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E-mail: redflowerppl@vsnl.net
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Original Article

Accessibility of Copyrighted Works for Visually Impaired and Print Disabled Persons: Indian and International Perspectives

Devidas G. Maley

"To every cow her calf, and to every book its copy"

- Diarmaid Mac Cearbhaill

Author Affiliation
Assistant Professor of Law, Department of Post-Graduate Studies and Research in Law, Gulbarga University, Gulbarga - 585 106.

Reprint Request
Devidas G. Maley, Assistant Professor of Law, Department of Post-Graduate, Studies and Research in Law, Gulbarga University, Kalaburagi Gulbarga – 585 106.
E-mail: drdgmaley@gmail.com

Abstract

Rationality and creativity are the hallmark of the human being as he is only a rational and higher creative animal than any other animals. There are several activities of creativity which be an invention, a discovery, a literature, a music compositions, a dramatic works, a painting, a cinematograph film, a sound recording etc. Almost all the modern countries have recognised the contribution of these creators by affording and conferring certain rights on the persons who are responsible for creating these works called the intellectual property rights (IPRs). The intellectual creations are regarded as property. They are being protected by law. The IPRs are of varied types such as patents, trademarks, designs and copyright etc. Intellectual property helps in economic, educational and cultural development of the nation.

Copyright is one of the major kinds of IPR which is different from the patent, trademark, integrated circuits and geographical indications. Copyright helps in progress of cultural and publishing industry of the nation for which copyright is recognised as a property protected by legal mechanism. Copyright exists in creative works which are original in nature. Copyright subsists in original literary, artistic, dramatic, musical, cinematographic, sound recording and computer programmes. Copyright also further extended to performers' and broadcasting reproduction rights allied rights. The creators of these works such as authors, artists, composers and producers will get certain exclusive rights protected by a definite period. Owners of copyright to the exclusion of others will enjoy these rights protected by the law for a defined period. The person who make use of the works, protected by the copyright without consent or authorisation of the owner, amounts to infringement of copyright leading to civil and criminal liabilities.

Copyright constitutes one of the most challenging barriers in the access to information of persons with sensory impairments. Among the 57 countries with copyright exemptions, India's approach stands out as it is inclusive and non-bureaucratic, catering to the needs of persons with disabilities living in the Global South.

Keywords: Intellectual Property; Copyright; Visually Impaired Persons; Print Disabled Person; Infringement of Copyright; Fair Use Doctrine; Exceptions to Infringement; Accessible Format.

Introduction

The concept of copyright is essentially a product of modern civilisation. In ancient days, works of art and literature were created mainly to achieve name and fame [1]. Copyright is a unique kind of IPR, the importance of which is increasing day by day. Traditionally the copyright does not fall in the category of industrial property. In fact, copyright was the first intellectual property, which received legal protection in the world. Copyright law unlike patent and trade secret, protects the expression of an idea rather than the underlying idea itself. The subject matter of copyright is literary, artistic, dramatic, musical etc., works. All such works are protected as long as there is an original expression of an idea. The idea and expression dichotomy enables others to express the same or similar idea with different expression or similar expression without copying or imitating and receive copyright protection as long as the expression satisfies the test of originality.

The most basic right conferred by copyright is the right to exclude unauthorised reproduction of the copyrighted work. Most laws relating to copyright also prohibit certain acts such as performing the work in public, making a sound recording or audio-visual recording of the work, making a motion picture of the work, broadcasting or publicly communicating [2] the work and translations or adaptations [3] of the work. In addition to these economic rights, most copyright laws recognise moral rights as well, which are also called as special rights, normally include the author's right to claim authorship and to protect the work from mutilation or distortion [4]. It is said that 'what is worth copying is worth protecting'. This principle is aptly applicable to the protection of copyright in relation to various works such as literary, artistic and musical works etc.

Copyright is the most vulnerable form of intellectual property, as it is the most fragile and prone to abuse and theft. Generally it is said that advancement of science and technology improves the standard of life in the society. However, in the case of copyright protection, the advancement has posed greater challenges for protection of copyright due to invention of printing machine in 1440 by Johannes Gutenberg of Mainz, Germany. With the advent of reprographic technology like photocopying, scanning and digitisation, it has become very much easy to make multiple copies and reproduction of works within a fraction of time which put greater risk of protecting copyrights of the authors and owners. Since protection of intellectual property is based on the principle of economic reward or incentive to the creator, the authors of the copyrightable works, now feel really insecure in the present environment. The effective mechanism is need of the hour to guard the interest and to protect the rights of the owners of the copyright as all copyright systems have recognised principle of fair use doctrine to make of the copyrighted works for certain purposes including by visually impaired or print disabled persons recent past.

Meaning and Definition of Copyright

Copyright is a right accorded by law to creators of literary, dramatic, musical, artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, *inter alia,* rights of reproduction, communication to the public, adaptation and translation of the work. There could be slight variations in the composition of the rights depending on the work [5].

Copyright derives from the expression of 'Copie of words' first used in 1986. The word 'copy' alone probably dates from *circa* 1485 and was used to connote a manuscript or other matter prepared for printing [6].[6]

The Oxford English Dictionary defines 'Copyright' as 'the exclusive right given by law for a certain term of years to an author, composer etc. (or his assignee) to print, publish and sell copies of his original work'. Chambers Encyclopaedia defines copyright in its most elementary form as 'the exclusive right to multiply copies of a book'. The Colliers Encyclopaedia defines as 'a privilege or franchise granted by the Government to authors, composers and artists ……..which entitles them to the exclusive right of printing or otherwise multiplying, publishing and vending copies of the copyrighted literary or artistic production.'

The statutory definition of the copyright defined in Section 14 of the Copyright Act, 1957, copyright means the exclusive right to do or authorise others to do certain acts in relation to: 1) literary [7], dramatic [8] or musical [9] works, not being a computer programme, 2) computer programme [10], 3) artistic work [11], 4) cinematographic film [12] and 5) sound recording [13]. The nature of the acts varies according to the subject matter. Basically copyright means the right to copy or reproduce the work in which copyright subsists [14]. Apart from these works the Copyright Act, 1957 extends its protection to performer's [15] rights [16] and broadcasting [17] reproduction rights as allied rights to the copyrights.

Object of Legal Protection of Copyright

Copyright ensures certain minimum safeguards of the rights of authors over their creations, thereby protecting and rewarding creativity. Creativity being the keystone of progress, no civilized society can afford to ignore the basic requirement of encouraging the same. Economic and social development of a society is dependent on creativity. The protection provided by copyright to the efforts of writers, artists, designers, dramatists, musicians, architects and producers of sound recordings, cinematograph films and computer software, creates an atmosphere conducive to creativity, which induces them to create more and motivates others to create [18]. Chinnappa Reddy, J. in *Gramophone Co. v. Birender Bahadur Pandey*, AIR 1984 SC 667 at p.676 stated about the rationale and objective of protection of copyright, he said, "An artistic, literary or musical work is the brainchild of the author, the fruit of his labour and so, considered to be his property. So highly is it prized by all civilised nations that it is thought worthy of protection by national laws and international conventions [19]."

The object of copyright law is to encourage authors, composers and artists to create more and more original works by rewarding them with the exclusive right to enjoy monetary advantages for limited period to reproduce the works for the benefit of the public. On the expiry of the term of copyright the works belong to the public domain and anyone may reproduce them without permission [20].

The hallmark of any culture is the excellence of arts and literature. In fact the quality of creative genius of artists and authors determine the maturity and vitality of protection. What the law offers is not the protection of the interest of the artist or the author alone. Enrichment of culture is of vital importance to each society and the copyright law protects the social interest [21]. The copyright law has been enacted to check the piracy i.e., the labour put by the author or the copyright owner can enjoy but not pirates, who indulge in plagiarism and other undesirable and illegal activities of theft of intellectual property [22]. Thus the objects of the copyright protection are: (1) encouragement to creative and innovative works, (2) enrichment of culture and heritage, (3) dissemination of information and knowledge, and (4) protection of the legitimate interests of authors and owners of copyright.

History of Copyright Law in India

The legislative history of copyrights in India is influenced by British law on copyright. The first and foremost copyright law in India is the Copyright Act of 1914. This Act was essentially the extension of the British Copyright Act, 1911 adopted India with suitable modifications. Then the Copyright Act, 1957 was enacted which is current law on Copyrights in India. The Copyright Act, 1957 is based on many of the principles and provisions contained in the Copyright Act, 1956 of the United Kingdom. The Copyright Act, 1957 continues with the common law traditions. Developments elsewhere have brought about certain degree of convergence in copyright regimes in the developed world.

The Copyright Act, 1957 came into effect from January 1958. This Act mainly has been amended five times since then, i.e., in 1983, 1984, 1992, 1994, 1999 and 2012. The Copyright (Amendment) Act, 2012 is the most substantial. The main reasons for amendments to the Copyright Act, 1957 include to bring the Act in conformity with WIPO Copyright Treaty (WCT), 1996 and WIPO Performers & Phonograms Treaty (WPPT), 1996; to protect the music and film industry and address its concerns; to address the concerns of the physically disabled and to protect the interests of the author of any work; incidental changes; to remove operational facilities; and enforcement of rights. Some of the important amendments to the Copyright Act in 2012 are extension of copyright protection in the digital environment such as penalties for circumvention of technological protection measures and rights management information, and liability of internet service provider and introduction of statutory licences for cover versions and broadcasting organizations; ensuring right to receive royalties for authors, and music composers, exclusive economic and moral rights to performers, equal membership rights in copyright societies for authors and other right owners and exception of copyrights for physically disabled to access any works.

The Indian Copyright Act today is compliant with most international conventions and treaties in the field of copyrights. India is a member of the Berne Convention of 1886 (as modified at Paris in 1971), the Universal Copyright Convention of 1951 and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs), 1995. The two international treaties were negotiated in 1996 under the auspices of the World Intellectual Property Organization (WIPO). These treaties are called the 'WIPO Copyrights Treaty (WCT)' and the 'WIPO Performances and Phonograms Treaty (WPPT)'. These treaties were negotiated essentially to provide for protection of the rights of copyright holders, performers and producers of phonograms in the Internet and digital era. India is not a member of these

treaties; amendments are being mooted to make Act in compliant with the above treaties in order to provide protection to copyright in digital era. The provisions of the Act are also in harmony with two other new WIPO treaties namely, the Beijing Audiovisual Performers Treaty, 2012 and the Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired or Otherwise Print Disabled Persons, 2013.

The Copyright Rules, 2013 was notified on 14 March, 2013 replacing the old Copyright Rules, 1958. The Rules, *inter alia*, provide for procedure for relinquishment of copyright; grant of compulsory licences in the matter of work withheld from public; to publish or republish works (in certain circumstances); to produce and publish a translation of a literary or dramatic work in any language; licence for benefit of disabled; grant statutory licence for cover versions; grant of statutory licence for broadcasting literary and musical works and sound recordings; registration of copyright societies and copyright registration[23]

Rights Conferred on Ownesr of the Copyright

Copyright is purely a creation of the statute [24] so it is a statutory right not a common law right unlike a trademark. The right which an author of a work has by virtue of creating the work, but not upon the registration. The registration of copyright is not mandatory for subsistence as well as for acquiring the right in the works. Copyright is an exclusive right which is available subject to Section 13 and other provisions of the Copyright Act, 1957. Copyright is a negative right, to the prohibition of others the owner will enjoy his right. Upon confirmation of the right copyright provides bundle of multiple rights. Copyright provides both economic as well as moral rights to the authors [25]. The exact rights which conferred on the owner are listed in Section 14 of the Copyright Act, 1957. Section 14 reads that copyright means the exclusive right subject to the provisions of the Act to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:

(a) In the case of a literary, dramatic or musical work, not being a computer programme, - (i) to reproduce the work in any material form including the storing of it in any medium like electronic form; (ii) to issue copies of the work to the public not being copies already in circulation; (iii) to perform the work in public, or communicate it to the public; (iv) to make any cinematograph film or sound recording in respect of the work; (v) to make any translation of the work; (vi) to make any adaptation of the work; (vii) to do, in relation to a translation or an adaptation of the work any of the acts mentioned above;

(b) In the case of a computer programme, - (i) to do any of the acts mentioned in clause (a); (ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme: Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental."

(c) In the case of an artistic work,- (i) to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work; (ii) to communicate the work to the public; (iii) to issue copies of the work to the public not being copies already in circulation; (iv) to include the work in any cinematograph film; (v) to make any adaptation of the work; (vi) to do in relation to an adaptation of the work any of the acts mentioned above;

(d) In the case of cinematograph film, - (i) to make a copy of the film, including a photograph of any image forming part of it; (ii) to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions; (iii) to communicate the film to the public;

(e) In the case of sound recording, - (i) to make any other sound recording embodying it; (ii) to sell or give on hire, or offer for sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions; (iii) to communicate the sound recording to the public. *Explanation:* For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.

Apart from these rights the owner can also transfer his rights through assignment and licences to the person who wants to exploit the rights of the owner.

Term of Copyright Protection

Copyright basically a limited right in terms of its protection. The term and duration for which the copyrights are protected is varies according to the nature of the work. Term of copyright is provided under Sections 22 – 29 of the Copyright Act, 1957. The term is shown in the following table.

Sl. No.	Works	Term
1	Literary, dramatic, musical or artistic	60 pma* (Life + 60 Years)
2	Photograph	60 years
3	Cinematograph film	60 years
4	Sound recording	60 years
5	Government work	60 years
6	Works of public undertaking	60 years
7	Works of international organizations	60 years
8	Performers right	50 years
9	Broadcast reproduction rights	25 years

**post mortem auctoris*–after the death of the author

Violation or Infringment of Copyright

Rights conferred upon the owner must be enjoyed and exploited by the owner for the term assigned for the particular works. The right of owner can be enforced preventing others from making use of his works. In case any person indulge in violation or infringement of copyrighted works is an encroachment upon rights of the owner of the copyright. Copyright law confers upon the owner of the work a bundle of exclusive rights in respect of the reproduction of the work and other acts which enables the owner to get financial benefits by exercising such rights. If any of these acts relating to the work is carried out by a person other than the owner without a licence from the owner or a competent authority under the Act, it constitutes infringement of copyright in the work [26]. Copyright is a limited right restricted with a definite term, after the expiry of this term there will be no infringement of copyright. Infringement of copyright depends upon the nature of the works. Infringement of the copyright varies from the work to work.

Section 51 [27] provides for when copyright infringed. - Copyright in a work shall be deemed to be infringed-

(a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act- (i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or (ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or

(b) when any person- (i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or (ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or (iii) by way of trade exhibits in public, or (iv) imports into India, any infringing copies of the work: Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer. *Explanation.*- For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an "infringing copy".

Exceptions or Limitations to Infringment of Copyright

In all modern civilised countries have also provided certain exceptions or limitations on copyright protection whereby facilitated to make use of the copyright protected work without being facing the liabilities of violations. The exceptional circumstances are meant for protecting the public interest whereby the persons are allowed to use the works for genuine purposes called as 'fair use doctrine' or 'fair dealing doctrine.' The authority in copyright W. R. Cornish lists fair dealing circumstance are (1) Research and Private Study, (2) Reporting current Events, (3) Criticism and review: [28] The same has been adopted by the international as well as national level legal systems. In India there is separate provision under which the limitation clause has been adopted under section 52 of the Copyright Act, 1957. Section 52 of the Copyright Act, 1957 can be read: "52. Certain acts not to be infringement of copyright.- (1) the following acts shall not constitute an infringement of copyright, namely:

(a) a fair dealing with any work, not being a computer programme, for the purposes of- *(i)* private or personal use, including research; *(ii)* criticism or review, whether of that work or of any other work; *(iii)* the reporting of current events and current affairs, including the reporting of a lecture delivered in public. *Explanation.*-The storing of any work in any electronic medium for the purposes mentioned in this clause, including the incidental storage of any computer programme which is not itself an infringing copy for the said purposes, shall not constitute infringement of copyright";

(aa) the making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme, from such copy- (i) in order to utilise the computer programme for the purposes for which it was supplied; or (ii) to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilise the computer programme for the purpose for which it was supplied;"

(ab) the doing of any act necessary to obtain information essential for operating inter-operability of an independently created computer programme with other programmes by a lawful possessor of a computer programme provided that such information is not otherwise readily available;

(ac) the observation, study or test of functioning of the computer programme in order to determine the ideas and principles which underline any elements of the programme while performing such acts necessary for the functions for which the computer programme was supplied;

(ad) the making of copies or adaptation of the computer programme from a personally legally obtained copy for non-commercial personal use;

(b) the transient or incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public;

(c) transient or incidental storage of a work or performance for the purpose of providing electronic links, access or integration, where such links, access or integration has not been expressly prohibited by the right bolder, unless the person responsible is aware or has reasonable grounds for believing that such storage is of an infringing copy: Provided that if the person responsible for the storage of the copy has received a written complaint from the owner of copyright in the work, complaining that such transient or incidental storage is an infringement, such person responsible for the storage shall refrain from facilitating such access for a period of twenty-one days or till he receives an order from the competent court refraining from facilitating access and in case no such order is received before the expiry of such period of twenty-one days, he may continue to provide the facility of such access;

(d) the reproduction of any work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding;

(e) the reproduction or publication of any work prepared by the Secretariat of a Legislature or, where the Legislature consists of two Houses, by the Secretariat of either House of the. Legislature, exclusively for the use of the members of that Legislature;";

(f) the reproduction of any work in a certified copy made or supplied in accordance with any law for the time being in force;

(g) the reading or recitation in public of reasonable extracts from a published literacy or dramatic work;

(h) the publication in a collection, mainly composed of non-copyright matter, *bona fide* intended for instructional use, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for such use in which copyright subsists: Provided that not more than two such passages from works by the same author are published by the same publisher during any period of five years. *Explanation.-In* the case of a work of joint authorship, references in this clause to passages from works shall include references to passages from works by any one or more of the authors of those passages or by any one or more of those authors in collaboration with any other person;

(i) the reproduction of any work- (i) by a teacher or a pupil in the course of instruction; or (ii) as part of the questions to be answered in an examination; or (iii) in answers to such questions;

(j) the performance, in the course of the activities of an educational institution, of a literary, dramatic or musical work by the staff and students of the institution, or of a cinematograph film or a sound recording if the audience is limited to such staff and students, the parents and guardians of the students and persons connected with the activities of the institution or the communication to such an audience of a cinematograph film or sound recording;";

(k) the causing of a recording to be heard in public by utilising it,- (i) in an enclosed room or hall meant for the common use of residents in any residential premises (not being a hotel or similar commercial establishment) as part of the amenities provided exclusively or mainly for residents therein; or (ii) as part of the activities of a club or similar organisation which is not established or conducted for profit; (iii) as part of the activities of a club, society or other organisation which is not established or conducted for profit;

(l) the performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution;

(m) the reproduction in a newspaper, magazine or other periodical of an article on current economic,

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(n) the storing of a work in any medium by electronic means by a non-commercial public library, for preservation if the library already possesses a non-digital copy of the work;

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(p) the reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic or musical work kept in a library, museum or other institution to which the public has access: Provided that where the identity of the author of any such work or, in the case of a work of joint authorship, of any of the authors is known to the library, museum or other institution, as the case may be, the provisions of this clause shall apply only if such reproduction is made at a time more than sixty years from the date of the death of the author or, in the case of a work of joint authorship, from the death of the author whose identity is known or, if the identity of more authors than one is known from the death of such of those authors who dies last;

(q) the reproduction or publication of- (i) any matter which has been published in any Official Gazette except an Act of a Legislature; (ii) any Act of a Legislature subject to the condition that such Act is reproduced or published together with any commentary thereon or any other original matter; (iii) the report of any committee, commission, council, board or other like body appointed by the Government if such report has been laid on the Table of the Legislature, unless the reproduction or publication of such report is prohibited by the Government; (iv) any judgement or order of a court, tribunal or other judicial authority, unless the reproduction or publication of such judgment or order is prohibited by the court, the tribunal or other judicial authority, as the case may be;

(r) the production or publication of a translation in any Indian language of an Act of a Legislature and of any rules or orders made thereunder- (i) if no translation of such Act or rules or orders in that language has previously been produced or published by the Government; or (ii) where a translation of such Act or rules or orders in that language has been produced or published by the Government, if the translation is not available for sale to the public: Provided that such translation contains a statement at a prominent place to the effect that the translation has not been authorised or accepted as authentic by the Government;

(s) the making or publishing of a painting, drawing, engraving or photograph of a work of architecture or the display of a work of architecture;

(t) the making or publishing of a painting, drawing, engraving or photograph of a sculpture, or other artistic work failing under sub-clause (iii) of clause (c) of section 2, if such work is permanently situate in a public place or any premises to which the public has access;

(u) the inclusion in a cinematograph film of- (i) any artistic work permanently situate in a public place or any premises to which the public has access; or (ii) any other artistic work, if such inclusion is only by way of background or is otherwise incidental to the principal matters represented in the film;

(v) the use by the author of an artistic work, where the author of such work is not the owner of the copyright therein, of any mould, cast, sketch, plan, model or study made by him for the purpose of the work: Provided that he does not thereby repeat or imitate the main design of the work;

(w) the making of a three-dimensional object from a two-dimensional artistic work, such as a technical drawing, for the purposes of industrial application of any purely functional part of a useful device;

(x) the reconstruction of a building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed: Provided that the original construction was made with the consent or licence of the owner of the copyright in such drawings and plans;

(y) in relation to a literary, dramatic, artistic or musical work recorded or reproduced in any cinematograph film the exhibition of such film after the expiration of the term of copyright therein: Provided that the provisions of sub-clause (ii) of clause (a), sub-clause (a) of clause (b) and clauses (d), (f), (g), (m) and (p) shall not apply as respects any act unless that act is accompanied by an acknowledgment- (i) identifying the work by its title or other description; and (ii) unless the work is anonymous or the author of the work has previously agreed or required that no acknowledgement of his name should be made, also identifying the author.

(z) the making of an ephemeral recording, by a broadcasting organisation using its own facilities for its own broadcast by a broadcasting organisation of a work which it has the right to broadcast; and the

retention of such recording for archival purposes on the ground of its exceptional documentary character;

(za) the performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any *bona fide* religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority. *Explanation*.- For the purpose of this clause, religious ceremony including a marriage procession and other social festivities associated with a marriage.

(zb) the adaptation, reproduction, issue of copies or communication to the public of any work in any accessible format, by- *(i)* any person to facilitate persons with disability to access to works including sharing with any person with disability of such accessible format for private or personal use, educational purpose or research; or (ii) any organisation working for the benefit of the persons with disabilities in case the normal format prevents the enjoyment of such works by such persons: Provided that the copies of the works in such accessible format are made available to the persons with disabilities on a non-profit basis but to recover only the cost of production: Provided further that the organisation shall ensure that the copies of works in such accessible format are used only by persons with disabilities and takes reasonable steps to prevent its entry into ordinary channels of business. *Explanation*.-*For* the purposes of this sub-clause, "any organisation" includes an organisation registered under section 12A of the Income-tax Act, 1961 and working for the benefit of persons with disability or recognised under Chapter X of the Persons with Disabilities (Equal Opportunities, Protection or Rights and Full Participation) Act, 1995 or receiving grants from the government for facilitating access to persons with disabilities or an educational institution or library or archives recognised by the Government".

(zc) the importation of copies of any literary or artistic work, such as labels, company logos or promotional or explanatory material, that is purely incidental to other goods or products being imported lawfully.

International Aspects of Accessibility of Copyrighted Works to Visually Impaired or Print Disabled Persons

Organisations representing the interests of visually impaired [29] people have been lobbying for action for a number of years. For example, the World Blind Union, the DAISY Consortium and IFLA Libraries for the Blind Section published an agreed policy position in April 2004.

WIPO has itself recently published a Study on Automated Rights Management Systems and Copyright Limitations and Exceptions, which studied exceptions for the benefit of visually impaired people and exceptions applying to distance education in particular. Exceptions for the benefit of visually impaired people were also covered in a joint WIPO and UNESCO Working Group on Access by the Visually and Auditory Handicapped to Material Reproducing Works Protected by Copyright and a second study by the Secretariats of the Executive Committee of the Berne Union and the Intergovernmental Committee of the Universal Copyright Convention which was included in a joint report by the Secretariats. The International Federation of Library Associations and Institutions (IFLA) published a Study as long ago as 1982 on Copyright and Library Materials for the Handicapped.

There have in addition been various conferences and meetings where the issues relevant to this Study have been discussed and this Study has also drawn on the presentations made at those events. For example, WIPO held an information meeting on Digital Content for the Visually Impaired in 2003 at which the International Publishers Association as well as the World Blind Union and other disability interests and national representatives gave presentations. In 2004, one of the agenda items at the World Library and Information Congress looked at the balance of copyright and licensing to give access to information for print handicapped people. These are just a few of the sources of information that have been referred to in preparing this Study.

The World Blind Union has estimated that there are about 180 million blind and partially sighted people in the world. Although this figure includes many children and young people who need access to the written word in order to study. The older people whose sight has declined as they age make up an increasingly large proportion of the total. Their preferences are more likely to be mainly a desire to access the written word for leisure reading. It is widely accepted by stakeholders of all types that it is import to increase visually impaired people's access to the written word. A figure widely quoted as the proportion of books published that are currently available in alternative formats useable by visually impaired people is no more than about 5%. Publishers and other right holders generally want visually impaired people to be able to read what they publish and visually impaired people want the barriers that prevent them reading this material removed.

However, it is also widely accepted that there is no simple or single solution and that copyright is not the only relevant issue. This Study, however, concentrates on only the copyright issues and attempts to identify the problems and possible solutions to those problems.

Based on the recommendations of several studies and seminar and conferences again the WIPO has conducted a study by constituting its standing committee in 2006. The study has been carried out by WIPO Standing Committee on Copyright and Related Rights presented a report entitled "Study on Copyright Limitations and Exceptions for the Visually Impaired [30]."

Study on Copyright Limitations and Exceptions for the Visually Impaired

The study conducted by WIPO builds on a number of earlier studies and reports looking at the relationship between copyright and the needs of visually impaired people who are unable to read copyright works in the form in which they have been published. In particular, the Study looks at what might be the appropriate balance between the interests of right holders on the one hand, and visually impaired users of copyright works and those assisting them on the other hand where exceptions to rights are provided, but it also looks at other possible solutions to the copyright problems that have been identified.

The framework in international treaties and conventions relating to intellectual property seems to permit exceptions for the benefit of visually impaired people. Indeed, exceptions seem possible with respect to a wide range of acts restricted by copyright that might be undertaken by those making and supplying accessible copies to visually impaired people. However, the possibility of such provision is not specifically addressed and is not mandatory under these treaties and conventions, although it is widely accepted that copyright laws should provide a balance between the interests of different stakeholders. Also, especially where several different treaties and conventions need to be considered, the conditions that might apply to exceptions is quite complicated and there may be some doubt regarding exceptions to the adaptation right in particular.

In examining exceptions for the benefit of visually impaired people in national laws, 57 countries have been found that have specific provisions that would permit activity to assist visually impaired people unable to access the written word, or to assist people with a print disability more generally, by making a copyright work available to them in an accessible form. Some of the exceptions found in these countries would also permit other types of assistance for handicapped people, and two further countries have been found that have exceptions that would permit, amongst other things, audio description of broadcasts. It has not been possible in this Study to consider to what extent exceptions of other types would permit activity for the benefit of visually impaired people, such as exceptions permitting private copying, use of copyright works for educational purposes and those applying to activity in or by libraries,. But it seems unlikely that such exceptions would provide a comprehensive solution to the legitimate needs of visually impaired people unable because of copyright constraints to access the written word.

The specific exceptions found in national laws have been analysed in some detail, for example looking at how the end beneficiary is defined, what type of copyright works can be copied or otherwise used and by what type of organisation, whether or not activity must be of a non-commercial nature and what type of accessible copies can be made. The range of provision varies considerably between countries on most of the factors considered and the variation does not generally seem to have any relationship to the needs of visually impaired people in a particular country. A number of exceptions are specifically qualified by a requirement to comply with a test the same as or similar to the 3-step test found in the Berne Convention. The majority of exceptions do not provide for any remuneration to be paid to right holders for activity under the exception.

After a long debate the WIPO came to the conclusion of the treaty to facilitate the accessibility of the copyrighted works to the visually impaired people entitled the 'Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired or Otherwise Print Disabled Persons, 2013.'

The Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired or Otherwise Print Disabled Persons, 2013.

In keeping with the fundamental objectives of non discrimination, equal opportunity, access, complete individual development, effective and inclusive participation in society, the Treaty of Marrakesh truly balanced human rights and intellectual property rights. Marrakesh, an international treaty that ensures visually impaired people to have easier access to books, unanimously adopted by member state of the UN's World

Intellectual Property Organization (WIPO). The treaty was approved by representatives from WIPO's 186 member states including India at "The Marrakesh Treaty to Facilitate Access to Publish Works for Persons who are Blind, Visually Impaired or otherwise Print Disabled" on June 27, 2013. After this treaty, books would be available in all sorts of formats such as Braille, for the print disabled/ visually impaired, in order to enable them to read, learn and participate in the well learned society.

Treaty's Agenda and the Final Verdict

The treaty recognized the obligation of the right holder to make works accessible to persons with visual impairment and to the print disabled, recognized that though countries have different limitations and exceptions to their copyright law, but a uniform international framework to be followed and to ensure cross-border exchange of books in accessible format. The main agenda was to promote sharing of books in any accessible format for blind or visually impaired, and to alleviate the "book famine" experienced by many of the WHO estimated 300 million people from such disability in the world. According to WHO, India has more than 63 million visually impaired people, of whom about 8 million are blind.

Considering the access of knowledge, keeping the blind persons in mind, the treaty removed barriers to access, recognized the right to read, established equal opportunities and rights for blind, visually impaired and otherwise print disabled persons who are marginalized due to lack of access to published works. Adoption of this treaty has made equal and appropriate balance between Copyright Law, its exceptions and limitations. The treaty also focused to adopt national law provisions that permit the reproduction, distribution and making available published works in accessible formats without having to seek permission from organizations that serve people who are blind, visually impaired and print disabled. This will in turn increase the availability of accessible works as different countries will be able to each produce accessible versions of materials which can then be shared with each other instead of duplicating efforts by adopting the same work.

Furthermore, because copyright law is "territorial" these exemptions usually do not cover the import or export of work covered into accessible formats, even between countries with similar rules. Organization in each country must negotiate license with the right holder to exchange special format across border, or produce their own material, a costly undertaking that severely limits access by visually impaired persons to print works of all kinds.[1]

Substantive Provisions

Article 2: of the draft lays down certain important definitions. From the definition of the work, it becomes clear that this treaty is applicable to literary and artistic work. 'Accessible format copy' is defined to mean a copy of a work in an alternative manner or form in order to enable people with visual impairments to have access to these works 'as feasibly and comfortably as a person without visual impairments or print disabilities.' The breadth of this definition is welcoming. However, the US and EU policy on digital locks as well as translation rights may pose a hurdle for the realization of access and availability of such formats. Therefore, though the law requires books to be made available easily, technology and market choices by the US and EU may hinder 'feasible and comfortable' access to such formats.

The footnote to Article 7 allows authorized entities to make use of technological measures and says that nothing should disturb such practices if they are in accordance with national laws.

Article 3: Another major development has been the inclusion of the 'print disabled' as a beneficiary (along with the blind and visually impaired). This is in keeping with the objectives of non-discrimination and equal opportunity. A print disable person is someone who cannot access print due to certain visual, physical or cognitive disabilities. Example a person who has no hands cannot turn page of a printed book and is print disabled (even though his visions is fine).

Article 4.2: The treaty allows the owner of the copyright, the beneficiary (or someone acting on his behalf) or an 'authorized entity' to make an accessible format copy of a work without the authorization of the copyright holder. Moreover, the treaty mandates that such copies be shared only with beneficiaries and be made from lawfully obtained copies. The Indian Copyright law also allows the disabled person and non-profit third parties working for the disabled to convert works into accessible formats without authorization from the right holder.

Article 5: Cross border exchange of copyrighted works in accessible formats is one of the primary aims of the treaty. Technologically advanced developed nations have the capability to convert works into various formats, whereas the developing nations may not have the same capabilities. The

treaty enables easy access to converted works across borders. This is giant step for ensuring access. However, since the treaty text uses the word 'may' and gives an impression that this provision is non-mandatory, the US and EU may take advantage of such language.

Article 9 and 14: The treaty delegates administrative functions to the International Bureau of WIPO. The International Bureau will also help in facilitating cross border exchange of accessible formats by encouraging voluntary sharing of information so that authorized entities can identify each other. An Assembly to maintain and develop the treaty has also been created. Each Contracting State is represented by one delegate in the Assembly who has one vote[31].

Indian Aspects of Accessibility of Copyrighted Works to Print Disabled Persons

Basically the Indian Copyright Act, 1957 is not having provisions pertaining to exceptions under section 51 regarding accessibility of works for visually impaired persons. India being a proactive country is always far ahead in updating its laws in par with the international developments. It has been found that only 1% of all the books are available in accessible formats and it is stated that 47 million of the world's visually impaired persons stay in India. In order to deal with this deficit an amendment in the Indian Copyright Act, 1957 was introduced in 2012. The Copyright (Amendment) Act, 2012 especially clause (zb) has been newly inserted in sub-section (1) of section 52, which permits the conversion of a work into any accessible format exclusively for the benefit of persons with disabilities. This amendment was introduced much before the Marrakesh Treaty and in all probability would have been upheld as a shining example at the Marrakesh Conference, Morocco[32].

The Copyright Amendment Act No. 27 of 2012 updates India's copyright law and includes amendments facilitating access to works. Concerning specifically the access barriers of persons with disabilities to a wide abundance of works, despite technological advances, the Act envisages three activities:

1. Conversions by the disabled person for his/her own use and for sharing with others in the community.
2. Conversions by third parties working for the benefit of the disabled on a non-profit basis. As long as the converter (any person or organisation) operates on a non-profit basis and ensures that converted formats are only accessed by persons with disabilities, Section 52(1)(zb) permits the conversion of a copyrighted work to any accessible format. It is very important to note that the exception extends not only to persons with print/reading disabilities/visual impairments, but to any person with a disability requiring a special format to access the work for private or personal use, educational purposes or research.
3. Conversions by for-profit organisations: Any organisation or an individual working for conversion of the works for disabled for-profit or for business, the entity can apply for a compulsory license under Section 31(B). The Copyright Board has to dispose such application within a period of two months from the date of receipt of application[33].

Conclusion

After a long demand from the persons with disabilities and NGOs working towards them for facilitating the accessibility of copyrighted works to them, the WIPO has played an important role in devising the international law for the benefit of the visually impaired persons by adopting the Marrakesh Treaty.

Prior to the Marrakesh Treaty, it was often unlawful to allow so-called authorized entities (libraries or NGO's) in one country to send accessible format books directly to authorized entities or blind individuals in another country. This resulted in large libraries of accessible books being trapped behind national borders. As a result, the same books had to be made accessible from scratch in each new country where a blind person needed it. Now cross-border shipment will be legal with little administrative burden. The treaty reiterates the requirement that the cross border sharing of work created based on limitation and exceptions must be limited to certain special cases which do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interest of the right-holder. The treaty also allows for the unlocking of digital locks on e-books for the benefit of blind people. In other words, a kindle book or iBook with digital rights management could now be unlocked and printed in Braille without consulting the rights holder. At present, 51 countries have signed the treaty making it the largest number of the countries to ever sign a WIPO-administration treaty upon adoption.

Subsequent to the commencement of Amendment Act, India also ratified Marrakesh Treaty to Facilitate

Access to Published Works for Persons who are Blind, Visually Impaired or otherwise Print Disabled, adopted on 23rd June, 2013, became the first country to do so. This would enable Indian users to use accessible format copies available in the developed countries and also allow sharing of digitized version of hitherto available printed works which when used with assistive technological measures such as read aloud capability, text to speech function or refreshable Braille display may prove very beneficial[34].

India is a more proactive without waiting for the Marrakesh Treaty in enacting the law by amending the Copyright Act in 2012 to facilitate availability of copyrighted works to the visually impaired and print disabled and allowing conversion of works in accessible formats towards them. Due to this as of 2013, 95 Indian members of DAISY (Digital Accessible Information System) have converted 25,000 books which are available to some 50,000 users. All 150-200 million Indians with disabilities could potentially benefit[35].

As this is a knowledge era so, visually impaired or print disabled should not be made further disabled to get the information and material source from the copyright protected material. This will help in enriching their knowledge, capabilities and skills and contribute the same to the society by creating more and more works of art and literature by making use of these laws.

Every country should have the widest possible copyright exceptions permitting the conversion of books and other cultural material into accessible formats for persons with disabilities[36]. However, at the same time one should also needs to respect and honour the interests of the copyright owners.

References

1. P. Narayanan, (2002), Copyright and Industrial Designs, Third Edn., Eastern Law House, New Delhi, P.[7].
2. Communication to the public means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available. *Explanation*.- For the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public (Sec. 2(ff) of the Copyright Act, 1957).
3. Adaptation means,- (i) in relation to a dramatic work, the conversion of the work into a non-dramatic work; (ii) in relation to a literary work or an artistic work, the conversion of the work into a dramatic work by way of performance in public or otherwise; (iii) in relation to a literary or dramatic work, any abridgement of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical; (iv) in relation to a musical work, any arrangement or transcription of the work; and (v) in relation to any work, any use of such work involving its re-arrangement or alteration (Sec. 2(a) of the Copyright Act, 1957).
4. Jayashree Watal, (2001), Intellectual Property Rights in the WTO and Developing Countries, Oxford University Press, New Delhi, P.207.
5. http://copyright.gov.in/Documents/handbook.html.
6. P. Narayanan, (2002), Copyright and Industrial Designs, Third Edn., Eastern Law House, New Delhi, P.2.
7. Literary work includes computer programmes, tables and compilations including computer literary data bases (Sec. 2(o) of the Copyright Act, 1957).
8. Dramatic work includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise but does not include a cinematograph film (Sec. 2(h) of the Copyright Act, 1957).
9. Musical work means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music (Sec. 2(p) of the Copyright Act, 1957).
10. Computer programme means a set of instructions expressed in words, codes, schemes or in any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result (Sec. 2(ffc) of the Copyright Act, 1957).
11. Artistic work means- (i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality; (ii) work of architecture; and (iii) any other work of artistic craftsmanship (Sec. 2(c) of the Copyright Act, 1957).
12. Cinematograph film" means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any process analogous to

cinematography including video films (Sec. 2(f) of the Copyright Act, 1957).

13. Sound recording means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced (Sec. 2(xx) of the Copyright Act, 1957).
14. P. Narayanan, (2002), Copyright and Industrial Designs, Third Edn., Eastern Law House, New Delhi, P.2
15. Performer includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance (Sec. 2(qq) of the Copyright Act, 1957).
16. Performance, in relation to performer's right, means any visual or acoustic presentation made live by one or more performers (Sec. 2(q) of the Copyright Act, 1957).
17. Broadcast means communication to the public- (i) by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or (ii) by wire, and includes a re-broadcast (Sec. 2(dd) of the Copyright Act, 1957).
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20. P. Narayanan, (2002) Copyright and Industrial Designs, Third Edn., Eastern Law House, New Delhi, P. 3.
21. See Manu Bhandari v. Kala Vikas Pictures Pvt. Ltd., AIR 1987, Delhi 13.
22. See Girish Gandhi v. Union of India, AIR, 1997, Raj 78 at p.84.
23. See http://copyright.gov.in/.
24. P. Narayanan, (2002), Copyright and Industrial Designs, Third Edn., Eastern Law House, New Delhi, P. 89.
25. Author means,- (i) in relation to a literary or dramatic work, the author of the work; (ii) in relation to a musical work, the composer; (iii) in relation to an artistic work other than a photograph, the artist;

(iv) in relation to a photograph, the person taking the photograph; (v) in relation to a cinematograph or sound recording the producer; and (vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created;] (Sec. 2(d) of the Copyright Act, 1957).

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27. Section 51 of the Copyright Act, 1957.
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29. Wikipedia defines "Visual impairment (or vision impairment)" is a decreased ability to see to a degree that causes problems not fixable by usual means, such as glasses or medication. WHO defines the term visually impaired as follows: There are 4 levels of visual function, according to the International Classification of Diseases -10 (Update and Revision 2006): 1) normal vision, 2) moderate visual impairment, 3) severe visual impairment, and 4) blindness. Moderate visual impairment combined with severe visual impairment are grouped under the term *"low vision"*: low vision taken together with blindness represents all visual impairment. See http://www.who.int/mediacentre/factsheets/fs282/en/.
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Original Article

Rights of Differently Abled Persons in India: A Comparative Analysis of UNCRPD and Rights of Persons with Disabilities Bill 2014

Aparna Singh*, Sony Singh**

Author Affiliation
*Assistant Professor Law, Dr. Ram Manohar Lohiya National Law University, Lucknow-226012.
**LL.M, Babasaheb Bhimrao Ambedkar (Central) University Lucknow-226025.

Reprint Request
Aparna Singh, Assistant Professor Law, Dr. Ram Manohar Lohiya National Law University, Lucknow-226012.
E-mail: greeneyeaparna@gmail.com

Abstract

India is a signatory of the UN Convention on the Rights of Person with Disability (UNCRPD).The three important obligations arises out of the convention namely, implementation of provisions of UNCRPD, harmonization of Indian Laws with UNCRPD and preparation of a country report by 2010. Critical analysis of the Right of Persons with Disabilities Bill,2014 and taking into consideration the extent of compliance and with the obligations imposed by UN Convention on rights of persons with disabilities thereby, reflecting the substantive contribution of the convention to disability law in India. While disability rights are at this nascent stage, both as legal and academic concepts, the need to strengthen and deepen our understanding of the disability agenda is urgent, especially, if we are to strategically promote disabled peoples' distinctive needs and experiences within the broader equality debate [1]. At the same time that the Disability Discrimination Act 1995 was enacted in Britain, the PWD Act came into force in India from 1 January 1996. Prior to this, disability-related discrimination was never addressed in India either in the Constitution under Chapter III, which contains the fundamental rights, or by any other statute. The Constitution, while protecting equality under Articles 14, 15, and 16, does not include disability as one of the categories for non-discrimination. The only mention of protection of persons facing disability and sickness was made in the Directive Principles of State Policy in Chapter IV of the Constitution (there is no guarantee from the State to prevent discrimination due to disability)[2]. The present Right of Persons with Disabilities Bill, 2014 and PWD Act was itself an outcome of India's obligations as a signatory to the Proclamation on the Full Participation and Equality of People with Disabilities in the Asia and Pacific Region, adopted at the meeting to launch the Asian and Pacific Decade of Disabled Persons 1993-2002, convened by the Economic and Social Commission for Asian and Pacific Region, held at Beijing from 1 to 5 December 1992. Therefore, the CRPD would also give impetus for a review and amendment of the PWD Act and Right of Person with Disability Bill, 2014 to incorporate its new principles and requirements. Fundamental rights such as the right to education and the right to employment and livelihood that essentially stem

from the right to life guaranteed in Article 21 do not specifically address disability related issues. It is only in the Directive Principles of State Policy under Article 39A & 41 that disability is briefly mentioned [3]. These principles direct the State through this article to make effective provisions for securing the right to work, to education, and to public assistance in cases of unemployment, old age, sickness disablement. Justice Sinha notes that even the provisions of Article 41 should be implemented in consonance with the complementary principles of non-discrimination and reasonable differentiation [4]. Article 39A imposes upon the State a duty to ensure that "opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities". [5]The only legislation enacted prior to the PWD Act and Right of Persons with Disabilities Bill, 2014, which covered persons with disabilities, was the Mental Health Act of 1987. This Act does not address the issues of legal capacity and rights of persons with mental disabilities, but only provides for their guardianship and institutionalization and, therefore, cannot be considered as a legislation addressing disability-based discrimination. Persons with disability were included in welfare schemes and were referred to as 'physically handicapped' or 'PH'. Token affirmative measures were taken by the State in reserving posts in government services that is civil services legislations, purely as welfare measures and not as antidiscrimination measures. However, this was very limited and the extent of reservation for persons with disability was not uniform throughout the country. In this context, the enactment of the PWD Act is remarkable because for the first time in India since 1995, social and economic rights of persons with disability have been addressed by any statute. One can say that it has the potential to probably become India's first anti-discrimination law, or in the words of Fredman, an 'equality law'.[6]

Keywords*:* Differently Abled Persons; PWD; UNCRPD; Disability; Discrimination; Institutionalization etc.

Introduction

Disability law in India prior to the 1990s was effectively only a sub-category of social welfare law and protectionist legislation. Early laws dealing with people with disabilities consisted of legislations such as the Indian Lunacy Act 1912, which categorized people with mental and intellectual disabilities as 'lunatics' and provided for their guardianship and care. This was replaced with the Mental Health Act in 1987, but even this statute focused entirely on providing for the guardianship and institutionalization of persons with mental and intellectual disabilities. In other legislations relating to social welfare or public employment, some welfare provisions were made for persons with disabilities by reserving some categories of jobs for disabled persons. Hence, disability laws in India had twin effects, there was a paternalistic denial of legal capacity for persons with mental and intellectual disabilities and on the other hand the only welfare measure provided was reservation in employment.

To amend PWD Act 1995, there was a Committee set up headed by Smt. Sudha Kaul to draft a Bill to this effect. The Draft Bill of 2011 was submitted to the Ministry. Thereafter the Draft, went to the various Cabinet Minstries, and then circulated among States. Finally, it was introduced in the Rajya Sabha on February 7, 2013 by the Minister of Social Justice and Empowerment, Mr. Mallikarjun Kharge, the Bill repeals the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995. The Rights of Persons with Disabilities Bill was meant to be an enactment to codify India's obligations under the UNCRPD. This bill tries to make a paradigm shift from a Charity model to Rights based model and b) Medical model of disability to Social model of disability.

Comparing united nations convention on the rights ofpersons with disabilities 2006 & the rights of persons with disabilities bill, 2014(RPWD bill, 2014)

Articles	UNCRPD	RPWD bill 2014
5	Equality and non-discrimination	Have been addressed and sidcussed in Clause-3
6	Women with disabilities	No such special provision but Discussed and provisions are made across the Bill in clause 3(2), 9,23(3)[d], 24(2)[k] & 36(a, b), 38
7	Children with disabilities	No such special provision but discussed and provisions are made across the Bill in clause 3(2), 15, 30,16, 23, 24 and best interests principle has been addressed but limited in scope and no explicit recognition to respect to evolving capacity of children
8	Awareness-raising	Have been addressed in Clause 38
9	Accessibility	Present Clause 39, 40 & 41
10	Right to life	Not discussed specifically in the Bill
11	Situations of risk and humanitarian emergencies	Present and have been elaborated in detail Clause 6 (7)
12	Equal recognition before law	Have been addressed in Clause 12 but in partial form.
13	Access to justice	Have been addressed in Clause 11
14	Liberty and security of person	Have been addressed in Clause 3(4)
15	Freedom of torture or cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific exper imentation.	Have been addressed in Clause 5
16	Freedom from exploitation, violence and abuse	Present in Clause 6
17	Protecting the integrity of the person	Present in Clause 3(1)
18	Liberty of movement and nationality	Not discussed
19	Living independently and being included in the community	Present in Clause 4
20	Personal mobility	Present in Clause 23(3)(f)
21	Freedom of expression and opinion, and access to information.	Not discussed
22	Respect for privacy	No provisions
23	Respect for home and the family	Present in Clause 8&9
24	Education	Have been discussed in clause 15-17 explicitly incorporating the concept of reasonable accomodation.
25	Health	Have been discussed in clause 24 in terms of accessibility. This clause seeks to provide for the appropriate Government and local authorities to take measures to provide free and barrier free access to health care facilities in the vicinity and also casts responsibilities on them to promote health care and prevento occurrence of disability
26	Habilitation and rehabilitation	Have been discussed in clause 26 The appropriate Government and the local a uthorities shall within their economic capa city and development, undertake or cause to be undertaken services and programmes of rehabilitation, particularly in the areas of health, education and employment for all persons with disabilities.

27	Work and employment	Present in Clause 19 & 35
28	Adequate standard of living and social protection	Present in Clause 23 The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and

Merits of the Bill

The Bill states that persons with disabilities shall have the right to equality and shall not be discriminated against on grounds of their disability. Rights of disabled persons include protection from inhuman treatment and equal protection and safety in situations of risk, armed conflict, humanitarian emergencies and natural disasters. All existing public buildings shall be made accessible for disabled persons within five years of the regulations being formulated by the National Commission for Persons with Disabilities. No establishment will be granted permission to build any structure, issued a completion certification or allowed to occupy a building, if the building does not adhere to the regulations formulated by the Commission. The Bill provides for the access to inclusive education, vocational training and self-employment of disabled persons, concept of reasonable accommodation. All government institutions of higher education and those getting aid from the government are required to reserve at least five percent of seats for persons with benchmark disabilities. The central and state governments have to identify posts in establishments under them to be reserved for persons with benchmark disabilities. At least five percent of the vacancies are to be filled by persons or class of persons with at least 40 percent of any of the disabilities [1]. Of this, one per cent shall be reserved for persons with;

(i) blindness and low vision;

(ii) hearing and speech impairment;

(iii) locomotor disability;

(iv) autism, intellectual disability and mental illness; and

(v) Multiple disabilities.

The Bill provides that the reservation has to be computed on the basis of total number of vacancies in the strength of a cadre [2]. To comply with the Article 12 of UNCRPD, the Bill also discusses and accommodates Legal Capacity. Disabled persons have the right, equally with others, to own and inherit movable and immovable property, as well as control their financial affairs. Further, special provisions are made for persons with mental illness with regard to guardianship. The Bill provides that if a district court finds that a mentally ill person is not capable of taking care of him or of taking legally binding decisions, it may order guardianship to the person. The nature of such guardianship is also specified. The Bill also states that no person with disability shall be subject to any medical procedure which leads to infertility without his or her free consent under Clause 9 [3]. The Bill places obligations on the central and state governments to establish a National and State Commissions for Persons with Disabilities, respectively. The Commissions will be composed of experts and be required to:

(i) Identify any laws, policies or programmes that are inconsistent with the Act,

(ii) Inquire into matters relating to deprivation of rights and safeguards available to disabled persons,

(iii) Monitor implementation of the Act and utilization of funds disbursed by governments for the benefit of disabled persons. On comparing UNCRPD and the Rights of Persons with Disabilities Bill, 2014 it becomes clear that the drafter of the bill have taken outmost precautions to be inclusive and also to fulfil the obligations of CRPD.

Shortcomings of the Bill 2014 in Comparision with the UNCRPD

Article 1, Purpose

The Convention seeks to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities. To this end, the definition of "persons with disabilities" is an inclusive definition, and include those "who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." Thus, the definition links the barriers which exist in society to the impairment and therefore moves away from the medical approach to the social approach. The Bill, in Clause (q), curtails the definition under the UNCRPD, and limits the definition of "persons with disabilities" to "long term physical, mental, intellectual or sensory impairment which hinder his full and effective participation in society equally with others". By removing the reference to barriers, the focus is on the impairment of the person, which goes entirely against the purport of the UNCRPD, that the focus should be on removal

of the barriers that exist in society, and not focusing on the impairment [4].

Article 3, General Principles

One of the General Principles of the Convention is the respect for difference and acceptance of persons with disabilities as part of human diversity and humanity. The Draft Bill does a great disservice by the inclusion of Clause 24 (2) and the stress on "Prevention of Disabilities" in sub clauses (a) and (b). While there is no doubt that many disabilities are preventable, this becomes the prerogative of the Ministry of Health and associated bodies, and not that of the Ministry of Social Justice and Empowerment which is responsible for the well being of persons with disabilities. To single out a group of persons to be essentially a "failure to prevent" by the State violates the Purpose under Article 1 of the UNCRPD to promote respect for the inherent dignity of persons with disabilities. Similarly, disability is not a curse or an ailment that a person "suffers from" – unlike what the Bill states while defining "Special Employment Exchanges" under Section 2 (w). The inclusion of a primary prevention provision in a disability rights charter is stigmatizing of persons with disabilities as it is virtually saying that persons with disabilities do not have the right to live.

Article 5, Equality and Non Discrimination

According to the UNCRPD, State Parties are to grant an unconditional Right to Equality and Non Discrimination to all persons with disabilities, on par with others. The Bill does not impose a positive obligation to promote equality in the same manner that the CRPD does. Article 5(2) of the CRPD obligates State Parties to "prohibit all discrimination" and "guarantee...equal and effective legal protection against discrimination on all grounds. In the Bill, the Right to Equality is curtailed under Clause 3 (3), which says that the right against discrimination exists "unless it can be shown that the impugned act or omission is a proportionate means of achieving a legitimate aim". The terms "proportionate means" and "legitimate aim" are highly subjective, and this could be a means of perpetuating discrimination. As a matter of fact, the term "discrimination on the basis of disability", comprehensively defined under the UNCRPD, does not even find mention in this Bill. The positive duty to provide reasonable accommodation to guarantee equality is not resonated in Clause 3 of the Bill as given under Article 5(3) of the UNCRPD.

Article 9, Accessibility

The UNCRPD has extremely wide ranging provisions on accessibility, and extends it to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. Thus it is clear that it extends to buildings, services etc. which are provided both by the State as well as by Private Entities. In Clause-39 of the Bill, standards of accessibility are delegated to the National Commission for the physical environment, transportation, information and communications, including appropriate technologies and systems, and other facilities and services provided to the public in urban and rural areas. The Section only speaks of standards, and not enforcing them. Further, the next following Sections severely clamp down on what the UNCRPD provides. In Clause-40, the facilities for persons with disabilities at bus stops, railway stations and airports appear to require to conform to the accessibility standards (presumably laid down by the National Commission) relating only to parking spaces, toilets, ticketing counters and ticketing machines. The limiting of accessibility standards to these 4 areas is inexplicable. Secondly, the access to public transport is also severely limited. It is only mandated wherever technically feasible and safe for persons with disabilities, economically viable and without entailing major structural changes in design. This is extremely vague and means that in practice, it would never actually be implemented. In the light of this, any "incentives and concessions" for persons with disabilities would be entirely meaningless. Accessibility to be provided "to the maximum of its available resources" Article 4 (2) of the UNCRPD rather than "within the limits of economic capacity". Section 43, which deals with "mandatory observance of accessibility norms", violates the UNCRPD extension of accessibility measures to all services and places "open or provided to the public". The interpretation of this is not limiting it to Government Buildings. However, the Section limits mandatory observance of accessibility norms only to "establishments", defined under Section 2 (h) to mean "a corporation established by or under a Central Act or State Act or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 2 of the Companies Act, 2013 and includes Department of a Government". Thus, all other buildings are excluded from its purview, which makes the provision meaningless to persons with disabilities. The common thread that runs through

these Sections is access to the physical environment and moving around the same, in a strictly physical sense. The use of terms like transport, roads, and reference to completion certificates for possession of buildings etc. indicate that stress is on the built environment and therefore physical access. However, the question of assistance which is outside the physical movement requirements, like sign language interpretation, or Braille/large print signage, or other forms of specialized live assistance, is excluded from this, which are expressly provided for in Sub-clause 2 (d) and (e) of the Article [5].

Article 12, Equal Protection before the Law

One of the hallmarks of the UNCRPD is the recognition of legal capacity for all persons with disabilities. Neither of the statements of Article 12(1) & (2) have been reflected in the Bill in Clause 12. The Clause also refers to "support arrangements" without making any mention of safeguards, unlike the protocol mandated under the UNCRPD States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law [6]. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interest.[7] Clause 13 of the Bill refers to guardianship, and only concerns the "mentally ill", presumably as defined under Schedule 1 of the Bill. The wording of the Section is that the limited guardian "shall take all legally binding decisions on his or her behalf, in consultation with that person". The Clause is unambiguous that the ultimate decision making power lies with the guardian, whereas the shift should be from substituted decision making to supported decision making. Though persons with disabilities are granted the right to own or inherit property; control their financial affairs; obtain access to bank loans, mortgages and other forms of financial credit in Clause 12 (1), there is no effective manner of realizing these rights, and the right under Article 12 of the UNCRPD to not to be arbitrarily deprived of their property is absent.

Article 14, Liberty and Security of Person

The Bill supports institutionalization and Chapter IX and does not specifically bar any institutionalization which is without a person's consent, either by a family member or at the instance of the Assessment Board in respect of persons with "high support needs". Section 51 speaks of returning a person with disability in a derecognized institution "restored to the custody of his or her parent or spouse or lawful guardian" or "transferring them to any other institution" which once again goes back to the violation of Article 12 of not recognizing persons with disabilities are persons before the law. It is also worth pointing out that since the institutionalization under this Chapter is for all persons with disabilities, it gives further credence to the understanding that legal capacity is in question for all persons with disabilities, and not just those under the Mental Health/National Trust Act[8]. The right of protection against scientific experimentation or testing except with the free and informed consent of the individual is seriously compromised by the recognition of guardians under Section 13 who are empowered to take "all legally binding decisions" on behalf of their wards.

Article 16, Freedom from Exploitation, Violence and Abuse

While the proposed Section 6 details many steps towards effective realization of this freedom it misses out an extremely crucial requirement of the UNCRPD – that in order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties are obligated to ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities. This is especially relevant with regard to the encouragement given to institutionalization and guardianship under the Bill. The lack of monitoring mechanisms, which have been long criticized as encouraging the abuse of persons with disabilities, is a violation of the UNCRPD [9]. Article 17, Protecting the Integrity of the Person: Though Section 3 says that the "appropriate Government shall ensure that the persons with disabilities enjoy... respect for his or her integrity equally with others", the Bill fails to reiterate the specific wording of the UNCRPD that "(e) very person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others." The use of the words physical and mental integrity are important, and are obviously left out by the drafters of the Bill, because by allowing for institutionalization and

guardianship, neither physical nor mental integrity of persons with disabilities are respected.

Article 19, Living Independently and Abeing Included in the Community

The Bill, in Section 4, curtails the rights granted under the UNCRPD by retaining only the negative right i.e. of not being forced to live in any particular living arrangement, and not the positive right of having the opportunity to choose their place of residence and where and with whom they live on an equal basis with others. This potentially creates obstacles when looking at the effective realization of the rights under Article 23 of the UNCRPD as well [10].

Article 21, Freedom of Expression and Opinion, and Access to Information

The UNCRPD recognizes the States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice. Communication has a very specific definition in Article 2, and includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology. Languages are defined as well in Article 2 and include spoken and signed languages and other forms of non spoken languages. While the definition of communication is incorporated in the Bill, with minor grammatical changes, the definition of "language" is absent. This is highly problematic, as there is no specific recognition of sign language [11].

Article 23, Respect for Home and the Family

The Bill states that no person with disability shall be subject to any medical procedure which leads to infertility without his or her free consent, in Section 9 (2). For persons with psychosocial disabilities, who will be placed under guardianship under Section 13 of the proposed Bill, the question of their own consent does not arise as their guardian, be it limited or plenary, is empowered to take "all legally binding decisions" on their behalf. In addition, the right under the UNCRPD for all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses, is gravely threatened by the failure of the Bill to categorically grant legal capacity to all persons with disabilities. Those under a system of guardianship will still be unable to exercise this right [12].

Article 24, Education

The UNCRPD mandates State parties to ensure that persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability. It further stipulates that persons with disabilities have the right to access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live, Clause 30. The second part of the clause states that every child with benchmark disabilities has a right to education in a neighbourhood school, or in a special school, "if necessary". There is no clarity as to who is to determine the necessity. If the child falls under the category of "high support needs", then this decision may be carried out by the assessment board. The question of where the child should study should be decided, as far as possible, by the children themselves, according to Article 7 of the UNCRPD, which grants children with disabilities the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right. This decision can also be taken by the parents of the child, as per Article 26 of the Universal Declaration of Human Rights which recognizes that parents have a prior right to choose the kind of education that shall be given to their children. By not specifying and prioritizing who deems the move to special schools "necessary", there is a violation of the UNCRPD. There is no transition plan to move a set up with adequate number of trained teachers and proper infrastructure. Without such a plan, it is likely that an entire generation of persons with some types of disabilities such as children who are deaf-blind (requiring specialized training) and children in wheelchairs (requiring accessible infrastructure) who join the ill-equipped mainstream school system immediately after enactment will be lost in the cracks and get no education whatsoever. The government must

address this and elaborate the long-term strategy for inclusive education [13].

Article 27, Work and Employment

This Article mandates that, under sub-clause (i) that State Parties should ensure that "reasonable accommodation is provided to persons with disabilities in the workplace". Reasonable accommodation is a specific term defined under the UNCRPD and "means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms." In Clause 2 of the proposed Bill, the term finds a slightly modified definition and means "necessary and appropriate modification and adjustments without imposing disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others." Be that as it may, Clause 19 of the proposed Bill which pertains to "non discrimination in employment", merely specifies that every establishment shall provide "appropriate environment" to persons with disabilities. "Appropriate environment" is not defined under the Bill. Therefore, the provisions relating to the workplace environment with respect to persons with disabilities is extremely vague and not in compliance with the UNCRPD. This could even mean, for example, sheltered and segregated workshops [14].

Clause 32 of the proposed Bill speaks of the identification of posts which can be reserved for persons with benchmark disabilities. This is violative of the UNCRPD in as much as the present Article provides for the prohibition of discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions. Interestingly, the term "discrimination on the basis of disability", defined under the UNCRPD, is omitted from the proposed Bill, for reasons best known to the drafting committee. Discrimination on the basis of disability is defined to be mean "any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation." By denying reasonable accommodation to persons with disabilities in employment, and by granting the State powers to identify posts for reservation, which is a distinction which has the effect of impairing the rights of persons with disabilities, the drafting committee appears to be guilty of discrimination on the basis of disability themselves. Lastly, by the denial of legal capacity to persons with disabilities, it is difficult to envisage them being eligible for any job prospects because of their possible inability to sign the basic contract of employment [15].

Article 29, Participation in Political and Public Life

Clause 10 of the proposed Bill speaks of "accessibility in voting" and states that the Election Commission of India and the State Election Commission shall ensure that all polling stations are accessible to persons with disabilities and that all materials related to the electoral process are easily understandable by and accessible to them. This is severely limiting the scope of Article 29 – which does not limit the participation of persons with disabilities only to voting but also recognizes the right and opportunity to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate, forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels. In fact, the Bill itself contains express disqualifications for persons who have become "physically and mentally incapable of acting as a member" in Clause 89 (for members of the State Commission) thus completely violating the UNCRPD [16].

Article 30, Participation in Cultural Life, Recreation, Leisure and Sport

Clause 28 of the Bill deals with "culture and recreation", in an attempt to comply with the UNCRPD. However, the approach of the Bill, with its focus on making mainstream instances of "culture" and "recreation" – like scouting, dancing, outdoor camps, adventure activities – loses the purport of the Article [17]. While the Article undoubtedly speaks of making mainstream cultural activities accessible to persons with disabilities, one of the most important Rights under the Article is that persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including

sign languages and deaf culture. This is lost under the Bill, and is therefore a very serious violation of the Right. Clause 29, which deals with "sporting activities", loses out on an important provision of the Article – to encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels. The Bill does not refer to mainstream sports, and without that specification, the Bill seems to lean towards limiting persons with disabilities to only disability specific sports.

Conclusion

While equality, non-discrimination and access are all guaranteed for all persons with disabilities, most entitlements relating to education and employment under the Bill are only for persons with benchmark disabilities and reproduces the medical model of understanding disability that is prevalent in the PWD Act. Under the chapter of education, the right to free and compulsory education, the provision of free books, assistive devices, and scholarships are restricted to children with benchmark disabilities. Reservation of seats in higher education is also limited to students with benchmark disabilities [18]. Even in the case of employment, the reservation in public employment is restricted to persons with benchmark disabilities, the schemes for concessional allotment of land, and other poverty alleviation schemes are also only for persons with benchmark disabilities. The provision for seeking high support from the government in the form of any intensive physical or psychological support required for a person for his or her daily activities including education, employment, and therapy can also only be made by a person with benchmark disability.

While the number of disabilities covered under the "benchmark disabilities" is increased from 7 to 19, this is certainly not the way forward for a legislation aimed to address full protection of rights of persons with disabilities. It was to remove such exclusions from rights guaranteed under the PWD Act, that a broad and all-encompassing definition for persons with disabilities was recommended by the disability rights movement. Further, the definition of benchmark disability still requires the person prove medically that he or she has 40% or more of the said disability. Such a narrow definition of disability is based on the assumption that only severely disabled persons, i.e. persons whose disability is more than 40%, are in need for any entitlements under the law. This, in turn, presumes that disability discrimination is actually and only invoked by a certain degree of impairment, which again locates the problem of disability discrimination inside the individual victim. This kind of a two definition structure within the draft Bill creates a second class status for all persons who do not have a benchmark disability, as they would not be entitled for any of the tangible benefits listed above. If the Bill is passed in this form, the law would have failed to internalize the key message of the disability rights movement that disability has to be understood not as an attribute of an individual, but, rather, a complex collection of conditions and barriers, many of which are created by the social environment. From this perspective, disability cannot be medically defined as any specified number of conditions with a percentage of severity. If such a definition of benchmark disabilities is retained in the RPD Bill, it would just be a case of repackaging the old PWD Act in a new bottle.

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Review Article

A Study on Poverty under the Indian Socio-Legal Framework

Diganta Biswas*, Bhaswati Saha**

Author Affiliation
*Assistant Professor, School of Law, Christ University, Bangalore.
**Part timeTeacher of Sociology, Nakshalbari College, Dist. Darjeeling, West Bengal.

Reprint Request
Diganta Biswas,
Assistant Professor, Room No. 480, School of Law, Christ University, Bangalore, Karnataka 560029.
E-mail:
diganta.biswas@christuniversity.in

"Like slavery and apartheid, poverty is not natural. It is man-made and it can be overcome and eradicated by the actions of human beings."

Nelson Mandela

Abstract

Policy on the regulatory environment involving-quality, safety and efficacy. Climatic factors, Demographic factors, Personal causes, and Economic causes are at the background of poverty in India. Since the 1950s, the government of India and non-governmental organizations have initiated several programmes and policies to alleviate poverty which includes-subsidization of food and other necessities, increased access to loans, improving agricultural techniques and price supports, promoting education and family planning.This paper is aiming to study the socio-legal aspects of poverty in India i.e. how the issues of poverty has been addressed in India under the different legislative and policies over the years.

Keywords: Poverty; Tendulkar Committee Report; Planning Commission; Constitution; Supreme Court Etc.

Introduction

Poverty is a condition where people's basic needs for food, clothing, and shelter are not being met. The official measure of Indian government, before 2005, was based on food security and it was defined from per capita expenditure for a person to consume enough calories and be able to pay for associated essentials to survive. Since 2005, Indian government adopted the Tendulkar methodology which moved away from calorie anchor to a basket of goods and used rural, urban and regional minimum expenditure per capita necessary to survive[1]. Poverty is generally of two types: (1) Absolute poverty is synonymous with destitution and occurs when people cannot obtain adequate resources (measured in terms of calories or nutrition) to support a minimum level of physical health. Absolute poverty means about the same everywhere, and can be eradicated as demonstrated by some countries. (2) Relative poverty occurs when people do not enjoy a certain minimum level of living standards as determined by a government (and enjoyed by the bulk of the population) that vary from country to country, sometimes within the same country. Relative poverty occurs everywhere, is said to be increasing, and may never be eradicated[2]. Low level of saving reduces the scope for investment; low level of investment yields low income and thus the circle of poverty goes on indefinitely [3]. Climatic factors, Demographic factors, Personal causes, and Economic causesare at the background of poverty in India.Since the 1950s, the government of India and non-governmental organizations have initiated several programmes and policies to alleviate poverty which includes- subsidization of food and other necessities, increased access to loans, improving

agricultural techniques and price supports, promoting education and family planning. This paper is aiming to study the socio- legal aspects of poverty in India.

Meaning of Poverty

Poverty, destitution, need, want imply a state of privation and lack of necessities [4]. Poverty denotes serious lack of the means for proper existence. It also signifies the state of being extremely poor. It is a state or condition in which a person or community lacks the financial resources and essentials to enjoy a minimum standard of life and well-being that's considered acceptable in society[55]. Available at http://www.investopedia.com/terms/p/poverty.asp , accessed on 23rd October, 2015 at 3. 20 PM.

There is a poverty line in India and elsewhere, which tells us how we can measure poverty. The global poverty line for extreme poverty is $1.25 and for moderate poverty is $2 [6]. In India, the national poverty line by using the *Tendulkar methodology* is estimated at Rs.816 per capita per month in villages and Rs.1,000 per capita per month in cities. It means the persons whose consumption of goods and services exceed Rs.33.33 in cities and Rs.27.20 per capita per day in villages are not poor [7]. Poverty may mean a *state or condition in which a person or community lacks the financial resources and essentials to enjoy a minimum standard of life and well-being that's considered acceptable in society [8].*

Determination of Poverty Line in India

The poverty line drawn up in the early 1970s was on the basis of the consumption expenditure level of a household in which per capita calorie consumption was 2,400 kilocalories (kcal) in rural areas and 2,100 kcal in urban areas [9]. The Tendulkar Committee suggested an alternative approach, based on some rough estimates of expenditure for buying food worth 1,700 calories and also a family's monthly spend on education, health, electricity and transport [10]. As per the said study, the Planning Commission estimated a significant decline in poverty compared with a decade earlier: that the aggregate incidence of poverty has fallen from 37.2 per cent of the population in 2004-05 to 29.8 per cent in 2009-10, to 22 per cent in 2011-12 (25.7 per cent in rural areas and as low as 13.7 per cent in urban India). The total number of poor people is now estimated at just below 270 million, of which around 216 million reside in rural India [11]. Now, let's have a look on the different features of poverty.Poverty features the followingindicators-

Sl. No.	Social-economic indicators	Legal indicators
a.	Low income or lack of financial resources	Discrimination
b.	Unemployment,	Denial of access to justice[1]
c.	Insecurity, fear for the future, living one day at a time	Denial of access to information
d.	Hunger, Mal nutrition, Poor status of health,	Denial of legal recognition
e.	No education or not having access to school and not knowing how to read	Denial of access to treatment
f.	Less cloth	Denial of access to education
g.	Lack of hygienic shelter	Merciless exploitation
h.	Being sick and not being able to see a doctor.	
i.	Illness brought about by unclean water.	
j.	Powerlessness	

Causes of Poverty

a. Rapidly Rising Population

b. Low Productivity in Agriculture

c. Under Utilized Resources

d. Low Rate of Economic Development

e. Price Rise

f. Corruption

g. Unemployment

h. Shortage of Capital and Able Entrepreneurship

i. Social Factors like inheritance, caste system, traditions and customs

j. Political Factors

Planning Commission and Poverty

The Planning Commission's poverty line, using methodology suggested by the *Suresh Tendulkar* Committee in 2010, is now apparently defined as the spending of Rs. 27.20 per capita per day in rural areas and Rs.33.40 in urban areas and filed an affidavit submitted in the Supreme Court, which said that persons consuming items worth more than Rs 32 per day in urban areas (Rs 26 in rural areas) are

not poor. As per the affidavit, a family of five spending less than Rs 4,824 (at June, 2011, prices) in urban areas will fall in the BPL (Below Poverty Line) category. The expenditure limit for a family in rural areas has been fixed at Rs 3,905 [13]. Here, the poverty estimates based on the consumption expenditure survey of the NSSO (National Sample Survey Office) Survey of 2011-12.

In this context it may be noted that life consists of more than eating. There are all the other necessary daily expenses that are a necessary part of existence. In most cities and town today, rents take up a huge part of the income of the poor. Daily life also requires some mobility, at the very minimum to get to and from one's place of work. So if we consider a casual worker living in a slum settlement in Bangalore, say Chandapura. Suppose this labourer is able to find work somewhere near the Banshankari Busstand. The cheapest public transport available would cost a minimum of Rs 40 for a return trip leaving aside the expenses for food and other things. This is significantly higher than the national urban poverty line of Rs 33.40. Hence, it is simply ridiculous to consider the national urban poverty line of Rs 33.40 which is supposed to cover the total of all daily expenses.

In 2010, the World Bank reported that 32.7% of all people in India fall below the International Poverty Line of US$ 1.25 per day while 68.7% live on less than US$ 2 per day. According to 2010 data from the UNDP, an estimated 29.8% of Indians live below the country's national poverty line [14].

Legal framework Addressing Poverty

The issue of poverty has been dealt by law from the perspectives of human rights. A number of Declarations Conventionshave addressed the issue of poverty among which the followings are most important-

The Universal Declaration of Human Rights (UDHR)

• *Articles 22* provides that, "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each state, of the economic, social and cultural rights indispensable for their dignity and the free development of their personality."

• *Article 25(1)* says that "Everyone has the right to a standard of living adequate for the health and well-being of their family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, windowhood, old age or other lack of livelihood in circumstances beyond their control."

International Covenant on Civil and Political Rights

• *Article 7 says,* No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

• *Article 8(1),* No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude and shall be required to perform forced or compulsory labour [15];

• *Article 14 (1)* All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

• *Article 26 says that*" All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

International Covenant on Economic, Social and Cultural Rights (ICSER)

• *Article 9 says*, The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

• *Article 10 (3)* speaks, Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

• *Article 11says,*

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

• *Article 12says,*

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

• *Article 13says,*

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

Economic and Social Council

The Committee on Economic, Social and Cultural Rights under the *General Comment No. 14 [16],* it has been stated that if a national or international anti-poverty strategy does not reflect this minimum threshold, it is inconsistent with the legally binding obligations of the State party.

Constitution of India

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a [SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC] and to secure to all its citizens:

JUSTICE, *social, economic and political"*

Preamble of the Constitution of India.

The concept of the protection of poor in India is underlined in the above quoted set of words in the

Preamble of the Constitution. If we go by the body Constitution of India, the principles of protection for the poor can be underlined as under:

Right to Life

The Indian Constitution in Part III under Art. 21 recognizes the right to livelihood as one of the most important positive fundamental rights under which the Supreme Court in *Francis Coralie v. Union Territory of Delhi*, [17] held right to life is not restricted to mere animal existence. It means something more than just the physical existence.

Right to Livelihood

Though right to livelihood is not a separate fundamental right under the Constitution of India, the Supreme Court of India in Pavement Dwellers case, [18] interpreted this right as a part of Art. 21 of the Constitution of India and held that no person can live without the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest ways of depriving a person of his right to life would be to deprive him of his means of livelihood. Again, in *D.K. Yadav v. J.M.A. Industries, [19]* the Supreme Court held that right to life enshrined under Article 21 includes right to livelihood. Article 21 clubs with life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. Further, in the Directive Principles of State Policy Articles 39(a) and 41 require the state to secure to the citizen an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life.

Right to Dignity

Right to dignity is like the right to livelihood is not a separate fundamental right. The Supreme Court of India has recognized the right in the case of *Bandhua Mukti Morcha v. Union of India* and others [20]. The Supreme Court held, Article 21 assures the right to live with human dignity, free from exploitation. The state is under a constitutional obligation to see that there is no violation of the fundamental right of any person, particularly when he belongs to the weaker section of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. So, now both the Central Government and the State Government are bound to ensure observance of the various social welfare and labour laws enacted by Parliament for the purpose of securing to the workmen a life of basic human dignity in compliance with the directive principles of the state policy.

Right against Exploitation

The right against exploitation, given in Articles 23 and 24, in Part III of the Constitution, provides for two provisions, namely the abolition of trafficking in human beings and *Begar* (forced labour), and abolition of employment of children below the age of 14 years in dangerous jobs like factories, mines, etc. Child labour is considered a gross violation of the spirit and provisions of the constitution.*Begar*, practised in the past by landlords, has been declared a crime and is punishable by law. Trafficking in humans for the purpose of slave trade or prostitution is also prohibited by law. An exception is made in employment without payment for compulsory services for public purposes. In the case of *Bandhua Mukti Morcha v. Union of India*and others [21], the Supreme Court held, the Supreme Court has categorically declared that a person engaged in a work with a payment less than the Minimum Wages Act, 1948 is a beggar.

Right to Health

Just as the right to dignity and right to livelihood, right to health is not a separate fundamental right under the Constitution of India. The Supreme Court has in the case of *Parmanand Katra vs Union of India [22],* held that whether the patient be an innocent person or be a criminal liable to punishment under the law, it is the obligation of those who are in charge of the health of the community to preserve life so that innocent may be protected and the guilty may be punished.In 1995, the Supreme Court held that right to health and medical care is a fundamental right covered by Article 21 since health is essential for making the life of workmen meaningful and purposeful and compatible with personal dignity. The state has an obligation under Article 21 to safeguard the right to life of every person, preservation of human life being of paramount importance [23]. In *Life Insurance Corporation of India v Consumer Education and Research Centre*[24] the Court observed that social security has been assured under Article 41 and Article 47 and it imposes a positive duty on the State to raise the standard of living and to improve public health.

Right to free Legal Aid

The Supreme Court followed the same path just as

the right to dignity and right to livelihood, right to health in regard to recognition of Right to free Legal Aid as a fundamental right while it was not a separate fundamental right under the Constitution of India. In *Hussainara Khatoon & Ors vs Home Secretary,* State of Bihar, the Supreme Courthas emphasized that free legal service is an inalienable element of 'reasonable, fair and just' procedure, for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice [25]. Apart from this, Article 39A of the Constitution of India, also provides for equal justice and free legal aid [26]. Further, *Order XXXIII. R.18 of the Code of Civil Procedure 1908*, provids that the state and central governments may make supplementary provisions as it thinks fit for providing free legal services to those who have been permitted to sue as an indigent person. In this connection, the *Legal Services Authorities Act, 1987* provides- to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Right to Social Security

In the form of Directive Principles of State Policy we have included, social security as a part of Constitutional Scheme to address poverty [27]. The social justice principles are underlined in the constitution as under-

The concept of social security is based on human dignity and social justice. Social security is a basic human right and a fundamental means for creating social cohesion, thereby helping to ensure social peace and social inclusion [28]. In *Union of India v Prabhakaran Vijay Kumar* [29], the Court has admitted the fact that it is only in the 20th Century the concepts of social justice and social security, as integral parts of the general theory of the Welfare State, were firmly established. In *CESC Ltd. v. Subhas Chandra Bose [30],* the Supreme Court has categorically held that the goals of social security can be summarized as:*providing subsistence means of livelihood*, *reduction of poverty*, *attainment of more equality*, *a guarantee of security and a share in prosperity of nation*. The right to social security has been recognized in order to ensure means of livelihood in loss of employment or disablement during employment. In *Life Insurance Corporation of India v Consumer Education and Research Centre [31]* the Court observed that social security has been assured under Article 41 and Article 47 and it imposes a positive duty on the State to raise the standard of living and to improve public health. The National Commission on Review of the Working of Constitution made an attempt to conceptualize the right to social security (The Report of NCRWC, Vol. II, Book 1, p. 293.). The term "Social security" is all encompassing and has wide connotations. Is dimensions are largely subjective, though in some cases objective criteria can be defined. It includes inter alia:

- *Alleviation of poverty including Elimination of hunger and deprivation.*
- *Economic and Income Security*
- *Food and Nutritional Security*
- *Social equity including gender dimensions Reaching the unreached*
- *Empowerment of people at various levels including the individual and community, and elimination of voiceless.*

Legislative Efforts Aiming at the Alleviation of Poverty

Apart from the Constitution of India, with the passage of time the government of India has come up with the following legislative measures to support the poor population of India.

1. The Employees Compensation Act, 1923
2. The Minimum Wages Act, 1948
3. The Equal Remuneration Act, 1976
4. The Right to Information Act , 2005
5. The Mahatma Gandhi National Rural Employment Guarantee Act, 2005
6. The Right of Children to Free and Compulsory Education (RTE) Act, 2009,
7. The National Food Security Act, 2013
8. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013
9. The Lokpal and Lokayuktas Act, 2013
10. The Agricultural Workers' Conditions of Work and Social Security Bill, 2007
11. The Unorganized Non-Agricultural and Social Security Bill, 2007,
12. The Unorganized Non-Agricultural Workers' Conditions of Work and Social Security Bill, 2007

Strategies of Government for the Alleviation of Poverty

For the alleviation of poverty in India the government has adopted a number of strategies

among which may be categorized as follows-

- Milennium Development Goal;
- Creating scope for the generation of income of people;
- Recognition of livelihood security;
- Focus on the improvement of health with special emphasis to-
  - Eradicate Mal- nutrition
  - Improve Maternal health
- Focus on providing shelter
- Sectoral Reform
- Structural adjustment
- Paying attention to improve the condition of education. Just like the major scheme for universalization of elementary education, Sarva Shiksha Abhiyan (SSA), Rashtriya Madhyamik Shiksha Abhiyan (RMSA), Rastriya Uchha Shiksha Abiyan (RUSA) has been introduced in 2013-14.

Schemes to Promote Social Security in India

Need-based social benefit has been provided to helpless which is based assistance on public funds, raised through tax revenues. The schemes introduced by the Government of India and different state governments can broadly be categorized into:

- Schemes for the generation of income
- Schemes ensuring social security to support the poor
  - ✓ Nutrition
  - ✓ Health
  - ✓ Shelter
  - ✓ Welfare (Sectoral)

Sl. No.	Anti Poverty Programmes	Year of Beginning	Objective/Description
1	**Antodaya Yojana**	**1977**	To make the poorest families of the village economically independent (only in Rajasthan)
2	**Swarnajayanti Gram Swarozgar Yojana (SGSY)**	**1999**	Assistance is given to the poor families living below the poverty line in rural areas for taking up self employment.
3	**Sampoorna Gramin Rozgar Yojana (SGRY)**	**2001**	Providing gainful employment for the rural poor.
4	**Employment Assurance Scheme**	**1993**	To provide gainful employment during the lean agricultural season in manual work to all able bodied adults in rural areas who are in need and desirous of work, but can not find it..
5	**Pradhanmantri Gramodaya Yojana (PMGY)**	**2000**	Focus on village level development in 5 critical areas, i.e. primary health, primary education, housing, rural roads and drinking water and nutrition with the overall objective of improving the quality of life of people in rural areas.
6	**National Rural Employment Guarantee Scheme (NREGS)**	**2006**	To provide legal guarantee for 100 days of wage employment to every household in the rural areas of the country each year, To combine the twin goals of providing employment and asset creation in rural areas
	Anti Poverty Programmes	**Year of Beginning**	**Objective/Description**
7	**Swarnajayanti Shahari Rozgar Yojana (SJRY)**	**1997**	It seeks to provide employment to the urban unemployed lying below poverty line and educate upto IX standard through encouraging the setting up of self employment ventures or provision of wage employment.
8	**Antidaya Anna Yojana**	**2000**	It aims at providing food securities to poor families.
9	**National Housing Bank Voluntary Deposit Scheme**	**1991**	To utilize black money for constructing low cost housing for the poor.
10	**Integrated Rural Development Programme (IRDP)**	**1980**	All Round development of the rural poor through a program of asset endowment for self employment.
11	**Development of Women and Chidren in Rural Areas (DWCRA)**	**1982**	To provide suitable opportunities of self employment to the women belonging to the rural families who are living below the poverty line.
12	**National Social Assistance Programme**	**1995**	To assist people living below the poverty line.
13	**Jan Shree Bima Yojana**	**2000**	Providing insurance security to people below poverty line.
14	**Jai Prakash Narayan Rojgar Guarantee Yojana**	**Proposed in 2002 - 03 budget**	Employment Guarantee in most poor districts.
15	**Shiksha Sahyog Yojana**	**2001**	Education of Children below poverty line.

Schemes for the Generation of Income

Eradication of poverty remains a major challenge of planned economic development. With the progress of time, after independence, the government of India has adopted a number of program to eradicate poverty form India. A brief discussion has been presented as under: [32].

Programs for Supporting the Poor

Article 41 imposed duty on State to public assistance basically for those who are sick and disable. The programme intends to protect poor and destitute persons in events of insecurities during old-age, death of the breadwinner and maternity. *Schemes ensuring social security to support the poor may be categorized as follows:*

- ✓ Nutrition:
- ✓ Health
- ✓ Shelter
- ✓ Welfare

Schemes Ensuring Welfare for the Poor

With the progress of time the government has come up with a number of schemes to help the poor which are as under-

• *Varishta Pension Bima (2003):* On July 14 when the Varishtha scheme was formally notified. Latest reports say that the scheme has attracted 34,000 subscribers, a number that does not seem particularly large considering the fanfare that marked its introduction. The scheme has been launched through the Life Insurance Corporation of India. For the present there is no proposal to entrust the scheme to any other agency. The Government will subsidise LIC the extent of shortfall between what it earns on the corpus and what it pays. This scheme has been planned for unorganized workers aged 55 and above.

• *Unorganized Sector Workers Social Security Scheme (2004):* This is a scheme available for unorganized and self-employed workers drawing salary/wage/ income of not more than Rs. 6500 p.m. The scheme includes three benefits; old-age pension scheme, personal accidental health insurance and medical insurance, Schemes for Handloom Weavers and Artisans to guarantee social security coverage like thrift fund scheme, new insurance scheme, group insurance scheme, pension plan scheme to weavers. The Scheme has no statutory backing hence has had contribution from employers.

• *'Rashtriya Krishi Bima Yojana'* (This was introduced in 1999- 2000. Under it, the small and marginal farmers are entitled to a subsidy of 50% of the premium charged); 'Farm Income Insurance Scheme' (This was introduced from Rabi Crop 2003-2004. It provides income protection to the farmers by insuring both production and market risks. Presently this scheme covers only wheat and paddy.). This particular scheme provides cashless health insurance cover upto 30,000/- for the families of the unorganised sector workers below poverty line.

• *'Varsha Bima':* The Varsha Bima was introduced in 2004. it covers anticipated shortfall in crop yield on account of deficit rainfall. Against this backdrop "Varsha Bima", providing insurance protection against deficit rainfall is an efficient risk mitigation tool securing the financial interest of the farming community. Although there is no way of controlling weather-factors, there is now a hope of mitigating the adverse financial effects that weather can have on the rural economy, particularly farm incomes.

• *Janashree Bima Yojna:* The NABARD (National Bank for Agriculture and Rural Development) in collaboration with the LIC has launched the Janashree Bima Yojna for women of self- help groups between 18- 60 years under which the policy holder will be required to pay Rs. 100 per year as premium while the Central government's social security Fund will pay Rs. 100/- as premium. In case of a natural death of a policy holder, her family will get Rs. 20,000/-. However in case of accidental death, the family will be given Rs. 75,000/-. Moreover, Rs. 100/- per month will be given as scholarship if the policy holder's child is studying in classes IX- XII. This particular plan is for the persons in the age group of 18-60 years and living below or marginally above the poverty line,

• "*Aam Aadmi Bima Yojna*" (having coverage of Rs.30,000/- in case of natural death, Rs. 75,000/- in case of accidental death; Rs. 75,000/- in case of loss of limb in addition to which a monthly scholarship of Rs. 100/- for each of two students from each family if they are studying from class 9- 12 in collaboration with the Central Government through LICI for the landless farmers in the state.

• *'Krishi Shramik Suraksha Yojana' :* This scheme was launched in 2001 and provides life insurance protection, periodical lump sum survival benefits and even pension to those who are between 18- 50 years. Under the Scheme, the worker is required to pay one rupee per day while the Central Government contributes two rupees per beneficiary. Under this scheme funds are not released to the State governments as the Central share has been

automatically credited to the LIC from the Social Security Fund on the basis of the workers covered and premium deposited. The Social Security Scheme, Krishi Shramik Samajik Suraksha Yojna - 2001 launched in July last year through the Life Insurance Corporation of India in fifty selected districts intends to cover 10 lakh agricultural workers over a period of three years. The Scheme has provision of life-cum - accident insurance, money back, pension and superannuation benefits.

• *Kisan Credit Card:* The West Bengal State Co-Operative Bank in collaboration with the National Insurance Company has entered into a master policy contract on 30th April, 2008 which enables the farmers having the Kisan Credit Card to enjoy the accidental claim upto Rs. 50,000/- Again, the state has also introduced in which the premium will be paid by the government against which the respective farmer will have a coverage of Rs. 20,000/-.

Schemes Addressing the Health of the Poor

• *Rashtriya Swasthya Bima Yojana* scheme envisages provision of issuance of smart cards to the beneficiaries to facilitate cashless transaction upto Rs.30,000/-. The coverage of the Rashtriya Swasthya Bima Yojana has been extended to construction workers, street vendors, railway porters & vendors, MGNREGA workers, domestic workers and beedi workers.

• *Indira Gandhi Matritva Sahyog Yojana:* To improve maternal and child health, the Cabinet Committee on Economic Affairs on introduced the Indira Gandhi Matritva Sahyog Yojana — a monetary scheme for pregnant women and lactating mothers — on a pilot basis in 52 districts in this Five-Year Plan. Each pregnant and lactating woman will receive Rs. 4,000 in three instalments between the second trimester of pregnancy until the child is six months old. Each beneficiary has to open an individual account (if she does not have one already) in the nearest bank or the post office for cash transfer.

• *Janani Suraksha Yojana (JSY):* It was launched in 2005 with an objective to increase institutional deliveries. Under the scheme, the government provides a cash incentive for pregnant mothers to have institutional births as well as pre- and ante-natal care. The JSY primarily aims at promoting institutional delivery while NMBS component (payment of Rs.500/-) within the Scheme is fairly limited. According to the October 2006 JSY guidelines, all women in Low Performing States (LPS) receive cash assistance if they have their baby in a government health centre or accredited private institution. In rural areas they receive Rs.1400 and in urban areas Rs.1000. The money is to be dispersed at the time of delivery in the institution. The cash assistance to the mother is mainly to meet the cost of delivery. Under JSY, below poverty line pregnant women above 19 years of age also receive Rs. 500 cash assistance for their first two births if these deliveries are at home. The cash is to be given at birth or around 7 days before for "care during delivery or to meet incidental expenses of delivery."

• *Ayusmati Scheme:* The aims of the Ayusmati Scheme are to increase the number of institutional deliveries by partnering with private sector facilities empanelled against certain pre-determined criteria. To ensure quality of service delivery in the empanelled private sector facilities by stringent monitoring and supervision.

Schemes Ensuring Nutrition of the Poor Children

• *Mid-day Meal Scheme:* The *Mid Day Meal Scheme* is a multi-faceted programme of the Government of India, among other things, seeks to address issues of food security, lack of nutrition and access to education on a pan nation scale. It involves provision for free lunch on working days for children in Primary and Upper Primary Classes in Government, Government Aided, Local Body, Education Guarantee Scheme (EGS) and Alternate Innovative Education (AIE) Centres, Madrasas and Maqtabs supported under Sarva Shiksha Abhiyan and National Child Labour Project (NCLP) Schools run by Ministry of Labour. The primary objective of the scheme is to provide hot cooked meal to children of primary and upper primary classeswith other objectives of improving nutritional status of children, encouraging poor children, belonging to disadvantaged sections, to attend school more regularly and help them concentrate on classroom activities, thereby increasing the enrollment, retention and attendance rates.

Shelter for the Poor

• *Indira Awas Yojna:* Indira Awaas Yojana is a social welfare programme, created by the Indian Government, to provide housing for the rural poor in India. It is one of the major flagship programs of the Rural Development Ministry to construct houses for BPL population in the villages. The houses are allotted in the name of the woman or jointly between husband and wife. The construction of the houses is the sole responsibility of the beneficiary and

engagement of contractors is strictly prohibited. Sanitary latrine and smokeless chullah are required to be constructed along with each IAY house for which additional financial assistance is provided from Total Sanitation Campaign and Rajiv Gandhi Grameen Vidyutikaran Yojana respectively. This scheme, operating since 1985, provides subsidies and cash- assistances to people in villages to construct their houses, themselves.

• *Rajiv Awas Yojna:* Rajiv Awas Yojana (RAY) [33] envisages a "Slum Free India" with inclusive and equitable cities in which every citizen has access to basic civic infrastructure and social amenities and decent shelter. The scheme is applicable to all slums within a city, whether notified or non-notified (including identified and recognised), whether on lands belonging to Central Government or its Undertakings, Autonomous bodies created under the Act of Parliament, State Government or its Undertakings, Urban Local Bodies or any other public agency and private sector. It is also applicable to "urbanized villages" inside the planning area of the city, urban homeless and pavement dwellers.

National Social Assistance Programme (Nsap)

Keeping these issues in mind the central government has introduced the National Social Assistance Programme (NSAP) w.e.f. 15-8-1995 which includes the followings-

➢ *The National Family Benefit Scheme:* It is a family benefit scheme. If the bread earner of the family dies accidentally or naturally, it is given to the nominee. Followings are the features of the scheme-

i. The primary breadwinner will be the member of the household (male or female) whose earnings contribute the largest proportion of the total household income.

ii. The death of such a primary breadwinner should have occurred while he or she is in the age group of 18 to 64 years i.e. more than 18 years of age and less than 65 of age.

iii. The bereaved household qualified as one below the poverty line according to the criterion prescribed by the Govt. of India.

iv. Rs. 5,000/- (Rupees five thousand only) in the case of death due to natural causes and Rs.10,000/- (Rupees ten thousand only) in the case of death due to accidental causes will be the ceilings for purpose of claiming Central Assistance.

v. The family benefit will be paid to such surviving member of the household of the deceased who, after due local enquiry is determined to be the head of the household (House-hold include spouse, minor children, unmarried daughters and dependent parents).

vi. Claims shall be entertained only if the person is residing in the Mandal for more than 3 years;

vii. Not applicable if the deceased person has a son of more than17 years.

➢ *National Old Age Pension Scheme:* Rs. 1000/- (Rupees one thousand only) per month per beneficiary.

i. The age of the applicant (male or female) shall be 65 years or higher.

ii. The applicant must be a destitute in the sense of having little or no regular means of subsistence from his/her own sources of income or through financial support from family members or other sources.

In order to determine destitution, the criteria, if any, currently in force in the State Govt. may also be followed.

➢ *National Maternity Benefit Scheme:* Under NMBS there is a provision for the payment of Rs. 500 per pregnancy to women belonging to poor households for pre-natal and post-natal maternity care upto first two live births. The benefit is provided to eligible women of 19 years and above. The Scheme is redesigned as Janani Suraksha Yojna in which targeted women in BPL households are provided cash benefits of up to Rs. 1300 in rural areas and up to Rs. 800 in urban areas for ante-natal care and institutional deliveries.

Poverty Alleviation under 2014- 15 Union Budget

➢ In terms of urban development, the Ministry of Housing and Poverty Alleviation revised down its budget estimates Rs 1,208 crore;

➢ The allocations for the much hyped Rajiv Awas Yojana also saw a major cut of 38 %.

➢ Increment in the number of days from 100 to 150 no. of days work for the Tribal people under the MGNREA.

➢ The National Social Assistance Programme (NSAP) had been budgeted Rs. 10618 crore has been provided for this programme.

Conclusion

Thus, it is quite noticeable that the government

of India at it's best trying to eradicate poverty.The initiatives of the government may be looked as insufficient but the efforts are admirable when we see the bold programmes like MGNREGA; National Food Security Act, 2013 etc. if the implementation mechanism is made more vigilant and corruption goes out from the country, the poor also will start living with a smiling face.

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Review Article

Adoption vis-a-vis Surrogacy: A Comparative Legal Analysis

Kushal Singla

Author Affiliation
Assistant Professor of Law, Army Institute of Law, Mohali.

Reprint Request
Kushal Singla
Assistant Professor of Law, Army Institute of Law, Mohali, Sector 68, Sahibzada Ajit Singh Nagar,
Punjab 160062.
E-mail:
kushalsingla@gmail.com

Abstract

The 2001 census of India shows the number of married couples to be 173,044,576 [1]. Due to the change in the lifestyle and the pattern of living in today's times, the number of couples who have various medical problems in conceiving has risen tremendously. The recent National Family Health Survey, for example, estimates childlessness as 2.4 percent of currently married women over 40 in India, one in every six couples being infertile [2]. These people, including other couples who may not have had children due to other reasons, then resort to other measures like adopting a child, surrogacy etc

This paper is thus a humble attempt to provide a comparative analysis of these two above mentioned options i.e adoption and surrogacy with respect to India and discusses the several aspects with reference to feasibility, cost etc. Last but not the least, the legal provisions highlighting the lacunae in the respect to various personal laws would also be dealt with in detail.

Keywords: Adoption; Surrogacy; Uniform civil code; Rights of adopted child; Relation back.

Introduction

Adoption has been a practice undertaken by childless parents since times immemorial. However, since India has not adopted a Uniform Civil Code, even the adoption laws are different for each specific religion. While some of them allow adoption, the others do not recognize adoption but allow other forms of the same like foster care, guardianship etc. Though Central Adoption Resource Authority provides for specific and precise guidelines for adoption the sad reality is that it is not followed in most cases, making adoption a difficult, intricate and time consuming process.

These difficulties in procedure among the various other factors lead to emergence of other methods like surrogacy etc. Surrogacy is a productive method for people who want children of their own but unable to conceive or do not have children of own due to other personal reasons. However, due to the absolute lack of express laid down laws in the country, surrogacy is still far from reality. In some cases it leads to the exploitation of the surrogate mother as she is paid really less money for her services or on the other hand problems are created for the parents, especially the foreigners. This is because there are no laws in India to regulate the same and set down a standard procedure.

Thus as seen though both these methods are helpful, in practicality both bring along their own set of problems. This paper also thus provide recommendations and suggestions for reducing such gaps that exist between the existing laws on paper and the real picture by clearly laying down the lacunae in the procedure and laws and necessary changes to be implemented with respect to the same.

Adoption under Personal Laws

Adoption means the process through which the adopted child is permanently separated from his biological parents and becomes the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship [1]. Thus it is referred to as the transplantation of the child from one family to another.i.e it is a process to incorporate a child permanently into a family with all the rights of a natural child, in which he was not been born [2].

In India, there is no uniform common stature that governs the laws of adoption. Hence,the various personal laws provide for different provisions regarding adoption. Some of them have been discussed in brief below. The Hindus, who form the majority of the country's population, follow the Hindu Adoption and Maintenance Act, 1956which consists of many intricate features. Though these were intended to safeguard the adopted children from any kind of exploitation these actually create difficulties in adoption. Some of the essential features of this Act are [3]:

- The age difference between parent and adopted child (specifically, between adoptive father and adopted daughter, and adoptive mother and adoptive son) must be minimum 21 years.
- If the person already has a biological or adopted child, the second (adopted) child cannot be of the same sex.
- A married female cannot adopt a child during the lifetime of her husband without his consent unless he is of unsound mind and incapable of making decisions or giving consent. Similarly, for a married male intending to adopt, the consent of the spouse is necessary unless she is of unsound mind, has ceased to be a Hindu or has renounced the world.
- An unmarried or widowed or divorced Hindu female can adopt a child.
- The principle right to give a child in adoption lies only with the natural father, but the mother's consent is necessary if she is living. The biological mother can give the child in adoption if the father is dead or of unsound mind. An orphan child can be placed for adoption by a guardian duly appointed by the court.
- In-country adoption is a private act between the natural and adoptive parents, not requiring the scrutiny or permission of the court, except when a person other than the natural guardian is giving the child in adoption.
- If in the natural family some property was vested in the child before adoption, that will remain in him and he cannot be divested of it just because he has gone out to another family of adoption. Further, the child retains 'sapinda' relationship and degrees of prohibited relationship in his natural family for the purpose of marriage.

As an exception to the above mentioned , the personal laws of followed by Christians and Parsis do not recognize adoption .However , in this case an adoption can take place from an orphanage by obtaining permission from the court under Guardians and Wards Act, 1890 [4]. Since there is no adoption law for Christians, they can take a child under the said Act only under foster care. Foster care would be however differ from that of adoption in it's feature. Once a child under foster care becomes major, he is free to break away all his connections. Besides, such a child does not have legal right of inheritance. Thus these communities follow the provisions of Guardians and Wards Act, 1890.

Islam does not recognize adoption. This does not fundamentally mean that they cannot adopt in any manner .This only means that there is no system similar to adoption as recognized in the Hindu System [5]. Adoption in Muslims can take place from an orphanage by obtaining permission from the court under Guardians and Wards, Act, 1890.

Adoption under other Statutes

The Guardians and Wards Act, 1890

As seen above , except for the Hindus , none of the other cultures have an enabling law to adopt a child legally as thus the people belonging to these religions who are desirous of adopting a child can only take the child in 'guardianship' under the provisions of The Guardians and Wards Act, 1890.

This Statute thus does not allow for full adoption but only guardianship [6] making the child a ward, not an adopted child. Under this law, when children turn 21 years of age, they no longer remain wards and assume individual identities. They do not have an automatic right of inheritance. Adoptive parents have to leave whatever they wish to bequeath to their children through a will, which can be contested by any 'blood' relative [7].

However, it does not cover the topic of guardianship in its entirety. The law is silent about the orphan, abandoned and surrendered children. Further, there is also no other child specific codified legislation dealing with the adoption of the children

of these categories. As a result, several appeared in respect of the custody, guardianship or adoption of these types of children, which were prejudicial to the interest of the children [8].

Juvenile Justice Act, (Care and Protection of Children) Act, 2000

To remove such uncertainties and fallacies that were present in the personal laws covering adoption and also laws regarding guardianship, Juvenile Justice (Care and Protection of Children) Act, 2000 introduced the concept of secular adoption where a universal right was granted to all citizens to adopt and all children to be adopted, irrespective of the religions. Unlike Guardianship and Wards Act, 1890 here the status granted is that of a parent and not of a guardian and similarly the child is a son/daughter and not a ward. In addition, it allows adoption of two children of the same sex.

Thus as seen this enactment brought a holistic development to the adoption laws in the country.It removed various restrictions like age, sex, religion which in many cases acted as a barrier. Further amendment made in the year 2006, in addition ensured that these are being implemented properly.Sec.41 of J.J. Act, 2000 read with Rule 33(1) of Central Rules lay down the laws with reference to adoption of orphaned, abandoned or surrendered children.It states that such children can be adopted for their rehabilitation through such mechanism as may be prescribed. Such children may be given in adoption by a Court in keeping with the provisions of several guidelines regarding adoption issued by the State Govt./Central Adoption Resource Authority and notified by the Central Govt.

Apart from these statutory enactments, numerous judgments strengthened the laws of adoption of the country broadening the discussion onto other topics like inter –country adoption.The landmark judgment in the case of Laxmi Kant Pandey v. Union of India & others[9] laid down the laws on inter-country adoption. The Court also issued certain guidelines to be followed while undertaking such adoptions and also stressed on the need for establishment for a central agency that would ensure the implementation of the same. In view of the same, Central Adoption Resource Agency (CARA) was established. Subsequently the Revised Guidelines for the Adoption of Indian children were issued in 1995 to provide a frame work of Rules for regulating and monitoring inter-country adoptions. These Guidelines are now applicable all over the country and they provide a uniform mechanism for processing cases of Inter-country adoptions [10]. On an international scale, India ratified the Hague Convention on Inter-country adoption in the year 2003 as a step towards achieving international cooperation on the subject.

The above paragraphs thus indicate the various provisions under the Indian personal laws in relation to adoption and the other legislations and authorities that facilitate the same.Now, we will be discussing in detail about the other aspect , that is surrogacy and the laws and regulations relating to it in India .

Surrogacy

According to the Black's Law Dictionary, surrogacy means the process of carrying and delivering a child for another person. The Report of the Committee of Inquiry into Human Fertilization and Embryology or the Warnock Report (1984) defines surrogacy as the practice whereby one woman carries a child for another with the intention that the child should be handed over after birth.[11] The word 'surrogate' has its origin in Latin 'surrogatus', past participle of 'surrogare', meaning a substitute, that is, a person appointed to act in the place of another. Thus a surrogate mother is a woman who bears a child on behalf of another woman, either from her own egg or from the implantation in her womb of a fertilized egg from other woman.

Fundamentally, there are two types of surrogacy — traditional surrogacy and gestational surrogacy. In traditional surrogacy, a surrogate mother is artificially inseminated, either by the intended father or an anonymous donor, and carries the baby to term. The child is thereby genetically related to both the surrogate mother, who provides the egg, and the intended father or anonymous donor.

In gestational surrogacy, an egg is removed from the intended mother or an anonymous donor and fertilized with the sperm of the intended father or anonymous donor. The fertilized egg, or embryo, is then transferred to a surrogate who carries the baby to term. The child is therebygenetically related to the woman who donated the egg and the intended father or sperm donor, but not the surrogate [12].

Monetary compensation may or may not be involved in surrogacy arrangements. If the surrogate receives compensation beyond the reimbursement of medical and other reasonable expenses, the arrangement is called commercial surrogacy; otherwise, it is often referred to as altruistic surrogacy [13].

Commercial surrogacy in India is legal in India since 2002 [14]. The availability of medical infrastructure and potential surrogates, combined with international demand, has fueled the growth of

the industry [15]. Surrogate mothers receive medical, nutritional and overall health care through surrogacy agreements. In commercial surrogacy agreements, the surrogate mother enters into an agreement with the commissioning couple or a single parent to bear the burden of pregnancy In return of her agreeing to carry the term of the pregnancy, she is paid by the commissioning agent for that. India is a favourable destination for foreign couples who look for a cost-effective treatment for infertility and a whole branch of medical tourism has flourished on the surrogate practice.

However, this picture looks pretty only on paper .In most of the cases involving surrogacy, the surrogate mother is exploited as she is paid comparatively less for her services in India. The usual fee is around $25,000 to $30,000 in India which is around 1/3rd of that in developed countries like the USA. In most cases she is cheated by the agent or the other parties involved. All these lacunae arise from the fact that India does not have any laws with respect to the same. Therefore these practices though legal and not regulated in any manner. This creates problems not only for the mother but also for the who find themselves in the midst of many immigration, citizenship and other difficulties.

Since there is no specific legislation on the same,the Indian Council for Medical Research in the year 2005 came up with The National Guidelines for Accreditation, Supervision and Regulation of ART clinics in India .This discussed all the aspects relating to surrogacy including definitions, procedures, legal issues etc. However, owing to it being a mere guideline, its enforceability could not be guaranteed. In view of these inadequate and ineffectual efforts, The Law Commission of India submitted the 228th report on Assisted Reproductive Technology procedures discussing the importance and need for surrogacy, and also the steps taken to control surrogacy arrangements. The following observations had been made by the Law Commission:

1. Surrogacy arrangement will continue to be governed by contract amongst parties, which will contain all the terms requiring consent of surrogate mother to bear child, agreement of her husband and other family members for the same, medical procedures of artificial insemination, reimbursement of all reasonable expenses for carrying child to full term, willingness to hand over the child born to the commissioning parent(s), etc. But such an arrangement should not be for commercial purposes.
2. A surrogacy arrangement should provide for financial support for surrogate child in the event of death of the commissioning couple or individual before delivery of the child, or divorce between the intended parents and subsequent willingness of none to take delivery of the child.
3. A surrogacy contract should necessarily take care of life insurance cover for surrogate mother.
4. One of the intended parents should be a donor as well, because the bond of love and affection with a child primarily emanates from biological relationship. Also, the chances of various kinds of child-abuse, which have been noticed in cases of adoptions, will be reduced. In case the intended parent is single, he or she should be a donor to be able to have a surrogate child. Otherwise, adoption is the way to have a child which is resorted to if biological (natural) parents and adoptive parents are different.
5. Legislation itself should recognize a surrogate child to be the legitimate child of the commissioning parent(s) without there being any need for adoption or even declaration of guardian.
6. The birth certificate of the surrogate child should contain the name(s) of the commissioning parent(s) only.
7. Right to privacy of donor as well as surrogate mother should be protected.
8. Sex-selective surrogacy should be prohibited.
9. Cases of abortions should be governed by the Medical Termination of Pregnancy Act 1971 only.

However, these were only recommendations that needed to be incorporated into a comprehensive legislation which in India was missing .Thus after a long wait of so many years, the Indian Council of Medical Research (ICMR) came out with a draft Assisted Reproductive Technology (Regulation) Bill , 2010 and Rules 2008. Though this bill acknowledged surrogacy agreements and their legal enforceabilityand brought out provisions regarding proper procedure to be followed by foreigner and foreign couples. It also laid down provision for safeguarding the right of surrogate by the specifying the age and the no. of times surrogacy can be undertaken by her. However this bill suffered from multiple lacunae. The Bill neither created nor designated or authorized any court or quasi-judicial forum for adjudication of disputes arising out of surrogacy, ART and surrogacy agreements. In addition remedy available to biological parents to obtain exclusive legal custody of surrogate children and many relevant factors were not covered in the bill.

A new bill with some new modifications was, thus introduced in the year 2013 known as Assisted Reproductive Technology (Regulation) Bill, 2013.Various suggestions of several Indian Ministries and Departments were accommodated and the bill attempted to remove many lacunae that existed in the earlier bill. A National Advisory Board for ART will be established under the Health Ministry to recommend modification of rules to the ART techniques and Indian Council of Medical Research will maintain a national registry of ART clinics and banks in India which will act as a central database through which all information related to services offered by clinics will be maintained. Such other recommendations have been paid heed to.

Adoption Procedure in India

The following are the steps as stated in the CARA guidelines that are to be undertaken for adopting a child in India [16]. It consists of the following 7 stages:

Stage I : Registration: A person desiring to adopt a child shall register themselves only with one with State Adoption Resource Agency (SARA)/ Recognised Indian Placement Agency (RIPA)/ Special Adoption Agency or SAA/Licensed Adoption Placement Agency (LAPA) which shall guide them on the registration process..

Stage II: Pre-adoption Counselling and Preparation of the PAP(s): The concerned RIPA/SAA/LAPA shall provide pre-adoption counseling to them. Such agency shall also prepare them for the adoption and related process by providing them with all relevant information.

Stage III: Home Study and Other Requirements: Documents listed shall be furnished to the concerned SAA/ RIPA to facilitate conduct of home study.

Stage IV : Referral and Acceptance : An 'Adoption Committee' is constituted. After matching the child, the RIPA/SAA/LAPA shall advise to see the child physically before they give their acceptance This process is known as "referral".In case the referred child is not acceptable to the PAP(s), a maximum of two other children shall be shown to them at a given time. In case, matching does not take place, the PAPs would be eligible for reconsideration only after a lapse of three months from the date when the last child was shown to them. If the PAP(s) decide to adopt the proposed child, they shall give their formal acceptance for adoption.

Stage V: Pre-adoption foster Care: The Child can be placed in pre-adoption foster care after acceptance of referral. Before physically entrusting the child to the prospective adoptive parents, the adoption agency should ensure that they have record of local contacts of the couple including contact details of two close relatives.

Stage VI: Legal Procedure: The child can be legally placed in adoption by the competent court. For this purpose, the court having jurisdiction over the area where the RIPA/SAA/LAPA is located will be the competent court.

Stage VII: Follow up Visits and Post-Adoption Services: The RIPA/SAA/LAPA shall carry out half yearly follow-up visits to the child from the time the child has been placed in pre-adoption foster care till a period of two years after the legal adoption.

Surrogacy Procedure in India

As seen in the case of adoption, there is a set procedure which if effectively implemented may ensure that none of the adopted children are exploited. On the other hand, there is no set procedure which is present in case of surrogacy that are to be undertaken. However, the govt. has proposed several guidelines and the ART bill is pending and yet to be passed. Therefore, since there is no body that regulates surrogacy and a laid down procedure that is to be followed, yet , the guidelines and the general procedure followed , as laid down by the Govt. in this regard are discussed below.

Procedure followed for Surrogacy in India

Requirements for Surrogacy

A contract is drafted specifying that the baby becomes the legitimate adopted child of the genetic couple. The genetic parents, the surrogate mother and her spouse will sign this document. The requirements and the details of the parties and the surrogacy agreement are written in the same document.

Screening the Surrogate Mother

The services begin with finding an Indian surrogate, who is sourced by means of advertisements sin local newspapers. Surrogacy clinics in India ensure that surrogate mothers taken into their program are qualified for the job. She is tested for HIV beforehand, and tested again, just before embryo transfer.

Theprocess

Matured eggs developed in both ovaries of the genetic mother and the semen from the genetic father

are transferred into the embryo transfer of surrogate.

Delivery and Birth Certificate

Once the embryo transfer has taken place, the surrogate is placed under the care of the clinic's efficient obstetricians till term (9 months). Genetic parents will be provided with regular updates about the surrogate mother's progress through e-mail. The baby will be delivered in a hospital set up and handed over to the genetic parents immediately following the birth.The Government of India issues a birth certificate in the name of the Intended parents / Genetic parents.

Thus, it can beviewed that the procedure for both that is adoption and surrogacy. Both contain cumbersome and intricate procedures that have to be complied to , the only differentiating factor being there is a specific procedure that is enforceable by regulatory authorities for adoption, while for surrogacy the procedure is not specially enforceable but is the one which is generally followed. Further , surrogacy includes a lot of medical procedures like insemination of the egg etc. This may make the process a bit more complex and expensive. Considering the procedure to be followed in adoption, these, do not include much medical procedures, just a basic medical and health check up of the child. Further, in adoption the only three particular agencies are involved: The couple who have come for adoption also known as PAP, the child and the concerned authority. Surrogacy would include more members like the doctors, the surrogate mother, the couple itself etc.

Issues

Adoption

After having seen the various legislations and also the procedure regarding adoption and surrogacy in the country, the next step would be to see the several shortcomings of both these methods and also the things to be done and applied while going for these.

One of the major shortcomings of adoption is that the children who are adopted are exploited in various forms .They are made to do household work and exploited in several other forms. Sometimes the people who adopt are part of a big child trafficking racket that exists and therefore, children especially girls end up being sexually and physically exploited by many. Therefore, nowadays special care is taken by the adoption agencies especially in case of inter country adoptions.

It is not only that the adopted children are exploited, another major issue concerned with adoption is the long cumbersome process that people have to undergo. This , in many cases makes the people reluctant to take such a step. Keeping in mind the various adoption scams that we come across in our lives everyday, it is pertinent following things should be kept in mind while going for adoption:

- Never register with multiple agencies; it may cause delay and duplication in the procedure.
- Maintain all correspondence and terms with the agency in writing.
- Always get an independent medical advice about the child before adoption.
- Ask for a break-up of the cost the agency claims to have spent on the child.

Always adopt from an authorised agency and do not enter into any private illegal dealings. Private dealings can look faster but are not reliable and may even result in you losing the child at the end.

There are not much other legal issues in regard to adoption , but lots of psychological ones. The issue whether the biological mother(if own) should be made to meet or visit the child, whether the parents should the child of him or her being adopted , the treatment of the children in case the couple has another child of their own all exists. These should be dealt with carefully.

On the other hand , the issue with surrogacy in India is that there is no settled law in this regard. Many bills including the latest 2013 ART bill though have been brought to the scrutiny of the Parliament, none have been passed. Further even this bill does not cover holistically all the aspects relating to surrogacy and there were objections raised with respect to some criteria mentioned. For eg: The bill strictly barred homosexual couples, foreign single individuals and couples in live in relationships to have children by the way of surrogacy.

Legal and Moral Issues –Surrogacy

The moral issues associated with surrogacy are pretty obvious, yet of an eye-opening nature. This includes the criticism that surrogacy leads to commoditization of the child, breaks the bond between the mother and the child, interferes with nature and leads to exploitation of poor women in underdeveloped countries who sell their bodies for money. Sometimes, psychological considerations may come in the way of a successful surrogacy arrangement [17].

As far as the legality of the concept of surrogacy is

concerned it would be worthwhile to mention that Article 16.1 of the *UniversalDeclaration of Human Rights 1948* says, *inter alia*, that "men and women of full age without any limitation due to race, nationality or religion have the right to marry and found a family". The Judiciary in India too has recognized the reproductive right of humans as a basic right. For instance, in *B. K. Parthasarthi v. Government of Andhra Pradesh [18]*, the Andhra Pradesh High Court upheld "the right of reproductive autonomy" of an individual as a facet of his "right to privacy" and agreed with the decision of the US Supreme Court in *Jack T. Skinner v. State of Oklahoma [19]*, which characterised the right to reproduce as "one of the basic civil rights of man".

However, the question in dispute is not whether surrogacy should be held to be illegal because there is no inherent reproductive right in the individuals. The dispute is on whether India has reached where such assisted reproductive technologies can be undertaken without leading to exploitation of the surrogate mother or creating technical difficulties for the parents. The laws in the other countries of the world are also not uniform in nature , creating more uncertainties.

In the famous *Baby M case [20]*, the New Jersey Supreme Court, though allowed custody to commissioning parents in the "best interest of the child", came to the conclusion that surrogacy contract is against public policy. It must be noted that in the US, surrogacy laws are different in different states.

If the 1988 *Baby M case* in the US forced many to put on legal thinking caps, then that year also saw Australia battling with societal eruptions over the *Kirkman sisters' case* in Victoria. Linda Kirkman agreed to gestate the genetic child of her older sister Maggie. The baby girl, called Alice, was handed over to Maggie and her husband at birth. This sparked much community and legal debate and soon Australian states attempted to settle the legal complications in surrogacy. Now in Australia, commercial surrogacy is illegal, contracts in relation to surrogacy arrangement unenforceable and any payment for soliciting a surrogacy arrangement is illegal.

Baby Manji Yamada v. Union of India [21] concerned production/custody of a child Manji Yamada given birth by a surrogate mother in Anand, Gujarat under a surrogacy agreement with her entered into by Dr Yuki Yamada and Dr Ikufumi Yamada of Japan. The sperm had come from Dr Ikufumi Yamada, but egg from a donor, not from Dr Yuki Yamada. There were matrimonial discords between the commissioning parents. The genetic father Dr Ikufumi Yamada desired to take custody of the child, but he had to return to Japan due to expiration of his visa. The

Municipality at Anand issued a birth certificate indicating the name of the genetic father. The child was born on 25.07 2008 and moved on 03.08.2008 to Arya Hospital in Jaipur following a law and order situation in Gujarat. The baby was provided with much needed care including being breastfed by a woman.The grandmother of the baby Manji, Ms Emiko Yamada flew from Japan to take care of the child and filed a petition in the Supreme Court under article 32 of the Constitution. The Court relegated her to the National Commission for Protection of Child Rights constituted under the Commissions for Protection of Child Rights Act 2005. Ultimately, baby Manji left for Japan in the care of her genetic father and grandmother.

Thereafter was in the news the Israeli gay couple's case[22]. The gay couple Yonathan and Omer could not in Israel adopt or have a surrogate mother. They came to Mumbai. Yonathan donated his sperm. They selected a surrogate. Baby Evyatar was born. The gay couple took son Evyatar to Israel. Israeli government had required them to do a DNA test to prove their paternity before the baby's passport and other documents were prepared.

One of the major drawbacks is the manner in which the surrogate mother is treated in this "transaction". A meager amount is paid to her, as less as Rs 10,000 for a job that takes away 10 months of her life. India, being a fertile ground for reproductive tourism, many girls who have not even attained majority , are pushed into such a lucrative business.

Adoption V. Surrogacy

The aim of this paper was to find out the most or the better option that can be adopted by couples who do not have children .In the process, we have discussed the definition of both adoption and surrogacy, various legislationsand provisions available with respect to India etc. In addition , we have discussed in depth the procedure involved in both , which can be one of the majordeciding factors of many people. Last but not the least various legal , moral and psychological issues relating to the same were discussed.

The above mentioned are the points which are the major issues that exist regarding these methods. There is no way in which we can point out which of these is a better method as compared to the other. Adoption has existed in India since a long period of time, unlike surrogacy whose commercialization was

legalized only in the year 2002. Surrogacy, being a new concept in India , in my view, is not implemented properly due to their being no legislation to control or regulate it in any manner. The surrogate mother is exploited in many ways. There is no centralized agency that keeps a record of the ART clinic or the number of woman who act as surrogates. A woman, who acts as a surrogate, is in fact given a certificate, which is a very insensitive thing to be done according to me. Though after the Baby Manji case, the govt, came up with guidelines, they have not been passed yet and therefore not implemented properly. Thus in the end it can be said that, though surrogacy is a very lucrative business for India , bringing in almost Rs 55000 crores into the country every year, unless and until it is properly implemented and regulated, people would be hesitant to go for it.

Adoption, on the other hand, as said previously, has existed in India since early history. Everybody is aware about the procedure to be undertaken to go for adoption. There is a centralized agency, CARA, which keeps a record of all the adoption agencies and children. In today's time adoption is done in a regulated manner, by following all the legal procedures in the correct manner. Though there still exist lot of issues regarding adoption, the well planned implementation of adoption under various personal and secular laws have led to them being reduced to a bare minimum. Adoption scams in the past, that have been brought into limelight have made the public aware of the cons of the system and thus has led to the new regulated manner in which adoption takes place.

Conclusion

There can be no outright answer to the question about which among, Adoption and Surrogacy is a better option. Both have their own pros and cons and the method to be selected depends upon the particular couple and their requirement. A couple who may want children of their own, may go for surrogacy by inseminating the egg and sperm into the surrogate mother, who would then give birth to the couple's own child. On the other hand, if a person is ready to give life to another's man's child may go for adoption. Another attributing factor in this case, would be the monetary consideration. Surrogacy is expensive as compared to adoption.

Therefore, in the end it can be said that many factors play a role in deciding among these two factors. Further, each have their own share of issues, advantages and disadvantages as explained above. All these should be kept mind while undertaking these. In addition, the personal laws of the person should also be kept in mind since India does not follow uniform law on adoption. The legal issues involved in each of the personal and secular laws should be paid heed to .For example, under HAMA the status of the person is that of a parent but in the GAWA it is that of a guardian. All these should be kept in mind.

Thus, concluding it can only be stated that it both adoption and surrogacy cannot be expressly stated as a boon or bane. It can be boon if not regulated and implemented properly as it may lead to exploitation of many children and may in turn make the adoption process really long and lengthy. On the other hand , it can act as a boon to a number of childless couples , if they are being carried out in a proper manner. Thus, all of us, especially the authorities should strive to achieve the latter.

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Review Article

Death Penalty: A Legal Murder

Debajyoti Saha

Author Affiliation
Student, 3rd Year, School of Law,
Christ University,
Bangalore-560029.

Reprint Request
Debajyoti Saha, C/O Bidi Supply Company, P.O. Khetrajpur,
District-Sambalpur,
State-Odisha-768003.
E-mail:
debajyoti.saha@law.christuniversity.in

Abstract

Death Penalty is a type of punishment where the convict is sentenced to death. It prima facie seems to be very harsh. It is given in the rarest of rare cases. There is huge uproar among the public whether to abolish death penalty or not. Death penalty takes away the Right to Life of the convicts.

It is given in very serious cases like waging war against the state. In the article the author has analyzed the hanging of Yakub Memon who was involved in 1993 Mumbai Serial Blasts. There are many philosophers who have stated the importance of death sentence in the society. The justification of the criminalization process of death penalty has been taken into consideration in the article.

There were Law Commissions set up for the analysis of death penalty in India. There is a drastic change in the view of the courts regarding capital punishment. Time and again the courts went through the societal conditions before giving the judgment in the death penalty cases. The author has described the inadequacies in the administrative set up. The author has taken the views both for and against capital punishment in order to come to a conclusion. The author will employ doctrinal method of research.

Keywords: Death Penalty; Yakub Memon; Rarest of Rare; Capital Punishment; Retributive; Paternalism; Mercy Petition; Deterrent.

Introduction

Yakub Memon was hanged recently. He was involved in 1993 Mumbai serial blasts. His curative petition was dismissed on 28th July 2015. He was convicted by the Terrorists Activities and Disruptive Activities (Prevention) Act, 1987 court for his role in the Mumbai blasts. His hanging was the third in the row after Ajmal Kasab in 2012 and Afzal Guru in 2013. There were the first hangings since that of Dhanajay Chatterjee. According to the Centre on the Death Penalty at the National Law University, Delhi, out of 1800 people who are sentenced to death by the trial courts, only 5% has been confirmed by the Supreme Court of India. Now around 385 people are on the death row [1]. There are many cases where the death penalty was awarded on wrong grounds. Many judges have written letters regarding this to the President of India. Here the reason behind the protest against the hanging of Yakub is very difficult to understand. Two years earlier, when the Delhi gang rape happened, everyone was asking for death penalty for the culprits. So now Yakub was involved in the blasts which took the life of thousands of people. Why should he be not given death penalty?

When a mercy petition is rejected, there has to be a minimum period of 14 days between its rejection being communicated to the petitioner and his family and the scheduled date of execution. That apart, minimum period of 14 days is stipulated between the communication of the death warrant to the petitioner and the scheduled date of execution[2]. After the rejection of the first mercy petition, despite sufficient time, the petitioner chose not to challenge the same. We do not think that it is a case of such nature where it can be said that legal remedy was denied to the petitioner.

Death penalty is regarded as state sanctioned executions. There were huge debates on the same in the social media and among the human activists groups. People are questioning the judicial process of the country and also the law enforcement procedures of the country. In India death penalty is awarded on the 'rarest of rare cases'. This means there has to be very high standard proof in order to award death sentence. This includes excessive brutality, incessant killing of people etc.

The limited grounds that are given for the death penalty makes the people think that there still remains one or the other doubt while awarding the death sentence. Some people think the death penalty is a kind of reprieve to the culprits. The onus also comes on to the judges that they have to be unbiased towards all the citizens. But all the cases, where death penalty was given to the culprits, are of serious nature where a lot of social commotion is involved. It is very difficult to expect a judge to always decide cases objectively. There is already existed the procedure of appealing in the higher courts and also the judges are appointed in the transparent way. But above all that, a judge is a human being and is also a part of the society. He cannot remain uninfluenced by the socio-economic situation of the surroundings.

Cesarae Beccaria, one of the greatest philosophers, stated that capital punishment is both inhuman and ineffective and is having less deterrent effect than imprisonment. The state has the responsibility of giving expressions to public will and hate murders, crimes but by exercising death penalties the state is committing public murders by its own[3]. The great philosopher Bentham has stated about the utilitarianism principle. This principle upholds 'greatest good of greatest number.' The convicts are being given death penalty as they are not regarded as the part of the society. It is for the welfare of the society because if they remain alive, people will imitate them and commit heinous crimes. It is better to eliminate them from society as they are not only doing harm to themselves but also to the society. It is on the basis of pleasure and pain relationship as the violation of laws by the convicts has caused a greater harm. This harm is needed to be removed. Immanuel Kant supported death penalty on different lines. He stated that death penalty has to be there for murderers. If anyone kills other in the rage of revenge or any other reason, the action of killing becomes immoral. But when the state imposes death penalty the person, who has killed the other, is a moral act as the state is not acting in personal interests. The death penalty is for the protection of citizens.

Retributive punishment always does not seem to give us the same result as it is thought of. The emotions of the society are also attached to the culprit. Though the culprit has done the most heinous which has been proven, but the state should not take the responsibility of killing of those people. But there is also no alternative existing in the current scenario to have the same effect as the punishment of death penalty. The people should not be allowed to take the laws in their hands in any regard. The reformatory form of punishment will not work in all circumstances. We can take the alternative of life sentence but whether the right to life would be protected in the four walls of prison is really a doubtful one. The abolition of the death penalty is only a suggestive one but the criminals have to be given some punishment which can have a deterrent effect. Sometimes the greater good principle has to be kept in mind and the death penalty should not be abolished absolutely by the society. The main motive behind awarding any punishment is to educate the people about what are the things that are considered apt by the society. With this, the punishment can have the deterrent effect. Deterrent effect is a very subjective one. Prima Facie death penalty may seem brutal but the main motive of the legislators behind incorporating this provision also has to be considered. There has to be some alternative tool to address the emotions of the culprit. Death penalty should not be given only on the basis of popular opinion.

The death penalty is barbaric and primitive one. If we are awarding death sentence to the criminals, there may be a chance of his or her to be proved innocent. Moreover we cannot be the party to take life of other person.

The differentiation between harm and the offence given by the great philosopher J.S. Mill can also be taken into consideration. According to Mill, harm occurs whenever there is physical or mental injury and that is a crime. But in offence, there is no such injury. The killings that were done by Yakub Memon was a harm to the society. There was no chance of

negotiation between both the criminal and the victims. It disturbed the harmonious social constitution. There is direct connection between the crime and the victim. The crime was against the whole society. There was no such of avoiding the crime.

In the Hart-Devlin the concept of individual v. the community interests was evolved. We have given our rights to the state to protect in all circumstances. The state is giving those people death penalties who are committing serious crimes. Here though the process of punishment may be against the morals of the society but the interests of the citizens have to be protected at any cost. The legislators have made the law keeping in mind the morality of the society. This is called legal moralism. The society is a dynamic society. There are many factors that will keep on changing the faces of the society like legal norms etc. The building blocks of the society will remain the same i.e. good faith but to cope up with all the circumstances society will imbibe new values. The concept of legal paternalism was brought into picture by the philosopher Hart. It signifies that the state would give the instructions as to how to lead life. Everyone has the obligation to follow it. The terrorists are those persons who willingly did not follow the rules. So they are liable to be given punishment. But this principle is against the principle of individual autonomy. Individual autonomy is the basis of most of the laws? Then why the terrorists are given so harsh punishments? Terrorism cannot be seen as a general offence in which the person can escape any punishment. The liability and the sentencing part of the crime vary from circumstances to circumstances. The seriousness of the crime is the determinant of the punishment. The court, while rejecting the mercy petition of Yakub Memon, has taken all the factors into consideration. Though he had committed such a grave crime, but all the procedure was still followed by the Indian courts. This displays the moral obligations in the judges that is still existing in them.

The welfare principle can be considered when Yakub was sentenced to death. Section 121 of the Indian Penal Code, 1860 states that

"Whoever, wages war against the [Government of India], or attempts to wage such war, or abets the waging of such war, shall be punished with death, or [imprisonment for life] [and shall also be liable to fine]. Yakub Memon committed crime against the whole nation. Even though he can claim defense that he was not involved in any of the crime, but in a crime against the nation he will be presumed to be involved in that crime. The welfare of all the public will be having an upper hand in comparison to the right of the terrorist."

But according to the principle of individual autonomy, the rights of the culprits have to be protected also. There has to be consideration of human rights of the culprit while convicting him. The criminal is already convicted but he still has rights inside the prison also. None can be arbitrarily subjected to the death penalty. According to some reports, the culprits, who planted bombes in the respective areas, were awarded death penalty by the respective trial courts. But later on their punishment was commuted to imprisonment. Now Yakub was "commanding position", as he made financial and travel arrangements for the other accused who later planted the explosives. He cannot escape the consequences but whether commutation of all other criminals would lead to a discriminatory approach by the state towards Yakub. Now his case was already going on for 22 years then why his second mercy petition was not taken into consideration by the Supreme Court. The mere procedural aspects of the law cannot be abridged away.

Right to life is the right from which all other Fundamental emanates. All the remaining rights have restrictions embedded in it. So there has to be stronger, foolproof procedure for taking away the Right to Life.

Our nation, India, is not always harsh in the sense that it has many times commuted the death penalty to imprisonment. But if the state is making 'terrorism' as one of the grounds for death penalty, then how many criminals get lesser sentences. It seems to everybody that there is some political interest involved in it.

In order to make the acts as crimes the criminalization procedure has to be followed. Indian Penal Code gives death penalty in the rarest of rare cases. It is an open bracket in which the court includes acts from time to time. Every crime that has been included in that bracket has its own moral justification. The death penalty is awarded to protect the interests of greater number of people. The validity of any such law can be challenged on the grounds of violation of fundamental rights. In death penalty we are having the fundamental right of one person against the rights of whole nation. In what situation can the right be taken away? In this way we can take the example of Maneka Gandhi v. Union of India[4] case where Justice Bhagwati has stated that the procedure established by law has to be just, fair and reasonable. Yakub Memon or Ajmal Amir Kasab, both of them was given enough number of chances to represent their case. Their crimes were heinous in the sense that in both the situations hundreds of innocent people were killed. The provision of the

Constitution of giving right to the citizens to be heard was never denied to those terrorists.

Perhaps the Law Commission of India can resolve the issue by examining whether death penalty is a deterrent punishment or is retributive justice or serves an incapacitative goal[5]. In the 35th law commission report, 1967, it was stated that arguments for the death penalty which are valid in one area can be invalid in another area. Drawing the same analogy, the reasons behind abolition of death penalty would be accepted by one part of India and might be rejected by the other part. So the Law Commission recommended for the retention of the capital punishment.

But since 1967, a lot of developments have taken place in India. The retention of the death penalty was recommended keeping in view the then circumstances.

The concept of 'rarest of rare' "alternative option is unquestionably foreclosed" was very much there from the beginning of the regulation of death penalty in India [6]. The court has shown its concern over the arbitrary issuance of death penalty by giving guidelines in the Bachan Singh's case. But the Supreme Court only has been time and again stating that there is no such precedents which have to be considered while ordering death penalty. The court has affirmed the capital punishment without specifying any legal principle [7]. The dictum of 'rarest of rare' has been inconsistently applied in a number of cases.

In the month of May 2014, the 20th Law Commission rolled out consultation paper on death penalty to take their views into consideration. At last on 11th July, 2015 the Law Commission invited eminent lawyers, distinguished judges, political leaders, academics, police officers, and representatives of civil society to discuss on the issue of death penalty.

In the Constituent Assembly, Prof. Shibban Lal Saksena analyzed the right to appeal against the order of death penalty. He stated that every person who has been given death penalty has the inherent right to approach the Supreme Court so that he has the satisfaction that his case has been heard by the highest court of the country. But the poor section of the society is unable to approach the highest forum because of lack of resources. Though in our Constitution, the Supreme Court can grant special leave to appeal from any judgment, but only the rich and wealthy section can go ahead with the same[8].

Dr. B.R. Ambedkar, in the Constituent Assembly, stated for the abolition of death penalty from the statutes. He argued that Indians have always followed the principle of non-violence. Though they do not follow those principles in their actual life but they consider non-violence as one their moral mandate which they will try to follow as far as possible[9]. He also suggested that it should be left to the discretion of the legislature whether to include death penalty in the statutes or not.

Jagmohan Singh v. State of U. P[10], the petitioners argued that the death penalty is in violation of article 14, 19 and 21 of the Constitution of India. It gives the judge a high degree of discretion to decide the death penalty cases. There is no procedure established to determine as to whether the accused should be given capital punishment or death penalty. But the court held that the discretion invested in the judges is liable to be corrected by the superior courts. It will be the safest safeguard for the accused.

Deterrence and reformation are the primary social goals that are sought to be achieved. Rehabilitation is also one of the important purposes of punishment. In Bachan Singh case, the court stated that the circumstances of crime and criminal have to be taken into consideration while giving the death penalty.

Shatrughan Chauhan v. UOI,[11] the court held that the inordinate delay in the execution of death sentence would entitle the condemned person to approach the court under Art. 32 of the Constitution of India but the court will only examine the nature of delay caused and it has no jurisdiction to reopen the conclusions that are reached by the courts while convicting the accused. There is no such fixed period of delay that would make the death sentence inexecutable.

The Criminal Law (Amendment) Act, 2013 expanded the ambit of death penalty in India. This act imposed death penalty on the accused who has committed rape and it has led to death of the victim or left her in permanent vegetative state (Section 376A). This amendment also imposed death penalty for certain repeat offenders.

Concentration on the death penalty diverts our attention from other factors like poor system of investigation, rights of the victims. In India, there are many instances where the voices of the witnesses and victims are silenced by threats. There is no such comprehensive system for the protection of them. We have two opposing views. There are many cases where the discretion of giving death penalty has been used arbitrarily by the courts. But there is another side also. Our society is dynamic. Even if some standards are set for the application of death penalty, in the next moment a new circumstance will grow in where

it might seem that capital punishment has to be there. So the judiciary is finding it difficult to define the standards. Over that, the clemency power, which have been given by the Constitution of India to the President and the governor under Art. 72 and 161, are proving as some kind of impediment in deciding the death penalty cases. These powers have been given to the executive as a royal right but the time taken by them in deciding the clemency applications is making the victim suffer all the more.

The mistakes that are made by the trial courts, while awarding death sentences to the criminals, will not make the system of death penalty as an arbitrary one. There are grounds being included in the "rarest of rare" cases to make the basis of conviction more stringent. That will not make the courts rely on the weak evidences brought by the parties. India is a developing country whose society is also evolving. The need of death penalty is the need of the state. We do not have enough resources take care of all the criminals who are being sentenced to death. The process of including crimes in the rarest of rare bracket is a very slow process because nothing can be done suddenly in a democratic country like India where Public opinion matters a lot. Once the scope is made clear, then the death penalties will not be subjective to the judges of the courts.

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Review Article

A Critical Analysis of South Asian Free Trade Agreement and South–Asian Regionalism: Is Article 24 of GATT Enough?

Namit Bafna

Author Affiliation
5th Year Student, School of Law, Christ University, Bangalore.

Reprint Request
Namit Bafna, 5th Year Student, School of law, Christ University, Bangalore.
E-mail: Namsbafna@gmail.com

Abstract

The free trade initiatives led by The South Asian Free Trade Agreement (SAFTA) was claimed to be a gigantic step towards escalating the trade and economic cooperation in the South Asian region. It has been a long time since the commencement of SAFTA and the progress made in trade between SAARC countries has not been satisfactory. Keeping that in the mind, the author intents to evaluate the situation responsible for this scrawny progress in trade. However, before that it will be pertinent to analyze the provisions with respect to Regional Trade Agreements in WTO jurisprudence and then to put them in contrast with SAFTA, to give a clearer picture of South Asian Trade regionalism.

Keywords: SAFTA; SAARC; ASEAN and South Asia.

Introduction

The transition from feudalism to mercantilism proved nothing but continuance of elitist, protectionist and restrictive policies in Europe. It emerged in the age of exploration with the opening of overseas trade routes and colonies in Asia, Africa, Australia, and the Americas. With increasing foreign trade, the merchant class of traders and guildsmen hastily grew in number, in wealth, and in their ability to lobby for polices and regulations to restrict import, insistently promote trade, protect domestic industries and apply military forces to exert control over foreign economies and vital resources that were scare back home.

Mercantilism doctrine at its heart is of the view that maximizing net exports is the best route to national prosperity, narrowing down its interest to maximum acquisition of gold (bullionism) by limiting imports and increasing exports, thereby generating a net inflow of foreign exchange and maximizing country's gold stocks [1]. However, decline of mercantilism came with the work of Adam Smith wherein, he contended that unlike a merchant, a nation needed to focus on the gross instead of the net result of its economic activity[2]. According to him, the mercantile system was built on an erroneous and confused identification of wealth with money, based on rent – seeking behavior of vested actors [3]. He urged that dominant contributor to national wealth and power is economic growth which in turn depends on an efficient division of labor and not on positive balance of payment [4]. Nonetheless, mercantilism should not consider as an anti-trade doctrine. Rather, it is an anti-free trade doctrine that calls for government intervention to generate trade surplus [5].

With increasing popularity of Smith's idea of economic growth, a gradual shift from mercantilism to free trade was experienced. The work was later supported and modified by David Ricardo's famous Law of Comparative Advantage, wherein he argued that international trade is mutually beneficial for all the countries. These developments gave rise to the

theory of Free Trade, which in essence refers to unrestricted flow of goods and services across the border. It refers to a foreign policy completely devoid of tariffs, quotas, exchange restrictions, taxes and subsidies on production, factor use and consumption [6]. From this doctrine came the concept of "Free Trade Agreements" (FTA) [7].

Article 1 of GATT 1994 enunciates the Most Favored Nation (MFN) principle which states as follows:

"*Any advantage, favor, privilege, or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties*"

However, derogations from this principle is permitted for forming FTAs under specific conditions as per Article 24 of GATT and Article 5 of GATS or using an enabling clause [8] by developing countries without adhering to provisions of WTO Agreements.

Nevertheless, there remains a basic difference between functioning of WTO and FTAs. For the purposes of FTAs, the "base rate" is the critical element in all aspects of negotiations/phasing that are carried out. The base rate is the applied MFN duty of any year which is decided mutually. In an FTA tariff reduction is generally undertaken with reference to the base rate i.e. from the applied MFN tariffs. However, the WTO negotiations are always based on "bound duty rates" and not the MFN applied duties.

The two most difficult yet interesting questions which are posed by the recent proliferation of RTAs are *why is happening* and *whether it is welfare-improving [9]*. They can be answered from three different points of views that is, from a pure economic analysis, political economic analysis and constitutional analysis (WTO jurisprudence).

Economic and Political Analysis of Regional Trade Agreements

Trade liberalization via RTAs is widely attributed for enhancing economic development amongst participating economies. By reducing barriers to trade, countries in the international trading system unleash their economic potential by empowering domestic industries to access foreign markets and strive for greater productivity. Reducing restrictions that are imposed at a government level has the beneficial effect of exposing businesses to global competition and persuasive domestic industry to greater innovation and efficiency [10].

Nevertheless, economists have two major concerns with RTAs. They are the theory of Second Best and Transaction Cost that is associates with such arrangements.

The general theorem for the second best optimum states that if there is introduced into a general equilibrium system a constraint which prevents the attainment of one of the Paretian conditions, the other Paretian conditions, although still attainable, are in general, no longer desirable [11]. The optimum situation finally attained may be termed a second best optimum because it is achieved subject to a constraint, which, by definition, prevents the attainment of a Paretian optimum. If one of the Paretian optimum condition cannot be fulfilled a second best optimum situation is achieved only by departing from all other optimum condition. It is important to note that even in a single general equilibrium system where there is only one Paretian optimum, there will be a multiplicity of second best optimum positions. This is so because there are many possible combinations of constraints with a second best solution for each combination [12].

Let us understand this problem by an example. Until the 1980s Canada had a protected wine industry, where it was expensive but was not of high quality and was competing domestically only because of tariff and non-tariff barriers. However, as a result of Canada- US Free Trade Agreement of 1898, which liberalized the wine trade, the Canadian industry lost market share to California vintners. This is an example of welfare-improving trade creation: Canadian wine prices fell; consumers were able to purchase more; Canadian vintners ceased producing goods that could be produced more cheaply in California; this freed up resources for use elsewhere, government lost tariff revenue but consumers gained by virtue of lower prices on imports. Now the consumers pay tariff price only on French wine. Therefore, the agreement lead to substitution of French wines with California Wine, diverting trade from France to California. However, if Canadian consumers would have preferred more of French wine over California wine, switch would be welfare-reducing [13].

The problem of transaction cost relates to the differences among members with respect to habit, regulation, commercial practice and other such differences which the exporters has to familiarize themselves with. Such differences impose fixed costs on exporters that are part of the reason why small firms tend not to export [14].

Constitutional Framework of Regional Trade Agreements

Under the guises general public international law, states are essentially free to enter any agreement of any kind and consent. Equality of states (sovereignty) gives them power to choose partners and to discriminate against others. There are barely any limitations in international customary law on engaging in preferential or discriminatory treatment, beyond the Charter of the United Nations [15]. There is no codified general obligation to treat all states alike. Neither equal treatment nor Most Favored Nation (MFN) status is considered to be principles of general public international law [16]. Norms relating to *jus cogens [17]* hardly affect trade relations, except for the prohibition of slavery in its different forms, and of policies supporting racial segregation. The principle of *pacta tertiis nec nocent nec prosunt (*that a treaty binds only parties to it and not third party*)* is of equally limited effect. Devoid of specific treaty provisions certainly does not limit the conclusion of preferential and discriminatory trade agreements having distorting effects of trade diversion.

The principles and rules pertaining to regional integration and preferential trade agreements of the World Trade Organization, which binds its members, are consequently of supreme importance in light of the proliferation and complexity of preferential agreements. These principles and rules shape the conditions, requirements and limitations for such agreements on the basis of the General Agreement on Tariff and Trade 1994 [18] and the General Agreement on Trade in Services 1994 [19]. The WTO principles and rules pertaining to treaty law (from a functional point of view) assumes the role of overriding constitutional disciplines which shapes and contents the preferential agreements – all with a view to supporting trade creation as building blocks to trade regulation and liberalization, while at the same time limiting trade distortions and diversions. However it remains open to discuss whether these WTO disciplines provide sufficient guidance and force to bring about the desired effects, to regulate such agreements [20].

Members of the WTO who are negotiating and concluding RTAs are obliged to comply with a number of principles and rules of the multilateral system. Since preferential agreements by definition restrict the application of MFN, WTO rules rarely exceptionally allow for sectoral bilateral or multilateral treaties. WTO law thus provides the framework within which members may to conclude preferential agreements between themselves and other members. In the field of goods, the main exceptions to MFM are set forth in Article XXIV GATT 194 and the Understanding on the Interpretation of Article XXIV of the General Agreements on Tariff and Trade 1994 [21]. In the field of services, a largely parallel provision is contained in Article V GATS and Article V bis GATS for Labour Market Integration Agreements. These provisions relate to the creation of separate customs territories free trade areas, including interim agreements, and to economic integration agreements. They seek to balance objective of multilateralism and the need of RTAs by setting out a number of conditions which bilateral or multilateral preferential agreements are required to meet [22].

Preferential arrangements are only lawful and possible under the definitions of FTAs or CUs. While the former establish free trade among members, the latter, in addition, adopt a common external tariff and trade policy. WTO law does not allow for preferential and non – reciprocal preferences under Part IV of GATT, except for recourse to the general and temporary exceptions of waivers under Article IX: 3 of WTO Agreement [23], no provision was made to cover non-reciprocal agreements between developed and developing members [24].

Preferential agreements essentially need to meet following basic criteria: (a) Substantial Trade Coverage (b) Abolition of Internal Trade Restrictions (c) Avoiding Additional Barriers for Third Countries and lastly, (c) Minimum Requirements on Preferential Rules of Origin.

First, regional agreements need to cover considerably all the goods or services originating within members of the RTA. The policy of *pick – and - choose* among different products and sectors are inconsistent with WTO rules. Limited liberalization is excluded and discriminations are lawfully only when extensive areas of trade are covered irrespective of the fact that it may lead to greater distortions and sectoral agreements. Yet, the requirement serves the purpose of preventing selective agreements and limitations to goods or services of particular interest. It also serves to limit the number of RTAs, as comprehensive agreements are most difficult to negotiate than sector specific deals. The 'substantially all trade' and 'substantial sectoral coverage' requirements, If properly enforced, thus impede a gradual erosion of MFN trade and thus of the multilateral trading system [25].

Second, RTAs need to remove all tariffs and quantitative restrictions within a reasonable extent of time. Intermediary arrangements may extent for up to ten years and in exceptional cases such as in agriculture, may last even longer. The same is turn in

services. The elimination of discrimination and the granting of national treatment are required to take place either at the date of entry into force of the agreement or within a reasonable time frame. It is possible that the basic framework of ten years applied to goods will provide guidance in services as well.

Third, RTAs must not result in more server barriers to trade for third member states of the WTO. Liberalization must not be achieved at the expense of others. In GATT, market access rights for third parties vary slightly depending on whether the RTA formed is a CU or a FTA. In the former, trade restrictions shall not be on the whole more severe than the general incidence of the duties and regulations prior to forming the CU. In the case of FTAs, such restrictions must not be higher in any instance.

Last, it should be noted that Agreement on Rules of Origin is of particular importance. While this agreement primarily set the agenda for future negotiations in this filed with a view to applying equal rules in all areas, there are nevertheless several principles and provisions which apply immediately upon ratification and can potentially be used for a challenge before a dispute settlement panel. Article II offers a number of detailed against which preferential rules of origin can be assessed. They are of importance in arguments against arbitrary and discretionary determination by national customs authorities. To provide the discipline currently lacking in Article XXIV, the internal trade under an RTA should be based upon 'non-preferential rules of origin' (NPROO) so that trade barriers between RTA parties with respect to 'substantially all the trade' will be eliminated [26].

Introduction to SAFTA

South Asian countries, which has open economies in the immediate post-independence period in the 1940s, has become some of the most highly protectionist economies in the world by the 1970s. Tariff and, even more important, non – tariff barriers were extremely high, state interventions in economic activity had become pervasive, attitudes to foreign investments were negative, often hostile, and stringent exchange controls in place [27]. However this began to change with liberalization policy driven by across-the-border, unilateral liberalization by individual countries. However, a process of preferential trade liberalization also has been ongoing since the establishment in 1985 of the South Asian Association for Regional Cooperation (SAARC).

South Asian Free Trade Agreement came into force on 6th January 2004 at the 12th SAARC (South Asian Association for Regional Cooperation) Summit at Pakistan. SAFTA was result of South Asian Preferential Agreement (SAPTA) which was entered into on 7th December 1995. It was framed by the Inter – Governmental Group (IGG) which was established in the 6th SAARC summit held at Sri Lanka.

The main objective of SAFTA is to encourage and elevate common contract among the member states for tariff and non- tariff concessions to provide competition and equitable benefits to member states by increasing trade among member states.

SAFTA has following institutions: (1) Trade Liberalization program (2) Rules of Origin (3) Institutional Arrangements (4) Consultation and Dispute Settlement Process and (5) Safeguard Measures.

Trade Liberalization Program

SAFTA lays down for a trade liberalization program in Article 7, wherein the member states have to follow tariff reduction schedule. There should be a fall to 20% tariff from the existing tariff by the Non Least Developing Countries and 30% reduction from the existing tariff by the Least Developing Countries. However it craves out an exception got for the sensitive list because this list is to be negotiated among the members and traded. Such list will be review every four years by the SAFTA Ministerial Council (SMC) with view of reducing the items in the list [28].

Rules of Origin

Article 18 of the Agreement lay down that, the rules of origin shall be negotiated by the member states. Rules of Origin determine the criteria needed to determine national source of a product so as to extend benefits of tariff cut as determined in the FTA [29].

Institutional Arrangements

Article 10 enumerates upon institutional arrangements. It establishes SMC as the highest decision making body of SAFTA, responsible for administration and proper implementation of the agreement within its legal framework. SMC is supported by Committee of Experts (COE), with one nominee from each contracting state who is expertise in trade matters.

Consultation and Dispute Settlement Process

The COE shall act as Dispute Settlement Body as given under Article 10 (7), Article 19 deals with Consultation and Article 20 further enumerates upon its working and procedure, as settlement of dispute.

Any dispute that arises among the member States in regards to the interpretation and application of the provisions of this Agreement or any instrument adopted in reference to rights and obligations of the member states will be amicably settled among the parties concerned through a process initiated by a request for bilateral consultations [30].

Safeguard Measures

Article 16 enumerates upon safeguard measures. Accordingly, If any product is imported into the territory of a member state in such a manner or quantities as to cause or threaten serious injury to producers of like or directly competitive products in the importing member state, it may pursuant to an investigation by the competent authorities of that may suspend temporarily the concessions granted the Agreement. However such safeguard measures shall not be available if it's in liberalization process. This provision is to be in conformity with WTO's Agreement to Safeguard [31].

However, to date the SAFTA process has generated only limited enthusiasm. It suffers from significant shortcomings, primarily on account of cautions approach adopted to achieve the ultimate objective of free trade within the South Asian region [32]. Concerns about the very usefulness of SAFTA have been mounting in light of more bilateral free trade agreements as well as preferential access that could conceivable be granted through alternative trading arrangements among SAAR Countries [33]. The dynamics of regional integration in South Asia have also changed with the growing emergence of India not only as an Asian economic power, but also as a rapidly emerging world economic power. With India looking increasingly to strength economic relations with the wider Asian region through initiatives such as Association of Southeast Asian Nations (ASEAN) plus three plus India, the strategic interests of the all South Asian economies are likely to become inextricably linked to successful integration with the Indian economy. The evidence t date suggests that economic integration of the South Asian region is gathering pace, but that SAFTA remains fairly marginal in that process [34].

Conclusion

With the above analysis, it can be logically concluded that India's inclination towards preferential trading shall not be beneficial as India continues to have very high trade barriers so that the scope for trade diversion and the losses accompanying it are likely to be considerable [35]. To add to that, business lobbies are considerably powerful in most of the countries in the South Asian region which gives them sufficient scope to exploit the rules of origin and sectoral exceptions in FTA/PTA arrangements in a way that will maximize trade diversion and minimize trade creation, for their personal benefits [36].

Therefore, India should proceed along nondiscriminatory lines to achieve further liberalization. Coordination among the regional partners in a non-discriminatory manner may help speed up regional liberalization and assist in disciplining the adjustment costs [37]. A South Asian FTA/PTA may not be very useful, with a low-tariff country such as Sri Lanka benefiting and high-tariff country such as India hurting.

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Review Article

Role of Governance for Poverty Alienation in India: A Critical Analysis

Shakuntla Sangam

Author Affiliation
Assistant Professor, Dr. Ram Manohar Lohiya National Law University, Sector D-1, L.D.A Colony, Kanpur Road Scheme, Lucknow- 226012.

Reprint Request
Shakuntla Sangam, Assistant Professor, Dr. Ram Manohar Lohiya National Law University, Sector D-1, L.D.A Colony, Kanpur Road Scheme, Lucknow- 226012.
E-mail: shakun.rmlnlu@gmail.com

Abstract

Recent evidence pertaining to the post-liberalization period, 1991–1997, clearly suggests that despite a significant increase in per capita income, rural poverty did not decline appreciably. This is mainly due to increased inequality not only vis-à-vis the urban areas but also within the rural population. This paper tries to unfold the relations among governance, sustainable development, poverty, and role of judiciary.

Keywords: Democracy; Poverty; Good Governance; Judiciary; Sustainable Development.

Introduction

The government is viewed as an agency or machinery through which the will of the state is formulated, expressed and realized. There is no accepted definition of governance but there is divergence of opinion about the meaning of governance between the conservatives and the liberals, between socialists and the communists.

The World Bank has sought to take a middle position to defining governance, particularly as the traditions and the institutions by which authority in a country is exercised. This includes (i) the process by which governments are selected, monitored and replaced; (ii) the capacity of the government to effectively formulate and implement sound policies; and (iii) the respect of citizens and the state for the institutions that govern economic and social communications among them (Kaufmann 1999). In recent years the word governance has become a very fashionable term and is being used in a variety of ways and that covers a large number of organizations both in public and private domains (Balmiki 2008). We are confining governance only to public domain and are concerned here with that form of governance which serves the citizens by safeguarding territorial integrity of the State and securing individual security, rule of law and the delivery of services ranging from education, health to livelihood and food security, no theory of governance would be intelligible unless it is seen in the context of its time. Unfortunately, in spite of numerous government schemes and safety nets, under and malnutrition remain widespread in our country the progress have made in industry and economic growth rate, but reputation in the field of eradication of hunger, poverty and malnutrition is poor (Swaminathan 2010). In the last decade, emphasis in relation to basic human needs has shifted from patronage to a rights approach. Thus, we have now legal rights through Parliament Approved Legislation in the fields of education, information, and employment. Currently, there is an ongoing exercise on National Food Security Act which will confer on every Indian the legal right to food.

Food is the first among the hierarchical needs of a human being. Therefore, food security should have the first charge on the available financial resources. Spoilage of grains through lack of investment in storage is a sad reflection on our sense of priorities.

National Food Security Act, 2013 is giving legal rights to food can be implemented only by attending to the safe storage of both grains and perishable commodities like fruits, vegetables, and milk. At the same time animal nutrition will also require greater attention. Unfortunately, grazing land is fast shrinking. Animals are underfed, and are therefore low yielding. In order to secure nutritive food for human being, animal food security has become essential to provide nutrition security.

An efficient, effective and democratic government is the best guarantor of social justice as well as an orderly society. Similarly, there is also emphasis on the fact that the administrative system has to be country specific and area specific taking in view not only the institutions of governance and its legal and regulatory mechanisms but also its market, its civil society and cultural values of the people. The government would, therefore, have the singular responsibility to create an enabling environment where development programmed get properly implemented and that creative minds do not get stifled or their energies diverted from undertaking new initiatives or enterprises. In present time India is not excluded from the global debate or transition from socialist order to capitalist growth models but fortunately, the Indian State does not have the monopoly of the public sphere. The civil society is increasingly more concerned with public sphere issues and government intervention is considered necessary to provide welfare schemes to cover social safety needs, upgrade health-care to protect children, and help provide opportunities for women and the minorities.

Challenge before Good Governance

The central challenge before good governance relates to social development. Good governance must aim at expansion in social opportunities and removal of poverty. There is no uniform measure of poverty in India and there was no official consensus on what percentage of the population lived below the poverty line. Nationally, there were different definitions of poverty. One of the more accepted definitions of poverty was in nutritional terms: below 2,400 calories daily in rural areas or below 2,100 calories daily in urban areas. However, out of context, these numbers are grossly misleading: in the U.S., the 2,000-calorie daily diet is touted as healthy for the average American. Since its independence, the issue of poverty within India has remained a prevalent concern. As of 2010, more than 37% of India's population of 1.35 billion still lives below the poverty line, more than 22% of the entire rural population and 15% of the urban population of India(Indian economy 2010). Food security policy in India has for many years favoured extensive government intervention. Farmers are assisted by input subsidies and, if necessary, their harvests will be purchased at guaranteed minimum support prices. A safety net for the poor is provided by the long established Public Distribution System (PDS). This offers BPL families the opportunity to purchase heavily discounted food and cooking essentials through a vast network of 489,000 "fair price shops" (Jadhav 2013).

The persistence of hunger in India has finally persuaded the government that this strategy has failed. Corruption and fraud has ravaged the PDS to the extent that 70% of its resources may be misdirected. The government's food storage facilities have proved woefully inadequate. In short, good governance, as we perceive it, means securing justice, empowerment, employment and efficient delivery of services.

- Securing Justice There are several inter-related aspects of securing justice including security of life and property, access to justice, and rule of law.
- Threats to Peace the most important public good is the supply of security especially security of life and property. The responsibility of the Indian nation-state to protect the life and property of every citizen is being seriously threatened particularly in areas affected by terrorism (Jammu and Kashmir), insurgency (north-eastern states), and naxalite violence in 150 districts of India's mainland. The Indian nation-state is aware of complexities of the situation and the need is to show greater determination and relentless in support to its instruments of law and forces of democracy and social cohesion to defeat the elements of terror, insurgency and naxalite violence.

Good Governance and Poverty

People suffer high incidence of poverty and inequality due to lack of resources and skills and assets and the resulting un employment and under employment. The concept of good governance is now on the top of agenda in a major part of the developing world. The reports of the Transparency International bear evidence to this. The object of good governance is to develop certain pre conditions to improve the socio economic condition of the people at the bottom of the pyramid and to drive out poverty from the face of the globe. Every effort to achieve total eradication of poverty At a time of global economic insecurity,

with governments' quick to excuse themselves from international responsibilities, should not forget that a significant proportion of the world's population is excluded from the prevailing model of wealth creation. Whilst the symptoms of this model's inherent unsustainability economic recession, volatile food and fuel prices, and climate change have slowed the advance of consumerism, the disproportionate impact on the poor is yet to be acknowledged in the corridors of global governance [1]. Is at a 'progressive level' of each and every developing country.

The development strategy is now focused on achieving the Millennium Development Goals (MDGs) and to lift 460 million of the poor and deprived above the poverty line of income per day US$1 or 2. The programmes taken up are not so successful, sustainable due to weak links in the system. The efforts should be multi disciplinary cutting across sectoral lines so as to make them sustainable in the long run, involving all stakeholders i.e. participatory empowerment of the poor (not just through social safety nets) and generating productive systems for the poor. The world wide acceptance of liberalization, privatization globalization etc., started a new phase, new practices and new habits globally. The need to orient the governments and organisations for pro poor[2] and gender sensitive projects for active participation as partners and stakeholders in governance is the need of the hour. This discussion above calls for a new approach and new policies which are pro active and which ensures political commitment and effective implementation of plans, projects and programmes for the poor and marginalised sections.

Role of Good Government in Poverty Alienation

In ancient times it was about lack of water, food, shelter etc. Nowadays all that is combined with unemployment, lack of energy, infrastructure, resources, etc. and many governments are at a loss at where to begin within and between countries, the poor and the well-off live in completely different worlds, completely insulated from one another. Poverty exists in many forms and arises in a broad range of circumstances. The causes may be man-made and systemic or they may be environmental, meaning people may live in poverty because they are not part of a system. In other words, poverty may be the result of effective as well as ineffective policy interventions. Policies tend to be effective where interdependent systems exist, it is possible to rationally coordinate and direct collective action in a certain direction, and people are sufficiently dependent on the system to "feel the pinch". This is what is needed to redress mistakes and ensure a policy dynamic that responds to what happens to citizens in a particular country.

The first thing to do is to understand the problem, its causes and effects in different contexts. In the recent years, the discourse on 'good governance' has assumed a lot of significance. It is admitted by Government of India (GOI) that continued deprivation and inequality is the result of poor governance in the country. 'Good governance' has been identified as an instrument which would help overcome the challenges of poverty and deprivation. To GOI, governance means the 'management of all such processes that, in any society, define the environment which permits and enables the individual to raise their capability levels, on one hand, and provide opportunities to realize their potential and enlarge the set of available choices, on the other'. Governance, it is identified, would become 'good governance' if it goes with certain universally accepted features like exercise of legitimate political power, and formulation and implementation of policies and programmes that are equitable, transparent, non-discriminatory, socially sensitive, participatory, and above all accountable to people at large. A close relationship is established between 'good governance' and the success or failure of poverty alleviation efforts in India has been seen as there are 22.15% people living under the poverty line in India (NSSO 2004-2005). The estimate was based on monthly consumption of goods, daily wages, self employment and landless laborers. However Economic growth and positive commercial developments have served to reduce poverty substantially over the years in India. The Tenth Five Year plan specifically takes up the case of rural development programmes to illustrate how governance affects any process, it has identified that, excessive compartmentalization of executive into ministries/departments; has ensured that such programmes are not only spread over host of ministries which encourages a narrow sectoral approach to conceiving, formulating and implementing schemes, but also prevents mutual synergies that are inherent in most social sector programmes to benefit the plan.

Conclusion

The Trinity i.e. Legislature, Judiciary and Executive is an accomplish phenomenon. Their harmonious existence is a theory; the differences a reality. Justice- social, economic and political can only

be achieved if every organ of the Government functions are as per the constitutional mandate. The Constitution of India, having divided the powers of governance among different Institutions, has assigned to the Judiciary a role of supervision and correction, through 'judicial review'. In the Constitution, the Judiciary has the ultimate duty for oversight and maintenance of the rule of law in its dynamic and social justice oriented approach and to fail performing these goals for the Judges is to fail their oath of office. In order to achieve the objectives of constitution judicial activism is only a passing phase. After an analysis, it is not only the Judiciary that should play an activist role for upholding the rule of law in a democracy, but also the legislature and the executive. It is neither able to ensure true participation of people nor able to bring in much needed integration and coordination for better impact on poverty. That's why the proclaimed good governance for the poor hence appears to be more of rhetoric than a reality.

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4. https://problemsin.wordpress.com/2012/05.
5. http://undesadspd.org.

Endnotes

1. At a time of global economic insecurity, with governments' quick to excuse themselves from international responsibilities, we should not forget that a significant proportion of the world's population is excluded from the prevailing model of wealth creation. Whilst the symptoms of this model's inherent unsustainability – economic recession, volatile food and fuel prices, and climate change have slowed the advance of consumerism, the disproportionate impact on the poor is yet to be acknowledged in the corridors of global governance.
2. India also needs a more effective tax system as its private sector grows. This will give it enough to finance the right pro-poor policies and review their efficiency. Recently, the decentralization of the administration was an attempt to improve such efficiency.

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Corporate (collective) author

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