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# RELIGION AND LAW REVIEW

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Editor

*Prof. M. Afzal Wani*



Institute of Objective Studies

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## Declaration

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## CONTENTS

### Articles

Emerging Challenges before Indian Judiciary 1-16  
*Justice Sudbir Agarwal*

Minority Educational Rights in the Era of Privatization and  
Economic Liberalization 17-43  
*Dr. Francis Assisi Almeida*

Retrieval of Waqf Properties for Promotion as a Resource  
for the Development of Muslim and other Deprived  
Beneficiaries 45-57  
*Dr. Malika B. Mistry*

Teaching and Experiential Learning in Law 'Need for Change  
and Adoption of New Approaches to Law Teaching' 59-73  
*Dr. Babita Singh Parasain*

Domestic Violence in India: Male Victims' Perspective 75-82  
*Dr. Anam Wasey*

### Book Review

Gandhi: *Siyasat Aur Sampradayikta* by Piyush Babele,  
Institute of Objective Studies, New Delhi, INR 495 83-87  
*Dr. Dipti Pandey*

**Reports on Conferences/Seminars etc.** 89-136

➤ IOS Condolence on the Demise of Prof. M. K. A. Siddiqui  
(July 21, 2022)

- Lecture on “*Azadi Ka Amrit Mahotsav*: The Significance of Tiranga” (August 13, 2022)
- Lecture on “Politico-Religious Harmony and Economic Development: India” (August 20, 2022)
- IOS Lecture on “Challenges faced by Minorities in the Current World Scenario, focusing on Indian Muslims” (September 04, 2021)
- IOS organises International Conference on “Power of Good in Changing Global Scenario” (September 17, 2022)
- IOS organises a two-day National Conference on “Inter-religious Understanding and Programming for Sustainable Goals of Equality and Fraternity” in collaboration with Punjabi University at Patiala, Punjab (October 10-11, 2022)
- IOS Latest Publication “Equality, Justice and Fraternity in Contemporary India” Released (November 12, 2022)
- IOS organises two-day National Conference on “True Nature and Management of Auqaf for Better Protection, Performance and Development” at Pune (November 26-27, 2022)
- 10<sup>th</sup> IOS Lifetime Achievement Award presented to Mr. K. Rahman Khan (December 29, 2022)

**About Religion and Law Review** 137-138

**About the Institute of Objectives Studies** 139-140

## EMERGING CHALLENGES BEFORE INDIAN JUDICIARY

*Justice Sudhir Agarwal\**

In any system of governance, judiciary or the system of justice forms the most important wing/organ. One cannot imagine a system of governance without power of administration of justice. In other words, justice administration is an integral part of governance. Effective and efficient governance always carries with it an extraordinary capability and sense of dispensation of justice. We need not go into global history on this aspect, since our Indian ancient system is witness to this fact. In India, historically, power of dispensation of justice is thought of divine power. It always vested with the King or the highest ruling authority in the territory of governance. It underwent changes with the arrival of people beyond the boundary of Indus (Himalaya) from the North and through sea routes in West. After 1600 A.D., when Europeans came to this land, they brought with them their own system of justice administration. Today we carry this system till date.

Every system has its own merits and demerits. At this stage, suffice it to mention, our Framers of Indian Constitution, when finalized draft Constitution understood the importance of judiciary. More so, an independent and non-committed judiciary. They made provisions in Constitution making not only justice social, economical and political, in the Preamble but also in judicial review, an integral part of Constitution, giving it a place in the most important part of the Constitution i.e., The Fundamental Rights.

The highest Court in the land made sentinel of protection of Fundamental Rights. The original jurisdiction of High Courts, the superior most courts of record, provide widest powers of judicial review while formulating Article 226. As always happens, the earlier

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\* Former Judge, Allahabad High Court. This article was published in RLR 2011-1&2 Issues. It is reprinted for further research benefits because it reflects very significant aspects of the Justice System. *Editor: Prof. M. Afzal Wani*.

Judges were those who were transferred from British Indian Courts to Indian Courts. The initial adherence to old theories and reluctance to open democratic country's forum of justice to teeming millions was evident. Fortunately with the passage of time, particularly when people from independent India adorned the office of justice in superior Courts, the situation went on sea change. It created its mark with the people of this country generating extraordinary confidence in judiciary.

It is the public confidence which is the real strength of judiciary. It has no army or otherwise police personnel of its own for carrying out its orders and to maintain its authority. The Executive headed by elected Political Executive is ultimately the enforcing machinery of judiciary. The experience has shown that more or less the executive in past had been quite honest and sincere in observing its constitutional obligation of enforcement of judicial orders. Of late, however, a new but dangerous indication has come on the surface.

This is because of the faith and confidence of people in the system of justice. I need not tell you, whenever situation demanded, judiciary has shown its independence, strength and mettle.

One of the biggest challenges before Indian judiciary came when the provincial legislature tried to overreach judiciary in 1964. I feel elated to say that it is Allahabad High Court which firmly reacted, solidly withstood on the principle that on question of judicial review, the judiciary has the ultimate words. This was the ultimate view expressed by Constitution Bench of Apex Court by majority of 6:1 in Kesav Singh's case.<sup>1</sup>

The second such occasion came in 1975, when the judiciary showed its independence and impartiality. It unseated the then sitting Prime Minister of the country in an election petition, though aftermath of this judgment is another history. Today, the people commonly divide post independent era in pre emergency and post emergency.

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<sup>1</sup> Special Reference No. 1 of 1964, (1965) 1 SCR 413.

The third incident occurred when the basic human life and liberty came to be considered. Here again almost a dozen High Courts of our country did not hesitate in declaring that right of life and liberty cannot be left at mercy of Executive. But here came the first blow. Unfortunately, reversal of this judgment of several High Courts came from the Highest Court. It is true that the dissenting opinion in this judgment has been given by legal fraternity much more respect than majority. But, to my mind this was the first blow.

It is this time we saw alleged supersession on the highest seat resulting in a few resignation by Judges of Apex Court and also a serious threat to the independence of Judiciary in the wholesale transfers of Judges in the High Courts. Probably this was the first occasion after promulgation of Indian Constitution when an attempt was made to weaken judiciary and to change its character from non-committed to committed. Fortunately, very quick the system recovered and regained its strength and confidence. It is this era in which we have seen the judgments of *Maneka Gandhi v. Union of India & Anr.*<sup>2</sup>, *Minerva Mills Ltd. & Ors. v. Union of India & Ors.*<sup>3</sup> etc. Immediately thereafter we witnessed the desire of judiciary to reach the last man and it opened the gate of PILs with the judgement in *People's Union for Democratic Rights and others v. Union of India* (commonly known as *Asiad's case*). In order to appear more independent, the system thought it fit to assume dominating and decisive role in appointment of judges in superior courts. That is how we have the judgments in *S.P. Gupta v. President of India & Ors.*<sup>5</sup>, *Supreme Court Advocate on Record Association v. Union of India*<sup>6</sup> and *Appointment of Judges Case*<sup>7</sup>.

Recently, strength of impeccable integrity, impartiality and rock like determination of peaceful resolution of most contentious and sensitive issues have been shown on 30<sup>th</sup> September, 2010 when after

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<sup>2</sup> AIR 1978 SC 597

<sup>3</sup> AIR 1980 SC1789

<sup>4</sup> 1982(3) SCC 235

<sup>5</sup> AIR 1982 SC 149

<sup>6</sup> AIR 1994 SC 268

<sup>7</sup> (Special Reference No. 1 of 1998): 1998(7)SCC 739



more than half a century, a dispute was adjudicated in an atmosphere, when the entire country was having a curfew like atmosphere though precautionary and preventive, but the path shown by Court did not cause any discontentment in the people and the everything passed in a most calm and peaceful manner. This has been appreciated and commended favourably globally. We are all witness to it.

Thus, this was a brief resume, including a few challenges which were met successfully by Courts in the past. But here lies the real crisis which we intend to discuss today with the title of our topic "Emerging Challenges Before Indian Judiciary".

Even a layman, if asked for, can immediately tell *ex facie* some shortcomings namely extraordinary delay, mounting arrears, shortage of Judges and corruption in lower Judiciary (Now its presence is being felt in superior Courts also).

This is an over simplification. On all these aspects we can shift the onus/responsibility on different bodies. Judiciary may say it is the Executive, the Executive may say it is the judiciary and so on. But probably that is not the real cause. It lies elsewhere. First we understand what the real challenges are.

The title consists of some sub-titles or sub-themes like:

1. Method of Appointment of Judges;
2. Probity, Privileges of Judges and Contempt of Court;
3. Accountability and Transparency for Judges and Advocates;
4. Menace of Judicial Backlog; and
5. Judicial Governance vs. Judicial Overreach.

The first sub theme is, "The procedure of Appointment of Judges", which earlier was dominated by Political Executive and now by judiciary. We are continuously hearing that the present system giving upper hand to judiciary in the matter of appointment of Judges in superior courts has failed. A serious attempt is going on to have a

change thereof. To some extent it is not incorrect but the flaw existed in the system earlier also. What perceived by Constitution Framers initially was sought to be undone by the later representatives of people making appointments of their own men and choice attempting to dilute the system's independence. They overlooked independent and bold Judges, having courage to stand against political Executives in the matters of importance, if find, it was not in accordance with law. This flaw in the system could have crippled the very strength and credibility of the institution diminishing its strength of independence. The second system, which has been usurped by judiciary by way of interpretation of Constitution has brought in the system "Bhai Bhatijawad" and those responsible for appointments are unfortunately getting more impressed, "my men" "your men" instead of a common man. The people having high or special background or resources in judiciary are easily being inducted. I have no hesitation in saying that a kind of unwritten succession has intruded. Long drawn exercise calculating for next 15-20 years is being made.

If one has his patronage with some very high ex Judicial Authorities may get appointment at an early age so as to ensure his berth in the highest Court but a common man even if otherwise of higher merit would not be taken. Not necessary to give any illustration. The system has resulted in more mediocre appointments. Unfortunately, it is this system, which is presently in the mind of the public, which involves a few tainted characters in the system causing a blow to people's faith in the cleanliness of the system. It needs be checked immediately lest it deteriorates further, which we cannot afford. When other wings of Constitution are now coming with more and more blotted and stigmatic cover, it can easily be visualised that they would try to involve judiciary also but we have to keep distance and maintain our whiteness. Even a single blot may cause severe harm to us than other wings. No system can be perfect but there has to be one of the best. Before appointment if the merit, credibility etc. of the candidate is examined threadbare, I do not find any reason of objection therein. The system needs transparency.

Then comes Probity, Privileges of Judges and Contempt of Court. So far as probity is concerned, there cannot be any question of its importance. In fact not only at the time of appointment but throughout one holds the High Office, maintaining honesty and integrity, is unquestionable. Any abrasion deserves to be handled with very strictly and with iron hands. I go to the extent that in judiciary even a single minor abrasion ought not be tolerated and should be nipped at the bud, even if need be cruelly, that is, by removal. It may be hard or harsh so far as that individual is concerned, but not for the society as also the system and the institution in particular. The institution and system cannot tolerate even a slightest blur. Any tolerance and delay in checking may be fatal since it would act like a slow poison, which initially may not be apparent but very soon may damage the entire substratum.

Coming to the so called Privilege and Power of Contempt sometimes it is said that even if someone sneezes, the superior court may haul up for contempt. Privileges of Judges are extra judicial which need be curtailed and so on. This is all a calculated move to weaken an independent and strong judiciary. What was earlier believed and practised a divine power cannot be belittled. Obviously to maintain supremacy and effectiveness it must possess certain powers over and above, otherwise power of Executive, which is the main organ of discontentment to the people, coming to Court mainly against it. In absence of superior powers and that too punitive ones, the judiciary may prove to be a toothless tiger. Wrong exercise of power of contempt in a particular case does not mean that power itself is bad. Therefore, it has to exist and should remain untouched otherwise expectations of the people may not come true at a time when it is needed most. What other privileges of judges, which need be discussed, I am slightly at a loss. If it refers to facilities, perks and wages admissible to the Judges, I leave it to be commented upon by the learned speakers who would be coming hence after otherwise I will be guilty of violating the principle of "Judge in one's own cause". Only one thing I can remind you that in ancient times, the power of Judges vested in the King himself. Others appointed, were kept in a position so as not to think of going for monetary or otherwise compromise. A starving or wanting judiciary cannot maintain for

long its independence and honest image. After all the people come from the same society. They are amongst us all. One cannot expect a pure and simple saint like approach while the person concerned has all worldly duties to discharge also. I leave this aspect heret.

Accountability and Transparency for Judges and Advocates is obviously inherent in the system. Transparency in the matter of administration of justice one cannot dispute, but when we talk of accountability, it would have to be clarified whether this accountability means that in no case wrong judgment shall be passed or if a Judge has given a wrong judgment, he has to pay for it. If it is later, I am sorry. It cannot be applied to judicial system. A bona fide honest judgment is the only requirement of the system. Whether it is correct or not, is to be seen in the system of appeal which normally law provides. Even in respect of the highest Court, one cannot say that all the judgments given by the highest Court would always be correct. If there would have a further higher Court, may be many judgments of the highest Court would have been or may have been reversed. This is what we have seen. Many earlier judgments, by Highest Court have been overruled.

In this head, to my mind, one of the most important aspects would be that the relations of the Judges must not practice in the same Court as it reduces the scope of impartiality and transparency. One says that the relative advocate shall not appear in the Court of the particular Judge but there are several ways and means to overcome this problem. In fact we have to see perception of a client who feels that a Judge's son or other close relative would be more effective in obtaining a favourable order compared to another advocate. Many a times, when several Judges have their relations in the Court, a kind of cartel works with the same goal and objective. This is happening throughout the country and in all the High Courts. When I was at the Bar, I had some experience of this menace even in the Apex Court. Obviously, relations of Judges cannot be debarred from practice at all if they have chosen it as their profession but then something has to be worked out to rule out this menace. The concept of transparency is much more needed in the matters of appointments. If transparency is maintained at that level, I believe and trust, it will continue to persist.

Angularity in a person is not born suddenly. It is a characteristic which one carries or not. It may happen that one is not corrupt or has not shown anything wrong since he could not get the opportunity. The test lies on when and how he reacts at the time of having opportunity of all kinds. If one has even minute trace of angularity, it may surface and flourish when opportunity becomes available but if one has no such angularity, the question of its surfacing will never arise. However, minor human weakness can be overlooked. So long as it has not harmed the system, minor abrasions have been overlooked in the belief that no human being exists without any evil or corrosion. It may be true. It is normally said 'to err is the human being' but then it has to be seen, whether this abrasion is resulting in a dishonest judgment or adjudication; may be in law it is correct. The accountability of Judges lies only in giving honest decision without fear and favour and to the best of one's ability. If in process of adjudication, one gets impressed by a reason other than what is required by law, adjudication cannot be honest. To expect hundred per cent saint like character in these days is asking for improbable and impossible and therefore, we have to work out our system in the light of the stuff available in the society. Only this much can be said that best must be chosen in available resources and scope of abrasion can be reduced by maintaining, as much as possible, transparency. Confidentiality to the extent it is desired and not beyond it be maintained. Further, I leave to the speakers to elaborate on this subject.

Then comes the real problem with which everybody is concerned i.e., Menace of Judicial Backlog. It talks of in terms of piling of cases as also unfilled vacancies of Judges. Everybody has his own views in this matter. Some say Judges do not work, they do not sit in time in the Court, rise early and avoid to decide contentious matter. Some say, only those cases where some otherwise interest is there, are decided or not at all. Long holidays, shorter court time also add to it. These are all, thoughts of an informed person. Nothing of this sort can result in backlog of cases if the Judges are determined to decide cases.

In fact there appears to be a well-planned concerted effort on the part of political persons as well as Executive who give air to these thoughts and thereby erode confidence in the conduct of the Judges, which ultimately erode and reduce the strength of judiciary. If the only requirement of merit and impeccable integrity is met at the time of appointment of Judges, the question of cases falling in arrears will never arise. The real problem lies elsewhere. Judge's time is wasted in simply handling files and accommodating parties and their Advocates in one or the other manner. That is how the cases remain undecided which we see in the shape of "piled up" arrears. I can explain it giving illustration of Allahabad High Court. About two lakhs cases filed annually in the last 2-3 years. We had 210 working days in a year, meaning thereby the average filing of cases at Allahabad was less than a thousand per day. Many Judges decide 40-50 cases per day and some 5-10. In criminal appeals obviously one or two criminal appeals a day can only be decided. If I take up average as 20 cases per day per Judge, and if only 60 Judges are working at Allahabad, it would bring the total to 1200 cases per day. Meaning thereby the Judges at Allahabad are capable to decide much more than that which are filed. What will then add to arrears.

Then, where the real problem lies.

The Executive i.e., the State, the main litigant in the High Courts. It does not cooperate by showing its prompt response. Cases are adjourned at their instance and much of the Court's precious time is consumed in granting time to respective counsels of Government and adjourning cases. Fortunately, time lost on account of Advocates' strike is minimal but on account of non-preparation by counsels, huge time is wasted. In the District Courts both these problems exist. If we take illustration of subordinate Courts in western U.P. for the last almost 30 years, 52 days are wasted due to non-functioning on Saturday.

Why one should worry for holidays which are given to Courts since most of the Judges work hard even during holidays. They study cases, prepare judgments and that is how the vacations and holidays are mostly consumed. It is my own experience. I work for about five

hours in the Court and same amount of period I have to work in Chamber also for preparation and finalization of judgments. The same is the position of most of my brothers. The error in arguments of counsel may not be noticed but an error in a judgment is of serious consequence. The judgments are matters of record. Therefore, Judges exercise due care in reading, writing and finalizing the judgments. Still sometimes some clerical mistakes remained. If the time in the form of vacations or holidays is not given, it will deprive judges of time for reading and updating themselves and will ultimately reflect on the quality of work. We cannot afford to have compromises with the standard of verdicts.

Those who know this system are well aware that much time is required for studies than what is required for hearing and deciding the cases.

Take an illustration of a counsel. He prepares a case day and night and thereafter argues the same for an hour or two. The backlog is not creation of vacations or holidays. A Judge can decide as many cases in a short time with due correctness if he really intend to work otherwise he may simply sit in the Court, may not give any output. The suggestion that to reduce Court work, other system of redressal should be provided like Arbitration, Mediation, Rural Courts, Evening Courts, Tribunals etc., may not be necessary if competent Judges are appointed and litigating parties and their counsel cooperate for expeditious disposal.

A recently, observation of the present author and judge is reproduced here:

“...time has come now when long adjournments should not be frequently and easily be granted. Response of official respondents must come within a short time. The Court cannot have the luxury of giving several weeks and months' time seeking response where extra ordinary equitable speedy jurisdiction under Article 226 has been invoked by a harassed pinnacle. Half a century ago, time of more than a week to other side for placing its response might have been necessary

since system of communication was not so fast. The people also did not have better facilities of travelling and conveyance but now, particularly in the last more than two decades, the situation has gone a sea change. We can communicate across the world within no time. The Government machinery has already consumed a hefty sum from valuable public money in modernising its system of communication etc. It is inconceivable that a person in the farthest place in the State may not be informed to respond to the Court within a few hours. In order to prepare the case and study record, one may understand of giving a few more days but it is inconceivable that time of weeks and months together be allowed to pass awaiting reply of respondents; in particular where State Government, its officials and instrumentalities are parties. If Government's officials are willing and ready to respond to Court cases, they can file their response within a week or even less. Probably, it is the lethargic old system still prevailing in the minds of Government Officials in regard to Court cases, and, that is how, months and years pass but they fail to respond causing extra ordinary delay in disposal of Court cases.

Not only this Court but all the Courts throughout the country are reeling under the pressure of mounting arrears. A lot of hue and cry here and there is going on about extra ordinary delay in dispensation of justice by the Courts of law but one has to be realistic to appreciate the real problem. It lies on the part of Executive in showing response to pending cases. Despite receiving information, for one or the other reason, and mostly without any reason, they continue to ignore showing attitude of non-response and that is how the cases are piling up. Small matters, which may be decided then and there, if stand of the Government is immediately informed to Court also remain undisposed of for this very reason. When some Courts, after awaiting for a reasonable time, try to decide the matters without further awaiting for reply, the Government and its authorities raise a hue and cry that without giving opportunity of hearing for reasonable



time, cases are being decided *ex parte*. In their understanding, probably the term "reasonable opportunity" means indefinite period. This Court finds it an opportune moment to refer some observation made in the majority order dated 17.09.2010 of Full Bench in OOS No.4 of 1989 (Sunni Central Board of Waqf, U.P. Lucknow & Ors. v. Gopal Singh Visharad & Ors.) where the Court observed:

"... Is it what we have to deliver to our future generation that the courts of law in India are not capable to decide cases for generations and on a mere drop of a hat, an excuse is found to defer the matter or adjourn the case? Are we here to find out ways and means of deferring adjudication or to make adjudication? No case, no dispute and no apprehension can be above the honest discharge of constitutional function by an independent judiciary. The people of India are already having serious complaints in abundance in recent past against the judicial system of this country that it keeps the matter lingering on for generations and attempt to decide cases is minimal.

'With the increased awareness, the people are getting conscious of their right and do not hesitate in asserting it. If the enforcement of rights get deferred not because of any slackness on their part, but due to extremely slow pace or inaction on the part of judiciary, their complaint cannot be levelled frivolous. In a system of good governance, effective, independent judicial system is not only the requirement but the real crux lies whether it can deliver justice within reasonable time; whether it can decide the issue expeditiously and before the patience of the people exhausts? These are some of the aspects which need be seriously taken up by the Bench and Bar both. This is the high time when not only the Presiding Officers of the Court but also the members of the Bar who are also officers of the Court should ponder over seriously and find out the way in which cases may be decided expeditiously instead of inventing the way for their deferment and adjournments. The courts are meant for adjudication and not for adjournments or deferment."

Here I may add one more thing. A system has developed where in the garb of reducing burden of judiciary, quasi-judicial bodies have been and are being created in which retired Judges and retired bureaucrats get an extended employment in the form of "post retiral assignments" and that is how both enjoy perks, privileges and wages of office without being regular member of the system as such.

I am constrained to say that it has caused a serious blow to the otherwise efficiency, independence and fairness of the system. I may not be liked by many but I am firmly of the view that Executive and the political Executive both have been successful in providing a bickering to retired Judges and thereby ensuring much more for themselves after retirement. This concept of post Retiral Assignment has also weakened the strength of judiciary. The Judges nearing retirement look forward to Executive for some subsequent assignment and that is how, many a times, you find some compromises in vital matters. If a Judge is capable of functioning after retirement, fit mentally and physically otherwise to function in a quasi-judicial body, why should he not be allowed to continue in superior Court itself where his experience may result in better quality of verdicts and may also help in quick disposal of cases. In the form of quasi-judicial post retiral appointment, when he is sent to specialized kind of bodies, for some time he learns and by the time he makes up the things, the tenure gets over. The system is more inclined in favour of the Executive. They need to have longer post retiral assignment so as to continue in the office of authority and that is how, with mutual back scratching, it is going on. Why can't the appointments be made in these bodies by appointing younger persons having some experience in the field by creating a permanent regular cadre? Such persons, coming early in age, may be more vital, enthusiastic, energetic, and active to yield better.

One of the real problems, which is part of the same argument, is shortage of Judges. The number of Judges in the country per capita is one of the minimum compared to other developed systems in the world. Actually, it is this discrepancy which is resulting in much more angularities, illegalities and corrupt practices in other wings of governance. If we can ensure a criminal trial within a fortnight or a

month, I am sure and confident, crime will go down. This includes the instances of minor and major corruption. I may give one illustration.

Fast Track Courts were created under directions of Apex Court. In the State of U.P., only Courts were created but posts of Judges separately including staff was not provided on the ground that creation is temporary. Result was that existing judicial officers from regular Courts were posted in Fast Track Courts. Now, suppose two hundred and odd Fast Track Courts created in the Uttar Pradesh manned by equal number of Judges coming from regular Courts, it immediately reduced number of Judges in regular Courts. Subordinate Judiciary did not raise any voice since subordinate judicial officers, who mostly were posted in these Fast Track Courts, were in lower cadre namely Civil Judge (Senior Division) or Chief Judicial Magistrate and they were given ad hoc promotions as Additional District & Sessions Judges to work in Fast Track Courts. They were happy with their untimely but earlier promotion with higher pay, perks and status. Nobody bothered that two hundred and more regular courts in the State became manless. Criminal cases in these Fast Track Courts, no doubt, were decided but other kind of cases remained untouched in regular Courts.

Similarly, State who controls budget and finance, takes extraordinary time in providing requisite money for betterment of infrastructure. No control the Judiciary has on this aspect. No accountability lay on Executive if it delays availability of funds for meeting even necessities of Courts about infrastructure and other facilities. In inhuman conditions of functioning, if we expect much efficient functioning from a judicial officer in subordinate Courts, it would be really an atrocity on him. This part of the subject really needs much more time to discuss but for the constraint of time, I refrain myself from diluting it further and leave it to coming speakers.

Then comes Judicial Governance v. Judicial Overreach. This term has been coined by a few intellectuals, sometimes treating themselves jurists who are pro-Executive. Whenever system has changed, they speak otherwise.

I have no illusion in straightway saying that both these terms are misnomer and show lack of understanding on the part of persons who have coined these words.

Whenever there is a dispute, the ultimate authority of adjudication is the Court. The question is then, what a "dispute" is? Is it only confined to a disagreement or dissatisfaction on a particular aspect between two individuals, natural or artificial or beyond that. In the system, governed by voluminous Constitution, like ours, which has different shades, the term "dispute" is very wide. If anyone in authority fails to discharge his function or wrongly functions, which includes his ill motive in functioning and so on, it cannot be said that it is not a kind of 'dispute'. Inaction or wrong action on the part of an authority amounts to breach of rule of law and whenever it comes to the notice of judiciary, it is the constitutional obligation of judiciary to set the things right. The system of complaint, as we traditionally know, may not apply in each case. Sometimes wrong doer is such that a common man may not have the courage or resources to raise his voice and bring it to the Court. It does not mean that Court will not act to set the things right if the matter comes to its knowledge otherwise. I extend it further.

Investigation by bodies responsible in such matters is also controlled by Executive. If the Executive tries to paralyse the system of investigation also, can it be said that judiciary, if takes cognizance of such failure and lack of impartial investigation or no investigation, as the case may be, is functioning by intruding the area of another wing not meant for judiciary. See the oath administered to a Judge of superior Court when he adorns the office, "upholding rule of law and the Constitution". Keeping eyes shut, remain a silent spectator to whatever is happening even though illegal, unconstitutional, will it not amount to breach of oath taken by such judge? In fact whether you term it as "judicial governance" or "judicial overreach", I have no hesitation in saying that it is nothing but a pure and simple judicial function by a Judge of the Court, particularly of superior Court, where he is reminding other wings of their legal obligations and constitutional functions, requiring it to perform the same strictly in accordance with rule of law. This is the function enshrined to

judiciary by the Constitution makers making it independent and non-committed. In fact all these words have been coined again to check judicial intervention in otherwise corrupt activities of Executive as a result whereof they are syphoning off valuable public funds and victimising common men of this country. It is of utmost importance that judiciary should come forward with much more commitment on these matters otherwise time is not too far when even this country may have to see a revolt, we have recently seen, and still continuing in some parts of the world. It is a caution to all and sooner we wake up, would be better.

# MINORITY EDUCATIONAL RIGHTS IN THE ERA OF PRIVATIZATION AND ECONOMIC LIBERALIZATION

*Dr. Francis Assisi Almeida\**

## 1. Introduction

The right to education is considered to be one of the important human rights both at the national and international level and further, the responsibility of imparting the same is considered to be the bounden duty of parents and the religious heads, and therefore, the Church in the western world and gurukul system in India have splendidly carried out their responsibilities. Gradually, it was acknowledged to be the responsibility of the State, and presently, the State and non-state entities like private entrepreneurs and NGOs own the responsibility of providing education as their major concerns. The Constitution of India under Article 30 (1) has guaranteed the right of minorities to establish and administer educational institutions of their choice whereas, Article 19(1) (g) of the Constitution provides the right to establish and administer educational institutions by all citizens as 'occupation' subject to reasonable restrictions under Article 19(6).

Privatization and Liberalization after 1992, in India, have hampered both the educational rights of all as well as the rights of minorities under Article 30 (1). This article analyzes the impact of privatization on minority educational rights.

## 2. Privatization of Education in India

### 2.1. Privatization in General

Since 1970, the transposition of the economy from the public to the private sector started to take place at the world level. In Chile, under the dictatorship of Pinochet in the 1970s, and in the U.K., under

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Thatcher in the 1980s initiatives have been taken for privatization.<sup>1</sup> Privatization has been felt in the history of Germany under Nazi rule in the year 1930s wherein the rulers extended their support to the wealthiest sectors of the society to obtain their support.

Notions of privatization were not the same everywhere but they differ among themselves. The privatization of Germany in the year 1930 was different from the privatization of Volkswagen in the year 1950, and both of them were different from British privatization in the 1980s, Russian in the 1990s and Latin America, etc.<sup>2</sup> The Conservative politicians felt privatization was the need of the hour after striking off the miners in 1974 to escape the wrath of the unions of industries.<sup>3</sup> During the 1970s and early 80s, both developed and developing countries initiated the process of privatization and between the 1980s and 1992, more than 15,000 enterprises were privatized worldwide giving rapid rise to privatization.<sup>4</sup>

Perspectives of private and public differ as per the opinions of the experts. Economists find differences between public and private by taking into account the state and market, whereas, analysts of culture take the market and the politics as their parameters. Further, sociologists describe privatization purports to be a shift of individual involvement from the whole to the parts and so on.<sup>5</sup> In contrast to public ownership, privatization is considered to be in an advantageous position regarding revenue building, increased competency, efficacy, etc.<sup>6</sup> This general opinion may not hold well as

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<sup>1</sup> Wills, Matthew, *JSTOR DAILY*, (2018), <https://daily.jstor.org/the-roots-of-privatization/>, Last Visited on 14-06-2021.

<sup>2</sup> Bel, Germa. Retrospectives: The Coining of 'Privatization' and Germany's National Socialist Party. 20, *The Journal of Economic Perspectives*, 187, 193 (2006).

<sup>3</sup> Herald, David. Privatisation: Analysing Its Appeal and Limitations. 5, *Fiscal Studies*, 36, 37 (1984).

<sup>4</sup> Edadam, Narayanan. Privatization Strategies in Developing Countries: External Debt and Domestic Economic Perspectives. 32, *Economic and Political Weekly*, 1608, 1609 (1997).

<sup>5</sup> Starr, Paul. The Meaning of Privatization, 6, *Yale Law & Policy Review*, 6, 8- (1988).

<sup>6</sup> Yarrow, George, et al. Privatization in Theory and Practice, 1, *Economic Policy*, 324, 327 (1986).

an unqualified notion that the outcomes of privatization outweigh public ownership.<sup>7</sup>

Privatization is considered to be an inclusive term that includes government policies and market principles under public services which raise concerns about the distribution of assets and resources.<sup>8</sup> The four main arguments in favour of privatization are the efficiency argument, property rights argument, distortion argument and fiscal argument.<sup>9</sup> The term privatization has been used to describe distinct or alternative relationships between the government and private sector and some of them are denationalization, deregulation, and contraction.<sup>10</sup>

In simple terms, privatization, here, means the transfer of ownership, property or business from government or state ownership to the private sector. Normally, privatization is assumed to be a potency to increase economic efficiency and for State, it is the reduction of fiscal burden to lessen the external debt and also stimulation of technical efficiency for economic growth. Thus, in a broader sense, privatization can be described as the sale or transfer from the public sector to the private sector of those activities which concern the economy of the country.<sup>11</sup>

## 2.2. Indian Economy and Privatization before 1991

Generally, the production of public or collective goods for the general public is the responsibility of concerned state governments.

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<sup>7</sup> T. T. Ram Mohan. Privatization: Theory and Evidence, 36, *Economic and Political Weekly*, 4866, 4865 (2001).

<sup>8</sup> Pulkingham, Jane. From Public Provision to Privatization: The Crisis in Welfare Reassessed, 23, *Sociology*, 387, 388 (1989).

<sup>9</sup> Nyong, Michael O. Government Interventionism, Privatization and Economic Development: A Critical Review of the Issues, 1/2, *African Review of Money Finance and Banking*, 123, 128, (1994).

<sup>10</sup> Kay, J. A., and D. J. Thompson. Privatization: A Policy in Search of a Rationale, 96, *The Economic Journal*, 18, 19, (1986).

<sup>11</sup> Awadalla, Safwat A. Privatization and Economic Development: Study on the Effect of Privatization on the Economic Efficiency in Developing Countries: Egypt: As a Case Study under Law No. 203 for 1991, 18, *Arab Law Quarterly*, 34, 36 (2003).



Nevertheless, the inflation due to the inefficiency of the public sector and slow growth of the economy gave rise to the private sector creeping into the market but hampered these initiatives due to the fear of domination by the non-residents of the country and local ethnic groups and further, privatization, as perceived and accepted at large, may find paths of divestiture, contract services, privacy provisions, deregulation, etc.<sup>12</sup> Since 1931, before the independence of India, there was a discussion on the concept of planning but hardly any concrete idea of economic development through state ventures had taken place before 1947. Virtually, there weren't any public sector ventures before 1947, except for some initiatives in the Railways, the Postal and Telegraph, Aircraft Factories, etc.<sup>13</sup>

In the year 1956, the government brought out a social-led Industrial Policy Resolution envisioning that public undertakings would lead to the economic and industrial development of the nation rather than private undertakings that lacked the required resources and long-term investment perspectives. Further, in the 1960s, the advancement of the public sector took place due to nationalization. In the 1970s, it had grown to one-fifth of the GDP and in 2001, it accounted for almost one-fourth of the GDP.<sup>14</sup>

### 2.3. Post-1991, Neoliberalism-Scope of Privatization in India

Privatization in India prominently emanated with the 1991 revolutionary changes in the Indian economy.<sup>15</sup> As per the interim budget presented on 4<sup>th</sup> March 1991, the decision was taken to

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<sup>12</sup> Paul, Samuel. Privatization and the Public Sector: Relevance and Limits. 20, *Economic and Political Weekly*, M4, M 4-M5 (1985).

<sup>13</sup> Chand, Smriti. Public Sectors in India: Role, Growth and Problems, <https://www.yourarticlelibrary.com/india-2/public-sectors-in-india-role-growth-and-problems/23430>, Last Visited on 15-06-2021.

<sup>14</sup> Makhija, Anil K. Privatization in India, 41, *Economic and Political Weekly*, 1947 (2006).

<sup>15</sup> Madaan, Davinder Kumar and Davinder Kumar Madan. India's New Economic Policy - A Macro Study. 8, *Indian Journal of Asian Affairs*, 104-113 (1995).

disinvest up to 20 per cent of its equity in public assets.<sup>16</sup> The Rangarajan Committee stressed the need for disinvestment and recommended up to 49 per cent of the equity could be divested for industries exclusively reserved for the public sector and in exceptional cases, it could go up to 74 per cent.<sup>17</sup> The Disinvestment Commission felt that valuation for a business should be based on the health of a company, the nature of the industry and the company's intrinsic strength. The Commission recommended strategic sales with the transfer of management to get the best value through strategic sales.<sup>18</sup> In the 1998-99 budget, the government brought down its share in the private sector to 26 per cent, and in the public sector, it retained majority shares.<sup>19</sup>

The reports of various financial years, beginning from the 1970s, reveal that the operational inefficiency, poor performance, and huge losses of the public sector at large, despite being overprotected, gave massive annual liabilities on account of interest payments.<sup>20</sup> Moreover, this huge financial crunch gave the Indian Government to seek external financial support from international agencies for which the Government had to alter its mode of transactions surrendering to the regime of privatization, liberalization, and globalization. A shift from the public sector to the private sector took considerable progress after the introduction of renewed economic policy in 1991. It was done primarily through delicensing, relaxing entry restrictions,

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<sup>16</sup> Interim Budget 1991-92, Speech of Shri Yashwant Sinha, Minister of Finance, 5, (1991), [https://www.indiabudget.gov.in/doc/bspeech/bs199192\(I\).pdf](https://www.indiabudget.gov.in/doc/bspeech/bs199192(I).pdf).

<sup>17</sup> A., Anushree. Essay on Disinvestment Policy in India/ Policies/ Economics, <https://www.economicdiscussion.net/essays/essay-on-disinvestment-policy-in-india-policies-economics/27091>, Last Visited on 22-06-2021.

<sup>18</sup> Kumar, Keshav., Rani, Nirmla., Monu, The Need of an Effective Disinvestment Process in India, 5, *International Journal of Science Technology and Management*, 209, 211 (2016).

<sup>19</sup> Budget Speech, Disinvestment/ Privatization/ PSU Reform, Ministry of Finance, Government of India (1998), [https://www.indiabudget.gov.in/budget\\_archive/ub1998-99/bs/bs17.htm](https://www.indiabudget.gov.in/budget_archive/ub1998-99/bs/bs17.htm), Last Visited on 22-06-2021.

<sup>20</sup> Gupta, Anand P. Political Economy of Privatization in India 31, *Economic and Political Weekly*, 2687, 2688 (1996).

and equity funding of Public Sector Enterprises (PSEs).<sup>21</sup> To delineate the activities of privatization from the public sector to the private sector were denationalization, deregulation, and private provision of public services, contracting out, a joint venture of public and private by mutual finance, reduction of subsidies, and increase of user charges, contracting out, etc.<sup>22</sup> In simple words, privatization is to diminish the influence of bureaucrats and politicians in functioning the PSEs and transfer management from public to private owners.<sup>23</sup>

## **2.4. Education-The role of the Private Sector and Non-State Entities in India**

### **2.4.1. Privatization in Education**

The new policies have been introduced at the global level to overhaul the existing damages intended to cut down the percentage of profits allocated to the private sector and reduction in public expenditure allocated for social consumption (social welfare) including education.<sup>24</sup> Largely, a shift took place in policy which was reflected in the transition to monetarism and supply-side economy from the Keynesian model<sup>25</sup> and further, it invaded the world and especially, in India after 1991. The proponents of privatization often based their arguments, on saying, the superiority of the public sector over the private sector is of blind faith than reason. Often debate in the

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<sup>21</sup> Gouri, Geeta. Privatization and Public Sector Enterprises in India: Analysis of Impact of a Non-Policy, 31, *Economic and Political Weekly*, M63, M64 (1996).

<sup>22</sup> Wood, Douglas, and Kodwani, Devendra. Privatization Policy and Power Sector Reforms: Lessons from British Experience for India 32, *Economic and Political Weekly*, 2350, 2351, (1997).

<sup>23</sup> *Id.* at 2350.

<sup>24</sup> Kallaway, Peter. Privatization as an Aspect of the Educational Politics of the New Right: Critical Signposts for Understanding Shifts in Educational Policy in South Africa during the Eighties? 37, *British Journal of Educational Studies*, 253, 256 (1989).

<sup>25</sup> *Id.* at 256.

private and public sectors on education ignores basic questions of the need, purpose, and responsibilities of education.<sup>26</sup>

Generally, most of the schools established by the private sector are often known to be non-profit entities where that cannot distribute dividends or profits for capital gain.<sup>27</sup> Public intervention in education could be justified in the event of reduction of inequalities, equal opportunities for the poor and marginalized, lending for education in the wake of market failures, and dissemination of the benefits of education to the general public. Since education incurs a lot of investment both direct (books, tuition fees, school uniforms, and transport charges) and indirect costs (forgone earnings to families and individuals), the role of the state is very much felt and cannot be undermined. Though the benefits of education are expected remotely, immediate costs of education burden the families to provide education to their children, especially, in the low-income categories. Other issues like little or no education of parents against better informed and educated parents, and allocation of public resources including the proportion of public subsidies towards higher education at the expense of elementary education hamper education for all.

The State Governments, in most countries, facilitate education, and in some countries private (Non-profit entities), religious institutions, and NGOs assist the state in providing education to its citizens. Wherever demand was felt and states were not ready to afford to provide education due to lack of financial assets, the private entities/suppliers have taken over the demands of education.<sup>28</sup>

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<sup>26</sup> Rees, John. 'Privatization' – A View from the Private Sector, 37, *British Journal of Educational Studies*, 279, 283-84 (1989).

<sup>27</sup> Pal, Sarmistha & Saha, Bibhas. Are socially motivated Private schools more efficient than profit seeking ones? Ideas for India (2018), <https://www.ideasforindia.in/topics/human-development/are-socially-motivated-private-schools-more-efficient-than-profit-seeking-ones.html>.

<sup>28</sup> Patrinos, Harry Anthony. Market Forces in Education, 35, *European Journal of Education*, 61, 62-65 (2000).

Always there exists a dilemma, about whether education is a private good or a public good. On the one hand, it provides individual productivity and earnings, a wide variety of private outcomes like health efficiency and access to information, political participation, and the inculcation of civic values, social status, etc. which purports to be a private good and the other hand, it caters to the needs of the nation, region, and community building inculcates to have common values like social equality, economic and political values, and efforts to contribute collectively towards the economic growth of a country, which goes beyond the private good and contributes or reflects the education as a public good. Thus, it must be understood that the true situation lies between these two.

As a whole, it can be asserted that privatization of education does mean the transfer of ownership and management from the public sector to the private sector but it cannot be treated equally with those of other sectors like telecommunication, energy, aviation, etc. but privatization of education inclines to take place mostly at the level of service provisions, funding and not strictly at the level of ownership.<sup>29</sup>

#### **2.4.2. Privatization of Education in India**

Since its inception, and even after independence, education catered to the needs of elitist or creamy layers of society. The traditional Indian education system concentrated mostly on religious training and to a certain extent comprised of ordinary teachings. Privatization, in a limited way, existed during the Vedic period too.<sup>30</sup> During the medieval period, the Mughal education system improved upon the same by doing some modifications to it and whereas, the British education system introduced modern trends of learning, giving due prominence to the English language, considering its superiority over the Indian education system. Undoubtedly, it rendered certain

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<sup>29</sup> Verger, Antoni. Foutdevila, Clara & Zancajo, Adrian., *The Privatization of Education, A Political Economy of Global Education Reform*, 7 (Teachers College Press, New York, 2016)

<sup>30</sup> Laurie, S.S. *The History of Early Education*. III. The Aryan or Indo-European Races, 1, *The School Review*, 668, 672 (1893).

changes to the notions of the Indian education system but the trend remained unchanged with regard to the elitist group of learners. Even during the pre-British period, education was mostly limited to Brahmins and they used to study in centres like 'Tols', 'Vidyalayas' and 'Chatuspathis'. These centres were maintained by the wealthy Hindus and even the royal family members have provided assistance for the same.<sup>31</sup>

Several references could be found where private people or entities have played a humongous role in the field of education before the concept of privatization of education was thought of in a full-fledged way. During the British period, there was a concerted effort from both the state and private philanthropists.<sup>32</sup> Education was fostered by private initiatives rather than the ruler's initiatives. An English watchmaker from Calcutta David Hare in 1816, joining Babu Mohon Roy, ventured into the education field by establishing the Hindu College for the promotion of Western secular learning.<sup>33</sup> The schools, in general, are supported by private financial support and very few are supported by the endowments but the poorer class students were relaxed in payment of fees.<sup>34</sup>

Privatization of Education in India, somehow remotely, took its birth in the year 1882 under the Hunter Commission which recommended the indigenous schools with financial aid and further, advised the government to establish a high school in every district providing initiation to the expansion of secondary education with the help of private sector in the later stage.<sup>35</sup> Finally, in 1991, when the Liberalization, Privatization, and Globalization policies were given

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<sup>31</sup> Acharya, Poromesh. Indigenous Vernacular Education in Pre-British Era: Traditions and Problems, 13, *Economic and Political Weekly*, 1781 (1978).

<sup>32</sup> Hector, J. The Present Place of Educational Work Among Missionary Methods, XV, *The Indian Evangelical Review*, 203, 204 (1888).

<sup>33</sup> Education in India, 1, The Harvest Field, A Record of Mission Work in India and Ceylon, 33-34 (1880).

<sup>34</sup> Cooling, James. Historical Sketches of Primary Education in the Madras Presidency, VIII, *The Indian Evangelical Review*, 48, 49 (1881-82).

<sup>35</sup> Hunter Commission, 1882, [http://uafulucknow.ac.in/wp-content/uploads/2020/03/Indian\\_Education\\_Commission\\_ma\\_sem\\_2nd.pdf](http://uafulucknow.ac.in/wp-content/uploads/2020/03/Indian_Education_Commission_ma_sem_2nd.pdf), Last Visited on 11-11-2021.

impetus within 'Indian Economic Policy', education had taken a new mode in the form of privatization.<sup>36</sup>

### 2.4.3. Incorporation of International Trade Policies in Indian Educational Plans

Trade under educational services, though not a new concept, it grappled with its speed after the application of policies under GATS in India. The famous ancient Indian educational institutions, namely, Nalanda, Takshashila, and others used to attract students from all over the world,<sup>37</sup> and before independence, several Indian students moved to foreign countries for education,<sup>38</sup> and further, after independence, it increased to a greater extent with the provisions of scholarship and other educational assistance from host countries.<sup>39</sup>

Under GATS, the private enterprises directly compete with the government-run institutions in India,<sup>40</sup> and with regard to the higher education system, India stands at the top of the world having the highest number of institutions that is four times more than the total number of institutions that exists in both US and Europe.<sup>41</sup> Regarding the enrolment and emergence of private unaided institutions, it is observed to be an upward trajectory, both in the

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<sup>36</sup> Bazaz, Rabiya Yaseen. & Akram, Mohammad. Privatization of Education and Right to Education in India, 3, *International Journal of Social Science and Economic Research*, 6093, 6094 (2018), [http://ijsser.org/2018files/ijsser\\_03\\_\\_425.pdf](http://ijsser.org/2018files/ijsser_03__425.pdf).

<sup>37</sup> Singh, Sahana. How India went from World's Education Capital to Depths of Illiteracy-I, <http://www.iharweb.org/uncategorized/india-went-worlds-education-capital-depths-illiteracy/>, last visited on 08-07-2021.

<sup>38</sup> Ten eminent Indian personalities who studied abroad, Hot courses India, <https://www.hotcoursesabroad.com/india/why-study-abroad/study-in-india-or-abroad/ten-famous-indians-who-studied-abroad/>, Last Visited on 08-7-2021.

<sup>39</sup> Singh, Onkar. Why Do Indians Seek Education Abroad?, eduvoice, <https://eduvoice.in/why-do-indians-seek-education-abroad/>, Last Visited on 08-07-2021.

<sup>40</sup> Deoshar, Satish Y. Educational Services: Issues for India in WTO Negotiations, 37, *Economic and Political Weekly*, 1791, 1791 (200).

<sup>41</sup> Prakash, Ved. Trends in Growth and Financing of Higher Education in India, 42, *Economic and Political Weekly*, 3249, 3250 (2007).

number of institutions and enrolment ratio.<sup>42</sup> The government of India approved 100 per cent automatic FDI in higher education in April 2000. Since then foreign educational service providers are able to enter India without any regulation as long as they do not want UGC/ AICTE recognition. So also India had included higher education services in its 'Revised Order of GATS' in August 2005 but later, it was withdrawn possibly due to the differences between the Ministry of Human Resource Development and the Ministry of Commerce.<sup>43</sup>

Due to the incorporation of international policies in the Indian education system, no doubt, the higher education institutions have been drawing students from developing countries and have grown to a larger extent due to their orientation toward employability. The commercial presence mode plays a great role here.<sup>44</sup> India does have some world-class educational institutions offering the best/ competitive academic standards but equally lacks competent infrastructure facilities like hostels, classrooms, etc. The advanced and developed countries with all these facilities earn huge income to their national income but with complete potency to offer world-class education, whereas India failed to attract foreign students due to lack of such facilities.<sup>45</sup>

#### **2.4.4. The impact of Foreign Direct Investment (FDI) on the Indian Education System**

Foreign Investment, which began in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, focused mostly on portfolio investment from 1914, and later in 1920, it took the method of FDI. Except for defence and small-scale industries which are limited to 26 and 24 per cent

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<sup>42</sup> *Id.* at 3254.

<sup>43</sup> Kanchan, Sarker. Neoliberalism, GATS, and Higher Education in India: Moving Away From Its Original Objectives; 7, New Proposals: *Journal of Marxism and Interdisciplinary Inquiry*, 13, 18 (2015).

<sup>44</sup> Sahni, Rohini and Kale, Sumita. GATS and Higher Education: some Reflections, 39, *Economic and Political Weekly*, 2174, 2176 (2004).

<sup>45</sup> Bhushan, Sudhanshu. Trade in Education Services under GATS: Implications for Higher Education in India, 39, *Economic and Political Weekly*, 2395, 2396 (2004).



respectively, most of the manufacturing sectors provided 100 per cent foreign ownership but due to certain obligations, export restrictions applied to 22 consumer goods industries of foreign investors were withdrawn in the year 2000.<sup>46</sup> Further, India intended to transform its education system into a service-aided environment to compete at the global level. With the available funds, the government tries to sustain the market but fails to meet the needs of the potential seekers.<sup>47</sup> The rapid increase in the demand of people with the potential ability to sustain in a foreign environment and aspirations to study abroad gave way to the outflow of the economy from the country. To stop this trend, it needs huge investment including investment by foreign countries but Indian current status of investment is not up to the mark and a vacuum between the demand and supply should be filled by inviting foreign investments.<sup>48</sup>

Undoubtedly, the Indian education sector is growing and emerging as a strong potential market for investment due to its demographic nature (young population) and service-oriented economy. Inventions and research growth also need to be supported financially. As per the survey conducted by United Nations Conference on Trade and Development, India stands next to China for the FDI, and further, portfolio investment, foreign loan, and FDI are the three main classified forms of foreign investment.<sup>49</sup>

The education sector in India had a steep growth with the approval of FDI in 2000 and provided ample opportunities to foreign investors to invest in India. Even though in the initial three years there was some inhibition, it increased until 2008-09 and then started to fall again but the Government had proposed 100 per cent FDI

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<sup>46</sup> Kumar, Nagesh. Liberalization, Foreign Direct Investment flows and Development; Indian Experience in the 1990s, 40, *Economic and Political Weekly*, 1459, 1460 (2005).

<sup>47</sup> Greeshma, T. &Ujwala, S. Role of FDI in Indian higher education sector, 8, *IOSR Journal of Business and Management (IOSR-JBM)*, 31, 33 (2017).

<sup>48</sup> *Id.* at 34.

<sup>49</sup> Singh, Kalpana & Awasthi, Dr. Alka. Impact of Foreign Direct Investment on Higher Education, 4, *International Journal of Research, Granthaalayah*, 80, 81-82 (2016).

investment in higher education.<sup>50</sup> The education sector in the present global era faces rapid competition and to compete with other countries, it is important to upgrade education both in its structure and mode of education.<sup>51</sup> A strong opinion is that the inclusion of FDI by amending the Foreign Contribution Regulation Act (FCRA), 1976 would be another scope of increasing the inflow of the economy through the education sector.<sup>52</sup>

#### 2.4.5. Companies Act and Education in India

Educational institutions were allowed to be established by trusts, societies, or companies and it was not possible to establish by non-profit companies. The Central Board of Secondary Education (CBSE) allowed companies registered under the Companies Act to start private (primary and secondary) educational institutions.<sup>53</sup> Under section 25 of the Companies Act of 1956, a provision was made to promote charity without creating any trust or society.<sup>54</sup> Section 25 was preferred due to a lot of advantages and also to be free from legal complications unlike the trust or society or any other registered institutions.<sup>55</sup> The owners or stakeholders will not receive dividends out of profit rather the income or return would be re-invested in the same. Section 25 has been replaced by Section 8 of the Companies Act, 2013,<sup>56</sup> and Section 8 (a) of the new Act makes provisions to

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<sup>50</sup> Suhag, Vinay & Rani, Kavita. FDI and Higher Education in India, 2, *International Journal of Social Science & Interdisciplinary Research*, 110, 112 (2013).

<sup>51</sup> Dr. Pansare. R. R. & Dr. Sinde, Manish. A Study of Changing Scenario in Education Sector with Reference to FDI in India, 2, *Pune Research Times*, 1, 2 (2017).

<sup>52</sup> Singh, *supra note*, 49 at 85.

<sup>53</sup> TaxGur, Government planning to allow section 25 companies to set up higher educational institutions, <https://taxguru.in/company-law/government-planning-to-allow-section-25-companies-to-set-up-higher-educational-institutions.html>, Last Visited on 02-07-2021.

<sup>54</sup> The Companies Act, 1956, Section 25, No. 54, Acts of Parliament, 1956 (India).

<sup>55</sup> Misra, Udit. Explained: Meaning of Section 25 company, Indian Express, <https://indianexpress.com/article/explained/explained-meaning-of-a-section-25-company/>, Last Visited on 02-07-2021.

<sup>56</sup> Companies Act, 2013, Act of parliament (Act No. 18 of 2013).

establish educational institutions but prohibits them from distributing their profit to their members.<sup>57</sup>

#### 2.4.6. Various Committees on the Privatization of Education

The Indian education system has seen a series of commissions for the recommendations of privatization of education. The Planning Commission of India appointed two committees of financial resources to stabilize higher education, i.e., one under the chairmanship of Justice Punayya to study the Central and Deemed to be Universities including Delhi colleges, and the other under the leadership of Dr. Swaminathan to study the technical education.

The Punayya Committee (1992-93), appointed to study the universities including Delhi Colleges, in its recommendations, upheld the need for revenue generation by the Universities.<sup>58</sup> Further, the committee proposed that the Universities may find their avenues of sustenance and the government may provide 100 per cent tax exemptions on those grants to provide its assistance to stabilize them.<sup>59</sup>

Dr. Swaminathan Commission, appointed by the All India Council for Technical Education in the year 1992 to study technical education, recommended the mobilization of additional resources for technical education in India. The commission has put forth the idea of collecting educational cess from industries and other organizations.<sup>60</sup>

The committee headed by Mr. Mukesh Ambani and Mr. Kumaramangalam Birla, appointed by the Prime Minister's Council on Trade and Industry, submitted its report in the year 2000, and the report highlighted the role of the state in the growth of

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<sup>57</sup> India Filings, <https://www.indiafilings.com/learn/section-8-company/>, Last Visited on 02-07-2021.

<sup>58</sup> M. Shatrugna. Financing Higher Education: Justice Punayya Committee Report, 29, *Economic and Political Weekly*, 2060, 2061, (1994).

<sup>59</sup> *Id.* at 2060-61.

<sup>60</sup> Report of the High Power Committee for Mobilisation of Additional Resources for Technical Education (New Delhi, 1994).

education. The recommendations of the committee are, that the state should limit itself to primary and elementary education and that higher education should be handed over to the private sector, the government should pass a private university bill, implementation of user-pay rule principle in higher education, and loan facilities to socially and economically weaker sections. It suggested that the business class should be encouraged to start higher educational institutions.<sup>61</sup> It was observed that the recommendations made by the committee were to replace the existing system of higher education with a market-oriented education system and income orientation is the sole aim of the system. If ever this system is implemented, mere elite and rich may get in since it attracts a huge fee structure.<sup>62</sup> The report invited criticisms from all corners and expressed that it failed to understand the very purpose of the education that was known from its inception. The influence of privatization in education is due to the WTO and privatization suits well to commercial activities and not the learning sector. No doubt, privatization intensifies the availability of resources but it compels to reduce the public funding for education. It deteriorates the education sector still further and current problems will get more aggravated.<sup>63</sup>

The Narayan Murthy Committee was constituted in January 2012 to review some issues pertaining to the corporatization of education, namely, the corporate involvement in higher education and research, constraints of corporates to invest in education, new guidelines and modalities to develop education hubs and clusters, effective use of Private-Public Partnership (PPP), and to provide a road map to implement the recommendations. The report focused on three important areas and they are primarily, enabling the environment to

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<sup>61</sup> Prem Sai, C. Higher Education in India: From Socialism to Capitalism-Education law, <http://www.legalserviceindia.com/articles/he.htm>, Last Visited on 09-07-2021.

<sup>62</sup> Sharma, Vijender. Impact of Neo-liberal Policies on Education and the Consequent Policy and Legislative Issues, <https://vijendersharma.wordpress.com/2013/06/15/impact-of-neo-liberal-policies-on-education-and-the-consequent-policy-and-legislative-issues/#more-530>, Last Visited on 09-07-2021.

<sup>63</sup> Kumar, Arun. Challenges Facing New Education Policy in India, 50, *Economic and Political Weekly*, 14, 16 (2015).

attract investments, support of corporate for research and faculty development, and investment by the corporates in existing and new educational institutions.<sup>64</sup> The report has several positive points to suggest the involvement of the private or corporate sector in higher education but some of the apprehensions regarding implementation of it are Firstly, if self-interest creeps in when an institution chooses an independent agency for the accreditation, the whole process shall jeopardize the standard of education, Secondly, the principle of autonomy shall either encourage the excellence or move to the proliferation of substandard but ultimately lead to costly education, Thirdly, excellence and profiteering may not go hand in hand and it may defeat the very purpose of education, Fourthly, exchange programmes between the foreign and local educational institutions may lead to exorbitant charges of education without knowing whether it improves the quality of education or not. Therefore, the idea proposed by the committee was criticized for its utopian idea of the confluence of education with privatization rather than practical solutions for the privatization of the education sector.<sup>65</sup>

#### **2.4.7. Promotion of Privatization of Education implied in the NEP, 2020**

By mentioning the words, namely, ‘public-spirited private’ and ‘philanthropic private’, the NEP, 2020<sup>66</sup> has given an official backup to the privatization of education by making provisions and giving ample avenues to the private sectors to enter upon and rule over the education sector.<sup>67</sup> The maximum advantage under these provisions would be reaped by foreign universities and other corporate

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<sup>64</sup> Mathews, Eldho, et al. Engaging the Corporate Sector: Narayana Murthy Committee Recommendations on Higher Education, 48, *Economic and Political Weekly*, 41, 42 (2013).

<sup>65</sup> Pathak, Binaykumar. Critical Look at the Narayana Murthy Recommendations on Higher Education, 49, *Economic and Political Weekly*, 72, 73 (2014).

<sup>66</sup> National Education Policy, 2020, Ministry of Human Resource Development (Government of India, 2020).

<sup>67</sup> Gurudu, Dhanashree. The Legitimation of Privatisation in NEP 2020: An analysis, *The New Leam*, (26-12-2020), <https://www.thenewleam.com/2020/12/the-legitimation-of-privatisation-in-nep-2020-an-analysis/>, last visited on 11-01-2022.

institutions at the cost of indigenous and philanthropic institutions. It is worth remembering here that the World Bank and UNESCO had warned against the influence of foreign influential universities under their brand names offering courses without having equivalent quality education.<sup>68</sup> Due to these developments and further, supporting such entities without proper regulation could be hazardous to the poor, marginalized, and minority educational institutions.

Primarily, the policy promotes the multidisciplinary structure under higher education and its growth within a prescribed time which would attract two issues. The first one would be it is an open invitation for absolute privatization of higher education through a national policy<sup>69</sup> and secondly, destroying the unaffordable but philanthropic or altruistic charitable educational institutions and also institutions of minorities established and administered under Article 30 (1) of the Constitution for the genuine cause of education of the poor, marginalized and disadvantaged people. In the event of privatization of education, it may have adverse ramifications leading to unhealthy competition among the private education entities where students will be at the mercy of large private entities. Greater avenues for the commercialization of education will be given access to and education opportunities may become a utopian world to many, especially for the remote, marginalized, and socio-economically backward students.

#### **2.4.8. Analysis of Privatization of Education**

Education, ever since its inception, understood as an instrument to empower an individual to live a dignified life. It aimed to form a holistic life for an individual. India, known for its holistic form of education, came across several stages of its reformation under various

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<sup>68</sup> Singh, Prem. National Education Policy for the elites (New Delhi, 22-10-2020), <https://indianexpress.com/article/opinion/national-education-policy-for-the-elites-6841211/>, last visited on 12-01-2022

<sup>69</sup> Implementation of NEP Nothing But Privatisation of Education: AIFUCTO, (New Delhi, July, 26, 2021), <https://www.ndtv.com/education/implementation-of-nep-nothing-privatisation-of-education-aifucto>, last visited on 12-01-2022

rulers, both indigenous and foreigners. Education was imparted free of cost and also several rulers in the past had taken a keen interest to educate all without making any discrimination.

Further, under the rule of the British, even though, it suffered at the initial stage, gradually it advanced towards modernization through the introduction of English as the medium. After independence, to eradicate poverty and move towards development, the state formulated several policies and made extensive efforts to educate all by undertaking several measures towards the universalization of education. The fundamental rights under the Constitution, Judiciary, and further, the RTE Act, 2009 have upheld the right to education.

Under the modern-day's education system, the policymakers and executors bestow hardly any importance on socially and economically backward categories due to their lack of political will and poor administrative capabilities in executing existing education policies. Lack of resources and poor spending for both elementary and higher education by the government<sup>70</sup> on the one hand and increased demand for education, on the other, have forced the Indian education system to venture into privatization giving rise to a hierarchy of education and division of private and public schools.<sup>71</sup>

The Annual Status of Education Report (ASER), 2020 reveals that Indian schools generally show, in the recent past, an upward trajectory of dropout rate and decline in enrolment rates, but a consistent increase of students has taken place in private schools.<sup>72</sup> Thus, in the Indian context, the policy regarding education during the

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<sup>70</sup> India Education Spending 1997-2021, macro trends, <https://www.macrotrends.net/countries/IND/india/education-spending>, Last Visited on 11-11-2021.

<sup>71</sup> Bazaz, Rabiya. Right to Education: An Analysis of the Role of Private and Public Schools in Upholding Educational Rights of Marginalized Group, 6, Scientific & Academic Publishing, 40, 42 (2016).

<sup>72</sup> Menon, Sharanya. Education in India needs an overhaul, [https://idronline.org/state-of-school-education-india-pre-covid/?gclid=CjwKCAjw8uGBhBAEiwAayu\\_9T2D1cAYBlrMGzyRzWJtoT66c5Z0IkM8uH4K43iE-JmlREypAYbt0hoCTCAQAvD\\_BwE](https://idronline.org/state-of-school-education-india-pre-covid/?gclid=CjwKCAjw8uGBhBAEiwAayu_9T2D1cAYBlrMGzyRzWJtoT66c5Z0IkM8uH4K43iE-JmlREypAYbt0hoCTCAQAvD_BwE), Last Visited on 24-06-2021.

early years of post-independence was leaning towards the public sector but as years passed by due to the financial burden and increased number of institutions including the emergence of the concept of universalization of education began to take a drive towards privatization of education.<sup>73</sup>

Twelfth Five Year Plan (2012-17) upholds the importance of the private sector and it recommends the private sector venture into a mid-day meal scheme at the elementary level, and its involvement in secondary education to effectuate the same.<sup>74</sup> Further, a venture of GATS in the education sector has modified education as a marketable commodity attracting the norms and principles of market mechanisms and giving wide avenues at the global level.<sup>75</sup>

Private schools have been kept in high esteem in line with the learning outcomes as against the public schools but within the private schools, there exists discrimination based on high-cost and low-cost schools. However, the privatization of education must have boosted the literacy rate but not much benefit to the society as a whole and especially, the poor and marginalized as illiteracy among SCs, STs, and women persist on a high scale. The State, instead of allowing the corporate or profit-oriented entities to invest their capital in education directly through their educational institutions, must compel them to set aside a percentage of their corporate income to the public or aided educational institutions, to avail the facilities of education to all without any discrimination, complying with the policy of equity and good conscience.

Quality education provided by the State exchequer would bring out not only good and valuable products but also help to establish the constitutional values in society. The government or public schools are doing better than the private schools in some parts of the country

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<sup>73</sup> Chitta, Kalyanlakshmi. Foreign Direct Investment and Higher Education in India: Assessing the Link between Internationalization, Competition and Efficiency, 18, *World Affairs: The Journal of International Issues*, 94, 103 (2014).

<sup>74</sup> Tilak, Jandhyala B. G. Higher Education Policy in India in Transition, 47, *Economic and Political Weekly*, 36, 38 (2012).

<sup>75</sup> Chitta, *supra note*, 73 at 97.



and especially, it has been proved in Karnataka.<sup>76</sup> The speed and growth of privatization of education demonstrate that soon the very intention of the education guaranteed under the Constitution will be defeated. The gap between the rich and poor will be widened with animosity and greed, and class divisions like first class and second class citizens will be made based on literacy and illiteracy in society. No doubt, education is a step towards development but this development based on universalization of education, quality, and skill-based education, and equal access and equal education opportunities would accomplish the true sense of development.

The statistics in the educational sector reveal that India is one of the highest illiteracy prevailing countries, despite its disparity in state-wise.<sup>77</sup> Education is provided both by the public and private sector and it is controlled and funded by the Centre, State, and local levels. It falls under the concurrent list where both the Centre and the State can formulate laws, rules, and regulations. It cannot be denied that the commodification of higher education with privatization derailed the universalization of elementary education and further, extended humongous support to higher education instead of elementary education.

The rapid increase in the privatization of education puts a roadblock on the elementary education of the poor and marginalized sections of India. Ever since privatization prevailed in the Indian market, the private sector had begun to grow rapidly in all spheres. Confusion persisted in the minds of the general public, about whether privatization is good or bad, and also a dilemma of privatization of education and commodification of education has continued. Therefore, a general understanding was upheld of restrictions on the

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<sup>76</sup> Rozinder, Firoz. Govt. schools do better than aided schools, *The Hindu*, (May 14, 2012), <https://www.thehindu.com/news/national/karnataka/govt-schools-do-better-than-aided-schools/article7203827.ece>, last visited on 21-12-2021.

<sup>77</sup> Annual Status of Education Report flags poor learning outcomes in schools, (Jan 15, 2020), *The Hindu*, <https://www.thehindu.com/news/national/aser-flags-poor-learning-outcomes-in-schools/article30569671.ece>, Last Visited on 11-11-2021.

commercialization of education despite the privatization of education. Undoubtedly, compelled by the financial crunch and policies of the World Bank and International Monetary Fund, India reluctantly approved the privatization through modification of its policies in the education sector<sup>78</sup> in the first place but the absence of tight regulations to monitor the privatization in education has derailed the position still further.

India has positive demographic opportunities and it needs to be fostered by quality education for all the prospective young minds. Quality education depends on school infrastructure and facilities like academic, extracurricular, and other incidental provisions to attract and motivate children for learning. Most of the Indian rural public schools lack well-furnished infrastructure not only decent buildings but even important facilities which demand the modernization of education like electricity, computers, internet, etc.<sup>79</sup> A good number of girls in rural areas drop out of school when they reach the age of puberty for the lack of decent washroom facilities in government schools.<sup>80</sup>

Lack of political will on the part of policymakers, drawbacks of the policies and poor implementation of the RTE Act, the dominance of the local language over the English language, and the inward-looking nature of public education which doesn't foster the interests of industry and economy of the day, individual growth rather than holistic growth, etc., are some of the reasons behind the popularity of private sector over the public sector.

Due to the poor quality of public schools, demand has increased to withdraw the state from the education sector and either fund private

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<sup>78</sup> Tilak, *supra note*, 74 at 32.

<sup>79</sup> Singh, Jaivir. Why rural India still has poor access to quality education? (2018), <https://www.financialexpress.com/education-2/why-rural-india-still-has-poor-access-to-quality-education/1393555/>, Last Visited on 09-07-2021.

<sup>80</sup> Murali, Janaki. Govt schools struggle with poor facilities, unskilled teachers and high dropout rates, *Firstpost* (2016), <https://www.firstpost.com/india/govt-schools-struggle-with-poor-facilities-unskilled-teachers-and-high-dropout-rates-2848972.html>, Last Visited on 09-07-2021.

initiatives or have public-private partnership (PPP) initiatives.<sup>81</sup> Even the judiciary, too, has paved the way for the privatization of education by opening the avenues of the education sector to the private entities under Article 19 (1) (g) of the Constitution regulating under Article 19 (6) of the Constitution.<sup>82</sup>

#### 2.4.8.1. The advantages of Privatization of Education

The privatization of education would bring some benefits in the form of choice, variety, competition-induced efficiency, consumer responsiveness, competition, and so on.<sup>83</sup> Besides these benefits, the capability of families to select the kind of educational institutions befitting their religious and political value system.<sup>84</sup> Some other advantages would be teacher and student ratio, smart classes and infrastructure, global rostrum, qualified and experienced teaching faculty, extracurricular activities,<sup>85</sup> choice and flexibility, skill-based learning,<sup>86</sup> parental involvement,<sup>87</sup> well-secured and more academic opportunities,<sup>88</sup> and high standard of conduct building,<sup>89</sup> etc.

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<sup>81</sup> Narayan, Venu. The Private and the Public in School Education, 45, *Economic and Political Weekly*, 23, 24, (2010).

<sup>82</sup> T.M.A. Pai Foundation & Ors vs State of Karnataka (2002), 8 SCC 481 at 593.

<sup>83</sup> James, Estelle. Benefits and Costs of Privatized Public Services: Lessons from the Dutch Educational System, 28, *Comparative Education Review*, 605, 606, (1984).

<sup>84</sup> Levin, Henry M. Education as a Public and Private Good, 6, *Journal of Policy Analysis and Management*, 628, 636, (1987).

<sup>85</sup> Advantages of Private Schools over Public Schools, <https://vsiinternational.in/advantages-of-private-schools/>, last visited on 09-07-2021.

<sup>86</sup> Advantages of a Private School Education (2019), <https://www.tcsatl.org/blog/advantages-to-a-private-school-education/>, Last Visited on 09-07-2021.

<sup>87</sup> Benefits of Private Schools, <https://www.ourkids.net/school/benefits-of-private-schools.php>, Last Visited on 09-07-2021.

<sup>88</sup> Advantages of Private Schools (2017), <https://community.today.com/parentingteam/post/advantages-of-private-schools>, Last Visited on 09-07-2021.

<sup>89</sup> The Benefits of Private Schools over Public Schools, (2020), <https://tenneyschool.com/benefits-private-school-public-school/>, Last Visited on 09-07-2021.

#### 2.4.8.2. The disadvantages of the Privatization of Education

Private education concentrates mostly on individualistic growth rather than holistic growth. The private educational institutions concentrate more on fee payment and well-performing students that serves the interests of 'market-oriented capital'. Under private schools, the students are categorized based on quality performance like commodities destabilizing the criteria of social reform. They are directed toward individual excellence rather than societal good including the holistic development of a child.<sup>90</sup> The private educational institutions earn their profit at the expense of poor families and a large number of students drop out of school due to their unaffordability to continue with the huge fee structure of private entities. Normally, the private unaided schools will use English as a medium of education and they impose exorbitant fees to get into those institutions where only the elite, rich and upper class can afford to get into such schools.<sup>91</sup>

Privatization has obstructed the implementation of the RTE too. A report published by a Hyderabad-based agency, while throwing light on the privatization of education, provides that the low-fee private schools fail to provide quality education and only 10 per cent of private schools are in compliance with the RTE, 2009.<sup>92</sup> This report and other studies conducted to find out the drawbacks of implementing the RTE, 2009 mention the element of non-cooperation on the part of private unaided schools to receive the guidelines of the state to incorporate the provisions of RTE, 2009 on the intake of 25 per cent children from the poor and marginalized class within the specified radius of their schools. The real picture at the ground level gives a very poor implementation of the RTE due to non-compliance by the private entities and also both central and state

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<sup>90</sup> Sreekanth, Yagnamurthy. Dynamics of Public and Private Sector Participation of Education: A Perspective on India and Beyond, 3, *International Journal for Educational Studies*, 159, 164 (2011).

<sup>91</sup> *Id.* at 162.

<sup>92</sup> Spreen, Carol Anne. Privatization Undermines the Right to Education in India, (2016), <https://www.unite4education.org/uncategorized/privatisation-undermines-the-right-to-education-in-india/>, Last Visited on 09-07-2021.

governments are not eager to set right the mistake and implement the RTE Act effectively.

The regional disparity and concentration of higher education institutions pose the threat of regional disparity in development also.<sup>93</sup> The role and control of the existing regulatory body seemed to be limited in nature.<sup>94</sup> Competitive learning is good to an extent but it also must be understood that it alienates holistic growth and concentrates more on market orientation and whereas public education promotes the holistic growth of an individual and society as a whole.<sup>95</sup> The Constitution of India Bill, 1895, a non-official attempt to draft the Constitution of India during the pre-independence era provides in Article 25 that education in the empire shall be free by the State, and further, Article 26 of the same bill observes the free and compulsory primary education under the patronage of the ruler.<sup>96</sup>

The State, in the wake of the privatization of education, has failed to upgrade the government schools by taking measures like employing qualified teachers, provisions of scholarships, and strong budgetary allocation to the education sector especially, primary and secondary education. It undermined fostering the already existing aided schools and further, failed to support the already existing model schools such as Sarvodayas, Navodayas, and Kendriya Vidyalayas within the public school system coupled with participation of privatization to diminish the discrimination and inequalities.

### 3. Privatization and Minority Educational Rights

Private schools can be further divided into private schools established under Article 30 (1) and schools established by private entities under Article 19 (1) (g). Both of them are two different

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<sup>93</sup> Sahni, Rohini and Kale, Sumita. GATS and Higher Educations: Some Reflections, 39, *Economic and Political Weekly*, 2174, 2178-79 (2004).

<sup>94</sup> *Id.* at 2178.

<sup>95</sup> Sreekanth, *supra* note, 90 at 166-68.

<sup>96</sup> I, Rao, Shiva B. et al., *Framing of India's Constitution* 7 (The Indian Institute of Public Administration, New Delhi, 1966).

entities and educational institutions established under Article 30 (1) are protected and the state can impose reasonable restrictions in the interest of the welfare of the minorities without destroying the character of the minority institutions. Whereas, institutions established under Article 19 (1) (g) are restricted under Article 19 (6) of the Constitution. These institutions constitute mostly profit-oriented institutions under 'occupation' like any other market-oriented or business-oriented entities.

Undoubtedly, privatization in itself is not a negative concept. Ever since the inception of education in India, private entities had existed side by side and imparted value-based education to all irrespective of one's socio-economic background. The state had taken the assistance of rich and flourishing philanthropists who generously contributed through their might and knowledge. The role of private entities during those days and present days in the field of education is entirely different. Education prior to privatization and economic liberalization hardly had any vested interest in gaining profit out of education rather they had genuine interests to impart knowledge and further, extended their support to the state in educating the common citizens without differentiating between the poor or rich and particularly, the marginalized and disadvantaged or backward community people.

The minority educational institutions established under Article 30 (1) are also private entities belonging to minority communities but these minority establishments are created with the genuine interest of promoting education to their community and also to the general public. The minority community members and mainly, the Christian minority community members have established educational institutions as their mission of life before the state could think of any venture in the field of education. The state had extended its support to the minorities in establishing their educational institutions through financial aid and other ancillary support whereas, after the privatization of education under the new economic policy, the state began its leniency towards the private entities and reduced its support to the minority-run institutions to privatize the whole education sector. Already it has privatized higher education and it is on the

verge of privatizing primary and secondary education through its new policies and programmes.

The initiatives of privatization of education are felt by the minority-run institutions in various ways, namely, the hidden agenda of political leaders of certain political parties to denigrate the minority educational institutions through its vindictive policies and impugned legislation, rules, and regulations, false allegations of conversion and other illegitimate accusations against the administration of minority institution to force them to close down, harassment by the departments in the name of departmental procedures, poor working machinery established to protect the minority educational institutions, etc.

#### **4. Conclusion**

Undoubtedly, education qualifies a person to live better, participate in democratic exercises, and utilize basic knowledge to motivate themselves to live a dignified life but financial and other constraints hamper the marginalized and backward people to meet the requirements of private schools and abstain them from getting even primary education. Affordable children avail themselves of facilities of private schooling by paying huge fees and other required things but socially and economically backward children are exempted from this privilege. There exists a huge gap between the rich and poor and the state allows this discrimination and inequalities among these groups by providing lots of avenues to the private sector to continue with it.

Minority institutions established under Article 30 (1) are altruistic educational institutions and they cannot stand by themselves, unless supported by the State and its agencies, as their main motive is to impart education to the marginalized and disadvantaged categories of society with the support of the State. Further, the State cannot treat minority educational institutions equal to those of purely private entities established by the private citizens under Article 19 (1) (g) for 'occupation' but unfortunately, the State, from the point of view of majoritarianism, is attempting to compromise its role by becoming

the protector of private educational entities instead of protecting the minority educational institutions and thus, undermined the minority-run institutions through various impugned legislation, policies, rules, regulations and also through the indirect ways of harassing them under false allegations and accusations to denigrate their integrity.





# **RETRIEVAL OF WAQF PROPERTIES FOR PROMOTION AS A RESOURCE FOR THE DEVELOPMENT OF MUSLIM AND OTHER DEPRIVED BENEFICIARIES**

*Dr. Malika B. Mistry\**

## **Introduction**

It is a well-documented fact that Muslims in India are economically a backward community [Sachchar Committee Report (2006) and Mahmoodur Rahman Committee Report (2013)]. Waqf is a charity institution in Islam which is devoted to Allah i.e., God to be used totally for the uplift of the poor Muslims. It can also be used for the uplift of the poor non-Muslims as Islam preaches that all humans have come from the same mother and father i.e., Adam and Hawwa.

A large amount of waqf lands exist all over India. Unfortunately most of them are occupied either by the government or the private parties. Many times Muslim care takers of the waqf lands and properties, themselves are crooks who have sold them illegally for selfish gain at a pittance of the market value. They have neither fear of God nor self-respect or shame. Many times Muslims are not organized. They cannot do proper documentation. Somehow if we can improve our character, be bold, dynamic and sincere, we can get back at least some of the waqf lands which if exploited, can certainly lead to economic uplift of the community. From this perspective, retrieval of waqf lands and properties becomes very relevant and urgent.

The aim of this paper is to document stories of three valuable waqf properties in Pune city, Maharashtra. Two properties could be retrieved and fate of one property may not be considered a success.

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**Story of Alamgir Masjid, Survey No. 5, Kondwa Budruk (Big Kondwa)**

The researcher interviewed Salim Mulla, a waqf activist from Pune, who along with others struggled to get back this particular waqf property occupied by illegal occupants.

In 1656, emperor Aurangzeb (Alamgir Badshah) gave a *sanad* for the mosque in Kondwa Budruk. This mosque is known as Alamgir Masjid. This fact is recorded in Charity Commissioner's record (2004).

The property of this mosque is recorded in alienation (Inam Commission) around 1850 in Permanent Class III Devasthan Property (46.4 acres). This property was registered with Waqf Board in 2009.

Till hundred years back continuous prayers were performed here. Later waqf land mafia stopped prayers here. In 1987, the first deal to sell the land was done. Slowly they sold the land illegally in collaboration with revenue officers, advocates and Registrar. For sale purpose Mutawallis were shown as the owners of the waqf land.

Whatever documents the waqf activists collected were from the government records. Almost for three years (from 2016 to 2019) they were collecting them. To collect further necessary documents, research was done on what happened, how the deals were done, what facts did the culprits had hidden etc. They submitted all these facts to Tahsildar, Collector, Waqf Board, PM and CM's offices and requested these authorities to take necessary action against the members of waqf land mafia as there was a huge scam of waqf land. They pursued the authorities. After a thorough investigation, the Tahasildar in December 2019 gave an order that this is waqf land which belongs to Masjid. He cancelled all the sale deeds mentioned on the 7/12 extract stating that this is Permanent Inam Land class III which is now Class II in the digital form. After this the Talati made changes in the 7/12 extract that the waqf land was Devasthan

Inam Land. Rest of the procedure is going on. So far there has been success in retrieving the land from the mafia.

How did they succeed in retrieving the waqf land? What struggles they had to make? In their own words, it is as follows:

Mulla said, “There are scores of encroachments on the land including mobile towers, hoardings and other commercial activities going on in the land. We have demanded removal of all encroachments on the land”. As a result Pune Municipal Corporation’s (PMC) Anti-Encroachment Department demolished a 4,000 square feet ground plus one unauthorized structure in the Alamgir Masjid Trust area.

On June 17, 2022, the Pune Waqf Board had lodged a case against eight persons for threatening Waqf Board officials in the presence of police when the team had gone to erect sign boards across the area.

Former Chief Commissioner A.J. Khan, another waqf activist informed, “We have been after the Waqf Board for removal of encroachments since November 2016. It is incumbent upon the board to remove illegal occupation of waqf properties and the power under Section 54 of Waqf Act has to be exercised expeditiously. The delay in doing so creates multiple titles due to subsequent sales as it happened in this case – survey no.55. Yet notice under Section 54 is yet to be issued even after almost six years after application. The demolition is on account of our keeping track of the activities on this land, informing the board members and interacting with the district revenue, police, municipal and registration authorities”.

Now the process of getting back the land from the illegal buyers has started. Care taker trustees will be appointed by the Waqf Board. Ninety per cent of the job of getting the trustees appointed is done. Now people ask these activists, “Why you want to become trustees?” They reply, “Anybody who wants to become a trustee is welcome but should show their special talent, sincerity and honesty to take best care of waqf properties”.

In 2019, permission to perform prayers at Alamgir Masjid was given. When believers wanted to pray, some goondas came and threatened to stop prayers. Activists are pursuing legal action. Once the legal procedure against goondas is completed and the trustees are appointed by the Waqf Board, the prayers will restart and continue.

What are the plans for future use of this big waqf property? Salim Mulla and others want to use this precious land to establish educational institutions, health facilities, hostels, shelter home, warehousing etc., to sustain the waqf institution. Also they intend to set up a Waqf Research Institute. Their dream is to establish a national skill and vocational university for Muslim minority. In this respect, a proposal was submitted to Government of Maharashtra. Government readily gave a provisional approval and giving of a Rs.100 crore first time permanent grant was announced by the then Finance Minister of Maharashtra.

What is the advice by Salim Mulla and other activists to those who are fighting to retrieve the waqf properties? Salim Mulla avers, “We should be always positive, do our job sincerely, honestly with perseverance and patience. Positive result will come”.

He further informed that this is the first example in Maharashtra where without judiciary, using power of administration, land record has been brought back to the original title viz., as waqf land.

Court was not involved. Administrative culprits were identified. Around 2000 letters were written to different authorities. 231 illegal sellers and buyers were called to give proof that they owned the land. None of them could prove because they were on the wrong side.

What were the hurdles the activists had to face in their struggle? Many, for example, indirect threats to stop the work, money was offered to stop the work, false complaints were filed against the activists. Also they had to face allegation that they were misusing the RTI Act.

If the Waqf Board, government authorities, ulama and public work together in peace and understand the concept of waqf and define the beneficiaries of waqf, many waqf institutions will run smoothly, benefits for the community will start flowing and further increase the revenue for the government.

### **Story of Adambaug Masjid, Swargate**

This story is narrated to this researcher by Mujeeb Patel, a young social worker and activist from Pune, who was very active in the effort to save this waqf property from being taken over by the PMC but could not succeed.

In 1924 a widow from Misgar Muslim community donated as waqf the above piece of about one-and-half acre land for building a masjid. (Misgar refers to those people in Maharashtra who manufacture brass and copper utensils and sell them. Today hardly anybody is in the occupation of Misgar. According to her wish, it was named as Adambaug Masjid. After the masjid was constructed, a board for its management was formed by the Misgar community. This board built some shops around the masjid to earn enough revenue to pay salaries of Imam, Muazzin and to maintain the masjid for paying electricity bill etc. Shops were given on rent (This is the situation with many mosques in Pune). In the past, it was also used as graveyard. But not many graves openly existed here.

In 1980s, Pune Municipal Corporation brought reservation on Adambaug Masjid trust area for developing a garden. A legal clause is that on waqf property no reservation can be done. **Municipal corporation violated this by doing reservation on waqf land.** Once Waqf property is registered under the Waqf Act, 1995, no local body has any right to implement reservation on any waqf property.

Another legal clause is that within 500 meters radius of an existing garden, another garden should not be built. Here a huge Peshwe Garden exists. One more legality is that when reservation on land is laid by an authority, within 10 to 12 years, the reservation should be carried out for the said purpose. It may be any kind of reservation,

say for public utility, fire brigade, garden etc.) **In case of Adambaug Masjid area, it did not happen.**

When a property is over taken by government authorities, compensation is paid. It is of two types. One is in the form of TDS (transfer of development rights or FSI i.e., floor space index). The other type is that an equal amount of land must be given as compensation. No compensation was as yet given in case of Adambaug Masjid area.

When Muslims realized this, they protested against this injustice by taking out a rally of 20000 Muslims. Ramesh Bagve, who later became MLA, from Congress Party, Parsuram Wadekar, the then President of Republican Party of India, took part in this rally. Also many Ulma-e-Deen (religious leaders i.e., Maulanas) participated in this rally. The rally reached PMC office. Leaders of the rally met the Municipal Commissioner. They demanded status quo for the Adambaug masjid area. He stated that since all the procedures were completed, PMC cannot go back and give status quo. Instead PMC can give land. They provided equal area of land in another area viz., Salisbury Park. Then PMC developed a full-fledged garden on the waqf land taken over by it unjustly.

The story does not end here. The land given as compensation was next to a cremation ground of Hindus and Lingayat Samaj, which is about 6 kilometers away from the waqf. The land given to Muslims was converted into graveyard. Now the purpose of masjid is lost. Who will go into the grave yard to offer namaz five times in a day?

The trustees of Adambaug, Masjid approached High Court to seek justice to regain the land i.e. to get an order to lift the reservation and hand over the land back to Adambaug trust. The matter is pending in the High court. May be justice will be done in favour of the Masjid.

It is also said that the previous trustees of Adambaug trust were to some extent responsible for this mis-hapenning. Some trustees took TDR from PMC. They have done wrong.

It is also said that a prominent Muslim leader from Pune, who heads a huge educational complex, is to some extent responsible for Muslims to lose Adambaug area. He mediated between PMC and Adambaug Masjid trustees to close the matter. Matter is not yet closed. It is pending in the High Court.

A prominent member of Misgar community, who was involved in this struggle, informed that he feels very sad that this prime land of Adambaug Masjid is taken away by the PMC. Today it is a hot property. If it were in the hands of the Muslims, it could have been developed into commercial complex with high returns and the income generated could have been used for the uplift of the Muslims in Pune city.

Another prominent member of Muslim community from Salisbury Park informed that PMC wanted to give a flat in place of the taken over property to Muslims to pray in the nearby area of Swargate. One flat in a residential area was suggested. But parking was not available. Also it seems that there was some dislike from the Hindu Brahmin community who mostly reside in this area. So flat was not given to Muslims to offer namaz. According to him, PMC wanted to take over the one room masjid also. The matter pending in High Court is regarding this one room masjid only. Others contradicted him.

As of today, Adambaug Masjid does exist aside the garden in the form of one room simple Masjid. Muslims do offer namaz here five times a day. Most of the Muslims offering prayers come in this area for their work. Mostly they reside in far off areas.

### **Story of Makke Shah Masjid, Deccan**

Below we narrate the story of Makke Shah Masjid, Deccan. Name of the trust is Haji Makke Shah Masjid Public Trust, Pune. The property of this trust is in two parts: (1) Survey No.744, final plot no. 257, Shivaji Nagar and (2) Survey No.174, Narayan Peth. Old survey no.156, Narayan Peth. The existence of this trust is recorded in the Government Records from the year 1875.



The original area of survey no.744, Shivaji Nagar, Deccan was more than 9000 sq.ft. in which a Muslim grave yard i.e., qabristan and a masjid existed. In this qabristan Haji Makke Shah was also buried.

As the development of the city, road widening and expansion of Lakdi Pul (Sambhaji Bridge) was taking place, PMC acquired the trust's land from time to time. This process continued from 1916 to 1973. In this process the Qabristan and Makke Shah's grave were taken over. Presently only 253 sq. mtrs. area is remaining on which the old masjid existed and where the present structure is reconstructed.

The above two properties were occupied by Amirbi Sayed, Sayed Karim and Sayed Yasin, Syed Ismail etc., as their private property. They gave it on rent for both commercial and residential purposes. The rental income was mostly used by them. Also road widening compensation was paid to them. This is misappropriation of trust property.

Therefore, a case was filed in Charity Commissioner's Office by Shaikh Raj Mohammed, Babumiya Fatumiya and others against Amirbi Sayed and others which was challenged in the District and High Court and finally on 19.12.1955, the Court issued an order that Survey no.744, Shivaji Nagar and Survey no. 174 (old CTS no.156), Narayan Peth, Pune-30, was declared Public Trust with Registration No. B 162/1954.

The court directed that Sayed Ismail Sayed Karim from the family who occupied the place will be a trustee for life but it will not be hereditary and out of the three trustees appointed by the District Court, two will be from the community. The trustees will be appointed by the District Court (presently by the Maharashtra State Waqf Board.)

On 6.9.1961, three trustees (1) Sayed Yasin Sayed Karim (2) Shaikh Raj Mohammed Abdul Rahim and (3) Babumiya Fatumiya Attar were appointed trustees. Sayed Ismail Sayed Karim expired in 1971. The cases were handled by Advocate Kazi of Bhawani Peth, Pune.

In 1961 the Panshet Dam developed breach. It led to devastating floods in Pune city. Many properties were destroyed beyond repair. Many were washed away. The Lakdi Pul was washed away. The Makke Shah Masjid, which was adjacent to the river was also washed away.

After the floods stopped, citizens started reconstructing their properties. The trustees also took recourse to legal procedure for reconstruction of the masjid. This required a sanctioned plan from the Building Department of the PMC. It started giving excuses one after the other and finally refused to sanction the plan saying that there never existed a masjid on survey no. 744, Shivaji Nagar. So the question of giving permission for reconstruction of the masjid does not arise.

After many meetings and discussion with the PMC authorities, it appointed Naik Commission, a retired judge to enquire into the details of the masjid. The Naik Commission gave a negative report. In the meantime, Sayed Yasin Sayed Karim and Babumiya Fatumiya expired. They were replaced by Jalil Khan and Latif Shaikh on 8.5.1971. The trustees filed a suit in the court in Pune against the PMC in 1972. The court after carefully examining all the official documents from both sides, issued an order in favour of the trust and directed PMC to sanction the masjid plan in 1984.

PMC went in appeal against the court order to the District Court in 1984. As the trustee Jalil Khan expired, Shaikh Raj Mohammed Abdul Rahim gave responsibility to Sajid Jalil Khan and Shah Suleman Shaikh to look after the masjid and the related work under his supervision. The court matter was pursued with dedication by Advocate S.A. Rehman. Finally on 16.11.1998, the court ordered that it is the trust's right to reconstruct the masjid and the PMC cannot deny this right and permission should be given to the trust to reconstruct the masjid.

In the meantime, new trustees were appointed by the District Court: (1) Noor Mohammad Raj Mohammad, (2) Sajid Jalil Khan, and (3)

Shah Suleman Shaikh in 1994. This trusteeship is renewed from time to time.

Thereafter a fresh reconstruction plan of masjid was submitted to PMC Building Department for sanction according to new rules. In 2000, the State Government made it compulsory for all religious places to obtain NOC from Home Department and Urban Land Department. After many hurdles, NOC was given by the State Government. Even after the NOC was obtained, there was opposition to construction of masjid. Therefore, in 2012 a peaceful dharna was organized by the trustees and the citizens for implementation of the official order. The trustees expected around 70-80 people for the dharna. On the day of dharna, more than 20,000 citizens from all walks of life participated in the dharna and demanded justice. Finally the government provided the police protection till the work was completed in January 2013.

In the meantime the trustee Noor Mohammad expired. He was replaced by Dastagir Mastan Bagban. Another trustee Shah Suleman Shaikh expired on 30.5.2013.

There were some encroachers on survey no.744, Shivaji Nagar, where masjid was reconstructed. They claimed that it was their ancestral property. Trustees did settlement with some of them and got them vacated but Asif and Shakil Tajpir Shaikh, the encroachers, started harassing the trustees by filing false FIR for robbery, molestation etc. Trustees complained against them under section 54 of Waqf Act.

About property at 174 (old 156) i.e., 5400 sq.ft. at Narayan Peth, a qabristan existed. It was closed for burial by PMC in 1970. One of the trustees Abdul Latif Shaikh applied to the trust to give him this plot on lease. For some years he gave rent. After that it was sublet to others and started collecting rent and deposits from them. The trust received no rent from him. After he died, his sons took charge of this trust property. They too never paid any rent to the trust. On the contrary they were collecting rent from those to whom they had sublet the property. The trust requested them to hand over the property. They agreed but at the last moment refused.

They too were given notice under section 54 of Waqf Act. They appealed to the Tribunal and the High Court against the Waqf order to vacate and hand over the trust land to the trust. They ruled in favour of the trust and the encroachment was removed by the Collector, Pune on 21.9.2019. On 4.1.2020 encroachment at 744, Shivaji Nagar, Deccan was removed.

Still false cases are filed by Asif/Shakil Tajpir Shaikh, Shabana Asif Shaikh, Shahnoor Shakil Shaikh who claim it to be their ancestral property as their maternal grand-father had claimed. As they could not prove anything, the cases are still pending in the court.

As of today the legal possession of both the properties is with the trust. Very soon trustees plan to provide a prayer hall for the ladies within the masjid area at Deccan. There are a number of hospitals, colleges and commercial offices in this area and the Muslim ladies working here can come and offer namaz in the masjid. The trustees aim to use these premises in different ways to preserve the true values of Islam in the original form and pass on the same to coming generations.

The Trust tries to cater to the development and secular needs of the community. It provides overnight stay in masjid to poor students and needy Muslims. It gives food for *Iftar* and *Sehree* during Ramzan to the needy. Free study area is available throughout the year to the scholars. Further, it provides free marriage counseling, legal, educational and medical guidance to the community.

The Narayanpeth property is under the D.P. plan of the PMC. The trust plans to utilize this property for commercial and social purposes such as education, technical courses, health facilities etc., for the uplift of the community.

In the struggle to retrieve the waqf property, a number of persons and social organizations rendered unrelenting support. The trustee Sajid Jalil Khan, who narrated the story of this successful struggle and who continued this struggle right from 1984, advises that Muslims should have strong faith in Allah Almighty, work hard, do proper and

strong legal work, focus on the aim and the way to achieve it under Shariah and government laws for the benefit of humanity, by understanding laws properly without expecting anything in return but God Almighty's pleasure. Then success will follow.

### **Recommendations**

1. First of all awareness about concept of waqf and waqf properties has to be developed among Muslims.
2. In this respect Muslims need to be organized.
3. Proper documentation of available waqf lands and properties must be undertaken on an urgent basis.
4. Waqf land and properties' retrieval has to become a mass movement.
5. Rigorous research is required to retrieve the lost waqf lands and properties.
6. Also legal battles have to be fought to retrieve waqf properties.
7. Activists working in this field need to be provided with all moral, physical, emotional and other types of support and resources to retrieve waqf lands and properties and develop them for the uplift of poor Muslim women, youth, old and under privileged.

### **Conclusion**

As of today to retrieve waqf lands and properties seems to be a Herculean task. However, with wisdom, daring, sincerity and struggle, it would be possible to retrieve them. After retrieval too financing has to be arranged and they need to be developed. Then there is every chance that Muslim community will attain prosperity and also bestow prosperity on other under privileged groups such as Dalits and Adivasis and poor Indians.

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# TEACHING AND EXPERIENTIAL LEARNING IN LAW 'NEED FOR CHANGE AND ADOPTION OF NEW APPROACHES TO LAW TEACHING'

*Dr. Babita Singh Parasain\**

## Introduction

Critical thinking and analytical abilities are the most crucial qualities of human mind that are enhanced through constant studies in various disciplines, law being one of those noteworthy subjects relevant to the thought. Law and Legal Studies are the subjects that enable order in the society and make people aware of their rights and responsibilities as good citizens for doing their best in national interest. It is also important to say that legal norms, as they prevail in the human sphere, hold such importance only when they are contemporarily relevant to the society and caters to the societal needs.

A very eminent jurist has stated –

“We cannot allow the dead hand of the past to stifle the growth of the living present. Law cannot stand still; it must change with the changing social concepts and values. If the bark that protects the tree fails to grow and expand along with the tree, it will either choke the tree or if it is a living tree, it will shed that bark and grow a new living bark for itself. Similarly, if the law fails to respond to the needs of changing society, then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth. Law must therefore constantly be on the move adapting itself to the fast changing society and not lag behind”.<sup>1</sup>

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<sup>1</sup> Justice P.N. Bhagwati in *National Textile Workers' Union v. P.R. Ramakrishnan* (1983), 1 SCC 228; emphasis added.

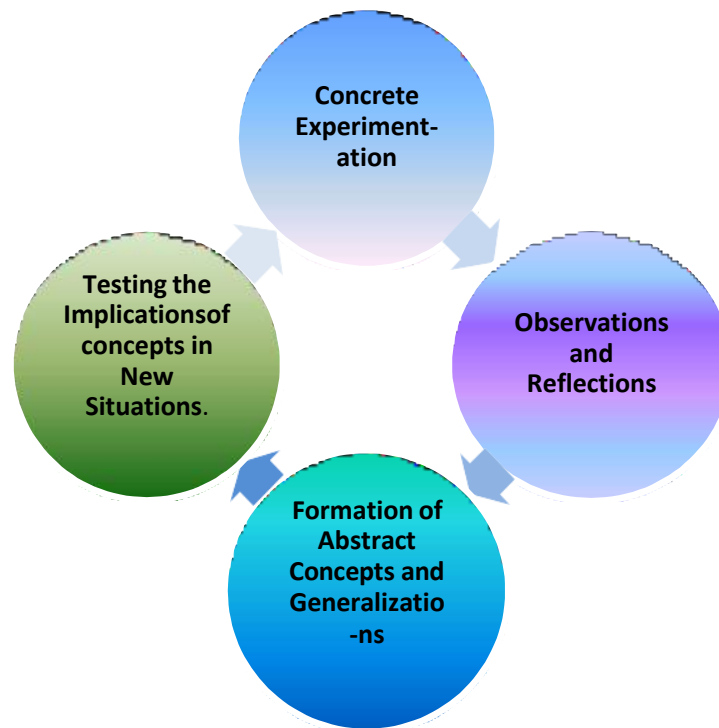


The quotes above are a testimony to the fact that the responsibility of law, both as a science and as humanities, is more towards reflecting upon as well as responding to the contemporary human needs for any times. It is now a well-established fact that law must assimilate all aspects of experiential learning in its approach towards practical as well as theoretical education. On this premise, the concept of experiential learning holds a deep significance towards achieving the desired goals as it is the process of learning through human experience and can be precisely defined as "a learning that is imbibed through reflection on behavioral action of 'doing'. Through our learning process, we become predictive and futuristic as we comprehend the results well before time. And thus, through this process, we also come to know what are our lacuna and how we can improve upon them. The concept of experiential learning explores a cyclical pattern of learning from Experience through Reflection and Conceptualisation to Action and so on to further experience. This process is widely known through Kolb's learning cycle. According to Kolb, experiential learning can be defined as a learning process where knowledge results from the combination of grasping and transforming an experience. Kolb suggested that learning requires the acquisition of abstract concepts that can then be applied flexibly in a wide range of situations.<sup>2</sup> Could it, then, be said that experiential learning is more organic in nature as it involves a combination of mental and physical capabilities through human intellect, emotions, instincts and experiences!

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<sup>2</sup> Growth Engineering; What is Kolb's Experiential Learning Theory; <https://www.growthengineering.co.uk/kolb-experiential-learning-theory/> (visited on March 26, 2023 9pm).

**Image of Kolb's Four-Stage Experiential Learning Cycle<sup>3</sup>**



Concrete Experimentation → Observation and Reflections →  
Abstract Concepts and Generalizations → Testing the  
Implications of Concepts in New Situations.

The term 'Learning', however, cannot be contained in formulations or specific terms. It could be academic learning, spiritual learning, or simply learning through the life and its experiences; all could involve learning through behavioral action. This finds a relevant and simple example in parents conscious and sub-conscious teachings to their offspring. Each parent through their respective cycles of learning in their formative as well as matured years attain a wisdom (in their own

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<sup>3</sup> Kolb's Four-Stage Experiential Learning Cycle (Image designed by the author).

environs of understanding) and once their child is born, as a new situation, they, consciously or at sub-conscious level, test and transform their own enhanced learning into the process of imparting that conceptual knowledge to their offspring. This cyclic pattern of learning could be in more than one cycle or multiple cycles. Each time, after completion of a cycle, an enhanced learning at zenith, that is then tested on new subjects or situations. In terms of academic learning, from the learner's point of view, it thus shows that a learner or the pupil needs time to understand and reflect upon or discuss the learning he has experienced. The concept and pattern of the learning should encourage students to build a kind of knowledge (intense learning) that is an outcome of practical positives of learning and not just replication in a repetitive manner.

The youth of today wants to understand logic and reasoning behind every action as they are, more inquisitive with reasons behind injustices and apathies than the earlier generations. Hence, experiential learning of an educator combined with students' inquisitiveness can bring a highly positive outcome in achieving higher goals. However, legal education, today, has become a more challenging task keeping in view the transition process resulting in human interface with technology and fast changing world. This certainly needs a re-thought of what we do, how do we enforce and how, then, we achieve the outcome. As the topic warrants, some proposals revisiting the legal education system for reforms are being made.

### **New Proposals in Legal Education Reforms**

For the purpose of introducing reforms, legal education can be divided in four broad categories:

1. Practical Legal Education
2. Theoretical Legal Education
3. Techno-Legal Education
4. Creative Legal Education

## **1. Practical Legal Education**

The practical or behavioral aspect of legal education is a very important facet of learning being emphatically impressed upon in the present times. Some more suggestions to the already existing ones in the legal education domain could be incorporated:

- ‘Attachment Programmes’ of Students for Training. Although there have been attachment programmes of law students with lawyers, Judges, legal firms etc but one important aspect left out is the ‘Village Panchayats’ and the ‘District Administration offices’ as there are many legal-administrative matters coming before them on which students of law could provide assistance as interns, further, people living in villages could also be provided legal counseling by the law students in matters of their property, marriages, inheritance, women rights, safety of old age people or any other social issue. This would prove to be beneficial for our students, the administration as well as the people. Almost all cities of India are surrounded by rural as well as urban villages where district administration plays a vital role in regulating the societal needs, the law students could be attached in such administrative units. Attachment/Internship Programmes with State Legislatures and the Union Legislature are also important aspects. In addition to the above, attachment with the state legislatures and the union legislature as part of their curriculum, for an understanding of the legal and legislative processes and procedures, could also be of great help. Understanding the legal system and its problems from the grass-roots level i.e., panchayats, up to the apex institutions of law-making shall be very beneficial for our youth in any phase of their career in life.
- In addition to that, ‘Exchange Programmes with Foreign Schools’ should be a regular practice. With the advent of online functioning, exchange programmes between different law schools globally combined with actual visits, organising

debates on socio-legal issues, symposia, mutual classroom discourse etc. would give a new perspective and exposure to the legal trends and developments in the outer world.

- ‘Individual ‘Tutorials’ by the Faculty for students after the regular classes in the day needs to be imparted within the institution for personally attending to the students’ needs and requirements for their clear understanding of legal concepts and interpretations. Some neo-concepts in the practical aspect of law education are proposed as below:

- **The Concept of Law Workrooms**

On the front of practical learning, a new concept of Law Workrooms is proposed for a more clear, precise and practical understanding of the subject of law through imbibing the learner’s approach of ‘doing’. These Law Workrooms, proposed to be established in the premises of the law colleges would be practical and technical laboratories imparting techno-legal as well as practical education to students in the form of practical studies.

- **Legal Skill & Language Atelier**

A proposal is also being made for a separate section of ‘Legal Skill & Language Atelier’ that would enhance skills of students in legal language specially designed through years, Presentation Skills, Personality Development and general discussion on legal glossary, terminology, French and Latin words, Indegenous words through verified dictionaries and thesaurus and also their regional language equivalents for encouraging medium of instruction in the regional languages as per the National Education Policy, 2020 in the law institutions located in different states.

The functioning of the Law Workrooms and the Legal Skill & Language Atelier shall be described in the concluding part of the paper.

## **2. Theoretical Legal Education**

Importance of theoretical knowledge as a strong foundation cannot be denied. This is like providing a healthy earth (soil) to a growing sapling. Law education is not limited to lawyering. It has many facets as being a judge, an educator/professor, a researcher, a counselor or a bureaucrat. Teachers may concentrate upon identifying students' aptitude for research. In this way, research interest needs to be inculcated amongst those who have the potential. Also, sometimes, it is observed that students do have the potential but do not understand the 'right direction' in which they should proceed. For this purpose, there should be a dedicated mechanism for counseling on research topics by experienced faculty members on important contemporary subjects. Here, the experiential learning of the teachers would be of immense help to the students. Once a research is undertaken, it is not the subject-matter merely of the department, the institution, or the country; rather it attains the status of a work under international domain. Each research at doctorate level is, therefore, a global endeavour and should be approached from that perspective only. It is an exclusive creation of a scholar vis-à-vis the whole world. A good research leads to academic credibility and standing in the global academic forum, thus, requires a dedicated mechanism for the students, by the law institutions, of identifying, counseling, enabling and delivering.

A researcher who systematically brings out social or legal issues that have a possibility to be addressed through legalities, or who studies the effect of the law upon socio-political and economic world, needs to be more equipped with knowledge. With these objectives in mind, the educators need to highlight problems of legal and social concern hitherto ignored, in subjects of contemporary importance like developmental studies, varied climate needs of people/communities, environmental degradation, awareness of medical sociological issues, possibility of creating subjects like cyber philosophy, medical negligence, techno-legal concepts etc., relevant to the human ecosystem. Facilities to research scholars in institution must be expanded in an advanced manner keeping in view the significance of each research project of human relevance.

Law, as a subject even at Bachelors level, cannot remain aloof or isolated in an ivory tower. Multi-disciplinary as well as Inter-disciplinary studies on subjects like Environmental Science, Sociology, Psychology, Economics, Science, History, Cost Benefit Analyses, Development Theory, Public Policy and Social Statistics should be amalgamated with legal studies as a need of the times. One of the upcoming disciplines like the Neurolaw has been under consideration – ‘Neurolaw’ as an interdisciplinary field links the human brain to law, facilitates the passage to better understanding of action and behavior of humans and can prove to be having near accurate results; it, thus, calls for a need to be incorporated in neuroscience achievements in legal studies. Since 1990’s, this emerging field, by study on human nervous system as a new dimension of legal phenomena, leads to a more precise explanation for human behavior to revise legal rules and decision-making.<sup>4</sup> Many of the legal judgements, arguments, discourses and consequences are closely linked with human neurological studies. Subjects like Neurosciences could prove to be beneficial in furthering the cause of law and its functioning. The common quotient between law and neuroscience is the human mind, that could give more precise conclusions in the entire legal domain.

Keeping in view the precisions with which human intelligence is performing, now it is time to have Super Specialisation in different branches of law on the lines of Super Specialities in Medical Sciences, Engineering or Life Sciences. As for example, in Environmental Law, different legal studies specifically on tropical forests laws, cold temperate forests laws, or hot humid forests laws; Or Laws of different topographical regions could be undertaken as each exhibits different geographical, and ecological conditions.

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<sup>4</sup> Neurolaw: A brief introduction; Author: Arian Petoft; *Iranian Journal of Neurology*, 01 Jan 2015, 14(1):53-58 PMID: 25874060 PMCID: PMC4395810 at <https://www.bing.com/search?q=Neurolaw%2C+> (visited on March 25, 2023 AT 4 PM).

- **Centre for Comparative Global Studies & Implementation in Legal Pedagogy**

On theoretical education front, there needs to be a separate study section on pedagogy or methodology of teaching and curriculum development in every institution that should study the education patterns and latest trends of all prominent national and international universities/institutions of Law, and, recommend on different ways of teaching in changing new scenario as per the nature and requirement of the institution. The entities, within the university/institution, undertaking such kind of studies could be named as 'Centre for Comparative Global Studies & Implementation in Legal Pedagogy'.

### **3. Techno-Legal Education**

Law requires intelligence, objectivity and creativity and in that respect, it complements subjects like technology and its branches. Keeping in mind the inevitable presence of technology in our lives, the foremost need is to fully acquaint the students with computers, various applications, software programmes, and ancillary subjects. For this purpose experts from the technology sector may be engaged as Teachers/Professors, Consultants and Advisors for educating the students. Students with a knack in technology driven subjects should be honed for such education. These efforts, at the outset, calls for establishment of a Separate dedicated 'IT & Law Department' within the Law Campuses dealing with all aspects of technology in its combination with different subjects of law.

- **Teaching Artificial Intelligence for Future Professional Requirements**

Artificial Intelligence (AI) is a phrase coined by John McCarthy, an American computers and cognitive scientist and one of the founders of the discipline of artificial intelligence. The Oxford Referencer defines Artificial Intelligence as, 'The theory and development of computer systems able to perform tasks normally requiring human intelligence, such as visual perception, speech



recognition, decision-making, and translation between languages.<sup>5</sup> Artificial intelligence can play a vital role in disposing of cases in expediting the due diligence process. In the field of legal research, lawyers can use machine learning technology to get unmatched insight into the legal world in a giffy. Here it is pertinent to mention that although the legal services sector is one of the most widespread sectors globally, nevertheless, due to its conventional approach in dealing with cases, it is also said to be not updating itself on utilizing technology for its own facilitation. India being the largest democracies with a broad based legal system and with the lengthiest Constitution and most varied laws of the world, needs to vitally use AI in law in order to deal with its legal challenges in the vibrant scenario. A good example to this is Kira Systems, a Canada-based patented machine learning software provider, that improves the efficiency, accuracy and speed of a legal corporate's functioning system for legal services and can handle a lot of things like a legal assistant which saves time and effort. Kira is a patented machine learning software that identifies, extracts, and analyzes content in your contracts and documents with unparalleled accuracy and efficiency. It easily finds and uses trusted information from your contracts and documents.<sup>6</sup> Hence, it expedites the due diligence process. It is also stated that AI can give near judgement solutions or give a hint for solution. AI as a growth engine is being considered by the governance by appointing a task force to study the limited social benefits of the same in country's economic, political, education and legal processes etc., which, in turn, has recommended for an Inter-Ministerial National Artificial Intelligence Mission.<sup>7</sup>

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<sup>5</sup> Artificial Intelligence; Quick Reference; <https://Www.Oxfordreference.com/>; (visited on April 11, 2023 at 1.55 pm).

<sup>6</sup> Kira; at <https://kirasystems.com/how-kira-works/> (visited on April 11, 2023 at 2.20 pm).

<sup>7</sup> INDIA; Ministry of Commerce and Industry, at <https://indiaai.gov.in/government/ministry-of-commerce-and-industry>; visited on 13th April, 2023 at 12 pm.

As a caution, it is most pertinent to mention here that AI need not be used by students while attaining their education but needs to be only “taught” in combination with law for future readiness of students as professionals in various sectors. For such futuristic application of technology, it is pertinent to understand that at academic level, two corresponding knowledge environments need to be developed – First, a law based deep foundation and second, an advanced technological know-how. On these lines, following suggestions are made:

1. The law institutions and schools that do not offer a course in combination of Law with Artificial Intelligence, should work upon for curriculum development in consonance with technology institutions of the same.
2. The institutions that have initiated the process of teaching AI with Law should now proceed with higher technologies and their relevance to law studies by revising their existing syllabus in order to attract more students.
3. More allocation of funds on this discipline must be sought by the concerned law institutions as it is the demand of the times.
4. The Law making agencies must issue Guidelines for imparting education in Law and AI but this should have feedback from the academia as well as the young students.
5. Study areas as diverse as patent law, criminal law, torts, human rights, climate change, healthcare law, predictive analytics, finance law etc., to be considered in the growth and development of AI and Machine Learning Technology.
6. There is a requirement for Law Institutions to continue to improve interdisciplinary collaborations and partnerships with other university departments especially those that are

excelling in the field and can provide expertise such as the IITs in India, National University of Singapore, the MIT in the U.S, University of Oxford or Stanford University etc.

7. There needs to be continuous dialogues, conferences and participation in trans-national discourses, seminars and workshops between the Law Schools and Technology Institutions.
8. The Schools that work diligently on creating Artificial Intelligence & Law axis must be provided impetus with Prizes/Awards and better funds for encouragement.

#### **4. Creative Legal Education**

Creative writing is a part of the legal domain for without this, law shall remain incomplete. 'Legislative Drafting' involves the application of both the left and right side of the brain i.e., analytical ability and creativity at the same time. Efficient drafting in Laws needs to be practised in order to become a good draftsman. It is a discipline which can be taught at practical level. Each student of law needs to know how to write and draft a law. This would enhance precision and foresight. In addition to that Legalese, the Legal Language is a standardized language and is distinct from our ordinary natural language in vocabulary, formation, semantics, syntax and other features. It aims to achieve reliability, consistency and validity to a given law. There is also a lot of interaction of the general masses through contracts, testaments, by-laws and notices. Unusual sentence structure, traditionalism, technical terms, use of double words or even triple words like void ab initio, a priori or null and void, are also some of the factors that categorise legal language different from other common languages. The lack of grip over legal language prevents the students from clearly understanding these legal documents or statutes. In the teaching pedagogy 'Legal Language Labs' should be made (as mentioned above) where special tutorials after the main subjects are taught, could be taken up, like, effective communication skills, presentation skills, words from legal

dictionaries, legal sentence formations, Latin-French terms vocabulary etc.

In addition to that, for medium of instruction as per National Education Policy, 2020 in Regional Language, Translations of legal books and literature in respective language needs to be done in coordination with the concerned state government departments.

### **Conclusion**

A short re-capitulation of the proposals as given above will simplify the reforms process:

1. Attachment Programmes of Students for Training- in the Village Panchayats and the District Administration offices.
2. Attachment/Internship Programmes with State Legislatures and the Union Legislature.
3. Exchange Programmes with Foreign Schools– online and, wherever possible, offline.
4. Individual Tutorials by the Faculty for students after the regular classes in the day.
5. A dedicated mechanism for counseling on research topics by experienced faculty members on important contemporary subjects of relevance.
6. Well-equipped facilities to research scholars in institutions to be expanded in an advanced manner keeping in view the significance of each research project of human and global relevance.
7. On the part of teachers, for the purposes of research-identifying, counseling, enabling and delivering.

8. Inter-disciplinary studies on upcoming disciplines like Neurolaw to be included – ‘Neurolaw’ as an interdisciplinary field.
9. Super Specialisation in different branches of law.
10. Centre for Global Studies & Implementation of Legal Pedagogy in all major Law Institutions.
11. Experts from the technology sector to be engaged as Teachers/Professors, Consultants and Advisors in Law Institutions.
12. Teaching Artificial Intelligence & Law for future professional requirements.

### **Special Consideration**

- **Proposal for Opening ‘Law Workrooms’**
  - i) Training in computer applications
  - ii) Legislative Drafting, i.e., How to draft a law; giving a topic for drafting.
  - iii) Training in the legal skills of Problem Solving, Counseling, or Negotiating, integral to legal education that will give more confidence to students even before they take up any profession.
  - iv) Practical display and study of legal papers/documents like a will, negotiable instruments, formats of contracts/agreements, property registration papers, affidavits, stamp papers etc.
  - v) Imparting practical education on AI & Law.
  - vi) Any other practical study aspect of law.

- **Legal Skills & Language Atelier**
  - i) Special skills in how to write and design Legalese.
  - ii) Topical Debates and discourse to enhance presentation skills.
  - iii) General Discussion on legal glossary, terminology, French and Latin words, Indigenous words prevailing in the Indian legal system as well as concepts, through verified dictionaries.
  - iv) Discussion on legal and technical terminology, usages, concepts etc., and their regional language equivalents.
- **Forming a Centre for Comparative Global Studies and Implementation in Legal Pedagogy**
- **A Separate 'Department for IT & Law Studies'**
- **Artificial Intelligence & Law Cell (AI & Law Cell)**

Contemporary times demand for a holistic change in approach towards legal teaching and there appears a greater need to re-vamp the curriculum in legal education in India to meet the needs of technology and its rapid advances. This shall provide a strong lego-technical foundation for our students combined with a deep theoretical base. This is extremely important as a first step to modern legal education essential for the coming generations as also in our commitment for law and its learning. At the same time, it would inculcate a feeling of confidence in our youth in this era of transition. With new norms and concepts coming up in the academic institutions, our bright youth shall have a promising future in their quest for law and legal education and its objectives.



## **DOMESTIC VIOLENCE IN INDIA: MALE VICTIMS' PERSPECTIVE**

*Dr. Anam Wasey\**

When one hears the term “domestic violence”, he/she often presumes that it is the man who is the antagonist. Domestic Violence from a male victim’s viewpoint is a matter that is not commonly deliberated upon in our society, reasons being inadequate information and unreported incidents.

Domestic Violence is an issue that affects people irrespective of their age-groups, genders, races and sexual orientations. Violence against men is often considered less of a menace to society and to the people who are involved in it. But it is extremely significant to understand that female-on-male violence involves serious consequences to the victim’s as well as batterer’s short and long-term health.

Majority of the matters being unreported, it is essential to examine and analyse the threat of violence against men by women and other allied factors. This will have grave implications and consequences that will undoubtedly be far-reaching and thus, will severely affect the society at large. The author recommends that the Act dealing with the issue of domestic violence, must be made gender-neutral.

Domestic Violence from a male victim’s perspective is an issue that is not widely discussed in our society, reasons being limited information and unreported incidents. Research was done on this issue or aspect of domestic violence to see how the types of abuse have had an impact on the victim from a physical and emotional perspective.

Domestic violence is an act of aggression that can be committed by a partner or a family member. Warning signs of domestic violence are that victims are criticized by their spouses for the smallest of things, sexual intercourse without consent, the blame for violent outburst is placed on the victims and they are monitored by their spouses or

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partners. Barber stated in 2008 that domestic violence could be defined from emotional, financial and physical perspectives.<sup>1</sup> Male victims of domestic violence rarely report their incidents of abuse. They feel humiliated that this act of violence happens to them and struggle to decide what to do next. This was seen as a problem because males will feel that they cannot address this matter, as no one will listen to them and that any type of treatment will not help them solve their problems. Male victims are silent about the domestic violence incidents and do not contact the authorities as they think it is a personal matter and that they can take care of it. Battered men think they will not be taken seriously if they went to the authorities to report because of the stigma that domestic violence only happens to women and not men. Also, their “*mardaangi*” would be put to question.

The common types of abuse that male victims experience, are emotional, physical and psychological. Men tend to stay in abusive relationships for the same reasons that women do because they blame themselves for the abuse, there are children involved and have some type of dependency as it relates to the abuser.

Domestic Violence has been a controversial topic for some time now. This article offers more insight as to how domestic violence has become an epidemic in India in recent years. Signs of domestic violence include but are not limited to the abuse of alcohol or drugs or behavioral change and the threat of physical harm in order to receive attention from the victim. Domestic violence has been a problem plaguing our society since the times of ancient Babylon. The public started to become aware of it in the last two or three decades. The question of whether domestic violence is an intergenerational problem is answered based on the finding that the stronger predictor of violence is a result of witnessing parental violence and not experiencing direct violence as a child.

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<sup>1</sup> <https://www.scribd.com/document/37691089/domesticviolence>.

The term “domestic violence” is used loosely in our society. This term is referred to in the context of male-to-female abuse, in the social order we reside in.

Domestic Violence has been identified across the world as a form of violence that affects an individual's life in every way—physically, mentally, emotionally and psychologically. It is a violation of basic human and legal rights. The consequence and effect of this violence against men in India is largely emotional and psychological in nature. The physical harassment resulting from domestic violence, also affects their lives and productivity but it is still more inclined towards the emotional problems which men face in India. It is largely because many such cases go unreported or men feel hesitated to report, as compared to the matters of physical assault of women. An emotionally harassed and depressed man may lose interest in the occupation he is associated with.

No doubts that domestic violence directed against women is a serious problem, but the same against men is also increasing gradually in India. The supremacy of men in the society makes one believe that they are not vulnerable to domestic violence. Battering of men by their wives and family members has become an important issue and is another form of domestic violence under the sense of judiciary. In comparison to violence against women, violence against men in India is less frequent, but it has already taken a dreaded shape in most of the countries across the world including India.

Voice has been raised against the freedom and equality of women but we forget that the men can be victims of the same, unfortunately. Indian legislation has failed to accept that men can also be victims of sexual violence and physical assault. The very section 375 of the Indian Penal Code of 1860 (hereinafter referred to as IPC) dealing with rape and legal provisions against it mentions no rapes or sexual assaults against men, in fact it states that if rape has been committed then woman is the victim and man is the perpetrator. IPC Sections, 354A, 354B, 354C and 354D, new amendments in 2013, deal with sexual harassment, disrobing, stalking and voyeurism, accept a

woman as victim and man as the executor.<sup>2</sup> There is only one IPC provision, Section 377, crippled in itself that records the sexual violence against men but it incorporates only penile sexual intercourse and hence, non-penile abuse victims are not served by this law. It would not be wrong to say that these provisions work as the mirror to the thought-process of the society. The situation of crime and abuse against men is in need of urgent attention and calling for serious consideration. It is now time that we should raise voice on this issue and then only we will be talking of gender equality. The figures recorded for crime against men are disturbing not because they are huge figures but because of the number of cases where men are victims, go unreported.<sup>3</sup> Men in India are facing all kinds of abuse and “men don’t cry” or “*mard ko dard nahi hota*” mentality should be done away with. They are humans too.<sup>4</sup>

Save Indian Family Foundation organization is working on men’s rights.<sup>5</sup> When a man tries to talk about his problems, torture, struggle, and harassment of marriage and family, no one is ready to listen; instead they laugh at him. Many men feel ashamed to talk when they are beaten at home by their wives and their family. A trust will not be plagued by his wife if this happens, since the case is rare and they do not tell anyone as they are worried as to what people would think and say. So, they just keep tolerating because of our Indian mentality that believe that only a woman can be assaulted, abused and tortured.<sup>6</sup> There are many laws to protect women against crime but there is no law to protect a husband and his family members against the crime by women. It is atrocious and absolutely unfair to see that no organization has hardly done any research on that as well as no one has demanded the data of crime committed against men by women.

Most of the crimes committed against men are not registered and it is because of the sick mentality of people carried out by society. A man

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<sup>2</sup> The Indian Penal Code, 1860.

<sup>3</sup> <http://menrightsindia.net/2014/09/advice-to-men-on-498a-maintenance-dv-divorce-child-custody-what-else.html>.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

suffers in silence for many reasons. Like women, men also worry about leaving their spouses; they fear their children will be left unsafe without them. Taking care of children is always challenging for fathers, as it is the prospect of raising them alone. They feel that they have failed in their role as a protector and provider for the family. The biggest fear Indian men feel is that of being slapped with a dowry harassment case because the case is not only levied against the man but his family members too and they also bear the pain and punishment for it. Not only is it hard to shake off the social stigma that comes after being charged with such an act, but the cases also tend to linger on for years and most of the time it is decided in favour of women. Even today most of the men continue to live with their parents even after getting married. When differences arise, parents generally step in and sometimes make matters worse with their own demands.

When husband comes home exhausted from work, his wife starts whining and grumbling as Indian women are known for such murmuring and cursing, most of them being housewives. They withhold sexual intercourse without reason as man in India cannot have sex without consent of his wife and even if he is not enjoying, he can be charged for rape.<sup>7</sup> Most of the women raise their children against their own father, especially the sons. They are also threatened by father-in-laws and brother-in-laws to act according to their wives. They take all his earnings and salary and refuse to entertain his family. Most of the Indian women are verbally abusive and we all know their art to twist tongue. They know how to misuse and manipulate their husbands. They find faults in everything, his profession, attitude, day-to-day work and even in bedroom. As all men are not capable to satisfy the needs after some age or have some physical problem; mostly this physical disability in bedroom occurs because of wife's sarcasm. This verbal abuse leads men to mental torture but the society and judiciary consider that women cannot verbally or mentally abuse or harass men.<sup>8</sup> Many Indian women use sex as a bargaining

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<sup>7</sup> <http://timesofindia.indiatimes.com/india/False-cruelty-cases-under-Section-498A-ruining-marriages-SC-says/articleshow/45424532.cms>.

<sup>8</sup> <http://www.legallyindia.com/views/entry/domestic-violence-act-2005-a-boon-or-blight-to-the-society>.

tool to get things done, they can deny sex for no reason. According to psychologists it is a mental torture for men, but Indian judiciary never admits it as a domestic violence of women against men.<sup>9</sup> They all the time consider men to be rapists. It is also found that when things go wrong or when husband does not fulfill his wife's demands, then she along with her family start threatening to charge him with false cases like anti-dowry sections such 498A of IPC or the Protection of Women against Domestic Violence Act, 2005 (hereinafter referred to as DV Act). When the people suffering, are asked about this menace, many of them refuse to comment as they are diffident and embarrassed to talk of it.<sup>10</sup>

Domestic Violence as per the Protection of Women from Domestic Violence Act, 2005, can be defined under four broad categories:

- i. Physical abuse
- ii. Sexual abuse
- iii. Verbal and Emotional abuse
- iv. Economic abuse

In this Act, physical abuse means—causing bodily harm or danger to life, limb or health or development of the aggrieved person. This includes assault, criminal intimidation and criminal force. The definition of sexual abuse explains- “conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of a woman”. This definition clearly denies justice to men and indirectly says that abuse, humiliation or violation of dignity cannot happen to a man. This definition includes, “insult, ridicule, humiliation, name calling or specially insult for not having a child” or “repeated threat to cause physical pain to any person to whom the aggrieved person is related”. The definition of economic abuse under this law is—“deprivation of all or any economic or financial resource to which the

<sup>9</sup> [http://www.academia.edu/9531210/A\\_Doctrinal\\_Research\\_on\\_Section\\_498a\\_IPC\\_1860\\_\\_A\\_critical\\_Analysis](http://www.academia.edu/9531210/A_Doctrinal_Research_on_Section_498a_IPC_1860__A_critical_Analysis)

<sup>10</sup> [https://scholar.google.co.in/scholar?q=STUDY+ON+498A&hl=en&as\\_sdt=0&as\\_vis=1&oi=scholar&sa=X&ved=0ahUKEwjE9uHIzrPTAhXEsl8KHwaYAhUQgQMIIjAA](https://scholar.google.co.in/scholar?q=STUDY+ON+498A&hl=en&as_sdt=0&as_vis=1&oi=scholar&sa=X&ved=0ahUKEwjE9uHIzrPTAhXEsl8KHwaYAhUQgQMIIjAA)

aggrieved person is entitled under any law or custom". On one hand if the husband earns and he does not give money to his wife, it is considered domestic violence. But if the wife earns and does not do the same, it is not regarded as domestic violence. Majority of women do not have to bear the responsibility of household affairs.<sup>11</sup>

It is a common thinking that men are more violent and women are not and hence, the definition of aggrieved person says that only 'woman' is right. This Act is purely in favour of women. It provides protection to wives and female live-in partners from domestic violence carried out by husbands and live-in partners or their relatives.<sup>12</sup> In this way the Act addressing the issue of domestic violence must be made gender neutral.

It is important to have a look on the results of suicide, depression and divorce in the Indian society. A survey conducted by the National Family Health Survey throws light on unprovoked violence against men by women. It should not be a surprise to go for a law to protect men as such a law for women already exists. In fact, it would be preposterous in this age when we talk about gender equality, not to have such a law. Such a law to protect men from domestic violence would act as preventive relief to millions of those men who feel victimised and left out. It would also provide them with a legal platform to come forward and share their pain and agony and get some semblance of relief. In 2014, the Hon'ble Supreme Court has said in a recent order that IPC section 498A has "dubious place of pride amongst the provisions that are used as a weapon rather than a shield by disgruntled wives."<sup>13</sup>

The fact is that domestic violence is a serious problem and a neutral and unprejudiced law is needed to protect the genuine victims of domestic violence irrespective of gender. The perpetrators of domestic violence need to be appropriately punished and dealt with. At the same time, protection cannot be withheld from real victims

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<sup>11</sup> <http://www.socialtahalika.com/section-498a-boon-or-bane/>.

<sup>12</sup> <http://www.legallyindia.com/views/entry/section-498a-of-ipc-its-use-misuse.html>.

<sup>13</sup> <http://www.ias4sure.com/wikiias/gs2/dowry-cases-section-498-a-of-ipc/>.

for any reason whatsoever. One can be certain that there is something sinister about a law, when it intimidates and instills fear in innocent people. When a person who has not committed any crime, begins to fear punishment under the provisions of law, it is no longer a law but a state-sponsored terrorism. Men and women both are equal and significant for the society and its development. Both the genders face their own problems which cannot be compared. Each have their own struggle. Thus, both must be protected and encouraged equally.

## Book Review

### **Gandhi: *Siyasat Aur Sampradayikta* by Piyush Babele, Institute of Objective Studies, New Delhi, INR 495**

The book under review contains 33 chapters on thirty three varied amusing perspectives. These are: (1) Casteless Hindu; (2) Gandhi's Religion; (3) Miyaan and Mahadev; (4) Africa's Struggle and Communal Unity; (5) Hindu Pani Muslim Pani; (6) Strike of 1919: Hindu Muslim Blood Shed Together; (7) Towards Resistance and Non-Cooperation; (8) Non-Cooperation Movement: Jai Hindu Muslim; (9) Moplah Rebellion: Acceptance of Hindu Muslim Unity; (10) Flood of Riots; Gandhi Arrested; (11) Unique Fast; (12) Gandhi Ji-Shaukat Ali Conversation; (13) Ups and Downs of Hindu Muslim Unity; (14) Rise of Muslim Secularism, Mohammad Ali Jinnah; (15) Rise of Hindu Secularism, B.D Savarkar; (16) Proposal of Pakistan; (17) Dr B.R. Ambedkar: *Musalman Chahenge to Pakistan Banega*; (18) Again in The Field; (19) Do or Die; (20) ...And the British Empire Crumbled; (21) Gandhi-Jinnah Conversation; (22) Changing Landscape; (23) Direct Action; (24) Noakhali's Miracle; (25) Peace Work In Bihar; (26) Towards the Partition; (27) Last Effort to Stop Partition; (28) Towards the Freedom; (29) Kolkata Fast; (30) Delhi Riots and Fast; (31) Speech in RSS Rally; (32) Moksh; and (33) Journey Continues. These chapters indicate Gandhi's multiple perspectives with which he influenced the socio-political environment of India as a real front runner. There is a lot of literature on Gandhi, but the present is frank addition to that literature looking for further analytical approach to understanding the victory man of India.

Father of Political Science, Plato, in his book "The Republic" states that an ideal state is a living body and as a living individual, states have different organs to perform various tasks, these organs are "Bodily appetite, Spirited Elements and Reason" i.e., the ruling class, the military class and the professional class. In "The Republic" Plato describes the ruling class to be developed as saints, philosophers, and thoughtful people. Plato says, "Until philosophers are kings or the kings and princes of this world have the spirit and the power of



philosophy and political greatness and wisdom meet in one, cities will never rest from their evil”. Was Gandhi such a philosopher, as mentioned in “The Republic”? Piyush Babele, has tried to present a philosopher’s understanding of Gandhi, in his book “Gandhi – *Siyasat aur Sampradayikta*”.

No doubt, Gandhi is a biggest icon in the Indian political spectrum, and while Gandhi was active as a leader in Indian freedom movement, his philosophy has been a guiding lantern for the whole world. From Nelson Mandela to Fidel Castro and Barak Obama to Macaron, every world leader have paid their respect and tribute to Gandhi.

In the book, Piyush, from the very start makes it clear that Gandhi can only be understood in totality, and if you want to understand the philosophy, you will have to understand the politics, and if you want to know the theology behind the philosophy you need to understand the political and social circumstances of that time. India under the colonial rule needed Gandhi. There were many political currents working in the theatre of freedom movement in India, when Gandhi entered into this arena, nothing was clear, nothing was united and nothing was seen as pan-Indian, or national movement. The book brings forth this aspect of Gandhi in the freedom movement in a very subtle manner. From the very first moment, he became the part of a political or politico-social movements. Gandhi had shown a very clear and decisive thinking pattern. Never afraid of preaching what he believed, and never hesitating in executing his beliefs, are the most daring, most honest aspect of his personality and that is one thing which made him stand out in all the other leaders of that era. In course of learning about Gandhi, it becomes clear that, there was no planned path, which was taken by him. He always discovered new ways to express his philosophy, he always learned new things, welcomed new meanings, and always accepted, corrected and altered his path wherever he seems to understand the flaws in the process and thinking.

In the very beginning, in South Africa, where Gandhi started to work as a movement, he believed himself to be the part of the British rule,

his demands at that time were not about freedom of India, or equal rights as Indian citizen, but only a little respect as British citizen, to be recognized as an elite Indian person or society, and he demanded that Indians be treated better than African “Kafeers” with the same understanding, his demand was very clear, that since, he and other Indians are the subject of English crown, he and Indians should be treated with more dignity and respect in comparison with Black natives.

In 1893, he wrote to the Natal Parliament that, “a general belief seems to prevail in the colony that the Indians are a little better, if at all, than savages or the natives of Africa.” In 1904, he wrote that the council, “must withdraw Kaffirs” from an unsanitary slum called the “coolie location” where a large number of Africans lived alongside Indians. “About the mixing of the Kaffirs with Indians, I must confess I feel most strongly”. While Indians were called Coolies (and Gandhi had no objection to that) Africans were called Kaffirs.

If we would try to understand and criticize Gandhi, in a simple and linear manner, it would be very unfair to the political journey of the greatest political philosopher of our times. Gandhi cannot be understood without going deep into the complexities of the socio-politico-theological super structure of that time and society. Gandhi, a person and political philosopher grew, in India, he learned from Indian culture, he learned from Indian traditions, he learned from Indian people. In his political journey, he did not plan, as it seemed in the book, about what he was going to do in next 20 steps, as a political move, but he took one problem, and tried to solve it, as aptly quoted from Gandhi’s “Charkha and Takli” example. In my personal view nobody could mix and match the politics and theology in the manner Gandhi had done, he never gave up his religions, but he created a beautiful space for other religion also. He was a “Kattar Hindu” when he went on to get education or for the job in south Africa, but he returned a well versed religious tolerant person. It was not the same Gandhi, who left India to work as a barrister in South Africa, he was a clear minded political philosopher of a very sharp political sense and new found confidence. He had gained a unique perspective about the relationship between the ruler and the ruled, he

had started understanding the rule of engagements with state and people, and he was looking for his own standing on the stage of Indian political struggle.

In its 32 chapters, the book tries to understand Gandhi's politics and the idea of communalism behind it. It is a tough task, Piyush had done it with direct quotes, articles and speeches, directly taken from various sources. In today's time, it is a courageous task in itself, it's ironical that the same powers, which did not want Gandhi to succeed, are on the working hard to diminish Gandhi again, they are trying to destroy Gandhi. And it's a miracle that despite so much power and hatred being used to kill Gandhi again and again, Gandhi and the Gandhian philosophy is becoming much stronger day by day. Piyush has cited the example of Farmers protest, but I would suggest to see the protest against CAA and NRC, to be more precise, the most powerful and mostly working on the same philosophy as Gandhi had taught. Nowhere in the history of India after independence, any movement had worked so successfully as the protest dubbed as "Shaheen Bagh" and "Kisan Andolan" where communal walls were shattered by people protesting peacefully and the state trampling the rights of people, where religion was given utmost respect, but it was never bragged upon, where people came together for the rights of citizen, armed with power of truth and non-violence. The state in its utmost brutal form, created the sense of fear, hatred and violence, it created a kind of environment, similar to the British "divide and rule" for a minority community of the country, but at the end, Gandhi's philosophy won, and whole country was engaged in a manner of struggle which stopped the state in its tracks.

Chapter by chapter the book tries to decipher the meaning and understanding of Gandhi's religious philosophy, in context with India's freedom movement, its partition, its communal history, its cast complexities and its political future. The book brings forth various models of struggle, philosophies, understandings, and tries to draw a sort of comparison to understand the meaning behind the philosophy. The book, meticulously refers to all the national leaders

and puts forward their relationship, differences, and their political ideas and truly understand the meaning of being 'Gandhi'.

This is the most useful book of our times, the time when true human values are lost and defenders of humanity are being persecuted, when it is becoming a fashion to criticize Gandhi, without even understanding Gandhi and his philosophy. We need to welcome this book, we need to urge people to read this book, and we need to spread word about this book, about Gandhi and about his philosophy.\*

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\* Dr. Dipti Pandey, Assistant Professor, Department of Psychology, IILM University, Greater Noida.



## REPORTS ON CONFERENCES/ SEMINARS ETC.

### Lecture on “*Azadi Ka Amrit Mahotsav: The Significance of Tiranga*” (August 13, 2022)

The Institute of Objective Studies organised an offline/online lecture on “*Azadi Ka Amrit Mahotsav: The Significance of Tiranga*” to mark the 75<sup>th</sup> anniversary of India’s Independence on August 13, 2022.

The programme commenced with the recitation of a Qur’anic verse by Hafiz Athar Husain Nadwi with its Urdu translation.

Prof. Haseena Hashia, Assistant Secretary General of the Institute, who introduced the topic, said that India was celebrating its 75 years of independence. It was also the diamond jubilee year of India’s independence. Referring to the tri-colour, she said that the national flag was a sign of country’s pride and patriotism. All the three colours of the flag, which was adopted on July 22, 1947, had a meaning. Surayya Tayyabji, the wife the great freedom fighter and former Congress President, Badruddin Tayyabji, gave a final shape to the tricolor, she noted.

Maulana Shah Ajmal Farooq Nadvi, In-charge, Urdu section, IOS, held that the Institute organised several seminars on India’s freedom movement and independence. Similarly, as many as 55 books were published on the subject in Urdu, English and Hindi. Out of them, 23 books were published in Urdu, 29 in English and 3 in Hindi. These books focused on the history of freedom struggle, personalities, who were part of the freedom movement, and modern India. These books were written by Prof. Zafar Ahmad Nizami, Dr. Abida Samiuddin, Iqbal Ahmad Ansari, and Maulana Abdul Hameed Nomani. While Prof. Z.M. Khan wrote, *Political Empowerment of Muslims in India*, Qazi Mujahidul Islam Qasmi penned *Hindustani Musalmanon ke Samaji Masail*. He said that Prof. Rifaqat Ali Khan and Dr. Syed Abdul Bari were other scholars whose books focused on the

contribution of Muslims during and after the freedom struggle, and were published by the Institute.

Delivering the lecture, Prof. M. Afzal Wani, Pro-Vice chancellor, IILM University (Greater Noida), Former Member, Law Commission of India, Ex-dean, GGS Indraprastha University and the Vice-Chairman, IOS, went into the spirit of the national flag, and said that it symbolised unity and integrity of the nation. India's Independence paved the way for the creation of polity that had a vision for harmony, peace and justice system. Every institution and organisation had a flag that represented its vision. United Nations Organisation (UNO), for instance was a world organisation that expressed its mode of action. Similarly, the Indian national flag represented hopes and aspirations of the people of the country. He said that Pingali Venkayya was a freedom fighter and a Gandhian who designed the Swaraj flag used by Mahatma Gandhi during the Independence movement. It was later modified by Surayya Badruddin Tayyabji into the flag of India. She was an artist of repute and came from a well-known Muslim family, and was known for her unconventional modern outlook, he added.

Prof. M. Afzal Wani explained that the national flag of India was a horizontal tricolor of deep saffron at the top, white in the middle and dark green at the bottom in equal proportion. The ratio of the width of the flag to its length was two to three. In the centre of the white band was a navy blue wheel, which represented the *chakra*. He further said that in the national flag of India, the top band was of saffron colour, indicating the strength and courage of the country. The white middle band indicated peace and truth with *Dharma Chakra*. The last band was green in colour that symbolised fertility, growth and auspiciousness of the land. He noted that the wheel also represented life and dynamism, goal of progress and prosperity. Thus the tricolor gave the whole concept of a nation and one must possess zeal and ardour to hoist the flag. He referred to the circumstances in which the tricolor came into existence. He said that during the freedom movement, every Indian was feeling that he was not free. It reflected the struggle that Indians talked about among themselves. Many known and unknown martyrs contributed to the freedom struggle. It

was the tricolor through which every Indian was expressing his proud, he stated.

Prof. Wani held that the twentieth century was important because of two world wars, economy and the rivalry between two world powers. Among them, the emergence of India as a republic was the most important. The disintegration of the USSR took place, but India remained strong. It was a united group of people as was reflected by the tricolor. Unlike Ukraine, the geo-political situation in the region did not have any effect on India due to its strong bonds of unity. Indian tricolour's wheel was very powerful as it possessed the strength to fight the devil. He called for the wheel of progress going as fast as the rest of the world. He said that the Indian Constitution began with, "We the people of India". This was reflected in the tricolor that fluttered on the top of the Indian parliament. Indians wanted the tricolor to survive, and thus there was a need to hold it high. He observed that the emergence of the United States of America was not as important as the Indian republic because of its commitment to freedom, justice and equality. The flag was knocking at the door of people to go ahead, fight poverty and remain united. One who carried the tricolor must think of contributing to development and achievement of the goal of trillion dollars economy, he stressed.

Prof. Wani emphasised that the areas in which the country lagged, should be identified. India was yet to overcome the problem of hunger, malnutrition and poor health. That was the reason why the dynamics of progress slowed down. When the countrymen carried the tricolour in their hands, they had the high level of morality and honour. He called for cherishing issues of humanity and not the issues of the community. Earlier, people did not have books but they understood the meaning of humanity.

There was a need to examine how the country performed on the index of poverty during the last 75 years. The state of education, particularly the rate of drop-out must receive proper attention. He said that the tricolour was great and Gandhiji became great because of it. He maintained that only hoisting the tricolour and clapping did not suffice. True understanding of the national flag led to right



actions. Tricolour should be in mind and conscience. Equality, justice and fraternity could not be ensured till the state fulfilled its commitments to the tricolour. He said that justice should not be manipulated, and it should be as clear as the tricolour. Democracy meant that the people were together. Describing the day as an occasion to start the constitutional movement, he observed that the tricolour represented aspirations of the people.

Presiding over the event, Prof. Z.M. Khan, Secretary General, IOS, held that the tricolour could not be seen in isolation because it reflected the long struggle for freedom and the spirit of the Constitution. The tricolour had a history and philosophy behind it. Referring to the process of nation-building, he said that lately, the policies of the government were in question. He especially mentioned the policy of taxation that put a heavy burden on people. He also questioned the border policy, which exposed the vulnerability of Indian borders. Some countries were trying to invade the country's borders. He criticised the sentimentalisation of the situation by the powers-that-be. He said that the cost of a flag had been fixed at Rs. 32, and the ration card holder who constituted the lower strata of the society had been warned that the non-purchasing of flags could deprive them of ration distributed under the free ration distribution scheme. The sanctity of the tricolour formed a part of the preamble to the Constitution that secured justice, equality and fraternity to all the citizens of the country. This dictum was part and parcel of the preamble. He said that flying the *tiranga* on rooftops and pinning its band on chest was not enough. It would be dangerous to sentimentalise the foisting of *tiranga*, he concluded.

Earlier, Prof. Wani, together with other office-bearers and members of staff of the Institute of Objective Studies hoisted the tricolour at the entrance to the main gate of the Institute.

The lecture ended with a vote of thanks by Prof. Haseena Hashia to both offline and online attendees. Those who were present on occasion included the Finance Secretary, IOS, Mohammad Alam, prominent Islamic scholar, Maulana Abdul Hameed Nomani, staff members of the IOS, FANA and the All India Milli council etc.

**IOS Lecture on “Challenges faced by Minorities in the  
Current World Scenario, focusing on Indian Muslims”  
(September 04, 2021)**

An online/offline lecture on “Challenges faced by Minorities in the Current World Scenario, focusing on Indian Muslims” was organised by the Institute of Objective Studies on September 4, 2022, on the occasion of the Institute’s 36th Annual General Assembly meeting. The lecture was delivered by Prof. Amitabh Kundu, the professor emeritus, L.J. University, Ahmedabad, and a distinguished fellow at the Research and Information System for Developing Countries.

Introducing the topic, Prof. (Ms.) Haseena Hashia, Assistant Secretary General, IOS, held that the topic was very important from the prism of the status of Muslims in economic and social fields.

Prof. M. Afzal Wani, Vice-Chairman, IOS, and Pro-Vice-Chancellor, IILM University, Noida, in his brief speech, said that the topic was very much important for the whole of the world. He said that Prof. Kundu is a good fit to talk on the subject matter, given his area of expertise and caliber. He would do the best while dealing with issue of what was happening about the minorities in the world. Nobody was carrying such kind of heart and sensitised mind and a skillful person with modern systems of analysis in social science as Prof. Kundu, he remarked.

Delivering the lecture, Prof. Kundu said that he would focus on social and economic conditions globally and the condition of minorities in India with a little more attention on Muslims. He clarified that he was not working for the Muslim community but worked for inequality and social justice. Referring to India’s growth recovery, he said that it was faster and was doing better. The 21st century belonged to India, and its faster economic growth was poised to leave even China behind. But, there are some structural issues. Inequality and regional disparity were major areas of concern. Deprivation of the Muslim community was one of them. He pointed out that India was now struggling and getting out of two and a half years of the nightmare of Covid-19.

Every developing country was talking about the reshaped economic recovery. He said that in the case of India, regional, social and economic disparity were the major areas of concern. The deprivation of the Muslim population was also a matter of concern, he said.

Prof. Kundu maintained that the unequal access of people to the labour market caused disparity among various social groups. He said that even before Covid-19, the Indian economy was not very well. At present, share of India in the global economy was only 8 percent out of 18 percent of the total population share of the world. It was expected that India's share would be 29 percent by 2050. Then, it would be much larger economy than China. This projection had been endorsed by the Asian Development Bank (ADB) and World Bank. He struck a note of optimism by saying that the 21st century belonged to India. He said that Asia's share in the global income was 58 percent as against 12 percent in 1961. As per Bloomberg Foundation analysis, the projection was that Asia's share would again reach 50 per cent, which would mean a big recovery. Indian recovery was also much sharp. He said that the projection for India's economic growth was very positive.

Prof. Kundu said that Indian economy was poised to reach 10 trillion dollars by 2032. Referring to the skill development, he noted that it was unequal in respect of both Muslims as well as Scheduled Castes/Scheduled Tribes. Not everybody had an equal share in the labour market; if certain critical assumptions were not made available to different social groups, then, certainly the dream projection of a most powerful nation would be difficult to achieve. In order to achieve this in the labour market, access had to be given to all irrespective of caste, class, gender and religion. Similarly, in skill development, if inequality among various social groups was not minimized, then projected growth would not be accomplished, he said.

Prof. Kundu observed that India was certainly looking up. It would overtake China in terms of its share in the GDP. But still, there were some catches and assumptions. Putting up a mathematical model, the Asian Development Bank, Manila, said that 21st century belonged to

Asia – to India. According to Angus Madison, an economic historian, Asia's share in economy was 58 percent in 1700, and it continuously slid downward. He said that Indian recovery was much sharper as it was doing much better. If India was able to maintain growth tempo with its structural parameters being very much strong, it would certainly come up. He noted that in the last 7-8 years or a little earlier to this, the Human Development Index (HDI) had been growing well as it was growing two decades ago prior to this. The United Nations Development Programme (UNDP) brought out the report of HDI every year where India's growth was seen negligible. Earlier, India's growth used to increase 2 per cent. But now, it was less than 1 per cent. He pointed out that India dropped to 132nd rank out of 191 countries in the 2021 HDI report. It was further declined during two years in a row – 2020 and 2021.

Explaining that there were three things that came under HDI, he said that they were education, health and average income. Inequality in the access to education and skill development was very high, and unless it was addressed, the whole dream of India becoming a 10 trillion economy would become a far-fetched goal. He also revealed that the rate of education among Muslims had increased. But the rate of education among women was very low. Even today, the drop-out rate of Muslim girls was very high. He reasoned that the high rate of drop-outs in education was due to their economic hardship. However, he said that in rural areas, the overall situation of Muslims improved, compared to Dalits and OBCs because of the latter's dependence on agricultural wages. The death of children up to the age of 5 years was also less among Muslims, he concluded.

In his presidential remarks, Prof. M. Afzal Wani, observed that Prof. Kundu provoked a thought that intrigued one to think. There was dejection, depression and deprivation in our society. He said that when one was caught up in a difficult situation, he must try to wriggle himself out of it. One should rise and ensure justice to everybody. He advised to give respect to every human being. He exhorted the young Muslims not to get depressed and accept challenges.

The lecture ended with a vote of thanks extended by Prof. H. Hashia.

**IOS organises International Conference on “Power of Good in  
Changing Global Scenario”  
(September 17, 2022)**

A one-day online International conference on “Power of Good in Changing Global Scenario” was organised by the Institute of Objective Studies on September 17, 2022.

**Inaugural Session**

Conducted by Shaikh Nizamuddin, a social activist from Sholapur, the inaugural session was initiated with the recitation of a verse from the Holy Qur’an by Maulana Athar Hussain Nadwi of the Urdu section of the IOS.

In his welcome address, Prof. Z.M. Khan, Secretary General, IOS, observed that the current global scenario was very disturbing, and it was the power of good that could address the problems facing humanity. Islam has the power to create a world order that could restore the lost values, he remarked.

Referring to the activities of the IOS, he noted that the area of its operation was spreading. The IOS was engaged in promoting research, conducting surveys on relevant themes, and publishing books and journals in areas of national concern and pressing challenges of civil society. The Institute had certain permanent and regular publications. Publication was a big area in which the IOS was working. More than 400 titles had so far been published in English, Urdu and Hindi. Regular publications include the IOS Newsletter, Mutalea’at and two journals of the IOS. Besides, IOS Minaret was an online magazine of viewpoints. Translation of books in different languages was another area in which the Institute stepped in a big way.

Two awards, namely, the Shah Waliullah Award and Lifetime Achievement Award, had been instituted to recognize the contribution of scholars and other personalities to various fields.

Inaugurating the conference, Prof. Omar Hasan Kasule, Secretary General, International Institute of Islamic Thought (IIIT), USA, stressed the need for peace. Expressing his happiness over the selection of the theme, he said that good meant peace. He related *Salah* to peace and held that the Qur'an assured that peace would ultimately triumph. The world was witnessing a lot of suffering, but it would vanish with the triumph of good. Referring to the epistemology of history, he said that Allah asked Prophet Adam to stay in the garden of Heaven, but Satan confused him. This was the conflict between good and bad, but eventually, good triumphed over bad. Similarly, so was the history of Moses and Pharaoh, he added.

Prof. Kasule observed that while Pharaoh was played out because he stood for bad, Prophet Moses triumphed because he embraced the virtue of good. In history, there were plenty of such incidents to show how rational people always stood by good. Citing another example, he said that there was the virtue of good in Prophet Yusuf, which made him triumphant. In the Qur'anic narrative, illustrations of the fight between good and ego abounded. Coming down heavily upon the media for exaggeration and sensitisation of incidents, he noted that it aroused people. Good might or might not be seen; it should always be discovered. We should look for the good in everything. One needed to work at the individual level and be rational. He also called for educating good to young people. Then ego would disappear from society, and good would prevail. He laid emphasis on the epistemological approach to history.

In his keynote address, Prof. M. Afzal Wani, Pro-Vice Chancellor, IILM University, Greater Noida and Vice-Chairman, IOS, held that things were not as simple as they looked. Truth should be modulated and looked into the upright way. It was the consequence that helped do action. Illustrating his point, he said that when you see a child around her mother, there is always a smile on the face of the child. The virtue of good gave power, energy and stimulus. It was good for humanity and the cosmos. Non-good resulted in oppression and the denial of humanity, childhood, fatherhood, respect, etc. All the things should be examined in terms of consequences. It should be measured

in terms of good. He asked for having truthful democracy, appreciating the power of good and being on its side. Public opinion should also be in favour of good. He said that a legal system of good for the people in the world had been created.

Prof. Wani said that there should be power to identify the attribute of good. One had to explore good and enjoy the fruits of good. There should be collective good for ensuring local and global harmony. He stressed the need for seeing things from the correct perspective. There was a prevalence of hunger and poverty all around. He regretted that alleviation of poverty programmes were launched every 10 years, but they failed to cut much ice because of policy paralysis. He called upon the people to appreciate the good and take a vow to eradicate poverty. He said that greed had destabilized governance and the governing system. If the people gave good education to their wards they would become the best citizens of the world. Equality was good because it empowered people. He called for identifying the truthfulness of what was good.

Prof. Wani observed that the good behind every action should be seen. He cited the example of Buddha, who left his palace in search of the good. It was good by which he stood. History taught humankind to be on the side of good. This meant that there should be harmony in society. The Prophet of Islam (PBUH) was on the side of good and truth. He was the best for humanity because he stood for good. He quoted the Prophet who said that a fair-skinned person was not superior to a black-skinned. The best of things was the best of understanding. The creation of knowledge should be for the benefit of society and the sustenance of the universe. Distinguishing between good and evil was necessary to choose the right path. He concluded by commenting that one should understand the power of good and the power of truth.

Prof. M. Ishaque, Department of Islamic Studies, Jamia Millia Islamia, New Delhi, summed up the proceedings of the inaugural session and proposed a vote of thanks.

### **Technical Session-I**

Presided over by Prof. Syed Jamaluddin, Director, IOS Centre for Historical and Civilisational Studies, the first technical session was moderated by the principal of Jibreel International School Kolkata, A. Basit Ismail.

The first speaker of the session was Prof. Shamim A. Ansari, Dept. of Psychology, Aligarh Muslim University, who focused on “Power of Good for Goodness of Enhancing Sustainability of Inter-Personal Relationships”. He said that good was always good. Referring to the Greek concept called hedonism, he noted that the man was basically good. All human relations were based on power. Influence and compulsions of power had a cascading effect on goodness. He observed that if one did good to others, he would receive the same from them. The power of good had effects of positivity in individuals. Smiling face of people always had positive effects and influenced others. Human qualities were very good and they should be imbibed. Loyalty formed an important element of goodness. Besides, piousness that implied speaking truth was equally important. Humanity, compassion, love, peace, courage and openness were also constituted. Goodness, he added. Prof. M. Ishaque observed that according to the Prophet (PBUH), good was beautiful and the beautiful was good. He said that good and bad things were for the test only. There were trees of good and evil. Good had its provision. He called for return to the divine directions in the present global scenario. He counseled that one must keep himself patient.

Prof. Akbar Hussain, Department of Psychology, AMU, spoke on “Power of Good Behaviour to Attain the Goal of Humanness”. He said that the Prophet (PBUH) emphasized the importance of good. All people should strive for good things. He observed that what was beautiful was good and what was good was beautiful. Allah likes those who are good and knows who are good. Allah likes those who excel in doing good. Allah also likes those who are good in their deeds. Modesty did not convey anything but goodness.



There was a relationship between good behaviour and character. Akhlaq was the soul of the character since there were good and bad akhlaq. He pointed out that doing good would bring rewards 10 times more. Good was an attribute of humanity. One should be good and generous to everyone, he added. Prof. Hendry Tanjung, Vice-Director, Postgraduate School, Ibn Khaldun University Bogor, Indonesia focused on “Responsible Role to be Played by National Government and International Agencies for Attaining Sustainable Social Order and Development for All”.

Defining Waqf, he said that it was Sadqaa-e-Jaariah. Waqf had played a significant role in the world for both Muslims and non-Muslims. Waqf was embedded in a Muslim society. He noted that cash Waqf had become increasingly popular. Cash Waqf in Indonesia had been recognised by a Fatwa dated May 11, 2002. He continued that there were 17 goals of sustainable development. He enumerated all of them. He held that Waqf had played a positive role in India to feed the hungry and provide water to the thirsty. Waqf was also doing a very good job in Indonesia. He was followed by Dr. John Dayal, Human Rights and Christian Political Activist, Delhi, who called for walking together and helping together. Referring to the tragedies and other incidents in other parts of the world, he said that the post-war economic power was in shambles. Secularism was on the run, and democracy was dangling. He said that ultra-nationalism was now a global phenomenon. He expressed his willingness to work with the IOS. He emphasised the need for working together. He said that *Rajdharm* in India should be to see everyone with the same eye.

The next speaker was Maulana Atiq Ahmad Bastavi, Secretary, All India Muslim Personal Law Board. He said the world was undergoing a change, but it should be good and beneficial for humankind. Expressing concerns over the grouping together of evil forces, he regretted that those who stood for good were badly divided. Islam stood for the entire humanity and Muslims and had been ordained with greater responsibility as *Khair-e-Ummat*. One of the duties of the *Ummah* was to spread the message of virtue and abhorrence for vice. He said that efforts should be made to ensure justice for those who suffered due to one reason or the other. Everyone should get his

due without hindrance. He suggested that the good people of every community should be approached to seek their cooperation in the spread of peace, order and goodwill. He called upon non-governmental organisations to activate such groups as could work for the welfare and development of the country. The IOS and other such organisations should come forward and chalk out a plan for promoting mutual love and brotherhood, he concluded.

Prof. Shuja Shakir, Department of Political Science, Babasaheb Ambedkar Marathwada University, Pune, observed that today's challenges had moral dimensions. Moral issues were there and had not seen solutions. Today, society was morally weak leading to the deficit of the ideas of freedom, justice and equality. Morality in public life was missing. In order to keep the society bound by ethical values Prophets and great men always pleaded for cherishing a high moral order, he added. Professor Samir Qasim Fakhro, UNESCO Consultant, Bahrain, focused on "The Good, the Bad and the Ugly". In his message read out by Prof. M. Ishaque, he said that the power of the good was only meaningful when associated with ethnically disciplined human beings who ventured out, acted or pro-acted based on the governing universal laws laid out by the creator of this universe and had to be followed in detail by the people He created. He observed that being an optimist yet realist, he had based his narrative on the conclusive findings of a few world strategists and futurists who were also close to the decision-making circles in the West. Their findings coincided with the existing ground realities and the most likely events expected in the near future. He recommended that one should keep the findings and warnings in mind during the coming few years and review them every six months to check their evolving validating or falsehood.

Another activist, VB Rawat, held that India was a multicultural society. With a view to cementing cultural bonds among different communities, constitutionalism should be strictly followed and practiced. He said that one must have the courage to speak the truth and stand up to falsehood and propaganda. Emphasising the urgent need for initiating dialogue with the representatives of different faiths, he opined that courage should be displayed to condemn the

wrongs done in the past. He asked for apologizing for the dark chapters of the past and learning from them. Religion and religious persuasion should be a very personal matter, he contended.

The first technical ended with the summing up of the proceedings by Prof. Syed Jamaluddin.

### **Technical Session-II**

Chaired by Prof. Hendry Tanjung, the second technical session was moderated by Shaikh Nizamuddin.

The first speaker of the session was Dr. Syed Ashraf Imam, a Licensed Clinical Psychologist in the state of California who centered his presentation on “Positive Change through the Power of Empathy & Conditional Positive”. He said that human life was a two-way street. He called for following the guidance of human relations. He asked to empathise with the condition of others or the behaviour of a person. He was followed by Prof. Syed Jamaluddin who observed that Allah loves good doers, and acts of goodness were recognized by Allah. He said that good and evil existed since time immemorial. Good doers would be rewarded by Allah. One should believe in God, His Angles and the Day of Judgement. God could never be unjust. One should try to be of a good moral character in public as well as in private. One should also be good to others regardless of what they did. He said that believers were always positive. He referred to several motivational Ahadis. Allah is compassionate, kind and merciful, he added. The third speaker was Prof. Amita Valmiki, Head, Deptt. of Philosophy, R. J. College of Arts, Science and Commerce, Mumbai. In her presentation, she referred to the Bhakti and Sufi way of goodness by quoting Kabir, Meera, Buddha and the modern time philosopher Bertrand Russell. Bhakti and Sufism embodied theistic mysticism. She also quoted Swami Vivekananda who opined that religion taught goodness. The Bhakti movement played an important role in promoting good in society. The self or the ego was annihilated gradually in the process of realization. She noted that Guru Nanak Dev said, “Those who have loved are those who have found God.”

Independent journalist and writer Bhasha Singh held that hatred could be challenged by collective efforts. Everyone had to stand against wrong and stand for humanity. One should speak the truth to their inner-selves. All the humane and just people were co-travellers and should stand together. “Fascist forces are at our doorsteps and we should accept their challenges”, she said. Dr. Nirwan Syafrin, Senior Lecturer, Ibn Khaldun University Bogor, Indonesia, focused on “Qur’anic and Prophetic Teachings on Promoting Global Peace”. There was no doubt that religion was one of the fundamental elements that intrinsically inhered in every human being. He said that Islam was the religion of peace, and it preached harmony and peace. Muslims constituted 20 percent of the world's population, but Muslim countries were involved in civil war. There are 49 Muslim countries, but peace eluded in several of them because of conflicts. Islamic principles called for creating congenial environment for peaceful living. Referring to the objectives of *Shariah*, he said that providing goodness was one of them. The Holy Qur’an categorically condemned any form of destructive acts. Islamic principles should be applied to deal with the people of other faiths, he pointed out.

The last speaker of the session was Maulana Abdul Hameed Noumani, General Secretary of the All India Muslim Majlis Mushawarat, New Delhi. He called for creating alternatives to prevent ills from prevailing in society. He said that the path that the Qur’an showed the believers must be followed. There should be a distinction between *Halal* and *Haram*. If one wanted to get rewarded, he must connect with Allah. He said that socially, the scope of *khair* was very wide. In the Indian context, it was *Dharmshastra* that guided *Raj Dharm*. He noted that truth, welfare and piety would have to be seen from an international perspective.

### Valedictory Session

Conducting the valedictory session, Prof. M. Afzal Wani observed that goodness would have to be seen in political, social, religious and moral contexts. The distinction between good and bad would have to be made. It was humane and needed to be addressed in the same way. There was no difficulty in identifying the truth. He said that

there should be an administrative code of ethics and international code of medical ethics.

Addressing the session as the guest speaker, Mr. Mamoon Al Azmi, Head, Community Development Programme, IIIT, USA, said that the darkness was poverty and deprivation. The power of good was clearly demonstrated in the Qur'an and Hadith. Only good could create good. Justice should be done because it was the way of *Taqwa*. It was evil versus good. He held that the one who spoke the truth could not lie, adding that forgiving was the power of good. He suggested that one should start with himself as an individual and then progress to promote good and pacify others. People should be mobilized for good things, he emphasized.

The message of the chairman, IOS Dr. M. Manzoor Alam, who was supposed to preside over the session but could make it, was read out by Prof. M. Ishaque. In his message, Dr. Alam said, "Each day, we make decisions as per our beliefs and values. Sometimes, the decision is easy to make, but many times, we are faced with predicaments to make a choice. The choices made by us are depended on economic, cultural, social, political, religious and other factors, and these choices, at the end of the day, reflect our identities that are also shaped by these factors. The ideologies and the set of rules one grows up with also play an equal part in our decision-making."

"One could argue that it becomes challenging to carry the virtue of goodness in the current global changing scenario. In recent times, the world experienced a humanitarian crisis followed by the fall of other components that run our society.

Unfortunately, we live in a world which is so full of disapproval and hatred against certain communities, races, classes, castes, genders, etc.; the world is a witness to social evils, like racial supremacy, class hierarchy, gender disparity, religious hate crimes, etc. In such circumstances, we ought to be more responsible for the holistic development of society and desire a life sans vileness and inequality. Imagine living in a world that emphasized making our lives better and

also full of love, empathy and respect for others. This should be our goal in the long run on both individual and community levels.”

A three-point resolution, moved by Prof. M. Afzal Wani, was unanimously adopted by the attendees.

The resolution read: A one-day International conference on “Power of Good in Changing Global Scenario”, held on September 17, 2022, via Zoom, has been successfully concluded in which researchers, academics, activists, and journalists from India and abroad participated, and the following resolutions were presented and adopted:

1. The Regulatory bodies of education across the globe are urged to include in the courses of study the content enabling an understanding of ‘good’ and its ‘power’ to create a better humane world.
2. Institutions of politics, economy and society should strive for directing their planning and action in the direction of achieving good for all and facilitating the working of all people in creating a better political, economic and social order in the world.
3. All the countries across the world are to be stressed upon to cooperate and give a good shape to inter-country relations to cooperate in harmonious development and prevent and mitigate the horrors of war and disasters together.

In the end, Prof. Syed Jamaluddin extended a vote of thanks to all participants.

**IOS organises a two-day National Conference on “Inter-religious Understanding and Programming for Sustainable Goals of Equality and Fraternity” in collaboration with Punjabi University at Patiala, Punjab  
(October 10-11, 2022)**

A two-day national conference on “Inter-religious Understanding and Programming for Sustainable Goals of Equality and Fraternity”, was organised by the Institute of Objective Studies in collaboration with Dept. of Religious Studies, Punjabi University, with technical assistance of Baba Farid Centre for Sufi Studies, Patiala, Punjab, on October 10 and 11, 2022.

**Inaugural Session**

The inaugural session began with the playing of the university song. This was followed by the welcome address by Prof. Mohd. Habib, Department of Islamic Studies, Maulana Azad National Urdu University (MANUU), Hyderabad, & Hon. Director, Baba Farid Centre for Sufi Studies, Punjabi University, Patiala.

Prof. Haseena Hashia, Assistant Secretary General, IOS, introduced the Institute by highlighting its activities. She said that the IOS is a non-profit organisation, steadily pursuing its goal by conducting research in different areas, like the socio-economic plight of minorities, especially Muslims, oppressed sections, and pressing issues that confronted society. The IOS focuses on the issues of secularism, democracy and constitutionalism and synergy with progress. She pointed out that five regional chapters are in place to take care of regional issues. She said that the Institute has embarked upon publishing books and journals notably. So far, more than 400 titles have been published by it. Regular publications like the *Religion and Law*, *Journal of Objective Studies*, *IOS Newsletter*, and *Mutaleaat* are regularly published by the Institute. IOS has a good library and an extensive databank, she added.

Prof. Hamidullah Marazi, Convener, IOS Forum for Inter-Religious Understanding, who introduced the theme, said that the world today

is suffering from a catastrophe and one should feel concerned about it. Pluralism and relationship with people of different religions should be encouraged to achieve sustainable goals. He called for setting an agenda which was neither too conservative nor too progressive. He observed that common points for inter-religious dialogue should be discussed to arrive at a decision. For this, religions should have good relations among themselves. As a human being, all the stakeholders must promote understanding of all religions, he stressed.

Inaugurating the conference, Professor Arvind, Vice-Chancellor, Punjabi University, Patiala, said that working together was necessary to sustain an understanding of all religions. This conference focused on sustainable goals of equality and fraternity. Being human was of paramount importance. Fraternity should open up to greater dialogue. He pleaded that the dialogue should be held among believers and non-believers and also with people of the same belief. He called for engaging in dialogue with different religions and making efforts to bring all the stakeholders together. He also stressed that the stage for democracy and equality should be set.

In his keynote address, Prof. M. Afzal Wani, Pro-Vice Chancellor, IILM University, Greater Noida & Vice-Chairman, IOS, emphasised the need for achieving goals of religious understanding. Referring to fraternity, he said that it found a place in the Universal Declaration of Human Rights. While achieving the goals of sustainable development, a change in the attitude towards humanity should be brought. He called for promoting fraternity by sustaining it. One should address his conscience. For the furtherance of fraternity, all religions have a role to play in it. Commenting on dignity and fraternity, he said that they also formed a part of the Preamble to the Indian Constitution. He concluded by observing that respect for human dignity should reflect in every decision.

Addressing as a special guest, Prof. Dr. Harmohinder Singh Bedi, Chancellor, Central University of Himachal Pradesh, Dharamshala, said that the cultural legacy and religion could be used to connect people. He referred to the views of Dr. Radhakrishnan who laid emphasis on the dialogue with other religions. He said that it was



Guru Nanak Dev who first spoke the language of dialogue and believed that it was like a bridge which could be crossed by all. His discourse contained the participation of all, which was an answer to all the issues that would be raised at the conference.

He observed that the *Guru Granth Sahib* presented a model to the world, describing it as the first book of dialogue in the world based on Indian languages and culture. When the Universal Charter of Human Rights was being revised, a scholar from Pakistan suggested that the views of Guru Tegh Bahadur should also be included in it. He concluded by saying that the external connection could be snapped, but the internal connection remained unbroken.

Dr. John Dayal, Secretary General of the All-India Christian Council & Member, National Integration Council of India, New Delhi, said that he had spoken several times about the need for holding dialogue with the followers of different faiths in order to understand their viewpoints on a lot of issues. But the problem arose from unrelenting hate speeches that poisoned the mind. Bearded Muslims and Sikhs were targeted by those elements who had no respect for other religions. This phenomenon was not conjoined to India because it was a global phenomenon. He categorically said that the hate against Muslims today was a solitary weapon of the political class to use for political purposes. Hate permeated the whole environment. He observed that the absence of positive wisdom was dangerous for the survival of democracy and its institutions. Dialogues could end the unrelenting hate. He urged the IOS to do something tangible in the field.

Bhai Ashok Singh Bagrian, Former President and Founder Member of the Institute of Sikh Studies, Chandigarh, who prepared the Encyclopedia of *Guru Granth Sahib*, touched upon various aspects of the Sikh holy book.

Maulana Anisur Rahman Qasmi, Member, All India Muslim Personal Law Board, Patna, observed that Islam had reference to other religions also. All human beings have been given respect and treated with dignity. Allah made man worthy of respect. All human beings

were born to one mother and father, and no one had preference over the other. He observed it was Islam which gave respectability even to a dead body. Islam gave equal status to everybody in respect of justice, protection of life, honour, education, employment and business. Equal punishment for the commitment of similar crimes had been prescribed in Islam.

Swami Chidanand Saraswati, President & Spiritual Head, Parmarth Niketan Ashram, Rishikesh, while speaking as guest of honour, highlighted the significance of Inter-religious understanding and stressed on the need of dialogue among different faiths in the present-day context.

Dr. Pramod Kumar Dash, Head, Department of Philosophy, Nayagarh Autonomous Utkal University, Odisha, said that there was much gap between religious paradigm and practice. He observed that religion was to understand one's existence. Everyone should have a common belief because values were beyond religion. There was the need for a common dialogue with different religious denomination he added.

In his presidential address, Prof. Syed Jamaluddin, Director, IOS Centre for Historical and Civilisational Studies, Aligarh, held that Punjab was fertile land for Sufis and saints. In this connection, he took several names of Sufis, saints, gurus and babas. Sohni–Mahiwal symbolised love like the clean water of the rivers flowing in Punjab. *Dastan-e-Ishq* and *Mohabbat* had been the legacy of Punjab, he concluded.

The inaugural session ended with a vote of thanks extended by Prof. Harwinder Kaur, Dean, Faculty of Social Sciences, Punjabi University, Patiala.

### **Business Session-I**

Chaired by Prof. M. Afzal Wani and co-chaired by Prof. Hamidullah Marazi, the first business session focused on peace in the context of religion and sustainable development. Dr. Altaf Hussain Yatoo,

Senior Assistant Professor, Department of Higher Education Government of Jammu & Kashmir, spoke on the Quranic principles of tolerance. He was followed by Saba Naqvi, who focused on the Islamic concept of faith. Mr. Javeed Ahmad Malik, Research Scholar, Department of Islamic Studies, Islamic University of Science & Technology, Awantipora, threw light on 'A Study of Prophet Muhammad (Peace be upon him)'s Universal Peaceful Initiatives'. He was followed by Mrs. Jamaliah Jamil, Research Scholar, University Teknologi Malaysia and Idris Ali, Research Scholar, University Malaysia Sabah. Both of them centered their talk on the role of psychology and gratitude emotion in harmonizing Islamophobic behavior. Mrs. Narinder Kaur, Research Scholar, Department of Philosophy, Punjabi University, Patiala, spoke on 'Humanising Dimensions of Religion and Sustainable Development'. She was followed by Ms. Chetna Trivedi, Research Scholar, Jawaharlal Nehru University, Delhi. She focused her paper on 'Reading Secularism in India with Special Reference to Akeel Bilgrami'.

Dr. Riyaz Ahmad Sheikh, Associate Professor, Department of Islamic Studies, Islamic University of Science and Technology, Awantipora, Kashmir, dwelt on 'Interfaith Dialogue as Tool for Co-existence: An Islamic Perspective'. He laid emphasis on achieving social cohesion and fostering mutual respect.

### **Business Session-II**

Devoted to religion, Gandhi and non-violence, the second business session was chaired by Prof. Idrees, Department of History, Patiala University, Punjab. Prof. Haseena Hashia was the co-chair. Dr. Daljit Kaur, Associate Professor, Department of History, Mata Sundari College for Women, Delhi, spoke on 'Bhagat Bani, *Guru Granth Sahib*-An Explicit Legacy'. She explained the concept of *Bhakti* and the composition of *Guru Granth Sahib*. She said that the Granth Sahib was a paradigm of peace and a model of structural harmony. She was followed by Dr. Rukhshanda Shaheen, Research Scholar, Department of Islamic Studies, AMU, Aligarh. She presented her paper on 'Religion and Peaceful living from the perspective of Abul Kalam Azad'. She said that Maulana Azad was a nationalist and expressed

himself against dogmas. Ab. Majeed Ganaie, Research Scholar, Central University of Kashmir, spoke on 'Universal Brotherhood: A Study'. Mr. Sandeep Kumar, Research Scholar, GNA University, Jalandhar, Punjab, focused on religion and peaceful living. He held that a healthy environment was required in society to promote calmness. Religious tolerance could ensure peace in society, he said. Summing up the proceedings of the session, Prof. Syed Jamaluddin said that history was all about the interpretation of events.

**Day 2 (October 11, 2022)**  
**Business Session-III**

The third business session focused on inter-religious understanding and the Indian Constitution. The session was chaired by Prof. Gurmail Singh, Deptt. of Religious Studies, Punjabi University, Patiala, and Prof. Leila Chamankhah, Visiting Professor from Department of Philosophy, University of Dayton, USA, was the co-chair. Dr. Khalid Hossain, Head teacher, Monu Memorial Institution, Kolkata, spoke on the Indian Constitution and its safeguards for minorities. He briefly discussed Article 30 of the Indian Constitution, which was most important for the minorities and Article 31, which gave right to them to set up and maintain their educational institutions. Dr. Peshimam Nazeer Ahmed, Joint Secretary, OMEIAT Tirupathur, Tamil Nadu, focused on 'Indian Constitution and Safeguards for Minorities'. He said that majorities created problems for minorities leading to conflict. The rights of minorities were inherent and in consonance with the rights contained in the United Nations Declaration on the Rights of Minorities, he added. Dr. Humera Afzal Qadri, Senior Lecturer of Islamic Studies, delved into 'Hazrat Ali's Perception on Social Justice and Human Rights'. Dr. Showkat Hussain, Sr. Assistant Professor, Department of Islamic Studies, Islamic University of Science & Technology, Awantiopra, focused on 'Debating Muslim Women's Rights Act in Contemporary Socio-Religious Context: Challenges and Future Discourse'. Dr. Asma Kounsar, Research Scholar, Central University of Kashmir, Srinagar, presented her paper on 'Gender Equality in Islam'. Dr. Tamanna Mobeen Azmi, Research Scholar, Department of Islamic Studies, Jamia Millia Islamia, Delhi, spoke on 'Islamic Tolerance and Justice

for the Peaceful Coexistence in Multicultural Society’. Mr. Arshadul Islam, Research Scholar, Shri Venkateshwara University, Gajraula, U.P., focused on the ‘Significance of Religion in Social Justice: A Comparative Study of Social Justice Theories of Thomas Aquinas and Ibn Khaldun’. Ms. S. M. Rizwanah, Research Scholar, Department of Philosophy, Manipur University, presented her paper on Indian Secularism and its challenges. Ms. Umme Ammara, Research Scholar, Department of Islamic Studies, AMU, Aligarh, expressed her views on Social Justice and Equality: An Islamic Perspective.

The vote of thanks was proposed by Dr. Tajinder Kaur, Deptt. of Religious Studies, Punjabi University, Patiala.

#### **Business Session-IV**

Chaired by Prof. Abdur Rashid Bhat, Department of Islamic Studies, IUST, Awantipora, the fourth session was devoted to the dialogue for social change and inclusiveness. It was co-chaired by Prof. Haseena Hashia and Prof. Leila Chamankhah. Dr. Tarunjit Singh Butalia, Executive Director, Religions for Peace, USA, spoke on ‘Religious Pluralism in the Public Square: Perspectives from South Asia, United States, and Europe’. Dr. Mohammad Shekaib Alam, Research Scholar, Department of Political Science, IIU, Malaysia, spoke on internalising the maxim that “there is no compulsion in religion” in Islam to realise societal peace and harmony. Dr. Sabreen Javid, Post-doctoral fellow (ICSSR), Shaikh-ul Aalam Centre for Multidisciplinary Studies, University of Kashmir, Srinagar, discussed ‘Linguistic Pluralism Today: A study of Humanistic Values in the Poetry of Shaikh-ul Aalam’. Mr. Mohd Azam, Research Scholar, Department of Islamic Studies, BGSB University, Rajouri, spoke on the ‘Role of Abul Hassan Ali Nadwi in Strengthening Communal Harmony in Indian Subcontinent’. Mrs. Robina Singh, Research Scholar, Department of Art History and Visual Arts, Panjab University, Chandigarh, touched upon ‘A Study of Artistic Responses to the Communal Violence through Installation of Art in India’. Mr. Jaswinder Singh, Research Scholar, Centre for Comparative Religion and Civilisations, Jamia Millia Islamia, Delhi, spoke on

‘Communicating "with" or "about" Other Religion: Making Sense of Inter-religious Dialogue in Habermasian Perspective’. Mr. Heera Singh, Research Scholar, Centre for Comparative Religion and Civilisations, Jamia Millia Islamia, Delhi, focused on ‘Appropriation of Meaning of Religion in Inter-religious Dialogue: A Ricoeurian Perspective’. Mrs. Anita Rani Kamboj, Research Scholar, Tanta University, Sri Ganganagar, Rajasthan, read her paper on ‘Sangat-Pangat and Human Welfare’. Ms. Humaira Mehmood, Research Scholar, Department of Islamic Studies, AMU, Aligarh, centered her paper on ‘Inter-religious understanding: An Islamic perspective’. Ms. Arsala, Research Scholar, AMU, Aligarh, spoke on ‘Peaceful Coexistence: An Islamic Perspective’.

The vote of thanks was proposed by Dr. Ritu Raj, Deptt. of Religious Studies, Punjabi University, Patiala.

### **Business Session-V**

Fifth business session was chaired by Prof. Syed Jamaluddin and co-chaired by Prof. Idrees, Deptt. of History, Punjabi University, Patiala. The session was devoted to the ‘Concept of Langar and Idea of Human Equality’. Dr. Mohammad Ajmal, Assistant Professor, School of Language, Literature and Culture Studies, JNU, Delhi, focused on ‘Vivekananda and Religious Diversity: A critical approach to his thought and belief’. Dr. Sartaj Ahmad Sofi, Assistant Professor, BGSB University, Rajouri, devoted his paper to ‘Contextualise “Langer Khana” in Tassawwuf: A Study of selected Langer Khana’. Dr. Ambreen, Research Scholar, Department of Islamic Studies, AMU, Aligarh, spoke on ‘Tolerance and its value in one’s life: The Perspective of Abul Kalam Azad’. Mrs. Areesha Azhar, Research Scholar, Aligarh Muslim University, Aligarh, focused on ‘Islam and Peaceful Behavior’. Mr. Nasir Hassan Wani, Research Scholar, Department of Islamic Studies, AMU, Aligarh, spoke on ‘Islam and Peaceful Behavior’. Mr. Umar Rashid Bhat, Research Scholar, Central University of Kashmir, Srinagar, co-authored his paper with Mr. Ishtiyag Ahmad Wagay. He spoke on the ‘Institution of Sangat-Pangat and Human Welfare in Sikhism’.

Summing up the proceedings of the session, Prof. Syed Jamaluddin highlighted the Concept of Langar and Idea of Human Equality.

Dr. Leila Chamankhah proposed a vote of thanks.

### **Valedictory Session**

Addressing as one of the guests of honour, Dr. Abdullah Al-Lheedan, Visiting Professor, Kingdom of Saudi Arabia, said that Islam called for equality regardless of colour and creed. There is no superiority of one race over the other. The idea of superiority represented colonisation or subjugation of others. He observed that equality was very important for progress and said, “We made nations and tribes, but they colonised them. Tolerance meant acceptance and peaceful co-existence. Tolerance also meant mercy and compassion”. Equality and tolerance are the two pillars of Islam. Islam called for dialogue among all religions. Cooperation was the key to goals of sustainable goals of equality, he added.

The second guest of honour was Prof. (Dr.) R. S. Bawa, Pro-Chancellor, Chandigarh University, Punjab, observed that faith and religion are very personal to everyone. Human dignity is central to all religions, and all humans must be respected and valued. He called for restraining from saying anything which hurt the sentiments of the people belonging to other religions. He suggested that a prayer relevant to all religions must be held in order to imbibe common minimum features of different religions.

Prof. Om Narayana Rao, Department of Philosophy, Niranjana Govt. Women’s College, Odisha, held that every religion is supreme and human beings are at the centre of it. No interpretation was wrong because everyone has their standpoint. Much of the conflict would be resolved if one understood others’ perspectives. He said that focus on good should be there. He called for focusing on the good and not on the bad. All the good things should be learnt from others. He added that the brotherhood in Islam and *Ahimsa* in Jainism should be adopted for greater acceptability. Prof. Hardev Singh Virk, former

Professor of Department of Philosophy, Punjabi University, Patiala, also expressed his views on the subject as guest of honour.

Prof. M. Afzal Wani called for making all the efforts to arrive at a consensus. This was quite possible to achieve, he observed. He said that Guru Nanak Dev first initiated inter-faith dialogue. The purpose of such conferences and seminars was to disseminate ideas and the message, he pointed out.

Presiding over the valedictory session, Prof. Z. M. Khan, Secretary General, IOS, said that the politicisation of religion affects the true understanding of religion. He observed that propaganda has made religion a tool in the hands of politicians. Religion is the spiritualisation of the human body. He also emphasised that ventures like the two-day conference should try to be collaborative.

Earlier, a five-point resolution, read out by Prof. Syed Jamaluddin, was unanimously adopted by the participants of the conference. The resolutions are as under:

1. Appreciating the impact of its programming in the direction of creating fair understanding about various religions for promoting equality and fraternity, the Institute of Objective Studies is urged to continue such programmes in collaboration with other institutions across the country.
2. The Institute of Objective Studies, by widening its horizon, should expand and extend such programmes and important messages to the whole of humanity, irrespective of their faiths.
3. The Institute of Objective Studies greatly acknowledges the healthy and cordial collaborative support from Sri Guru Gobind Singh Department of Religious Studies and Baba Farid Center for Sufi Studies, Punjabi University, Patiala, and expects such collaborations with other departments of the university also.



4. Youth, including students and scholars, should be involved in the dialogue process and essential measures should be taken for the same.
5. To facilitate this task of nation-building based on equality, justice, universal brotherhood, sustainable co-existence etc., individuals and organisations should come forward and support the Institute of Objective Studies in these endeavours.

The conference ended with a vote of thanks extended by Sh. Daljit AMI, Director, Educational Multimedia Research Centre, Educational Multimedia Research Centre.

**IOS Latest Publication “Equality, Justice and Fraternity in Contemporary India” Released  
(November 12, 2022)**

“Equality, Justice and Fraternity in Contemporary India”, a book edited by Prof. Md. Zafar Mahfooz Nomani, Faculty of Law, Aligarh Muslim University, Aligarh was released by Prof. Eqbal Husain, Dean, Faculty of Law, Jamia Millia Islamia, at a function organised by the Institute of Objective Studies on November 12, 2022.

Presided over by Prof. Z.M. Khan, Secretary General, IOS, the proceedings of the function began with the recitation of a Quranic verse by Hafiz Athar Husain Nadwi with its Urdu translation.

Conducting the proceedings, the Assistant Secretary General of the IOS, Prof. Haseena Hashia, briefly highlighted the characteristics of the book. Referring to the editor of the book, she said that he is a researcher and a teacher of law with expertise in environmental law. He studied the impact of economic zones on the environment and farmers. He wrote several books and contributed several articles in various national and international journals, she added.

Speaking on the occasion, Prof. Md. Zafar Mahfooz Nomani said that the book was the outcome of the commitment of IOS to constitutionalism and constitutional morality. Commenting on the basic structure of the Indian Constitution, he said that in the Kesavananda Bharti v. State of Kerala case, the Supreme Court of India outlined that the basic structure of the Constitution could not be changed. The case was decided on April 24, 1973. In Golaknath v. State of Punjab, which was decided by the apex court in 1967, the Court ruled that the Parliament could not curtail any of the fundamental rights guaranteed in the Constitution. Thus, the basic features of the Constitution could not be altered. He observed that the period between 1973 to 1990 was marked by judicial activism during which issues like the right to livelihood and Panchayati Raj were debated, discussed and decided. He said that under Article 45 of the Constitution, compulsory education became a fundamental right.

The Supreme Court was reeling under a feeling that the country must have constitutionalism and constitutional morality.

Prof. Nomani held that the establishment of an egalitarian society was envisioned by Dr. B.R. Ambedkar. The dream of the creation of a classless society was yet to be realized. The issue of EWS was being debated, and it was open to the Supreme Court to interpret who a minority was. Reports of the diversity and equal opportunities commissions were waiting for implementation. He questioned why a few sections were lacking behind others in terms of development. He also asked why the aid was not reaching certain sections. He commented that equality in social and economic terms was a part of the Preamble to the Constitution. Similarly, according to Dr. Ambedkar, fraternity was most important, adding that equality and liberty were useless without fraternity. The executive was duty-bound to read and implement the provisions of the Constitution, he concluded.

Speaking as the chief guest, Prof. Eqbal Husain said that the title of the book was based on the topic of the two-day national conference organized by the Institute of Objective Studies in Kolkata on April 22-23, 2017. Thus the book was a compilation of papers presented at the conference.

He observed that equality, justice and fraternity were taken from the Preamble to the Constitution. Pandit Jawaharlal Nehru had moved a resolution in the Constituent Assembly to include fraternity and justice—social and political. Talking about the Preamble, he said that it was a pious agreement, and its utility was explained in several judgments of the Supreme Court. The Preamble also enunciated the nature and mode of governance. Governance should also be democratic from a social point of view. The Preamble pointed out that economic justice should be ensured. He observed that the Constitution ensured political and social democracy. He pointed out that liberty could not be divorced from fraternity. Economic and social justice was included in the Preamble, which formed a basis for a reservation to economically backward sections. He explained the meaning of liberty and the idea of a secular state. He said that

equality could not be ensured without the dignity of an individual. The Constitution ensured fair play, and thus, the spirit of it should be maintained, he stressed.

Prof. Z.M. Khan, Secretary General, IOS, observed that understanding things from a proper perspective is a big challenge today. Dr. B.R. Ambedkar was very anxious when the Constitution was drafted. Several things remained in order, but for some time now, the Hindutva ideology diametrically put itself against the spirit and intent of the Constitution. This was so because it believed in a Hinduism-graded society, which had no place in a democratic set-up where every citizen enjoyed the right to freedom of religion. In a democratic political system, it was the duty of the state to ensure that the ultra-religious groups and their activities were put under check. He said that for some time now, India has been witnessing the emergence of the Hindutva ideology, which threatened to develop into majoritarianism. This tendency could lead to dictatorship, which the framers of the Constitution never imagined. He observed that democracy was a commitment to the people to be treated equally. The present situation was tragic because of the plot hatched by the British colonial rulers to keep the pot of bigotry boiling. Referring to Deen, he said how one could know about the world if he had poor knowledge of it. He commented that the madrasas acquired huge properties and presided over them. Friction was bound to exacerbate if society, politics and economics were mixed up. He urged that the true spirit of Islam should be revived. He further asked the Muslims to come forward and work hard.

While extending a vote of thanks, Prof. Haseena Hashia paid rich tributes to the noted scholar of Islamic Economics and Finance, Prof. Mohammad Nejatullah Siddiqui, who died in the USA recently. She read out Dr. M. Manzoor Alam's condolence message on the demise of Prof. Siddiqui. Dua for the maghfirah of Prof. Siddiqui was made.

**IOS organises two-day National Conference on “True Nature and Management of Auqaf for Better Protection, Performance and Development” at Pune  
(November 26-27, 2022)**

A two-day national conference on “True Nature and Management of Auqaf for Better Protection, Performance, and Development” was organised by the Institute of Objective Studies, New Delhi, in association with Waqf Liaison Forum, Pune, Waqf Task Force, Pune, and Indian Auqaf Foundation, Bengaluru at Azam Campus, Pune, on November 26-27, 2022.

**Inaugural Session**

The inaugural session of the conference began with the recitation of a Qura’nic verse by Mr. Mansoor Ahmad with its translation in Urdu. The proceedings were conducted by Mr. Shaikh Nizamuddin, a member of the IOS General Assembly and All India Milli Council. Mr. Akramul Jabbar Khan, a retired Chief Income Tax Commissioner, welcomed the guests and introduced the topic and explained the purpose of holding the national conference.

Opening the conference, the former Union Minister of Minority Affairs, Mr. K Rahman Khan, said that the topic of the conference was very relevant and related to the performance of Auqaf. He noted that the purpose of Auqaf is charitable and religious. There are about six lakh Auqaf in India, which include masjids, graveyards, dargahs, etc.; all of which come under public property, and therefore, their income should be spent for charitable purposes. An effort was made to make the Waqf Act in 1924. Then the Waqf Act was made in 1995. In 1985, the upkeep of Auqaf was transferred to states. The Waqf Act, amended in 1995 had a provision to remove illegal occupation of Waqf property. The Act, however, had some shortcomings, and, in order to remove them, a parliamentary standing committee was appointed. Again, a comprehensive Waqf Act was made in 2013. He said that India had a Waqf Act and state Waqf boards. Despite this, there were encroachments on Waqf property and illegal occupants were making money. Under the Waqf

Act, 1995, Waqf boards had elected members, MLAs and government nominees. At the top level, there existed Waqf council. He demanded that Auqaf properties should be protected and their illegal occupation removed.

Mr. K. Rahman Khan observed that there was a law to protect Waqf properties, but this was not being implemented in letter and practice. He said that Auqafs should be made profitable. Waqf properties were donated for the welfare of the people. Thus it was the duty of every Muslim to protect the Waqf property. He held that people did everything possible to protect their property but did little to save the Waqf property. He said that the property donated by the forefathers as Waqf should be protected by the community or else they would be answerable to Allah on the Day of Judgement. He said that currently, 1.04 crore acres of land in India belong to Waqf, enclosing many cities of India. There would be a complete changeover if Waqf properties were properly used. He noted that even the Supreme Court ruled “once Waqf is always Waqf”. Conferences and seminars on Auqaf were being organised but what was needed was to develop an institutional mechanism to save Waqf properties. He referred to the setting up of a parliamentary committee headed by him and Sachar Committee report for the amelioration of a lot of Muslims. A one thousand crore rupees project encompassing all aspects of the community’s welfare was prepared but it could not move an inch after 2014.

Mr. K. Rahman Khan remarked that he got the Waqf lease rules drafted under which nobody could take land on lease against the law, and Waqf properties could be commercially developed in order to increase their income. Unfortunately, it was not being done. Waqf property belongs to Allah, and everyone is duty-bound to protect it. It could be done voluntarily as well. No community could progress with only emotional slogans. Auqafs should be looked after like five-time prayers and fasting. Since Waqf properties belong to Allah, Muslims have a duty to save them from encroachment and misuse. He referred to a state that possessed 5000-acre Waqf property. The apex court ruled that it was the property of Waqf. But the concerned state government sold about 2000 acres of property, and the rest

were handed over to the Waqf board. He expressed confidence that the conference would yield positive results.

Dr. Wajahat Mirza, the Chairman of the Maharashtra state Waqf board, shared his personal experience during one year of his term.

Mr. Akramul Jabbar Khan, a retired Chief Income Tax Commissioner, pointed out that he was fully devoted to the identification of Waqf properties, their upkeep, and illegal occupation. He said that in many cases, encroachers have been sitting over Waqf properties for years. Arguing for the construction of big buildings on Waqf land, he said that they should be commercially used for increasing the income of those properties. This must be done to thank Allah for giving us the strength to perform the job. In Burhanpur, he found that there were 700-800 illegal occupations of Waqf properties. Stressing the need for the modernisation of Waqf properties, he referred to a Waqf property that was spread over 280 acres on which 2000-3000 tree plantations existed. Such cases were found in UP and Bihar too. Waqf boards were charged with the task of identifying illegal occupants and dispossessing them. He said that problems relating to Auqaf were many.

In his keynote address, Prof. M. Afzal Wani, Vice-chairman, IOS, pointed out that problems had multiplied during the last three decades. Exhorting the younger generation to develop a culture to face problems, he said that every leader thought that they had the last word. But, this was far from reality. Every effort of a Muslim is needed. They have to decide how to face challenges and save humanity. He advised that when a problem occurs, one should see what is lacking in it. If the community did not become conscious, problems would only multiply. He called for critical thinking about how the work could be taken forward. Success could be achieved if the efforts were made with spiritual zeal.

Dr. PA Inamdar, an eminent educationist, observed that things before 1950 were different from today. If the community wanted to progress, it would have to be very serious about its responsibilities. In

order to protect and develop Waqf properties, sincere and honest people would have to be appointed to Waqf boards, he remarked.

Prominent cleric Maulana Aslam Rizvi commented that three systems are in existence today. There are capitalistic, participatory, and Islamic systems. The Islamic system is the best among all of them. Lakhs of acres of land are under illegal occupation today. Thus a plan of action should be formulated to free Waqf properties from illegal occupants. Pleading for holding more such conferences in the future, he said on the Day of Judgement, Allah will ask the faithful to what they did for the protection of Waqf properties. He assured the full cooperation of the Shia community to every effort being made for the preservation of Auqaf.

In his presidential remarks, Prof. ZM Khan, the Secretary General of the IOS, said that the IOS published five books on Waqf. Besides, 16 conferences have been organized by the institute so far in different places in the country on it. He observed that Muslims were living in a survival syndrome because they were being systematically destroyed. About 17.2 crore Muslims live in India, but their economic condition is not good.

Calling Islam the best system in the world, he said that it covered all aspects of life. Islam offered the best democratic system. Advising against finding fault with Islam all the time, he noted that Muslims were caught in the vortex of neither leaving nor catching. A large number of the Muslim population in rural areas shifted to urban areas. But the better half section was of no help to them. Thus there was a need to promote others so that they could also progress. That was the only way out of the present impasse.

He called upon Muslim philanthropists to come forward and extend a helping hand to the poor and the needy in the community.

He pointed out that the problems before Auqaf were not confined to India alone. They were everywhere in the world. He said that the success stories relating to Waqfs should be shared with others for emulation.



Mr. Mohammad Alam, Finance Secretary of the IOS, who represented the Chairman, Dr. M. Manzoor Alam, was also present in the conference.

### **Technical Session-I**

Speaking at the first technical session, Datuk Dr. Mohamed Ghazali Md. Noor, Chairman, iWaqf, Malaysia, and former First Director Strategic Planning, IDB Group, Jeddah, emphasised to work for better protection, performance, and development of Auqaf. He highlighted the role and form of global waqf for the development of the ummah in the 21st century, changing economic realities/opportunities for global waqf, strategic positioning of Muslims through the waqf agenda for Nusantara and catalyst for change imperative of global waqf etc. Auqaf is akhirat duty for Allah SWT.

Dr. Zafar Mahmood, Chairman of Zakat Foundation India, in his speech held that it was the need of the hour to organise such a conference to discuss issues relating to Waqfs. He called for having a telescopic vision of the entire issue. Tracing the genesis of the present legislation on Waqfs, he noted that in 1883, the Religious Endowments Act was passed, and since then, several amendments to the Waqf Act have been made. In order to properly manage, protect and reclaim Waqf properties, several states had a separate Waqf cadre. The Sachar Committee Report had also recommended that a senior officer of the state cadre be appointed as CEO of the Waqf board concerned. Joint Parliamentary Committee too made a similar recommendation. The Sachar Committee had also recommended the constitution of an Indian Waqf Service. The National Waqf Academy, set up a year ago, would provide intellectual input to recruit young graduates for Waqf service, he concluded.

Mr. M. R. Shamshad, Advocate, Supreme Court of India, pleaded for mutually resolving issues. Muslims should be encouraged to engage with the Ulema in masjids and dargahs to sort out their issues and avoid approaching courts and Waqf boards. Calling for doing work on the ground level to benefit from it, he urged the IOS to publish literature on Auqaf.

Advocate Shamshad observed that Jains and Sikhs faced similar problems. He asked the community to be self-sufficient to financially manage Auqaf. Matters arising out of Auqaf were not religious but related to property. Thus it was also necessary to pay attention to record management. There was also a need to build a relationship with the trustee of Waqf because he was not a religious entity. He was there to generate financial resources. He remarked that the account of the Waqf property should be maintained.

In his concluding remarks, Prof. M. Afzal Wani suggested that a document should be prepared for future action. Muslims should be awakened about the better use of the document. He suggested that a conference be organised in Mumbai in which he would also like to participate.

## **Day-2 Business Session-II**

The second business session focused on the aims and objectives of Waqf management. Speaking in the session, Mr. Akramul Jabbar Khan referred to Alamgiri masjid Waqf, where he made a proposal for the setting of a vocational training school. A similar proposal was made in the Kali masjid Waqf complex in Solapur city. He called for maintaining proper accounts and registration of Waqfs. He said that the resources of Waqfs should be generated for the benefit of the community.

Advocate-on-record, Supreme Court of India, Mr. Rauf Rahim, explained the legal perspective of laws relating to Auqaf.

Former CEO of Maharashtra State Waqf Board, Mr. Abdul Rauf Shaikh, said that he remained in the post from 2006 to 2008. He made several suggestions for empowering Auqaf. He noted that the Waqf Act was fine in its present form but required some minor changes even though a few amendments were made in the Act of 2013. He suggested that a bold, honest, and regular CEO of the board should be appointed, and the CEO should belong to the All India Waqf Service. Nearly 90,000 acres of land in Maharashtra came

under Waqf. Under the new Waqf Act, encroachment on Waqf property had been made a cognizable offence. But the impediment to the encroachment removal was the non-availability of manpower.

Dr. Abdul Halim Zeidan, Chairman, Glocalobe Development Programs Institute, Lebanon, shed light on futuristic Waqf. It required re-energising the futuristic Waqf thought. He also said that Waqf should be redefined from the civilisation revival perspective. He called for developing competencies in all fields and sectors, paralleled to leadership. Mr. Salim Mulla, President of Waqf Land Task Force, said that the course of action in the matter should be decided. Millat was also duty-bound to cooperate in the task of overseeing and upholding Waqfs. And all the stakeholders would do well if taken interest in it, he stressed.

Mr. M. Farid Tunekar, Director, Waqf Liaison, said ‘once a Waqf, always a Waqf.’ Tracing the history of Waqfs, he said that there had been a shift and reciprocity. But about 68,550 acres of land still had no management. He clarified that the mutawalli was the owner of the Waqf. This was due also to the lack of interest and awareness in the community. Thus the community needed to be awakened. There has to be a mode of development of Waqf properties. Besides, measurement of performance and accountability needed to be put in place, he pointed out.

Mr. Usman Ghani from Hyderabad emphasised that the protection of the Waqf property was very important. He said that till Muslims got their rights guaranteed in the Constitution, Waqf property could neither be properly managed nor protected. Criticising the inaction of the Telangana Waqf Board, he said that land worth Rs. 20,000 crores in the state was going to waste.

### **Business Session-III**

Mr. Salim Mulla, President, Waqf Land Task Force, asked the Muslims not to allow the feeling of weakness to affect them. Waqf boards could do much for strengthening Auqaf in terms of better management if their funding improved, he added.

Dr. Zahir A. Kazi, Chairman, Anjuman-e-Islam, referred to Waqf laws and stressed that the Waqf institutions should be strengthened. In order to free the Waqf properties from illegal occupation, an unauthorised occupation bill must be brought. Besides, the community should be acquainted with civility and good mannerism. He said that Waqfs in several states were engaged in implementing welfare schemes. He suggested that the functioning of the board and the management be improved.

Advocate Rashid Siddique of Waqf Matta Suraksha Force, Aurangabad, said that the Waqf boards consisted of Muslim functionaries, but the loot was rampant. He informed that land worth about Rs. 8 lakh crore was still untraceable. With a view to recovering Waqf land, a movement could be launched, and his organisation was willing to cooperate in the task. He urged the Waqf experts to maximally use social media to reach out to the community.

Dr. Shariq Nisar, professor at Rizvi College of Management, Mumbai, spoke on cash Waqf and its relevance in India. He said that liquidity was the main problem in cash Waqf. However, cash Waqf was very much in circulation in countries like Malaysia and Bahrain. He briefly threw light on understanding the Waqf and its relevance, structure, types, categories, innovations, and challenges faced by Waqf in India.

Sayed Anwar Ali, joint secretary, Indian Union Lawyers League, focused on innovative financing for Waqf development projects. He pointed out the drawbacks of the existing financial institutions. He also referred to current financing regimes for Auqaf development and the National Waqf Development Corporation Limited. Proposing solutions to such issues, he said that there should be sharing-based instruments. Besides, there should be instruments yielding predetermined returns. He concluded by saying that innovative financing of Waqf could be mobilised.

### **Valedictory Session**

Delivering the valedictory speech, Prof. M. Afzal Wani said that there should be a networking system to connect with people. In addition, there should be a media arm, a hospital, and a knowledge-sharing system. Waqf is an institution that enabled tying up of property for a pious cause like alleviation, promoting human good, facilitating collective human activities at all levels, and making humanness sustain in its endurance and dynamics. He said that the role of Auqaf was perpetual and continued in most parts of the world for the benefit of many. Prof. Wani maintained that at present, India has lakhs of significant Waqfs with a potential of a few billion economies. He said the issues related to Waqf needed to be seriously addressed and considered with new needs and new techniques.

Dr. M. Manzoor Alam, Chairman, IOS, who could not physically attend the conference, in his message, said that the fundamental idea behind the concept of Waqf was focused on the socio-economic assistance, strength, stability, and the development of the Muslim population. The humanitarian emphasis of the concept was entirely *Fi-Sabilillah* (charity for the sake of Allah for His pleasure). Any asset/possession which had been given/donated/purchased for the Waqf had no longer any individual claim legally and was used for the benefit of ummah. The assets under Waqf needed the utmost attention of the Ulema, Islamic institutions, organisations, and Ummah to change the present status by presenting a comparative plan to challenge each problem with logic and rationale and come up with solutions, he emphasised.

In his presidential remarks, Prof. Z. M. Khan remarked that in terms of Auqaf, India presented a pathetic situation in terms of the potential and size of Auqaf and the performance of Auqaf over the centuries. The most important issue relating to Auqaf in India was how to salvage and improve the system and working of Auqaf in India. Waqf endowments in India were staggering. He said that there were around 8 lakh registered properties and as much as 6 lakh acres of land, the largest in the world. Waqf, in its constructive sense, was

one of the redistribution institutions for the welfare of the whole society, he concluded.

On this occasion, an eleven-point resolution was unanimously passed by the delegates of the conference. The resolution read as:

- A- Ministry of Minority Affairs Govt. of India & State Minority Departments should issue rebuttal of the false propaganda /untruths about the WAQF ACT through media in various quarters. This can be easily done by issuing a White Paper about Waqf properties, purpose, and history thereof.
- B- Digitisation through [wamsi.nic.in](http://wamsi.nic.in) sorely needs SUPERVISION AND RECTIFICATION of glaring mistakes. No business/ project has ever succeeded with incomplete and incorrect INVENTORY. Digitisation should be REAL TIME, CORRECT, AND COMPLETE.
- C- The Central Waqf Council should exercise its power of calling for information from the WBs more regularly and STRINGENTLY. The members of the CWC are advisors to the government of India on WAQF MATTERS, and as such that institution should further be refurbished, if need be.
- D- State Governments are bound by law to put up in the assembly annual reports about Auqaf in their jurisdiction on the basis of reports submitted by the Waqf Boards as provided. Submission of such reports and publication thereof be ensured.
- E- Submission of annual AUDIT REPORTS by the WBs to the CWC should be ensured. If a Waqf Board does not deliver, it should be dissolved in the interest of protection of this very important tool of social welfare.
- F- Concerned Waqf Boards should ensure that the legal limit of a total of five years for a property being in their management

and the requirement of annual reports relating to such properties should be STRICTLY ADHERED TO.

- G- Recruitment of staff, outsourcing, prioritisation, and formation of local committees as provided under the law should, needless to say, be taken up IMMEDIATELY.
- H- Developmental work, as provided under section 32 (4,5,6), be taken up in consultation with the local area committees. The objective of development should be the maximisation of income therefrom to finance aids, scholarships, etc.
- I- A wide-bodied research cell comprising experts from various concerned fields should be formed at the national level with similar bodies at the state level. This body/bodies should be in constant interaction with CWC/WBs as well as Mutawallian and publish the annual report of their activities for the information of the community. Simultaneously, this body should elect personnel of eminence to serve as a "WAQF OMBUDSMAN". This institution should be at the National level as well as State level.
- J- An appeal to the community suitably and widely advertised through local zimmedarans/activists for the institution of a WAQF FUND. This is necessary for effectively carrying out the Waqf Liberation and development work.
- K- Lastly, all efforts should be made to engage actively with all elected representatives who talk about minority interests.

The conference concluded with the presentation of a vote of thanks.

**10<sup>th</sup> IOS Lifetime Achievement Award presented to  
Mr. K. Rahman Khan  
(December 29, 2022)**

The tenth “IOS Lifetime Achievement Award” was conferred on the former union minister for minority affairs, Mr. K. Rahman Khan at an impressive function organised by the Institute of Objective Studies on December 29, 2022 at the speaker hall of the Constitution Club of India, New Delhi.

The function began with the recitation of a verse from the Holy Qur’an by Adnan Nadwi. The secretary general of the IOS, Prof. Z.M. Khan, welcomed the guests and introduced the Institute by highlighting its activities. In his speech, he said that K. Rahman had been associated with the IOS for a long time. The Institute had completed three and a half decades of its existence with steady progress and widening the scope of its endeavours as a non-political and non-profitable organisation. It had gained recognition in all relevant quarters at a national and international plane for promoting research, conducting surveys on relevant themes, publishing books and journals in the areas of national concern and pressing challenges of civil societies, awarding scholarships to meritorious university scholars, actively participating in social welfare, educational and management fields. He observed that the focal areas might also be identified for developing development models suiting to Indian masses, particularly the poor, marginalised and deprived sections; initiatives to foster world peace, and strive hard to develop mechanisms and environment for conflict resolution.

Prof. Khan noted that the IOS had specifically tried to create linkages with other NGOs on practical levels by creating synergy for collaborative efforts and programmes. Another notable area had been to work on regional problems and profiles of marginalised sections of society in different regions of India. He said that the Institute had become a trendsetter in the fields of conceptual and investigative research on the Quranic approach to human problems and the problems of Muslims in India. He invited suggestions for making the Institute more meaningful.



Prof. Khan's speech was followed by the reading out of the citation by S.M. Shafiq which read as "A legislator, a parliamentarian, and educationist, a master of the accounting profession, an intellectual of global standing, an editor of reputed newspapers, a social activist..., the life and times of Mr. K. Rahman Khan are embellished with achievements, glittering with causes he has upheld in the Parliament of India, in the Karnataka State Legislatures, impacting and benefitting the lives of millions of people in India and across the world... "In 1994, Mr. Rahman Khan stepped into the national stage. For the next twenty-four years, Mr. Khan left his mark in the Upper House/Rajya Sabha as an hon'ble Member of Parliament, a Deputy Leader of his party, the Indian National Congress, a Minister of State for Chemicals and Fertilizers. Indeed, a brilliant political career, unmatched by his peers".

"In 1966, upon his initiative in Rajya Sabha, a Joint Parliamentary Committee (JPC) on Waqf was formed after he successfully highlighted the loopholes and gaps to be filled in the Waqf Act, 1995 for the benefit of the Muslim Ummah, including humanity at large..." Deeply connected with the finest and the most refined facets of life and learning, Mr. Khan's contributions as a patron of cultural, educational, artistic and scientific causes are legendary. Innumerable Trusts, Foundations and Civil Society bodies have benefited from his patronage..." The Institute of Objective Studies deems it an honour and privilege to present the Tenth IOS Lifetime Achievement Award to him in recognition of his selfless and dedicated services to the nation".

Prof. Furqan Qamar, former Vice-Chancellor, University of Rajasthan and Himachal Pradesh, presented the scroll of honour to K. Rahman Khan.

Chairman of the IOS, Dr. M. Manzoor Alam, presented a cheque of One Lakh rupees to K. Rahman Khan as the amount carried by the award.

A momento was presented to him by the former chief minister of Uttarakhand, Harish Singh Rawat. Addressing as the chief guest, he

said that he saw Mr. K. Rahman Khan working in different capacities. Whichever institution he worked for, he did its complete makeover. He saw his work in educational and social fields and his role as a parliamentarian. Describing him as a perfect personality, he noted that as the deputy chairman of the Rajya Sabha, K. Rahman Khan conducted proceeding of the House in a decent manner. On a number occasions, he displayed maximum restraint and caution while giving his ruling on difficult and contentious issues. He used to be tough on several matters, but his explanation was very convincing to both treasury and opposition benches. As a union minister for minority affairs, his proactive initiatives were acclaimed by the community. His contribution in the field of education was peerless as he opened several educational institutions in Karnataka, his own state, for the benefit of Muslims and other communities. In public life, he encountered several difficulties, but overcome them in the long run.

Harish Rawat observed that Rahman Khan launched a number of schemes for the benefit of the minorities. He was always very sincere about his work and had a sense of belonging to the welfare of the community. He was never found wanting in his efforts to empower new generation with education. He observed that he learnt a lot from Rahman Khan. Referring to the state of affair today, he said that the number of well-meaning persons was sharply declining. Such people had been putting the shortcomings under wraps in order to avoid giving grist to the propaganda machinery. Things had changed now as the history was being sought to be re-written. They wanted to negate the facts of Indian history, down-playing the sacrifices made by great leaders. He maintained that earlier, people used to vote on the basis of the qualities of the candidates. But today, the mood of the country was being changed to suit the whims of certain people. Quoting the senior Congress leader, Rahul Gandhi who said that he wanted to 'open shops of love in the corridors of hatred', he said that instead of knowing the identity of a person he should be listened first. He described Rahman Khan as a lighthouse who spread light to illuminate whoever came into its contact. By honouring K. Rahman Khan, Chairman of the IOS, Dr. M. Manzoor Alam had honoured the society, he added.

Speaking as the guest of honour, Prof. Furqan Qamar commented on the current situation and said that it could be likened to the time existent during the Britishers which prompted the famous Urdu poet, Akbar Allahabadi to say that “The rivals lodged an FIR with the police that Akbar uttered Allah’s name even in this age”. Under the prevailing situation, the IOS was doing yeoman’s service by not sticking to subjectivity and engaging itself in inter-faith dialogues for proper understanding of one’s religion and its practices. He felt proud of the recipients of the lifetime achievement award being given by the Institute of Objective Studies to the eminent personalities who made exceptional contribution in different fields since 2007. Enumerating the names of the awardees in the list, he held that K.R. Rahman fully deserved the award. In this connection, he recited a couplet of the prominent Urdu poet, Allama Iqbal. Since the function was being held in the Constitution Club, the Constitution of India should be safeguarded. He noted that Rahman Khan symbolised all the things enunciated by Dr. Iqbal in his poem, “Lub Pe Aati Hai Dua Banke Tamanna Meri...” But unfortunately, a student was punished by the school for singing this song. He remarked that both Harish Rawat and Rahman Khan rekindled identical hope. He concluded by saying that he served as a member of the committee on the minorities set up by A.R. Antulay, the then union minister of minority affairs.

In his special address, the Vice-Chairman of the IOS, Prof. M. Afzal Wani, observed that the Institute reflected values and the vision of the Constitution. It also reflected the dignity of governance in the country. He said that K. Rahman Khan was assertive and had a vision. People knew what he did for their welfare. He did his best to educationally and socially empower the people. He had been a benefactor of the people and thus the society must appreciate his sincerity. He had challenges before him as was reflected from his biography. He held that Rahman Khan piloted a bill to amend the Waqf Act in the face of stiff opposition to it in 2013. His life was a light in the darkness, Prof. Wani concluded.

Addressing the function, K. Rahman Khan, said that he had been associated with the IOS for the last three decades. Describing the

chairman of the IOS Dr. Mohammad Manzoor Alam as an intellectual, he noted that he had been discussing a number of issues relating to the community and nation. IOS contribution in the field of data collection, publication, research, etc., was noteworthy. Referring to the psyche of the Muslim community, he said that sentiments had gripped leading to the loss of proper vision among them. He admitted to have benefited from the guidance of the IOS chief. Laying stress on the need for a dialogue among the stakeholders, he noted that he had been holding regular consultations on various issues. He criticised those who said that nothing substantial was done in the matter of awqaf and everything was lost during the period. This simply meant that they became oblivious to the sacrifices made by the leaders of the community. He asked the members of the community to always adopt positive attitude that was the only key to success.

K. Rahman Khan, claimed that he was the first Muslim chartered accountant of Karnataka. Underlining the importance of education, he said that it played an important role in changing the life of an individual. This was due to training one underwent. He maintained that he been connected with the educational institutions for the last 55 years. He set up schools, engineering colleges and other institutions. Besides knowledge, one needed initiatives to be taken for success. He complained that the Muslim community was very sentimental and less inclined to take initiatives. In a diverse society, every community has a participatory role which could not be termed as communal. If one could not help himself, nobody would come forward to help him. He said that he was first Muslim to open a medical college, an engineering college and several degree colleges. In order to educationally empower Lingayat community in Karnataka, several educational institutions were opened and they were smoothly running for the last 100 years. He asked the Muslims to become givers and not seekers. He thanked Allah for granting him an opportunity to work for the benefit of his community. He was of the firm opinion that if one had ability then help would definitely come his way.

K. Rahman Khan, called for holding dialogues to end an atmosphere of conflict. There should be no occasion of conflict. An atmosphere of goodwill and brotherhood should be created to sustain secularism. Communal harmony and brotherhood were the prerequisite for progress and prosperity. He said that the onus of saving the Constitution rested on everybody. He recalled the statement of Dr. B.R. Ambedkar who warned at the Round Table Conference in London that if proper steps were not taken, India would end up a majoritarian state. He held that the bills on data centre and equal opportunities commission were introduced by him in parliament. He vowed to continue his struggle for the cause of society.

In his presidential remarks, the Chairman of the IOS, Dr. Mohammad Manzoor Alam observed that the legacy of the IOS Lifetime Achievement had been rich, and this year too, the honour was being dedicated to someone whose phenomenal life and actions were nothing short of an inspiration. The 10th IOS lifetime achievement was being bestowed on a warm and gracious person whom he had known for decades. He said that throughout his active life, K. Rahman Khan Saheb had helped people and reached out to institutions which needed his help and support. With an innate desire to help community at large, his immense contribution for the upliftment of the Muslim community was also commendable, he noted.

Referring to the contribution of K. Rahman Khan in the areas of waqfs and waqf management, he said that he gained immensely from his knowledge and insights. While attending a programme organised by the IOS on waqf, he patiently listened to the challenges faced by the waqf management and promises to do everything to help in his capacity, he concluded.

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