ISSN 0971 – 3212

RELIGION

AND

LAW REVIEW

Volume XXXI: No. 1
[2022]

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Institute of Objective Studies

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RELIGION AND LAW REVIEW

Volume XXXI: 2022

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 XXXI: No. 1 **2022**

CONTENTS

ORIGIN AND EMERGENCE OF JUDICIAL REVIEW AS THE FOUNDATION OF CONSTITUTIONAL GOVERNANCE: AN ACADEMIC PERSPECTIVE

Dr. Shivani Singh*

1. Impressions

Judicial Review and its development can be well traced since 1803. Till 1803 the development phase was in flux, yet to be crystallised in a pronounced manner. Finally, the prolonged stretch and in clear words, released itself by way of judicial pronouncement in *Marbury* v *Madison.*[1] The article deals with the evolution, development and theories conducive for the growth of the Judicial Review. The endeavour traces out the origin of judicial review by studying the origin, development, and growth of the doctrine in England, the United States of America, France, Australia, and Canada.

During ancient and medieval times in western nations, the philosophers propounded the hypothesis that law ought not to be discretionary and harmful to the human interest and generator of oppression. The Greek idea of law was that an unfair law was consistently an image of oppression. From Plato to Rousseau, the lawful way of thinking of Europe consistently stated that law should be the generator of congruity and satisfaction. It should likewise be sensible and should only aim for justice. The first idea of law was that it should not be in struggle with the divine law:

> "Man-made law, whether made by the king himself or by some legislative body, was primarily for the purpose of implementing the natural law and was valid only so long as it did not come in conflict with natural law, whatever its origin. The individual was obliged to follow those laws which were valid by this standard; he was free to disobey others."[2] It

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1 *Marbury* v. *Madison* 1 Cr. 137 (1803).

2 Murray Clark Havens, "*The challenges to democracy*" 5(Uni. of Texas Press, 1965).

> discloses that during that time, too, in the ancient society, the elements of judicial review were clearly traceable. Aristotle said, "Laws must be constituted in accordance with the Constitution, and if this is the case, it follows that laws which are in accordance with the right constitution must necessarily be just, and laws which are in accordance with wrong or prevented constitution must be unjust."[3]

While propounding the reasonableness theory, the Roman legal philosopher Cicero said, "A true law namely, the right reason which is in accordance with nature, applies to all men, and is unchangeable and eternal."[4] Plato's idea of the government and majority rules system, Aristotle's idea of reasonable law and Coke's precept of common right and reason, later on, explained by Blackstone all provided sound material for Locke's idea of constitutional philosophy. He gave a steady and never-ending basis of judicial review. Locke is considered as the advocate for constitutional democracy and legislation's control through the constitution. He, in a way, generated the modern theory of judicial review.

The American doctrine of judicial review embodies the Lockean emphasis on the judicial function of state authority. The development of judicial review became the American tradition into the institutional practice of Lockean ideal."[5] Locke's theory and views on treaties of the government can be broadly put in as:

i. The aim of the governments is the greater good of humankind, and the supreme power lies with the people only.

ii. The lawmakers are the trustees of the people; people in return are trustees as well as beneficiaries. In case the legislature breaches the trust of the people, the power will be taken away from them and be vested with the people again.

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3 Ernest Buler, 'The politics of Aristotle' 127 (Uni. Press, Oxford, 1946).

4 Francis William Coker, Marques Tullius Cicero, '*The republic and the laws: From reading in political philosophy*',151 (the Macmillian Co., New York, 1959).

5 Thomas Cokes, '*Two Treaties of Government*', XXXV (Harper Publication Co. 1964).

In this manner, Locke set up an arrangement of philosophy of constitution, which had its roots in the theories of Plato and Aristotle. Locke's philosophy enormously affected the development of America's judicial review. Despite the fact that in England, judicial review got wiped out on the advancement of the precept of parliamentary sway, "judicial law preceded to statutory law in England."[6]

2. Emergence of Judicial Review: 16th Century Britain and Chief Justice Coke's Contribution

The infant idea of Judicial Review was brought into the legal world in England and developed in America by Chief Justice Coke in 1610. Chief Justice Coke's career is full of dramatic turns, despite that nothing could bring down his courage and his stance— "his cross-examination of Sir Walter Raleigh, his role in uncovering the Gunpowder Plot, his bitter rivalry with Sir Francis Bacon and his explosive face-to-face confrontations with King James I—Coke's work presents a studied calm".[7] Undeniably his most important contribution to legal history is his sowing of seeds of judicial review and Injecting the idea that judges can invalidate the legislative Acts.

Coke held the reputation of master of uncoded laws, but he was equally comfortable working with the written laws. Coke gave much importance to the publications of the cases in the yearbook, as it would reflect the true essence of the statutes passed by the Parliament, and how it was applied, the expression of Common law, and serve as the commentaries. His subtle actions to empower the Judiciary had started long before his much-talked judgment in *Bonham's* case. He underscored the intelligence of the Judges and contrasted it with the insight of sages. Bonham was neither an unexpected sudden decision by Coke nor the first occasion when he wanted to rewrite the law himself. On several occasions, statutory interpretation helped him to negate and experiment with the law to

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6 Edward Jenks, '*The book of English law*' 3 (John Marry, London, 1967).

7 Allen D. Boyer, "Understanding, Authority, and Will: Sir Edward Coke and the Elizabethan Origins of Judicial Review" 39 *B.C.L.* 43 (1998).

broaden the sphere of judicial authority. Coke's uncertainty and dissatisfaction toward statutes reflected powerfully in the case of one legislative Act, "*De Donis Conditionalibus* ("*De Donis*") (1285)." *De Donis* was one such Act that Coke was enthusiastic about writing it again by way of interpretation and by taking advantage of "the equity of the statute."

Even before the Cokein era, common law lawyers were acquainted with the way of expanding the application of the Act. Since the times of the "Year Books," judges recognized the doctrine of "the equity of the statute," which was a rule of interpretation, based on a "construction of reasonableness," which permitted judges to apply a law to verifiable circumstances which were not within its real letter.

2.2. (i) *Bonham Case; Coke's Judicial Creativity*

Thomas Bonham[8] practiced medicine in London. After receiving a degree in Physic medicine from Cambridge University, he associated himself with surgeons in 1602. By 1605 his problems with the Royal College of Physicians started cropping up. The college had the authority to govern the entire medical community and fine anyone who was practicing without a license by the law passed under Henry VIII. Clause two of the Statute authorized it to punish anyone found malpractice by the imposition of fine and imprisonment.

London College of Physicians, also the regulating body for physicians in London, found him practicing without an authorized license. The college examined Bonham and found him unfit to practice as a physician. Order of abstaining of practice was passed against him in the jurisdiction of London. Later on, Bonham was found defying the order; they arrested him subsequently brought him in the censor's custody. This did not deter him and he promised to continue his practice after his release. This led to his prompt imprisonment.

In 1606, Bonham, after the examination, was found unfit and thus denied membership. Bonham, on the other hand, continued

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8 *Thomas Bonham v. College of Physicians* (1610)77 Eng. Rep. 646,652.

practicing and was summoned by the College. Bonham told the College authorities that they had no power to regulate and manage medical practice by graduates of physics from the college. This was when he was imprisoned. However, within few days, his attorney obtained the "writ of Habeas corpus" and was released. The writ was conceded by the Chief Justice Coke of the Court of Common Pleas.

College sued Dr. Bonham in the Court of King's Bench and fined him sixty pounds. After this Bonham counter sued the college in the Common Pleas for "false imprisonment" and sought hundred pounds as damages. Year later the King's Bench found him guilty of malpractice. However, a year later, the case reached the Court of Common Pleas, wherein as a defense, college depended on its "statute of incorporation," which was responsible for giving them authorization for the regulation of all physicians in London and to penalize those practitioners found practicing which were not granted a license from the college. The legislation additionally qualified the school for one portion of the multitude of fines forced by it.

Chief Justice Coke held that the University did not have the power to penalize Bonham and ordered his release, and also levied a fine of forty-pound on the university.[9] Coke proposed that only the physicians whose practice or negligence hurt patients should be punished "*in his body*," i.e., imprisonment; Secondly, the physician whose only shortcoming was unapproved practice may be punished in some alternate manner, but not through detainment.

After the point-by-point readings of the two important legal provisions: Coke found that the principal proviso, under which Bonham had been arraigned, didn't approve the College to detain him ("a power available only for prosecutions under the second clause").[10] The distinction in sanction demonstrated that the clauses were "distinct and parallel." They would inappropriately give the College capacity to penalize twice for the same offense on the off

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9 Allen D. Boyer "Understanding, Authority, and Will: Sir Edward Coke and the Elizabethan Origins of Judicial Review"39*B.C.L* 43(1998).

10 *Ibid.*

chance that they were perused as connected. Also, the clause permitted fines to be imposed simply following one month of unlicensed practice. The subsequent clause permitted immediate action for malpractice.

The most important reason given by Chief Justice Coke to struck down the law was that it permitted the College to hold half of the fines it forced on unapproved specialists. According to him, parties, judges and censors cannot be the same on the grounds of unreasonableness and biasness.

> "…The censors cannot be judges, ministers, and parties: judges to give sentence or judgment; ministers to make summons; and parties to have the moiety of the forfeiture, *quia aliquis non debet esse Index in prapria causa, imo iniquum est aliquem suae rei esse judicem* . . . And it appears in our books, that in many cases, the common law will control acts of Parliament, and sometimes adjudge them to be utterly void; for when an act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such act to be void."[11]

By voiding a statute, Coke was opening the world to new possibilities. With this judgment, Coke asserted that common law has the authority to negate a law not found in consonance with the common will. For Coke, the insight of judges was superior to the intent of the lawmakers. He was well aware of what he was doing. Again in 1612, without citing the *Bonham* case in *Rowles* v. *Mason*[12], Coke reiterated that the common law "corrects, allows, and disallows both statute law and custom, for if there be repugnancy in a statute; or unreasonableness in custom, the common law disallows and rejects it."

11 *Thomas Bonham v. College of Physicians* (1610)77 Eng. Rep. 646,652.
12 *Rowles* v. *Mason Thomas* (1612) Eng. Rep. 892, 895.

In Modern times, many jurists correctly trace the origin of the doctrine to the judgment of Coke given in *Bonham's* Case (1610). As the Chief Justice invalidated a law, he found it questionable and against the common will of the people, and with great courage not only pronounced the judgment but even after much controversy and pressure stood by it. Sadly, at the end of the seventeenth century, the power shifted in the hands of Parliament. The "*Glorious Revolution* of 1688" made the English crown and Judiciary subordinate to the Parliamentary.

From here emerged *'Marbury v. Madison"*[13] and two central principles of constitutional law.

1. Judges are the final arbiters of the Constitution and the

2. Judges are independent of two other governmental branches.

Coke's judgment, in a way, led to the formulation of the doctrine of "judicial review," and his defense of the judgment subtly gave the prototype for the idea of independent judges.

(ii) ***Day* v *Savadge***[14]

Day sued Savadge for trespass on the grounds that the latter removed a bag of nutmegs from his property. Savadge asserted that it was the standard custom in London for people to leave goods at the "Queen-Hilthe Wharf" to be removed by collectors in lieu of a fee. The collector claimed that he didn't receive the installment owed to him, hence was entitled to remove Day's nutmegs. Savadge asserted that said custom in question had the requisite authority of the Parliament, which was also liable for certification[15]. Day differed and expressed that the dispute ought to be tried by a jury and not by a certificate since it would be against "common sense and unlawful."

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13 *Supra* note 1.

14 *Day* v. *Savadge* Hob. 84 (K.B. 1614).

15 Braybrooke, E. (1951). Custom as a Source of English Law. *Michigan Law Review, 50*(1), 71-94.

The Court held that there was no such custom present in London and observed that a certain place's laws and customs can exist but shall still be subjected to Judicial control. The Court viewed that the "laws of nature are immutable" and that they are the paramount laws.

Judicial Committee of the Privy Council is why didn't the British demand "judicial review" of Acts of Parliament at home as well as providing for federalism judicial review in the Empire? The first answer to that question is that formally the Judicial Committee of the Privy Council exercised the power of the royal prerogative and that power had been eliminated in England in 1641 with the abolition of the Court of Star Chamber.

(iii) Parliamentary Sovereignty

After the Glorious Revolution of 1688[16], the Parliament attained sovereignty as the King became part of the Parliament as well as of Courts. The king acted together with the House of Lords and the House of Commons. It was inconceivable in such a Mixed Regime that the King's judges could have the power acting alone to invalidate an Act of the King-in-Parliament.

After a great tussle between the Parliament and the King, England witnessed the victory of Parliament in 1688. Ultimately, King had to acknowledge the legislative and tax powers as the powers of the Parliament and separate judicial powers of the Court. During this period, the King had executive powers; Parliament assumed to itself legislative powers and the courts exercised only judicial powers; however, later on, England adopted a parliamentary form of government.

Unfortunately, all the factors necessary for the growth and development of judicial review were absent in England during that time, for instance, a written constitution, the principle of separation

16 The Glorious Revolution took place in1688-1689 in England. Wherein, King James II was overthrown by his own daughter Mary and his husband. This changed the entire way of governance of the England, parliament was given more power over monarchy considered as the advent of political democracy.

of power, and demarcation of work of legislature and executive. The King-in-Parliament played a major role in the subjugation of the doctrine and the parliamentary supremacy. On the other hand, there existed in the colonies several factors which probably contributed to the growth of judicial review, namely written constitutions, high regard for the theory of separation of powers, and familiarity with the practice of appeals to the Privy Council; regarding the validity of colonial laws.'[17]

Blackstone's tenth rule for construing statutes must be repeated "Lastly, acts of parliament that are impossible to be performed are of no validity; and if there arise out of them collaterally any absurd consequences, manifestly contradictory to common reason, they are, with regard to those collateral consequences, void." He immediately adds that he lays down this rule with these restrictions, although he knows that it is commonly laid down more largely, to the import that "acts of parliament contrary to reason are void".

Reasons for the absence of judicial review power in England may be briefly summarized as follows:

- Evolution of Parliamentary supremacy
- Absence of written Fundamental rights
- Having not written Constitution
- Unitary form of government controlling all powers
- Members of Parliament taking part in judicial administration
- The political consciousness of the English people make Parliament work in the spirit of national harmony

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17 David Deener, "Judicial Review in Modern Constitutional Systems" 46 *American Political Science Review* pp. 1079-1099(1952).

- Predominating influence of the public opinion on the parliamentary activities
- Growth of legislative idealism

3. Origin and Evolution of Doctrine in the United States of America.

The doctrine of "Common Rights and Reason" propounded by Chief Justice Coke as the basis of Judicial Review might at that time in England had died down, but the same was accepted as a basis for negating the legislative Acts in one of England's former colonies. Blackstone's commentaries and Locke's philosophy that legislature is the trustee of the people and cannot enact anything in conflict with the interest of the people was a good enough reason and atmosphere conducive to the growth of the Judicial Review. Various reasons such as Colonial decisions, Otis Hamilton's arguments in Federalist paper, Pre- Marbury judicial decisions of the Supreme Court of America led the way to wider scope for judicial review of legislation.

During colonial rule, provincial Acts could be proclaimed void and invalid by Privy Council's judicial committee. It was based on the grounds that the Acts were secondary to the Parliament and any subordinate legislation made by the lower administrative body of the provinces in the negation of the Parliamentary Acts were void and unlawful. This practice of judicial review paved a path for the federal Supreme Court of America which accepted the judicial review. Apparently, the colonial courts and the PC of England could announce laws void if they struggled with British laws.

(i) Writ of Assistance case

In the evolution of judicial review arguments of James Otis[18] in February 1761 in Boston are considered as a significant step. The

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[18] James Otis Jr. was a lawyer, political activist, pamphleteer, and legislator in Boston, a member of the Massachusetts provincial assembly, and an early advocate of the Patriot views against British policy which led to the American Revolution.

issue referred to was whether Paxton along with the British custom officers ought to be allowed the power of issuance of search warrants which empowered them to look through goods that were smuggled. James Otis firmly opposed such an act and described it as "against the Constitution" and "against natural equity" and hence void. James Otis was Advocate-General under the Crown; however, as the case continued, he resigned in 1761 in the protest against the decision given in Writs of Assistance which approved officials to go into any residential place without having a warrant to look for such commodities. He put together his case with respect to "natural right" and contended that any law made by the Parliament against this was consequently invalid and void. Otis, however, did not win the case but laid down a new perspective for the public and jurists to ponder upon.

(c) In 1776, on the eve of Independence of the United States of America, judge Gushing of Massachusetts, relying upon the Doctrine given by Justice Coke in the *Bonham* case, asked the jury to treat few Acts *of* Parliament as void and inoperative. Such Acts were found to be against the 'common right and reason.'

(e) On account of *Holmes* v. *Walton* [19] in 1780, the New Jersey's Supreme Court rejected to validate a State legislation that authorized the capture of loyalist property, and it was to be decided by the trial whether the property so seized was in fact a loyalist property, and stated that it was passed in contravention of certain provision of the Constitution of the State. The Act had a provision of six jury members for a specified class of offenders although the state constitution provided a jury of twelve for such trials. The Appellant Court ruled in favour of Defendant, holding that it was an unconstitutional Jury. Interestingly, The Constitution did not expressly specify the number of jurors. But it stated "*that the inestimable right of trial by Jury shall remain confirmed as a part of the law of this colony, without repeal forever.'* The Court considered the requirement of 12 jurors was derived from the Common law of England, and the two documents that served as the foundation document for the

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19 *Holmes and Solomon Ketcham* v. *Elisha Walton* (1780).

drafting of the New Jersey Constitution, The West Jersey Concession & Agreements of 1676 and the East Jersey House of Representatives 1699 provided that Trial shall be by 12 honest men of the neighbourhood and by the verdict of 12 men. The New Jersey Supreme Court did not shy away from construing the Constitutional text in the light of background principles.

(g) *Travett* v. *Weeden*[20] is a kind the case that paved the path for the evolution of the Judicial Review. Interestingly, at the time of the case, Rhode Island did not have a written Constitution, so the Supreme Court did not have a Constitution to base its judgment upon. In the year 1786, the legislative Act was passed that imposed a penalty on those who did not accept the State's paper money bill as gold or silver. Anyone so caught would be penalised without a trial by the jury. One John Weeden refused to receive the money bill, and Trevett brought an action against him to collect the penalty.

James Varnum, Weeden's attorney, advanced several arguments and claims that reflected different approaches to Judicial Review. He started with the traditional conventional argument that the legislative Act should not be against the Common Right and Reason. He referred to Natural Law and Constitution as the basis for invalidating the Statute. When he was countered by the claim that there was no Constitution, he remarked, "Constitution! We have none: who dares to say that? None but a British emissary or a traitor to his country."[21] He equated the Constitution with the Historical rights of the English people. Varnum made arguments about Constitutional interpretation even without the existence of one. Varnum claimed:

The trial by the jury, as hath been fully shewn, is a fundamental, constitutional law'. He asked,

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20 *Travett* v. *Weeden* (1786). There is no published official report of *Trevett.* The principal historical source concerning the case is attorney James Varnum's pamphlet.

21 William Michael Treanor, "judicial review before *Marbury"* 58 *Stan. L. Rev*. 455-562 (2005).

> Is it consistent with common right or reason that any man shall be compelled to receive paper, when he hath contracted to receive silver? That for bread he shall receive stone, or for a fish a serpent?

Judges, however, pronounced in favour of Varnum but did not provide much explanation to the decision. Out of four judges, two judges declared the Statute as unconstitutional without any explanation, the third judge also declared it as unconstitutional on the ground that penalties were to be assessed by the jury, the Fourth judge voted against taking cognizance and the last judge did not explain his vote. This judgment provided a suitable foundation for forthcoming development of the principle of Judicial review.

(k) In the time frame of 1796-1798, the Supreme Court gave judgments in accordance with the powers of judicial review. Chief Justice Chase in 1796 opined, in *Hylton* v. *United States*[22]

> "It is unnecessary for me to determine whether the court constitutionally possesses the power to declare an act of the Congress void on the ground of its being contrary to and in violation of the constitution, but if the court has such powers, I am free to declare it but in a clear case."

(ii) The Age of Marshall (1801-1835)

In 1801, The then Chief Justice of America was John Marshall. He remained in the service till 1835. The period was a remarkable opportunity in American legal history for the development and growth of the principle of Judicial review to formally take place. His notable and celebrated decision in *Marbury* v. *Madison.*[23]

Marshall in 1803, under several political pressures, gave the judgment of *Marbury* v. *Madison*; he declared that:

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22 *Hylton* v. *United States* (3 Dall 171).

23 *Supra* note 1.

a) The Parliament does not have the authority to make laws in contravention of the Constitution.

b) Judiciary has the right to interpret the law and the Constitution, and it is up to the Courts to decide whether Constitution or Statute is paramount.

c) If violated, only the Judiciary has the absolute right of declaring the Statute void.

This was not a sudden blow on the legislative authorities. The famous judicial debates of the senate served as the precursor to the pronouncement of the doctrine where the power of the judges for judicial review was firmly established.

In the *Marbury* case, Chief Justice Marshall did not come up with an entirely new theory. The doctrine was already on its path for a long time. The decision reinforced and affirmed it to a significant extent.[24]

Gradually the doctrine of judicial review since then has become an essential part of the jurisprudence of America's Constitution. Marshall's calm and intelligence and his spirit to tackle adverse and difficult situations won many hearts. Although at that time, the decision was surrounded by many criticisms. He was threatened with the consequences if the decision went in favour of a judicial review of the Act. It was also an open threat of impeaching him. During that time, the apex judiciary of the country was under immense political influence and pressure from the political party. Chief Justice Marshall possessed a great sense of patriotism and knew how to come out of the situation without compromising the dignity of the Judiciary. He chose a middle path which shows how courageous he was. Marshall remained unperturbed. Instead of deciding in favour of judicial control or legislative supremacy, he declared the Constitution supreme and thus established constitutional supremacy. Marshall was inspired by Hamilton and the role of the Judiciary he had essayed in

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24 *Fred* v. *Cahill*, JR, Robert J. Steamber, *The Constitution Cases and Comments* 22 (The Ronald Press Company, New York, 1959).

federalist papers. Hamilton was the first one to argue in its favour, but Marshall, afterwards played a vital part in the evolution of America's democracy through judicial review.

The plain reading of the judgment that Marshall's idea of judicial review did not have a broad scope can be observed by the plain reading of the judgment. His judicial review jurisprudence was based on the premise that a legislation violating the Constitution was void. Marshall did not touch upon the fact that even the arbitrariness and unfairness of the law could be considered the law against the people's will which is sovereign. The people who are considered sovereign did not delegate power to the Parliament. Therefore, the legislation should be void.[25] Later on, the Fourteenth Amendment took care of this provision as well.

(iii) ***Marbury*** **v.** ***Madison***[26]

The official pronouncement of judicial review is accredited to Chief Justice of United States, John Marshall, in the landmark case *Marbury* v. *Madison*. The dramatic circumstances under which the case unfolded are worth analysing. Chief Justice Marshall belonged to the Federalist party and he also held the position of Secretary of the State in President Adams's cabinet. In the January of 1801, President Adams nominated Marshall as the Chief Justice of the Supreme Court. In the final administrative weeks of President Adams, Marshall held both the offices, as Adams lost the presidential election to Jefferson, who was the leader of the Republican party in November 1800. The Federalists were still in Congress until 4th March, when Jefferson would take charge officially. To take the optimum advantage of the time they still had in their hands, they hastily tried securing the future of the federalist supporters, and also, they wanted to induct as many federalists to the position before leaving the office. Hamilton, who was also known as the mastermind of the federalists, formulated a plan. Consequently, a law was passed that created several Federalist District Courts and the judges so

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25 *Ibid.*

26 *Marbury* v. *Madison* 1 Cr. 137 (1803).

appointed would hold the seat permanently and for life. As the in charge of the senate, Jefferson made a point that they already had more than enough district Courts, and new courts were not needed in the country, but he could not do anything. They hurriedly passed the law and appointed new judges to the Court. To appoint the judge's commissions were to be signed, which were not duly signed till the evening of 3rd March, which was just a day before Jefferson took charge. On the night of 3rd March, Marshall, Chief Justice sat to sign and fill out the commissions. Time was passing from their hands like sand in hand.

On the other hand, Jefferson could also not sit and watch things happen, so he came up with another plan; he sent his chosen Attorney General Levi Lincoln to take control and possession of the State Department as soon as midnight struck. Since it would officially make Jefferson the President. At midnight, Levis Lincoln went to the office of Marshall's and informed him that President Adams sent him to take possession of the office. Marshall drew out his watch to show him that it still was not 12 o clock on which the Lincoln showed him Jefferson's watch and said that this was President Jefferson's watch and rules the hour. There were few unfinished commissions kept on his table duly sealed and few finished commissions kept in his pocket. The judges appointed through them were known as "Adams, midnight Judges." In the pile of papers that left, there were 17 commissions duly signed by Marshall as Secretary of the State for the appointment of Justices of the Peace. John Madison, who was the new Secretary of State, rebuffed to distribute the commissions after Adam's office closed. The commission of William Marbury was duly signed but not delivered. It brought an action for issuing the writ of Mandamus to push the Jefferson administration to give the signed commissions by summoning the Supreme Court's original jurisdiction. The writ of Mandamus was the most common remedy for making executive officers for performing ministerial acts. And from here came the case of *Marbury* v. *Madison.* Marshall can be said he was seeking an opportunity to give effect to the power of Judicial Review. That opportunity came knocking at his door in *Marbury v. Madison.*

John Marshall, who had the direct and personal connection with the case, was assumed would refuse to sit in the case as many held him responsible for not delivering the commissions under the stipulated period. Nevertheless, Marshall did not shy away from fulfilling his constitutional duties over the ministerial act involved in the case.

Chief Justice Marshall was aware of the threat this case posed on the powers and independence of the Supreme Court. Jefferson and Secretary also belonged to the Democratic Party, and Marbury and Marshall were federalists. However, the Court unanimously decided that they cannot mandate Madison to deliver the commission. Chief Justice Marshall understood the danger that this case posed on the power of the Supreme Court. Because Madison was President Jefferson's Secretary of State and Jefferson was head of the Democratic Party while Chief Justice Marshall and Marbury were Federalists, President Jefferson would never direct Madison to deliver Marbury's commission. The Court was aware that even if they required Madison to release the signed commissions, he would most certainly refuse, and the Court had no power against such action, and Court would appear weak in such a scenario. On the other hand, if the Court declines to act, it would look like a decision made out of fear.

In the order in which the Court has viewed this subject, the following questions have been considered and decided.

1. Has the applicant a right to the commission he demands?
2. If he has a right, and that right has been violated, do the laws of his country afford him a remedy?
3. If they do afford him a remedy, is it a mandamus issuing from this Court?

The justices chose a middle path between these alternatives, written by Chief Justice Marshall. The Court rules that:

1. Marbury was entitled to his commission, but that according to the Constitution, the Court did not have the authority to

require Madison to deliver the commission to Marbury in this case.

2. They found the Act of 1789 was in conflict with the Constitution of the United States of America since it had given more power to the Supreme Court than it was authorized under the Constitution.

The dispute revolved around the Court's original jurisdiction and its appellate jurisdiction. By Original Jurisdiction, the dispute went directly to the Supreme Court; however, in the case of Appellate jurisdiction, the case first went to lower courts and only after the decision can be reached to Supreme Court by way of appeal. Marbury had brought his petition under the original jurisdiction of the Supreme Court. Hence, the Court ruled that they could not decide the case under the Court's original jurisdiction, and issuance of the writ of Mandamus would be an improper exercise by the Court.
The Judiciary Act 1789 gave Supreme Court the power to "issue the writ of Mandamus to an authority that held the United States of America's office. Under a writ of mandamus, a superior court issued a command to a public official or a lower court requiring them to perform a special duty. The Court believed that this authority of issuing the writ of Mandamus is an exercise of its original jurisdiction under the Constitution. However, Article III, Section 2(2) of the Constitutions provides particularity to the section wherein only cases involving "ambassadors, other public ministers and consuls, and those [cases] in which a state shall be a party can be covered under the original jurisdiction of the Court and the matters related to rest of the authorities can be decided only by way of exercising its appellate jurisdiction. The present dispute, however, did not involve ambassadors, public ministers, consuls, or states. Hence, it was held that the Supreme Court did not have the authority to issue the writ under the exercise of its original jurisdiction. The reasons stated hereinabove the Judiciary Act of 1789 was found in conflict with the Constitution's provisions.

Declaring the Constitution as "superior, paramount law", the Supreme Court ruled that when ordinary laws conflict with the

Constitution, they must be struck down. Furthermore, judges' job, including the justices of the Supreme Court, to interpret laws and determine when they conflict with the Constitution. According to the Court, the Constitution gives the judicial branch the power to strike down Congress's laws, the legislative branch. This is the principle of judicial review. Thus, it has been recognized since this decision that it is "emphatically the province and duty of the judicial department to say what the law is."

Through this decision, Chief Justice Marshall made it clear that the Judiciary is at par with other State organs. By refusing to issue the writ thus, declined madison the chance to disobey the Court's ruling and, on the flip side, by declaring through the principle of Judicial review the power of Supreme Court and thus maintained the sanctity and integrity of the Judiciary and also making it clear that Constitution is the land's supreme law. Only Supreme Court has the final authority to interpret the same, saved the judges from looking influenced or under any fear of the authorities.

(iv) Jurisprudence Provided in Support of the Principle of Judicial Review

The judgment, in this case, provided a strong jurisprudence in support of the principle of Judicial review for the courts to consider and apply in the years to come. The judgment has been cited repeatedly to support the nuances pertaining to the Judiciary's power in pronouncing a legislative act void. By his writing, Chief Justice Marshall has lucidly woven the thread conducive to the growth and pronouncement of the Judicial review principle. The jurisprudence has been analysed below:

Firstly, He tackles whether an Act that contravenes the provisions of the Court can become the law of the land?

By his great understanding, Chief Justice started by discussing the importance of the will of the people he calls supreme will. Through this supreme will as an original right, a government and different departments are formed to provide maximum happiness to society.

Based on this notion, the whole American fabric has been erected. The government and various departments extract their power from this original right, but at the same time, there are several limits provided by the same which should not be transgressed. These are known as the legislature limits, which should not be avoided or violated because the United States has a written Constitution. If these limits cannot confine the government, then the distinction between a limited government and a limitless government would cease to exist. The written Constitution imposes limits.

Hence, it is important to point out whether the Constitution is paramount or at par with the other legislative Acts and the legislature may alter it? Chief Justice Marshall correctly explained that if Constitution is supreme, then a legislative Act in contravention of the Constitution must be held void. If it is not, then the notion of limited government is an absurd concept because the source that defines the limit of the legislature can be altered by the same.

Secondly, Chief Justice discussed the intentions of the framers of the Constitution. He emphasized the theory of the written Constitution by observing that the framers drafted the Constitution to write fundamental principles and be considered by the Court and in no way could be ignored.

Thirdly, showing extreme courage, Chief Justice stated that if the Courts have to say what the law is, the courts apparently have to interpret the same. If the Court is presented with a dispute where law conflicts with the Constitution, it is for the Court to decide which shall operate and form the judicial duty's essence. If Court decides that Constitution is the supreme law, the Court will be abiding by the same. Dealing with a scenario where Constitution will not be considered paramount would render the theory of a written Constitution of no relevance. In such cases, the legislature becomes capable of doing something that is expressly forbidden, and the limits would be passed at the pleasure of the legislature. Therefore, the Constitution will be reduced to nothing.

Fourthly, Marshall illustrates that the Constitution's language is explicitly addressed to the Court and for its governance and the legislature.

By making the arguments and supporting it with valid and strong jurisprudence and illustrations, he finally held that to strengthen the written Constitutions, it is required that when a legislative Act is found in conflict with the Constitution, it should be rendered void and the instrument binds all the organs of the State.

(v) Federalist Papers

Federalist papers are 85 letters that were written in the 1780s as a persuasion for the ratification of the Constitution in the United States of America. The constitution needed ratification from nine out of 13 States to persuade the States and bring everyone on board. The letters were written and published in newspapers. This was not the first attempt to bring a written Constitution into existence. Article of Confederation and perpetual Union was the first written Constitution of the United States of America that was drafted in the 1770s but was not ratified until 1781. According to this, States were to remain sovereign and Congress was considered the last resort to appeal for a dispute. It was The Articles of confederation that named the nation 'The United States of America.' Maintenance of army, coining money and making treaties and alliances were the tasks to be performed by the Congress. But the document was not free from loopholes and weaknesses. Congress could not make tax laws and hence it was becoming difficult for the new nation to cope up with the post-Revolutionary War. There was no executive or Judiciary. The Philadelphia Convention, also known as the Constitutional Convention, took place in 1787 with the aim to revise the Articles of confederation. On the other hand, many celebrated statesmen like Madison and Hamilton wanted to bring a new written Constitution instead of making revisions to the old one.[27]

[27] Federalist papers, *available at:* https://www.history.com/topics/early-us/federalist-papers (Last visited on: August 26, 2019).

During that time, the convention was not referred to as constitutional convention neither the delegates attending the convention came with the intention to draft a new constitutional convention. New broadlines were presented and debated. Finally, James Madison's Virginia plan was selected as the basis for the formation of the new government.

However, the opposition was also strong and the framers were afraid that they would not get the States' support as the new constitutional convention wanted a strong Union as opposed to the Articles of confederation. To convince people that the Constitution was not against the State's government and tries to balance the Federal and State government, a series of letters were written by James Madison, Alexander Hamilton, and John Jay, which were published in the newspaper. Later, these articles that got published in the newspaper were compiled and published in the form of a book called *The Federalist Papers*.[28]

The nationwide debate over what constitutes the constitutional principle spread across the states' Hamilton, who had written most of the letters, addressed the objections. He argued that the proposed draft would help preserve the Union, which was on the verge of breaking apart, reconciliation would be brought through Congress in Economic and political conflicts, and the legislations thus brought shall be subjected to the Judicial Review.

For the purpose of the study, Federalist paper no. 78 is discussed pertaining to the judicial powers.

Judiciary the least dangerous branch: Hamilton takes the issue lucidly and coherently to explain why Judicial Review's power is just and fair by first explaining that the Judiciary is one of the 'least dangerous' branches as far as political rights are concerned since it is in the least capacity to infringe them. He explains the branches' functions and

28 Federalist and Anti-Federalist papers *available at:* https://www.landmarkcases .org/ marbury-v-madison/the-power-of-the-judicial-branch-the-federalist-number-78-and-the-anti-federalist-78(Last visited on August 26, 2019.

roles rather perfectly by referring to the 'Executive' as holder of the sword, 'legislature' as the commander of the purse. 'Judiciary,' on the other hand, neither has the sword nor the purse, which is a testament to its no influence over society's strength and wealth. Its only power is its power of 'Judgement' whose efficacy rests on the executive.

Independence of the Judiciary: Hamilton's persuasion in the direction that Judiciary being the weakest among the three branches should be kept distinct from the other leads to the justification that the people's liberty cannot be infringed by it as Judiciary being the weakest branch itself, needs to defend itself from the attack. Hence should be kept distinct from the legislature and the executive. There is no liberty without a separate Judiciary.

Power of Courts to find a place on the written Constitution: After proving theoretically how Judiciary can never risk individuals' liberty, it has to face a lot of pressure and attacks from the other two branches. To keep the authority and power of the Judiciary protected and intact, the powers must find their place in the Written Constitution, which he describes as *'citadel of the public justice and public security*.[29]

Limited Constitution and the Judicial Review: Hamilton explains the limited Constitution's concept as certain kind exceptions where the legislation cannot pass any bills and laws that are unjust in nature, for instance, bill of attainder or Ex post facto laws. He argues that exceptions of this kind can only be preserved by way of Courts, whose duty is to render all the Acts of the legislation contrary to the essence of the Constitution void. In the absence of this setup, all the rights and privileges would hold no water.

Superior and Subordinate Debate: Suppose the Judiciary gets the power to announce the legislative acts as void. In that case, it certainly raises arguments and implies that the Judiciary is superior to the other branch based on the notion that the authority that can declare the act of the other must be superior to it. However, he dismisses the

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29 Federalist papers, *available at:* https://www.history.com/topics/early-us/federalist-papers (Last visited on: August 26, 2019).

contention explaining that every act of the delegated authority which is in contravention of the Principal authority is void. Similarly, Legislative Acts that are in direct conflict with the Constitution should be pronounced void, and if we deny this contention, then it affirms that the agent is superior to the principal.[30]

Courts as an intermediate body between the people and the legislature: The legislative body cannot be considered the constitutional judges of the power they possess and the constructions so formed by them to be considered conclusive in nature for the other branches that have not been extracted from the Constitution. On the other hand, Constitution should have the power to enable the legislature to substitute their will to that of the constituents. Hamilton argues that the Court has been made to serve as the intermediate body between the people and the legislature as the main motive to keep the legislature within its limits so assigned. It is the primary and peculiar duty of the courts to interpret the law. Moreover, Constitution should, in fact, be the fundamental law for them. Hence it is up to them to find and ascertain the meaning of the legislative Acts. If any conflict between the two arises, i.e., Statute and the Constitution. Constitution ought to be preferred to give effect to the intentions of the people rather than of their agents. Hence rest the superiority, and subordinate debate since neither the legislature nor the Judiciary has been given an upper hand but the Will of the people who indeed is superior to both.[31] So if the legislature is in opposition, the judges ought to be governed by the Constitution, which is the will of the people. The fundamental laws should make regulations.

Rule of Construction: Hamilton discusses that if two acts, one superior and the other being derivative in nature, contradicts each other, then in such a case, the Derivative act should be disregarded, similarly If a statute stands in contravention of the Constitution. The Statute, in this case, needs to be disregarded. And it becomes the duty of the Court to give effect to the written Constitution.

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30 *Ibid.*

31 *Ibid.*

Independence of Judges and Permanent Tenure: Hamilton emphasizes the permanence of the tenure of Judges. The Court of Justice acts as a bulwark against the legislative encroachment; hence, it is of utmost importance that judicial officers' tenure must get permanency as it will contribute greatly towards maintaining the Judiciary's independence, fearless and faithful spirits of the judges towards their duty. This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humour, which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information. More deliberate reflection has a tendency, in the meantime, to occasion dangerous innovations in the government and severe oppressions of the minor party in the community.

(vi). The Age of making of Judicial Constitution (1865-1932)

The Fourteenth Amendment was the consequence of a lot of constitutional agitations, deliberations, and necessity during the fourth period in 1868, thereby adding the principle of Due Process of Law. "No one, in fact, was wholly satisfied with the Constitution. It was a patchwork of compromises, a delicate adjustment of checks and balances"[32]. The developing disappointments from the Constitution led the Supreme Court of United States to make a separate constitutional skyline through judicial review.

The year1868 proved to be a significant year in the advancement of America's constitutional law when the "Due Process of Law" phrase corresponding to Magna Carta's "the law of the land" phrase was added. "Due Process of Law" served as a bulwark against arbitrary Acts in the United States of America. It imposed restrictions upon all the three organs of the state, legislative, executive and judicial. Consequently, the Due Process became an incredible weapon for the judicial review's enforcement in America. Venkata Subba Rao says - "Due Process is thus a formula which means that legislation would be struck down as unconstitutional if in the opinion of the Supreme

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32 Nathan Schachner, *The Founding Fathers*, 5 (Capricorn Books, New York, 1961).

Court it imposes unreasonable restrictions upon vested rights or upon liberty."[33]

Chief Justice Taney's judgment in the *Dredscott* case[34] made an extraordinary response in America's people's minds. The Fourteenth Amendment giving "Due Process Clause" gave more extensive control of judicial review to the Apex Court. Taney and Marshall's principle of constitutional supremacy made it possible that a law could be pronounced void and would not be enforced if it is in contravention to the Constitution. The decisions were established on the theoretical grounds that the Congress is a simple agent of the public hence, possesses zilch authority to pass legislations that aren't for the public good.

In *Lochner's*[35] case of 1905, the Court negated the statute of state of New York that restricted the Bank's employment to a limit of 60 hours per week and 10 hours every day. The Supreme Court ruled that it was a grave "deprivation of liberty without due process."[36]

The case did not invalidate the legislation that violated the constitution but the arbitrariness of the law that further violated the personal liberty of an individual. This became the guidance for cases to come. The attention of the court in the periods of Taney and Marshall remained restricted to the doctrine of the "constitutional supremacy," evolution and development of powers of the Union and consolidation of government and the extension of trade and commerce, etc. Individual freedom was disregarded. But the Supreme Court applying its judicial mind, worked towards public safety.

The period from 1865-1932 witnessed a massive number of judicial review cases related to policy-making and impacted the National system of America. The bench looked into the socio-economic situations of the nation while deciding upon the constitutionality of

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33 G.C. Venkata Subba Rao, "*Legal Pillars of Democracy*", The Madras Law Journal Press Madras 80 (1956).

34 *Dred Scott* v. *Sandford,* 60 U.S. 393 (1856).

35 *Lockner* v. *New York*, 198 US (1905).

36 *Ibid.*

legislation. The aim was to see if the law is in consonance with the constitution. The Supreme Court of the USA during this time endeavored to go along the flow and that the judgments do not reflect the individual feelings. They were largely based on socio-economic visions of the nation.

(vii) (1933-36) The Period of Unconstitutionality: The New Deal plan

In the new deal period, rather new and circumstances grew up. The Supreme Court resorted to an unprecedented action in the process of judicial review that alarmed political assumptions. It caused an extraordinary concern to the then President of the USA and it led to a new era in America's judicial review history. President Roosevelt became the president on 4th March, 1933. The United Stated of America was in the grasp of economic crisis when Roosevelt assumed the office of the President. He vowed to find strong ways to bring an end to it. The President presented specific new legislative measures that are popularly known as the "New Deal," it involved bewildering stakes in the established history of America. Roosevelt said, "The New Deal implied a new order of thing designed to benefit the great mass of the farmers, workers and businessmen would replace the old order of special privilege."[37]

The president was sure of achievement by his plan of new financial strategy. Countless Socio-Economic institutions in industry, agribusiness, and work were introduces to eliminate the financial distress. However, out of these ten New Deals the Supreme Court proclaimed unconstitutional at least eight rules. In this way the Court bushed the New Deal in the pieces by holding them unconstitutional, it nullified the New Deal measures that annihilated the core of the New Deal Programme. It was held by the Supreme Court that New Deal measures were unlawful based on the fact that they included an inappropriate utilization of the burdening forces of the Government (Federal) and disregarded the privileges of the individual States.

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[37] Louis E.Koening, *The Chief Executive*, 632 (Harrourt Brace & World, Inc., New York, 1964).

(viii) The Court-Packing Plan or The Year Of Revenge (1937).

Roosevelt was reappointed as the president in the year 1936 by the biggest majority. This time he had an incredible resentment towards the Judges who had gone against the New Deal measures. On 5th February 1937, he proposed to rearrange the Judiciary, that is, to "pack the court." Six appointed judges around then were 70 years of age or above. The President arranged that in the event that they didn't resign, Roosevelt would upsurge the number of judges to fifteen by selecting six additional appointed judges. Three judges at this point were supporting this.

Hence, Roosevelt transparently expressed that the judges who have become old should retire because their isolated presence had no soul of the current times. Specifically, those who were 70 years old. The Court-packing program became controversial and could not see the light of the day. The Court-packing system turned out to be a lot far from being obviously true and couldn't be implemented. The Bar Association of America genuinely went against it and protected the Judiciary. Alphens Thomas Mason says- "The Court-packing plan itself left judicial power intact. The judiciary retreated; it did not surrender."[38] Meanwhile, the Supreme Court started to find out that the New Deal Laws were constitutional. However, no laws passed by the Congress were proclaimed unlawful by the Supreme Court beginning in 1936 until 1952.[39]

(ix) The Next Era from 1938 to the Present

Beginning 1938 another time arose in the protected history of the United States of America. Amazing components of the period is that there grew up an inclination in the legal air of the Court to show an extraordinary limitation in negating the laws instituted by congress or the state legislative. It appeared that, however, the judges of the Supreme Court had not annulled the power of judicial review, yet

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38 Alphens Thomas Mason, *Security Through Freedom* 123(Cornell University Press, New York, 1955).

39 Raymond M. Lahr. & J. William Theis, *Congress*, 221(Allyn & Bacon. Inc., U.S.A., 1967).

there built up a stamped difference in their way of approaching it. The Court's strategy of specific self-restraint, which has been such a great amount in proof since 1937, should not be confused with the relinquishment of its determinative job as final arbiters.

"For rather than an indication of abdication, such a policy is the manifestation of the Supreme Court's continued exercise of the power as guardian of American federalism."[40]

1954 proved to be a wonderful year for the Constitutional law of the America. On 17th May 1954, Chief Justice Warren[41] pronounced judgment in *Brown's* case. This was the year, the Supreme Court of America endeavoured to build up through judicial review the much-needed social balance. In this way, judicial review in America, the Judges have been for the most part administered by the motivation of the environment so created during that time.

For Ferguson's situation, through Justice Black of the Supreme Court of America, stated that the Supreme Court couldn't strike down a law that isn't disregarding some particular prohibition under the constitution. In any case, the views of Justice Black in the current American Society could not profess to have a lot of impact on the legal climate of the USA and it couldn't be assessed as the representative perspective on the Judicial demeanor and climate of America.

In this new era, the Supreme Court of America, although was not consistent in opinions on similar points, yet functioned as the "living voice of the Constitution", as Lord Bryce characterised it. "The Supreme Court is the Chief Protector of the Constitution, of its great system of balances, and the people's liberties. It may have retreated even yielded to pressures now and then, but without its vigilance of liberties would scarcely have survived."[42]

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40 John R. Schmidhauser, *The Supreme Court as Final Arbiter in Federal State Relations 1789-1957* 213 (University of North Carolina Press, 1958).

41 *Brown* v. *Board of Education of Topekha*, 347US483 (1954).

42 Hewry J. Abraham, *The Judicial Process 327*(Oxford University Press, New York, 1962).

4. Position of Judicial Review in France

France was the first nation to come up with an administrative system by constituting separate tribunals. At the outset, it seems important to look into the legal history of France.

France was an absolute Monarchy. In the 17th and 18th Centuries, Kings refused even to acknowledge the existence of any other authority. With no clarity in the separation of power, the decisions and laws made by the king were supreme and unquestionable. King Louis XIV remarked; that Louis XIV claimed only that France, through a divine right, had a constitution that enabled certain corporations to advise the king.

> "All authority belong to us"… "we hold it of God alone, and no person of whatever quality he may be, can pretend to any part of it."

King Louis XV in the 17th Century said-

> ..That it is in my person alone that the sovereign resides. And that it is from me alone that my courts receives their existence and their authority, which they exercise only in my name…and that it is to me alone belongs the legislative power without interference and consultation…that public order enmates directly from me and that the rights and the interests of the nation…are necessarily identified with mine and rests exclusively in my hands".

However, no power in politics or government administration survives without popular support. Without popular support, the laws and rules hold no water as the concept of obligation to follow them collapses completely. Hence, the claim that nobility was as old and honorable as the monarch was to a great extent true. Montesquieu's claim "*No Monarch no nobility, no nobility and no monarch"* found its basis in this regard. Parlements in France as the representatives of the nobility stood at par with the monarch.[43]

(i) Nobility; the Parlements

The *Parlements* were the courts of law in pre-revolutionary France. They were also responsible for the registration of the Laws. The origin of the Parlements could be traced back to 13th Century. In the early 18th century, there were thirteen different Parlements the *Parlements* served as a check on King's power. However, Parlement had no role in the formulation of the laws.

According to custom, the *Parlements*[44] examined and registered laws and royal edicts before their final adoption. Thus, it gave Parlements to question and block few laws and royal edicts and exert their pressure and influence on the royal Monarch. In case the *Parlement* refused to register law, it had to publish a *remonstrance* (a written explanation of its concerns and objections to the law). The Monarch then could summon justices of the *parlement* to a *lit de justice* ('bed of justice,' in essence, a royal session of the *parlement*). Where the King could override the explanation officially and order for the registration, and in case of further refusals, the king could use *lettres de cachet* to order, exile, or imprisonment of the magistrates of the *parlement*.

When Louis XV ceased to be a minor, he no longer required tutoring on the fundamental laws of the subject:

> Obedience (he declared) is the first duty of my subjects It is for my parlement to to provide an example of this fundamental law of my kingdom. When I permitted them to make remonstrance's on the edicts and declarations which I

43 Louis Gottschalk,"The French Parlements and Judicial Review" 5(1)*Journal of the History of Ideas* 105-112 (1944). *available at* https://www.jstor.org/stable/2707104 (last visited on December 2,2019).

44 Parlement description *Available at*: https://www.britannica.com/topic/Parlement last visited on 2-9-2019.

> sent them to register, I did not give them the power to destroy or alter them on the pretext of modifying them."

The relationship between king and *parlements* was often full of conflicts. The reign of Louis XV (1715-1774) was often disrupted by the tension and conflict with the *Parlements*. It became too intense and in the last quarter of the king's reign when opposition from the *parlements* made governing almost impossible. From 1763, the Paris *parlement* started blocking a series of royal reforms and policies. In 1766, Louis XV appeared at a session of the *parlement* and firmly informed its judges that his royal sovereignty was supreme. King temporarily abolished the Parlements.

Between the 1750s and 1770s, they realised that they could rely on public support in vetoing new taxes and could limit the authority of the church. They claimed the right not only of advising but also of vetoing and of modifying to ultimately make the Court superior to the king in the legislation. There came the time when there evolved the demand of popular participation in the government, there the Parlement stood as semi-popular government. However, the claim of power of Judicial Review by the Parlement remains questionable.

(ii) Dual Judicial System

Post-Revolutionary Act of 1790, France adopted the dual judicial system. The administrative actions are tried and decided by a separate judicial system. Before the revolution, the actions and reactions of the judicial branch led the leaders to believe that there should be a separate system for legislative and executive Acts with no interference from the normal courts. In 1799 the Conceil d'État was established. The traditionalordinary Judiciary and administrative Judiciary were separated. The administrative Judiciary was organized on three levels.

- first-instance administrative tribunals,
- regional administrative courts of appeal and

- the Council of State as the Supreme Court of administrative Judiciary.

The administrative courts of appeal (regional) could re-adjudicate on the judgments of first instances tribunals. However, the Conceil d'État can only review the cases on the basis of procedural aspects and question of law and not on the question of fact. The essence of French administrative law lies in the principle of legality. According to this principle, administrative authorities must respect the law in all administrative acts. Hence, in the French judicial system, it can be said that the origin and evolution of Judicial Review cannot much be traced from here.

5. Origin of Judicial Review in Other Jurisdiction

In the Commonwealth of Australia and Canada, the practice of Judicial Review has not attained the same significances as in the U.S.A. but follows the same procedural forms. In these two countries, the principles of supremacy of the Constitution and the right of the courts to declare ultra vires acts of Federal parliament repugnant to the Constitution have been well established. "Neither the Canadian nor the Australian Constitution expressly provides for judicial review, but the courts in both these Dominions have clothed themselves with this power on the basis of the theory that is a logical and necessary adjunct of the judicial function." The most prominent function of the High Court in Australia is to interpret the Constitution, but in exercising this task, the Court follows the British practice that it is interpreting a statute and does not admit political and historical argument to the same effect as the American Supreme Court[45]. Australia's basic constitutional document is contained in the ninth clause of the Commonwealth of Australia Constitution Act of 1900, a statute of the British parliament. Written guarantees of fundamental rights in the Australian Constitution are scant: section 116 of article 9 of the 1900 act, which applies to the federal government, guarantees freedom of religion; section 117 prohibits

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[45] J.B.D. Miller, *Australian Government and Politics*140 (Gerald Duckworth and Company, London,1966).

discrimination but limits the extent of protection, and section 51 requires just compensation for federal property acquisitions. However, the system of fundamental rights protection in Australia works because any interference with civil liberties has to be justified to a court's satisfaction by showing that the action in question had some statutory or judicial authority. No presumption of authority is given to the federal government. States, on the other hand, are not so tightly restrained.

In Australia, a federal state, power at the national level is divided between the prime minister and the legislature, without a strict separation of the executive and legislative authority, and the Judiciary, which exercises judicial review. However, judicial matters may be framed as administrative matters by the government and the parliament. The Constitution gives the federal government specifically enumerated powers, but with certain exceptions, such as defense, they may be exercised concurrently with the states; federal law prevails in the case of any inconsistency[46]. While the court system in Australia is similar in some respects to that of the United States, its high Court is the ultimate Court of appeal even from state courts, which provides more uniformity in the nation's laws. The acknowledged supremacy of the Australian Constitution and the requirement of a referendum for amendments support the power of judicial review exercised by the Australian courts.

6. Conclusion

In ancient and medieval times, the western world's legal philosophers believed that law should not be "arbitrary and deleterious" to humanity or the generator of tyranny. The 'Greek' concept has always held that "improper law" is always a symbol of tyranny. From Plato to Rousseau, the legal, philosophical thinkers of Europe, from time to time, assiduously maintained that law must be the builder of "harmony and happiness" and has to be reasonable and begetter of justice. The original concept of law was that it must not be in conflict with the natural law. "Man-made law, whether made by the king

[46] *Ibid.*

himself or by some legislative body, was primarily for the purpose of implementing the 'natural law' and was valid only so long as it did not come in conflict with 'natural law,' whatever its origin. The individual was obliged to follow those laws which were valid by this standard; he was free to disobey others."[47] From it is revealed that even in the ancient system of society, the elements of judicial review could easily be detectable. Aristotle said: "Laws must be constituted in accordance with the Constitution, and if this is the case it follows that laws which are in accordance with the right constitution must necessarily be just, and laws which are in accordance with wrong or prevented constitution must be unjust."[48] The Roman legal-politico thinker Cicero propounded the concept of "reasonableness of law." He stated, "A true law namely, the right reason which is in accordance with nature, applies to all men, and is unchangeable and eternal[49]" Plato's concept of the "republican government and democracy," Aristotle's precept of "just and fair" law or coke's doctrine of "natural right and reason," was further built on by Blackstone which again provided a robust material for Locke's constitutional-philosophy who provided the coherent and consistent and everlasting foundation of judicial review. Locke proved to be the greatest proponent of constitutional democracy and constitutional control of legislation. 'The American doctrine of "judicial review" expresses the Lockean significance on the judicial function of the state authority. The evolution of judicial review became the "American tradition into the institutional practice of Lockean ideal."[50]

Accordingly, Locke set up an arrangement of the constitutional way of thinking, which had its establishment in Plato and Aristotle. Locke's constitutional way of thinking greatly affected the development of the Judicial Review in America. Despite the fact that in England judicial review, of legislations of parliament, later on, got

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47 Murray Clark Havens, '*The challenges to democracy*" 5(Uni. of Texas Press, 1965).

48 Ernest Buler, The politics of Aristotle' 127 (Uni. Press, Oxford, 1946).

49 Francis William Coker, *Marques Tullius Cicero, The republic and the laws: From reading in political philosophy*', 151(the Macmillion Co., New York, 1959).

50 Thomas Cokes, *Two Treaties of Government* XXXV (Harper Publication Co., 1964).

extinct on the advancement of the parliamentary sovereignty, judicial law went before the statutory law in England. Judicial Review in America flourished because of various reasons. France as a monarchy had fluctuating instances of judicial review; however, not much could be derived from there. At present, Australia could be said to have made good progress in this regard.[51]

51 The article is based on doctoral research of the author.

DOES THE OWNERSHIP OF PROPERTY INCLUDE RIGHT TO DESTROY: A JURISPRUDENTIAL EXEGESIS

Dr. Mohd. Ahmad[1]

"Ownership of property is the right of an individual to determine how "things" will be put to the utilization of his own interest but this right is not to be exercised as if the person lives in isolation and not enjoying that property on his own conscience to the infinite ends but to own is to conclude that his right of ownership to exploit is clubbed with sharing of one's property and substantiating it to others within public interest and public domain, treating the interests of others as their own interest and on justifiable grounds the bundle of ownership rights are to be exploited with finite ends. So is the fate of right to destroy that it is permissible but restricted. If one tends to destroy his asset there may be valid reasons such as demolishing an old building will only effectuate construction of a new house or to express viz. Right to freedom of speech and expression, this right to destroy is used as a means of demonstration where statues are vandalized or f lags are scorched or dummies are burnt. This all create a tussle in the mind of a prudent man whether to elaborate or give away that right. Analysis to that effect shall be demonstrated in this research essay.

THE BACKDROP

Natural law theory offers a provocative alternative to understandings of various eminent scholars of morals, politics and law and similarly with regard to ownership, production, distribution and consumption, natural law theory has been a base for staking positions on a number of contested issues related to economic life of man and highlighting the potential dimensions of economic aspects therein. Subsequently, economic justice is also rooted in the depths of Natural law principles and the rules derived from the nature to possess, own,

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[1] Professor of Law, Lucknow University.

enjoy, consume, exploit and destroy. "Jus utendi fruendi abutendi"[2] or the right to use, generate income from that property and finally destroy is a Roman Law maxim which was then considered to be vital in those ages. In present time also, ownership rights are considered one of the remarkable entities for the existence of any person in a State since it is the property tangible or intangible which makes the stand for holding the past and better future of that person. So be it a natural or human rights.

Analogy of this research study must be seen along with the context of other aspects of the law, which deal with property law principles. Constitutional law restricts the State's power to take its citizen's property; criminal law seeks to protect our belongings against thefts, vandalism, and the like; divorce law gives judges the power to reallocate assets by taking property off one spouse and giving it to the other; the law of tort is supposed to ensure compensation for trespass on, or taking of, our land and our goods.[3] What the above examples have in common is that they are the law's response to something abnormal, something which disturbs the even flow of life in society.[4] In the usual run of events, the government does not take private property, theft and wanton damage are crimes, most marriages last until death, and tort means wrong.[5] These all examples propagate the idea of ownership of property and rights it includes which are made available to the respective person as provided by law and also that appropriate legal provisions are made available to sustain that the rightful owner of that property is not being deprived of his rightful right.

But, do these ownership rights incorporate within itself the right to completely destroy that property? Is it covered under the right to ownership of that property to terminate the property for the sole

2 "Fundamental Concepts of the Roman Law", Max Radin, 13 CAL. L. REV. 207, 209 (1925).
3 "The Law of property", F.H. Lawson and Bernard Rudden, Clarendon Law Series (3rd Edition).
4 *Ibid.*
5 *Ibid.*

reason that the person owning it has a right against the world to the sole use by him, to devastate in whole the tangible or intangible, subsequently destroy it? On the grounds of Natural Law theory under economic needs perspective, is it justified that his choice to destroy the process or product or subject matter is correct?

Further, it is well established that the constitution is by the will of its people viz. arising from authority of civic notion. It stands to protect the fundamental, civil, constitutional and legal rights of its people. Now, if an owner or by turn government gets the right to destroy a property does it not concern the people of that country because at the bottom property tangible and sometimes intangible as in case of Intellectual Property Rights is a national asset of that country. Though it is individuals' domain to tear down it yet State has the ultimate right of it.[6] If the property is converted through transfer then there is no harm in national asset since the property is still within the territorial and jurisprudential reach of the nation but if the same is destroyed as stated, secrets to any industrial process or military action which is created by an individual or a scientific invention or discovery by a patentee and they are being destroyed then who is accountable for the threat is latter point of concern but formerly it is the country and its people who are at stake because they are being deprived of those valuables and worth. This legal tension makes it jeopardizing when a property of public and generic importance is not made available to the public and more dreadful is when something of public trust importance is being destroyed, the world would be deprived of its utility. This statement is based on the Benthamite Theory of greatest happiness of greatest number of people. Thence, there may be a proposition to elaborate on ownership of property laws to include right to destroy with a jurisprudential analysis including legal queries in regard to Destruction of What, the type of property subject to be destroyed and under the contours and bundle of Ownership of Property, what are the possibilities to such destruction?

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[6] Shift of Right to property from fundamental right to legal right.

Concept of destruction of property and right to destroy

Jus abutendi, a term in civil law and Roman law, is an attribute of dominium or ownership, best translated as "the right to abuse" and by this phrase is understood the right to abuse property, or having full dominion over property, or "the right to destroy or use up the res altogether."[7] What does property destruction connote? It is quite a tough task to elaborate on destruction of property because there can be a clash on exploitation of property and destruction of property since the parameters and domain of exploitation and destruction for different person can vary. For instance, destruction can also be inferred when a person eats his meal; or leaves on the fan running while he is no more sitting beneath it; or instead of renting his extra premises leaves it vacant for no one to accommodate there since a homeless fellow could be sheltered there and by not doing so he is creating damage to the property which some scholars may refer to exercising of right to destroy, which is purely abstract. Such complicated examples hint to wasteful non-use.[8] Edward J. McCaffery brought in the concept of "nonurgent waste", implicating "nonurgent, frivolous, or excessive consumption" and poor choices of how to fritter time or value of property and under these broad parentheses, man continually destroy possessions and in effectuate, any rule of anti-destruction of affluence would be impractical.[9] Narrow interpretation of the right to destroy can be contemplated in terms viz. destruction as the extermination of the whole means in a prolific resource. On this understanding of destruction, diminishing an ancient castle cannot account to destruction if the debris was used to construct a new structure. On the other way round, if active vandalism of historic statue or cast etc. is carried out for protesting a political campaign or for corporate appetite is something that will amount to destruction. It is justified or not is something totally different. Subsequently, neither would suicide be destruction of life

7 *Drymiotis v. Du Toit*, 1969 (1) SA 631.

8 "Must We Have the Right To Waste?", Edward J. McCaffery, in "New Essays In The Legal And Political Theory Of Property" 76 (Stephen R. Munzer ed., 2001) at § 88-89.

9 *Ibid.* 8 at 86.

on condition that the deceased's body was utilized for manure or feeding the scavengers,[10] some might say.

While the right to destroy one's property has old vintage starting points, the practical defences for that privilege have not been all around created and for sure, the confirmed right to destroy writings has not advanced a long ways past early Roman law and its short modem repetitions by Roscoe Pound[11] and Honore[12] yet until the production of Joseph Sax's book[13] and McCaffery's work, couple of researchers had dedicated much thoughtfulness regarding the privilege to devastate, while a lot of consideration has been pampered on a portion of the other property rights that Pound and Honore perceived the right to exclude, the right to alienate, the right to use, the right to testamentary disposition, the right to mortgage, and the so forth.[14]

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10 Dakhma (Persian: دخمه ; Avestan: lit. "tower of silence"), also called a Tower of Silence, is a circular, raised structure built by Zoroastrians for excarnation.

11 In a frequently refered to 1939 exposition, Roscoe Pound recognized six rights of property possession, the remainder of which was a jus abutendi right to destroy or manhandle. Pound's six rights were a jus possidendi or right of having, a right in the strict sense; a jus prohibendi or right of barring others, additionally a right in the strict sense; a jus disponendi or right of mien, what we should now call a legitimate power; ajus utendi or right of utilizing, what we should now call a freedom; a jus fruendi or right of getting a charge out of the products of the soil; and ajus abutendi or right of destroying or harming in the event that one prefers the two last likewise what today we should call freedoms.
Roscoe Pound, "The Law of Property and Recent Juristic Thought", 25 A.B.A. J. 993, 997 (1939).

12 Obviously disappointed with Pound's rundown of six sub-rights, Tony Honore occupied with a more driven push to verbalize the rates of property proprietorship, recognizing eleven in his 1961 exposition Ownership;
A.M. Honore, Ownership, in OXFORD ESSAYS IN JURISPRUDENCE 107 (A.G. Guest ed., 1961) at 76-80 (discussion on the expositional Pound's and Honor's views of destruction).

13 "Playing Darts With A Rembrandt: Public And Private Rights In Cultural Treasures", Joseph L. Sax, (1999).

14 "The Right to Destroy", Lior Strahilevitz, 114 Yale Law Journal 781 (2005).

In the case, Carter vs. Helmsley-Spear Inc.[15], it was ruled,

> "*IT IS HEREBY ORDERED that defendants, their agents, their employees, 1and their representatives are enjoined from (1) distorting, mutilating, or modifying plaintiffs' art work (defined herein as "the Work") installed or located in the Lobby of the Property located at 47-44 31st Street, Queens, New York; (2) destroying this art work; and/or (3) removing this art work, or any portion thereof.",*

with the conclusion that owner of sculpture could modify or destroy it, despite objections by sculptors. By the virtue of the instant case, US District Court for the Southern District of New York uplifted the existence of right to destroy, partially, in the bundle of ownership rights to property. The owner was allowed to vandalize the thing owned by him on the ground that he has his right to modify or destroy it.

Modern Outlook: Did it continue?

Daniel Martin expounding in his writing Dispersing the Cloud[16], seized on an essential and emblematic stick from the customary property package.[17] By demonstrating the changes the right to destroy has experienced in the shift from Roman law to common law to present day law, Martin offers us a valuable guide for the gradually moving forces we underestimate over what is our own and exhibits a route forward for one of the most seasoned of them.[18] In view of the fact that since year 2006, blender maker and vender Blendtec has promoted its items on the web by setting a to a great extent pompous inquiry: Will It Blend?[19]

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15 71 F. 3d 77 (2d Cir. 1995).

16 "Dispersing the Cloud: Reaffirming the Right to Destroy in a New Era of Digital Property", Daniel Martin, 74 Wash. & Lee L. Rev. 467, 526 (2017).

17 "Appetite for Destruction: Symbolic and Structural Facets of the Right to Destroy Digital Property", Joshua A.T. Fairfield, 74 Wash. & Lee L. Rev. 539, 550 (2017).

18 *Ibid.* 17.

19 See Christian Briggs, "BlendTec Will It Blend? Viral Video Case Study", SoCIALENS (Jan. 2009), http://www.socialens.com/wp-content/ uploads/ 2009/04/20090127caseblendtecll.pdf ("In 2006, Blendtec's relatively new

The entire analysis is innovatively and amusingly straightforward where the proprietor delineates the intensity of his organization's blenders by mixing things extending from toy autos to a fresh out of the new iPhone X.[20] Some valued the amusingness however opposite, some communicated infuriation at seeing Mr. Dickson truly lessening a momentous bit of innovation worth several dollars to powder. They are genuinely illustrative of the scholarly atmosphere encompassing the property right basic Blendtec's endeavor to advance its items: the much- sparkling right to destroy.

But, the number of commodities crushed-blended by the owner might have been in some productive task. Can one not say that the owner should be restricted in destroying assets worth thousands. If no one is restricting him of his ownership rights and noninterference is tolerated viz. a car-owner can drive-off his million dollar car off a cliff, makes the intricate indication that there is embedded and inbuilt right to destroy may be with restrictions.

One centre commitment D. Martin makes to the hypothesis of obliteration is to sketch consideration toward elective thought processes in practicing the right to destroy.[21] Courts are distrustful of demolition of rare assets for resentment's purpose.[22] Maybe, Martin hypothesizes, courts may be more open to the demolition of non-rare (yet rivalrous) assets to secure the proprietor's significant serenity.[23] The inquiry is whether there are different inspirations for devastation that may reverberate with courts that fall nearer to Martin's genuine feelings of serenity hypothesis on the range than to the resentful annihilation of rare assets.[24] There is the standard game plan on an

Director of Marketing launched a viral video campaign in which the company's CEO blended up various non-food items in Blendtec blenders.").

20 https://www.youtube.com/watch?v=KWqw5SpITg8 as accessed on 09-03-2018.

21 *Ibid.* 17 at 540.

22 See, e.g., Eyerman v. Mercantile Trust Co., 524 S.W.2d 210, 217 (Mo.Ct. App. 1975) (finding that "senseless destruction serving no apparent good purpose is to be held in disfavour").

23 *Ibid.* 16 at 35.

24 *Ibid.*17 at 541.

iPhone: if a prospective impostor proceeds on their game-plan of speculating incorrectly passwords, the telephone will automatically erase the encryption key, rendering the information blocked off.[25] This unequivocally disincentivizes burglary, as the innovative encryption key wipes out profitable information, denying the hoodlum a huge piece of her increases.[26] In this sense, at that point, the ability to destroy serves not simply to give the client significant serenity that information contained inside a destructible computerized resource is gone perpetually, yet a more vigorous genuine feelings of serenity: the possibility that the benefit will be destroyed instead of automatically exchanged, got to, or utilized, along these lines, that obliteration fills in as an especially viable guarantor of property rules against obligation run endeavors to grab the advantage; consider the decimation of benefits after death.[27]

Current Trends in this parlance

There is a catch for positive study and analysis for “Right to Destroy” within the bundle of ownership rights to property which can be congruent to Fundamental Right to privacy[28] in some aspects. To the peace of mind of owner his Right to Destroy should be exercised over his assets in his absence or his death subject to state restrictions which shall be discussed later, though, the right has few defenders and has been for the most part elapsed, sparingly retrieving academic notice. Till, “Black's Law Dictionary” has apparently flounced the right to destroy under the carpet.[29] “The right to destroy

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25 See Alina Selyukh & Camila Domonoske, “Apple, The FBI and iPhone Encryption: A Look at What's at Stake”, http://www.npr.org/ sections/ thetwo-way/2016/02/17/467096705/apple-the-fbiand-iphone-encryption-a-look-at- whats-at-stake (last visited 10-03-2018) (describing the iPhone's encryption system) (on file with the Washington and Lee Law Review).

26 *Ibid*. 17 at 541.

27 *Ibid*. 17 at 542.

28 Justice K. S. Puttaswamy (Retd.) and Anr. vs Union Of India And Ors. WRIT PETITION (CIVIL) NO 494 OF 2012.

29 See “Owner”, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining "owner" as one "who has the right to possess, use, and convey something"). Prior to the 1999 seventh edition, Black's Law Dictionary defined "owner"

cannot be found in any modern code or Constitution rather it is instead implicitly recognized in all legal systems"[30] which were not always like that. A sparingly thousand years ago, the laws of Ancient Rome specifically provided property owners with some of very broad rights in a bundle as mentioned before in the exposition: "jus utendi fruendi abutendi."[31] In English, instant axiom encompasses "the rights to use the [property,], to use the income generated by the property, or to completely consume and destroy the property."[32] Therefore, the whole prodigy within this wholesome view of ownership of property contemplates that the right to destroy finds its roots.[33] The right to destroy was almost certainly, as it gives the impression today and largely, symbolic.[34] A proprietary holder doesn't characteristically desire to actually destroy his valuable belongings.[35] The 'right to destroy' is in addition dishevelled with the integrity right, as authors who have wanted to destroy their creative's, have argued that it is quite indispensable to safeguard the authenticity of their creativity and their personality invested in that particular ingenious work.[36]

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more broadly to include the "right to enjoy and do with [his property] as he pleases, even to spoil or destroy it, as far as the law permits."(quoting Owner, BLACK'S LAw DICTIONARY (6th ed. 1990)).

30 "The International Law Of Property", John G. Sprankling, 293 (2014).

31 *Ibid.* 2.

32 *Ibid.* 2.

33 *Ibid.* 2.

34 See Radin, *Ibid.* 2, at 210 (observing that "it may be seen that the jus utendi fruendi abutendi, by virtue of its climactic arrangement, is rather an analysis of the idea of ownership than a real statement of what the elements of Roman dominium actually were".

35 As to why this is the case, Professor Strahilevitz in a nutshell explains the obvious: "A new homeowner is more likely to want to exclude outsiders from his home than he is to want to raze it." *Ibid.* 27 at 794. On the other hand, property that we routinely destroy is typically disposed of without controversy. See Sprankling, International Law,
Ibid. 43 at 293-294 (noting that many "things subject to ownership will be destroyed as part of a consumptive process that benefits their owners").

36 "The Right to Destroy under Droit d'Auteur: A Theoretical Moral Right Or a Tool of Art Speech", Sofie G. Syed, , 15 Chi.-Kent J. Intell. Prop. 504, 537 (2016).

Incidents and Cases pertinent to Right to Destroy: Issues and Areas

Lately, French craftsmen have declared the right to destroy in their own particular work as a poignant method for upholding the right to save the integrity of their demeanor.[37] In 2007, applied craftsman Daniel Buren denounced the French Ministry of Culture for permitting his popular segments at the Palais Royal in Paris to fall into deterioration.[38] Critics contended that Buren's segments passed on a political message symbolizing between party joint effort, and that the Ministry of Culture was passing on a fanatic explanation by allowing their crumbling.[39] Buren's risk to destroy his segments got huge media scope[40], and brought about the portion of Six Million Euros for the restoration of the work.[41] In 2014, craftsman Alain Mila reported that he expected to destroy one of his figures, after a neighborhood government official painted the work the shade of the rightwing party Front National without Mila's assent.[42] In the two cases, the administration's treatment of the work brought about a potential risk to the nobility of the craftsman, and the summon of the right to destroy produced open discussion about the limits of the

37 "This right may be grounded in the rights to exclude or withdraw one's work; authors claiming the right to destroy in the French context have not explicitly cited a consistent legal theory". *Id.* 49 at 504.

38 *Ibid.* 36.

39 John Lichfield, Les Deux Plateaux: "Monument to the French malaise? INDEPENDENT" (Jan. 4, 2008), http://www.independent.co.uk/ news/ world/europe/les-deux-plateaux-monument-to-thefrench-malaise-768339.html. last accessed on 12-02-2018.

40 "Artist threatens to take down columns", UPI (12-2-2018), http://www.upi. com/ Entertainment New s/2007/12/3 I/Artist- threatens -to-take-downcolumns/ 27321199152254/.

41 James Mackenzie & Elizabeth Pineau, "Paris Palais Royal colums get 6 million euro facelift", REUTERS (12- 2-2018), http://www.reuters.com/article/ 2010/01/08/us-france-sculptureidUSTRE6074AX20100108.

42 "Le maire FN de Hayange juge "sinistre" une sculpture, il la fait repeindre [The FN Mayor of Hayange Repaints a "Sinister" Sculpture]", L'EXPRESS (12-02-2018), http:/ /www.lexpress.fr/actualite/politique /fn/le-maire-fn- de-hayange-juge-sinistre-une-sculpture-il-lafait-repeindre_1562581.html(15.03.2018).

ethical right of honesty by and by.[43] The right to destroy can fill different needs, which might compare to the ethical rights method of reasoning supporting droit d'auteur (Copyright law of France).[44]

The same shall be analysed in chapter 4 related to Intellectual Property Rights. Also, a reference made by Stephen E. Sachs[45] in his article[46] with regard to this connotation of "ownership right to destroy" has been eminently explained which is perused as,

> "In the spring of 2005, on the site www.savetoby.com, one could discover many charming pictures of Toby, "the cutest little bunny on the planet." Unfortunately, Toby's proprietor declared, on June 30 "Toby will bite the dust. I will eat him. I will take Toby to a butcher to have him slaughter this charming bunny." Unless, that is, the site's perusers sent $50,000 to save Toby's life. By early May, Toby's proprietor (utilizing the name "James McEahly") asserted to have raised more than $28,000 and the bunny's predicament had pulled in generous news scope. At the point when the critical day arrived, Toby was evidently saved, however with another cost upon his textured head- 100,000 buys of McEahly's book by November 6, 2006. Despite Toby's real destiny, the site raises a captivating issue of law. The risk to murder Toby will strike numerous perusers as a type of extortion. Current extortion statutes, be that as it may, for the most part don't forbid the undermined annihilation of one's own property, regardless of whether they disallow imperiling property claimed by another person. The law therefore gives lacking assurance to an assortment of assets on which others may put esteem,

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43 *Ibid.* 36.

44 *Ibid.* 36, the paper seeks to examine the intersection of droit d'auteur and art speech, in order to compare the theory of the right to destroy with its actual application. Right to Destroy under Droit d'Auteur (2016).

45 Yale Law School, J.D. expected 2007; B.A. (Hons), University of Oxford, 2004; A.B., Harvard University, 2002.

46 "Saving Toby: Extortion, Blackmail, and the Right to Destroy", Stephen E. Sachs, 24 Yale L. & Pol'y Rev. 251, 262 (2006).

including historic structures, cherished artworks, and lovable bunny rabbits. This Comment recommends that rabbits like Toby be ensured under another criminal offense of "extortionate obliteration." Current extortion statutes are too thin to ensure Toby, or, if given a more extensive translation, could do as such just at the cost of criminalizing what is for the most part thought to be honest direct. The ethical protest to McEahly's direct through a similarity to coerce. Despite the fact that demolition of property, such as confessing others' insider facts, might be legal in many occasions, it is rendered wrongful by the unjustified utilization of a coercive danger. Not at all like a honest to goodness business offer, which may happen to be made under conditions that are unpalatable to the offeree, a coercive risk particularly goes for causing such obnoxiousness: McEahly has focused on murdering Toby simply because he trusts that another person will pay him not t. extortionate decimation shares the ethical unsoundness of coercion, as well as its appropriateness for criminal forbiddance. In spite of the fact that people may have a lawful right to destroy property in specific situations, it is dubious that the right stretches out so far as to help dangers spurred exclusively by the desire for extorting property from others. McEahly's dangers can't be supported by the monetary advantages of a right to destroy; as on account of coercion, where the proprietor has no previous motivation to play out the undermined demonstration, the trade stops to advance allocative effectiveness and turns into an inefficient exchange. Nor can current law be protected by reference to the financial freedoms of the proprietor, or the expressive esteem served by the right to destroy; the noxious exercise of such a right may in any case be denied, similarly as shakedown laws restrict unjustified dangers to embrace lawful acts. The instance of Toby in this way reveals some insight into the continuous discussion over the nature and misleading quality of blackmail propose display statutory dialect for an offense of "extortionate annihilation." Such an offense would fittingly criminalize extortionate dangers on Toby's life, while

> securing the true blue intrigue proprietors may have in destroying their property."[47]

The above account depicts a number of issues, firstly, "Current extortion statute do not prohibit the threatened destruction of one's own property, even if they prohibit endangering property owned by someone else." It is quite alarming that the right to destroy one's own property, in the instant case "toby", is not governed by any statute though intentional mischief is felonious. It is a huge question in law that what provisions will be attracted if someone threatens to destroy his asset if it carries an economic value as covered by the author as "extortionate destruction". There is no such offence as self-mischief. The legal jurisprudence attracted here is that the threatened property must carry a value in the eyes of the society. Also, cases involving suicide amounts to self-destruction.[48] Right to die can be administered as right to self-destruction. Though in India Attempt to commit suicide has been decriminalized but the negative implications of the same can be where one threatens another person that he will kill himself exercising his right to self-destruction until assertive is done as he intends. It might be hard to implicit life under ownership but at a philosophical and jurisprudential level, it can be questioned whether principle of self-destruction is covered under the nomenclature of traditional right to destroy. It can be an aspect where the legal elements and attributes of right to destroy and right to self-destruction can be congruent or overlapping. Taking the jurisprudential stance, right to destroy has some captivity. Secondly, "destruction of property like telling others' secret", is also rendered

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47 *Ibid.* 46 at 251-252.

48 An attempt under section 309 of Indian Penal Code implies a voluntary action towards suicide. An attempt should be intentional and voluntary. The main ingredient of Section 309 of IPC, 1860 is that it should be a voluntary attempt of self-destruction. But, in *Aruna Ramchandra Shanbaug v. Union of India & Ors.* [(2011) 4 SCC 454], Supreme Court stated that although 309 of IPC has been held constitutionally valid in Gian Kaur's case, in the year 2016 section 309 was deleted by the parliament. act of decriminalization of the offense is not an invitation or encouragement to attempt to commit suicide. It is to treat them with care and not punish them further.

correctly by the author. Secret is something intimate between two or more people and the threat to destroy it by the outside propagation is the destruction by wrongful coercion. Thirdly, "individuals may possess a legal right to destroy property under certain circumstances, it is doubtful that the right extends so far as to support threats motivated solely by the hope of extorting property from others" This statement raises the question of illegal extortion of property by making a wrongful use of one's Right to destroy his owned property. By the perusal of the abstract, one rebuttal for the malicious or deliberately wrongful use of ownership right to destroy could be the criminalization of extortionate destruction.[49]

Right to own and Right to destroy: Sustainability

In this hierarchy, destruction of what is quite essential to determine. Right to own contemplates that one can own a thing which will cast proprietary rights over that thing and property laws will apply accordingly. What "things" can be owned is determined by the jurisprudential analysis of ownership rights which, as mentioned earlier can include movables and immovable, tangibles and intangibles, including intellectual property rights. But, the question here is, what is the type of property subject to be destroyed? What thing can be exposed to active vandalism? Over what subject can one exercise his right to destroy amongst the ownership rights of property? Under the contours and bundle of Ownership of Property, what are the possibilities to such destruction?

Does this right fits in the BUNDLE: What are subjects of Destruction?

The right to own is commonly to describe property as a "bundle of rights" in relation to things. We conventionally marquee these sticks in alignment with the character of the right occupied thereof and the

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[49] "A person is guilty of extortionate destruction if, with wrongful intent to obtain property of another, he threatens to destroy property, where such destruction under the circumstances would not substantially benefit the owner............ perhaps as "Toby's Law." *Ibid.* 46 at 261.

vital sticks in this bundle of rights are: "right to exclude; right to transfer; and right to possess and use and the like."[50] Now, moving over to label the subjects which can be in the campaign of proprietary rights? In erstwhile syntax, "if 'property' consists of legal rights or relationships among people that concerns 'things', what is the universe of 'things'?"[51] Now what are the 'things' that could be under the sponsorship of property rights? The law's long-established reply to this peculiar question is relatively simple: each and every property is broadly classified in 2 categories; "real property (rights in land, eg. Buildings, signs, fences, or trees and including rights in land surface, subsurface like minerals and groundwater and the airspace)[52] and personal property (rights in things other than land eg. Chattels, Intangible Personal property like stocks, bonds, patents, trademarks, copyrights, trade secrets, franchises, licenses and other contractual commercial documents)."[53]

On some levels, the owner has a right to destroy his asset being it a real property or personal property. Subject to state restrictions, the author of the art or inventor of a "thing" has a better right to claim a full obliteration, traditionally. Conventional "things" are quite clear that owner could destroy a petty asset like his own storage of meal for day or two. But, owning a warehouse with tons of storage grains will not pass the test for vandalizing that asset. So there cannot be a clear cut demarcation about categorizing things into destructible and non- destructible items, but on certain grounds like, economic efficiency, economic liberty and expressive value[54], right to destroy avails sustainability. As per economic efficiency argument, "it is difficult to imagine how a modem capitalist economy would function if owners were barred from destroying obsolete refrigerators,

50 "Understanding Property Law", John G. Sprankling, LexisNexis Publications, 2nd Ed. (2008) at 5.
51 *Ibid.* 50 at 7.
52 But see *Wood* vs. *Wood*, 183 p.2d 889 (Colo. 1947), "holding that mature corn crop was personal property".
53 *Ibid.* 50 at 8-9.
54 *Ibid.* 46.

unfashionable clothes, or rough drafts of written work.[55] A charitable developer might therefore legitimately seek to replace his historic building with profitable high-rise condos."[56] This argument qualifies for good because dynamic attributes are embedded in society. Taking into consideration technology, fashion, architecture amongst other, change is like anything. So the Jus Abutendi is quite an inherent postulate for the fundamentals of any state in terms of property rights. Another set of argument for justifying right to destroy is "Economic Liberty" which contemplates to the liberty to destroy one's possessions as assumed by James Lindgren in his famous work on "blackmail".[57] Lindgren argues that, "a theory of coercive threats cannot explain blackmail's wrongness, for such coercion may be found in ordinary business transactions: a farmer may threaten to destroy his crop unless buyers pay a higher price for it."[58] In this regard, a patentee may destroy his invention if he does not get a just and prolific value for his article. Similarly, a handicraftsman might destroy his commodity out of esteem instead of getting such labours which cannot meet his daily requirements. Another, alternative legitimization of the right to destroy is progressed by Strahilevitz, who talks about finally the likelihood that devastation may serve expressive qualities. For instance, a lot of expressive esteem may be gotten from acts, for example, 'burning a flag', or 'being buried with one's wedding ring'[59]. Symbolic destruction of property might appeal for vindication but sometimes vandalising things like statues and historic article and also a flag will not render right to destroy, a fundamental right to ownership. Therefore, in terms of positive symbolism, like , right to destroy can be supported. Also, Slash-and-burn agriculture, or fire–fallow cultivation, is adopted that involves the cutting and burning of plants in a forest or woodland to create a

55 *Ibid.* 14.

56 *Ibid.* 14.

57 "Unravelling the Paradox of Blackmail", James Lindgren, 84 COLUM. L. REV. 670 (1984).

58 *Ibid.* at 712. Note that such threats require market power to be effective, since destroying crops in a competitive market would have little effect on the going price.

59 *Ibid.* 14.

field. Slash-and-burn may be defined as the large-scale deforestation of forests for agricultural use. It is often applied in shifting cultivation agriculture and in transhumance livestock herding.[60] Ashes from the trees help farmers by providing nutrients for the soil.[61] This activity also justifies destruction by owner of the field though on environmental grounds some scholars disregard this method of agriculture. A discourse on this outrageous property right rapidly embroils probably the most fascinating, basic, and quarrelsome inquiries in property law: What is the idea of proprietorship /ownership, what commitments does a property owner owe towards his neighbors, are the establishments of property law democratic or instrumentalist, to what degree does a private property framework-wealth expands to, what are the suitable parts of the dead hand and the premiums of who and what is to come?; every one of the right-to-destroy cases involves a portion of these vital inquiries.[62] These are the grey areas in this legal parlance.

SUMMING UP

The act of vandalism is by and large observed as, prima facie, inefficient and disgusting concept being wasteful, and regularly requires vindication all alone to each aspect of. While proprietors do have some privilege to discard their property as they see fit, none of the basic avocations for the privilege to annihilate as a prerequisite of economic efficiency, a types of economic liberty, or a strategy with the expectation of complimentary articulation give an adequate motivation to ensure its malevolent exercise for self-improvement at others cost. At the end of the day, the privilege to decimate may some of the time be practiced wrongly, and in a way that the law may authentically disallow as illegal or wrongful or offensive. Conventionally perceived as a, property right, the right to destroy has

60 "The Persistence of Subsistence Agriculture", Tony Waters, Lanham: Lexington Books, (2007), § 3 [ISBN 978- 0-7391-0768-3. OCLC 70334845].

61 "Slash and Burn Agriculture – An Overview of Slash and Burn", (Last accessed on 10-03-2018).

62 "Property Law And Policy: A Comparative Institutional Perspective", John P. Dwyer & Peter S. Menell, (1998) at 384-92.

in recent decades gone under concentration with negative ramifications. It has been confined as the privilege as for masterful manifestations, courts have cut out a few open arrangement special cases to the activity of the right, and a few analysts have called for either its incomplete or aggregate repeal, principally based on squander. The right to destroy property is, all things considered, regularly an outrageous exercise of a portion of the all the more broadly perceived sticks in the bundle of rights. The right to destroy can be regarded as, "an extreme adaptation of the right to exclude; by destroying a chair, I permanently exclude third parties from using it; the right to destroy is also an extreme adaptation of the right to use; by destroying a piece of jewellery, I do not merely use it rather I use it up; finally, we might understand the right to destroy as an extreme right to control subsequent alienation; by destroying property, the owner can prevent it from ever being resold or used in a manner that displeases her without running afoul of the Rule Against Perpetuities."[63]

Without reasonable doubt, the rationalizations customarily given for non-conveyance rules are both similar[64] and different from[65] the good

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63 *Ibid*. 14 at 781.

64 "There are obvious connections between the law's increasing hostility toward the right to destroy and its traditional resistance to restraints on alienation". Richard Epstein, Margaret Jane Radin, and others have shielded confinements on alienability specifically conditions. It's just plain obvious, Richard A. Epstein, Why Restrain Alienation?, 85 COLUM. L. REV. 970 (1985); Margaret Jane Radin, Market-Inalienability, 100 HARV. L. REV. 1849 (1987), it is significant that a portion of similar reasons that incite society to force nature principles may provoke it to institute against obliteration rules. For instance, paternalistic concerns may clarify why society bans a person from offering her kidney (distance) or taking her own life (pulverization). Furthermore, worries about negative externalities may clarify why the law bars both the offer of some sex demonstrations and the demolition of some profitable compositions.

65 "Hostility to restraints on alienation and openness to individuals' destruction of their own property might be able to coexist peacefully in some cases". Some portion of this cutting edge antagonistic vibe to restrictions on estrangement, comes from the limitations' inclination to repel an asset from its most elevated esteem client. See Gregory S. Alexander, The Dead Hand and the Law of Trusts in the Nineteenth Century, 37 STAN. L. REV. 1189, 1258-60 (1985). "The destroyer of property is now and then its most astounding quality client

reason given for confining the destruction of one's property.[66] There is additionally a vital sense in which property annihilation raises unique issues. Researchers are adapted to consider property law as the manner by which society demarks assets that have immortal life. Considering a bit of property law, most outstandingly those arrangements managing future interests, presumes that the asset being referred to will survive until the end of time. However, land is the main characteristically interminable type of property that will survive perpetuity. Assets, fixtures, corporeal instruments, cash money, and even intellectual property all can be demolished or vandalized, implying that a proprietor conceivably can deny property of its unending life. The law of property destruction viz. ownership right to destroy, at that point, is the law that represents whether and under what conditions the proprietor may deny an asset of its eternality. But, destroying an asset and making it out of utility of the owner or the State, it is justified or not is debatable. There are moral, ethical, economic, social and humanitarian grounds based on natural law perspective which may impose a ban on exercise of right to destroy.

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and is utilizing the asset to acquire protection, media consideration, notoriety, open space, or some other financially profitable asset."

66 *Ibid* 14.

PROBLEMS AND PROSPECTS OF MEDIATION IN JAMMU AND KASHMIR

Mohammad Ayub Dar[1]
Ashfaq Hamid Dar[2]

ABSTRACT

There is huge pendency of cases across courts in India. As per National Data Judicial Grid nearly four crore cases are pending in different courts in India. This paper accordingly discusses the mediation as a viable method for reducing judicial arrears. The main focus of this study is to identify the challenges afflicting mediation in India and Jammu and Kashmir in particular after analysing the concept of mediation and the present legislative framework controlling it in India.

Key Words: Court, National Judicial Data Grid, Mediation, Arrears,

Introduction

Judicial arrears are one of the most serious problems plaguing our court system. The administration of justice is on trial, and if we fail to meet the challenge and allow it to suffer due to excessive delays in case disposition, the public at large may consider changing the entire system, posing a serious threat to the democratic way of life that we have adopted.[3] With the backlog of cases in the courts, the Dass Committee was formed in 1949 to investigate the subject of arrears and case pendency. The committee was chaired by Hon'ble S. R. Dass, and the report revealed the dire need to address the problem of

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3 V. D. Mahajan, *Chief Justice Gajendragadkar: His Life, Ideas, Papers and Address* 104 (S. Chand, New Delhi, 1966).

arrears.[4] The Law Commission's Fifty Fourth Report[5] studied the Code of Civil Procedure, 1908, in depth in order to streamline the procedure and make it less formal, simpler, and more favourable to the speedy resolution of disputes and disagreements before the court. The Seventy-Seventh[6] and Seventy-Ninth[7] Reports, among others, provided recommendations in this regard for shortening the time it takes for suits to be heard in trial courts and High Courts, marginalising arrears, and making minor changes while keeping the system's essential framework intact. The Law Commission of India noted in its 114th Report[8] that an insurmountable backlog of cases, escalating arrears, and excessive delays in case disposition in courts across every levels from the lowest to the highest together with inflated costs have drew the attention of not only Bar members, clients of justice (litigants), social activists, academicians of legal field and Parliament, but also managers of the court system. Anyone interested in legal change should pay attention to the frightening scenario that has been revealed. The previous Law Commissions offered numerous recommendations for bringing fundamental reforms to the legal system. Until then, the only thing that mattered was how to shorten the time it took to resolve cases, make the system more resilient by removing stratification, and make the system less formal and truly affordable, i.e. to make it accessible to the poor.

Currency of pending cases in Indian Courts

As per the Statistics acquired from National Judicial Data Grid as of April 2022[9], there were 40953547 civil and criminal cases pending in all courts around the country. Civil cases account for 10827558 of the

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4 Upendra Baxi, *The Crises of the Indian Legal System* 58 (Vikas Publishing House, New Delhi, 1982).

5 Law Commission of India, 54th Report on The Code of Civil Procedure, 1908 (1973).

6 Law Commission of India, 77th Report on Delay and Arrears in Trail Courts (1979).

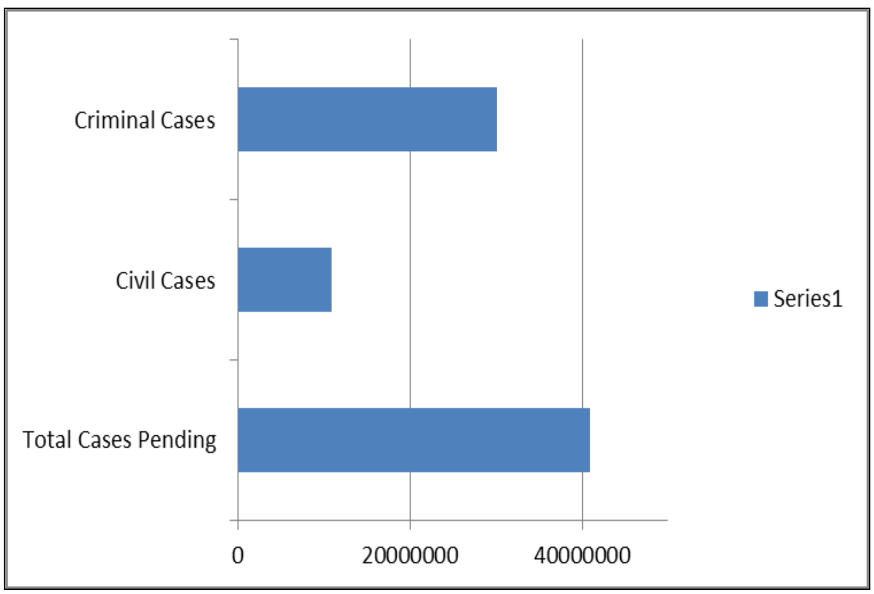
7 Law Commission of India, 79th Report on Delay and Arrears in High Courts and other Appellate courts (1979).

8 Law Commission of India, 114th Report on Gram nyayalaya (1986).

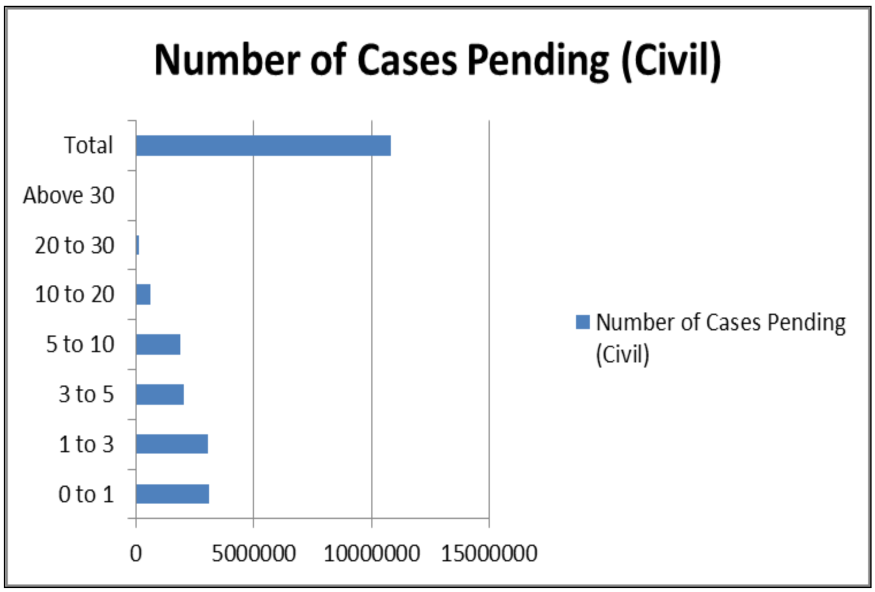
9 Available at https://njdg.ecourts.gov.in/njdgnew/index.php, (Last Visited on 06-4-2022).

total outstanding cases. 38160 (0.35%) cases are those that are pending for more than 30 years while as 119932(1.28%) cases are pending for past 20 to 30 years. The data further shows that 3047789 cases are pending for past 1 to 3 years. They account for 28.15 % of the total cases. Similarly, 2013658 are those cases that have been pending for 3 to 5 years and 1903811 cases are pending for 5 to 10 years. Between the time bracket of 10-20 years 623701 cases are pending in the courts across India. On criminal side there are 30125989 cases pending in courts throughout India.

Total Cases Pending	**Civil Cases**	**Criminal Cases**
40953547	10827558	30125989



Age Gap (Years)	Number of Cases Pending (Civil)
0 to 1	3080507
1 to 3	3047789
3 to 5	2013658
5 to 10	1903811
10 to 20	623701
20 to 30	119932
Above 30	38160
Total	**10827558**



To address the court backlog, there are two basic options. While the first aims to speed up the adjudication process by reforming methods and structures, the second aims to keep disputes from ever making it to the courts in the first place. Arbitration, conciliation, and mediation are examples of alternative dispute resolution (ADR) methods. By offering redress outside of the official court system, they help in playing a substantial task in lowering the amount of cases received by it.

Mediation as a Method of Dispute Redressal

Mediation is a non-adjudicatory, informal procedure in which parties work together to find solutions to their legal problems. It's a completely voluntary collaborative endeavour with the potential for a settlement, which refers to an agreement achieved with the parties' mutual consent. During the meetings, the mediator plays a passive role, having no authority to issue any binding orders and is solely tasked with facilitating discourse in order to find a resolution. Mediation's primary value and advantage is that it allows the parties to communicate, negotiate, and reach an agreeable agreement that is acceptable to all parties involved.[10] Mediation avoids long-drawn-out litigation due to court backlogs, saving both time and money. It allows the parties to develop agreements that may be more appropriate and inventive than the limited reliefs given by the courts.[11] There are 3 important mechanisms by which mediation can be triggered in India. The first one is through institutional and ad-hoc ways by including it in a contract's dispute resolution clause; the second includes referral by the civil judge under Indian civil procedure code(section 89) or referral under consumer protection Act(section 37) subsequent to the institution of the case; the third mechanism is by way of pre-litigative mediation as per the commercial courts Act(section 12).

In 1999, an amendment was made to Civil Procedure Code by which Section 89 was incorporated in it. It was a measure take with the aim of institutionalising AlternativeDispute Resolution in India. It empowers the courts to refer a dispute to Alternative Dispute

10 Rashika Narain & Abhinav Sankaranarayanan, "Formulating a Model Legislative Framework for Mediation in India", 11 *National University of Juridical Science Law Review* 82(2018).

11 M. Gaylanne Phelan and Mary L. MacGregor, "Mandatory Mediation of Estate Disputes" 28 *LAW NOW* 29 (2004).

Resolution system where it appears to the court that there exist elements of a settlement which may be acceptable to the parties.[12] The Supreme Court's decision in the case of *Salem Advocate Bar Association v. Union of India*[13] gave mediation in India a boost. In this case, the Supreme Court established a Committee in order to improve the application of Section 89 by ensuring that justice is delivered more quickly. This Committee drafted the Model Rules for Mediation in 2003, which were used as a template by various High Courts when drafting their own mediation rules. Supreme court in *Afcons Infrastructure case*[14] clarified the inconsistencies in section 89 and established a clear procedure for courts to be followed when referring a matter to any of the ADR processes indicated in this section. It also specified when both parties' assent is necessary before sending the case to an ADR procedure, as well as the binding power of such judgments granted by them. The Supreme Court also published a list of matters that can and cannot be submitted to an ADR procedure, albeit this list is not complete and exceptions may occur.

Court can also resort to mediation in cases involving section 498A of the IPC. This was held by the Supreme Court in *K. Srinivas Rao v. D. A. Deepa.* Court further ordered that every mediation centre must have clinics to resolve marriage problems before they get to court. Hence, it is obvious that Indian courts have favoured referring disputes to mediation rather than adding to the court's workload. Apart from this, Mediation has been included as a method of dispute resolution in various legislations as well. Take for instance Consumer Protection Act, 2019, here; District commission is authorized under section 37 to refer a case to mediation. It can do so either at the first hearing or later on in case it is satisfied that there are elements of settlement in it on which both parties may agree upon. In addition to this, chapter V of the said Act, contains elaborate provisions regarding mediation of consumer disputes. It includes provisions dealing with setting up of cells dealing with consumer mediation in

12 Section 89, Civil Procedure Code, 1908.

13 AIR 2005 (SC) 3353.

14 2010 (8) SCC 24.

state and district commissions,[15] setting panel of mediators,[16] mediation procedures[17] and so on. Provisions for mediation of disputes are also contained in Companies Act, 2013. A dispute may be send to mediation either by the tribunals constituted under the Act or by the central government. They can do so by their own initiative. The Act further provides that the panel (Mediation and Conciliation Panel) must endeavour to resolve the issue submitted before it within a time span of three months and send its suggestions to the concerned authorities. The Commercial Courts Act of 2015, as amended in 2018, makes pre-institution mediation and settlement necessary. It requires the disputing parties to try mediation first before filing a lawsuit.[18]

Position in Jammu and Kashmir

The local history of the erstwhile state of Jammu and Kashmir is replete with examples of ADR procedures such as mediation being used even after the installation of an adversarial system of justice delivery. The Jammu and Kashmir Code of Civil Procedure, was amended in 2009 to include Section 89, and the JK High Court enacted the JK Code of Civil Procedure Mediation Rules, 2009. After the Reorganisation Act 2019, the Jammu and Kashmir Mediation and Conciliation Rules, 2019, were brought into force. These rules deal with appointment of mediators, their qualifications and disqualifications, duties of mediator, procedure for mediation etc. Parties to a lawsuit may all agree to choose a single mediator to mediate between them. In the event that two sets of parties cannot agree on a single mediator, each set of parties might suggest a mediator. Where there are more than two sets of parties with disparate interests, each set must propose a person on its behalf, and the nominees must designate a sole mediator.[19] In addition, the High Court and other district courts must develop a panel of mediators to mediate conflicts. It is necessary to obtain the consent of the person

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15 Consumer Protection Act 2019, Section 74.
16 *Id.,* Section 75,
17 *Id.,* Section 79,
18 Commercial Courts Act, 2015, Section 12A.
19 The Jammu and Kashmir Mediation and Conciliation Rules, 2019, Rule 2.

who has been appointed in this capacity. The person appointed shall serve for a period of three years, with additional extensions at the discretion of the competent High Court and District Court.[20] Persons who are to be included in the panel include retired judges of Supreme Court, High Court and District courts, legal practitioners having ten years standing at bar, experts in the field having 5 years experience etc.[21] under the rules, persons who are of unsound mind, declared as insolvent and those against whom criminal charges involving moral turpitude have been framed or who are convicted for the same or disciplinary proceeding for an offence involving moral turpitude have been initiated are disqualified to act as mediators.[22] Any individual who is engaged in or associated with the subject matter of the dispute, or who is related to any of the parties or those who represent them, unless all parties waive such objection in writing is also disqualified to act as mediator.[23] The rules also impose a duty on the mediator to disclose any situation or circumstance which is likely to give rise to a doubt as to his independence or impartiality. This may arise either due to his interest in subject matter of the dispute or his relation with any of the parties to the dispute.[24] Mediation proceeding are to be completed within a period of three months. Further extension of thirty days is also allowed under the rules.[25] Confidentiality also applies to mediation proceedings. If a mediator gets information from a party with the condition that it be kept secret, the mediator is obligated to do so.[26] The settlement agreement reached is to be reduced in writing and signed by the respective parties.[27] Mediation centres have been established at the district level, following the directions of the Supreme Court's Mediation Conciliation Project Committee (MCPC). At the High Court level, two mediation centres have been established, one in Srinagar and the other in Jammu. Various pending cases have been referred to

20 *Id.,* Rule 3.
21 *Id.,* Rule 4.
22 *Id.,* Rule 5.
23 *Ibid.*
24 *Id.,* Rule 8.
25 *Id.,* Rule 18.
26 *Id.,* Rule 20.
27 *Id.,* Rule 24.

mediation by the High court. *Sushil Kumar and ors. v. Ram Murti and ors.,* the dispute was between a landlord and tenant and as such for its amicable settlement it was referred to mediation. With the efforts of mediation a compromise was reached and tenants have undertaken to vacate the premises and handover the possession to the landlord. Similary, in *Susheel Kumar v. Jyoti Malla,* involved a matrimonial dispute. It was referred to mediation by mediation centre of Kishtwar District and Sessions Court, and was settled with parties agreeing to live together as husband and wife. It is clear that the mediation process in Jammu and Kashmir has begun with enthusiasm. However, there is still more work to be done in this regard.

Issues with the Current Structure

Despite the fact that mediation is faster, more cost-effective, and has a higher chance of preserving the relationship between disputing parties, India's current mediation structure has not allowed it to reach its full potential. In its historic decision in the *Afcons Infrastructure Ltd. case*, the Supreme Court pointed out certain blatant drafting mistakes in Section 89. These include a mash-up of definitions in Section 89 of the terms "judicial settlement" and "mediation," as well as a lack of clarity in the court's procedure for submitting matters to mediation under Section 89. The Law Commission of India addressed the issues existing in Section 89 in its 238th Report[28], recommending that it be replaced with an improved clause that is consistent with the decision in *Afcons Infrastructure Ltd. case*. In its report the commission mentioned the stage at which the court may refer a dispute to various alternative dispute resolution methods that are specified in section 89. In addition to this the commission redefined judicial settlement and mediation. The suggestion given by the commission has not been yet brought into effect. There is also no statistics available, with the exception of a few High Courts, on the status of mediation cases referred, the success/failure of matters, or the number of settlements reached and efficiently implemented. In case settlement is reached in mediation proceedings it is to be reduced to writing and forwarded to

[28] Law Commission of India, 238th Report on amendment of Section 89 of the Code of Civil Procedure, 1908 and Allied Provisions.

the court which shall pass an appropriate order or decree. Here section 21 of the Legal services Authorities Act will come into play. Hence, a settlement agreed by the parties in matters referred to mediation by the courts is not automatically enforceable. There is also no clarity on implementation of the settlement reached in mediation in case a party breaks its agreement. Thus if ordinary contract law is applied to such circumstances it may merely delay the cause thereby undermining the very point of using mediation. Due to the ambiguity around enforceability, lawyers are hesitant to recommend mediation to their clients. Furthermore, despite the fact that the changes made to The Commercial Courts Act, 2015 had a huge potential, it has yet to be fully realised. The Act's limited implementation has experienced various obstacles, including the engagement of mediators, their lack of skill to handle business matters, and questions that may arise pertaining to the report that the mediator must produce if a settlement cannot be achieved. The authorities mentioned in the Legal Services Authorities Act have been entrusted with the task of appointing mediators under the Act by virtue of the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018. However, this procedure is fraught with difficulties which include insufficiency in number of the mediators that are in the panel of these authorities, second, apprehensions regarding quality of the mediator as many of them may lack the needed subject-specific knowledge to effectively resolve business disputes. It is critical that any law mandating obligatory mediation avoid the mistakes that the Commercial Courts Act did. Another issue with the mediation is that general public has no awareness about mediation. Even when parties are aware of mediation, one of the biggest obstacles is a lack of incentives for them to try it. Certain myths about mediation exist in India, as a result of which both lawyers and their clients hesitate in resorting to it and to regard it as a feasible conflict settlement option. The reason for this is that it is often thought that recommending or participating in mediation process reveals a weakness and a risk of failure at trial.[29]

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[29] Gupta, Juhi, "Bridge over Troubled Water: The Case for Private Commercial Mediation in India." 11 *American Journal of Mediation* 59-88 (2018).

Conclusion

In conclusion it can be stated that the adversarial setup in India and Jammu and Kashmir is plagued with backlogs. The number of court cases currently pending is tremendous. Mediation, as an alternate means of dispute resolution, can help to augment the system and reduce judicial backlogs. However, its full potential has yet to be realised. There are a number of flaws in the legal structure that governs mediation. As a result, there is a pressing need for comprehensive law that addresses the various difficulties surrounding mediation.

WOMEN PARTICIPATION IN INFORMATION AND COMMUNICATION TECHNOLOGY (ICT): NEED AND IMPORTANCE

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Dr. Mir Junaid Alam[2]
Saima Ahad Kumar[3]

Abstract

The information and communication technology sector is of increasing importance to virtually every sector of the economy. There is a high demand for highly-qualified workers to fill the increasing demand of this expanding sector and women, due to their currently low presence in ICT, constitute a pool of potential candidates. Expanding women's access to ICT jobs would not only advance economic opportunities for women, their families, and their communities, but it would also help address the shortage of skilled workers for these jobs and grow the digital economy. The paper presents a brief overview of selected literature on the issue of how to attract more women into ICT-related courses and consequently to a career in ICT. Two approaches are thus taken: firstly, to encourage them to pursue such academic path by closing the gender gap; secondly, an overview of the challenges female workers faces in their work and progression in ICT companies. The paper also highlighted the women prevalence in technology through statistical figures. Finally the paper recommends some policy measures to be adopted by various stakeholders to achieve the goal of gender equality thereby increasing women participation in ICT.

Keywords: Women, ICT, Empowerment, Gender-Gap, Covid-19.

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1. Introduction

As the world transitions to an increasingly digital economy, many low- and middle-income countries face an obstacle, most emerging economies lack qualified people to fill critical information and communication technology (ICT) jobs, a shortage that is exacerbated by the low representation of women in these industries.[4] The gap between the demand for ICT workers and the supply of job seekers with the necessary technical skills threatens the ability of those countries to participate in a powerful driver of growth in the twenty-first century—the digital economy. Increasing the participation of women in the ICT labor force would help bridge this gap, but women are not yet able to take full advantage of this growing sector. While a degree in computer science or engineering is necessary for most professional-level careers in ICT, the share of women graduates in these fields is slipping in many parts of the world.

Although researchers and policymakers have focused on closing the gender divide in ICT jobs in the United States and Europe, far less attention has been focused on emerging economies, which increasingly rely on local labor forces to drive growth. Globally, ICT sector jobs are transitioning from Organization for Economic Cooperation and Development (OECD) countries to non-OECD countries because of the rapid growth of ICT markets in emerging economies.[5] According to a 2012 report by the International Telecommunications Union (ITU), "China is by far the largest producer and exporter of ICT goods today, while India is the largest exporter of computer and information services."[6] The demand for ICT skills has also grown outside of the ICT sector, as digital technologies are applied across other sectors to improve productivity.

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4 Tim Fernholz, "The World Bank Is Eliminating Use of the Term 'Developing Countries' From Its Data Vocabulary," *Quartz*, May 17, 2016, http://qz.com/685626/the-world-bank-is-eliminating-the-term-developing-country-from-its-data-vocabulary/.

5 Nidhi Tandon, *A Bright Future in ICT Opportunities for a New Generation of Women* (International Telecommunications Union, 2012).

6 *Ibid,* p. 13 (citing OECD, *OECD Information Technology Outlook* [OECD: 2010], p.60).

Additionally, development policy faces an existential crisis. Dramatic advances in automation and artificial intelligence are rapidly replacing low-skilled and routine jobs and closing the traditional path of development through industrialization. Factories, agriculture, and call centers—traditional stepping stones to the middle class for low-wage workers—increasingly require fewer human hands. The global trend towards off shoring is even showing early signs of reversal because increased automation has made the cost of labor less significant. In this upheaval, the ITU notes, "more women than men have been displaced due to increased automation and computerization of workplaces."[7]

Expanding women's access to ICT jobs would not only advance economic opportunities for women, their families, and their communities, but it would also help address the shortage of skilled workers for these jobs and grow the digital economy. As women become increasingly active users of technology, their participation in designing and developing tech products and services will help to enhance technology's relevance for women as consumers, further boosting innovation and economic growth. Working together, the public and private sector should address the multiple barriers women and girls face, particularly in low- and middle-income countries whose economies stand to gain the most from greater participation of women in vital ICT jobs.

2. Why the Gender Gap Should Be Closed

Strengthening women's participation in the ICT sector is important for three reasons. First, increasing employment opportunities for women enhances gender equality, which is fundamental to human rights and dignity. Second, empowering women leads to benefits for their children and communities. Third, bridging the gender gap in ICT jobs can help address the mismatch between the supply and demand for jobs in emerging countries. Tapping into the ingenuity of the full population could fuel economic growth, not only by increasing productivity across sectors by effectively leveraging ICTs,

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[7] *Ibid,* p. 8.

but also by improving the design of ICT products and services to meet the needs of both women and men.

ICT jobs can advance the equality status of women in several ways. These jobs often have the potential to offer flexible hours and locations, which can enable women to balance household and professional responsibilities. In particular, jobs that offer consulting services remotely through information technology (IT) often provide a better balance between work and family for women, who tend to be primary caretakers for children and the elderly.[8] Moreover, because ICT is a fast-growing sector, it offers many job and career growth opportunities, including a range of self-employment options.[9] ICT jobs are frequently higher paid and have opportunities for advancement. Lastly, employment in the ICT sector builds skills that are transferable not only within the ICT field, but also to other sectors.

When women have equal access to economic opportunity, social empowerment, and higher wages, their children also often benefit. Women are more likely than men to save and invest their increased wages in their communities and families, which leads to improved education and health outcomes for their children, including improved survival rates of girls and higher rates of child nutrition.[10] Studies demonstrate that women spend roughly 90 percent of their income on their families; by contrast, men contribute 30 to 40 percent.[11]

Enhancing the participation of women in the ICT sector—to help close the employment and wage gender gaps—would also promote

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8 Samia Melhem and Nidhi Tandon, *Information and Communication Technologies for Women's Socio-Economic Empowerment* (World Bank, 2009), p. 8.

9 *Ibid,* p. 19.

10 World Bank, *World Development Report: Gender Equality and Development* (Washington, DC: 2011); *IFC Jobs Study: Assessing Private Sector Contributions to Job Creation and Poverty Reduction* (International Finance Corporation, January 2013), p. 5; International Labor Organization, *Global Employment Trends for Women* (Geneva: International Labor Organization, 2009).

11 Chris Fortson, "Women's Rights Vital for Developing World," *Yale News Daily*, February 14, 2003, http://yaledailynews.com/blog/2003/ 02/14/ womens-rights-vital-for-developing-world.

economic growth. According to the recent McKinsey report "The Power of Parity", advancing women's equality could add as much as $12 trillion to annual gross national product globally by 2025.[12] Other research demonstrates that the restricted job opportunities for women in the Asia-Pacific region cost between $42 and $46 billion a year, and those similar limitations have also led to the loss of enormous economic potential throughout Arab states, which have the widest gender gap in economic opportunity.[13]

Public and private sector programs have been developed in various countries to increase women in the ICT labor force, with varying degrees of success. Because women are increasingly consumers of technology, it also makes economic sense for women to be involved in designing and developing these products and services so that they can be tailored to the needs and preferences of both women and men. As the 2012 ITU report states, "Engaging women and girls in ICT sector work is not only the right thing to do from the point of social justice. It is also smart economics."[14]

3. Challenges for Women in ICT

Women face significant barriers to entry and advancement in the ICT labor force. Understanding these challenges can help pave the way for effective policies to improve gender parity.

i. **Hierarchy and Barriers follow traditional patterns:** Participation of women in the ICT workforce varies from country to country, but across the board the ICT sector is typically perceived to be male-dominated, and upper management is predominately male.[15] Outside the United States, there is little data on the ICT labor force that is disaggregated by gender, but according to the International

12 McKinsey Global Institute, *The Power of Parity: How Advancing Women's Equality Can Add $12 Trillion to Global Growth (*2015), p. 1.

13 Nidhi Tandon, *A Bright Future in ICTs Opportunities for a New Generation of Women*, pp. 10–11.

14 *Ibid.,* p. 3.

15 *Ibid.,* p. 4.

Labor Organization, traditional patterns of gender hierarchy are being replicated in the digital economy: men predominate in most high-skilled, higher wage jobs and women hold low-skilled, lower wage jobs with few benefits or less security.[16] Women tend to hold jobs at the bottom of the supply chain in ICT, such as in administrative and clerical positions, phone operations, and data entry.[17] Describing the "feminization" of lower rung jobs in the ICT sector, another study of global trends in this field found that, on average, women accounted for 30 percent of operations technicians, but only for 15 percent of managers and 11 percent of strategy and planning professionals.[18] Even in developed economies, women's participation in the ICT labor force has declined as the sector has evolved from robotic and clerical work toward innovation and design.[19]

Microloan programs that support women entrepreneurs often focus on traditional women's work, such as handicrafts, rather than ICT-oriented industries. Moreover, women are underrepresented in ICT sector decision-making structures, including policy and regulatory institutions, ministries, and boards of ICT companies.[20]

ii. Social Roles: Among other challenges, in many countries girls may face cultural pressures and stereotypes that discourage them from developing the skills needed to join the ICT workforce. In many parts of the world, the tech field has developed a "geek" or "nerd" culture, which often attracts more boys than girls. In the United States, for example, there was a strong shift away from women entering computer science when personal computers came out, because they

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16 International Labor Organization, *Work in the New Economy* (International Labor Organization, 2010).

17 Melhem and Tandon, *Information and Communication Technologies for Women's Socio-Economic Empowerment*, p. 8.

18 Tandon, *A Bright Future in ICTs Opportunities for a New Generation of Women*, p. v.

19 *Ibid.,* p. 6.

20 *Supra* note 14.

were marketed as toys for boys and not girls.[21] Even the origins of computer science are rooted in a masculine context—warfare—as the technology that paved the way for modern computing was developed during World War II by Alan Turing, the British scientist who developed a machine to break the Nazi enigma code.[22] Further, research suggests that boys have a tendency to tinker with computers as an innately interesting toy or puzzle, whereas girls tend to use technology as a tool for achieving another goal.[23] As a result, when girls take elective classes in computer science, they are often outnumbered and less experienced.

The jobs where women predominate are frequently lower paid and viewed as "soft," less prestigious and less desirable for men. In fact, across the globe, women are overrepresented in education and health; on par with men in business, law, and social sciences; and underrepresented in engineering, science, manufacturing, and construction.[24] Although ICT jobs have the potential to offer flexible hours and the ability to work remotely, which can enable women to balance work and family responsibilities, few companies are structuring their work this way to make jobs more accessible to women. Additionally, the demand for increasingly advanced technical abilities requires workers to continually upgrade their skills, particularly as the ICT sector evolves. The 2012 ITU report points out that this puts women "at a disadvantage given their multiple roles in work, family, and

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21 "When Women Stopped Coding", National Public Radio (NPR), October 21, 2014, http://www.npr.org/sections/money/2014/10/21/357629765/when-women-stopped-coding.

22 "Alan Turing Turns 100", National Public Radio, June 29, 2009, http://www.npr.org/2012/06/29/155992718/npr-alan-turing-turns-100; Ulf Mellstrom, "The Intersection of Gender, Race and Cultural Boundaries, or Why is Computer Science in Malaysia Dominated by Women", *Social Studies of Science* 39, no.6, December 2009, p. 886.

23 American Association of University Women, "Tech-Savvy", 2000.

24 World Bank, *World Development Report: Gender Equality and Development* (World Bank, 2012).

community and the cultural bias that tends to value an investment in men's education before women's."[25]

Another challenge facing women in ICT is the lack of female role models and mentors in their academic and professional careers. For girls and women interested in pursuing a career in ICT—as in other male-dominated fields—role models have the potential to inspire them, provide support and networks for job access, and offer encouragement and advice through the course of their careers.

iii. **Education and Digital Literacy:** Even when countries do have policies to promote women in nontraditional fields, efforts are often lumped together with a more general pursuit of science, technology, engineering, and math (STEM) fields.[26] In such situations, girls tend to gravitate toward the "soft" sciences that have neither the gender gap nor employment opportunities of ICT professions. Girls who do pursue computer science courses tend to lose interest after being subjected to curricula that are oriented around abstract algorithms, tedious syntaxes, or male-oriented problem sets about subjects such as sports and poker.

In many of the former British colonies in Africa, strict "cluster subject" prerequisites, including physics, are required to pursue a computer science degree. Girls are frequently discouraged from taking physics and such courses may not even be offered in some gender-segregated schools. Boys are therefore more likely to get on, and stay on, the tech track. Individual preference can certainly make women less likely to pursue ICT careers, but these preferences are shaped by powerful social attitudes about gender. Furthermore, because girls have less access to formal education in many countries, as women, they are less qualified for high-skilled digital work.

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25 Tandon, *A Bright Future in ICTs Opportunities for a New Generation of Women*, p. 8.
26 *Ibid,* pp. 6–7.

Another obstacle to gender parity in the ICT sector is that women have less access to technology as users, which decreases their digital literacy. In low- and middle-income countries, studies have shown that on average women have 14 percent less access to mobile phones and 23 percent less access to the internet.[27] With less access and less familiarity with ICTs, women are unsurprisingly less likely to pursue a career in this sector.

4. Women's prevalence in Technology

Women are slowly reaching gender equality across many industries, yet the technology sector is still far behind. Although companies are becoming more dedicated to hiring quality employees regardless of their race, sexual orientation and gender, women are still often discriminated against, underrepresented, and underpaid in IT roles. From the general workforce to management positions, statistics show that women are underrepresented in STEM (Science, Technology, Engineering, and Math's) careers. Gender stereotyping, lack of support and harassment in tech schooling and work environments are some of the many reasons women may not find their careers in the tech sector.

Women employed in GAFAM range from 29% to 45%. GAFAM is an acronym that stands for Google, Apple, Facebook, Amazon and Microsoft, better known as the five tech giants. The percentage of women in the workforce of these major tech companies is:

- Google – 33%
- Apple – 34%
- Facebook – 37%
- Amazon – 45%
- Microsoft – 29%

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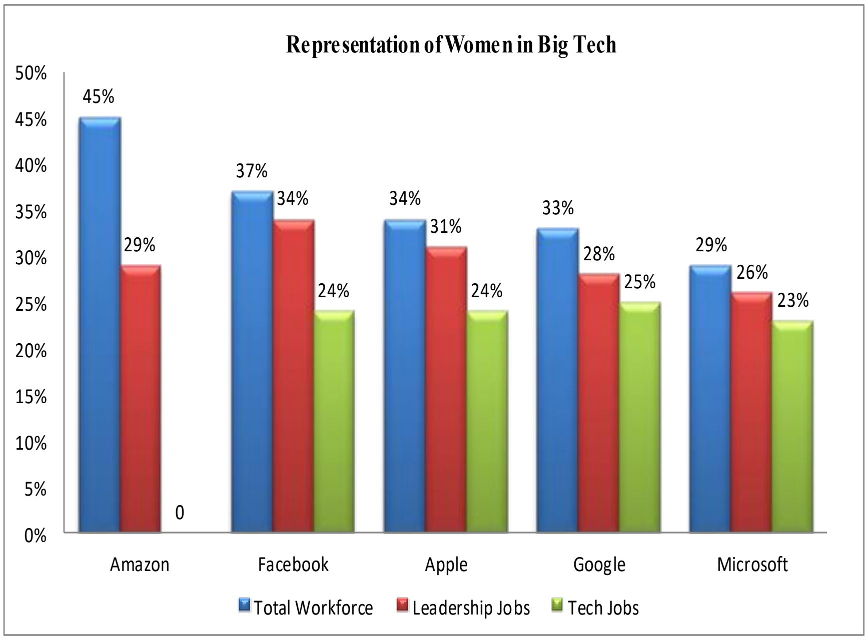
27 *Bridging the Gender Gap: Mobile Access and Usage in Low- and Middle-Income Countries* (GSMA Association 2015); Intel Corporation, "Intel Women and the Web 2013", January 25, 2013, http://www.intel.com/content/www/us/en/technology-in-education/women-in-the-web.html.

Furthermore, women hold just 26.5% of management positions and leadership roles in S&P (Standard & Poor's) 500 companies



Source: http://www.writersblocklive.com

In 2021, 39% of women perceive gender bias in the tech sector as a barrier to promotion. When it comes to gender discrimination in the workforce, statistics show that women are four times less likely to get a promotion than men.

The absence of women in the tech industry is a worldwide phenomenon. While prevalence varies by country, the trends remain constant. In India, the prevalence of women in the IT sector is just 26%. Despite the growing number of women in STEM fields, the male to female ratio in the information technology industry for 2021 in India has shown a widening gender gap. And in UK only 23% of people working in STEM roles are women.[28]

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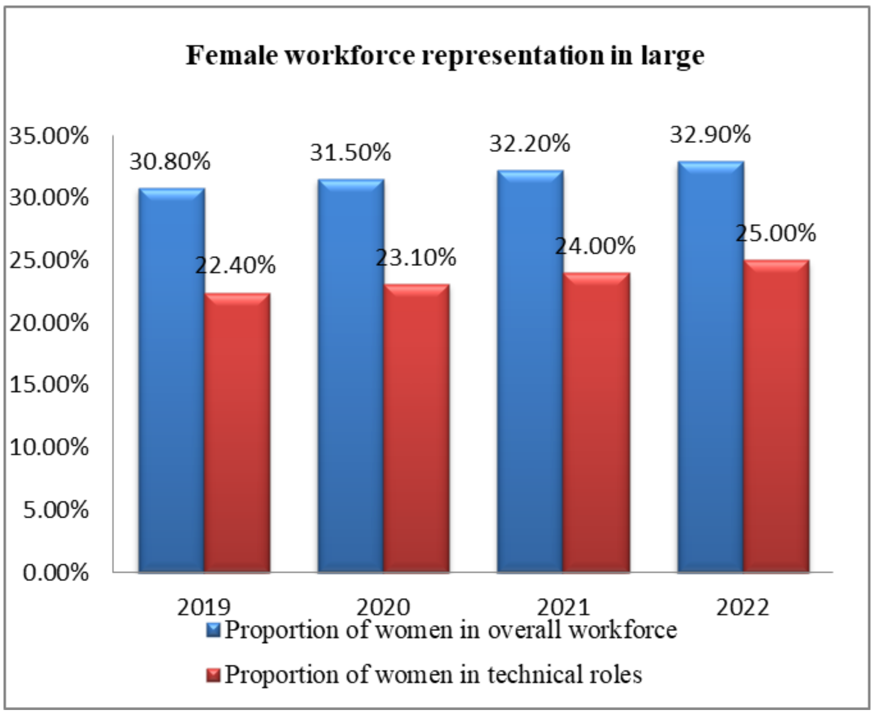
28 Women in Tech Statistics: What's the 2022 Landscape? By Maria Pengue on January 5, 2022, http://www.writersblocklive.com/blog/women-in-tech-statistics.

The technology industry or at least its largest players will likely continue to close the gender gap in the years ahead. Deloitte Global predicts that large global technology firms, on average, will reach nearly 33% overall female representation in their workforce by the end of 2022 up slightly more than 2 percentage points from 2019.[29]

Large technology companies are making slow but steady progress in increasing female workforce representation



Source: http://www2.deloitte.com/insights

29 Women in the tech industry: Gaining ground, but facing new headwinds, by Susanne Hupfer, Sayantani Mazumder, Ariane Bucaille and Gillian Crossan on December 01, 2021, http://www2.deloitte.com/us/en/insights/industry/technology/technology-media-and-telecom-predictions/2022/statistics-show-women-in-technology-are-facing-new-headwinds.html

5. Impact of COVID-19 on Women Workforce

The Covid-19 pandemic has taken a heavy toll on the workers well-being and professional prospects. Delloitte's 2021 women @ work study, which polled 500 women in the global technology, media, and telecommunications (TMT) workforce, found that, compared with how they felt prior to the crisis, TMT women have experienced dramatic drops in motivation and productivity at work, job satisfaction, physical health and well-being, work/life balance and feelings of loyalty to their employers.[30]

As a result of the pandemic, 57% of women working in tech fields felt burnout at work. Compared to 36% of men, TrustRadius reported that women in tech suffered from employee burnout the most in 2021. Being forced to work from home, female employees felt their duties multiplied, as home responsibilities and child education also added to their total workload, leading to more symptoms of burnout than their male counterparts.[31]

6. Policy Recommendations

The gap between the number of ICT jobs and workers with skills to fill these jobs has sparked interest in recruiting more women into the ICT labor force, particularly in emerging economies, which can reap the largest benefits from boosting the involvement of women and girls. Many small-scale initiatives have been piloted, but successful programs should be scaled up, funded on a more sustainable basis, and integrated into policy. The following steps are recommended to increase the participation of women in the ICT workforce on a larger scale in low- and middle-income countries. In most cases, the recommendations do not propose new programs nor call for new funding, but rather advocate for a shift in policy, priorities, and existing funding to ensure that economic development and education investments can better integrate women and girls into the ICT labor force.

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30 *Ibid.*

31 *Supra* note 25.

i. Integrate ICT in school curricula

Governments should modernize primary and secondary school curricula. ICT skills are increasingly important in almost all sectors and careers, and schools should integrate analytical thinking, digital technologies, and coding into their curricula, starting in primary school. This will better prepare all students for the workplace. Early exposure has shown to be of particular benefit to building confidence and overcoming cultural stereotypes for girls.[32] Integrating ICT studies as part of the core curriculum will also have the benefit of ensuring a critical mass of girls in classes, rather than relying on students to self-select. In 2014, the United Kingdom began requiring computer science for all students in both primary and secondary school, in recognition of the shortage of ICT skills among job seekers.

Primary, secondary, and tertiary schools should orient computer science curricula around relatable problems rather than abstract concepts. Many women and girls see ICTs as tools for solving problems, rather than as an end in itself. Thus, introductory courses, which are focused on abstract concepts such as algorithms and programming syntax, can feel dry and irrelevant. In the United States, Harvey Mudd College found that when it redesigned its mandatory introduction to computer science class to use tools that enabled students to write interesting and useful programs quickly and provided hands-on research experiences, the college more than doubled the percentage of women choosing to major in computer science. Schools should orient their curricula to follow this model.

ii. Help women enter the ICT sector

Governments, donors, and non-governmental organizations (NGOs) should prioritize initiatives that help bridge the gender gap in access to mobile phones and the internet. Access is the

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32 Allan Fisher and Jane Margolis, *Unlocking the Clubhouse: Women in Computing* (Cambridge: MIT Press, February 2003).

first step toward digital literacy and a path to ICT-enabled career options. It also is a driver for broader economic growth, increased productivity, and empowerment. Ensuring women have equitable access requires tackling the root causes of the current disparity including unaffordable prices, gaps in digital literacy, the lack of relevant content and services, and cultural barriers in economic development programs.[33] Programs such as GSMA's Connected Women (formerly Women), Intel's Women and the Web Alliance, and the Alliance for Affordable Internet have started to make inroads on these issues and can serve as a model for further investment.

Governments, donors, and NGOs should design more employment and job skills training programs to steer women toward jobs that build ICT skills. One example is digital micro work, which creates sustainable livelihoods through tasks such as transcription, cataloging, and digitization. Workers in these fields benefit from dramatically higher wages and more stable livelihoods, and these jobs can propel women to pursue further education, develop marketable skills, and sustainably support their families. ICT-oriented jobs can offer women superior growth opportunities, compared to traditional female jobs, such as smallholder agriculture and handicrafts, which women are often steered toward.

iii. Encourage and support women in Tech careers

Governments, donors, and NGOs should integrate ICT mentorship and support networks for women in education and employment programs: The lack of role models and the isolation inherent in pursuing male-dominated professions contribute significantly to the high attrition rate for women. Mentor and peer networks can provide support and combat isolation. Some successful programs have demonstrated proof of concept, but are not set to scale. Elements of successful programs need to be integrated into large donor education programs or core government services to reach a larger demographic and become sustainable.

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33 Chang, "Bridging the Technology Gender Divide".

For example, the U.S. Department of State's Tech Women program empowers, connects, and supports the next generation of women leaders in science, technology, engineering, and mathematics from Africa, Central Asia, and the Middle East through a U.S. exchange program and mentorship network. Tech Women is a successful model, but only serves about one hundred women a year. The companion Tech Girls program, also administered by the State Department, is an international summer exchange program designed to empower and inspire young girls from the Middle East and North Africa to pursue careers in science and technology. Separately, Women Enhancing Technology (WeTech) has provided training, built professional networks, and offered professional opportunities for women and girls to enter and succeed in technology careers. WeTech was created through a number of corporate commitments announced at the Clinton Global Initiative, but does not have long-term sustainable funding. These programs have demonstrated the potential of role models, mentorship, networks, and training to support women and girls in the ICT sector and can serve as a valuable starting point for broader interventions.

Companies should promote flexible work policies. Many ICT jobs have the potential to support flexible hours and locations, which can better align with the competing responsibilities women, face at work and at home. Flexible work structures will help draw more talent to a sector that needs it.

iv. Improve data collection

Data on the participation of women in ICT is extremely limited for emerging economies. Without such data, it is difficult to appropriately target interventions by governments, NGOs, and companies. Governments and international agencies should collect comprehensive, reliable, and disaggregated data on the representation of women in ICT education and professions to more effectively characterize the divergent trends that exist across countries, fields, and career stages. This data should be normalized for comparison and gathered every few years to identify gaps and trends.

UN Foundation's Data2X and other gender data initiatives should prioritize the collection of data on women in ICT: The GSMA's Connected Women program, Intel's Women and the Web Report, and the International Telecommunications Union have collected data, but they primarily report on the use of ICTs by women. Data on the participation of women in ICT studies and jobs is limited, particularly for low- and middle-income countries. The UN Foundation's Data2X initiative was established to build partnerships to improve data collection and demonstrate how better data on the status of women and girls can guide policy, leverage investments, and inform global development agendas. More recently, in May 2016, the Bill and Melinda Gates Foundation announced a new $80 million initiative to close gender data gaps and accelerate progress for women and girls. These initiatives and others should prioritize the collection of gender-disaggregated data regarding the global representation of women in ICT at all stages, from the classroom to the boardroom.

***Multilateral institutions should publish comprehensive data on women studying ICT in universities*:** UNESCO or a similar multilateral institution should undertake a comprehensive study, similar to *UNESCO Science Report: Towards 2030*, to gather and analyze gender-disaggregated data on technology education and career paths. The World Bank and other donors should encourage, and in some cases provide monetary support for, governments to publish gender-disaggregated data on university graduation rates for both undergraduate and graduate degrees, broken down by science, technology, and engineering fields.

***Technology companies should release gender diversity numbers*:** Governments, advocacy organizations, and industry associations should encourage companies in emerging economies to follow the lead of technology companies in the United States, many of which have published their gender diversity numbers in recent years both for technology and leadership positions.

7. Conclusion

The fact that there are too few workers for the ICT workforce in low- and middle-income countries gravely undercuts one of the strongest drivers of innovation and growth in the global economy. Women could help fill the gap, but they are currently underrepresented in the ICT workforce, particularly in higher-skilled, senior, and management positions. Increasing women's access to jobs in this field would advance economic opportunities for women, their families, and their communities, and would help grow the digital economy. As women continue to become more active users of technology, their involvement in designing and developing tech products and services will help to ensure technology's relevance for women as consumers. International institutions, governments, and NGOs, as well as companies and foundations, should work together to address the multiple barriers women and girls face, particularly in low- and middle-income countries whose economies can benefit the most from greater inclusion of women in the ICT labor force. Moreover, new companies and startups can support women's involvement in science and technology from their onset. Diversity supports innovation, and as the world enters into a new era, women of all backgrounds are ready to be part of the solutions of tomorrow.

POLYGAMY: WHY AND WHY NOT?

Prof. M. Afzal Wani[*]

Polygamy is the practice of simultaneously having more than one mates, that is, the practice of having more than one wife or husband at the same time. The different forms of multiple partnership in marriage or sexual relationship are:

(a) Sexual communism;

(b) Polyandry; and

(c) Polygyny.

In sexual communism no man has an exclusive relationship with any particular woman, and no woman is exclusively tied to any one man. While as polyandry implies possession of more than one husbands by a woman at one and the same time. And polygyny means possession of more than one wife at one and the same time.

The exclusive union of a man and woman is called monogamy. This is a form of matrimony where the wife and husband consider the sentiments, affections, sexual advantages from the other as his or her own and special to him or her.

Sexual Communism

It knows not special exclusiveness or personal attachment on either side, man or woman. Neither has the woman any special interest in any particular man nor the man in any specific woman. This is a shared condition of being a husband or wife. It proposes the rejection of family life. Plato had proposed it for the circle of ruling class, that is, the king philosophers and the philosopher kings. This behaviour has never prevailed in human history, instead it was disapproved not only by others, but also Plato himself deviated from this idea.

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Fredrick Engels, the second father of Communism also proposed this idea and wrote in its defense, but communist world did not approve of it. Soviet Government in view of many other bitter experiences which followed from the Engels' communist family theory, passed laws for the benefit of the family in 1928, and monogamy was adopted as the officially approved communist form of matrimony. Also, this practice as such is not found under any legal system.

Few cases of group marriages have been reported in Tibet, for example, where it was a custom for a group of brothers to marry a group of sisters, and for the two groups to practise sexual communism between them.

In 1848, John Humphry Noyes established the practice of "group marriages" in the Onedia community, Madison country, New York. All the men were the actual or potential husbands of all the women, though every man was not free to have children with every woman. The principle for such "complex marriages" was based by him on his own interpretations of certain passages from the New Testament. In 1879 Noyes proposed that in deference to public sentiment the community should give up the practice of complex marriages.[1]

Sexual communism, being against human nature and the ideal of chastity, is outrightly rejected by Islam.

Polyandry

In polyandry because of plurality of husbands the parentage of the children is not known. Hence in this kind of conjugal relationship the relation between a father and his children is unspecified. It is inconsistent with ones desire for exclusively and love for his children. It is more against the nature of a woman. For this reason, polyandry could not make itself popular in any society worth the name. Polyandry is forbidden by the laws of all civilized countries. The

[1] Edward Westermarch, The Future of Marriage in Western Civilization, p. 172 (London, 1936).

practice has only been reported in the tribe of Naires, on the coast of Malabar.

According to Montesquieu the Naires were a tribe of nobles, who were the soldiers of all the nations. In Europe soldiers were forbidden to marry; in Malabar, where the climate required greater indulgence, they were satisfied with rendering marriage little burdensome to them as possible: they give one wife amongst many men, which consequently diminishes the attachment to a family, and cares of housekeeping, andleaves them in the free possession of a military spirit.[2] Among Spartans polyandry was existent.[3]

Among the Hindus two instances of polyandry are reported as those of Droupadi wedded to five husbands (Pandva princes) simultaneously and the Asvins (the twin gods) referred to as the husbands of Surya. Some instances of fraternal polyandry are also seen.

Islam does not approve of polyandry. Man with a natural tendency towards exclusiveness and 'restricted attachment' naturally wants to reproduce, and he wants a connection with the future and the past generations to be specified and clearly defined. He wants to know for certain which child he is the father of and who is his own father. Polyandry is thus unfitting for the human temperament and instinct. It is against the nature of woman and inconsistent with her interests as well. A woman does not require a man only as a source of satisfaction for her sexual urge, so that it may be said 'the more the merrier'. A woman wants a man whose heart will be in her hand. He should be self-denying and devoted to her as a sincere protector and defender. A woman in polyandry has never been able to attract the protection, love, sincere attachment and devotion of man towards her.

Polyandry is just like a prostitution. Abu-Zahir-al-Hassan an Arab Muslim who in the ninth century visited India and China, thought

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2 Montesquieu, The Spirit of Laws, Vol. I, p. 272 (Translation).
3 Grote, History of Greece, Vol. VI, p. 136.

this custom (Polyandry) as a prostitution.[4] The practice of polyandry is quite strange to Muslims, It can be in no compromise with the basic principles of Islam particularly the object of marriage in Islam.

Polygyny

Polygyny unlike polyandry and sexual communism has enjoyed an accepted status not only in savage tribes but also civilized nations. It was a recognized institution among "Medes", Babylonians, Assyrians and Persians with no restriction as to the number of wives a man might have. Among Israelites it existed even before Moses and continued even after him with no limit on the number of wives that a Hebrew might have at a time.[5] To the Persians religion offered a premium on the plurality of wives.[6] Among the Syrophoenian races whom the Israelities replaced, polygamy was degraded into bestiality.[7] Thracian, Lydian and the Pelasgian races settled in various parts of Europe and Western Asia practised polygyny. Among the Athenians, most civilized and most cultured of all the nations of antiquity, the wife was a mere chattel marketable or transferable to others, and a subject of testamentary disposition. An Athenian was allowed to have any number of wives.[8]

Among Romans polygyny continued until forbidden by the laws of Justinian, virtually rampantly continued even later until the modern opinion condemned this practice. The frequency with which the wives were changed or transferred -was actually polygyny under a different name.

Jesus Christ is not believed to have forbidden polygyny. No Council of the Church in early times placed any obstacle on its practice. The indulgence in the practices of polygyny by Diarmait, King of Ireland, Merovingian Kings and Charlemagne professes the existence of polygyny practices among Church. In 1531 the Arab Baptists openly-

4 *Supra* note 1 at 272.
5 Ammer Ali, The Spirit of Islam, p. 222.
6 *Id.* p. 223; Dollinger, The Gentile and the Jew, pp. 405-406.
7 *Ibid.*
8 *Ibid.*

preached at Munster that he who wants to be a true Christian must have several wives.[9] Mormons do support polygyny even now. New Testament does not expressly forbid it.[10] In West still it is prevalent in different fashions like, frequent divorces, freedom of sex, homosexuality and exchange of wives. Thus polygyny has not been unknown to Occidentals either before or now.

Among Hindus polygyny in unlimited form has prevailed from the earliest times. Instances of polygyny are both common and frequent in Reg Veda Samhita. A simile is drawn as:

> Yearning wives" cleaving to "their yearning husband,[11]

Another instance is v/here a simile is drawn from a man placed in a helpless and pitiable condition by his wives. The evidence reads:

> Like rival wives on every side enclosing ribes oppress me sore.[12]

The distress of the poor hard-pressed husband between his jealous wives is hereby marked. Indra himself is said to be reveling among his several wives.[13] At another place we read of wives loving a single husband.[14] Indra takes possession of all castes "as "one common husband does his spouses."[15] The expression Sapatni (Co-wife) is frequently founding Reg Veda Samhita. Kings, nobles and even priests have resorted to have a number of wives. Laws of Manu lay down specific provisions for celebrating subsequent marriage:

> A barren wife may be superseded in the eighth year; she whose children die, in the tenth; she who bears only

9 Supra note 1, p. 172.
10 *Ibid.*
11 Reg -Veda Samhita, 1.62, 11.
12 *Id.*, 105.8.
13 *Id.*, VII 18.2.
14 *Id.*, I,71.1.
15 *Id.*, VII 26.3.

> daughters in the eleventh; but she who is quarrelsome, without delay.[16]

According to a recent survey in India, in the surveyed area with an estimated population of 40,000 people at least 20 percent men of all communities other than Islamic are bigamous, but none among the 300 families of Muslims had more than one wife.

Polygyny and Islam

We have seen above that polygyny existed centuries before the advent of Islam. Islam neither devised this system nor abolished it, but only humanised and reformed these practices existing in an inhuman manner there before. It permits limited polygyny but does not encourage it. Earlier people had degraded this custom to bestiality but Islam humanised it by providing a standard for taking another wife. Plurality of wives has been restrained by limiting their number and insisting on Adal (justice) not only in the form of physical requisites and domestic comforts but also in matters of respect and love.

The legal systems other than Islam now, instead of modifying it, have adopted provisions restricting bigamy but encourage it under the slogan of 'freedom of sex.' The people under such systems practice polygyny through call girls, prostitutes, change of wives and frequent divorces. It may be noted that even in Srinagar (Kashmir) a so called leader of Pandits (Hindus) has recently been caught who was exploiting various young women of his community and enjoying sex with them. Even a non-Muslim Minister in Government is involved in a rape case.[17] Thus both voluntary as well as coercive polygyny is in yoke among thepeople who claim to have abolished polygyny - 'after a long sleep.'

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16 Manu, IX : 81.

17 Weekly Chattan (Urdu) Srinagar, August, 23-29; 1988; Srinagar Times (Urdu). Srinagar 11-8-88 and 13-8-1988.

Islam at its birth found polygyny a common feature throughout the world. The persecution of women on the social and sexual scale can be determined by the history of time when Arabs buried their daughters alive and widows were inherited as an integrated part of the property of heirs. Christianity considered women as soulless and burnt them as condemned witches, while jews sold their minor daughters at a price they thought fit. Women had no status in the eyes of law under any legal system before the advent of Islam. Islam introduced rights and privileges for women conferring an independent legal status on them. The women under other legal systems continued to remain on the list of interdicted persons for a further period of not less than one thousand and three hundred years. Still, those are in a state of confusion and chaos unable to find a just and equitable place for women befitting their nature, in the society.

In the sphere of polygyny the first war of Islam was against unlimited polygyny. Before Islam there was no limit to the number of wives. Islam put a maximum limit on their number and an individual was not allowed to have more than four wives. All those who had more than four wives gave up the number in excess of four voluntarily on acceptance of the faith of Islam. Islam did not miss to guide that there must never be, for any reason, discrimination between the wives or their children. Quran in most explicit terms prescribes the limits:

> Marry women of your choice, two or three, or four; but if ye fear • ye shall not be equitable, then only one.[18]

In Roman world the wives, with the exception of one first married, laboured and lived- under severe disabilities. Without rights and without any of the safeguards which the law threw around the favoured first one, they were slaves of every caprice and whim of their husbands. Their children were stigmatised as bastards, precluded from all share in the inheritance of their father, and treated

18 Quran, Surah Al-Nisa (iv):3.

as outcast from society.[19] This is how people before Islam discriminated between their wives and children. The practice of keeping of one wife as the main wife and the others as secret loves had also been adopted. Islam puts an end to ail discrimination, whether between the wives or between the children. The Prophet (SA.W.) has said that anyone who has two wives and does not behave with them equitably with justice showing more inclination towards one than the other, he will be resurrected on the 'Day of Judgment', and one side of his body will be dragged along the ground till at last he shall enter the fire.

Justice is the most excellent human virtue and to make justice a condition means requiring the people to attain the highest moral Standard. The most difficult task for a husband is to give uniformly similar treatment to each of his wives. This standard, therefore, serves as a most efficient check on unrestricted and unguided polygyny leaving room for limited polygyny only at times of need and necessity.

Moreover, man has been obliged to satisfy the financial and sexual needs of his wife. A sound financial condition coupled with physical capability and stamina will always be the questions for consideration before a man takes another wife and a wife agrees to give herself in marriage as additional wife.

Polygyny with this strict and severe moral condition, instead of befog a source of sensuality for man, takes the shape and. form of the performance of a duty. Where the matters of discipline, justice and performance of a duty are so prevalent, the sensuality and licentiousness will have to be done away with. Hence polygyny, with its Islamic regulations cannot in anyway be regarded as a source of licentiousness.

Let us think for a moment as to why this practice should not be totally abolished in Islam? We know Islam, claiming to be the universal order having worldwide mission, has to look into the

19 *Supra* note 5.

requirements of all ages, circumstances, countries and civilizations. There are certain ordinances in Islam which shall be looked upon as residuary, and remedial to meet the contingency of time and place. The use of such ordinances is well guided and illustrated. The rules regarding polygamy are of the remedial nature, be it noted.

Need for Polygyny

There are certain circumstances under which polygyny be-comes inevitable. Abolition of it will lead to certain unwarranted situations and unnatural tendencies. Which alternative will be rendered available in cases of wife's barrenness, perpetual illness, unsuitability for cohabitation etcEither husband has to see marriage dissolved or wait for that till death, or to abandon the hope of an issue and the desire of co-habitation. It is better to take a second wife than torturing ones own self or desponding a helpless wife. It was merely the inability to provide an heir to the throne that snatched queenship from Soraiya, the wife of Raza Shah (King of Iran) and Josephine the wife of Nepoleon whom he divorced against his wishes. Moreover, when the women outnumber men, polygyny becomes indispensable.

It may be pointed out here that polygyny with all responsibility, human and financial, is in so-called developed nations, being replaced now-a-days by sin which carries no responsibilities with it but only lust and licentiousness. It is facilitated with limitless indulgence in sensuality. On the supposed need of a secretary, a typist and on hundreds of other grounds use of women is being made. Girl-friends are being changed after short intervals without any need of the formalities and requirements of dower, maintenance and divorce. May I ask how Bartend Russel, a strong opponent of polygyny lost love for his wife Alys and brought to an end his relations with her? Even so, a non-Muslim Additional Secretary in government in India was caught red-handed raping a girl along with his friend, who was also a non-Muslim Lawyer, assuring a Govt. job to her.[20]

Islam cannot up-hold such adulterous practices and unguided sensuality. All over the world even less than one per cent Muslims have more than one wife.

20 Daily Aftab (Urdu) Srinagar, 27-4-1988; The paper is from an earlier publication of the author.

REPORTS ON CONFERENCES/ SEMINARS ETC.

IOS online Lecture on Constitution, Democracy and Participation in India: A Citizenship Initiative (January 8, 2022)

New Delhi: An online lecture on "Constitution, Democracy and Participation in India: A Citizenship Initiative" was organized by the Institute of Objective Studies on January 8, 2022.

The lecture began with the recitation of a Qur'anic verse by Naseem Ahsan, IOS. The Assistant Secretary General, IOS, Prof. Hasina Hashia, who introduced the topic, said that this was the first lecture of a series started by the IOS. She observed that India adopted democracy soon after its Independence and the leaders of the freedom struggle had made all efforts for democratic governance even during the colonial rule. The major purpose before the leaders was to take up the responsibilities and administer power without any discrimination and exclusiveness. She held that this was well documented in the debates held in the constituent assembly of India, which prepared a blueprint for political equality, freedom, justice and fraternity in the country. It was in this context that the IOS took the national initiative to provide a meaningful and deliberative platform of academicians and intellectuals to deliberate on the challenges, issues and problems and to find out achievement solutions, she added.

Delivering the lecture, Professor, department of political science, Aligarh Muslim University, Aligarh, Prof. Arshi Khan, said that the topic was contemporary and a part of the syllabus in universities. Quoting the Chinese philosopher, Confucius, he observed that laws were unnecessary unless they were strictly enforced. He discussed briefly the political and social situation that prevailed during the Renaissance and the Enlightenment in Europe. Then happened the French Revolution that paved the way for the voice of freedom and human rights. India was colonized by the Britishers, who ruled it for two centuries, and the end came only after resistance by the united political community. It became possible after a long-drawn-out freedom struggle with the participation of all the Indians. He said that India was a multi-cultural society and its demographic composition differed from the west as it was religious. Religion played an important role in the socio-political life of the country. It was unique in the sense that federalism, democracy and electoral manifestations contributed to the country's strength. The relationship between people reflected the true spirit of a plural society, he remarked.

Prof. Khan observed that double safeguards to multi-cultural society had been provided in the Constitution by way of the reservation to OBCs and SCs/STs. While recognition of regional languages had been restricted, Article 15 prohibited discrimination against any citizen on grounds only of religion, race, caste, sex, place of birth, etc. There were a number of good things in the Indian Constitution that made it one of the best Constitutions of the world. He said that though the first elections to the Indian parliament took place in 1952, majoritarianism stared ever since the Indian National Congress was founded. Democracy gave power to parliament to pass laws, but there too, the majority ruled. India was fortunate that the transfer of power from the British rule was peaceful. He noted that for most of the time, the Congress was in power and during its rule, majoritarianism grew. Owing to its departure from the path it adopted during the national movement, Congress became weak. By 1978, it became more vulnerable, and after 1985, it was further weakened in the wake of the emergence of Hindu religious fanaticism. The year 1989 marked the second departure of the party when VP Singh left the party to become the Prime Minister with the help of some opposition group. He was followed by Chandra Shekhar, who had a stork term as the country's premier. He maintained that corruption and family rule weakened the Congress party exhaustively. Mandal and Kamandal issue marked the emergence of new political alignment and area of coalition governments in states started, he added.

Prof. Khan observed that the phase of coalition governments dominated the political scene till the BJP emerged as the single largest party in 2014. Riding the crest of Hindutva mobilization, BJP became a force to reckon with. It called the change the beginning of a new era. A new wave of violence against Muslims started, and dozens of them were brutally killed in lynching by Hindutva goons. Open humiliation of Mahatma Gandhi and anti-conversion laws were some of the steps of the new dispensation to write a new narrative. While OBC, SC/ST had certain safeguards against their victimization, Muslims had none. This raised question as to who were the beneficiaries of government largesse in a multi-cultural society where Hindus constituted 90 percent of the total population. He referred to the Gopal Singh Committee Report, 1983, which was a grim reminder of the educational and economic conditions of Indian Muslims. In this connection, he also mentioned the Sachar Committee Report, which declared that Muslims were worse than Dalits as they were under-represented in every walk of life. Rang Nath Misra Commission also concluded that Muslims needed more empowerment. He said that democracy in a multi-cultural society demanded more participation of the minorities and other weaker sections.

Commenting on the role of the ruling party in a democracy, Prof. Khan said that everything was decided by the party. Democracy is based on progress and development, equality and civil rights. Currently, the country is governed by the dictum-Hindi, Hindu and Hindustan. The ruling BJP was busy implementing its agenda. Today's India was identified with one country and one religion in a multi-cultural society. Thus the legitimacy of such a government was in question because the participation of all did not exist. One did not find health centres, schools and community centres, parks, etc., in Muslim dominated areas. He said that due to the lack of infrastructure, Muslims lived in slums. Since Muslims were not a bargaining community, they were not given facilities like the ones available in other countries. They were also not a participating community. Referring to the rule of law, he said that an independent judiciary could uphold the majesty of law by interpretation and playing the role of a guardian to safeguard the rights of citizens. Mutual consultation, which was one of the features of the British parliament, did not exist in India. Certain questions regarding the proportionate representation of minorities in various institutions arose. Their representation proportionate to the population was a necessity in vibrant nation-building. He opined that India was a society of communities, and the majority was not a threat unless there were religious considerations. He held that Indians were pre-political and pre-constitutional, and India could not be understood by ideology. The majority was not the people, and hence, they could not call to change the Constitution. Constitution was not a problem but the mind was certainly a problem, he concluded.

In his presidential remarks, the Secretary General, IOS, Prof. Z. M. Khan, said that the country was passing through a transitional phase with trials and tribulations. This was reflective of governance with regard to secularism and human rights. Democracy could not be understood in a particular perspective where only the majority dominated. The context in which democracy functioned was important. Unfortunately, the democracy was losing its colour as envisaged by its protagonists. He observed that the right of a citizen in a democracy should be protected at all costs. The idea of equality should be cultivated and shared by all groups. The current political leadership was not conducive to India's composite culture. India was a very peaceful society, and while focusing on other issues, this fact should be taken into account. He concluded that big business houses were also involved in mobilizing people along religious and caste lines.

At the end of the lecture, Assistant Secretary General, IOS, Prof. Hasina Hashia, extended a vote of thanks to the attendees.

IOS book on "Muslim Women in India: Education and Exposure to Media" Released (January 22, 2022)

Pune: The Department of Economics of Poona College of Arts, Science and Commerce, Pune, organized an online book release function of the book published by the Institute of Objective Studies titled *Muslim Women in India: Education and Exposure to Media* authored by Dr. Malika B. Mistry on Saturday, January 22, 2022 at 4:00 p.m.

The programme started with recitation from the holy Qur'an. Dr. Aftab Anwar Shaikh, the Principal, Poona College of Arts, Science and Commerce, Pune, welcomed the guest speakers and the audience. He stated that he was happy to organize this important function. Dr. Shahid Jamal Ansari, Head of the Department of Economics, introduced the profile of the author and the contents of the book, which deals about education among Muslim women from the closing years of the past century to the early years of the present. In the book, the author has analyzed education levels and exposure to the media among women by religion, pointing out that generally the levels of education among Muslim women are the lowest in National Family Health Survey I-IV. The author's endeavor to provide the demographic and socio-economic information about the Muslim and non-Muslim women will pave the way for many more studies of different communities in India.

The three experts who reviewed the book eloquently spoke about the book. The first expert was Prof. Naseeb Benjamin, former Professor at the Gokhale Institute of Politics and Economics, Pune. He spoke about each chapter and critically analysed the content of the book. He averred that this study of education among Muslim women from the closing years of the last century to the early years of the present is a pioneering academic endeavour. This is because Indian women in general, and Muslim women in particular, constitute a neglected group in Indian society.

The author used the data from National Family Health Surveys (4 rounds, i.e., I, II, III, and IV), 1992-93 to 2015-16 and Census

Reports 2001 and 2011. She has compared Muslim women's education and exposure to media levels with women from different religious groups.

When compared with Hindu women, educational backwardness among Muslim women is glaring. To make Muslim women competitive in Indian society, they need to be given higher education by concerted and long-term efforts. Some activism needs to be imparted to Muslim men and women so that they realize that literacy, education, and exposure to the media are their rights and would empower them to lead dignified lives. Affirmative action in education is the best way to enable Muslim women to catch up with women of other religions in a reasonable period. This requires a clear vision, a lot of planning, hard work, and missionary zeal on the part of the Muslim community and its leadership.

He concluded his analysis by saying that overall, Dr. Mistry's endeavour to provide demographic and socio-economic information about Muslim and non-Muslim women will pave the way for many more studies of different communities in India.

Mr. Maqbool Ahmed Siraj, a senior journalist and social worker from Bangalore and presently Managing Director of News Trail newspaper in Bangalore, reviewed the book. He appreciated the work and added from his own experience some more recommendations to educate Muslim women. He pointed out that it is very relevant and useful work.

The third speech was delivered by the Chief Guest of the function, Prof. D.P. Singh, Associate Dean, School of Research Methodology, Tata Institute of Social Sciences, Mumbai. He was invited to release the book by the Principal and as Chief Guest he released the book. He spoke about the demography of religious groups analysed in the third chapter of the book. He, too, appreciated the merits of the book. He suggested some areas of related research for scholars. His views appeared the next day in the Sunday issue of the Sakaal Newspaper, a popular Marathi daily published in Pune.

Dr. Mistry, the author of the book, was invited to express her thoughts. She elaborated that the Quran was revealed with the word *Iqra* (meaning *read*). There are *Hadees,* which say that "For a Muslim from cradle to grave it is obligatory to acquire knowledge." Also, "even if you have to go to China, go and acquire knowledge." Then how do we explain the educational backwardness of Muslims in general and Muslim women in particular? The community has neglected itself and its women. Their leaders are not really interested in the prosperity of the community. In a modern society, through education alone, one can achieve *social and economic mobility*. Let us remember this fact with abundant care.

So the community has to take a great interest in education, particularly women's education. Also, pressurize the government to provide educational facilities. This requires vision and missionary zeal on the part of the community.

Dr. Mistry thanked Dr. Mohammad Manzoor Alam, Chairman of the Institute of Objective Studies, for sanctioning the research project titled "*A Study of Trends in Education and Exposure to Media among Muslims based on NFHS-I, II, III and IV (1992-2016), and Census Data 2001 and 2011*" which has been published with the title "*Muslim Women in India: Education and Exposure to Media*." She averred that she will always remain grateful to Allah *Subhanahu Ta'ala*.

She thanked Prof. D.P. Singh for writing the Foreword, Prof. Benjamin and Mr. Siraj for reviewing her book. She also thanked them for taking out precious time from their busy schedules to speak in this programme.

She thanked the Principal and the Vice-Principal Mr. Iqbal Shaikh for organizing the function, Dr. Ansari, and the colleagues of the Department of Economics for conducting the program.

She expressed her gratefulness to Dr. Bhavana Deshpande, Department of Statistics, Poona College, Dr. Gupta, Adult Education Department of SPP University, Pune, her ex-student Dr. Abdul Jalil and many others who helped her in analysing the data to write a sound report.

The compering was done by Dr. Gulnawaz Usmani, and the formal Vote of Thanks was proposed by Dr. Vidya Sagar, both from the faculty of Economics.

IOS Centre for Historical & Civilisational Studies' symposium on Gandhi and His Legacy of Peace and Harmony (January 30, 2022)

IOS Centre for Historical & Civilisational Studies (IOSCHCS), Aligarh, an affiliate of the Institute of Objective Studies, New Delhi, observed Martyrs Day by organising a symposium on 'Gandhi and His Legacy of Peace and Harmony' on January 30, 2022, at 11:00 A.M. in the Conference Hall of the IOS Aligarh Chapter.

The proceedings started with the recital of a few verses from the holy Qur'an. Professor Syed Jamaluddin, Director, IOS Centre for Historical & Civilisational Studies, was in the chair. Professor Mohammad Muqim, Coordinator IOS Aligarh Chapter, welcomed the distinguished panelists from the Department of History, Aligarh Muslim University and members of the audience. Professor M. Muqim also introduced the theme of the symposium.

Dr. Mohammad Serajuddin Khan, Asstt. Coordinator, IOS Aligarh Chapter, who anchored the event, first requested Professor Waseem Raja of AMU'S Centre of Advanced Studies, Dept. of History, to express his views on the theme under discussion.

Professor Waseem asserted that M K Gandhi will always be looked upon as a torchbearer of peace and harmony. Referring to the tragic assassination of the Father of the Nation, he traced the following reasons which prompted the fascist Nathu Ram Godse to shoot Mahatma Gandhi with his weapon:

- Support for the two nation theory;
- Agreeing to transfer Rs. 55 crores to Pakistan;
- Appeasement of Muslims.

Professor Waseem also enumerated eleven points of Gandhian philosophy that helped him fight racialism.

Professor Perwez Nazir, from Dept. of History, AMU, said that it is only the relevance of Gandhi and his philosophy that we remember him and his policy of non-violence even after 75 years of his martyrdom. In the context of globalization and its evil effect, Professor Nazir said that the looming threat of the third world war is being felt by the nations of the world; they want to avoid war and stay in peace. He recalled Gandhi's words and said that Gandhi was against imperialism and racialism, but he was not against the British people.

Professor Hasan Imam, Dept. of History, presently Director of AMU's Kishanganj Centre, narrated the episode of how Gandhi was thrown out of the train compartment, which was meant for only the whites and the consequent decision of Gandhi to fight against discrimination, imperialism and apartheid. He also touched upon the background of Champaran Satyagraha. Professor Imam explained that it was in view of the atrocities committed against the peasants and farmers of Champaran that Gandhi chose this place as his *karambhoomi*. He further said that the philosophy of truth and non-violence were the mantras of Gandhi's life and mission, which he pursued relentlessly till the end of his life, except in 1942 when he espoused the notion of "do and die".

Towards the end of the three-hour long symposium, participants made some suggestions. Professor Perwez Nazir suggested that the IOSCHS should invite the students of the universities and colleges to such kinds of programmes so they get acquainted with Gandhi's quest for peace and harmony in our society which is the need of the hour.

Prof. Muqim suggested that the IOSCHS send resolutions to private educational institutions in Aligarh district to organise programmes to make the students familiar with Gandhian philosophy and principles. He also suggested that the Centre should bring out literature to bust concocted truth tarnishing the image of the Father of the Nation, especially after 2014.

In his presidential remarks, Professor Syed Jamaluddin acknowledged the contribution of the panelists to making the symposium a memorable event. He explained the relevance of Gandhi in the present time to bring peace and harmony to society. Welcoming the suggestions made at the end of the symposium, he said that the Centre would organize an essay writing competition on themes related to 'Freedom Struggle' for various levels of students of Aligarh and the adjoining districts. The symposium came to an end with a vote of thanks presented by Dr. Zabeen Anjum, Former Principal, Jamia Urdu College of Education, Aligarh.

In order to address the perpetual onslaught on the culture, civilization, and history of our country, an event was organised in both online and offline mode by the IOS Centre for Historical & Civilisational Studies on the premises of the IOS Aligarh Chapter on February 19, 2022, at 11:00 A.M. This event was attended by a large number of legal practitioners, social activists, retired teachers, and other academics.

After the recitation of some verses from the Holy Qur'an by Hafiz Qari Mohammad Danish from Madrassah Faizan-e-Mustafa, Dr. Mohammad Serajuddin Khan, Asstt. Coordinator, IOS Aligarh Chapter welcomed the speaker and members of the audience and invited Professor Syed Jamaluddin, Director, IOSCHS, to present his paper titled *"Tarikh Maskh Karne aur Saqafat ko Mitane ka 'Amal: Daur-e-Hazir ka Almiya"*.

Before presenting his paper, the learned speaker appreciated the initiative taken by Dr. Mohammad Manzoor Alam, Chairman, Institute of Objective Studies, to establish a Centre to promote the study of history and culture and the contribution of Muslims to the making of Indian civilization based on primary historical sources. He also highlighted the aims and objectives of the Centre.

Professor Syed Jamaluddin presented an overview of a series of incidents related to the politics of changing the names of roads, cities, and railway stations. According to him, all these activities were aimed to erase everything that symbolized Muslim culture. He also discussed the distortion of historical facts and figures from public platforms by those wielding political clout. He further said that all efforts are being made to tarnish the image of Muslim rulers and defame ulama and Sufis. Character assassination of Muslim rulers in Bollywood movies and television serials, according to him, has become a regular feature. He further said that no stone has been left unturned to deface or wipe out anything symbolic of Muslims or Islam. Mosques, madrassahs and dargahs are being targeted and attacked, but the media, both print and electronic, and those occupying high positions in government and administration remain mute spectators to this phenomenon. Referring to the hijab controversy and the appearance of Islamophobic and misogynist Apps like Sulli Deals and Bulli Bai, Professor Syed Jamaluddin narrated the ordeal of reputed working Muslim women and young college-going girls in recent months. He exhorted the scholars to remain vigilant and expose historical distortions and attacks on the cultural ethos of the Indian Muslims as it is the need of the hour.

While giving his presidential remarks, Professor M. Muqim, Coordinator IOS Aligarh Chapter, appreciated the well-thought and written presentation of the speaker and said that generally, distortions of historical facts and cultural manifestations are made owing to an inferiority complex, but in his opinion, this malicious campaign will not succeed. He said that historical distortions could be countered with the deep study and analysis of the primary sources of the medieval period.

Towards the end, the vote of thanks to the speaker, the chairman of the session, the audience, and Mr. Raihan for technical assistance was proposed by Mr. Mohammad Serajuddin Khan.

IOS-G.M. Momin Women's College two-day International Conference on "Need of Inter-religious Understanding for Promoting Peace and Harmony" (March 19-20, 2022)

A two-day offline/online International Conference on "Need of Inter-religious Understanding for Promoting Peace and Harmony" was organised by the Institute of Objective Studies in collaboration with KME Society's G.M. Momin Women's College, at Bhiwandi, Maharashtra, on March 19-20, 2022.

Inaugural session

The conference got off to a great start with the recitation of a Quranic verse with its English translation. Dr. Tabassum Sheikh, coordinator of the conference, presented the welcome address. She said that religions taught virtues that could serve as the basis for an understanding of all religions. Tracing the history of the college, she observed that the Konkan Muslim Educational Society, which ran the college, was established in 1927. She hoped that the conference would bring both the institutions together for close cooperation in experience-sharing in the field of research. She said that the college was founded in 1989, and the eminent sociologist and scholar, Prof. A.R. Momin studied there. She also briefly spoke about the activities of the IOS.

Dr. Nisar Shaikh, Principal, G.M. Momin Women's College, Maharashtra, observed that the purpose of holding the conference was to bring students and research scholars together. It was also an opportunity to share new ideas that might help to solve several problems that cropped up off and on, he said.

Secretary General, IOS, Prof. Z.M. Khan, highlighted the activities of the Institute and said that there were two highest decision-making bodies. These were the governing council (G.C.) and the general assembly (GA). The Institute invited research scholars to submit proposals for approval as projects on various themes. Referring to publications of the institute, he maintained that more than 400 books on a variety of subjects had so far been published. Besides, there were several regular publications. The Institute was engaged in holding local, national, and international seminars, symposia, and conferences on topical issues. Textbooks and reading books were published, and authors associated with them were requested to write them. A new series of books had been started to acquaint the younger generation with the basic tenets of Islam in Indian regional languages in a very simple way. The Institute had also instituted two awards, viz., the IOS Shah Waliullah Award and the IOS Lifetime Achievement Award. These awards were given every year to persons with exceptional contributions to scholarship and public service. He added that the IOS also built up a rich databank to cater to its needs and make the facility available to the institutions and those who wanted to use it. Commenting on the theme, he said it was very relevant in today's context.

Introducing the topic, the convenor of the IOS Forum for Inter-religious Understanding, Prof. Hamidullah Marazi, pointed out that peace on the earth was not possible if there was no peace among religions. If peace was absent, progress would be stalled. Due to misunderstandings among the followers of different religions, there was blood letting on the earth in the name of religion. He said that Islam was a great advocator of peace, but the presentation of Islam from a negative perspective by the West created the spectre of Islamophobia. He opined that religion could play a big role in the restoration of peace and harmony in the world, adding that the activation of actual religion was the need of the hour. In order to ensure peace among religions, inter-religious dialogues meant inter-religion faith dialogues. He called for establishing peace and harmony and inter-religious understanding. He expressed happiness that a big response to the conference had been received from within and outside the country. He firmly believed that no dialogue meant deadlock.

In his inaugural speech, spiritual leader and founder of the Art of Living, Bengaluru, Gurudev Sri Sri Ravi Shankar said that love, happiness and peace constituted the essence of all religions.

He felt delighted to be with the organisers and those in attendance at the conference. He held that certain forces were trying to divide countries and families, but efforts should be made to bring peace and happiness to everyone's life. The most important thing in life is happiness, and it can be achieved by way of love. Nature loved diversity, and one had to live in diversity. This required happiness and peace in hearts, which would come only through love. There was an element of goodness in everybody's heart, and this should be used to connect one individual with the other. He said that there was no deficit of love among people, and this could begin with giving respect to others. He called for leading a stress-free life. Only religion could create love, and the message of love, brotherhood, and *ahimsa* should reach every nook and corner of the country, he added.

Delivering his keynote address, Maulana Khalid Saifullah Rahmani, General Secretary, All India Muslim Personal Law Board, New Delhi, observed that the Prophet (PBUH) gave the message of love and equality to people. In view of the prevailing situation in the country and the world, such conferences had become imperative. He urged the participants in the conference to spread the message of brotherhood and love all over the world. Referring to the Prophet's (PBUH) last sermon at the Friday congregational prayer, He said, "All of you are the offspring of Allah and born to the same mother and father. O, faithful! Be fearful of your Master, who created you from a living being. "God is one, and since He is creator of every human being, everyone is equal", he said. This created a sense of equality among human beings. The Prophet (PBUH) also said that all the human beings were the offspring of Allah. Hence, there was no distinction between them. There would have been distinction had one treated himself as superior to the other. Islam conceptualised the idea of equality among human beings for the first time in history. Prior to the advent of Islam, no such idea existed. The Prophet (PBUH) declared that no Arabian would have precedence over non-Arabian, and no white-skinned individual had preference over the black-skinned. Similarly, no one was preferable on the basis of his race, colour, religion, geographical area, or boundary. He (PBUH) invested every day with honour and grace. Commenting on religious differences, he said that the Prophet (PBUH) went from house to house to teach the Message of Allah by way of *Dawah*. If Allah had wanted only one religion to exist on earth, he would have done it. But the divergence of opinion among religions or within religion was a logical corollary due to the way of thinking. Earlier, a country had the followers of a single religion, and only they were allowed to live there. But Islam taught Muslims to engage with the followers of other religions by helping and giving due respect to them. He observed that the Prophet (PBUH) would not defend on the Day of Judgment who usurped property and looted non-Muslims.

It was an Islamic duty under *Shariah* to treat others as brothers and extend warmth and love to them. He called for dousing the fire of hatred and sharing others' concerns. Every neighbour should be treated as a brother. He suggested that inter-religious dialogues should be organized in small towns, and representatives from all religions should be invited to attend.

Speaking as the guest of honour, Prof. Imtiyaz Yusuf, Associate Professor, ISTAC, Malaysia, who shared his presentation through power-points, said that inter-religious understanding takes place when a crisis happens. Crisis in the modern age deepened, necessitating inter-faith dialogues to lessen it. He observed that currently, in Asia, there is an urgent need to build inter-religious understanding. The inter-faith dialogue was a far cry today. Referring to Muslims and the Indic religions, he said that the period between the eleventh and twelfth centuries marked the presence of Muslim pioneers in history and phenomenology of religion.

He made special mention of emperor Akbar in the 16th century and Dara Shikoh in the 17th century, who promoted religious understanding. Western discovery of Buddhism also influenced a number of countries to adopt the Buddhist religion and philosophy. Prophet Mohammad (PBUH), by the message of *Tawhid*, told the world to treat every individual irrespective of his religion, race, and colour, as equal. Commenting on the crisis and inter-religious dialogue in the modern age, he referred to several Muslim pioneers of inter-religious dialogue, including Asghar Ali Engineer. He clarified that dialogue was not a debate to enter into. He concluded by saying that interfaith dialogue should be a permanent feature, and the political will of every group was needed.

Former president of Maulana Azad University, Jodhpur, Prof. Akhtarul Wasey, held that every enlightened person was aware of the issue. Holding that inter-faith dialogue was the need of the hour, he said that tolerance should be seen from an acceptance perspective, not from the pressure perspective. The message of religious harmony should reach the people in a manner that is conducive to the inherent ethos of different religions. It should be convincing without being offensive and critical of others religions. The Prophet (PBUH) Himself politely and convincingly reached the message of Allah to the people who were idolators and cherished no values that a civilized world demanded. This message was possible only when one understood the sensibility of other religions in the same manner as he did in the case of his religion. He remarked how Muslims could expect Hindus to be secular without themselves being secular. They should follow their religion and honour every religion. Instead of disconnecting, religion always established a connection among people and strengthens bonds of love and harmony. He also urged Hindus to give equal respect to other religions by treating them on par.

Mr. John Dayal, Member, National Integration Council and a veteran journalist, noted that all the communities shared their festivities together. It might be Holi, Eid, and other festivals. No religion wanted the blood to be splattered hither and thither. Referring to Islamophobia, he said that a deliberate attempt had been made to tarnish the image of Islam. Religious intolerance has strained warm relations among the followers of different religions. Politics and economy too played a contributory role in it. Emphasizing the need for inter-religious dialogues, he said that he had been trying for it for decades. The corporate world also played a role in the religious divide in the country, which could be tamed by making inter-faith dialogue a continuous process. He regretted that the National Integration Council created during the Congress rule became as good a non-functional because it had not been re-constituted by the current regime. He said that about 120 MPs belonging to SC/ST were politically empowered, but they could not speak on the atrocities committed on Adivasis, Christians, and Muslims. Even during the Crusade, when Christians and Muslims fought against each other for land, dialogues continued between them. One should take note of the world that changed in the last 110 years after the world religious congress was held in Chicago. He pleaded for discussing the issues relating to the minorities outside parliament because bodies, like Supreme Court, the human rights commission, minorities commission, miserably failed to solve their problems. He urged the IOS to create books on inter-religious faith dialogues and distribute them among students of all faiths.

Prof. Paramvir Singh, Department of Sikhism, Punjabi University, Patiala, laid stress on the need for creating a universal brotherhood. He said that the teachings of Guru Nanak were still relevant to the entire mankind. He observed that the founder of the Sikh faith, Guru Nanak Dev, taught that there was one Lord whose light shined in every human being. Explaining the universality of the teachings of Guru Granth Sahib, he said that the great Sufi saint Baba Farid also contributed to the couplets of the Granth. All the Sikh gurus wanted freedom of faith and worship. They also wanted the followers of all religions to follow their faith. Again referring to the Guru Granth Sahib, he insisted that it emphasized harmony among all faiths.

Maulana Hassan Nadvi, University of Cairo, Egypt, described the conference as very important. He held that inter-religious dialogues helped improve mutual relations among the followers of different religions. They also helped create an atmosphere in which the apprehension of confrontation between two religions stood little chance, and the respect for other religions increased. He counseled that everyone was obliged to protect whatever he possessed. This would change the entire perspective, he added.

The occasion was marked by the release of three books published by the IOS. The first book, *"Principal Foundations for Global Peace (A Way Forward for Better Future),"* edited by Prof. M. Afzal Wani, was released by the president of KME Society, Mr. Talha Faquih. The second book, *"Inter-religious Understanding for Advancement of Human Rights (for All)"* also edited by Prof. Wani, was released by Dr. Nisar Ahmad

Sheikh. The third book, *"Islam Meri Nazar Mein"*, written by Rishi Acharya, was released by the secretary general of KME Society, Sohail Fakieh.

In his presidential remarks, Vice-chairman, IOS, Prof. M. Afzal Wani, observed that people wanted mutual understanding, dialogue, and peace. Despite the efforts of Buddha, Jesus, Krishna, and the Prophet (PBUH), people were still at war. He said that educational institutions would have to come forward to let the students learn love and harmony. The institution of justice was fraught with contradictions, and there was a need to examine what humanity required. He asked for bringing humanity to the human pedestal. He also focused on the similarity of several things in both Islam and Hinduism. Every religion had the message that each individual was human, and the academics were required to do research and transfer their knowledge to the younger generation. He remarked that if menfolk went astray, womenfolk would rise to tell the former that they were wrong. Referring to the two World Wars, he said that while about 6 million people died in the First World War, nearly 60 million people were killed in the Second World War. He observed that every religion had several positive as well as negative aspects. Exhorting the students to become multi-disciplinary and vibrant, he held that the responsibility of the prophets had devolved on scholars and academics.

The inaugural session concluded with a vote of thanks extended by Prof. Haseena Hashia, Assistant Secretary General, IOS.

Business session I

The first business session focused on Indic religions and peace. While Dr. Amita Valmiki from Mumbai chaired the session, Prof. Srinivasan Iyer from Madurai was the co-chairperson. Prof. Abdur Rashid Bhat from Kashmir was the moderator.

Ms. Simmin Bawa, Head, Department of Philosophy, Jai Hind College, Mumbai, was the first speaker who spoke on 'The Pathway to Peace and Harmony: A Buddhist Perspective'. She said that according to Buddhism, violence begot violence. Thus Buddhism stood for the principle of non-violence and the culture of peace and harmony. She observed that there were internal causes of conflict and violence.

Prof. Fahim Akhtar Nadwi, Head, Department of Islamic Studies, MANUU, Hyderabad, centred his talk on the 'Concept of Peace in Islam'. He held that misquoting Islam created many problems. Islam was the religion of peace in relation to the rest of the religions. It was also the religion of preaching and never allowed forced conversions. Islam recognized all religions, which meant the co-existence of every religion. Unlike other religions, Islam never asked for performing rituals. He said that the Quran and Hadith laid stress on doing good deeds.

Dr. Uzma Naheed, Member, United Nations' GDF (Global Dialogue Foundation), Mumbai, observed that politicians exploited religion. Islam believed in one human being. She urged all heads of religions to come together for harmony and peace.

Iymen Nazir, Research Scholar, Department of Religious Studies, Central University of Kashmir, spoke on 'Interfaith Dialogue among Indian Religions.' Explaining inter-faith dialogue, he said that it was a way of communication among people belonging to different religions. They must treat each other as part of a cosmic society, he added. Dr. Amena Hamid from Kashmir focused on Islam and peace. She explained religious harmony from the Islamic point of view.

Dr. Daljit Kaur, Associate Professor, Mata Sundri College for Women, University of Delhi, spoke on 'Sikh Gurdwaras: Epitome of Peace and Harmony'. She said that Kartarpur Sahib Gurudwara was the workplace of Sikhism. It was the legacy of Sikhism in the 21st century, she noted. Asra Aslam and K Sajad Ahmad, Research Scholars, Department of Islamic Studies, BGSB University, Rajouri, J&K, presented a joint paper on 'Islam and Peaceful Co-Existence: An Appraisal of *Mithaq-i-Medina*'. In their presentation, they contended that Islam was the religion of peace and harmony. *Mithaq-*

i-Madina or the Constitution of Madina was the first constitution of the world. It was an agreement between Muslims and Jews of Madina where the population of both the communities stood at 40 and 15 per cent, respectively. They shed light on the Islamic perspective of peace. At the end of the session, Prof. Srinivasan Iyer called for working towards peace and harmony.

Business Session II

The theme of the session was Semitic Religion and Peaceful Living. The session was chaired by Dr. Nazir Ahmad Zargar from Kashmir. Dr. Radha Kumar from Mumbai was the moderator.

Dr. Nazar Ul Islam, Assistant Professor, Department of Islamic Studies, GDC, J&K, was the first speaker of the session who touched upon 'Peace and Conflict Resolution in Islam: A perspective building'. He was followed by Dr. Javed Nadeem Nadvi, Assistant Professor, Department of Arabic, MANUU, Hyderabad. He observed that Islam spread the message of peace and harmony to promote righteousness. The third speaker was Dr. Kamal Ashraf Qasmi, Assistant Professor, Dept. of Islamic Studies, Aliah University, Kolkata, who focused on *'Baahmi Mazhabi Afham-o-Tafheem ki Zaroorat: Daur-e-Hazir ki Ashad Zaroorat'*. Sumna Sadaqat, post-graduate, final year student, Department of Islamic Studies, Jamia Millia Islamia, Delhi, was the next speaker who spoke on 'Concept of Peace in Islam.' She was followed by Mahvish Fatima, Research Scholar, Department of Islamic Studies, JMI, Delhi who focused on 'Prophetic Model of maintaining Peace and Harmony'. She stressed ensuring the security of life and avoiding conflict. While Afreen Showqat, Department of Religious Studies, Central University of Kashmir, J&K, who spoke on 'Islam and Peaceful Behaviour,' insisted that Islam was a monotheistic religion, Horiya Hussain, Research Scholar, Shah-i-Hamadan Institute of Islamic Studies, University of Kashmir, J&K, focused on 'Interfaith Dialogue and Islamophobia: Challenges And Prospects' and held that one must strictly follow their faith. While Dr. Kounsar Jabeen, Research Scholar, University of Kashmir, J&K, talked about the 'Role of Islam towards Peace and Progressive Behaviour', Niyaz Ahmad Lone, PhD

Scholar, Islamic University of Science and Technology, J&K discussed 'Islam and Peaceful Behaviour'. Juneefa Bilal, Research Scholar, Department of Islamic Studies, University of Kashmir, Srinagar, was the last speaker who focused on the 'Qur'anic Paradigm of Religious Harmony'.

Business Session III

The third business session was devoted to the theme 'Personalities and Movements for Peace Promotion'. While Dr. Manvinder Singh from Amritsar chaired the session, Dr. Shahnaz Iqbal Qureshi moderated it.

Dr. Radha Kumar, Associate Professor, Department of Ancient Indian History, Culture and Archaeology, St Xavier's College, Mumbai, spoke on 'The tales of Jatakas- An inspiration for harmonious living'. She referred to Ajanta caves and their paintings which were commissioned by the Nizam of Hyderabad to be re-produced. Re-production of paintings caused dissatisfaction among a section of the people. The Suttas were the sources of Buddhist teachings. The Jataka stories were inclusive and indicative of the life to be led with discipline. Dr. Peshimam Nazeer Ahmed, Educational Consultant, Head Master (Retd.), Osmani Higher Second School, Tirupattur, Tamil Nadu, devoted his paper to 'Al-Biruni and his understanding of Indian Religion'. He said that Al-Biruni was a universal genius and most original in his writings. He was the religious historian of his time. Dr. Mohammad Ajmal, Assistant Professor, Jawaharlal Nehru University, New Delhi, focused on 'Contribution of Maulana Abul Kalam Azad to India's Unity in Diversity'. He said that Maulana Abul Kalam Azad believed in unity, diversity, and Hindu-Muslim unity. He was followed by Dr. Arshi Shoaib, Assistant Professor, Women's College, AMU, Aligarh, who spoke on 'Dissemination of Peace and Harmony: A Study of Maulana Wahiduddin Khan's Endeavours'. He said that Maulana Wahiduddin Khan was called the ambassador of peace due to his endeavors in this direction. He was the founder of the Centre for Peace and Spirituality, Dr. Shoaib added. While S.M. Rizwanah, PhD Scholar, Department of Philosophy, Manipur University, touched upon the theme 'Swami Vivekananda's Concept of Universal Religion'. Dr. Ambreen, Research Scholar, Department of Islamic Studies, AMU, Aligarh, made her presentation on 'The Emphasis on Peace and Harmony in the Quran as reflected in the Tafsir of Maulana Azad'.

Dr. Firdous Ahmad Sofal, Assistant Professor, School of Education, Central University of Kashmir, J&K, focused on 'Non-violence and Education: Reflections from Basic Scheme of Education advocated by M.K. Gandhi'. In his concluding remarks, Dr. Manvinder Singh said that all the religions preached peace and harmony. Every religion contributed something or the other for the benefit of society. While Mughals gave Urdu, Ghalib, and Taj Mahal, Christians did tremendous service in the field of education, and Sikhs established community kitchens. He emphasised the need for diversity and dialogue.

Business Session IV

The fourth business session focused on 'Religious Understanding for Preserving Peaceful and Harmonious Society.' While G.N. Taqi chaired the session, Dr. Shivani Sharma from Chandigarh was the co-chairperson, and Ms. Simmin Bawa moderated the session.

Dr. Amar Singh, Assistant Professor, Department of Philosophy, University of Mumbai, spoke on 'What is the role and impact of religion in Social harmony?' He was followed by Dr. Zabeen Anjum, Former Principal, Jamia Urdu College of Education, Aligarh, who touched on 'Prophet's Peace Mission: An Analysis'. While Ms. Ujala Amin, PhD Scholar, Department of Islamic Studies, BGSB, University, Rajouri, focused on 'The message of peace and communal harmony in the teaching of Sufis,' Poojita Goswami, Scholar, Centre for Peace and Conflict Studies, Tata Institute of Social Sciences, Guwahati, Assam, spoke on 'Peace, Youth and Interfaith Leadership: Value-based peace-building by advancing religious peace ideals'. Mumim Ahmad Khan, Research Scholar, Department of Islamic Studies, AMU, Aligarh, devoted his presentation to 'Ottoman Inter-Religious Understanding for Promoting Peace and Harmony with Special Reference to Millet

System'. Muneeb Ahmad, Research Scholar, Department of Islamic Studies, IUST, J&K, focused on 'An Islamic-cum-Hindu Approach to Inter-religious Dialogue'. He said that the dialogue was as old as the history of humankind itself. Oroos Nasim, Research Scholar, AMU, made presentation on 'Sufism and Peaceful Dialogue.' While Saba Irshad Ansari, PhD Scholar, Department of Islamic Studies, AMU, spoke on 'Ahimsa and Jihād-i-Maʿnawī: Drawing Parallels Between The Two Imperatives', Shakeel Ahmad Lone, Research Scholar, Department of Islamic Studies, AMU, Aligarh, touched upon the topic 'An Islamic Perspective of Peace and Communal Harmony'. He observed that peace could not exist without communal harmony.

The next paper presenter was Sohail Ashraf Mir, Research Scholar, Department of Islamic Studies, AMU, Aligarh, who focused on 'Fatehullah Gulen: His perspectives on Interreligious Dialogue'. He said that religion was the most important aspect of humans, and all the faiths had the same narrative. The last speaker of the session was Dr. Mukesh Pimplaskar, Dept. of Bio-Technology. G. M. Momin Women's College, who briefly discussed *Panchsheel* (five principles), which were vital for global peace.

Business Session V

The fifth session was devoted to the theme. 'Role of Education for Promoting Peace and Dialogue'. While Prof. Seshadri chaired the session, Dr. Afroz Ahmad assisted him as co-chairperson. Dr. Jeremiah Graham was the moderator.

Dr. Sheikh Idris Ahmad, Head, Department of Islamic Studies, Government Degree College, J&K, was the first speaker of the session. He focused on 'An Islamic Approach of the Interreligious Dialogue with reference to Inclusivism and Exclusivism'. He was followed by Dr. Ziauddin, Assistant Professor, Department of Islamic Studies, AMU, Aligarh. He spoke about the need to respect other religions. In his presentation, he commented on Sir Syed's response to other religions.

Business Session VI

The sixth business session was devoted to mmiscellaneous themes. It was chaired by Prof. D. A. Gangadhar from Varanasi. Prof. Manzoor Ahmad co-chaired the session. Prof. Hamidullah Marazi was the moderator.

Dr. Omkar Bhatkar, Head, St. Andrew's Centre for Philosophy and Performing Arts (SAPP), St. Andrew's College, St. Dominic Road, Mumbai, focused on 'Saints, Statues, Scriptures and Syncretism of Everyday Life: A Leaf from Goa's Organic Civility'. He said that the past five centuries shaped Goa's culture, life, and customs. He also referred to Goa's pluralism. He was followed by Prof. Syed Jamaluddin, Director, IOS Centre for Historical and Civilisational Studies, Delhi, who spoke on 'Lost In Bewilderment whither Should Man Go: Here Comes the Role of *Masjid* And *Imams* in Character Building and Maintaining Peace and Harmony. He stressed that an *Imam* should possess knowledge of the Qur'an. He must be a man of character and integrity. He said that *Imam* and *masjid* occupied a central place in Islam. One should remember that the *masjid* was also a social platform. It was also a central place to raise funds. An *Imam* should a role model for Muslims. Management of *masjids* should confine itself to fundraising. An *Imam* should be an Islamic scholar. *Imams* could play other roles than only conducting prayers. He contended that shoora should be constituted to conduct the affairs of a *masjid*. Speeches before the Friday Khutbah should focus on current affairs. *Masjids* could also play an important role in the character building and personality development of Muslim youth. *Imams* are also urged to speak of secular values, he added.

The third speaker of the session was Dr. Amita Valmiki, Head, Department of Philosophy, R. J. College of Arts, Science and Commerce. She expressed her views on 'Re-envisioning the Notion of Religious Pluralism and its Exigency in Contemporary Times'. She said that social and corporeal distancing during the Covid-19 pandemic had a bearing on human relations, adding that the diversity inherent in India's ethos should be celebrated. Dr. Nadeem Ashraf, Assistant Professor, Department of Sunni Theology, AMU, Aligarh, touched upon 'The Rights of Non-Muslims in a Plural Society'. He said that the non-Muslims living in Muslim countries should receive equal treatment, and there should be no distinction between Muslims and non-Muslims. While Z.A. Naik, Research Scholar, Department of Islamic Studies, BGSB University Rajouri, J&K, focused on 'Revisiting the Concept of Mu'alafatul Qulub in Zakat Distribution: A Move towards Religious Harmony'. Firdosa Akhter, Senior Research Fellow, Department of Islamic Studies, AMU, Aligarh, presented the paper on 'Philosophy of Human Dignity: An Islamic Perspective'. Gawhar Ahmad Khan, Research Scholar, Department of Islamic Studies, Islamic University of Science and Technology, Awantipora, J&K, was the last speaker who dwelt on 'Peace as the basis of Prosperity with special reference to Sirah of Prophet Muḥammad (*SAW*)'.

Valedictory Session

Speaking as the guest of honour, Advocate Gajanan Chavan, Ex-Chairperson, Bar Council of Maharashtra and Goa, advised everybody to read the Indian Constitution and know about the fundamental rights of a citizen guaranteed by it. There were definitely certain issues pertaining to diversity, which could be addressed by mutual understanding. Tolerance was another aspect of a host of problems that defied solutions. Tolerance had been a part of the country's cultural legacy. Referring to Russia's war with Ukraine, he said that nearly 30 per cent of the Ukrainian population suffered due to it. He sought to know the reason why Russia, a developed country, went to war. Lauding the role of Mahatma Phule and his wife in the spread of education in Maharashtra, he said they were pioneers of education. The role of Fatima Sheikh and Savitri Bai Phule in that direction was unparalleled. He remarked that there was a big disparity between India and *Bharat*. He painted a dim picture of facilities like toilets, employment, sanitation, etc. He concluded by saying that everyone should get education and at least one member of each family should be employed as a teacher.

Prof. Konrad J. Noronha, Director, Center for Safeguarding and Human Formation, De Nobili College, Pune, in his address as the guest of honour, stressed the need to strengthen inter-religious understanding among various faiths and communities.

Delivering the valedictory address, Prof. Abdul Aziz Barghout, Dean, ISTAC, Malaysia, laid emphasis on inter-religious dialogue, peace, and harmonious relations with the followers of other religions. He said that humanity had no future without co-existence. Therefore, cooperation, respect, and collaboration needed to be strengthened for a better understanding of religions. There should be a common ground for working together in the areas of the protection of the earth, environment, global warming, and biodiversity. Working together would be a big mission for the sake of humanity. He also expressed grave concern over Islamophobia and the belittling of Islam. He observed that spirituality, ethics, and values could not be bought from the market. These could be derived from the understanding of religions that taught harmony and peace for a better future. Human survival depended on ethics, spirituality, mercy, caring, artificial intelligence, sustainability, etc. Both Muslims and non-Muslims needed to work together, he added.

Making special remarks, General Secretary, Temple of Understanding India Foundation, New Delhi, Dr. A.K. Merchant, said that religion had come a long way, particularly in promoting inter-religious harmony and understanding. In today's world of globalisation, interdependence for achieving development goals is inescapable. Water was one such goal that required the cooperation of all. He called for the evolution of inter-religious understanding for the promotion of unity and spirituality. He observed that science had displaced the value of religion. Thus there was a need to harness the energy of religion on one hand and science on the other. Learning to know, to do, and to live together were the pillars on which life rested, he concluded.

A six-point resolution unanimously adopted by the participants was read out by Prof. Haseena Hashia, Assistant Secretary General, Institute of Objective Studies. The resolution read as:

1. The international bodies/institutions and national governments are urged to take a serious view of the ground situation, create mutual trust, and take necessary measures to promote peace and harmony in the world.

2. Efforts should be made to dispel doubts among the religious communities about one another, which are prominently spoiling the environment of peace and harmony in different parts of the world.

3. The academic bodies and voluntary organisations at international, national, and local levels should carry out educational initiatives to develop a fair understanding of religions for attaining their real objectives of establishing a peaceful world.

4. There should be regular programmes on inter-religious understanding at various places in India and Maharashtra organized jointly by the Institute of Objective Studies, M. Momin women's College, Bhiwandi, and other interested organisations.

5. The relevant authorities should strive to include a special course in their educational curricula to teach common core values of harmony, peace, and dialogue among Indian religions.

6. At the local level, G. M. Momin College, Bhiwandi, R. J. College of Arts & Commerce, Mumbai, St. Xavier's College, Mumbai, and Jai Hind College, Mumbai, 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 these programmes.

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