Animal-breeding, traditional fodder and forage species and their precise uses, grazing systems, tracking of animals, ethnic veterinary medicine.

- Forestry and Agro- forestry- The conservation and management of the forests lands, trees and timbers, the knowledge/ information or practices relating to the various uses of plant and animal resources, forest products, inter-relationships among the trees/crops and soil.

- Ethnobotany- Plants as a vital resource of food, building-materials, household-tools, musical instruments, fuel, plants relevant to rites and rituals.

- Food related techniques- Traditional methods of preparation of food, preservation and conservation including processing and fermentation of food, traditional food culture.

- Hunting skills- Traditional fishing methods, animal behavior as against seasons and weather, nets, traps, baits: protection against wild and poisonous animals, insects.

- Soil-conservation- The practices relating to the conservation of soil including the use of plant-species and other practices to enhance fertility of soil.

- Water-conservation- Traditional practices and techniques used for the conservation and effective management of water for the purposes of irrigation including the use of specific species for water conservation and the management of aquatic resources.

- Traditional Cultural Expressions- Folklore, cloth weaving, dyeing, handicrafts, housing techniques, cultural heritage etc.

2.3 Value of Traditional Knowledge

Today despite the industrial knowledge development, the value of TK has been realised and being appreciated. It has been recognised that TK is not only considered to be significant for the survival of the traditional/indigenous communities but is very much essential for the development of the modern industrial, technological and agricultural sectors as well. The importance of TK can be perceived by the following:

- A major portion of population in the developing/least developed economies (including the local/traditional communities) largely depends upon the biological resources and related TK for their livelihood.[50]

- It has been also noticed that the indigenous or local communities are often found close to the regions having rich biodiversity. This is also evident of a close inter-relation between nature, man and knowledge.

- TK has the potential to contribute significantly towards conservation of environment in a sustainable way. Many of these local communities have nurtured and exploited the biodiversity for a period of over thousands of years, in a

---

50 Morris Mudiwa, Global Commons: The Case of Indigenous Knowledge, Intellectual Property Rights and Biodiversity, Conference paper: The Commons in an Age of Globalisation, 9th Biennial Conference of the International Association for the Study of Common Property, Victoria Falls, Zimbabwe (June 2002).

sustainable manner. Several such methods have proved to improve and foster the growth of biological diversity at grassroot-levels, which has further helped in order to maintain healthy eco-systems. Such information, knowledge or practice can be instrumental for the international fora towards the formulation of various biodiversity policies.[51]

- Most commonly used products including the plant-based medicine, health products and other cosmetic items are based on some form of TK. Last two decades have experienced revival of significance of traditional-medicinal knowledge amongst the public. It has enhanced due to big corporations relying upon TK for developing new products. Most drugs that are marketed today are estimated to be developed from indigenous herbal-medicine.[52]

- TK of local/indigenous people and farmers is making a significant contribution in the improvement of novel crop-types and conserving biodiversity. These farmers have cultivated, enhanced and preserved various species of crops and their variety using their traditional knowledge.[53]

- Modern technologies, including biotechnology, make use of TK at one point or another, either remotely or in a direct manner while conducting research or at the stage of product development.[54]

---

51 https://www.cbd.int/traditional/intro.shtml (Visited on August18, 2017). See also S. Ram Reddy, M. Surekha, et. al., Biodiversity, Traditional Knowledge, Intellectual Property Rights, 177 (Scientific Publishers, Delhi, 2016).

52 S. Ram Reddy, M. Surekha, et. al., Biodiversity, Traditional Knowledge, Intellectual Property Rights, 177 (Scientific Publishers, Delhi, 2016).

53 The Role of Traditional Knowledge and Crop Varieties in Adaptation to Climate Change and Food Security in SW China, Bolivian Andes and coastal Kenya, Paper prepared for the UNU-IAS workshop on Indigenous Peoples, Marginalised Populations and Climate Change: Vulnerability, Adaptation and Traditional Knowledge, Mexico (July 2011).

54 S. Ram. Reddy, M. Surekha, et. al., Biodiversity, Traditional Knowledge, Intellectual Property Rights, 178 (Scientific Publishers, Delhi, 2016).

- TK proves to be significant towards stimulating research in the universities and corporations by providing a direction for researches leading to development of new and useful products.[55]

- Lastly, traditional knowledge is relevant on three levels- firstly, it is fundamental for the traditional communities being originators and holders of such knowledge. Secondly, it is essential for non-governmental organisations, State Governments and other private-sector bodies which do identify its relevance and value for attainment of their goals. Thirdly, TK is considered to be as component of international knowledge.[56]

2.4 Traditional Knowledge and Indigenous Knowledge

The concepts of―traditional knowledge (TK),―indigenous knowledge (IK), and ―indigenous peoples have gained significant attention during the deliberations relating to environmental protection, sustainable-development and protection of IP though there is still ambiguity. There is no universal definition of these notions, though several attempts have been made to define them. People have defined them in their own way in accordance with their understanding and individual professional preferences. Several have also used TK and IK interchangeably, though there is not much difference between the two.

So far as IK is concerned, it is referred to as ―knowledge that is held and used by people who identify themselves as indigenous of a place based on a combination of cultural distinctiveness and prior territorial occupancy relative to a more recently-arrived population with its own distinct and subsequently dominant culture.[57]

---

55 *Ibid.*

56 S. Ram Reddy, M. Surekha, et.al., Biodiversity, Traditional Knowledge, Intellectual Property Rights, 178 (Scientific Publishers, Delhi, 2016).

57 UNEP/CBD/COP/3/Inf. 33, Annex 2.

Whereas TK is held by —members of a distinct culture and/or sometimes acquired by means of inquiry peculiar to that culture, and concerning the culture itself or the local environment in which it exists.[58]

IK being local information/knowledge is considered to be distinctive to the aboriginals and their respective cultures. Such knowledge is instrumental to the aboriginals or local communities while taking various decisions regarding agricultural, medicinal, educational, resource-management and may be such other routine activities. Thus, indigenous knowledge is part of TK, very peculiar to society, culture or place or location.[59]

IK fits neatly in the category of TK, however, TK need not be indigenous. IK being quite similar to TK as far as transmission, extent and diverse nature is concerned; therefore, it is considered to be a sub-set of TK.

2.5 Defining TK

The expression —traditional knowledge is a combination of two words –'tradition' and 'knowledge'. The expression —tradition as taken from latin term—traditional, which means —handing over or —passing on. Dictionary meaning of the word —tradition is communication from one generation to another by words or action, transmitted from age to age. Simply speaking, any knowledge, which is transmitted from ancestors to descendants is traditional knowledge. Thus, it follows that TK being dynamic keeps on changing overtime as per requirements of the society or any associated community. Hence, defining limits to the meaning of this expression is challenging.

---

58 *Ibid.*

59 Onyemaizu O. Christopher, —Indigenous Knowledge Storage and Access for Cultural Continuity: The Role of the Library in Nigeria, 3, IJIAR, 59-63 (2015).

Traditional does not indicate about such knowledge being old or non-technical. In fact, it is considered traditional as it is developed, practiced and preserved so that it reveals the ethnicity, traditions and culture of its holders and is—tradition based.[60] If one studies the literature on the subject, it becomes evident that this concept is understood, misinterpreted and used in an ambiguous manner. Though TK lacks universally accepted definition; but certain academicians have usually defined it as knowledge, which has been created by local/indigenous people based on their traditions. It refers to the knowledge/information which is created and constantly developed over a period of time by any local community or group through their experiences and adaptations made to the surrounding environment and culture. It is instrumental in conservation of environment and biological resources and thus considered to be essential for the survival of the community along with its cultural identity.[61]

Lack of precise definition has led to different understandings of TK by various people largely due to individual preferences.[62] This is not considered to be an impediment since it has kept the concept as

---

60 WIPO, Elements Of A Sui Generis System For The Protection Of Traditional Knowledge, WIPO Intergovernmental Committee On Intellectual Property And Genetic Resources, Traditional Knowledge And Folklore, 3rd Session., 2002, WIPO/GRTKF/IC/3/8.

61 *Ibid.*

62 In 2002, the International Council for Science (ICSU) defines traditional knowledge as —a cumulative body of knowledge, know-how, practices and representations maintained and developed by peoples with extended histories of interaction with the natural environment. These sophisticated sets of understandings, interpretations and meanings are part and parcel of a cultural complex that encompasses language, naming and classification systems, resource use practices, ritual, spirituality and worldview. According to Barsh, —[w]hat is 'traditional' about traditional knowledge is not its antiquity, but the way it is acquired and used. In other words, the social process of learning and sharing knowledge, which is unique to each indigenous culture, lies at the very heart of its 'traditionality'. Much of this knowledge is actually quite new, but it has a social meaning, and legal character, entirely unlike the knowledge indigenous peoples acquire from settlers and industrialised societies, Russel Barsh, Indigenous Knowledge, in D.A. Posey ed., Spiritual and Cultural Values of Biodiversity (1999).

open-ended and flexible, as any definition creates certain limits to the contents thereby restricting its scope.[63] However, precise definition is essential in order to ascertain the subject-matter thereby determining its ambit for protection.

Several schools of thought and approaches exist. Some define TK in its broadest sense to incorporate matters that may be deemed to fall within the ambit of TCE or EOF. The second school defines TK in a narrow sense to exclude some items that might be considered important by traditional community. Third approach, it refuses to define TK but, instead, provides factors that could be significant to recognise TK or to contain elements that could compose TK.[64]

Johnson[65] defined TK as ―a body of knowledge built by a group of people living in close contact with nature. It includes a system of classification, a set of empirical observations about the local environment and a system of self-management that governs resource use. The essentials of TK include:

- development of knowledge through a period of generations being passed inter-generations;
- continuous enhancement to the knowledge base as each generation keeps on adding something new;

---

63 According to Leistner, ―[c]onsequently, definitions based on modern conventional law with its distinction of protected intellectual property, and, cultural property, which generally falls into the domain public may thus be perilous to the very root concepts of the development of traditional knowledge, Matthias Leistner, "Traditional Knowledge", in Silke von Lewinski ed. Indigenous Heritage and Intellectual Property: Genetic Resources, Traditional Knowledge and Folklore (2nd Ed., Kluwer Law International, Netherlands, 2004).

64 Dr. Tshimanga Kongolo, Unsettled International Intellectual Property Issues, 33, (Kluwer Law International, Netherlands, 2008).

65 M.L. Quinn., Protection for Indigenous Knowledge: An International Law Analysis, 14, TLR, 287-313 (2001) as cited in Walter H. Lewis, et. al., Ethics and Practice in Ethnobiology: Analysis of the International Cooperative Biodiversity Group Project in Peru.

- creation, preservation and enhancement of knowledge is a combined endeavour of the communities over generations.[66]

Traditional knowledge is —a cumulative body of knowledge and beliefs handed down through generations by cultural transmission about the relationship of living being including humans with one another and their environment. It is unique to a given culture or society.[67]

Few International and National instruments have also attempted to define TK. The Convention on Biological Diversity, 1992 defines TK as "the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyle as well as indigenous and local technologies around the world. Developed from experience gained over the centuries and adapted to the local culture and environment, traditional knowledge is transmitted orally from generation to generation. It tends to be collectively owned and takes the form of stories, songs, folklore, proverbs, cultural values, beliefs, rituals, community laws, local language, and agricultural practices, including the development of the plant species and animal breeds. Traditional knowledge is mainly of a practical nature, particularly in such fields as agriculture, fisheries, health, horticulture, and forestry.[68]

CBD's definition emphasises on the traditional knowledge being a collective knowledge, passed on from generations implies towards the information/knowledge, innovation and practice of any local/indigenous community, which might be a story, song, cultural-expression, proverb, cultural-value, belief, ritual, customary rule, language or agricultural practice etc. This definition is also criticised on the point that it only restricts itself to indigenous community and ignores the individual member like a farmer who may also be the

---

66 *Ibid*.

67 Madhav Gadgil, Indian Ecologist, see S. Ram Reddy, M. Surekha, et. al., Biodiversity, Traditional Knowledge, Intellectual Property Rights, 175, (Scientific Publishers, Delhi, 2016).

68 See Article 8(j) of CBD.

holder of certain traditional knowledge, which he holds in his individual capacity within the community.

Further, it had been observed by the Director General of United Nations Educational, Scientific and Cultural Organisation (UNESCO) (Federico Mayor, 1994) that—the indigenous people of the world possess an immense knowledge of their environments, based on centuries of living close to nature. Living in and from the richness and variety of complex ecosystems, they have an understanding of the properties of plants and animals, the functioning of ecosystems and the techniques for using and managing them that is particular and often detailed. In rural communities in developing countries, locally occurring species are relied on for many – sometimes all foods, medicines, fuel, building materials and other products. Equally, people's knowledge and perceptions of the environment, and their relationships with it, are often important elements of cultural identity.[69]

This also points towards the close relationship between the traditional knowledge and environment. It also refers TK as the knowledge acquired by the indigenous communities over a period of time in their close contact of nature. It also includes the specific techniques and a system of management governing the use of bio-genetic resources.

So it can be aptly defined as "a body of the knowledge built by a group of people through generations living in close contact with nature. It includes system of classification, set of empirical observations about the local environment, and a system of self-management, that governs the resource use".

WIPO has used the term 'traditional knowledge' to refer the "tradition-based literary, artistic or scientific works; performances;

---

69 Alaska Native Sc. Comm. (1994), What is TK? http:// www.nativescience. org / html/traditional_knowledge.html; see also http://nafaforestry.org (Visited on August 15, 2017.

inventions; scientific discoveries; designs; marks, names and symbols; undisclosed information; and all other tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields. The notion 'tradition based' refers to knowledge systems, creations, innovations and cultural expressions, which have generally been transmitted from generation to generation and that are generally regarded as pertaining to a particular people or its territory, that have generally been developed in a non-systematic way and that are constantly evolving in response to a changing environment".[70]

In 2006, WIPO Intergovernmental Committee on Intellectual Property and Genetic-Resources, TK and Folklore[71] defined TK as referring to "the content or substance of knowledge resulting from intellectual activity in a traditional context, and includes the know-how, skills, innovations, practices and learning that form part of traditional knowledge systems, and knowledge embodying traditional lifestyles of indigenous and local communities, or contained in codified knowledge systems passed between generations. It is not limited to any specific technical field, and may include agricultural, environmental and medicinal knowledge, and knowledge associated with genetic resources".[72]

The above definition suggests that traditional knowledge includes the —know-how, skills, innovations, practices and learning. It also includes any information/knowledge, which embodies customary lifestyles of the indigenous communities, whether codified or not, which has been passed from one generation to another in that particular community. The definition further provides that it is not limited to any particular field and its scope ranges from agricultural, environmental, medicinal and knowledge about bio-genetic resources.

---

70 WIPO/GRTKF/IC/3/9.

71 Article 3 (2) of the Annex to document WIPO/GRTKF/IC/10/5.

72 WIPO, Elements Of A Sui Generis System For The Protection Of Traditional Knowledge, World Intellectual Property Organisation, Intergovernmental Committee On Intellectual Property And Genetic Resources, Traditional Knowledge And Folklore, 3rd Sess., 2002, WIPO/GRTKF/IC/3/8.

A large number of Member States of WIPO have supported the definition as prescribed by Art. 3(2) of the revised draft Objectives and Principles. The discussion on the definition under the IGC centered on the issue whether TK should be defined broadly or in a narrow sense. In this connection, the requirement of proper and concise definition of TK was also contemplated. Some countries feared that a narrow definition would be too restrictive and would become obsolete in the long run. A broad definition would well respond to the dynamic feature of TK. Some supporters of this approach maintained that the elaboration of the definition of TK is not necessary. In addition, definition ought to facilitate precision to the protectable subject-matter. In the discussion, it was also maintained that the distinction between a legal definition of TK and additional modes of safeguard like conservation and preservation must be clarified.[73]

Therefore, according to WIPO, while there is no official international definition, TK can be characterised in general as knowledge, which is:[74]

- generated, preserved and transmitted in a traditional context;

- distinctively associate with the traditional or indigenous culture or community, which preserves and transmits it between generations;

- linked to a local or indigenous community through a sense of custodianship, guardianship or cultural responsibility, such as a sense of obligation to preserve the knowledge or a sense that to permit misappropriation or demeaning usage would be harmful or offensive; this relationship may be expressed formally or informally by customary law or practices;

---

73 Dr. Tshimanga Kongolo, Unsettled International Intellectual Property Issues, 34 (Kluwer Law International, Netherlands, 2008).

74 WIPO/GRTKF/IC/7/9.

- 'knowledge' in the sense that it originates from intellectual activity in a wide range of social, cultural, environmental and technological contexts; and

- identified by the source community as being TK.[75]

As per the United Nations Environmental Program (UNEP), "indigenous knowledge (IK) can be broadly defined as the knowledge that an indigenous (local) community accumulates over generation of living in a particular environment". It covers various aspects of TK including techniques, skills, customary practices and beliefs thereby enabling its holders and practitioners to attain livelihood and stable environment.[76]

The Report of the Commission on Intellectual Property Rights[77] has stated that ―Human communities have always generated, refined and passed on knowledge from generation to generation. Such 'traditional knowledge' is often an important part of their cultural identities. Traditional knowledge has played, and still plays, a vital role in the daily lives of the vast majority of people. Traditional knowledge is essential to the food security and health of millions of people in the developing world. In addition, knowledge of the healing properties of plants has been the source of many modern medicines.

The International Indigenous Forum on Biodiversity (2003) has tried to articulate that "indigenous knowledge is the essence of the identities and world views of indigenous peoples. Traditional knowledge constitutes the collective heritage and patrimony of indigenous peoples. Therefore, it is priceless to us, and its value cannot be calculated for economic exploitation".[78] Here the use of

---

75 WIPO/GRTKF/IC/7/9.

76 S. Ram Reddy, M. Surekha, et. al., Biodiversity, Traditional Knowledge, Intellectual Property Rights, 174 (Scientific Publishers, Delhi, 2016).

77 http://www.iprcommission.org/papers/text/final_report/chapter4 htmfinal.htm (Visited on August 19, 2017).

78 http://nafaforestry.org/forest_home/documents/TKdefs-FH-19dec06.pdf (Visited on August 19, 2017).

the term heritage indicates towards the holistic and sacrosanct character of TK.

On the other hand, Centre for Traditional Knowledge has explained that "traditional knowledge involves the practices of the elders and is based upon customary law. The essence of traditional knowledge is found in the language of the people…" It further states that —traditional knowledge includes, among other elements: ceremonies, language, teachings, dance and drum, hunting, housing, planting, harvesting, arts and crafts, storytelling, technology, governance, sacred sites, and songs.[79]

The task to define TK is not easy, as it incorporates the diverse arena of agricultural, medicinal, environmental, cultural, social, ethical and religious components. The TK Draft Bill, 2009[80], India, laid down a detailed definition of TK[81], which states that "traditional knowledge refers to the collective knowledge of a traditional community or a family related to a particular subject or a skill passed down from generation to generation for at least three generations including but not limited to –

- cultural products and practices from traditional communities such as weaving patterns, pottery, painting, poetry, folklore, music, and the like;

- genetic material discovered, selected, cultivated, domesticated, developed or conserved by traditional communities, regardless of whether they were used or can be used in the development of new plant varieties or animal breeds or which can be harnessed for other potential uses;

---

79 *Ibid.*

80 See Sunita K. Sreedharan, Bridging the Time and Tide–Traditional Knowledge in 21st Century, 15, JIPR, 149 (2010).

81 Article 2.17, Traditional Knowledge (Protection and Regulation of Access) Bill of India, 2009.

- agricultural practices and devices developed from indigenous or traditional material, customs, and knowledge;

- medicinal products and processes developed from indigenous or traditional material, customs, and knowledge by traditional communities;

- all other products or processes not made by person which was discovered through a community process, or when the person making the innovation does not claim the knowledge as his own or when the person has discovered it to be used openly for common purposes;

- discoveries, innovations and technologies made by communities that are usually not recorded in written form, and are transmitted orally from generation to generation.

Article 7 of Brazil Law No. 2168 (2001) defines — "traditional knowledge associated to genetic heritage as information or individual or collective practices of an indigenous or local community having a real or potential value and associated with the genetic heritage". Thus, Brazil links TK with the genetic-heritage. The term—heritage implies that TK is not simply a form of property, and in the same way is linked with culture and religious beliefs of the local community. Such kind of knowledge/practice is passed on inter-generation as cultural-heritage. Idea of "heritage" suggests towards the holistic and revered character of TK under Brazilian legislation.

African Model, 2000 defines — "Community Knowledge or indigenous knowledge as the accumulated knowledge that is vital for conservation and sustainable use of biological resources and/or which is of socio-economic value, and which has been developed over the years in indigenous/local communities".[82]

---

[82] African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources, 2000, http: www.farmersrights.org/pdf/africa/AU/AU-model law00.pdf (Visited on March 12, 2017).

—Community rights have been defined as the rights held by local communities over their biological resources or parts or derivatives thereof, and over their practices, innovations, knowledge and technologies.[83]

In Peru a different terminology has been used for traditional knowledge. Peru Law No 27811 (2002) makes use of the term —collective knowledge instead of TK. Article 2 (b) states that — "collective knowledge means the accumulated, trans-generational knowledge evolved by indigenous peoples and communities concerning the properties, uses and characteristics of biological diversity".

It is also argued that TK is three-dimensional concept thereby requiring the acknowledgement and protection of all three aspects. —Traditional knowledge encompasses three dimensions: a cultural aspect (it reflects the culture and values of a community), a temporal aspect (it is passed on through the generations, and slowly adapts to respond to changing realities), and a spatial aspect (it relates to the territory or the relationship, which a community has with its lands and waters traditionally occupied or used.)[84]

Although it is a challenge to provide a concise definition of TK, however efforts must be made in order to develop a sound understanding about the policy objects, which will accordingly facilitate in developing the definition. Alternatively one may choose to just explain the basic attributes of TK, rather than defining it, thereby offering flexibility to the Member States to formulate their own definition in accordance with their domestic laws, policies and aspirations.

---

83 *Ibid.*

84 UNEP Report: Development of Elements of Sui Generis Systems for the Protection of Traditional Knowledge, Innovations and Practices to Identify Priority Elements (CBD SECRETARIAT, UNEP/CBD/WG8J/5/6).

2.6 Characteristics of Traditional Knowledge

Traditional knowledge is not so-called due to its —antiquity, in fact is a living-knowledge, which is created, maintained and transmitted inter-generation in any local/indigenous community or group, thereby comprising its culture and sacred character. However, it has the following characteristics:[85]

- TK is vibrant, cumulative in character and might consist of experimentations and integrations. It keeps on changing overtime.
- TK is considered to be held and owned by the community as a whole rather than being limited to any particular individual or group.
- TK is conveyed through definite culture and traditions in the community, generally oral transmissions from elders.
- TK is sacred and holistic. It can never be restricted or compartmentalised and is inseparable from its holders.
- Traditional knowledge has ancient roots; it is embedded in religious, spiritual, cultural, medicinal practices and languages of respective communities.
- TK symbolises the respect towards nature and inspires the social responsibilities.
- It is an authority system. It plays a vital role in taking decisions within a community regarding the agricultural activities, hunting, food and nutrition, management of resources, health, education and allied activities along with

---

85 T. Ramakrishna, Biotechnology and Intellectual Property Rights, 73 (Distance Education Board, National Law School of India University, Bangalore). See also S. Ram Reddy, M. Surekha, et. al., Biodiversity, Traditional Knowledge, Intellectual Property Rights, 175 (Scientific Publishers, Delhi, 2016).

various other decisions relating to the socio-economic and political organisation of the community.[86]

Thus, a definition that caters to the aforesaid characteristics may suffice in order to identify the subject-matter of TK.

2.7 Who Holds TK? - Identifying the Stakeholder

The issue —Who owns Traditional Knowledge? is highly significant towards understanding traditional knowledge. The issue concerning ownership of TK has been debated since the beginning. Some countries have stated that it is quite hard to determine who owns TK. As it is passed on inter-generations; it would be problematic to ascertain the right holder. From the same perspective, the collective or communal nature of TK does not enable it to be granted protection as it is difficult to identify the real owner who must be rewarded.[87]

Any person who has identified; held; developed; spread; practiced and maintained any specific knowledge may be considered to its holder. He can be any individual person or a group of people or the community at large. It is also asserted that not all TK is collective in nature. A particular individual or a family may own an individual piece of TK. It is also understood that in some cases, TK may be owned by any single member of any particular community.[88]

Generally, it is assumed that TK is held either by a group of people or the whole community collectively, since this body of knowledge is created and developed as a result of the accumulation of thoughts, ideas or opinions of the tribal/indigenous population over a period of time. Each member of the community as an individual also plays a vital role towards the development of TK and accordingly such TK

---

86 S. Ram Reddy, M. Surekha, et. al., Biodiversity, Traditional Knowledge, Intellectual Property Rights, 175 (Scientific Publishers, Delhi, 2016).

87 Mayank Kapila, Understanding Traditional Knowledge in Post TRIPs Regime, I, CLC SLR, 140-142 (2013).

88 Dr. Tshimanga Kongolo, Unsettled International Intellectual Property Issues, 39 (Kluwer Law International, Netherlands, 2008).

may be owned by any individual member, family or the whole community.[89] Where TK is created as a result of the joint-efforts of the community practice and the experiments based on trial-error method, in such instances the specific community as a whole be recognised as holder of such knowledge. Holders of TK being the creators possess sound understanding about the nuances of their knowledge.

TK is shared among the members of the particular community to which it belongs. Sometimes it may be observed that an individual member or a dominant group of the community exercises control over the knowledge. It is clarified that such people hold and control TK as a 'TRUSTEE' having a duty to share such knowledge with other members of the community or even third-parties in consonance with the established norms of the community. Some countries expressed their view that the collective nature of TK does not have any implication on the ownership. TK may be owned collectively by a community in the same way as some rights may be owned collectively under the existing IP system (e.g., a collective mark or geographical indications (to some extent)).[90] But the question which still remains unanswered is that which is that community? Whether it refers to the aboriginals, the indigenous or the tribal?

The Draft Bill on Traditional Knowledge, 2009 of India defines 'indigenous communities' as "a group of people sharing common language, customs, traditions and other distinctive traits, and who have, since time immemorial, occupied, possessed, and utilised a territory except when such possession is either prevented or interrupted by war, force majeure, displacement or force, deceit or stealth, or other usurpation."[91]

---

89 Pradeep Kumar Gangwar, Traditional Knowledge and IPRs: Relevance for Sustainable Development, 35 (Media House, Delhi, 2011).

90 Pradeep Kumar Gangwar, Traditional Knowledge and IPRs: Relevance for Sustainable Development, 42 (Media House, Delhi, 2011).

91 Article 2.8, Traditional Knowledge (Protection and Regulation of Access) Bill of India (2009).

Brazil Law defines 'local communities' as — "human group, including remnants of Quilombo communities, distinguished by its cultural conditions, that traditionally organises itself throughout successive generations and through its own customs and preserves its social and economic institutions."[92]

According to the Peru Law 'indigenous people' means "aboriginal peoples holding rights that existed prior to the formation of the Peruvian State, maintaining a culture of their own, occupying a specific territorial area and recognising themselves as such. These include peoples in voluntary isolation or with which contact has not been made, and also rural and native communities. The term "indigenous" shall encompass, and may be used as a synonym of, "aboriginal", "traditional", "ethnic", "ancestral", "native" or other such word form".[93]

The above definitions follow a common notion referring to any community or population that resides in any particular geographic location, having distinct language and shares common culture, ethical values and customary practices amongst them as distinctive society.

Although a universal definition of indigenous/tribal population is lacking, however, the International Labour Organisation through its Convention No.169, lays down certain criteria that are often used for identification of indigenous people in any particular nation. According to it indigenous peoples are — "descent from populations, who inhabited the country or geographical region at the time of conquest, colonisation or establishment of present state boundaries". These people maintain their own socio-economic-cultural and political institutions, whatever be their legal standing. Whereas, 'tribals' have been referred to — "whose social, cultural and economic conditions distinguish them from other sections of the national community and whose status is regulated wholly or partially

92 Article 7(iii), Brazil Provisional Measure No. 2.186-16 (2001).
93 Article 2 (a), Peru Law 27811 (2002).

by their own customs or traditions or by special laws or regulations".[94]

Various scholars while understanding TK, have restricted themselves only to aforementioned populations since these people often exist as a group by forming their distinct community, holding knowledge/ information regarding genetic wealth in their surroundings and also having life of their own being regulated by own customary norms. However, it is pertinent to mention that adopting such perception may not be correct as it might lead to exclusion of those cultivators who also possess the knowledge about the soil, vegetation and environment essential for specific crops. Further, this viewpoint also somehow favours the biopiracy of genetic resources like haldi and neem, as we will be stopped from asserting our rights over it being component of our rich TK, which we have been practicing over ages for medicinal purposes.

Therefore, there is another set of scholars, who strongly argue that TK may be held by people coming from diverse sectors pursuing various occupations. It may be a farmer/cultivator, pastoralist, fisherman or a nomad having information/knowledge about any specific geographical area due to its existence in close contact with nature and environment over a long period of time being inter-generational.

However, the issue of identifying the holders of knowledge still remains a challenge as one needs to determine that such knowledge is being held either by any individual; group; leader of that community/group; small clan within such community; or the community as a whole or even by more than one community collectively as private property. We cannot have a precise answer for it. It has been observed that even an individual residing in urbanized societies might be holder of TK by virtue of such knowledge being inherited by him from his ancestors. It is relevant to note that it is the kind of knowledge which is considered to be as part of TK and not

94 ILO Convention No. 169, Understanding the Indigenous and Tribal Peoples Convention, 1989.

the locality or region of its practice. It may be owned/held by the whole community or by any individual.[95] The nature of rights exercised over it rests upon customary norms of such communities.

2.8 Traditional Knowledge - "A Movement from Commons towards Privatisation"

The common perception regarding traditional knowledge is that TK belongs to a particular traditional community. It has been developed by communities through its use over a period of time. Since these local/traditional communities consider it as knowledge owned collectively by the community at large, there is no intention to claim exclusive rights over it. It is believed that such knowledge has evolved through regular practice by the communities living in close contact with nature and has accordingly passed inter-generations.

Relying upon the above supposition some people misconceive that it is a knowledge, which is freely accessible to all. It is a knowledge that is in public-domain and is thus, open for public at large. This approach creates a problem for the TK Holders. It has lead to determining the true nature of TK so as to ascertain that whether it is owned collectively by the holder communities or it is shared freely being in public-domain.

Arguments are given from both sides. Some argue in favour of privatisation of such knowledge by conferring certain positive rights upon the holder communities and on contrary there is another sect which argues in favour of considering TK to be shared with public at large being in public-domain. Let us discuss these conflicting stands.

2.8.1 TK as Common-Property

Prior to CBD and ITPGRFA[96], it was firmly believed in some quarters that the transfer of plants/genetic wealth is governed by the

---

95 Pradeep Kumar Gangwar, Traditional Knowledge and IPRs: Relevance for Sustainable Development, 35 (Media House, Delhi, 2011).

96 FAO, International Treaty on Plant Genetic Resources for Food and Agriculture, 2001.

notion of common-heritage of mankind.[97] In reference to food-grains, it was alleged that since any one nation can never claim to be self-sufficient in order to fulfil the food requirements of its total population, hence, food-crops be also considered as component of common-heritage and regulated accordingly. The increased demand of genetic or bio-resources and the expansion of plant-breeding rights and related activities led to the erosion of resources, which ultimately became the cause for the downfall of common-heritage. This inevitable collapse highlights the theory of ―Tragedy of the Commons.[98]

The idea of considering genetic wealth as component of common-heritage is deceptive. It is pertinent to mention that common-heritage principle is not an old doctrine but a recent introduction to international law and thus it is relevant to note that bio-resources have constantly remained within the national jurisdiction of the country concerned.[99] Furthermore, an examination of relevant state practices during the period of 1492-1960 accompanied by the opinion-juris, shows that indeed, the concept of common heritage

---

97 Plant genetic resources are a heritage of mankind and consequently should be available without restriction. See also Ikechi Mgbeoji, Beyond Rhetoric: State Sovereignty, Common Concern & the Inapplicability of the common heritage concept to plant genetic resources, 16, LEID. JL OF INTL. L., 821-837 (2003).

98 When a resource is for collective use each and every individual would calculate utility by counting the benefit, which he enjoys individually and subtracting the loss, which is shared by the whole society. Therefore, individual benefit will definitely be much more than the loss shared by the whole society out of which that individual who has been benefited has to bear only a fraction of the loss and others have to bear the loss irrespective of the fact that there is no benefit for them. This collective loss due to the individual benefit is the tragedy of commons. Garrett Hardin, The Tragedy of the Commons, 162, SC. NEW SER., 1243-1248 (1968), published by American Association for the Advancement of Science.

99 Ikechi Mgbeoji, Beyond Rhetoric: State Sovereignty, Common Concern & the Inapplicability of the common heritage concept to plant genetic resources, 16, LEID. JL OF INTL. L., 821-837 (2003). 60, *Ibid.*, at 832.

has no roots or support in customary international law.[100] A careful analysis shows that States have always sought to protect and sustain their monopoly of and hegemony over economically useful plants. States always tried to keep economic useful plants out of reach of other States. Examples of State control over plants are legion. The French were so determined to retain their monopoly on the indigo dye trade that exporting indigo-seeds from French-Antigua was made a capital-offence.[101] Prior to CBD, Ethiopian Government embargoed export of coffee germ plasm. Furthermore, it was always difficult to obtain black peppercorns from India, and Ecuador did not freely supply cocoa germ plasm to other cocoa-producing states. Peru and Bolivia once made trade in quinine a government monopoly. No State could at that time have seriously argued that such actions violated international law.

Desperate and draconian measures were sometimes taken by States to maintain control over plants in their territory. For example, the Dutch, in order to maintain control over their global monopoly on the supply of nutmegs, destroyed trees of nutmegs and clove in Moluccas apart from trees of three-islands where they located plant-actions.[102] It was this tight control of the transfer of plant germ plasm that compelled some States to engage in audacious attempts to break the monopoly of other States on some plants of key economic importance. In some cases, some States sponsored or condoned criminal activities such as the smuggling of plants.[103]

---

100 Jack Ralphe Kloppenburg Jr., The First Seed- The Political Economy of Plant Biotechnology 1492- 2000 (2nd Ed., University of Wisconsin Press, U.S. 1988).

101 Jack Ralphe Kloppenburg Jr., The First Seed- The Political Economy of Plant Biotechnology 1492-2000 (2nd Ed., University of Wisconsin Press, U.S., 1988).

102 Ikechi Mgbeoji , Beyond Rhetoric: State Sovereignty, Common Concern & the Inapplicability of the common heritage concept to plant genetic resources‖, 16 LEID. JL OF INTL. L. 825 (2003).

103 Ikechi Mgbeoji , Beyond Rhetoric: State Sovereignty, Common Concern & the Inapplicability of the common heritage concept to plant genetic resources, 16, LEID. JL OF INTL. L., 833, (2003).

It is evident from the above instances and analysis that the undoubted powers of States to regulate access to and the use of plant life forms within their domain has always been inherent and intrinsic aspect of Statehood and, therefore, the application of the concept of common heritage to plants and, genetic resources is fallacious. Further asserting that transfer of plants and genetic resources can be traced back to 1492 as part of the Columbian exchange is also not correct. As such a transfer was asymmetrical from colony to mother country and was more or less perceived as an internal affair of the colonial empires. In juridical and political terms, the colonial powers construed their tropical territories as part of the empire or of the larger metropolis. For example, germ plasm from British colonies in Asia and Africa was routinely transferred not only to the Royal Botanic Gardens in London but to other parts of the British Empire as if the latter were a single juridical entity, if not *de jure* at least *de facto*. Transfer was not conducted under the notion that plants constituted a free good and a resource for all people of the world. Therefore, Columbian exchange does not support the concept of common heritage.

Due to the growth of the knowledge sector or ―Information-Age, focal-point of deliberations regarding property resources has shifted from land towards information/knowledge. The creative-commons/open-source thinkers have advocated the advantages of public-domain and have revealed the hazards of privatisation. They strongly argue to make available the genetic-wealth and associated knowledge open for public at large. It is contended that TK has been under-utilised, since it has been practiced within a closed community. Therefore, by now making it available in public-domain will result in its optimum utilisation. It is further argued that TK being a 'knowledge resource' is non-exhaustive and accordingly, it is not subject to depletion in case of its excessive use.[104]

TK being a collective-knowledge has been deliberately ignored to be protected by the Agreement on TRIPs, which has ultimately led to the misconception about TK referring to the information, which can

---

104 *Ibid.*, at 1345.

be shared freely being already in public-domain. It is pertinent to mention that the concept of 'public-domain' has often been misused by the developed nations and their big MNCs, not only to reject the legitimate claim of the holder communities for protection of their knowledge as an intellectual property but also to facilitate its appropriation for bioprospecting activities as 'global-commons'. It is argued that the notion of 'global-commons' and considering TK in public-domain or in a state of res-nullius[105] is fallacious. Since TK is governed by a wide range of customary, cultural, traditional and religious norms within the respective communities, it cannot be considered to be open for any third party use. On the pretext of public-domain, developed world continues to misappropriate TK belonging to the local/traditional communities of the developing or third-world nations and at the same time, these MNCs have abstained to recognise or acknowledge these communities and consequently have avoided their liabilities of benefit-sharing. Today, the developing countries are demanding recognition of their TK by granting them exclusive-rights over their genetic wealth and related knowledge. If positive rights are conferred upon such holder communities, it will facilitate in preventing the instances of misappropriation of TK in more effective manner and at the same time will enable them to seek compensation for the loss suffered due to any unauthorised act of third parties.[106] Hence, it is strongly asserted that 'global-commons' as a concept is not applicable to TK; though TK can be considered to be in "limited-commons".[107] Accordingly, this would signify that the rights relating to TK should be conferred in favour of the concerned local/traditional community being the holder of such knowledge. Therefore, as an implication of the above rights, the members of the community will continue to enjoy using the knowledge within their community as per customary

---

105 A thing which has no owner. A thing which has been abandoned by its owner is as much res nullius as if it had never belonged to anyone. The first possessor of such a thing becomes the owner, res nullius fit primi occupantis, http://legal-dictionary.thefreedictionary .com/Res+nullius.

106 Mayank Kapila, Traditional Knowledge: A Movement From Commons Towards Privatisation, 3, IJAR, 354-357 (2015).

107 See A. Chander and M. Sunder, The Romance of the Public Domain, 92, CALIF. L. REV., 1358 (2004).

norms, however, if any third party wants to use such knowledge, they will be required to pay some price for getting such access.[108]

2.8.2 Movement towards Privatisation

The answer to the Commons is privatisation. Under the garb of public domain the developed countries especially through big MNCs have misappropriated the resources of developing/third-world nations in the form of TK without acknowledging their holders thereby not sharing the benefits arising from such use. Today, the developing countries are demanding recognition of their TK by granting them exclusive rights for their TK and genetic-wealth. They are of the opinion that as TK is a community resource which they have acquired over a period from generations and which is governed by certain norms of the community, therefore, there is no harm in denying them these rights in that respect. Recognising their rights would facilitate them to tackle instances of misappropriation in more effective manner since now they have right to seek compensation for violation of their rights or any harm caused to such TK. Thus, these nations are pressing their demand for privatisation of TK. Still, the legitimate claim for privatisation is again misinterpreted by developed world. It is pertinent to mention here that the demand regarding exclusive rights on their knowledge is not concerning privatisation as deemed in the capitalist society. It nowhere seeks private-rights which confer unlimited and unqualified rights in relation to any resource. In fact the present claim is relating to creation of "enclosures" so as to enable them to restrict any third-party access. This will ensure them to regulate access to resources thereby preventing its misappropriation. Further would enable them—right to recognition‖ along with providing them with "*locus-standi*" to claim compensation for any non-consented third-party use.

108 Carol M. Rose, The Several Futures of Property: Of Cyberspace and Folk Tales, Emission Trades and Ecosystems, 83, MINN. L. REV., 129 (1998) (proposing recognition and development of limited commons property regimes).

Further, thoughtful justification (with very clear practical implications) supporting this argument is whenever any resource is considered to be in public-domain thereby used —in common; may result in depletion of such resource. It has been observed that when the burden is shared collectively and without any individual accountability, there is always a temptation for any individual to over-use such a resource to his personal gain. Such individual just calculates that benefit accruing to him after utilising that resource will be higher in comparison to any loss being suffered; as such loss will be shared by the whole community.[109] Since no person is willing to take the accountability towards management of common resources, such resources will exhaust more rapidly. Therefore, in order to avoid this scenario, privatisation is the best option. It is the answer to "Tragedy of Commons".[110]

2.8.3 Traditional Knowledge in Limited Commons

The risk of keeping TK in commons is somehow same. The bio-resources or its associated knowledge in public-domain too have a threat of over-utilisation leading to its exhaustion and also resulting in collapse of the holistic structure of traditional/local societies. Thus, these resources are required to be utilised and managed effectively, which can be done through privatisation.

But applying Hardin's solution to TK has its own problems. Firstly, there is itself a problem to identify TK holders, which again is an impediment so as to determine owners entitled to be conferred with proprietary rights. Further issue for consideration is that if such rights are abused by the owners, it again might lead to exhaustion of resources by misuse thereby resulting in collapse of the societal norms which has been prevailing there for Ages. The most important concern is that vesting exclusive rights over such communities results in commoditisation of TK and bio-resources. This move is hailed by

---

109 Garrett Hardin, The Tragedy of the Commons, 162, SC. NEW SER., 1243-1248 (1968), American Asso. for Advancement of Science (AAAS).

110 *Ibid.*

the MNCs and other bioprospecting nations since it offers them the opportunity to initiate bioprospecting agreements with the TK holding communities. In such a case also the biggest threat would be that of over-utilisation of resources by Big Corporations out of their greed to produce more and earn more profits by commercialisation. This will again lead to the depletion of the genetic wealth creating the imbalance in the bio-diversity. Therefore, in the light of above arguments, Privatisation of TK (in the strict-sense) does not seem to be viable solution, however, the suggestion for ―enclosures may be considered more feasible to protect the legitimate interests of the traditional/local communities being creators and holders of such knowledge. This approach will also equip them with adequate rights in order to prevent biopiracy or instances of misappropriation of their TK or genetic wealth.

2.9 Justification for Protection of Traditional Knowledge

One of the most debatable and complex issues before the international community is regarding protection of TK belonging to the traditional/local communities around the world.[111] Most of these communities belong to the developing and under-developed countries. Concerns for TK raised by developing and third- world nations are found on various ground realities. Misappropriation of TK and biopiracy has led to irreparable economic loss. Further, there has been considerable erosion due to exploitation of the genetic resources by the developed world with no plan for conservation. Further, there is no standard mechanism for sharing of benefits with a view to reward TK holders, in case of commercial exploitation by third parties. It is also relevant to note that a large number of inventions largely based upon TK have been conferred with patents despite of the fact that such inventions fail to meet the standards of novelty as required under Patent Law, if the traditional knowledge is taken into consideration as prior art. All these issues have raised serious concerns amongst the international community and various State governments which eventually led to deliberations regarding

---

111 S. K. Tripathi, Traditional Knowledge: Its Significance and Implication, 2 IJTK, 100 (2003).

TK protection of traditional knowledge due to reasons and justifications mentioned hereinafter:

2.9.1 Moral Argument

The justification in favour of TK protection lies in core principles of justice and righteousness including the rights of the communities relating to protection, preservation and regulation of their culture and traditions.[112] Several studies have shown that where highest biological diversity and linguistic diversity exists, a co-relation exists indicating towards inter-dependence amongst cultural-linguistics and biological diversities.[113] Since TK is considered vital for the existence of knowledge holders having their distinct identity and cultures, therefore, it is essential to permit such communities to lead a life in close contact with nature regulated by own customary-rules. This would help in sustaining their economic-cultural systems along with its relationship with surrounding environment as maintained by their forefathers over-generations.[114]

2.9.2 Conservation

Traditional Knowledge plays vital part towards the conservation of biological-diversity, promotes sustainable agriculture and food-security. This knowledge/practice has been instrumental for sustenance and development of the biodiversity throughout the world. The skills and techniques adopted, implemented and developed by knowledge holding communities over thousands of years have the potential to facilitate the international community towards development of an effective model and code of policies for protection of biological diversity. India is well-known for its rituals

---

112 S. Ram Reddy, M. Surekha, et. al., Biodiversity, Traditional Knowledge, Intellectual Property Rights, 185 (Scientific Publishers, Delhi, 2016).

113 Sreenivasulu, N. S., Intellectual Property Law Dynamic Interfaces, 74 (Universal Law Publishing, an imprint of Lexis Nexis, Gurgaon, 2017).

114 Jennifor Amiott, Investigating the Convention on Biological Diversity Protection for Traditional Knowledge, MISS. ENV. L. & POL. REV. (2003). See also, Sreenivasulu, N. S., Intellectual Property Law Dynamic Interfaces, 74 (Universal Law Publishing, an imprint of Lexis Nexis, Gurgaon, 2017).

and rich cultural-heritage. Many rituals like *hawans, pooja, prasad, dravyadana* (practice of donating food-grains etc.) are carried out as part of religious ceremonies in consonance of rules prescribed by various religious/sacred-texts[115] including Vedas, Upanishads, Vishvamitr-Karika and Brahm-Karma. They also explain methodology to maintain sound health and sustain ecological-balance. As per independent studies on the subject, it is believed that ―fumes emitted during "*agnihotras*" actually reduce various pollutions.[116]

2.9.3 Preservation of Traditional Lifestyles

Concerns for the survival of socio-cultural activities embodying in the traditional knowledge are also relevant factors that support TK protection. Protection perhaps may be considered as means of showing respect and recognition of the TK-holders and their culture

---

115 Recently on 4th April, 2011, the people in the village of Panjal in the Thrissur district of Kerala state performed about 4000 years age old ritual of '*athirathram'*. This particular ritual is said to be the oldest and perhaps the greatest of all vedic rituals that still continue to be performed today. A bird shaped altar is built with 10800 bricks for the ritual, which is offering to *agni* or the god of fire. Scientists are trying to establish that the ancient vedic ritual like this is a natural purifier of air, soil and microbiological life-impacting plants, animals and man-through an extensive network of research in the lush village and in neighbouring Kochi. Namboodiri, former director of the International School of Photonics at Cochin University of Science and Technology (CUSAT) and Emeritus scientist at the Council of Scientific and Industrial Research (CSIR) said that–'the new science of socio-microbiology will probe how society's intervention acts on the microbes positively through rituals involving medicinal herbs, fire, chants and smoke that can nuetralise toxic microbes (micro-organisms) in the atmosphere, living objects and soil with new non-toxic ones'. Further, citing an example on how the rite purifies the atmosphere and prevents microbe contamination he said, 'tests of soil collected from two earlier ritual altars, located 100 meters from the site of the current one, and has shown zero microbe contamination for more than 50 years'. http://www.deccanherald.com/content/153282/age-old-kerala- fire-ritual.html. (Visited on August 18, 2017). See also, Intellectual Property Law Dynamic Interfaces, Sreenivasulu, N.S. (2017), p.75.

116 Sreenivasulu, N.S., Intellectual Property Law Dynamic Interfaces, 75 (Universal Law Publishing, an imprint of Lexis Nexis, Gurgaon, 2017).

by any user of TK.[117] Traditional knowledge and associated lifestyles however, are gradually disappearing and might become extinct. Part of endangered traditional knowledge includes knowledge relevant to agriculture, medicine and biodiversity.[118] It is argued that protecting TK and culture shall be real object of all the legislations. One more way to protect TK is to desist from actions that dislocate indigenous people from their ancestral lands and cultural environment, and to promote their interaction within their traditional environment.

2.9.4 Public Interest and Development Agenda

Many areas of TK have potentially lucrative applications for modern society. TK protection and its advancement can enhance willingness of indigenous community to constructively cooperate with the pharmaceutical and research organisations. This will lead to development of new medicines and pharmaceuticals, which are derived from the traditional medicinal knowledge.[119] Further, there is a public interest in the maintenance and publication of the often very valuable traditional knowledge for use and utilisation of the coming generations.

Considering the contributions of TK towards innovation industry, it becomes more essential to make sincere efforts towards protection of TK failing which might result in exhaustion of such knowledge thereby depriving the industry from future innovations. Traditional knowledge system has been instrumental in providing the world valuable products and processes in the form of traditional knowledge medicines, new variety of food-grains, bio-resources, traditional

---

117 Antony Taumbman, "Saving the Village: Conserving Jurisprudential Diversity in the International Protection of Traditional Knowledge, in Keith E. Maskus & Jerome H. Reichman, eds., International Public Goods and Transfer of Tech. under a Globalised IP Regime, 521 (Cambridge University Press, England, 2005).

118 Remigius N. Nwabueze, Biotechnology and Challenge of Property: Property Rights in Dead Bodies and Genetic Information, 243 (Ashgate Publishing Ltd., United Kingdom, 2007).

119 Julia Honds, The Protection of Indigenous Traditional Knowledge by Intellectual Property Law, 8 (GRIN Veriag, Germany, 2006).

farming techniques, arts and handicraft items and numerous other products based on rich cultural-heritage. Like '*Neem'* is being used for various purposes in India ranging from insecticides, cleaning teeth and also as herbal remedy for skin diseases.[120] This resulted into its commercial exploitation by the Corporations.[121]

2.9.5 To respect Fundamental Rights and Human Rights

The rationale behind TK protection could be to give respect to the fundamental rights guaranteed under the Constitution. Part III[122] of the Indian Constitution guarantees fundamental rights to all the citizens and protection of right to life and personal liberty[123] is considered as the most important among them. The scope of this right has been expanded by the judicial interpretation, where it included right to livelihood as a fundamental right.[124] The Supreme Court has been of the view that without livelihood one cannot enjoy the right to life, therefore, right to livelihood forms the integral part of right to life.[125] Meanwhile, indigenous communities and traditional people who are largely dependent on biological resources and related TK are living with the nature. Perhaps, they have every right to use such biological resources and traditional knowledge for their livelihood as guaranteed under Indian Constitution. Further Article 29 also safeguards the cultural life of the minorities. People possessing distinctive language, script or culture are entitled to right to its protection and conservation.

Apart from the constitutional provisions certain human rights documents also guarantee and protect the environment and human rights underlying the traditional system of knowledge, which are

---

120 Devid Hunter, et. al., International Environmental Law and Policy, 443 (Foundation Press, 1998).

121 Jennifor Amiott, Investigating the Convention on Biological Diversity Protection for Traditional Knowledge, MISS. ENV. L. & POL. REV., 7 (2003).

122 Articles 14-35 of the Constitution of India guarantee various fundamental rights.

123 Article 21 of the Constitution of India.

124 *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180; (1985) 3 SCC 545.

125 *Ibid.*

particularly significant for indigenous communities. For instance, Article 27(2) of the Universal Declaration of Human Rights (UDHR) provides that everyone has the right to the protection of the moral and material interest resulting from any scientific, literary, or artistic production of which he is the author or inventor.[126] Further, the United Nations Declaration on the rights of Indigenous Peoples provides that indigenous people have every right to maintain and strengthen their distinctive spiritual and material relationship with lands, territories, waters and coastal seas and other resources, which they have traditionally owned or occupied or used to uphold their responsibilities to the future generations.[127] The International Covenant on Civil and Political Rights (ICCPR) provides that in those States, in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be deprived of the right in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their language.[128]

Moreover, several International Environmental Legal Instruments impose duties upon the member States to protect TK. For instance, Principle 22 of the Rio Declaration of Environment and Development imposes the duty upon the States to support the identity, culture and participatory role of the indigenous people in decision making, which would potentially affect them.[129] The ILO Convention No. 169 provides that State shall take measures for the protection of culture and environment of the people concerned.[130] Further, Agenda 21 of the Earth Summit also outline special environmental protection for indigenous people.[131]

---

126 See: Remigius N. Nwabueze, Biotechnology and Challenge of Property: Property Rights in Dead Bodies and Genetic Information, 246 (Ashgate Publishing Ltd, United Kingdom, 2007).

127 Article 25, United Nations Declaration on the rights of Indigenous Peoples, adopted by General Assembly resolution 2007.

128 Article 27, The International Covenant on Civil and Political Rights (ICCPR).

129 Conference on Environment and Development, Rio de Janerio, June 13, 1992.

130 Articles 4(1) and 7(4) of the ILO Convention No. 169.

131 See Chapter 26 of the Agenda 21, Rio Declaration on Environment and Development.

2.9.6 Fairness and Justice-Entitlements to Compensation and Benefit Sharing

The indigenous communities have a right to claim equitable share in the benefits arising out of commercial exploitation of their knowledge and resources by third-parties. A large number of patents have been conferred for the inventions based upon TK and genetic-resources acquired from India and other third-world countries. Biopiracy has also become rampant. Protection of TK through legal system is the need of the hour. There is a need to protect TK through a legal system, which prevents illegal patenting and biopiracy. There is a need to overcome the inherent injustice present in the existing IP regime in order to overcome this global injustice. We can adopt either the defensive protection or positive protection in order to overcome this menace. Defensive protection will ensure the prevention of illegal patenting.

However, positive protection on the one hand not only curbs the biopiracy but will also lay down a mechanism for compensation and equitable benefit sharing[132] with the traditional and indigenous people.[133]

Now, the issue to be determined is whether TK can be protected within the existing IPR regime or through a sui-generis model, specially designed for the purpose, as a possible solution to address all the issues in appropriate way.[134]

---

132 Jose Joseph, Intellectual Property Rights and Access to Plant Genetic Resources, in Aravind Kumar and Govind Das (eds.), Biodiversity, Biotechnology and Traditional Knowledge–Understanding Intellectual Property Rights 88 (Narosa Publishing House, Delhi, 2010).

133 Graham Dutfield, Protecting Traditional Knowledge and Folklore– A Review of Progress in Diplomacy and Policy Formulation, 1, UNCTAD-ICTSD, 1 (2003).

134 Mayank Kapila, Understanding Traditional Knowledge in Post TRIPs Regime, I, CLC SLR 149, (2013).

Reports on Conferences/ Seminars etc.

IOS on-line lecture on Social Media and Marginalised Communities (August 14, 2021)

New Delhi: An on-line lecture on "Social Media and Marginalised Communities" was organised by the Institute of Objective Studies on August 14, 2021. The lecture was delivered by Prof. Ehtesham Ahmad Khan, Dean, School of Mass Communication and Journalism, Maulana Azad National Urdu University, Hyderabad.

Introducing the theme, senior journalist, Abdul Bari Masud, said that social media was an important platform of communication and a weapon to influence the users. It had become evident that the prominent way to reach out to young adults was through social media platforms. He observed that the social media influenced the decision making of the youngsters between the age of 16 and 25 years, who were going through quick changes in their lives as they were modeling their personality, developing self-esteem, and look for freedom and power in their lives. He noted that living in the digital era due to technological revolution, the youngsters had access to social media platforms. Referring to the disadvantages of social media, he said that it had many.

Delivering the lecture, Prof. Khan, observed that the social media was yet to reach out to the illiterates and the marginalised in today's globalised world. Thus it raised the question of haves and have-nots; the question whether socially excluded sections were benefiting from the space created by the social media. He said that spurt in the usage of social media was evident during the Lok Sabha elections in 2014. Social media platforms were used as a base for reaching the urban electorate. Its use heightened during the last parliamentary elections in 2019. Used since 2004, Facebook became the most popular platform for the users of social media. The Member of Parliament, Shashi Tharoor had been using twitter since 2009, and it became the most popular platform among those in high positions. He said that

70 crore people accounting for about 50 percent population, were using smartphones daily. Majority of the users of these phones were youngsters with men outnumbering women. Giving the figures of the social media users, he noted that while WhatsApp was being accessed by about 53 crore, the number of YouTube users stood at 48.8 crore. The data revealed that the number of Twitter users was less, compared to other platforms, he maintained.

Commenting on the use of multiple accounts, Khan said that India stood second after United States. He sought to know if the space created by social media had been equally divided in society. Social media had also been misused as a ploy to spew hatred and for political campaigns. Marginalised communities had been constantly complaining that they were not receiving fair share in social media; their cultural practices were being given a raw deal. They also nursed a grouse that TV channels never gave them an opportunity to present their point of view on a host of issues pertaining to them and their identity. Similarly, mainstream media too was not giving due representation to these communities in terms of discussion on their problems and focus on economic plight and social life vis-à-vis other communities that figure prominently. Some headway had, however, been made but that did not suffice. They nursed the grievance that their issues were being deliberately negated, he said.

Prof. Khan pointed out that Twitter offered a suitable alternative to other social media platforms as it provided a facility to use minimum words to express views and opinion. Social media provided a platform to marginalised sections, who could not get space in the traditional media to present their case before the world. But the use of social media was a bit difficult as those who were not technologically literate could not operate it. He noted that as many as 70 crore people were currently using social media. By 2025, as many as 89 crore people would own smartphones. But the digital divide continued to rule the roost as digital participation in society had not become inclusive yet. Though WhatsApp had the largest number of users, yet its penetration in terms of digital participation was not balanced. Citing internet inaccessibility as one of the reasons for the digital divide, he said that marginalised societies lagged behind in terms of accessibility. According to Census-2011, the literacy rate among minorities stood at 74 percent. This left a wide gap between the rate of illiteracy and digital illiteracy. He observed that there were economic, social and political reasons of illiteracy that had not been addressed. As the figures showed, both Dalits and Muslims were far behind the upper castes in the usage of digital device. Upper castes had 55 percent representation in the use of social media platforms, followed by other backward castes (OBC) and Muslims. While OBCs accounted for 31 percent, Muslims stood at 39 percent, he maintained.

Prof. Khan pointed out that making marginalised communities digitally literate was a problem. Media literacy among these communities could not gained ground because of non-availability of internet services round the clock. Thus, digital accessibility for marginalised sections continued to be a problem. Under such circumstances, the question arose if these sections could provide smartphones to their children. It also raised the question if the accessibility of this technology would increase in view of the 27 percent people living below the poverty line and earning a paltry sum of Rs. 75/- per day. According to a World Bank report, about 15 crore people were spending less than Rs. 15 a day. He noted that social media was a luxury today as digitalization was linked to income. Competition in digitalization would grow with the growth of income. Referring to the role of social media, he said that it aimed at making human life better. Social media played a significant role in the health sector during the last one and a half year. It yielded better results. He said that it was social media that strengthened the foundation of the government of Egypt during the Arab Spring.

Prof. Khan remarked that out of 24 hours, social media was used for 2.50 hours. The digital divide also leads to the social divide. Thus, the need of the hour is to ensure that this media is used for purposeful objectives, he said. Emphasising the need for equipping children with the digital device, he said that this would bridge the existing gap. This technology was as important as food. He opined that the importance of a community was not determined by its population but their presence on social media platforms. Majority of social media users were youngsters and the answer to hate campaign could never be hate. The answer, he said, should be based on facts and figures. He called upon the community to become digitally savvy. Similarly, the digital divide should be narrowed or else marginalised sections would lag behind others. He said the Muslim community needed to correct its negative image. This was a big challenge before the community. Owing to some regulatory bodies put in place by the government, hate campaign against Muslims had been put under check to some extent. This improved certain things as service providers had been regulated by the means of digital censorship, he noted.

Prof. Khan observed that social media platforms were facing a big challenge and if corrective measures were not taken, it could prove to be counter-productive. In order to strike a proper balance, marginalised communities should optimally make use of social media. He said that the reach of the social media could be gauged from the fact that as many as 16 crore users viewed the so-called 'Corona Jihad'. But, that was the one-sided story. Things would have been different had Muslim religious leaders, social activists and the community's voluntary organisations set the record straight. In the same way, marginalised communities groups could post factual context on social media platforms. He concluded by saying that the social media was an effective platform for the marginalised sections to share their views and help reduce the digital divide.

The lecture ended with a vote of thanks proposed by Abdul Bari Masud.

IOS on-line lecture on Philosophy of Science and Human Evolution (August 21, 2021)

New Delhi: An on-line lecture on "Philosophy of Science and Human Evolution" was organized by the Institute of Objective Studies on August 21, 2021. The lecture was delivered by Dr. Gustavo Zubieta-Calleja, M.D., FPVRI High Altitude Pulmonary and Pathology Institute (HAPPI) Instituto Pulmonary Patologia de la Altura (IPPA), La Paz, Bolivia, South America.

Introducing the topic, Dr. Md. Imtiyaz Hassan, Asstt. Professor, Centre for Interdisciplinary Research in Basic Sciences, Jamia Millia Islamia, New Delhi, said that science was a fundamental pillar of human evolution. It stemmed from intuition and above all, the search for human needs of understanding and resolving the sustenance of life. He observed that science involved an interaction of multiple specialties with the mother of sciences being Mathematics.

Speaking on the subject, Dr. Calleja held that the philosophy of science was very important in the COVID-19 time. Science had to look forward. Referring to human evolution, he said that the theory in biology was posturing that various types of plants, animals and other living things on earth had their origin in other pre-existing types of philosophy. He listed three branches of philosophy as ethics, epistemology and metaphysics. Science stemmed from logic, methodology, curiosity and ability. It also involved an interaction of multiple specialties with the Maths. He listed some of the great men of science, like Rene Descartes, Srinivasa Ramanujan, Charles Darwin, Galileo Galilei, Nicolaus Copernicus, Ignaz Semmelweis, Newton, Leibniz and Erwin Schrodinger. While Descartes, who lived in the first half of the 17th century, was French, Ramanujan was an Indian mathematician who based his theory on logic, maths and epistemology. Charles Darwin and Galileo Galilei suffered in life for their scientific views. Newton and Leibniz were the inventors of the theory of Calculus. Erwin Schrodinger was an Austrian-Irish who addressed the problems of genetics, looking at the phenomenon of life from the point of view of physics, by giving a series of talks on his book "What is Life?. Commenting on the evolution of the concept of atom, he said that in 400 B.C. Democritus first talked about it followed by Dalton in 1800 A.D. It was taken forward by Thompson in 1890 who invented electron and Rutherford in 1910.

Dr. Calleja pointed out that there was also ethics in science and moral principles that governed it. Referring to human evolution, he said that Kevin Blake's work "The March of Progress" was an important book on the origin of human. Problems associated with the progress too surfaced. Science should focus on problems like global warming, desertification of the planet and holistic management of resources. He said that fauna and flora should be allowed to grow naturally. He made special mention of Clifford Allan Redin Savory, a Zimbabwean ecologist, livestock farmer and president and co-founder of the Savory Institute, who held that only livestock could reverse desertification. There was no other tool available to humans to address desertification that was contributing not only to climate change, but also to much of the poverty, emigration, violence, etc. He expressed himself against burning of the forests and pleaded for the reduction of carbon emissions. He advised everybody to live with nature and respect the nature. Expressing concern over the increase of methane gas in the atmosphere, he said that animals generated only 7.2 percent of the methane.

Commenting on the steps that could be taken to reduce the level of lethal gases on earth, Dr. Calleja said that afforestation, reforestation and neo-forestation could play an important role. Oxygen, which was sourced from sunlight, nutrients and water, was the lifeline for every individual on earth.

In cities, the organic systems of human beings began and all other species tended towards adaptation. At high altitude, the photo-electric biology effect worked. He said that humans must evolve to a better psychology, peaceful interaction and inner tranquility with abundance of water, nutrients and oxygen. Oxygen, the fundamental element of life, was plentiful within the planet. The pressure of oxygen played a key role on survival, he said. Defining philosophy of science, he noted that it was love of knowledge. Knowledge served to understand human evolution meticulously beyond earth in space. He emphasized that humans must evolve to a better psychology and peaceful co-existence. It was a great mystery as to who created the universe. He concluded by saying that there should be a balance between scientific strides and its negative impact on human life.

The lecture ended with a vote of thanks proposed by Dr. Md. Imtiyaz Hassan.

IOS On-line Lecture on Growth-oriented Optimisation of Personal and Professional Life (August 28, 2021)

New Delhi: An on-line lecture on "Growth-oriented Optimisation of Personal and Professional Life" was organised by the Institute of Objective Studies on August 28, 2021. Delivered by Dr. Syed Ashraf Imam, Ph.D., licensed clinical Psychologist, San Diego, California, USA, the topic was introduced by Prof. Akbar Husain, Department of Psychology, Aligarh Muslim University, Aligarh, who also chaired the function.

The lecture began with the recitation of a verse from Qur'an by Hafiz Athar Husain Nadwi. In his introductory remarks, Prof. Akbar Husain said that the topic was contemporary in nature. Modern age of crisis and a variety of allied factors at times made human existence challenging. The constant struggle at one's personal, familial, social, professional level in the daily life space made it harder to have the feeling of healthy living. But human species were endowed with the quality of being flexible and adaptive to various existential challenges, he observed.

In his lecture, Dr. Syed Ashraf Imam said that the world was currently passing through a critical phase resulting in violence and frustration. But there were simple ways to overcome them and enhance work. Then the question arose how to optimise one's attributes. And this could be done by optimising one's mind. He noted that life space had everything to do with the human being. One did not know what was going around one's life. Secondly, there was a psycho-social factor that optimised man's mental faculty. He said that there were societal bruises but one should not allow himself to be abused by negative feelings. Advising people not to accept whatever others stated about them, he remarked that one should negate all negatives. There were family members and family values that had to be adjusted. Life could become more purposeful if certain things were ignored. He said that everyone should be treated equally. Frivolous things, like the absence of househelps to do domestic chore should not cause unnecessary worry. One should cherish family values by being communicative to the spouse and other members. This needed effective and appropriate communication. He advised that one should shun having negative behaviour.

Syed Ashraf Imam called for optimising the energy earned in life. This would have a healing effect. He said that one should express himself without fear. Respect was always a two-way traffic. Thus one should have the capacity to accept others. One must change one's perception about others by giving them respect and entering into mutual understanding. Laying emphasis on generosity, he said that it could be anything. It might even be smiling. In order to be happy, one should practice smiling.

One must not be rigid and give others space in terms of nice advice and fulfill some expectations of others in orderly fashion. There were some social expectations from others to do something for society. He also observed that one should not hold a grudge against anybody. There should be no negative emotion against anybody. It was up to a person to accept or refuse negative sentiments. Calling for controlling anger, he said that the energy must not be wasted in entertaining negative emotions. In this respect, forgiveness was the best policy. He pointed out that anger should be controlled at all costs.

Explaining the attribute of empathy, Dr. Imam said that without knowing the person one generally developed antipathy against others. This should not happen. One should be honest and always be fearful of the wrath of Allah. Referring to the positive effect of empathy, he said that it helped a lot. Empathy also lessened tension. Another attribute he spoke on, was truth. He observed that trust was related to growth and development. In unsuccessful interviews and examinations, one lost trust. One should learn how to remain strong in adverse circumstances. He should be immune to such situations and stand solid rock in his trust. Emotions should not be allowed to hurt. One could achieve his goal by structuring his life. One's journey started when he focused on himself. One should be resilient and have solid faith in the Creator. He also said that daily practices like salah, rituals, prayers, etc; should continue. But the problem became complex when people started accepting all the negative energy from others. He further said that one's time was structured to do what one supposed to do. If one had a high level of empathy, the negative emotions would lessen. He advised that one should not feel offended by the adverse comment of a person because grudge was the worst enemy of a human being.

Dr. Ashraf Imam held that one should not get negative energy also because Allah was the ultimate forgiver. Allah would always be pleased with the forgiver. He advised against wasting energy on toxic things and emotions. He said that by getting negative energy, one hurt himself. He concluded by saying that Islam offered the best therapy for neutralising negative energy and this therapy could be applied by keeping faith in Allah.

Associate professor in the department of psychology at AMU, Dr. S.M. Khan said that role of religion started when an individual was surrounded by a host of problems. Religion was vibrant. Therefore, some spiritual personality should guide everybody. He observed that one could put forward the teachings of Islam for developing positive energy.

The lecture came to an end with a vote of thanks by Prof. Akbar Husain.

IOS organizes virtual condolence meet on the demise of Prof. AbdulHamid A. AbuSulayman (August 31, 2021)

New Delhi: A virtual condolence meet was organized by the Institute of Objective Studies on August 31, 2021 to pay homage to Prof. AbdulHamid A. AbuSulayman, former rector, IIU, Malaysia and former president IIIT, USA who died recently.

The condolence meeting began with the recitation of a verse from Qur'an by the in-charge of Urdu section, IOS, Maulana Shah Ajmal Farooq Nadwi.

Vice-chairman, IOS, Prof. M. Afzal Wani, who conducted the proceedings, briefly threw light on the life and works of Prof. AbuSulayman.

The Chairman, IOS, Dr. Mohammad Manzoor Alam, who spoke first, called Prof. AbuSulayman his mentor. Quoting the famous philosopher-poet of Urdu, Dr. Allama Iqbal's couplet - *"Hazaron saal nargis apni benoori pe roti hai, Badi mushkil se hota hai chaman mein deedawar paida"*, he said that it very much fitted into Prof. AbuSulayman's case. Recalling his first meeting with him in Saudi Arabia late in 1970 where he had gone to seek employment, he held that since then he used to frequently meet Prof. AbuSulayman there. He believed in universal brotherhood and equality, and did everything to promote them. He was an institution builder and a prolific writer whose deep knowledge of Qur'an and Sunnah was reflected in his books. What distinguished him from other Islamic scholars was that he was not wedded to traditional theories of Islam. Referring to his aesthetic sense, he noted that Prof. AbuSulayman was a scholar, mentor, guide and philosopher. He visited India four times and attended programmes organised by the IOS. He was also shot for a film prepared by the Institute of Objective Studies, in November 2017, under FutureFocus program to documenting Islam's vision and visionaries, values and movement, in November 2007. In the film divided in 2-parts, Dr. AbuSulayman discussed and explained different aspects of his life, thought and works that future generation would find beneficial and constructive In March 2010, he participated in two conferences organised by the Institute of Objective Studies in India. The reading material he prepared was of high quality. He called for working further on Prof. AbuSulayman's ideas.

Former deputy prime minister of Malaysia, Datuk Seri Anwar Ibrahim, observed that Prof. AbuSulayman always corrected his Arabic pronunciation. He was a lovely brother and an intellectual who was imbued with high moral and ethical values. Describing his death as an irrecoverable loss to the country, he always vouched for cultural reforms based on Quranic principles. He was an admirer of Ibn Khaldun's world view. He said that while opposing Western view of Islam, he adopted Islamic world view and inspired him to read Salahuddin Ayyubi. He always laid stress on basic education based on Islamic thought. He was a legendary figure in Malaysia and his contribution to the Islamic university of Malaysia as a rector would be ever remembered, Anwar Ibrahim added. Dr. Hisham Altalib, president, International Institute of Islamic Though, remarked that he knew Dr. AbuSulayman for the last several years. He said that he stayed with him and his family for three days. He secured his commitment to sacrifice life, career and family for reforms in the ummah. In 1980, he established the IIIT to do something concrete for the promotion of Islamic thought. He had several encounters with Prof. AbuSulayman and always found him dynamic and energetic. He established several institutions and founded the association of social scientists. He was brought up in an environment of secular education. Endowed with deep knowledge of Quranic thought, Prof. AbuSulayman was impactful to him and his wife, he noted.

Siraj Husain, a senior IAS officer and the former vice-chancellor of Jamia Hamdard, observed that he met him only once. He had an opportunity to listen to Prof. AbuSulayman when he visited Jamia Hamdard to deliver a lecture. He said that he read his book, 'Towards an Islamic Theory of International Relations: New Directions for Islamic Methodology and Thought'. Questions like role of the largest minority in India, i.e., Muslims, should be answered in the light of the concept of equality to all, irrespective of their differences and a sense of justice in Islam, he observed.

Prof. Omar Hassan Kasule Sr., secretary general, IIIT, held that the death of Prof. AbuSulayman, is a loss of an intellectual giant. His relationship with the Islamic scholars travelled the width and breadth of the globe. Though South Asians claimed to be Hindi, yet they must call themselves as a part of the larger Islamic community. Referring to his experience in Makkah, he said that the city was a centre where Muslims from around the world gathered, and the colour, customs and traditions were merged into one. Since he had a cosmopolitan upbringing in Makkah, he developed a cosmopolitan world view. He said that Prof. AbuSulayman appreciated the contribution of Indian Ulema, particularly Shah Waliullah, during the Mughal and British colonial periods. India was one of the countries that influenced Prof. AbuSulayman most, he observed.

Recalling his meeting with Prof. AbuSulayman, Dr. Habib Chirzin from IIIT, Indonesia, said that he met the former in 1994 during a conference in the university. His contribution in the field of reforms and *Islah* was remarkable. He noted that he was impressed with his educational reforms and his deepest commitment to the interest of the ummah. He met Prof. AbuSulayman again in 1997 in Washington during the UN session. He was committed to justice, peace and development. He stood for Islamisation of knowledge and curricular reforms. As rector of International Islamic University, Malaysia, he introduced educational reforms. He wrote books to serve as teaching material for students. His work on integration of knowledge received much appreciation from scholars, Dr. Chirzin added. Zaid Barzinji from USA, said that Dr. AbuSulayman's commitment to seek *Haq* (Truth) was inviolable. It led him to work on Maqasid Institute. He had a penetrating and analytical mind. According to him, Islam is not human-centric religion but it was created by Allah. Sometimes, he used such gestures that could benefit the general people. Once, he was seen directing traffic in Jakarta, he said. Dr. Omar Hisham Altalib from USA, observed that Dr. AbuSulayman was his valued colleague and he was much influenced by him.

Dr. Zaleha Binti Kamaruddin, former rector, IIU and judge of appeal, Shariah Court, Malaysia observed that he did much to transform the system of education. He fulfilled the commitments he made for Indonesia. He was concerned with the improvement and transformation of education. She said that he advised her to start projects for bringing change in the system of modern education.

Dr. Fathi Malkawi from Jordan, described the condolence meet as an occasion to recall his memories. He said that Dr. AbuSulayman was concerned about Islamic resurgence. Commenting on his meeting with Dr. AbuSulayman, he said that he accompanied him to several countries. Dr. AbuSulayman had a noble vision and devoted his life to Islamic reform projects, he noted.

Prof. Koutoub Moustapha Sano from Saudi Arabia, noted that Dr. AbuSulayman left behind a lasting legacy. He invited him to join the university while he was still doing his Ph.D. He used to say that children needed to learn compassion and sympathy. He said that it was a coincidence that many people had the ideas but they died before giving a practical shape to them. He enriched Malaysia with his knowledge and wisdom. He was very optimistic about life and looked at it as such. He built a great institution of learning not only for Muslims but also for others. He asked the ummah to work hard for the realization of Dr. AbuSulayman's dreams.

Secretary General, IOS, Prof. Z.M. Khan, referred to Dr. AbuSulayman's thought and action plan, and said that he left a mission which had to be completed. Those who were close to him needed to complete his projects. He said that he was privileged to host him on behalf of the Institute of Objective Studies. Commenting on one of his books on the status of women in Islam, he held that a woman was an economic person and the maximum punishment to the wife by the husband was a temporary separation. Islam taught both theory and practice. *Crisis in the Muslim Mind* was his best book, he added.

Assistant secretary general, IOS, Prof. Haseena Hashia, said that she knew him through the Institute during his visit to India. She found him very humble and knew much about the famous Urdu poet, Allama Iqbal. She said that after reading one of his books, she developed respect for him. He was a great scholar and educator. His concept of Islamisation of knowledge distinguished him from other Islamic scholars. He was a man of many dimensions and an institution in himself. In his death, the world lost a great reformer, thinker, and leader. She suggested that the IOS should organize conferences on various aspects of his life.

Prof. Hamid Naseem Rafiabadi, dean, faculty of social sciences, Central University of Kashmir, recalled his meeting with Dr. AbuSulayman at the IOS in 2007 and said that he was concerned more with the methodology. He was of the opinion that there was no difference between reason and revelation. There was a common origin of man, whether Hindu or Muslim. He wrote a book on international relations. Prof. Rafiabadi stressed the need to take Dr. AbuSulayman's mission ahead and reach it to its logical conclusion. Dr. AbuSulayman always laid emphasis on the periodical revision of text-books.

Dr. Kaleem Alam, researcher, Islamic Economics Institute, King Abdul Aziz University, Jeddah, said that he met him on both campuses of International Islamic University in Malaysia. He was very humble and dedicated himself to the development of the university. Started as a small university, it had now become one of the best institutions of the world with all the faculties, he added. Prof. Jamil Farooqi, held that Dr. AbuSulayman was a distinguished educationist and a great contributor to knowledge. He said that there were two types of knowledge–traditional and modern. Dr. AbuSulayman emphasised that both of them should be integrated into one. He wanted development of knowledge in Islamic perspective and integration of Islamic knowledge with human sciences.

In his conducting remarks, Prof. Afzal Wani observed that writing was very important and when one wrote, he was more conscious. One could find a great teacher in Dr. AbuSulayman. Describing him as a leader of humanity, he said that Dr. AbuSulayman was very sensitive and a rational Muslim. He was a reformist. Initially, he was a political scientist whose writings were very balanced. As a great thought leader, he looked at the world across the globe, he said.

While Dr. Mohammad Manzoor Alam presided over the meet, Prof. Afzal Wani extended a vote of thanks to all panelists.

IOS and CDPP jointly organises webinar on Growth of the Muslim Middle Class in India (September 17, 2021)

New Delhi: The Institute of Objective Studies, in association with the Centre for Development Policy and Practice (CDPP), Hyderabad, organised a webinar on Growth of the Muslim Middle Class in India on September 17, 2021.

Introducing the topic, the assistant secretary general, IOS, Prof. Haseena Hashia said that Muslims constituted a very important segment of society. They equally contributed to the country's GDP and job creation. The Muslim community was also the shock absorber of society. The rate of literacy among Muslims had increased. They were also catching up with the expansion of education. Tourism in several states had economically improved their standard of living. Though there was an increase in their income yet they had not reached the level of upper class. The community's status has improved after Independence but not at the level that was envisaged, she noted.

Former bureaucrat and a member of the Planning Commission, Dr. Naresh Chandra Saxena explained that a middle class person earned Rs. 20, 000 to Rs. 25,000 a month. That was the yardstick to measure the income of this class, though no independent opinion about Muslim middle class could be form due to the lack of specific data. He called for making the middle class to lead in every field.

Dr. Amir Ullah Khan, member of the board of governors at the Digital Empowerment Foundation, Gyan Shaala and Welham Girls School pointed out that some compelling data on socio-economic condition of the Muslims was available. He admitted that there was leadership vacuum among Muslims. A general decrease in the Muslim middle class had been noticed. Thus there was need to have a look at the data during the last 4-5 years, he said. Professor in the school of development studies, Tata Institute of Social Science, Mumbai, Abdul Shaban, observed that there were several areas that needed to be discussed by the academics. He viewed the absolute as declining and moving to relative poverty. This was due to the existence of lower classes in middle class. Referring to the role of bourgeois class, he said that this was important for the enlightenment in Europe. Role of this class was also evident in India. Instead of consumption based, Indian society was asset-based. That was the reason why the economists adopted consumption expenditure-based approach. In the case of Muslims, they spent more on source of protein than Hindus. While the former depend on meat as a source of protein, the Hindus went in for other vegetarian sources. Various criteria had been used to estimate the middle class with one of them being developed by the Nobel Laureates, Prof. Abhijeet Banerjee and Esther Duflo. Asset based approach postulated that it was pucca houses that determined the status of the middle class. In 1990 telephone became important to measure the middle class. Commenting on the growth of middle class, he said that in 1998-99 its size stood at 20.2 per cent but rose to 44.6 per cent in 2015-16. Thus an increase of 24.4 per cent was witnessed during the period. It worked out to about 1.4 per cent incremental increase every year. According to the available data, Muslim middle class constituted 21.1 per cent in 1998-99 which rose to 41.6 per cent in 2015-16. It was an incremental increase of 1.28 per cent every year. Hindu upper castes accounted for 19.5 per cent in 1998-99 which rose to 44.5 per cent in 44.5 per cent in 2015-16. This represented an incremental increase of 1.56 per cent every year. He said that Muslim OBCs constituted 18.6 percent as middle class in 1998-99 and 44.5 per cent in 2015-16, registering an incremental increase of 1.62 per cent every year. Similarly, Muslim upper castes constituted 22.3 per cent in 1998-99 and this rose to 39.6 per cent in 2015-16, registering an incremental increase of 1.08 per cent every year, he noted.

Dr. Abdul Shaban observed that while Haryana, West Bengal and Uttar Pradesh were worst performing states, Bihar and Assam were low in uplifting the community to the level of the middle class. Attributing the low percentage of middle class among Muslims, he said that it was due to the marginal number of salaried class. This could be well understood by the fact that their share in government job was around 4-5 per cent. By and large, Muslims were engaged in self-employment, micro, small and medium businesses and enterprises. He identified seven major occupations in which Muslims were engaged. Urbanisation played an important role in the formation of the Muslim middle class. Besides, the penetration of formal education contributed to rise in the percentage of the middle class. Muslims were moving to urban areas in search of better life and employment. Eighty per cent of them moved to cities in search of employment. He said that Muslims did not have a share in large enterprises, though they benefited from economic liberalisation with low-mobility middle class. Compared to the north, south Indian Muslims were well-off. He suggested some of the measures, including emphasis on education, financial support for business, women's empowerment and progressive leadership within the community could change the current scenario.

Former member of the national statistical commission, PC Mohanan, commented that the middle class was a brand but nobody knew what products did it have. He asked to look at the consumables the middle class consumed. The available figures could be segregated to understand what the position exactly was. There was a correlation between education and the middle class. He concluded by saying that after Covid-19, phenomenal growth in the sale of smartphones had been witnessed, and there were certain dimensions to what one believed was the middle class. Distinguished fellow at the Research and information System for Developing Countries (RISDC), Prof. Amitabh Kundu, held that it was the total value of assets that characterised the middle class. He said that the middle class should be measured through consumption. The middle class was a way of life and the idea of its measurement was shifting to assets. Thus the value of assets was important for measuring the middle class. The middle class might be higher for a community but it did not define the entire middle class community. Referring to the Muslim community, he noted that Muslims spent less on food items as compared to other items. On the basis of assets, one could articulate the middle class as a community. The middle class was basically a sociological and cultural group. Naming internationally acclaimed economists–Prof. Amartya Sen and Prof. Abhijeet Banerjee, he said that the arrogance of certain economists destroyed the concept. He hailed Shaban and Sattar's perspective on the growth of the middle class in India, and termed it as a departure from the usual narrative on the concept.

Dr. Mahabir Singh Jaglan, professor of Geography at Kurukshetra University, spoke on the geographical distribution of the middle class. He said that the share of the Muslim middle class in various economic activities was low. In Haryana, Mewat had the largest concentration of Muslims, followed by Yamunanagar with 12 percent concentration. He sought to know if higher concentration of Muslim population made the community more vulnerable to its ghettoisation.

In answers to a question, Shaban said that the bourgeois contributed to the growth of economic development. He observed that consumer expenditure did not take into account the deprivation of Muslims. People were not making assets but consuming them, particularly in urban areas. High consumer expenditure did not mean the community was well-off. Referring to the geography of riots, he said that they took place more in the north. Both indigenous and exogenous factors were responsible for Muslim concentration areas in Mumbai. If the members of one community mingled with the people of other communities, they would benefit. But this might not be possible in clusters, he added. Prof. Kundu opined that Muslims had less access to health services, good jobs, credit facilities and TV than the scheduled castes and scheduled tribes.

In his presidential remarks, the secretary general, IOS, Prof. Z.M. Khan, held that the gender development issue was also very important and must be taken care of. It must also be seen whether the Muslims were playing the same role as they were expected to play. He made special mention of the prevailing political environment in which the deprivation of Muslims was practiced and a propaganda against them unleashed.

The webinar ended with a vote of thanks extended by Dr. Amir Ullah Khan.

IOS On-line lecture on The Way to Economic Recovery after the Scourge (September 20, 2021)

New Delhi: A virtual lecture on "The Way to Economic Recovery after the Scourge" was organised by the Institute of Objective Studies on September 20, 2021. Delivered by the noted economist, senior civil servant and the former deputy chairman of the Planning Commission of India, the lecture focused on the current state of economy and the prospects for recovery in the post Covid-19 period.

The lecture began with the recitation of a verse from the Qur'an by Hafiz Athar Husain Nadwi. The secretary-general of the IOS, Prof. Z.M. Khan briefly highlighted the activities of the Institute.

Dr. Amir Ullah Khan, research director of the Centre for Development Policy and Practice (CDPP), who introduced the subject, said that the lecture would offer answers to several questions which the policy makers were grappling with. Describing Dr. Ahluwalia as a development economist, he observed that his advice on economic reforms during the preceding two regimes at the centre was core to India's economic development.

Speaking on the topic, Dr. Ahluwalia held that today economists went by the data that was frequently revised. But phenomenon created by the unofficial sources pointed to a difficult problem that arose as a result of the pandemic. All the estimates made pre and post-pandemic were based on the activities in the formal sector. He exuded confidence that the stagnating GDP at the current level below 7 per cent caused by Covid-19, could bounce back if 18 percent population of the country was vaccinated against the pandemic. Pandemic was an extended shock. Earlier, the government had said that the economy would recover by December, but that did not happen. He held that the situation three years before the pandemic was good. The current situation threw challenges not only before India, but also to the world as a whole. There would be no adverse effect on the world economy but it might affect India considerably. If India wanted to improve, it should start now. Given the situation, the pandemic is likely far from over and that should not halt the efforts at economic recovery, he said.

Dr. Ahluwalia pointed out that the economic growth during the last three years had been sluggish, with a swing between 6 to 4 percent, and the output in 2020 remained at the level of 2019. Calling for the recognition of the changes that were taking place, he said that China was dominating the world economy, particularly in the field of telecommunications and cyber security. Chinese export to other countries had registered a phenomenal growth. In share and high check areas also, China was dominating the world. Compared to China, the United States had lost its economic position as a super power in terms of the GDP.

He called for increasing the volume of export by doing away outdated set of ideas. Instead, India should adopt the policy of openness. It would help the country grow faster. He expressed the confidence that Indian economy would perform better as the country was well-positioned to grow in 2022. Referring to the economic growth that stood at 7.6 percent from 2003 to 2017, i.e., the pre-pandemic period, he said that the Covid-19 vaccination drive, undertaken on a massive scale by the government demonstrated well for the economic health of the country. The economy next year was likely better, particularly in the formal sector. The informal sector, which was not in good shape, would, however, grow with the advancement of the formal sector. Palliatives were needed to put the informal sector back to good health, he added.

Dr. Ahluwalia emphasised the need for reduction of poverty. Significant work on the eradication of poverty should be undertaken to generate employment in the unorganised sector. Social security net should be widened to bring in more and more people under its cover. Similarly, regulatory provisions should be strengthened to secure the interest of the industry. There should be no reason to remove labour regulations. Flexibility for the industry was needed to create a healthy environment for its growth and expansion. He said that the present labour laws discouraged an industry to get rid of labour force without the permission of the government. He suggested that the contract employment should be introduced to allow the industry to engage workers initially for one year with the provision for its renewal at the expiry of the period. He argued how one could continue with the labour when there was a downswing in the economy.

Laying emphasis on better quality of education, Dr. Ahluwalia made special mention of Indian Institutes of Technology (IITs). But he batted pressed for improvement in particular courses linked to the requirements of industry. He called for introducing skill development programmes that were tailor-made to business and industry. This would help produce skill-based labour force. He said that the percentage of hiring people in self-owned business was less than that in the big business. But the employment in businesses had expanded. He also pleaded that the kirana market be modernised. People had certain expectations from the government which should be attended to by ensuring that the economy was rapid with no downslide. He said that the problem started when people's hopes of better jobs were belied. Pitching for better infrastructure like roads, power; etc., he observed that one should have good access to other parts of the country – Improvement in the infrastructure was also important because globalisation was now turning back to the domestic economy. Thus there was the need to focus on the expansion of the private sector. This called for suitable regulations to allow competition in the private sector. He said that there was a consensus to allow domination of the private sector to boost economic growth. There were high expectations from the private sector to generate money. Another route to involve the private sector in the process of development was the Public-Private Partnership (PPP) model, which was more empowering. In this connection, he shared his experience while he was in the government. He said that he suggested partnership with Jawaharlal Nehru Stadium to earn revenue, which was not a conventional approach but it worked. Though one might not be sure of the money to earn from the partnership, yet once it came, it would continue to come.

Dr. Ahluwalia also focused on the climate change around the globe. Expressing concern over global warming, he said that governments' actions to push growth around the world had led to an unsavoury situation. And if nothing tangible was done about it, global climate would be hugely impacted. He warned that India would be among one of the most affected countries if this happened with severe droughts, rising sea level, and irregular rainfalls. He was optimistic that India could achieve seven plus percent growth rate. But this could happen only when India did not articulate a particular policy. He also laid emphasis on asset modernisation programme. This was not asset privatisation. It was for the government to have balanced minimum pay. He asked the government to consider changes suggested by the public by way of discussions.

In reply to a question by Prof. Furqan Qamar, professor in Finance, Jamia Millia Islamia, Dr. Ahluwalia, said that 65 percent grain was available in the country for distribution under BPL programme. He claimed that people under the BPL were provided more food grains during 2004-2011 period. But today, this group was hugely hit. He pleaded that the government should provide some support to this group. He noted that the GDP went down substantially after 2017. On the financial sector, he said that banks had not been able to reduce NPA (Non-Performing Assets). This resulted in writing off loans which implied that loans were bad. It was for the banks to assess the value of these loans. He said that there was no reason why the Reserve Bank of India should be so weak. There needed to be some amendment in RBI Act to make it more powerful. While pitching for serious bank reforms, he said that public sector banks needed more reforms. He called for re-structuring of public sector enterprises. He also noted that informal sector survived due to tax evasion to some extent. However, more leverage should be given to the informal sector. Small and medium industries and micro-enterprises should get more support, he emphasised.

Dr. Ahluwalia remarked that education system had become very poor because of no examinations at all or online examinations. He said that there was a need to spend more money on education and health. It was also the duty of the government to see to it that states were doing good on the count. He laid stress on developing a strong health system for tackling health-related issues in future. Regarding employment, he said that unless it was effectively addressed the demographic dividend could become demographic disaster. Long-term policy should be formulated to provide employment. Strengthening of social security system was equally important, he concluded.

The chairman of the IOS, Dr. Mohammad Manzoor Alam in his concluding remarks, raised the question of a big gap between haves and have nots. He said that poverty among economically backward sections had only deepened. To this question, Dr. Ahluwalia, replied that due to growth of 8 per cent GDP, the employment increased during 2004-2011 period. Employment was thus linked to growth. This was also a fact that the poor did not get the benefit of growth. But still, the increase in growth was a must, he added.

While Prof. Z.M. Khan wrapped the proceedings of the lecture, Prof. M. Afzal Wani, Dean, School of Law, Guru Gobind Singh Indraprastha University and vice-chairman, IOS, proposed a vote of thanks.

Trust in Financial Market should be maintained, hence need more transparency

Dr. Montek Singh Ahluwalia

New Delhi: September 20, 2021: Noted economist and former Deputy Chairman of Planning Commission, Dr. Montek Singh Ahluwalia, on Monday expressed hope that if 80% of India's population is vaccinated, it may make a pitch for economic growth which has now stagnated below 7% due to the pandemic.

Participating in a webinar on "The Way to Economic Recovery After The Scourge", organised by the Institute of Objective Studies, New Delhi, Dr. Ahluwalia said that during the last three years, the economic growth has been slow and pegged between 6% to 4% and the output in 2020 was at the same level of 2019. "It's time we start to rethink about our approach and actions to be taken as, pandemics are going to be common," he added.

To realise this, Dr. Ahluwalia said one should look at the economic growth during the pre-pandemic period, which was 7.6% from 2003 to 2017 and slipped later. "With the vaccination drive undertaken by the government of India, the country may position itself to grow in 2022," he stated.

Measures to be taken: Stating that he was not a "soothsayer"", Dr. Ahluwalia listed out a few areas which needed to be strengthened for the economy to boost. One such subject was the public health system which should be further consolidated to face any other pandemic in future. He said that India needs proper planning in view of global changes and emerging technology-based business culture.

He also discussed the Chinese HiTech approach to emerge as a major global player and in that context, gave the example of USA which lost its position with regards to its share of GDP.

The West feels threatened by China because of its dominance in telecommunications, cyber security among others, which has resulted in a pushback, " Ahluwalia said.

He also referred to the present labour laws of the country which, according to his opinion, discourages employer.

He advocated the idea of introducing contract employment, which will be for just one year and has to be renewed. "You need to have flexibility. How does one continue with the labour when there is a downturn in the economy?"" he asked.

On export, Dr. Ahluwalia stressed the need to bring in dynamic changes in our export policy in view of global changes and technological advances. Increased export enhances the industrial activities and issues of employment, which can have a direct impact on our GDP.

Dr. Ahluwalia had a word of praise for the educational institutions, which he said were excellent. However, they need to focus more on providing education that can churn out skill based labour force.

Whilst dealing with government approach towards PSUs, he tried to clear some misunderstandings towards the recent actions being taken by the Government of India and explained the concept of Public Private Participation. Due to paucity of time, he could not expand his argument, which was well attended by participants who posed several important questions.

IOS online Lecture on "Impact of Changing Lifestyle due to Covid-19 Pandemic in India and its Management in Islamic Perspective" (September 25, 2021)

New Delhi: An online Lecture on "Impact of Changing Lifestyle due to Covid-19 Pandemic in India and its Management in Islamic Perspective" was organised by the Institute of Objective Studies on September 25, 2021.

The lecture formally commenced with the recitation of a verse from the Quran by Hafiz Athar Husain Nadwi. Prof. Haseena Hashia, Assistant Secretary General, IOS, who introduced the topic, said that this was the first lecture of a series of four lectures. Briefly tracing the history of Covid-19 pandemic, she noted that it was reported in China for the first time in December 2019 and again in March 2020, infecting about one lakh population. This was the sixth public health emergency in known history. Being the second most populated country, India suffered severely. Referring to severity of the pandemic, she said that about 50 million people working in big cities were forced to move to their home states like U.P., Bihar, West Bengal, etc. After Independence, it was the second largest migration of people from one part of the country to the other. The movement of such a large population affected education not only in urban, but also in rural areas. Covid-19 caused isolation, fear and uncertainty among people. There was mass unemployment, anxiety and depression all around. She said that similar conditions prevailed during the second wave of the pandemic, which added to the sufferings.

Delivering the lecture, head community development programme of the International Institute Islamic Thought, USA, Dr. Mamoon Al-Azmi observed that the Covid-19 brought in its wake challenges as well as the opportunities. It did have impact on human life but it was mostly negative. Driving home his point, he said that in Surah Baqarah, Allah talked about five trials and tribulations. These were similar to the examinations for going to a higher status. *Tawakkul* (Trust in God) was the key to understand the vagaries of nature. Covid-19 pandemic was also one such calamity that struck the people irrespective of geographical borders. He also referred to Surah *Al-Fajr* to buttress his point that 'He tests man by unleashing the scourge of punishment.' In such times, Qur'an and Hadith were there for their guidance. Surah *Al-Ma'arij* warned of the consequences of disobeying Allah. Covid-19 pandemic could be understood in terms of the fury that nature demonstrated in the form of epidemics. He said that Nature was sending human beings a message with the common pandemic and ongoing climate crisis.

Dr. Azmi pointed out that nature was taking revenge on human beings due to number of gross mistakes, made deliberately or otherwise. This was caused by unmindful pursuit for material gains. As far as Muslim Ummah was concerned, it should not live in fear. Instead, it should live in faith in Allah, who is the final and sole dispenser. Commenting on the general impact of Covid-19, he said that it meant an end of normal life and socio-cultural living. It also caused great risk to health, life and well-being of the people. Fear, uncertainly, instability, job loss and bankruptcy impacted the world as never before. He noted that the tourism industry alone suffered a loss of about two billion dollars globally. During this period, poverty and inequality became acute. Referring to personal impact and challenges of the pandemic, he said that people were forced to remain indoors 24/7 generating a feeling of imprisonment. Owing to the lack of physical exercises, several ailments gripped them. Similarly, work from home created unsuitable work environment. No relatives or friends visited during the pandemic, which led to the feeling of isolation. Physical and mental health risks increased due to aloofness. He held that this was a kind of imprisonment and health emergency.

Dwelling on personal impact and opportunities, Dr. Azmi said that the pandemic offered an opportunity to be close to the family, rather than a chance to be closer. Flexibility of work time was another advantage of work and rest. It also saved the community from travel fatigue and financial cost of travelling. This was an opportune time for self-development. Explaining the family impact and challenges, he said that families were not used to being together 24/7 for a long time. Children suffered loss of education due to closure of schools and missed friends. Parents were overwhelmed with restless children not knowing how to keep them busy. Couples got into fighting with domestic violence cases on the rise globally usually for 24 hours. Millions of jobs were lost, which led many to poverty. With regard to the impact and opportunities to families, he said that living 24/7 with spouse and children offered them a chance to bond and catch up with their lives. Parents could teach children their values and culture. This was an extra-ordinary opportunity to unite the family. They could share joy and sorrow of Covid-19 together, he noted.

Dr. Azmi remarked that the Covid-19 pandemic threw social challenges as people felt disconnected in the absence of visiting family and friends. Besides, social and emotional isolation among people impacted their lives. If the social impact of the pandemic created a host of problems before the people, it also offered several opportunities. These included distances and separation that created sweeter relationship. He said that social isolation gave space for evaluating relationships. Relationships that were strained could be recovered with the passage of time. Social conflicts were easily avoided under the threat of Covid. Referring to economic challenges, he said that the quarterly loss of the GDP in June 2020 stood at 24.4 percent while the quarterly growth in September that year contracted by 74 percent. There was drastic cut in export-import causing business losses. According an estimate, the lockdown cost a huge loss of 4.64 billion dollars for a day. Similarly, the informal sector, which employed 70 per cent poor, registered a huge loss of jobs. Remittances sent by Indians abroad suffered a loss of 83 billion dollars. Commenting on the opportunities resulting from the economic impact, he said that reduced economic recoveries made restructuring much easier. As the economy recovered, new jobs were generated. Oil prices dramatically fell, saving US dollars as import costs. RBI and the government were offering stimulus packages for growth. Another boon in disguise was reduction in cars and flights that reduced the impact of pollution, he noted.

Speaking briefly on international impact of Covid and the challenges lying ahead, Dr. Azmi observed that export of goods and services suffered 32 percent loss while foreign exchange earnings fell by 76.3

percent (National Council of Applied Economic Research). During the first quarter of 2021, 14.5 million jobs were lost in the tourism industry. International impact also yielded opportunities that included better infrastructure and logistics. This also led to the simplification of various laws, including labour laws. A single window clearance could enable to develop a robust manufacturing ecosystem to help attract foreign capital, latest technology, and to create jobs and boost exports. Explaining the Islamic perspective on managing the impact, he said that only the learned knew the secret of the universe. Quoting Quran and Hadith, he said that only those who were patient would receive their rewards, unabridged, without limit. Ease and difficulty were rotating. He observed that when Allah desired good for someone, He tried them with hardships. All the prophets went through trials. Adam was tried through the Satan in Jannah. Noah was tried by the rejection of his people and his disbelieving son and wife. Abraham, Ayub, Daud, Musa, etc., also faced such trials, he noted.

Dr. Azmi presented a plan of action to face the challenges caused by the pandemic. He advised against giving up hope on the Most Merciful, Allah. Trial must be used to build resilience knowing that it would pass. He asked for making pragmatic planning to face challenges. Alliances must be sought and secured to support the plan. He advised to rely on Allah's help while implementing the plan. While examining the opportunities, confidence, competence, and courage should be strengthened to overcome difficulties. He also focused on the five. The 'D' formula to face challenges. Nature had taken revenge on humanity. There were public service, commercial service, community service and personal service. When the problem came, it should be examined first. Quoting Mother Teressa, he said that one could not solve the problem alone, when a problem came, it gave the opportunity for the family to remain together. Husband should be the leader and the wife should work as the deputy leader, and both of them should support each other emotionally. One should not forget that God is merciful and also revengeful. One needed to be a helpful human being. He observed that problems created opportunities too. He concluded by expressing his opinion that, for him, Covid was man-made because it was being developed in a laboratory. He also said that social harmony and economic growth should remain in focus.

Presiding over the function, the Secretary General, IOS, Prof. Z.M. Khan, held that money was also a factor in lockdown times as those who possessed it, properly planned it. Referring to knowledge, he said that it could not be bifurcated as knowledge was after all knowledge. Islam asked the man to learn for living in his time.

Family as an institution was very important in Islam and one had the time to live in family. Many differences were sorted out when one lived in family. Covid period provided an opportunity for reading because a lot of time was available. He urged Dr. Azmi to be more involved in the activities of the Institute. He said that the IOS concentrated on research in conceptual field as well. A translation bureau was in place to get IIIT books translated and published into different Indian languages. He looked forward to the future cooperation and coordination with him.

The lecture ended with a vote of thanks proposed by Prof. Haseena Hashia.

A two-day National Conference on "Inter-Religious Understanding: Its Implications for Human Rights" was jointly organised by the Institute of Objective Studies and Punjabi University at Patiala (September 29-30, 2021)

Inaugurated by the Vice-Chancellor of Punjabi University, Prof. Arvind, the inaugural session was graced by the Chancellor, Central University of Himachal Pradesh, Prof. Dr. Harmohinder Singh Bedi as special guest, Prof. Shivani Sharma from Chandigarh University, Punjab and Dr. Firoz Mohammad, Executive Director (Liberal Arts, Humanities and Creative Practices) Chandigarh University as guests of honour. While Prof. Dr. Mohd. Habib, Head, department of Religious Studies, Punjabi University, presented the welcome address, Prof. Hamidullah Marazi, Convenor, IOS Forum for Inter-Religious Understanding, Delhi, introduced the theme. In his key-note address, Prof. M. Afzal Wani, Professor of Law & Director Coordination, GGSIP University, Delhi, and the Vice Chairman, Institute of Objective Studies, observed that there was a deep link between humanity and religions. The importance of the conference should be understood in that context.

Inaugurating the conference, Prof. Arvind expressed happiness that the university was hosting a national conference on the subject that assumed much importance in the present context. Prof. Harmohinder Singh lauded the efforts of the organisers to discuss the issues related to inter-faith understanding. He said that his university would explore possibilities to hold such a conference. Prof. Shivani Sharma, explained the revelations and *anubhuti* in the light of Vedic practices. Dr. Firoz Mohammad held that religions were made to spread the essence of humanity. He emphasized the need for holding dialogues and conferences to promote better understanding among religions. Presiding over the session, Prof. Syed Jamaluddin, Director, IOS Centre for Historical and Civilizational Studies, held that such conferences should be regularly organised to help dispel misconception about different religions. He said that the IOS had been holding such dialogues to negate the misunderstanding among religions.

The inaugural session ended with a vote of thanks by the dean, academic affairs, Punjabi University, Prof. B.S. Sindhu.

A view of speakers in the inaugural session

A view of the audience

Business Session I

Chaired by Prof. Mohd. Roslan Mohd. Noor, Malay University, Malaysia, the session focused on inter-religious understanding and religions. Prof. Hamidullah Marazi moderated the session. The speakers of the session were, Dr. Daljit Kaur, associate professor, department of History, Mata Sundri College for Women, University of Delhi, Delhi, Bhupinder Singh 'Bashar' Kolkata. While the former spoke on "Sikhism: Tapestry of serenity and valour", the latter focused on "Inter-religious understanding and dialogue for promoting humanity". Dr. Naseem Gul & Ms. Ujala Amin from department of Islamic Studies, Baba Ghulam Shah Badshah University (BGSBU), Rajouri, Jammu & Kashmir spoke on "Ethical philosophy of Sufis: A nourishment to the communal harmony in Kashmir", while Dr. Nazeer Ahmad Ab. Majeed, assistant professor, K.A. Nizami Centre for Quranic Studies, Aligarh Muslim University, Aligarh, spoke on "Human rights as a mediator of interreligious understanding".

Business Session II

The second business session focused on inter-religious dialogues for promotion of humanity and justice, and was chaired by Prof. Ishrat Alam of AMU. Prof. Hamidullah Marazi moderated the session. While Dr. Md. Abrarul Haque, guest faculty (Islamic Studies), MANUU, Lucknow Campus, spoke on "Fr. Thomas Michel's Approaches to Christian-Muslim Dialogue", Dr. Poulosiju K.F., assoc. professor, Pontifical Institute of Theology and Philosophy, UC College, Ernakulum, Kerala, presented the paper on "Dialogue to Enhance Humanity: The vision of Pope Francis in FratelliTutti". The third speaker was Gulzar Ahmad Bhat, doctoral candidate, department of Islamic Studies, Islamic University of Science and Technology Awantipora, Kashmir, who focused on "Social Justice: A Key to Communal Harmony". He was followed by Waheed Ahmad Ahanger, Ph.D. student, School of Education, Central University of Kashmir, Green Campus Ganderbal, J&K and Dr. Firdous Ahmad Sofal, assistant professor in the same university. Both of them spoke on "Religion and Social Justice: Role of Major Religious Schools in Fostering Social Justice in India". While Dr. Amita Valmiki, assoc. professor and head, department of Philosophy, Ramniranjan Jhunjhunwala College of Arts, Science and Commerce, Mumbai, discussed on "Dialogical Communication between the Religious Traditions of Asia and Africa", J. Peter, research scholar, Christian Tamil Studies, Madurai Kamraj University, Madurai, T.N., spoke on "Social Justice in Christian Perspective". The last speaker was Nazir Ahmad Sheikh, research scholar, Philosophy, Barkatullah University, Bhopal, who focused on "Ghazali's View of Human Dignity".

Day 2

Business Session III

The third business session focused on dialogue in action for justice and protection of human rights, was chaired by Prof. D. A. Gangadhar, professor and former head, department of Philosophy & Religion, Banaras Hindu University, Varanasi. Moderated by Prof. Hamidullah Marazi, the session commenced with the talk of Dr. Mohammad Habib on "Islam and Inter-religious Understanding: Its Implications to Human Rights". He observed that Allah's words were revealed through the Prophet (PBUH) and preserved in the Qur'an. Religion was one and its aim was to uplift human beings by valuing human rights. The Qur'an says, "Unto you your religion; Unto me my religion." There was no compulsion in religion. If Allah wanted to make everyone as faithful to Him, nobody on earth had the courage to prevent Him. But He did not. This simply meant that He left it to people to decide their faith or otherwise. Quoting freely from the Qur'an, he said that people's opinion would certainly differ in matters of faith. Unfortunately, Islam was misquoted in the context of human rights. Islamic values and its identity had been presented by the western scholars in a biased manner. He concluded by noting that the faith was a matter of choice. Dr. Javed Nadeem Nadvi, department of Arabic, MANUU, Hyderabad, spoke on "Islam in a Multi-faith Society: Adherence with Rights and Respect". He said Allah is merciful and compassionate. He introduced His Prophet (PBUH) as *Rahmat-ul-Lil Alamin*. Referring to the Prophet's (PBUH) treatment to people, he said that He pardoned Haris despite his unpardonable misdemeanours. He also pardoned Suraaqa. Sulah Hudaibiya (Treaty of Hudaibiya) was the best example of engaging with the enemies in the most humane manner. His behaviour on the warfront also did not have a parallel in the history of mankind. Jews tied up with the tribals of Madina to attack Muslims. In the battle that ensued, Jews were forced to withdraw. All the withdrawing forces were treated humanely. Christians were never forced to embrace Islam during the rule of Second Caliph, Hazrat Umar Bin Khattab, he added.

Dr. Hassan Shareef, assistant professor and head, PG Department of Islamic Studies, SAFI Institute of Advanced Study, focused on "Peaceful Coexistence in Indian subcontinent: Lessons from Madina Charter of Prophet Muhammed". He said that the Charter was an example of unity in diversity. It was the first written constitution of the world in a country that was composed of fifty percent tribes. It also created a platform to promote peace, love and compassion among people of diverse ethnicity, he noted. While Iymen Nazir, Ph.D. scholar, department of Religious Studies, Central University of Kashmir, presented the paper on the "Rights of Religious Minorities in India Through a Constitutional Perspective", Dr. Afroz Ahmad Bisati, assoc. professor, department of Islamic Studies, Islamic University of Science and Technology, Awantipora, Kashmir, focused on "Cultural Diversity Under the Frame of the Indian Constitution". Dr. Afroz said that the provision in the IPC had been made to give protection to the minorities. The National Commission for Minorities was in place to deal with issues that affected minority rights. Article 30 of the Constitution outlined each category of the minorities defined as to who fell under the minorities category. She held the anti-conversion law as anti-constitutional as Indian Constitution guaranteed religious freedom. Calling India's multicultural diversity unique, she said that inter-faith dialogues should be held to cement the bond of brotherhood and communal harmony.

Dr. Masihullah, guest teacher, department of Islamic Studies, Jamia Millia Islamia, Delhi, presented his paper on "Meesaq-e-Madinah". He said that good words had been used for Jews and Christians in the Qur'an. It also commanded the faithful to mete out decent treatment to non-Muslims. Meesaq-e-Madinah (Charter of Madina), which had 47 points, was the first written agreement. He noted that 50 per cent Muslims from Mecca came to Madina. An agreement was reached with the Jews, rejecting the Western theory of 'King can do no wrong'. Under the Meesaq-e-Madina, the Prophet (PBUH) was the last authority to decide contentious issues. He opined that Hindu-Muslim unity could create a good society. Dr. Nazir Ahmad Zargar, assistant professor, department of Religious Studies, Central University of Kashmir, Kashmir, held that the Shari'ah was based on the benefit of all. According to him, Shari'ah had 6 objectives. These were – life, property, progeny, honour, preservation of age and preservation of Al-Aql. Sharia commanded the faithful to avoid certain indulgences. Murder of a human being had been treated as crime, he added. Prof. Jashpreet Kaur Sandhu from Punjabi University, Patiala, underlined the need for mutual understanding among different faiths. She said that truth was multi-faceted and multi-dimensional. Referring to six Sikh gurus, she said that they treated all the religions as divinely inspired. The founder of the Sikh faith, Guru Nanak Dev held inter-faith dialogues. His teachings were preserved and encouraged in Gurbani. She observed that God is not specific to any particular religion and thus human interaction was necessary for preventing violence and ensuring peace all over the world.

Presiding over the session, Prof. D.A. Gangadhar said that Islam was one of the strongest religions of the world. This raised the question as to how to manage religious plurality. Calling for world peace, he held that the problem of human rights was of utmost importance today. The crux of the matter was *'Kuchh kahiye; kuchh suniye'* (Say something and listen something). One could never nurture religious intolerance if he followed his religion in letter and spirit. He briefly referred to the classical cults in Hinduism-the Vaishnawism and Shaivism. There were two aspects of a religion – practical and theoretical. He was all praise for Islamic sufism and noted that it was the practical aspect of Islam. Speaking in the Indian context, he said that pluralism was deeply rooted in society and the country. He concluded by observing that no effort should be spared to take the country on the path of development.

Business Session IV

Devoted to the theme Inter-Religious Understanding in Islam and Indian Religions, the fourth session was chaired by Prof. Abdul Rashid Bhat, Central University of Kashmir. Dr. Nazir Ahmad Zargar moderated the session. Prof. Aleem Ashraf Khan, former head, department of Persian, Delhi University, was the first speaker who focused on "Traces of Tolerance in Persian Malfuz Literature". He said that India had been a centre of rational and intellectual sciences. Teachings of sufis, particularly, Hazrat Nizamuddin Auliya Mahboob-e-Ilahi, always inspired peace and amity in society. He was a true pir. Sikh gurus also spread the message of love and peace. He observed that Din-e-Ilahi was aimed at harmony and religious tolerance. He was followed by Dr. Ashraf Amin and Ms. Ujala Amin, guest lecturer and doctoral candidate respectively, in the department of Islamic Studies, BGSB, Rajouri, who spoke on "Revisiting Socio-religious Harmony: A Study of Sufi-Saint Traditions of India". Both of them insisted that religion was the lifeblood of the Indian sub-continent. Unlike western countries, secularism never took deep roots in this part of the world. Ignorance of other religious was the main cause of misunderstanding that permeated today. They said that conflicts were orchestrated to make political gains.

Sajad Ahmad Kumar and Dr. Rafique Anjum, research scholars, department of Islamic Studies, BGSBU, presented their paper on "Religious Pluralism and Peaceful Coexistence: An Islamic Perspective". They noted that religious pluralism and peaceful co-existence went hand in hand. Diversity was the law of nature, and multi-culturalism formed a part of it. There were a number of instances in history when clashes among different faiths took place, they remarked. Mohammad Osama, research scholar, Religious Studies, Punjabi University, who spoke on the "Rights of the Minorities and their Protection in an Islamic State", argued that Islam was the first religion to give minorities their rights. Minority rights formed a place in the Charter of Madina. This could be understood in the present context, he observed. Ab. Majeed Ganaie, Ph.D. scholar, department of Religious Studies, Central University of Kashmir, presented his paper on "Inter-religious Understanding in Indian context: Dialogue a way forward for the promotion of humanity". He laid stress on the collective recognition to promote the rights of minorities. Ashaq Hussain Hijam and Dr. Firdous Ahmad Sofa, Ph.D. scholar, School of Education, Central University of Kashmir, Ganderbal, focused on the "Place and Promotion of Inter-religious Understanding with Special Reference to Various Major Schools of Philosophy". Dr. Muied-ul-Zafar, assistant professor, department of Religious Studies, Punjab University, discussed "Inter-religious Understanding in Kashmir during the Sultanate Period". He said that a new culture emerged during the Sultanate period. There was religious tolerance and understanding among the people. Islam took care of the poor, he noted.

Javad Ahmad Mir and Prof. G. N. Khaki, research scholar at CCAS, University of Kashmir, focused on "Dara Shikouh and his Model of Hindu-Muslim Inter-religious Understanding: An assessment" and Contours of Religious Co-existence and Cooperation in Islam". In their presentations, they said that Dara Shikouh was the believer of Tawhid. He was a Sufi and belonged to the Qadariya order of Sufism. Baba Lal Das' teachings influenced a sizable population. Dara Shikouh rejected exclusivism which pitted orthodox sections of Islam against him. It was Dara who got translated Vedas and Upanishads into Persian, they added. Ms. Ira Leo, & Rifat Khan, research scholars, Lovely Professional University, Jalandhar, who were the last speakers of the session, spoke on "Inter-religious Marriages and their Implications". They said that marriage had been a universal social institution. The contemporary hostilities were politically motivated. They made special mention of Articles 16 and 21 of the Indian constitution.

Valedictory Session

Delivering the valedictory address, Prof. Hamidullah Marazi pointed out that religion had two dimensions – the role of sages and religious communities. A platform to promote religious tolerance was needed. Similarly, ideological dialogues should be regularly organized to maintain peace. Clerics, gurus and sufis could play a significant role in the restoration of peace and communal harmony. Keeping this in view, Sheikh Farid reached out to people belonging to other faiths. He said that Islam laid emphasis on peace and spirituality. Issues involving Hindus, Muslims, Sikh and Christians should be discussed in secular and constitutional perspective, he stressed. Presiding over the session, Prof. Afzal Wani said that the two-day conference was historical as well as demanding because of the paradigm shift in religious faith at this juncture. Seers and saints had been preaching harmony among followers of different faiths. The paradigm shift in the realm of religion suggested that faith should be rational with the purpose to reach the essence of it. As the sustainable development was much talked-about, sustainable thought was equally necessary. There should be no lopsided thought. He observed that since there was no prophet to reveal things, the responsibility now devolved on intellectuals to do so. Human history was witness to it that there were avatars and gurus who did their every bit to bring back things. This was repeated by the scholars. He said that religion was there to promote human dignity to teach and give respect to others. If God says to give respect to human beings, so give it to them. He remarked that if the shift took place in human mind, the objective of the conference would be fulfilled. He reminded that religion would lose its meaning if it does not promote human dignity.

Dr. Mohd. Habib, while lauding the activities of the IOS in reaching out to the minorities, depressed and deprived sections by way of research, survey, study and dissemination, said that it might be a small world but the vision was broad. It was like an oasis in the desert, an Anasagar in Ajmer, and Amrit in Amritsar. Dialogues and understanding among different religions must be a continuous process. He observed that humanity, tolerance and universal brotherhood were vital for human rights. Human rights and humanity were ingrained in all the religions, he concluded.

Prof. Syed Jamaluddin observed that Guru Nanak Dev laid emphasis on universality in his teachings. On this occasion, he read out a 6-point resolution which was unanimously adopted by the participants. The resolution read as:

1. There should be regular programmes on inter-religious understanding at various places of Punjab organized by the Institute of Objective Studies in collaboration with GGS Department of Religious Studies, Punjabi University, Patiala.

2. A special course should be included in the educational curricula to teach common core values of harmony, peace and dialogue among Indian religions.

3. A committee comprising of scholars and academics should be formed by the Institute of Objective Studies, New Delhi, and Department of Religious Studies, Punjabi University, Patiala, to regularly monitor the pace on inter-religious programmes.

4. Punjabi University, Himachal University and Chandigarh University should form a core group to carry on regular programmes on inter-religious dialogue in collaboration with the Institute of Objective Studies. Religious scholars and community leaders of all the communities should be invited to the programme.

5. GGS Department of Religious Studies, Punjabi University, should be made a nerve centre to carry on such activities, and a core committee comprising of the representatives of the said universities who participated in this conference, should be formed to take ahead the programmes on inter-religious dialogue.

6. Urdu is the beloved daughter of Punjabi. Therefore, efforts should be made in collaboration with Punjabi University to revive literary and cultural ethos of Urdu in Punjab.

At the end, the registrar of the Punjabi University, Prof. Ravinder Kumar Kaushik, extended a vote of thanks to all the participants.

IOS Kolkata Chapter organises Panel Discussion on "Economic Empowerment of Muslim Women: Issues and Opportunities" (October 30, 2021)

Summary

This panel discussion organised by the Institute of Objective Studies, Kolkata Chapter, on October 30, 2021, looked into the need of Muslim women to be economically empowered. The panelists, mostly women of repute, representing different walks of life and society, spoke freely on the hurdles before the society towards economically empowering Muslim women. Ms. Madiha Ahmed, a socio-cognitive development specialist, emphasised that women must be empowered from within their family first. This point were reiterated by all other panelists with substantial experiences from their personal lives. The panelists spoke on others issues like the hurdle of social norms of dominant patriarchy and that from the religious perspective. Mrs. Rukhshi Elias, founder of Taajira-The Businesswomen, laid emphasis on the importance of identifying skills and connecting women to each other and groups through social media platforms. The panelists shared their opinions on the opportunities for women in the 21st century. The following is the report of the proceedings.

Moderator: Mr. Abdul Basit Ismail, Coordinator, IOS Kolkata Chapter

Panelists:

Madiha Ahmed TEDx Speaker, Entrepreneur, Podcaster at The Edu Doctor and Dell Aarambh Consultant	**Muhammed Shahjahan** Vice Principal, Jibreel International School (JIS), Kolkata
Prof Ghazala Yasmin Assistant Professor at the Department of Journalism and Mass Communication, Aliah University	**Nuzhat Zainab** WBCS (Exe.) Secretary, West Bengal Urdu Academy, Kolkata

Rukshi Elias Founder Taajira-The Businesswomen	**Shabana Ejaz** A Journalist Chief Reporter, Sahara Samay News
Prof Shabina Nishat Omar Officer on Special Duty (OSD) Education Directorate, Dept. of Higher Education, Govt. of West Bengal Professor and Head, Department of English at A.J.C Bose College	**Saira Shah Halim** Social and Peace Activist, TedX Speaker An educator, a writer, a theatre personality, Image and brand consultant
Mohammed Safi Shamsi Independent Journalist A digital creator and content writer An educator and a motivational speaker	**Dr Noorus Sabah Ismail** Member, Madrasah Service Commission, Govt. of West Bengal Director, Jibreel International School, Kolkata A scholar, an educator and a columnist

Abdul Basit Ismail

In his opening remarks, Mr. Abdul Basit Ismail underlined the context and background of economic empowerment of Muslim women in India. He outlined the shape of the discussion because of the sensitive nature of the topic. There have been talks globally on the empowerment of women in general but the when it comes to Muslim women, this has seldom been brought to discussions in the public domain. He clearly emphasised on the need of such a discussion at this hour and this discussion shall pave the way for several others in the time to come.

Madiha Ahmed

Initiating the discussion, Ms. Ahmed spoke about the role of family in empowering women, substantiating it with references from her personal life. She emphasized on the word 'ma' and pointed out the significance of this particular word in an individual's life and the role that a mother plays in shaping the lives of her children. According to Ms. Ahmed, empowerment amongst women comes from this very figure.

During the course of her discussion on personal experiences and how she has risen above all to achieve where she presently is, Ms. Ahmed stressed on the point that before looking for external resources and factors that could lead us to empower women, one must consider two very important internal factors. First, the search for an identity, which should be seconded by mothers taking the challenge for change.

Muhammed Shahjahan

After a befitting prologue to the discussion, Mr. Shahjahan anchored the discussion further with his perspective. He began with a famous quote from Jane Austen's novel, Pride and Prejudice: "It is a truth universally acknowledged, that a single man, in possession of a good fortune, must be in want of a wife", and redirected the discussion to it roots, stating the it is here where the 'pride' lies and so does the 'prejudice'. He drew the panelists to imagine 'a single woman' in possession of a 'good fortune' and emphasised how a shift in thought is essentially important for the empowerment of women.

Drawing references from the World Development Report 2012 by World Bank Group, he presented the grim reality of gender biasness and how gender equality is inextricably linked with economic development. Referring to another work by World Bank Group 'Voice and Agency: Empowering Women and Girls for Shared Prosperity', he brought out the nature of constraints women continue to face globally and how this could give a clear picture of a more tragic state for Muslim women. He described Muslim women from the social perspective and how this calls for a stringent adherence to social norms by the women. He mentioned that these norms derive their stimulus from the religious constraints and this is the reason why talks on economic empowerment of Muslim women by so-called liberals meet strong criticisms from the more orthodox groups, and as a result they never materialise.

He expressed "it's time to talk about men and women together" and emphasised on the need for our religious leaders to talk in public and invalidate the supposedly rigid socio-religious norms mandated upon women and concluded that if achieved, it would be a strong step towards a progressive society with economically empowered women.

Prof. Ghazala Yasmin

Prof. Yasmin led the panel to an insightful discourse when she spoke about the policies of the central government, and compared the plight of Indian women to their counterparts in foreign countries where they hold a greater population in different fields and are able to show their skills and prove how economically empowered they are. Heading as challenging a department as Journalism in higher education, she is well aware of the inhibitions, myths and notions of girls taking up this field and the social disapproval that comes with it. She, however, felt encouraged by the fact that there has been a considerable change in the perspective, and with a discussion of this nature, it will further advance the community towards a more rational approach when it comes to giving choices to women in terms of making a career.
She stressed upon the need to value our own resources and opined that one must look for the resources and opportunities oneself. The community must rise above the perceived notions and stereotypes. She stressed on giving up the victim-feeling and rise to the occasion in search of an empowered identity.

Rukshi Kadiri Ilyas

Speaking on the opportunities for women in the 21st century, Mrs Ilyas, stressed on the fact that women need to identify a skill within themselves. The skill could as simple as being able to cook a delicious food, or being good at local art & craft work or anything of the like. One of the gifts that the 21st century world has placed at the disposal of people is the power of social media, and this can be a great opportunity to use it as a platform to connect people to the skills women possess. This, in turn, can be monetized to empower the women on the economic front. Citing instances from her initiative 'Taajira-The Businesswoman', she presented how an idea of this sort can foster success stories for many because this is exactly what she has been experiencing at Taajira.

According to her, there are three kinds of people in the society, viz. thinkers who promulgate the idea, people with solutions-the scholars and researchers, and those like Mrs. Ilyas who work for the solutions. It's time that the thinkers join hands with those who have solutions who, in turn, must unite to strengthen those who work on the solutions. This calls for local-level social groups who could help create awareness and take women in progressive and protective folds to help them achieve financial independence.

Prof. Shabina N. Omar

Empowerment must start from villages or from the backward class of the society. This significant statement by Prof. Omar added a new perspective to the discussion. It is the rural areas that need our attention because it is here where there is a lack of education and awareness and where economic empowerment is mostly felt and needed. She shared her personal struggle with the society on the socio-religious front to infer three significant things that factors for the oppression on women – adversity, patriarchy and the lack of self-confidence. She opined that one must "recognise the adversities and negotiate with them, smash the patriarchal belief and develop self confidence in order to become economically empowered".

Lending her agreement to Mrs. Ilyas, Prof. Omar advanced it further by laying emphasis on the idea of creating opportunities and connecting skills to empower women. This, she stressed, could be achieved not by education alone but by following it up with a vocational training. Only after one can strengthen the cause, further help, support and show solidarity, which could be on the lines of 'each one help one'.

She felt strongly disappointed at the community's approach of being judgmental and recommended a change in attitude, which is more sensitive and understanding and where one is led to stop judging and start thinking. The change in attitude is needed in both men and women to bring a harmonious living in a progressive community where one feels proud to say "Beside every successful man and woman, there's a woman and a man respectively."

Mohammed Safi Shamsi

'As a journalist, it is a great opportunity for me to speak as I am always on the listening side,' started Mr. Shamsi. In his opinion, economic empowerment of women cannot be thought of as an isolated entity. It has to be discussed in the context of the societal situations. He seconded Prof. Omar's view on the patriarchal orientation of society, and added that this alone is not the only issue but there are psychological issues as well. There's rigidity against views that seek reform, as a result of which, a change in perspective cannot be envisaged so easily.

Through various observations that he shared on the floor, he tried to establish that we have created layers within the society on the basis of language and the background women come from. Absence of awareness with regards to policies related to gender equality is another hindrance towards women empowerment. He tried to hint at both the policies of the government as well as those that are essentially religious which are often misread and misinformed. He strongly called for a gender neutral ecosystem, use of technology and general guidelines for women which are integral towards fostering a community with economically empowered women. However, he mentioned that the entire effort could still be proved futile in its realisation in the absence of a vision. He explained that a mere thought on economic empowerment would not have a lasting and far-reaching impact unless we know where exactly do we want to take the economically empowered women.

He continued that there must be a vision for opportunities, and that one must not rush after jobs but explore the opportunities well. He also stressed on the fact that we must draw parallels before women so that they may have choice over a role model for themselves. His concluding remarks drew references from the findings of World Development Report, 2012, which recognises the expanding of women's ability to make decisions and take advantage of opportunities as the key to improving their lives as well as the world we all share.

Nuzhat Zainab

Being a civil servant, with a wide range of experiences that she has gathered by virtue of several postings in her tenure, Mrs. Zainab was very candid in her opinion. She shared her experiences of working with bidi workers in South 24 Parganas and stated that it was mostly women at work rather than men but the problem was that they did not have any role in deciding where their hard-earned money should go, which was entirely decided by the men at home. So, it not only important to connect women to work to financially empower them but also empower them in matters of taking decisions without which this whole discussion on empowerment is meaningless.

He referred to Prof. Omar's view on thinking of empowerment from rural lines, where it is mostly needed. Of course, the task would not be an easy one as there are various fronts on which the work has to be done, but she was of the opinion that this should be an important component of the objectives of empowering women on the economic front. She also suggested if the spectrum of the discussion could be broadened further to include the experiences of women from the non-Muslim community to draw parallel and analyse what could more feasibly be planned to realise the objective of the discussion.

Shabana Ejaz

Ms. Shabana's personal story of the struggle and hardship and the consequent success in journalism, surfaces the social disapproval of a girl's choice of a career for herself, particularly that of a Muslim girl. Change in the mindset from irrational to one that is broad, accommodative, and rational is what, according to her, a fundamental aspect in the economic empowerment of Muslim women. She described how the community still engages itself in all-men night-long 'jalsas' without any reformative outcome. It is time the nature and content of such 'jalsas' are transformed or they are quashed altogether.

She stressed on creating awareness in localities through local groups. She is of belief that traditions and customs are passed down through generations in ghettoised localities, hence, it is important to create awareness at this level. She proposed that measures should be adopted in creating groups at local levels with the sole motive of creating awareness among women on their civil rights, religious rights and the opportunities before them that they can utilise to empower themselves.

Saira Shah Halim

From the discussions and opinions shared by most of the panelist, it was clear that patriarchy is a major roadblock in developing a progressive mindset but Mrs. Halim added a twist when she said, "Patriarchy is deep rooted and it's not only men but also women who practice it". Patriarchy as a social norm has been in practice for so long that it is practiced inadvertently by women too. Under the circumstances, the purging will involve seriously patient efforts and could span over years. The community in general must rise above their thoughts about women, which centre around marriage as the only mega event in the life of a girl and then washing hands off from the rest of her life thereafter.

According to her, economic empowerment can be achieved if one is self-empowered and self-reliant. She also emphasized on being politically conscious of one's rights. Political consciousness and the ability to take sides for an ideology is being self-empowered in her opinion. She referred to the life of our prophet's beloved wife, Khadija (RA) as an embodiment of empowerment and tried to establish how a woman's self-reliance can lead to her economic independence.

Dr. N. Sabah Ismail

Towards the end, through the opinions expressed by panelists, it was evident that religion has been another major deterrent in the progress of the Muslim community, particularly when it comes to the status of women. Dr. Ismail stated, at the very beginning, that the Almighty has created men and women to complement each other, and that by certain misinterpretation of the scriptures and under the impact of patriarchy, women have been pushed behind, obscured and oppressed for centuries. As a result, the community has rendered itself crippled which otherwise would have felt strengthened by the presence of women in the society. As a scholar, he vehemently expressed that nowhere does the Quran mention that women cannot adopt measures for her financial independence. There are, however, references that no financial responsibility has been laid upon them but that shouldn't by any means be understood as women cannot be economically empowered and that their financial independence cannot be envisaged.

He continued that awareness of the rights of women is vital for empowerment and when it comes to Muslim women, awareness in the light of the holy Quran is a must. He termed the society, where women empowerment is still a greater issue, as 'disabled' and added that both men and women have to work together. They must know their rights and this is possible only if they know the religion well through the Quran.

Comments/Questions and Clarification from the Floor

After the panelists had presented their views, the floor was opened for a brief cross questioning.

Referring to Mrs. Saira Shah Halim's statement that marriage seems to be the only mega even in the life of a women, Mr. Shahjahan added that we respect the sentiments of the parents in their generous and sincere planning for their daughters and that it would only be better if they had similar sincerity in planning their career. He went on to explain the discrimination is evident in the manner of upbringing of a son and a daughter. If only the discrimination could be avoided, it would make a lot of sense towards making the girls child empowered. His question as to why should a girl be left at the mercy of their in-laws or be made solely dependent for their finances on their would-be husbands called for an introspection.

The moderator, Mr. A. Basit Ismail highlighted the questions raised by Mr. Safi Shamsi on the clarity of thought in terms of the disempowerment of women. Answering this question, Dr. Shabina N. Omar said that it not where we want to go to but where we must start from, and it will begin when we stop telling our girls what to do, and start telling our boys to behave; start sensitising boys on women's issues, respecting them, and giving them voice and agency. Concluding this, Mr. Ismail said that it is important for the present generation to set examples of parenthood to pass on for the generations to follow.

Mrs. Mehpara Sharique, Supervisor primary section at Jibreel International School, expressed that she had a lot of things to take away home from the discussion but her major takeaway was that we need to sensitise our boys and the community towards empowering women. Another guest visitor Mrs. Majda Amolya, head of the pre-primary section at Jibreel International School shared her story of how she had let her daughter feel empowered when she allowed her to take the first flight of her life all by herself and emphasised the need for parents to show the same kind of confidence in their daughters as they often show towards their sons. Adding to their remarks, Mrs. Benazir Banu, a senior teacher and a colleague to Mrs. Sharique and Mrs. Amolya, said that we all can make significant contributions towards the question raised in the panel discussion today, keeping in mind that charity begins at home.

Afnan Akhzar

On the behalf of the Institute of Objective Studies, Kolkata Chapter, Mr. Afnan Akhzar presented the official vote of thanks to all the panalists and guest for their generous acceptance of the invitation and contributing their precious time to helping create a consensus towards adding value to the society.

Conclusions

The Institute of Objective Studies, Kolkata Chapter deliberated on the issue, a rather sensitive issue, for over six months before this panel discussion actually happened. Mr. Abdul Basit Ismail mentioned that this, however, should not be understood as a rare discussion but the Chapter believes that this is a beginning to a series of discussions and is keen on taking this movement forward. The Chapter pledges to endeavour to bring this issue to the academic discourse to involve responsible people from the literary, academia, social and religious circle and political sphere to provide impetus to the consensus that this discussion has helped us arrive at, and presented the resolution as follows:

The house resolved that:

- There should be an awareness programme among the older groups in their role as parents, guardians or elderly to help them know why it is important for them to support and encourage the girls of their family.

- There should be an awareness programme for girls and women to help them know their rights and opportunities.

- There should be a series of progammes planned and conducted for men and women both on religious front to help them reconstruct their thoughts in the light of the holy Quran.

- A series of talks with responsible locals should be planned for various localities towards creating local social-help groups for easy access of women.

- Mass discussion and orientation programmes should be planned to sensitise youth over the issues of behaviour and approach towards girls/women.

- A series of academic discourses should be planned to gather adequate data so that appropriate measures can be taken to make the measures adopted towards economic empowerment of women more effective.

- To have a women's team at IOS Kolkata Chapter to further the cause.

IOS organises two-day online international conference on "Environment, Social, and Religious Consequences on Human Evolution" (November 20-21, 2021)

A two-day online international conference on "Environment, Social, and Religious Consequences on Human Evolution" was organised by the Institute of Objective Studies on November 20-21, 2021. Professor Arvind, Vice-Chancellor, Punjabi University, in his inaugural address, talked about the changing climate and its effect on human evolution. Calling the theme of the conference interesting and relevant, he said connecting the evolutionary idea with other aspects opens the door of opportunities to advance the conversation around the given topics. Prof. Arvind pointed that, in a sense, we have still not absorbed the philosophy of the theory of evolution, therefore dialogues like these play an important role in the evolutionary process. Prof. Arvind also discussed the notion of evolutionary psychology that involves understanding the evolution of standard human behavior. The distinct response of each human is also connected with the evolutionary theory. Our identity, behavior, psychology, thinking, values have evolved over the period of time.

Prof Seyed E. Hasnain, Honorary Professor, National Science Chair-SERB, in his key-note address, talked about the COVID 19 pandemic as an example of an evolutionary trajectory. He discussed the chaos and tragedy brought by the pandemic, which held the world to a standstill. All of the world and its technological advances stood powerless before the force of nature. He also discussed the problem of evolving variants, which are growing faster than one could imagine. He stressed the need for well-funded public health and infrastructure.

Dr. Md. Asrarul Haq, Former Director, Ministry of Environment and Forests, Govt. of India, in his address as guest of honour, spoke on biodiversity and examined its importance in our society and the need for conservation of the biodiversity. The issue of exploiting biodiversity is emerging out to be a crisis of the contemporary world. If we continue to erode the resources at this pace, we might face the extinction of resources in the coming time soon. He said creating awareness among the masses to preserve our biodiversity is needed today as most people are not concerned about conserving biodiversity and even laws related to environment.

Prof. M. Afzal Wani, Vice Chairman, IOS, talked about the non-physical aspect of evolution. He said there is a great shift in human behavior with the advancement of science and technology. He also focused on the social, religious, and political context of evolution. To understand the evolution of thought and behavior, it is important to take a hold of truthfulness and avoid fabricated truth. A collaboration of natural sciences, environment, religion, social behavior would help understand the evolution process better, he said. In his concluding remarks, he proposed adopting the approach of universality in every system necessary for human survival - one knowledge, one human experience with a little room for behavioral differences rather than placing two ideas in contradiction to each other.

Prof. M. Ishtiyaque, Former Vice-Chancellor, Magadh University, in the Presidential address, said that the conference presents a platform to discuss the three important aspects of human evolution. Briefing the talk of each speaker, he welcomed everyone with an open heart.

Prof. Haseena Hashia, Asstt. Secretary General, IOS, presented the vote of thanks to all the attendees, speakers, and organisers.

Earlier, Prof. Z.M. Khan, Secretary General, IOS, introduced the IOS and welcomed all the participants and speakers, while Dr. Imtaiyaz Hassan, Asstt. Professor, Centre for Interdisciplinary Research in Basic Sciences, Jamia Millia Islamia, and Convenor of the conference moderated the session.

Session-1: Chairperson: Prof. S.N. Kazim, Centre for Interdisciplinary Research in Basic Sciences, Jamia Millia Islamia, New Delhi,

Prof. M. R. N. Murthy, Institute of Bioinformatics and Applied Biotechnology, the first speaker of the session, said that much of our understanding of everything comes from science. Science has always evolved with the advancement of technology; for example, until the discovery of Copernicus, it was believed that Earth was the center of the universe. Later, he talked about Darwin's four postulates. The essence of Darwin's theory is that the way animals behave is a result of evolutionary history; evolution has shaped the behavior of animals. Similarly, human culture and behavior are also a consequence of evolution. On the scope of religion, he said that every religion, in order to survive, has to be pro-science and not anti-scientific. Other ways suggested by him include reconciliation of science with religion, brotherhood, supporting women empowerment, non-violence, conservation of the environment, and respecting each other's differences. Prof. Murthy hopes for a better future, where people are not fighting wars, killing each other but having mutual respect for people's differences.

Prof. K.P. Mishra, President, Asian Association for Radiation Research, spoke on "Spirituality with Science Can Catapult Humans to Superhuman Capabilities." He pointed out how with the evolution of time, inequalities in society emerged. Ancient society was more egalitarian, more adaptive, and less divided in different castes, classes, religions, etc. Humans although made most of the scientific inventions and technological advancements as they progressed but deteriorated the environment with overexploitation and mismanagement of resources. On the discourse of the role of religion, he said that religions unintentionally impeded human progress; the greater purpose of human evolution was hampered by religions all over the world. As an alternative, Prof. Mishra suggested spirituality, which gives power and hope to people. Prof. Mishra tried to connect the dots between science and spirituality. According to him, science and spirituality seem converging. Spirituality, like science, has the capacity to be powerful when followed by scientific methods.

Prof Dinesh Kumar Patel, Head, Dept. of Botany, Harishchandra PG College, Varanasi, talked about the inaccessibility of water for irrigation, especially in arid and semi-arid areas of Varanasi. Due to this, non-conventional resources are used. The use of wastewater irrigation negatively impacts the produce as well as contaminates the land resource, leading to health-related issues and environmental concerns. Accumulation of metals such as sodium, zinc, copper, nickel, iron, etc., in plants and vegetables are some of the drawbacks of using contaminated water for irrigation. In his concluding remarks, Prof. Dinesh pointed out that wastewater irrigation leads to the accumulation of heavy metals in soil and vegetables, depending on the intake of contaminated produce.

Session-2: Chairperson: Prof. Ehteshamul Haque, Dept. of Electrical Engineering, JMI, New Delhi

Dr. Gustavo Zubieta-Calleja, Director, IPPA, President, Zubieta University, Bolvia, in his presentation on "Human Evolution beyond Earth: Adaptation to Chronic Hypoxia and Biospaceforming" talked about the process of human evolution. Pointing to the logical observations made by Charles Darwin, he said that humans adapt as per changing times. Discussing the nature of adaptation in blood components at high altitudes, he said that at sea level, red blood cells (porters of oxygen) amount to 36 per cent that rises to 50 per cent at high altitudes. He further busted the myth of the "loss of adaptation," which has been used with no scientific evidence and facts to back the claim. He said that it takes some time for Hematocrit (red blood cell) to adapt- in his case, around 40 days to adjust from high altitude to sea level. Given the high altitude adaptation formula, he said the more time we have, the better possibility of adaptation we get. Dr. Zubieta-Calleja, along with other colleagues, has overcome the challenges of Hypoxia in areas 4100 m above sea level and coined a related term, "normoxia". He coined the term "biospaceforming," which means the adaptation of all living beings on earth to space.

Prof. Atiqur Rahman, Dept. of Geography, JMI, New Delhi, started the presentation on "Challenges of Water Resources in Present Day Scenario" by explaining the importance of water for each living organism and the need for judicious use of water resources. Prof. Rahman shed some light on the discourse of water pollution globally, with a special reference of India. The relation between increasing

GDP and resource consumption was excellently explained by him. He said that the increasing GDP of any country is one of the reasons why people are exploiting the resources injudiciously. For example, increased economic activities involve setting up a lot of manufacturing industries, which is one of the main components of water and air pollution. Citing a study conducted on water pollution of Yamuna River, Prof Rahman outlined some of its findings. It was found that Delhi, which covers just 2 per cent (22 km) of the total length of the river, releases about 70 per cent of the pollutants in the river.

Dr. Bilal Ahmad Kutty spoke on the topic, "Concept of Environment from the Islamic Perspective." Quoting the Holy Quran and Hadith, Dr. Bilal pointed out some of the verses that support the conservation of resources and saving our environment. He said that humans are responsible for the ongoing environmental crisis, and it is the duty of every individual to save the environment from degradation. The Holy Quran has a comprehensive understanding of each component of the environment, where a total of 199 verses of the Quran discuss about the same. Dr. Bilal said that Allah created everything in equilibrium, and therefore, we must be mindful of spending all the resources. Overexploitation of resources is similar to disobeying the commandments of Allah, prescribed in the Holy Quran.

Alka, Research Scholar, Dept. of Chemistry, SRM-IST, Ghaziabad, spoke on "Preparation, spectral analysis and biological application of Schiff base ligand and its transition metal complexes." While presenting the study, Alka pointed out the objectives and other details of the study. Explaining Schiff base ligand, she said that it is a compound that contains carbon-nitrogen double bond. In the conclusion of the report, she said the study show, from the experimental point of view, that free ligand shows lesser activity.

November 21, 2021

Session-3: Chairperson: Prof. Urmi Vajpayee, AND College, University of Delhi.

Prof. M. Affan Badar, Indiana State University, USA, said there is a need to sensitise students, especially engineering students, to deal with the ongoing crisis. He proposed an upgrade in the curriculum to inculcate environment-friendly behavior. A global system engineering approach or a global engineering education system is the need of the hour. Delving upon the Islamic perspective, he said the Almighty has specifically mentioned conservation of resources, and reckless use of resources has been viewed as sinful. He talked about the corruption of using excessive natural resources sponsored by power and wealth and called for conscious consumption of resources. There is a need to sensitise our students about climate change to slow down the deterioration- educating people at the community (religious and social gathering) as well as institutional (school, university) level. At community level, he said we have to be mindful of the waste, especially plastic waste, generated on a daily basis; adopt reduce, reuse, and recycle approach; minimising wasting water with the installation of sensory faucets. Talking about solving the problem with the global perspective, Prof Badar mentioned some of the models like the DEJI Systems Model and the CDIO framework. He finished his talk with an appeal to stop wasting and overexploiting the natural resources and suggested a global approach to negotiate with the issue.

Prof. Suhel Parvez, Head of the Department, Medical Elementology and Toxicology, Jamia Hamdard, New Delhi, started the talk with the discussion on the contaminants in the environment. Citing the examples of food products consumed by people, he explained the extent of toxins present in animals, seafood, vegetables. The issue of adulteration of food impact all humans, physically and psychologically. The suggestions to resist and reduce the issue include chemical analysis of soil and its produce and creating models for field studies. In concluding remarks, Dr. Sohail suggested the need for a system, which can complement both field study and lab studies to address climate change.

Prof. R. P. PANDEY, Asstt. Professor, Biotechnology and Biomedical Engineering, SRM University, Sonepat, while talking about antimicrobial resistance as a "silent pandemic", said that pathogens are securing a place to survive in our environment. The factors contributing to antimicrobial resistance are environmental, drug-related, patient-related, physician-related factors. Stressing the interconnectedness of humans and the environment, he said we have to give attention to our environment and its component proportionately; toxins in the environment would eventually get to humans, plants, animals, and other living beings.

Dr. Swati Joshi, Asstt. Professor, School of Liberal Arts and Sciences, Era University, Lucknow, spoke on "Impact of religion and culture on menstrual practices." Explaining the physiology of the menstrual cycle, Dr. Swati delved into the notion of stigmatising menstruation in our society both from cultural and religious perspectives. She discussed how the biological process had become a taboo subject. The general perception of menstrual cycle is believed to be impure, unclean, and untouchable. Almost all the religions practiced in India label menstruation as "impurity" in women's bodies. Culturally, women are asked to isolate themselves with the day-to-day chores and live in isolation until the cycle ends. Destigmatising menstruation and starting a conversation around it is the need of the hour.

Dr Kiran, Dept. of Livestock Products Technology, Veterinary College, Nandinagar, Karnataka, presented a study on "Biochemical and proteome profile of layer breeder hen skeleton muscles." Stating the objective of the study, Dr. Kiran said that it was carried out to determine various physicochemical and biochemical characteristics of thigh and breast muscles of chickens. Out of many parameters explained by Dr. Kiran, it was concluded that pH level was higher in the thigh muscle, R-Value was higher in breast muscle, water-holding capacity was very low in breast compared to thigh muscle, MFI was significantly higher in thigh muscle numerically, etc.

Hina Majid, Research Scholar, Islamic Studies, MANUU, Budgam, J&K, presented her paper on "Islamic Ethics and Its Relevance in Environmental Conservation." Hina Majid pointed to the solutions available in the Holy Quran for the issue of environmental degradation. She said that Islam offers a pro-conservation outlook to look after the resources and hold accountable to those who are responsible for the devastation of our environment. Explaining why Islam calls overexploitation of natural as fitnah, she said that the meaning of fitnah is not limited to killings, test, and treachery but also include changing of resources from their original form, creating disorder and chaos in society, which most human beings are responsible for. In her concluding remarks, Hina Majid stated that the protection of the environment is central to Islamic beliefs and humans have the responsibility of safeguarding the same.

Session-4: Chairperson: Prof. M. Z.M. Nomani, Faculty of Law, AMU, AligarhDr. Deepak Moda, Dept. of Geography, Maharishi Dayanand University, Rohtak, presented the paper on "A Critical Analysis of the Performance of MNREGA in Nuh District, Haryana." Dr. Moda explained the geographical, cultural, and social determinants of Nuh District. The objective of the study was to analyse the performance of MNREGA in Nuh District during the financial year 2020-21. It was found that 96.96% of the rural households had valid MNERGA job cards. On average, MNREGA provided a total of 63 days of employment as opposed to 100 days, guaranteed in the act. 41.55% of the total beneficiaries were women. A total of 2319 works had been completed under it, accounting for 11.37% of the total works completed, with around 3311 ongoing projects. Out of a total fund of Rs. 259.80 crores, 143.26 crores were directly paid to laborers as wages.

Prof. Dr. Thyagaraju Kedam, UGC BSR Faculty Fellow, Dept. of Biochemistry, Sri Venkateswara University, Tirupati, talked about Selenium, a trace metal, which aids in preventing cell damage. It performs multiple roles such as boosting immunity, controlling thyroid, reducing asthma symptoms, working as antioxidants, etc. On daily dietary allowances in each stage of life, Dr. Kedam said in the US, it is 50-55 micrograms per day and 25-30 micrograms in India, which is very less. Concluding the study done by him, he pointed out how selenium-enriched diet was obtained by the experiment subjects (rats) more than any other element tested via the experiment.

Dr. M A Shah, Special Laboratory for Multifunctional Nanomaterials, P.G. Dept. of Physics, NIT, Srinagar, J&K, explained how science, society, and sustainable developments are connected and the need for a peaceful society for scientific development to occur. According to Dr. Shah, some of the issues of humanity include healthcare, and disease water treatment and remediation, energy storage and production, food processing and storage, environment and pollution, unemployment, poverty and starvation, population, etc. In his concluding remarks, he said that new research must be timely reported and properly communicated because the future of human evolution is dependent on that. Dr. Shah located the entire sustainable goals and the vices permeated in the name of climate change with special reference to Nanotech science and its multifunctionality.

Mr Gulam Gilani, Dept. of Biological Sciences, Aliah University, Kolkata, started the presentation with a detailed description of the Calicivirdae (CV) family of viruses, which has ss-RNA genetic material. It was concluded that a total of 1317 SSRs and 55 cSSRs were present in the genome-wide scan of six of two Caliciviridae. The SSRs showed ubiquitous presence across the species, albeit varying incidence rates, while several species of Caliciviridae genomes lacked any cSSR. There was a bias towards the occurrence of SSRs and cSSRs in the coding region compared to the non-coding region.

Sharandip Kaur, Research Scholar, Lovely Professional University, Punjab, presented the paper on "Impact of Climate Change with reference to the reproductive health of women and children." Explaining the impact of climate change, Kaur delved upon the health perspective, especially on reproductive women. The sexual and reproductive health and rights of women are at a risk in the changing climate. Many countries do not document comprehensive climate-related gender desegregated data. As the concluding remarks, she said there is a need for advocacy to enhance the reproductive health and rights of women due to climate change. Introducing gender-transformative measures, setting the target for inclusive, gender affirmative measures by multi-sectoral stakeholders, gender analysis of the available data of those affected by the climate change, investing in the health system to address the underlining causes of vulnerability to climate changes were some of the suggestions given by her.

Session-5: Chairperson: Prof. Anita Kamra Verma, Kirori Mal College, University of Delhi

Prof. Zafar Mahfooz Nomani, Faculty of Law, AMU, Aligarh, spoke on "Islamic Response to Environmental Sustainability, Equity, and Peace." Prof Nomani emphasised adopting a holistic approach in terms of environmental laws. Not questioning unsustainable technology, policies, development measures, etc., might lead to catastrophe, he stated. Further, Prof. Nomani discussed the Islamic perspective of the environment. He pointed that laws have some limitations; if a law is coercive or oppressive, we can opt for religious and ethical philosophy of environment. The environmental laws might not be inclusive of the diversity a territory has to offer. Quoting the Islamic verses on sustainable development, he said the Quran talks about not just equality but generational equity, along with judicious use of resources- all of which is the hallmark of inter-dimensional equity of the modern-day. The main objective of Islamic law is to promote a balance of deen, duniya, nafs, and nasl. Islam discourages hoarding of resources and advocates for a balance in sustenance. The invention of Islamic environmentalism emanates from the principles of unity, creation, balance, and responsibility.

Prof Hamidullah Marazi, Dean, School of Social Sciences, Central University of Kashmir, talked about the environmental disasters in the context of Kashmir. Prof Marazi pointed out the shrinking of forests that consequently force the wild inhabitants into the public space. Other environmental concerns include pollution, water depletion, destruction due to the continuous conflict in the region, floods, etc. Prof Hamidullah said that recent studies show a total of 24 % of people globally affected by environmental factors and 23 % of total deaths. On the teachings of Islam, he said that Islam had laid a framework to conserve and save the environment. Not just Islam, other religions too focus on saving the environment from exploitation. In his concluding remarks, he said there is a need for a set of robust strategies to overcome the damage and abuse of resources.

Dr. Aijaz Ahmad, Asstt. Professor, Dept. of Islamic Studies, AMU, Aligarh, focused on "The Scientific Theory of Evolution and the Response of Muslim Scholar." Discussing the theory of evolution, he said in the 19th century, Christian theology formed the basis of the theory of evolution. This view was later challenged by the modern theory of evolution given by Darwin, which became the foundation of modern biology. He said that prior to Darwin's theory, many Muslim scholars provided material on the evolution theory of Darwin. The claim that the evolution of people through common ancestors through the process of natural selection has been criticised by Muslim scholars. He argued many of Darwin's claims in a systematic manner. He also mentioned Muslim scholars who back Darwin's theory with evidence from the Quranic verses. The difference between their claims is that Darwin refused to accept the existence of God. Also, some other Muslim scholars point to the limitations and disparity in Darwin's theory of evolution.

Md Shafiullah, Research Scholar, Dept. of Sunni Theology, Aligarh Muslim University, Aligarh, presented the paper on "Gender Equality in Islam." The status of women in Islam is highly debated and misunderstood across the globe, according to Md Shafiullah. Debunking the idea that Islam promotes the oppression of women, he said the Holy Quran has clearly explained the position of women in many verses, which advocates for equality in every aspect of life. However, there are some societies that practice gender inequality in the name of Islam. The ethical qualities mentioned in the Quran for both men and women have social and political dimensions- the Quran makes no reference to the ethical and intellectual supremacy of women over men. Md Shafiullah competently explained socio-cultural, financial, legal, and emotional aspects- none of which preferred men over women, unlike the societal practices of our society in the name of Islam.

Iqura Fatima Iqbal, Research Scholar, Dept. of Islamic Studies, Jamia Millia Islamia, New Delhi, discussed about "Environmental Ethics, Human Evolution, and Islamic Perspective." On environmental crisis and its threat to living beings, she said technical solutions need redesigning and restructuring. Fatima I. Iqbal stated that the Quran accentuated maintaining a balance in nature. Discussing environmental ethics, a discipline and philosophy that studies the moral relationship of human beings to their environmental values, she delved upon Islamic environmental ethics and evolution, formulated by the Almighty, which is the Quran, Hadith, and Sharia. Islam believes that the environment is the creation of Allah, and hence, it is the duty of each of us to preserve nature by using their intellect and power, she asserted.

Tanjeel Ahmed, Ph.D. Scholar, Dept. of Sunni Theology, AMU, Aligarh, discussed the social structure of our society as prescribed in the Quran, he listed out the verses that focus on day-to-day activities commended by the Almighty. He also talked about the meditative and spiritual aspects of offering namaz.

Aal E Fatima, Human genetics and toxicology laboratory, Dept. of Zoology, AMU, Aligarh, spoke on "The pattern of Ocular morbidities in patients in eye hospital." The presentation started with the discussion of the impact of vision loss in people and its effects on their day-to-day activities. The prevalence of the impairment of the ocular system could trigger by climatic, environmental, socio-economic, literacy factors. To reduce the prevalence of visual impairment. Enlisting the details of the study conducted to understand the prevalence of ocular morbidities, she said that conjunctivitis and refractive error are the most common causes of ocular disorder among children, and a majority of the causes were treatable or preventable. Therefore, there is a need for raising awareness among school children to maintain ocular hygiene. Cataract was the most common in the elderly population. Early detection and timely intervention can prevent visual disability.

While conducting the Valedictory session, Dr. Imtaiyaz Hassan, Asst. Professor, Centre for Interdisciplinary Research in Basic Sciences, JMI, New Delhi, gave a brief summary of the two-day seminar.

Prof. Shakeel Ahmad, M.K. Gandhi Chair Professor, Dept. of Geography, JMI, New Delhi, while expressing his views as guest of honour in the valedictory session, applauded the efforts of the organisers to conduct the seminar on a very relevant and appropriate theme- "Environment, Social, and Religious Consequences on the Human Evolution." He said that evolution is also a long-term procedure that takes place each day as per the changing times. The best solution, he said, is to adapt to the ongoing circumstances and act accordingly, as resisting change could prove to be disastrous. Every change, he believes, has to be assessed holistically- looking at the positive as well as the negative impact. He suggested converting the conflict into cooperation because unless we cooperate, conflicts do not resolve.

Prof. Faizan Ahmad, Centre for Interdisciplinary Research in Basic Sciences, JMI, New Delhi, in his chief guest remarks, said that since the creation of the earth, it has been in a perpetual state of flux, and the planet earth has witnessed many changes, especially environmental changes. Although early humans survived such changes, major climate shifts may have changed some of the defining traits of humanity. From the beginning of their existence on earth, humans have adapted to their environment, which has now become a challenge to cope up with the unprecedented change in earth's environmental balance. Prof Ahmad said that the relationship between science and religion is a difficult one. Some believe that the two can never coexist, while others believe that science provide evidence and backs religious beliefs. The conflict between the two is simply the state of knowing versus the state of unknowing. In his concluding remarks, Prof Faizan Ahmad said religion and science are just different ways of solving challenges of our society.

In the Presidential remarks, Prof. Afzal Wani presented a fresh take on the theme. He said that science and religion are tools to explore the creation and understand the creator. The creator is the only source of knowledge, he asserted. The contradiction of religion and science is futile if it does not lead to any action. It is time for the curtain of ignorance, partisan, and partiality to fall. He said that scientists and spiritualists should collaborate to explore, understand,

and rationalise to find the truth and gather the knowledge. The intent should not be to validate one over the other, but it should always focus on the exploration of knowledge. The resources have to be used as per the need of humans; the sensitivity of bio-diversity should be given the utmost importance and not the superiority of religion over science and vice-versa.

Prof. Haseena Hashia presented the vote of thanks to the participants, speakers, organisers, and all those who were, directly and indirectly, involved in the two-day seminar.

IOS Online Lecture on Covid-19 Pandemic and Economy in India– Challenges and Opportunities (November 27, 2021)

New Delhi: An online lecture on 'Covid-19 Pandemic and Economy in India –Challenges and Opportunities' was organized by the Institute of Objective Studies on November 27, 2021.

The lecture was delivered by the head, Community Development Programme of International Institute of Islamic Thought (IIIT), USA, Mamoon Al-Azami. Presided over by the ex-professor of Economics, Jamia Millia Islamia (JMI), Prof. Naushad Ali Azad, the proceedings of the lecture were conducted by the assistant secretary general, IOS, Prof. Haseena Hashia. The lecture formally began with the recitation of a Qur'anic verse by Hafiz Athar Husain Nadwi.

Introducing the topic, Prof. Haseena Hashia said that Covid-19 caused havoc to the economy of India, causing unprecedented real losses never witnessed before, even during wars. The pandemic brought to the fore the challenges to India in the form of an unprecedented increase in the level of poverty, huge losses of jobs, businesses, international trade, supply chain disruptions, near collapse of international travel, tourism and related hospitality. She noted that the lecture was a practical macro-micro examination of the issues with a clear hope for the future of the Indian economy. While the 2.9 trillion dollar economy of the country was affected, about 7 per cent contracted in March 2021 alone, she added.

In his lecture, Mamoon al-Azami held that the Qur'an and Hadith were to guide the community. There were as many as 70 different kinds of trials that could be tackled as per the guidance of the Qur'an and Hadith. These trials differ from man to man. He said that Allah does not like a man to waste wealth, nor does He ask many unnecessary questions or spread gossip; wasting of food was also prohibited. Allah says that money should be spent on others who are pauperized, poor, and needy. Referring to the economic impact of Covid-19, he said that without equity, one could not end the pandemic, HIV, or any other epidemic. This was also supported by

Peter Alexander, a British banker and the executive director of the Global Fund to fight AIDS, Tuberculosis, and Malaria. Available figures suggested that during the pandemic, the retail giant, Amazon, earned millions of dollars as profit. This was a positive effect of Covid-19. But negatively, it also infected 219 plus million people, out of which about 4.5 million people died globally. Similarly, the stock market was drastically cut by 20 per cent. Commenting on the Indian economic impact, he said that the country's economy was weakening when the pandemic struck. As far as the public expenditure was concerned, it was 132 per cent, 16 per cent lower than the year 2008. Farmers lost big to local supply chain shut down. Milk demand dropped by 25 per cent, and its prices were cut by 19 per cent. He held that India was the fifth largest economy that could affect the world. According to an assessment made by the International Monetary Fund, indifferent output in India made sluggish global growth. This was also significant to note that India provided 70 per cent vaccines to fight Covid-19, he noted.

Focusing on crisis management during the pandemic, Azami suggested strategies. In order to overcome the negative effects of Covid-19, one should remain penitent, be insulated and do the teamwork. Besides, he should migrate if need be and prevent negative impulses and confront challenges. He must also entertain hopes and plan ahead. Here, he referred to the Hijrah route of the Prophet (PBUH). By being positive, one could find his brother with hope. Suggesting strategies for crisis management, he said that faith and trust in Allah was the core foundation of such strategies. Patience and perseverance in efforts were also vital to manage the crisis. He said that spirituality and integrity with the task were also equally important. Referring to economic and counter measures in Islam, he said that for poverty alleviation, the institution of Zakat was engaging the attention of *ulema and imams* to make it more effective. He asked for building partnership with UNDP (United Nations Development Programme), which supported Zakat institutions. He also called for practicing basic living needs like food, shelter, health, and education. Commenting on economic opportunities for India during the Covid-19 time, he said the country had one of the largest waqf properties in the world. These could generate income and support the poor to be self-reliant. India had some of the richest Muslim entrepreneurs with a heart to donate to the economically deprived and poor people. He suggested that the people should engage themselves in consultation, coordination, and cooperation.

Mamoon al-Azami pointed out that three levels of the action plan were needed to be put in place to effectively neutralize the adverse effect of Covid-19. The first was the personal action plan, which sought to care, concern, and commit to helping the poor for the sake of Allah's pleasure and paradise. It was also aimed at sharing these feelings with others. The second level was the group action plan, which sought to find individuals who had an interest and wanted to be involved and contribute to initiatives to help the poor. Contacting family was another element of the plan.

He said that the third level was the community action plan. Under the community action plan, a steering group of committed and competent community/religious leaders was formed for undertaking community action. A complete list of mosques, madrasas, businesses, NGOs, organizations, colleges, etc., could be drawn up for coordinating the action plan. Besides, sheikhs, professors, key social and community leaders could be asked to play an active role in the task, he noted. Maintaining that 70 per cent of job losses were recorded in the unorganized sector in India, he said that these people needed to be economically engaged in skilled work. They could be helped with equipment and interest-free loan to start their work as carpenters or construction workers. Ways to support them on the ground should be found, he stressed.

Mamoon Al-Azami observed that basic skill training in handling equipment–software and hardware, should be imparted because these areas had much work. He said there was much work for women who were not educated. They had sewing and tailoring businesses at home. Cooking service, as seen in Bombay, could also be started to support the family. Women could give education to children because they were experts in counselling. They always gave good advice. Eighty per cent of counsellors in the United Kingdom were women, he concluded.

In his presidential remarks, Prof. Naushad Ali Azad said that the lecture was very informative and interesting. To top it all, the lecture was put in the Islamic framework. He held that the pandemic was a global phenomenon. This showed how the world had become globalized. Explaining it further, he said that an African variant of Covid-19 was feared to be found in the UK. It was feared that India could face the third wave of the pandemic.

Referring to the Islamic framework, he quoted Dr. Grave from the US, who said that the American Supreme Court saw the Prophet (PBUH) as one of the greatest lawgivers. He said that the pandemic badly affected the informal sector. A big population living in villages was also affected, but agriculture, being resilient, saved the economy and averted the ill-effects of the pandemic. The stock market was showing up as good as the UK after the pandemic weakened. He suggested that a comprehensive study of the effect of Covid-19 on Muslims and non-Muslims in India and elsewhere be made. He said that India was a big business market and offered much scope for working for the welfare of Muslims.

The lecture ended with Prof. Haseena Hashia proposing a vote of thanks to the attendees.

IOS-MANUU jointly organises seminar on "Human Rights in Islamic and Modern Perspective" (December 8, 2021)

New Delhi: An online seminar on "Human Rights in Islamic and Modern Perspective" was jointly organised by the Institute of Objective Studies and Department of Islamic Studies, Maulana Azad National Urdu University, Hyderabad on December 8, 2021.

The inaugural session of the seminar commenced with the recitation of a Quranic Verse by the student of the department, Ashiqur Rahman. The topic was introduced by the assistant professor, deptt. of Islamic Studies, MANUU and convenor of the seminar, Dr. Shakeel Ahmad, who underlined the importance of the subject.

In his welcome address, head of the dept. Islamic Studies, MANUU, Prof. Md. Fahim Akhtar Nadvi, highlighted the activities of the department and touched upon the main aspects of the subject.

Inaugurating the seminar, the vice-chancellor of MANUU, Prof. Syed Ainul Hasan, said that the prophets were sent to the earth by Allah to know about Him and to acquaint themselves with the mystic knowledge. The Prophet (PBUH) occupied a place of exaltation among all the human beings in the world. He won over the hearts of people by His love, compassion, kindness and virtues. His teachings were guiding principles for the entire humanity even today. The world could sustain them for leading a better life. He remarked that only understanding rights and duties was not enough. They must also be practiced in life in equal measure. And here lay their importance. Lauding the activities of the department of Islamic Studies, he said that it was engaged in the study and research on the subject of a higher order and expressed the confidence that its works would be recognized at the international level in the near future. On this occasion, he also released the department's house journal "Islamic Mutaleaat" which contained the intellectual and cultural activities of its students.

The inaugural session ended with a vote of extended by the assistant professor in the department, Dr. Md. Irfan Ahmad.

The inaugural session was followed by the technical session which was addressed by Prof. Mohsin Usmani from Hyderabad, Prof. Mehtab Manzar from Delhi and Dr. Shakeel Ahmad. The proceedings of the session were conducted by Zeeshan Sarah, asstt. professor in Islamic Studies, MANUU.

Vice-chairman, IOS, Prof. M. Afzal Wani, who chaired the session, held that it was the duty of the state to ensure that human rights of every citizen were protected. It was also the duty of the state to see to it that no discrimination based on caste, creed and gender was made in the protection of human rights. He asked the Islamic scholars to undertake research in the field of human rights. India should be made a role-model for others to follow in giving due importance to the protection of human rights. India should carve out a name for itself for being known as a place where human rights were fully safeguarded, promoted and respected, he added.

Prof. Mohsin Usmani, former dean, Indian and Foreign Languages University (IFLU), Hyderabad, focused on human rights in Islamic perspective. He observed that the right to pray was very intrinsic in Islam. In the teachings of Islam, if a great deal of stress was laid on prayer on one hand, much importance had been attached to human rights on the other. Good mannerism formed an unalienable part of it. He further said that Islamic teachings also spoke of mutual love and co-existence. It was the duty of every Muslim to nurture cordial relations with his neighbour. It was a part of Islamic teachings to discharge the duty of protecting human rights, he insisted.

Speaking on modern view of human rights, former professor of political science, Jamia Millia Islamia, Delhi, Prof. Mehtab Manzar said that Islamic concept of human rights helped a lot in the preparation of modern documents and the human rights enshrined in them. Human rights movements also played a contributory role in the promotion of these rights. Referring to positive and negative aspects of human rights, he said that the UNICEF (United Nations

International Children Emergency Fund) and specialized agencies of the United Nations (UN) played an active role in the protection of human rights.

Dr. Shakeel Ahmad touched upon the system of enforcement of human rights. He said that in order to enforce and protect human rights, the current system was proactively involved. This included the codification of laws, rules, guiding principles and standards as well as a number of agencies and organizations working in the field. He presented a detailed account of the system in place at the international and national level to ensure protection of human rights. He explained how the laws enacted to safeguard human rights had been working properly. He also discussed the legal safeguards available to prevent violation of human rights.

The seminar came to an end with a vote of thanks proposed by Dr. Shakeel Ahmad.

IOS Calicut Chapter's Seminar underlines the Iconic Significance of 1921 Malabar Revolt (December 16, 2021)

A seminar on "1921 Malabar Revolt" was organised by the IOS Calicut chapter to mark the centennial celebration of the historic revolt by Mappila Muslims of Malalbar against the oppressive British rule, on December 16, 2021 at KPK Hall, Calicut. The scholars and intellectuals who attended the seminar and presentation of battle songs of 1921 Malabar Revolt opined that the historic significance of the revolt is to be passed on to generations.

It may be recollected that during the British period, there was a series of uprisings by the Mappilas, especially in the 19th century. Within 18 years from 1836 to 1853, there were 22 uprisings in Malabar. The uprisings were basically peasant revolts due to the economic deprivation suffered by peasants who were mostly Muslims .The landlords were upper caste Hindus. The most serious of these uprisings was the one in 1921, which occurred in Manjeri and other parts of Malappuarm.

To crush the rebellion, the British administration appointed senior police officer R. H Hitchcock, who led raids in the villages to find and kill the revolutionaries. A special paramilitary unit was formed to suppress the uprisings, forcing the Mappila men to flee to the hills, leaving women and children. According to historians, the women and children faced the brutalities of the colonial forces.

Dr P Geetha, a retired professor of history, who has extensively travelled in those areas, said that the Malabar Revolt was fundamentally an anti-imperial struggle led by the Mappilas and lower caste Hindus against the British authorities who were giving support to the landlords in their exploitation of poor farmers .She said the current official narrative is drawn only on colonial records which conveniently obfuscate the maladministration and exploitation of colonial bureaucrats. The role of women in fighting the British was also ignored. It is time the researchers go to the villages and collect all records, documents and photographs of such valiant women.

Dr Moin Malayamma, a research scholar involved in the study of the Revolt, said the Revolt was significant for totally destroying the British spy network in Malabar, at least for a brief period. But history is proof that the colonial masters never expected such an armed reaction to their rule as they thought the Muslim farmers were illiterate and leaderless and docile. It was the apogee of a series of struggle which goes to the first decades of 19th century. But the British wanted to ignore the socio-political and economic reason behind the Revolt and wanted to paint it as a religious response to their rule.

Dr Jameel Ahmed, an eminent historian, said that to be exact, there is no history but only interpretations of historical events .Some cynics may ask for the reason for remembering 1921 in 2021. Ther answer is to come from the new generation, which is more concerned about their tradition and culture. When lynching in the name of cows becomes a part of people's beleaguered life, when truth becomes the first causality in these post-truth times, the youth could ask whether the dominant classes remember an event which shook the foundations of the British Raj in Malabar.

Dr P Geetha and Dr Moin Malayamma jointly released the Malayalam translation of the prison poems of Dr G N Saibaba, an eminent poet and academic. Reny Ayline, a noted human rights activist introduced the book.

E M Abdul Rahman, the Chairman of the Empower India Foundation, Bengaluru, honoured Mr C Abdul Hameed, a historian who has written four books on the revolt based on rare documents painstakingly collected. He was given "The Writer of the Year 2021 Award".

Prof P Koya, IOS Calicut Chapter's Coordinator, presided over the programme. Dr C Habeeba, scholar of Arabic and member of IOS Academic Council, welcomed the audience and Ms K V Jameela, president, National Women's Front, Calicut, proposed the vote of thanks.

ABOUT RELIGION AND LAW REVIEW

The *Religion and Law Review* (RLR) is a peer reviewed legal periodical published by the Institute of Objective Studies, New Delhi. It covers scholarly discussions on various aspects of religion, law and other socio-legal issues. The periodical accords particular importance to the study of issues and events which are of contemporary concern, having a direct or indirect bearing on situations of minor or major religious groups and other underprivileged sections of the society.

The RLR entertains all significant contributions from scholars of law and allied disciplines on relevant themes. It encourages diverse opinions on different issues to make possible objective analysis of the problems and possible solutions. Contributions on important aspects of law, like environment, human rights and administration of justice are entertained in addition to religion oriented articles and comments.

Objectives of the Journal

The objectives of the RLR are:

1. To promote research on basic legal and social issues;
2. To provide a forum for discussion on various aspects of law and religion;
3. To highlight the issues relating to freedom of religion in different legal systems;
4. To study the contribution of religion to law;
5. To examine the nature and extent of regulation of religious activities and religious institution by law;
6. To analyse state action *vis a vis* religious groups; and
7. To discuss issues regarding religion and human rights.

Guidelines for Contributors

The RLR welcomes contributions from all interested students and scholars of law, religion and society in the form of articles, notes, case comments and book reviews. The size of contributions should not exceed 35 typed pages of A-4 size or 10,000 words. Margins should be left at each side of the page. Typing of both text and footnotes should be double-spaced. References should be given in footnotes. The footnotes should be numbered consecutively throughout the paper. The References of books and articles should be in the following format:

Name of the Author, "Name of the Book", Page(s), (Year). Name of the Author, "Name of the Article," Name of the Journal, Vol. (Year), Pages.

A hundred words abstract which summarizes the main ideas of the paper should be submitted by all contributors.

The full name of the writer, his present affiliation and complete correspondence address should be included.

All articles will be referred to experts in the relevant field.

The Editor reserves the right to make editorial revisions wherever found necessary.

All responsibilities for opinions expressed and accuracy of facts vest exclusively with the authors and not with the editor or editorial board.

All correspondence should be addressed to the Editor.

Editor

RELIGION AND LAW REVIEW
Post Box No. 9725
162, Jogabai Main Road
Jamia Nagar
New Delhi-110025

ABOUT THE INSTITUTE OF OBJECTIVE STUDIES

The Institute of Objective Studies was founded in March, 1986 to promote purposive research to generate understanding and awareness of conceptual issues and current problems and highlight the ethical and moral dimensions of social dynamics.

Objectives

- To set up institutes, centres and research facilities in various fields of social sciences.
- To undertake research on problems and issues of social importance.
- To provide a forum for contact and exchange of views among social scientists.
- To cooperate and coordinate with all individuals, organisations and institutions that are working for identical objectives at national or international level.
- To award fellowships and scholarships for promoting aims and objectives of the IOS.
- To publish books, periodicals, monographs and project reports for wider dissemination of Institute's programmes and point of view.

Areas of Research

It includes all major areas of social sciences and humanities viz: philosophy, religion, history, sociology, economics, political science, anthropology and education. It also includes public administration, human geography, population studies, inter-communal and international relations, constitutional studies, law, criminology, media studies, linguistics, ethnology, social eugenics and psychology etc.

Research activities

The IOS entertains applications for partial or full assistance for research schemes and projects which meet the Institute's goals and objectives. All applications are dealt with strictly on merit basis. Funding is generally available for a two-year period but exceptions can be made in case of major projects.

The IOS is amenable for cooperation with other institutes and within the purview of its research interests. The IOS also accepts research assignments on behalf of other agencies as long as their research priorities and purposes and in harmony with its own.

Financial Resources

The IOS is an autonomous, nonpolitical and public funded institution. Its major sources of funding are: membership fees, public donations, charitable grants and incomes from investments and the sale of its publications.

The IOS is open to private sector funding and charges fees for outside research assignments.

Organisational Structure

The organisational structure of the IOS, as its base, has a General Assembly comprising all its members who elect office-bearers and executive members of the Governing Council. The regional work is organised under regional committees appointed by the Chairman.

Address for correspondence:

INSTITUTE OF OBJECTIVE STUDIES
P.O. Box No. 9725
162, Jogabai Main Road
Jamia Nagar
New Delhi – 110025
India
Phone: [91-11] 26981187, 26987467, 26989253
Fax: [91-11] 26981104
E-mail: ios.newdelhi@gmail.com
Website: www.iosworld.org

JOURNAL OF OBJECTIVE STUDIES

The Institute of Objective Studies, New Delhi, publishes this biannual journal to further strengthen its multifarious research activities and to enlist wider participation in its ongoing scholarly discussions on issues of vital social concern.

The ***Journal of Objective Studies*** encourages publication of different points of view so that an objective analysis of various aspects of social realities could become possible.

Subscription Rates

Individual

Year	India		SAARC		Other Countries		Single Copy		
	Per year (Rs.)	Total (Rs.)	Per year (Rs.)	Total (Rs.)	Per year (Euro)	Total (Euro)	INDIA (Rs.)	SAARC (Rs.)	Other Countries (Euro)
1	500	500	550	550	50	50	400	450	40
3	350	1,050	385	1,155	35	105			
5	300	1,500	330	1,650	30	150			
10	250	2,500	275	2,750	25	250			

Institutional

Year	India		SAARC		Other Countries		Single Copy		
	Per year (Rs.)	Total (Rs.)	Per year (Rs.)	Total (Rs.)	Per year (Euro)	Total (Euro)	INDIA (Rs.)	SAARC (Rs.)	Other Countries (Euro)
1	700	700	800	800	70	70	400	450	40
3	500	1,500	560	1,680	55	165			
5	420	2,100	480	2,400	45	225			
10	350	3,500	400	4,000	35	350			

For further details please contact

Genuine Publications and Media Pvt. Ltd.
Distributors of Journal of Objective Studies
B-35, Nizamuddin West
New Delhi-110013 (India)
Ph: +91-11-24352732; Fax : +91-11-24352048
E-mail: genuinepublication@yahoo.co.in

RELIGION AND LAW REVIEW

Mode of Citation for This Volume

XXX RLR 2021

Subscription Rates

Individual

Year	India		SAARC		Other Countries		Single Copy		
	Per year (Rs.)	Total (Rs.)	Per year (Rs.)	Total (Rs.)	Per year (Euro)	Total (Euro)	INDIA (Rs.)	SAARC (Rs.)	Other Countries (Euro)
1	500	500	550	550	50	50	400	450	40
3	350	1,050	385	1,155	35	105			
5	300	1,500	330	1,650	30	150			
10	250	2,500	275	2,750	25	250			

Institutional

Year	India		SAARC		Other Countries		Single Copy		
	Per year (Rs.)	Total (Rs.)	Per year (Rs.)	Total (Rs.)	Per year (Euro)	Total (Euro)	INDIA (Rs.)	SAARC (Rs.)	Other Countries (Euro)
1	700	700	800	800	70	70	400	450	40
3	500	1,500	560	1,680	55	165			
5	420	2,100	480	2,400	45	225			
10	350	3,500	400	4,000	35	350			

For further details please contact

Genuine Publications and Media Pvt. Ltd.
Distributors of Religion and Law Review
B-35, Nizamuddin West
New Delhi-110013 (India)

Ph: +91-11-24352732; Fax : +91-11-24352048
E-mail: genuinepublication@yahoo.co.in