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Red Flower Publication Pvt. Ltd.

48/41-42, DSIDC, Pocket-II, Mayur Vihar, Phase-I

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Tel: 91-11-22754205, 45796900,

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Indian Journal of Law and Human Behavior (IJLHB) is a multidisciplinary forum for the publication of articles and discussions of issues arising from the relationships between human behavior and the law, the legal system, and the legal process. The journal publishes original research, reviews of earlier research results, and theoretical studies. Coverage spans criminal justice, law, psychology, sociology, psychiatry, political science, education, communication, and other areas germane to the field. It also publishes original empirical papers, reviews, and meta-analyses on how the law, legal system, and legal process relate to human behavior, particularly legal psychology and forensic psychology

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Indian Journal of Law and Human Behavior

January - June 2015
Volume 1, Number 1

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Original Article

Protection of Domestic Workers in India and Beyond: Emerging Socio-Legal Discourses

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Abstract

India has experienced high GDP growth in the last decades. This has enabled sections of the population, particularly in urban areas, to benefit from the growth around them. However, much of the jobs generated in this period of accelerated GDP growth were in the unorganized sector. Today, over 86 per cent of workers are in the unorganized sector and as such the contribution this sector makes to the current growth cannot be ignored. A profession that is supporting the growth in more ways than one is domestic work [1]. Yes, millions of women, men and children—India's large force of domestic workers, or 'servants', as most people call them remain unseen, undervalued and denied rights that all workers deserve [2]. Human rights of domestic workers a topic we have to ponder upon or contemplate on. Several steps have been taken by the government and several steps suggested, but the humanity continues to wail within the four walls of our homes. What lacks is a change in the attitude of the employers, an outright denial of the fact that they are also human beings, they too need and want the basic creature comforts. What lacks is the basic respect for a fellow human being!

Enactment of laws is never sufficient to solve the problem, to soothe the plight of the domestic workers. A change in attitude cannot be legislated. However, apt laws can coerce the employers, and provide the workers with courage to protest. Most labor laws face the challenge of implementation but amongst the most difficult must surely be the ones linked to domestic work [3].

Moreover, the available data portrays that the overwhelming majority of the workers in India are women and girls. There has been considerable documentation of the harassment they go through at the hands of their employers. Again, an estimated 20% of domestic workers are children below 14 years of age. Things can and will change only if those who employ domestics accept that these workers are first of all "workers" and not "servants".

The present paper sketch the reality about the plight of the domestic workers in Indian households, Through the paper the author try to suggest some legislative measures, some model legislation that would aid the domestic workers to combat the exploitation they are subject to, after critically analyzing the existing laws of the country with reference to international laws.

Introduction

According to the International Labor Organization (ILO), "A domestic worker is someone who carries out household work in a private household in return for wages." Domestic work refers to housework such as sweeping, cleaning utensils, washing clothes, cooking, caring of children and such other work which is carried out for an employer for remuneration. It has been referred to as "care work", "reproductive work", "labor of love" and for the most part it is the women of the household who have performed the bulk of it as unpaid household work, often forfeiting the opportunity to pursue paid work outside the house. Today, paid domestic work is the fastest growing sector of employment for urban women. It is the availability of paid (and unpaid) domestic work that enables households to run smoothly thereby allowing them to engage in the labor market and the tap the developments around them [1]. The domestic workers are classified into three categories:

- Live-in domestic workers,
- Part-time (Live-out) domestic workers,
- Migrant domestic workers: Inter-country domestic workers and Foreign migrant domestic workers.

Historical Perspective

Domestic service, or the employment of people for wages in their employer's residence, traces back its origin to time immemorial. It evolved into a hierarchical system in various countries at various times.

Prior to the labor reforms of the 20th century, servants, and workers in general, had no protection in law. Domestic servants usually lived with the employing family, performing a multitude of household tasks (such as laundry, ironing, cooking, cleaning, and serving) in exchange for a modest wage plus room and board [2]. Also, service was an apprentice system; there was room for advancement through the ranks.

In Britain this system peaked towards the close of the Victorian era, perhaps reaching its most complicated and rigidly structured state during the Edwardian period, which reflected the limited social mobility of the time. The equivalent in the United States was the Gilded Age.

In this context we might also give the term 'slave' a thought. It would be considered quite a harsh term for many of the employers, but the truth is that in many of the homes today the workers, especially who work full time, are in an almost same footing as the slaves as they have to work for generations for the employer to whom they owe a debt.

Live-in workers are often treated as 24-hour slaves. Many employers do not let them even step out of the house. Part-time domestic workers are in a slightly better position. They are not on duty 24 hours a day, have access to their own families and friends, and can quit work when employers become abusive. However, there is a growing demand for live-in workers who can double up as 'ayahs' or nurse-cum-companions for the elderly. To meet this demand, young girls and boys are often trafficked from the poorer districts of many States [3].

Domestic Workers and Their Conditions of Work

- Nearly 90% of domestic workers are women, girls or children, ranging from ages 12 to 75 and it is estimated that 25% are below the age of 14.
- Mostly women who leave their own homes to look after other people's homes.
- The majority of domestic workers are illiterate.
- Domestic Workers are engaged in such tasks as cooking, washing, and cleaning, which are traditionally seen as women's work and are therefore looked down upon and treated as less than humans.
- In India, the stigma for domestic work is heightened by the caste system, as tasks such as cleaning and sweeping are associated with low castes.
- Domestic Workers are referred to as 'servants' and 'maids' which has resulted in their feelings of insecurity and inferiority. This has further led to the indignity inflicted upon them and their work.
- Domestic Workers are highly exploited and denied just and humane wages. Domestic workers are paid well below the minimum wage for unskilled and semi-skilled workers.
- Labor laws do not cover Domestic Workers. They are not recognized as workers hence, do not enjoy legal protection, rights and dignity.
- The working hours of Domestic Workers can go up to 8 to 18 hours a day. Wage, leave facilities,

medical benefits and rest time depend totally on the employer.

- Domestic Workers are victims of suspicion. If anything is missing in the house, they are the first to be accused with threats, physical violence, police conviction and even dismissal.

A great number of live-in Domestic Workers are recruited from villages or tribal areas. They have to adapt to an alien environment, culture, and language. Domestic Workers experience a tremendous sense of loneliness because of the solitary nature of the work. This loneliness is compounded by the fact that most have no or very little time off and because they are unable to communicate with distant friends and relatives due to illiteracy. The basic problem the community of domestic worker faces is the harassment. The types of harassment that the "domestic workers" have to face can be very broadly and generally classified into the following:

- *Physical:* For petty offences, for unavoidable delays and at times for no significant cause, domestic workers are subject to physical torment at the hands of their employers. Unjustified beatings are very common. Refusing to provide the worker with food is another example of physical harassment. When the worker population overwhelmingly consists of women and girls, it is quite presumable that sexual violence is a common form of physical abuse.
- *Psychological:* No self-respecting human aspires to be a 'servant'. When the profession is humiliating enough, these helpless people are taunted and teased at the workplace. Threats of deducting wages when they fall sick, besides the already existing financial crisis, results in mental trauma.
- *Economical:* They are forced to do menial jobs only due to their adverse financial position. Yet there are situations when their positions can be equated with that of slaves. When they incur a debt to their employers, they have to work their whole lives to pay off the debt. Then, generations work to pay off the debt. And it never really ever gets paid off. They are on call 24 hours of the day, 365 days in the year. And they can never ever dream of freeing themselves from such bondage.
- *Social:* Without them our families stop running smoothly, yet they occupy the lower strata of the society. Their children are ridiculed due to their parents' 'profession'. And again, who is the first suspect when an elderly couple is murdered? Whom does the needle of suspicion immediately

point to when a gold chain or a ten-rupee note goes missing from the house? In all the above cases, the domestic help is presumed guilty until proven otherwise. The pattern of investigation by the police and the urban middle-class mindset is geared to suspect the domestic worker in every instance of crime [4].

Domestic workers suffer from lack of decent wages, ill working conditions, undefined working time, no weekly offs, loneliness (separated from family and friends, and children), no career growth, no skill development, victimization at the hands of traffickers/placement agencies and even violence, abuse and sexual harassment at workplace. The public perception of domestic work is often that it is undignified work, and the workers in this sector should be pitied as they are not qualified for anything else. Such sentiments are evident in news articles reporting criminal activities by domestic workers. Little is recognized about their role in improving the quality of life for their employers [5].

Man and woman, child and elderly—the population working as domestic help is vast and varied. Quite obviously, they belong to the lower income strata of the society. This sector is growing very fast indeed, yet domestic work is slow to receive recognition as professional work or a skilled occupation. The ILO estimates that worldwide, domestic work is the largest employment category for girls under the age of 16. Yet despite the extent of this form of labor, there are no international standards to regulate the conditions of work or the wages of domestic workers.

Also, a recent study states that there is an increasing demand for girls in the 10–12 age groups since women find them easier to mould. An estimated 20% of domestic workers are children below 14 years of age. Under child labor laws, these children should not be employed. Yet those who do employ them get around the law by claiming that they are "looking after" these children when in fact it is the children who look after them, usually with little or no pay. Such child workers slip between the cracks of labor laws as most laws cover workers over the age of 18.

It is almost impossible to calculate how many people in India are employed to work as household help. According to a study, "Invisible Servitude: An in-depth study of domestic workers in the world", by an organization called Social Alert, there are an estimated 20 million women, children and men in domestic work in India. Of these, 92 per cent are women, girls and children, 20 per cent are under 14 years of age and 25 per cent are between the ages of 15 to 20. In Mumbai alone, this study (released in March 2000) estimated that there were six lakh

domestic workers of whom 80,000 are full-time. This is likely to be an underestimate but it does give some idea of the extent to which this “industry” provides employment, particularly to rural migrants coming into the city [6].

No one opts to be a domestic help by choice; mere destiny or sheer helplessness forces them to be a domestic worker. Every day, changes in the economy and developmental policies are pushing more people into domestic work. Poverty is a major cause behind choosing this source of income, and education is too expensive. Also, obligation to pay off parental debt compels them to opt for this profession. With extended families being replaced by nuclear families, there is increasing demand for domestic workers. This ought to push up wages. But simultaneously, the increasing number of infrastructure projects and industries are displacing millions of people, particularly from tribal areas. These are the women, especially, who are now joining the growing force of domestic workers in our cities. Because of the large gap between urban and rural incomes, and the lack of employment opportunities in the countryside, even an ordinary middle class urban family can afford to employ a full-time live-in servant. Migration to urban areas since agriculture is no more a lucrative option, and the lack of other alternatives, also add to the number of domestic workers in urban areas.

Again, there is another side to this coin. Some feel that this profession has certain positive aspects. They argue that it provides for a source of income in the poorest families, and some even venture to suggest that this job might help in inculcating new skills, especially in the case of female child domestic workers.

With a decline in employment in the agricultural and industrial sector, almost all new employment is opening only in the service sector. Due to globalization, for the vulnerable sections of women from poorer backgrounds and poorer economies domestic work seems to be the last resort, globally as well. This fact reinforces sexual division of labor within the world of work and of race, caste, class, poorer economies apart from gender as well [7].

Again, reasons behind taking up domestic work as profession might include the prospect of earning from non-marketable skills, and the flexible working hours. This is commonly considered as ‘work in safe environment’.

The issue of Migrant Domestic Workers

Many women migrate from their villages to work as domestic workers. This migration takes two forms:

- Rural to urban, and
- From India to a labor-receiving foreign country.

Whether the domestic worker remains in India or travels to the Middle East or Southeast Asia, she finds herself in a foreign environment, away from her family and adjusting to new languages, food, and cultures. Migrants are typically live-in domestic workers and are thus most vulnerable to physical and sexual abuse, excessively long working hours, and deprivation. Many of them are from tribal regions and the traditional discrimination they face as women and as live in domestic workers is compounded by their ethnicity.

Despite these problems, poor women continue to migrate to cities and foreign countries as a way to supplement their families’ meager incomes.

Migration within the country

Migration from rural areas to big cities typically occurs due to debt bondage, poverty, sudden death in the family, rural and male unemployment. The glamour of city life acts as a further “pull” factor inducing young girls and women to migrate. Working in cities is seen as a solution to poverty and villagers are unaware of the difficult working conditions and poor remuneration of domestic workers. Additionally, a large number of domestic workers come from areas, which have been subjected to natural disasters and man-made crisis situations (such as insurgency) and as such are from displaced communities.

Migration Outside of India

Richer industrializing countries are increasingly demanding cheap, menial and domestic labor from poorer, less developed countries such as India. Because the job of a domestic worker does not require experience, thousands of Indian women travel to countries in the Middle East, South East Asia, and sometimes Europe and North America in search of jobs paying higher wages. However, these women earn the lowest salary for a foreign worker, despite the fact that they may be earning more than they would in India for the same job.

Many women travel abroad to send money back home in an effort to improve their quality of life in India. However, in travelling abroad, they become vulnerable to corrupt recruitment practices, lack of work contracts, withheld salaries, physical, sexual, and emotional abuse at the workplace and the inability to return home.

In India, the procedure for migrating abroad for work is much unregulated. Unlike countries, such as Sri Lanka, the Indian government has not implemented a pre-migration program aimed at educating migrants of their rights. In order to travel abroad, migrants are forced to borrow large sums of money, often with exorbitant interest rates, to pay fees to brokers.

Many times, the migrants, who are often illiterate and naïve to the potential risks of entrusting large sums of money with strangers, are the victims of scams of the fly-by-night brokers. These con artists do not secure the promised job abroad, give them false tickets, or do not secure the appropriate paperwork so that the women can legally work as domestic workers. Thus, many women find themselves in a foreign country without the necessary papers. They are especially vulnerable to not being paid the promised salary and being held in conditions of slavery without the ability to complain to the police. In many cases, the employer holds on to the domestic worker's passport, preventing her from leaving or contacting the Indian embassy to file complaints.

Working Conditions of Foreign Migrant Domestic Workers

Once they migrate, the domestic workers have little or no contact with their families at home. They cannot write letters as they are typically illiterate and they are not allowed access to the telephone. Since they are not typically given leave, migrant domestic workers do not have the opportunity to travel to their villages and visit their family. Because these migrants live with their employers, their free time is severely restricted. Often, they are unable to meet with friends and relatives from their village who are also working in the same city.

They often need to learn a new language in order to communicate with their employers, so they are more prone than other domestic workers to misunderstanding instructions and consequently making mistakes. Many of these girls have very limited skills. They are unable to use appliances and many have limited cooking skills. They are vulnerable to harsh reprisals, beatings and other forms of

punishment, for breaking household items or making mistakes.

In countries like Kuwait, Qatar, Oman, Saudi Arabia, the UAE and Yemen, there is a dearth of protective laws for domestic workers. Migrant domestic workers are frequently subjected to harsh verbal and physical abuse. Some are sexually harassed. They face racial discrimination in the country where they work and when they return home. They are discriminated against because other migrants in the area had been sexually abused and/or impregnated. Particularly in the Middle East, migrant workers are forced to very restrictive cultural norms such as the *purdah* system, preventing them from leaving the house.

Steps to curb international migration

- Pre-departure manuals have been disseminated to increase awareness of the risks and challenges of migration.
- The plights of migrated domestic workers abroad have been documented.
- Active advocacy and lobbying is carried out.
- Crisis interventions are carried out to victimized individuals.
- Networks are established with other NGOs that work on international migration.

Trafficking is closely linked to forced migration. It has been most often linked to prostitution but trafficking takes considerable magnitude for forced labor, especially domestic work. Trafficking of children-girls-women for domestic work is one of the fastest growing areas in inter-country and intra-country trafficking. Children, girls and women are predominantly trafficked from rural, tribal areas or drought and cyclone ridden areas into cities of India. Many of them are even trafficked to foreign countries. There are numerous cases of abuse and exploitation of trafficked girls and women. Most of the women, children and their families do not realize what they are getting themselves into. The problem gains more magnitude because our existing legislations are not able to deal with the issues. The Prevention of Immoral Trafficking Act, 1956 talks only of trafficking for immoral purposes and not for forced or bonded labor. Similarly the Inter-state Migrant Workmen's Act, 1979 do not protect the migrant or trafficked domestic workers. Further, the children, girls and women are sometimes brought to the cities secretly and are sometimes inaccessible. In foreign countries many domestic workers are undocumented or illegal

immigrants. Trafficking agents are plenty. In Delhi alone there are over and above hundreds of agencies which sell domestic workers. NDWM has also discovered that sometimes other domestic workers and close relatives become agents of trafficking. It points to the well-organized nature of the entire racket. Once the girls arrive in the cities, their wages are typically locked or they go unpaid in order to pay the traffickers a fee for securing employment.

Thus, to sum up the factors that drive them into this labor can be pointed out as follows:

Push factors

- Deepening Poverty, failure of government programs to make an impact on poverty reduction and the adverse impact of globalization has further impoverished the poor.
- Family problems: rural and male unemployment, disputes, ill-treatment, loss of parent/s.
- Natural Calamities and poor rehabilitation of victims who are displaced due to natural disasters like earthquake, floods, drought, etc.
- Biased religious and cultural practices that go against women and children.
- Porous borders and weak law enforcement in the border areas due to inefficient or corrupt policing.
- Ever increasing debt burden due to failing crops.
- Often Domestic Workers are single parents, widowed, estranged or with alcoholic husbands. They work for the survival of their children.

Pull factors

- Demand for cheap labor in growing market economies.
- Increasing number of working couples, residing as nuclear family units; create a larger need for more Domestic Workers.
- The preference of children in domestic work as they are powerless, docile and less likely to organize against abuse.
- Women's unequal status and commoditization of women with patriarchal structures
- Glamour of city life
- Rising consumerism and lack of access to education
- False image of security and a stable, healthy environment in the home of the employer
- Debt bondage

- Inaccessibility to education—every child outside school and at work is child labor.

It has been perceived throughout the world that most domestic workers are from the same country in which they work. They may live at home, though they are usually “live-in” domestics, i.e., they receive room and board as part of their salaries. The abuse of women and children transcends geographical boundaries as well as economic, cultural, religious, political, and social divisions.⁸ The work performed by the domestic workers does not correspond to what is generally thought of as the labor market. This is because domestic work does not take place in a factory or an office, but in the home. It typically reflects the otherwise unpaid labor in the household traditionally performed by women, which requires no formal skill training. Because of this female character of household work, the ‘paid’ domestic work also remains hidden, undervalued [9].

International perspective

The majority of domestic workers in China, Mexico, India, and other populous developing countries, are people from the rural areas who are employed by urban families.

‘In Guatemala, it is estimated that eight percent of all women work as domestic workers. They hardly have any legal protection. According to Guatemalan labor law, domestic work is “subject neither to a working time statute nor to regulations on the maximum number of working hours in a day”. Legally, domestic helpers are only entitled to ten hours of free time in 24 hours, and one day off per week. But very often, these minimal employment laws are disregarded, and so are basic civil liberties’ [10].

In Brazil, domestic workers must be hired under a registered contract and have most of the rights of any other workers, which includes a minimum wage, remunerated vacations and a remunerated weekly day off. It is not uncommon, however, to hire servants without registering them. Since servants come almost always from the lower, uneducated classes, they are sometimes ignorant of their rights, especially in the rural zone. Nevertheless, domestics employed without a proper contract sometimes sue their employers to get compensation from abuses.

In the United States, domestic workers are excluded from many of the legal protections afforded to other classes of worker, including the provisions of the National Labor Relations Act [11]. Traditionally domestic workers have mostly been women and are likely to be immigrants [12].

ILO international labor standards relevant to domestic workers: Basic human right.

Freedom of association

Title	Aim of standard	Comment
Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)	The right, freely exercised, of workers and employers, without distinction, to organize for furthering and defending their interests.	Applicable to domestic workers. Art. 2. Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned to join organizations of their own choosing without previous authorization.
(§) Right to Organize and Collective Bargaining Convention, 1949 (No.98)	Protection of workers who are exercising the right to organize; noninterference between workers' and Employers' organizations; promotion of voluntary collective bargaining.	Applicable to domestic workers Art. 1.1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their Employment.
Rural Workers' Organizations Convention, 1975 (No. 141), and Recommendation (No. 149)	Freedom of association for rural workers; encouragement of their organizations; their participation in economic and social development	Applicable domestic workers in Rural areas. Art. 1. This Convention applies to all types of organizations of rural workers, including organizations not restricted to but representative of rural workers

Forced labor

Title	Aim of Standard	Comment
(§) Forced Labor Convention, 1930 (No. 29)	Suppression of forced labor.	Applicable to domestic workers
(§) Abolition of Forced Labor Convention, 1957 (No. 105)	Prohibition of the recourse to forced or compulsory labor in any form for Certain purposes.	Applicable to domestic workers.

Employment

Employment services and fee-charging employment Agencies

Title	Aim of standard	Comment
Private Employment Agencies Convention, 1997 (No. 181), and Recommendation (No. 188)	To allow the operation of private employment agencies as well as the protection of the workers using their services, within the framework of its Provisions.	Up-to-date instrument on this subject. Applicable to domestic workers, but Allows implicit exclusion of them. Art. 2.2. This Convention applies to all categories of workers and all branches of economic activity... 4. After consulting the most representative organizations of employers and workers concerned, a Member may: ... (b) exclude, under specific circumstances, workers in certain branches of economic activity, or parts thereof, from the scope of the Convention or from certain of its provisions, provided that adequate protection is otherwise assured for the workers concerned
Employment Service Convention, 1948 (No. 88)	Free public employment service.	Applicable to domestic workers.
Employment Service Recommendation, 1948 (No. 83)		Explicitly applicable to domestic Workers. I.4. Measures should be taken in appropriate cases to develop, within the general framework of the employment services: (a) separate employment offices specializing in meeting the needs of employers and workers belonging to particular industries or occupations such as ... domestic service, wherever the character or importance of the industry or occupation or other special factors justify the maintenance of such Separate offices.
Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)	Progressive abolition of fee-charging employment agencies and regulation of other employment agencies, or (as the ratifying State shall elect) the regulation of fee-charging employment Agencies.	Applicable to domestic workers.

Employment security

Termination of Employment Convention, 1982 (No. 158), and Recommendation (No. 166)	Protection against termination of Employment without valid reason.	Applicable to domestic workers, but Allows implicit exclusion of them. Art. 2. 1. This Convention applies to all branches of economic activity and to All employed persons. 5. In so far as necessary, measures may be taken by the competent authority ... to exclude from the application of this Convention or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size of the undertaking that employs them.
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Social policy

Social Policy (Basic Aims and Standards) Convention, 1962 (No.117)	All policies shall be primarily directed to the well-being and development of the population and to the promotion of its desire for social progress.	Applicable to domestic workers
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Labour inspection

Protocol of 1995 to the Labor Inspection Convention, 1947 (No. 81)	To secure, by regular inspections of workplaces that are not considered as industrial or commercial, the enforcement of legal provisions for the Protection of workers.	Applicable to domestic workers. Art.1. 3. This Protocol applies to all workplaces that do not already fall Within the scope of the Convention.
Labor Inspection (Agriculture) Convention, 1969 (No. 129), and Recommendation (No. 133)	To secure, by regular inspections of workplaces, the enforcement of legal provisions for the protection of workers.	Applicable to domestic workers in Rural areas. Art. 1. 2. Where necessary, the competent authority shall ... define the line which separates agriculture from industry and commerce in such a manner as not to exclude any agricultural undertaking from the national system of labor inspection. 3. In any case in which it is doubtful whether an undertaking or part of an undertaking is one to which this Convention applies, the question shall be settled by the competent authority

Labor administration (General)

Labor Administration Convention, 1978 (No. 150), and Recommendation (No. 158)	The establishment of an effective labor administration with the participation of employers, workers and their organizations.	Applicable to domestic workers
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Labor inspection

Protocol of 1995 to the Labor Inspection Convention, 1947 (No. 81)	To secure, by regular inspections of workplaces that are not considered as industrial or commercial, the enforcement of legal provisions for the protection of workers.	Applicable to domestic workers. Art.1. 3. This Protocol applies to all workplaces that do not already fall within the scope of the Convention.
Labor Inspection (Agriculture) Convention, 1969 (No. 129), and Recommendation (No. 133)	To secure, by regular inspections of workplaces, the enforcement of legal provisions for the protection of workers.	Applicable to domestic workers in Rural areas. Art. 1. 2. Where necessary, the competent authority shall ... define the line which separates agriculture from industry and commerce in such a manner as not to exclude any agricultural undertaking from the national system of labor inspection. 3. In any case in which it is doubtful whether an undertaking or part of an undertaking is one to which this Convention applies, the question shall be settled by the competent authority.

Industrial relations

Collective Bargaining Convention, 1981 (No. 154), and Recommendation (No. 163)	To promote free and voluntary collective bargaining.	Applicable to domestic workers. Art. 1. 1. This Convention applies to all branches of economic activity.
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Conditions of work

Wages

Minimum Wage Fixing Convention, 1970 (No. 131), and Recommendation (No. 135)	Protection against excessively low wages.	Up-to-date instrument on this subject. Applicable to domestic workers, but allows implicit exclusion of them. Art. 1.1. Each Member of the International Labor Organization which ratifies this Convention undertakes to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate. 2. The competent authority in each country shall ... determine the groups of wage earners to be covered.
Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), and Recommendation (No. 30)	To create or maintain machinery whereby minimum rates of wages can be fixed for workers employed in certain of the trades or parts of trades (and in particular in home working trades) in which no arrangements exists for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low.	Applicable to domestic workers. Art. 1. 1. Each Member of the International Labor Organization which ratifies this Convention undertakes to create or maintain machinery whereby minimum rates of wages can be fixed for workers employed in certain of the trades or parts of trades (and in particular in home working trades) in which no arrangements exists for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low. Art. 2. Each Member which ratifies this Convention shall be free to decide ... in which trades or parts of trades, and in particular in which home working trades or parts of such trades, the minimum wage-fixing machinery referred to in Article 1 shall be applied
Minimum Wage-Fixing Machinery (Agriculture) Convention, 1951 (No. 99)	To create or maintain adequate machinery whereby minimum rates of wages can be fixed for workers employed in agricultural undertakings and related occupations.	Applicable to domestic workers in rural areas, but allows implicit exclusion of them. Art. 1.1. Each Member of the International Labor Organization which ratifies this Convention undertakes to create or maintain adequate machinery whereby minimum rates of wages can be fixed for workers employed in agricultural undertakings and related occupations. 2. Each Member which ratifies this Convention shall be free to determine ... to which undertakings, occupations and categories of persons the minimum wage fixing machinery referred to in the preceding paragraph shall be applied. 3. The competent authority may exclude from the application of all or any of the provisions of this Convention categories of persons whose conditions of employment render such provisions inapplicable to them, such as members of the farmer's family employed by him.
Protection of Wages Convention, 1949 (No. 95) and Recommendation (No.85)	Full and prompt payment of wages in a manner which provides protection against abuse.	Applicable to domestic workers, but allows implicit exclusion of them. Art. 2.1. This Convention applies to all persons to whom wages are paid or payable. 2. The Competent authority may, after consultation ... exclude from the application of all or any of the provisions of the Convention categories of persons: employed in domestic service or work similar to these.
Protection of Workers Claims (Employers Insolvency) Convention, 1992 (No. 173), and Recommendation (No. 180)	Protection of workers' claims in the event of the insolvency of their employer.	Applicable to domestic workers, but allows implicit exclusion of Domestic workers.

Art. 4.1. Subject to the exceptions provided for in paragraph 2 below, and to any limitations specified in accordance with Article 3, paragraph 3, this Convention shall apply to all employees and to all branches of economic activity.

2. The competent authority ... may exclude from Part II, Part III or both Parts of this Convention specific categories of workers.

Art. 3.3. A member which accepts the obligation of both Parts of this Convention may ... limit the application of Part III to certain categories of workers and to certain branches of economic activity. Such limitations shall be specified in the declaration of acceptance.

General conditions of employment

Reduction of Hours of Work Recommendation, 1962 (No. 116)	Progressive reduction of normal hours of work, when appropriate, with a view to attaining the standard of the 42-hour week without any reduction in the wages of the workers as at the time hours of work are reduced	Up-to-date instrument on this subject. Applicable to domestic workers. I.1 Each Member should formulate and pursue a national policy designed to promote by methods appropriate to national conditions and practice and to conditions in each industry the adoption of the principle of the progressive reduction of normal hours of work.
Forty-Hour Week Convention, 1935 (No. 47)	The principle of a 40-hour week applied in such a manner that the standard of living of workers is not reduced in consequence.	Applicable to domestic workers
Night Work Convention, 1990 (No.171), and Recommendation (No. 178)	Adoption of specific measures required by the nature of night work shall be taken for night workers in order to protect their health, assist them to meet their family and social Responsibilities, provide opportunities for occupational advancement, and compensate them appropriately.	Applicable to domestic workers, but allows implicit exclusion of them. Art. 2.1. This Convention applies to all employed persons except those employed in agriculture, stock raising, fishing, maritime transport and inland navigation. 2. A Member which ratifies this Convention may ... exclude wholly or partly from its scope limited categories of workers when the application of the Convention to them would raise special problems of a substantial nature.
Holiday with Pay Convention (Revised), 1970 (No.132)	Annual paid holiday of three weeks or more.	Applicable to domestic workers, but Allows implicit exclusion of them. Art. 2.1. This Convention applies to all employed persons, with the exception of seafarers. 2. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country ... to exclude from the application of this Convention limited categories of employed persons in respect of whose employment special problems of a substantial nature, relating to enforcement or to legislative or constitutional matters, arises.
Paid Educational Leave Convention, 1974 (No. 140), and Recommendation (No. 148) Part-Time Work Convention, 1994 (No. 175), and Recommendation (No.182)	To promote education and training working hours, with financial entitlements. Part-time workers shall be accorded the same protection than comparable full time workers.	Applicable to domestic workers. Applicable to domestic workers but, allows implicit exclusion of part-time domestic workers. Art. 3.1. This Convention applies to all part-time workers, it being understood that a Member may ... exclude wholly or partly from its scope particular categories of workers or of establishments when its application to them would raise particular problems of a substantial nature.

Protection in the various social security branches

Medical Care and Sickness Benefits Convention, 1969 (No. 130), and Recommendation (No. 134)	To secure to the persons protected, subject to prescribed conditions, medical care of a curative or preventive nature, and incapacity for work resulting from sickness and involving suspension of earnings.	Applicable to domestic workers, but allows implicit exclusion of certain categories of employees at the discretion of the Government.
Invalidity, Old-Age and Survivors Benefits Convention, 1967 (No. 128), and Recommendation (No. 131)	To secure to the persons protected the provision of invalidity, old-age and survivors benefits.	Applicable to domestic workers, but allows implicit exclusion of them. Art. 9.1. The persons protected shall comprise: (a) all employees, including apprentices, or (b) prescribed classes of the economically active population, constituting not less than 75 per cent of the whole economically active population; or less than 75 per cent of the whole economically active population; or (c) all residents, or residents whose means during the contingency do not exceed limits prescribed in such a manner as to comply with the requirements of Article 28. 2. Where a declaration made in virtue of Article 4 is in force, the persons protected shall comprise: (a) prescribed classes of employees, constituting not less than 25 per cent of all employees; (b) prescribed classes of employees in industrial undertakings, constituting not less than 50 per cent of all employees in industrial undertakings.
Employment Injury Benefits Convention, 1964 (No. 121) [Schedule I amended 1980], and Recommendation (No. 121)	To ensure that national legislation concerning employment injury benefits protect all employees, including apprentices, in the public and private sectors, including co-operatives, and, in respect of the death of the breadwinner, prescribed categories of beneficiaries.	Applicable to domestic workers, but allows implicit exclusion of them. Art. 4.1. National legislation concerning employment injury benefits shall protect all employees, including apprentices, in the public and private sectors, including co-operatives, and, in respect of the death of the breadwinner, prescribed categories of beneficiaries. 2. Any Member may make such exceptions as it deems necessary in respect of: (d) other categories of employees, which shall not exceed in number 10 per cent of all employees other than those excluded under clauses (a) to (c). Art. 5. Where a declaration provided for in Article 2 is in force, the application of national legislation concerning employment injury benefits may be limited to prescribed categories of employees, which shall total in number not less than 75 per cent of all employees in industrial undertakings, and, in respect of the death of the breadwinner, prescribed categories of beneficiaries.
Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168) and Recommendation (No. 176)	States shall co-ordinate the system of protection against unemployment and their employment policy. To ensure that its system of protection against unemployment, and in particular the methods of providing unemployment benefit, contribute to the promotion of full, productive and freely chosen employment, and are not such as to discourage employers from offering and workers from seeking productive employment.	Applicable to domestic workers, but allows implicit exclusion of them. Art. 11.1. The persons protected shall comprise prescribed classes of employees, constituting not less than 85 per cent. of all employees ... 3. Where a declaration made in virtue of Article 5 is in force, the persons protected shall comprise: (a) prescribed classes of employees constituting not less than 50 per cent. of all employees; or (b) where specifically justified by the level of development, prescribed classes of employees constituting not less than 50 per cent of all employees in industrial workplaces employing 20 persons or more.

Older Workers Recommendation, 1980 (No. 162)

To promote equality of opportunity and treatment for workers, whatever their age and to improve working conditions and the working environment at all stages of working life.

Applicable to domestic workers.

I.1 (1) This Recommendation applies to all workers who are liable to encounter difficulties in employment and occupation because of advancement in age.

The Indian Position

National Domestic Workers' Movement

The *National Domestic Workers' Movement* was established in 1985 in Mumbai, (Maharashtra) in India by Dr. (Sr.) Jeanne Devos. Sr. Jeanne is a Belgian missionary who first started work with domestic workers back in 1966 in the state of Tamil Nadu, India. From a small establishment in Mumbai, the Movement has spread into 23 states, organizing domestic workers, building their capacity for efficiency of work and awareness of rights and providing a platform to voice their struggles and demand for dignity of labor and proper legislations that will benefit their workforce.

Whatever may be the factors that lead the women to the job, it is the age-old patriarchal and societal systems in India that regard the work as menial and downgrade. As a result of which, it draws the poorest of remuneration. These workers have no benefits of work contracts, social security, and security of employment, wage raises, paid leave or medical facilities. As a result many of the women are subjected to humiliation, abuse (physical, verbal and sexual) and exploitation. This situation of work has lowered the self-esteem of the women, making them insecure and submissive.

The Work of the Movement

The Movement seeks to ascertain the dignity of the women in domestic work and to have society recognize the contribution of the women to the quality of life of individuals and to the economy of the country.

The Movement adopts a rights-based approach when working with domestic workers. We believe that the empowerment of the women is of utmost importance to help bring about dignity of domestic work and to advocate policies that will provide social security. To this end, domestic workers in the different states of India are organized into groups and a strong solidarity is created, where, together, the women can stand up for justice and rights of domestic work.

Regular meetings and training sessions are conducted to help build the confidence of the women not only in the work but also in them. Leaders are drawn out from these groups to help carry the work of the Movement deeper into their areas, further organizing women of the trade. The collaboration is effective when demands for domestic workers' legislations and social security/welfare schemes have to be made before the governments (both state and central). The women are also equipped to handle civic and social issues that arise in their communities. The solidarity is especially a great strength in times of abuse and threat. Domestic workers have also helped in several crisis interventions of fellow workers (rescue, rehabilitation and repatriation).

Along the journey of the Movement in the past years, other issues and concerns have offshoot from the work for rights of domestic work. These included:

- Trafficking for forced labor and domestic work,
- Children in domestic work and the Worst forms of child labor,
- Globalization and its effect on Women Domestic Workers,
- Human rights and domestic work.

The Movement condemns trafficking for domestic work. Trafficking rural and tribal children, young girls and women is rampant in the poorer districts of states. The Movement has established its presence in these areas (referred to as the source areas) and network with their counterparts in the urban areas (destination areas) where the women are taken. Village vigilant committees and strong ties with police force have been set up to monitor the activities of menacing trafficking agents and to check the movement of the women.

After years of creating awareness about children in domestic work, the Indian government has amended the Children's Act on Child Labor to include children in domestic work. However, active campaigns still continue to enforce the law as children are still victims of trafficking for forced labor and domestic work and are invisible—hidden behind the closed doors of the households.

When no Labor laws cover Domestic Workers and they are not recognized as workers, they do not enjoy

legal protection, rights and dignity. Hence domestic work is reduced to nothing but a contemporary form of slavery. The United Nations and the International Labor Organization have endorsed this issue as a concern for action. From 1996, the Movement has linked with Migrant Forum of Asia, Antislavery International, International Labor Organization, UN Human rights, GAATW and UNIFEM and UNICEF. Together we experiences and collaborate in joint efforts towards establishing a decent work environment and recognition of labor for all domestic workers.

Legislations for domestic workers in India through active advocacy and campaign by the National Domestic Workers' Movement

Domestic workers are especially disadvantaged since they are not covered by laws such as the Industrial Disputes Act, the Equal Remuneration Act, or even the Minimum Wages Act. The Central government has been shying away from enacting any specific legislation for this group. A Domestic Workers (conditions of service) Bill was drafted as early as 1959 but was never enacted. The House Workers (conditions of service) Bill, 1989, was not enacted either.

In 2003, the Human Rights Law Network filed a petition in the Supreme Court on behalf of the NDWM, pointing out that legislation to protect domestic workers had been stalled time and again. According to lawyer Vipin Mathew Benjamin, the government had told the court that domestic workers would be covered by the forthcoming Unorganized Sector Workers' Bill, 2004. "The Supreme Court passed an order saying that all suggestions and demands could be put before a tripartite committee to deliberate on the draft of the Bill. Consultations with all stakeholders were to be held at the Central and State levels. We don't have a problem if this bill is comprehensive," he said.

The order, passed on April 7, had directed the proposed tripartite committee to meet within three months but so far there has been no sign of such a meeting, nor have any suggestions been invited.

The Centre claims that the Unorganized Sector Workers' Bill would ensure their 'safety, social security, health and welfare' but already there are protests from various quarters. According to Bhatnagar, who is also coordinating the National Campaign Committee for Unorganized Sector Workers, there are no fewer than five versions of the draft Bill. The one put up by the Union Labor Ministry has come in for heavy criticism. In a letter to the Prime

Minister, Justice V.R. Krishna Iyer, former Judge of the Supreme Court, called it a 'a half-baked law' and said that rushing it through Parliament would be 'a gross betrayal'.

Meanwhile, domestic workers are organizing themselves. As a result, the Domestic Workers (Protection of Rights) Bill, 2003, has been tabled in the Maharashtra Assembly, while Karnataka has been persuaded to extend the Minimum Wages Act to domestic work. Legal provisions exist to ensure that a child under 14 can be made to work for only two hours on school days and up to seven hours on non-school days. The law implies that the child must be at school at any rate, working or not.

- The Tamil Nadu Government, State of Tamil Nadu, India, included Employment in Domestic Work in the schedule of the Tamil Nadu Manual Labor Act 1982 on the 1st June 1999. The Tamil Nadu Domestic Workers Welfare Board was constituted on the 22nd January 2007. The preliminary notification for the Minimum Wage Act for Domestic Workers was passed in August 2007.
- The Central government amended the Central Civil Service Conduct rules to prohibit any government official/civil servants from employing children below the age of 14 years as domestic workers.
- Indian law prohibits the employment of children below 14 years age, in certain occupations in accordance to the Child Labor (Prohibition & Regulation) Act 1986. By 10th October 2006, the ban on child labor included employment of children in domestic work.
- The Karnataka government passed the Minimum Wage Act for Domestic workers on 1st April 2004
- The Kerala government has included Domestic Workers into the Schedule of employment. The final notification for the Minimum Wage Act for Domestic Workers came through on 23rd May 2005. The government has introduced Domestic Workers as members to the Kerala Artisan and Skilled Workers' Welfare Fund, thereby allowing Domestic Workers to avail of Social Security Schemes. The Kerala arm of the National Domestic Workers' Movement has been appointed to issue Labor Certificates for the Fund to the Domestic Workers. The Kerala government has also registered the domestic workers of the Kerala Domestic Workers; Movement as a Trade union on November 2008.
- The Andhra Pradesh Government has issued on 10th December 2007, the final notification for the

fixing of the Minimum Wages in the employment of Domestic Workers in Part-I of the Schedule of the Minimum Wages Act, 1948.

- Preliminary notification for Minimum Wage Act for Domestic Workers were passed in the following State governments: Rajasthan (4th July 2007) and Bihar (2006)
- The Unorganized Sector Workers' Social Security Bill, 2007 has been passed on 8th January 2008. This Bill also includes domestic workers in the unorganized sector of workers.
- Domestic Workers have been guided to avail of several welfare and social security options like life insurance, health/medical insurance, ration cards and pension plans.

Salient features of the Unorganized Workers' Social Security Act, 2008

Domestic workers' (Registration social security and welfare) Act 2008 in the statement of objects and reasons of the Act the issue of exploitation of women and children domestic workers is discussed. It is also a known fact that many women and children are trafficked and exploited by the placement agencies, which operate openly without any form of restrictions and regulations. Absence of any legal protection, has led to severe exploitation women and children which include depriving domestic workers from their entire salary average more than 16-18 hours of work per day, absence of proper food and living/sleeping condition, forced and total cut off from their family members, bounded labor, sexual exploitation by agent during transit, at the office of agency and at the work place in houses of employers, The list of exploitation is endless and frequently reported upon by the media. The legislations such the recent notification on prohibition of child labor in domestic work under Child Labor (Prohibitions & Regulation) Act, 1986 cannot be implemented in the absence of any implementation mechanism in this Act. Recently few State Govt. have taken different initiative such as including domestic workers under minimum wage notification but in the absence of a central legislation capable of reaching all domestic workers none of these state level measures can really benefit the domestic workers. That only a Comprehensive Central Legislation specifically designed to meet the working condition of the domestic workers including registration, who are an important segment of service sector of Indian economy and who have a Multiplier impact on the economy by enabling the women in particular to work by sharing the family burden, can ensure the end of the exploitation of these domestic

workers. That in the public interest that the domestic workers, employing, as it does, a very large number of women and whose conditions of work and living need amelioration and to whom regularity of employment must be assured, Placement agencies must be regulated so that the Directive Principles of the Constitution more particularly the relevant provisions Article 39, 41, 42, 43, and 43-A of the Constitution are given effect to by a law made by Parliament with reference to entries 22, 23 and 24 of List III in the 7th Schedule in the Constitution.

Social Security Schemes

The Act has mentioned that the government would periodically notify schemes related to life and disability cover, health and maternity benefits, old age protection and any other benefit as may be determined by the central government. It has also mentioned ten schemes in the schedule which includes *Aam Admi Bima Yojana; Rashtriya Swasthya Bima Yojana; Janshree Bima Yojana; Janani Suraksha Yojana; Old Age Pension, Family Benefit* and schemes related to weavers, artisans and master crafts persons. None of these schemes are new and are mostly applicable only for BPL families. Most of the urban unorganized workers may not fall under the BPL category. The BPL income of Rs 500 is too less even for bare existence in urban areas. Moreover, most of these schemes are insurance schemes which are to be sourced from workers and operated by insurance companies. The only possibility is that the central and state governments may subsidize contributions from BPL workers at a ratio of 75:25. Beyond this, there appears to be no plan for the government to fund the entire social security schemes.

The state governments have been given a free hand to design their own schemes related to provident fund, employment injury benefit, housing, education, skill up gradation, funeral assistance and old age homes. It can be noted that none of them are mandatory on any government.

'Smart' Registration

The function of registration of workers, the 'biggest' advantage of the entire Act, is left to the state governments to be performed through the bureaucracy at district level. Any unorganized worker of above 14 years of age can register himself/herself with the worker facilitation centre by giving a self-declaration. By getting a unique identification number and smart card that are portable, the worker will be eligible for suitable social security schemes if he/she would pay the prescribed contribution.

Floor Level Schemes

What is really good about this legislation, as recommended by the NCEUS and NAC, is an enforceable 'floor scheme' that creates in each unorganized sector worker beneficiary a legal entitlement of governmental protection within a specified time frame. For instance, the National Rural Employment Guarantee Act, 2004 ["NREG Act"], that was enacted under the auspices of the present UPA government, creates a legal entitlement of 100 days of work for a specified minimum wage with penalties accruing to its denial. The NREG Act is both successful and unsuccessful, depending equally on the political will behind its implementation as the legal content of its provisions.

The Act mandates the provision of Implementing Authorities i.e., Central Advisory Committee under Section 4. There is also the provision of Domestic Workers Welfare Fund which mandates that: There shall be formed a Fund, to be called the Domestic workers Welfare Fund, and there shall be credited thereto:

- (a) Any grants made to the Fund by the Central Government,
- (b) Any money received by the beneficiaries,
- (c) All amounts from the District Boards received as registration and other fees,
- (d) Any income from investment of the amounts in the Fund.
- (e) All fines collected The Fund shall be administered and applied by the State Board to meet the expenditure incurred in connection with measures and facilities which, in the its opinion is necessary or expedient to promote the welfare of domestic workers; and, in particular:
 - (a) To defray the cost of such welfare measures or facilities for the benefit of domestic workers / beneficiaries as may be decided by the Board,
 - (b) To sanction any money in aid of any scheme for the welfare of the domestic - workers including family welfare, family planning, education ,Insurance and other welfare measures,
 - (c) To meet the allowances, if any, of the members of the Committees and the State /District Board and WFC under this Act and the salaries and allowances, if any, of persons appointed under section,
 - (e) Any other expenditure which the Board may direct to be defrayed from the Fund.

Conclusion

The laws are defied within the four walls of our households, hindering protection. There is little accurate data on the number of domestic workers and the extent of exploitation. A survey was conducted by the researchers in the college campus. It has revealed the domestic workers' dissatisfaction, their expectations which include a hike in the pay in consideration to the rising price of necessary commodities and a day off, weekly. But they are apprehensive to protest against their employer, the fear of losing the job looms large.

It is important to have an overview of the existing regulations and legal provision for domestic workers in our country to strategies and move forward. The ILO is coming up with a convention, 'Decent work for Domestic Workers', to set labor standards for domestic/household workers at the International Labor Conference in 2010.

The national commission for women along with a sub-committee of trade unions and NGOs working with domestic workers has undertaken to formulate legislation for domestic workers. The court demanded that the state government collaborate with civil society to frame guidelines for regulating the agencies.

Also what is suggested is that the government makes a provision for police to keep a regular check on the placement agencies that have been given licenses and ensure that there are no illegal issues involved viz., their functioning. There should be a special officer appointed to deal with these cases.

The initiative of ILO: Decent Work for Domestic Workers campaign

The Decent Work for Domestic Workers campaign is grounded in the four principles of the Decent Work Agenda:

1. Fundamental Principles and Rights at Work–To promote and realize fundamental principles and rights at work for all workers,
2. Broad social protection – Enhance the coverage and effectiveness of social protection for all ,
3. Access to decent and productive jobs–Create greater opportunities for women and men to secure decent employment and income,
4. Voice and representation at work–Strengthen the organization of workers and employers and promote social dialogue.

The strategic means of promoting Decent Work for Domestic Work are

Recognize Domestic Work as "Real Work"

- Enhance the visibility of domestic work by raising awareness of the extent of domestic workers and of the nature of their working lives.
- National law and legislation that recognizes domestic work as employment, worthy of regulation and labor law protection, both for Domestic Workers and for their employers.
- Statistical visibility through regular systematic data collection.

Reach out, Organize, Represent

- Spread awareness amongst the household employers, resident welfare associations and domestic workers of their rights and need to have a voice of their own with the help of media.
- Efforts towards facilitating the organization of domestic workers to improve their collective strength, voice and representation.
- Collective negotiation with the employers' associations, RWAs and with the state for protection.
- Bring together actors working on domestic workers to agree on a common "minimum floor" of benefits to domestic workers.
- Produce practical tools to support the work of constituents and civil society in promoting decent work for domestic work.

Recent initiatives of the ILO are towards a more concerted effort at spreading awareness about the rights of the domestic workers, dialoguing with the key constituents (the Government, the Employers' Organizations and the Trade Unions), involving civil society organizations, Resident Welfare Associations, the domestic workers themselves, the youth and the public at a large. The Standard Setting Process at International Labor Conference (ILC) also provides an opportunity for ILO to work with the Government and other stakeholders in organizing, developing and promoting draft national legislations for broader debate and consensus.

There is an urgent need to either include domestic servants into preexisting laws or to devise new laws which would provide them with provisions to cater to their basic rights and needs. They need legal safeguards to protect their salaries, their treatment

at the hands of both the placement agencies/agents and the employers and from immoral trafficking [1].

Anti-trafficking Committees should be set up to disrupt the supply of female and child domestic workers, and the recruiters should be barred in these cases. The police should be urged to enforce the existing laws.

Domestic workers pervade the homes of all the middle class and upper class people. These are the very people who make laws and implement them. One step in order to begin to deal with these obstacles is to empower domestic workers at least in some pockets, so that they begin to take the leadership of the national level alliance and begin to deal with obstacles that direct or indirect, conscious or unconscious vested interests pose in the consolidation of these organizations and alliances.

In case of the approach of the organizations that work for the domestic workers, one major difference lies in whether the organization works for domestic workers or with domestic workers and then, with what perspective. What is important is an organization that builds a perspective of active participation and control by domestic workers. This includes the recognition of their different needs in the informal economy vis-a-vis the union and the also the aspect of fluidity of identity of women in this sector.

But apart from the physical aspects of domestic work—the long hours, the absence of off-days, the low pay—what about the other messages that are passed down to future generations? This is a complex issue, tied up with questions of employment and surplus labor. But it is also a simple issue—one of attitudes, of how we value another human life. It is a question of recognizing all human beings, regardless of the nature of their work, as precisely that. It is a question of ensuring that we don't bring up our children with values that perpetuate slavery and servitude.

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Original Article

Use of Advanced Technologies in Higher Education Vis-A-Vis Information Technology Law

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Abstract

We are passing through the transition period from the traditional teaching methods to adapt ourselves to the technological teaching methods during recent past especially in higher educational instructions. The increasing number of technological devices and as well as availability of technology supported information services more specifically the information and communication technologies (ICTs) such as web based internet services have paved the way for inspiring the teachers as well as students towards effective, efficient and fast teaching and learning activities. When it comes to technology in the classroom, phrases like "faculty resistance" and the importance of getting "faculty buy-in" are tossed around with great frequency. The days are gone to resist and sceptics about the use of ICTs in classroom teaching. This is supported by the results of the recent surveys that a full 73.67 per cent of readers who took the survey said they incorporated technology into their class during the past year. It was the third most popular activity, exceeded only by an impressive 85.81 per cent who attended a professional development workshop or conference and 83.92 per cent who used a rubric [1]. However, the use of technology must be rational and ethical otherwise it will become bane for both the teacher and learner as the technology is two faced sharp edges which will cut who misuse it by attracting the penal provisions of the Information Technology Act, 2000.

This paper attempts to evaluate the importance of the use of advanced technologies in higher educational teaching-learning activities and their ill effects if they are misused.

Keywords: Education; Higher Education; Technology; Information; Communication; Information Communication Technology; Efficient; Effective; Rational; Ethical Boon; Bane etc.

Introduction

The social structures have been dramatically changed due to dynamics of the technology especially the information technology (IT) in recent past. The societies of the world are highly close and social boundaries are clearly narrow though there remain political boundaries of the

nations. Nation villages has been converted themselves into global village. Movement of goods less restricted and movement of people somehow more restricted from one country to another for political purposes. However, the movement and channels of information is globalised. This is possible due to innovations in technologies especially the information technology supported by hard and soft technologies. This has converted the traditional

society to technocrat society, the technocrat society to information society. The information society challenges the education system. In recent years, the speedy, effective and global communication of knowledge has created a new foundation for co-operation and team-work, both nationally and internationally. The increasing role played by information technology (IT) in the development of society calls for an active reaction to the challenges of the information society.

Information Technologies (ITs) are fast changing. During this period the educational system and for that matter any system has to be designed to be open to the changes both in IT and socio-economic processes. Development and progress of IT and its wider applications in all walks of life and work will be creating a society, in which every individual, group; community will be linked through internet with others. People will be using small hand-held and table-top devices to communicate access and send information, participate from a distance in talks, seminars, workshops and small/big group activities from a distance. In such a networked society, all communications and information could be stored somewhere, which could be accessed, sorted out, analyzed and useful information could be found out. Useful information or knowledge could be utilized for value addition or wealth generation. The persons who could find useful knowledge by using various IT tools and techniques, and could have related functionality to convert that knowledge into wealth will be successful in 21st Century. Education has therefore, to cultivate skills and competencies in using IT tools and techniques in the networked globalised context with a view to creating and nurturing innovativeness and entrepreneurship to convert knowledge into wealth. Education has to help in identifying and creating work and employment opportunities that would lead to new types of self-employment opportunities such as, knowledge workers, information service providers, tools/technique developers, process/system software designers, developers and implementers [1].

Already, new and greater demands are being made as to the core qualifications of individuals, as well as to their understanding and knowledge of the consequences of the introduction of information technology for the work and organisation of a company. Companies are no longer forced to gather all their functions in one place. The knowledge-intensive functions such as development and marketing can be sited in countries where the labor market can supply highly educated employees, whilst production itself can be moved to low wage countries. The result is the efficient handling, processing, co-

ordination and administration of company resources, which is decisive for the competitiveness of the company. In a society which is becoming increasingly dependent on information and the processing of knowledge, great demands are therefore made that the individual should have a solid and broad educational foundation on which to build. Educational policy in the information society must ensure that: (1) IT qualifications are developed by means of their integration in all activities in the education sector and (2) The individual citizen must have an active and critical attitude to developments and not passively allow technological development to set the pace [3].

This requires that the education policy must be revamped so that we can develop the citizens to convert them into techno-citizens (netizens) by adopting information and communication technologies (ICTs) into our educational teaching and learning process to adapt ourselves to time and space for ushering the development process.

The ICTs can be used as educational technology as the study and ethical practice of facilitating learning and improving performance by creating, using and managing appropriate technological processes and resources, which denoted instructional technology as the theory and practice of design, development, utilization, management, and evaluation of processes and resources for learning.

Educational technology thus refers to the use of both physical hardware and educational theoretics. It encompasses several domains, including learning theory, computer-based training, online learning, and, where mobile technologies are used, m-learning. Accordingly, there are several discrete aspects to describing the intellectual and technical development of educational technology [4].

History

There are several shifts and changes in the civilization of the human kind. Since early history, mankind has devised means to help people learn in ways that are easier, faster, surer, or less expensive than previous means [5]. From this perspective, educational technology can be traced back to the emergence of very early tools, such as paintings on cave walls. However, the use of media for instructional purposes is generally traced back to the first decade of the 20th century [6] with the introduction of educational films (1900's) and Sidney Pressey's mechanical teaching machines (1920's). The first large scale use of technologies may be training of soldiers

in World War II by films and other mediated materials. The concept of hypertext is traced to Bush's description of memex in 1945.

In 1960, the University of Illinois initiated a classroom system based in linked computer terminals where students could access informational resources on a particular course while listening to the lectures that were recorded via some form of remotely linked device like television or audio device [7]

In the early 1960s, Stanford University psychology professors Patrick Suppes and Richard C. Atkinson experimented with using computers to teach math and reading to young children in East Palo Alto, California. Stanford's Education Program for Gifted Youth is descended from those early experiments. In 1963, Bernard Luskin installed the first computer in a community college for instruction, working with Stanford and others, developed computer assisted instruction. Working with the Rand Corporation, Luskin's landmark UCLA dissertation in 1970 analyzed obstacles to computer assisted instruction.

The 1970s and 80s saw notable contributions in computer-based learning by Murray Turoff and Starr Roxanne Hiltz at the New Jersey Institute of Technology [8] as well as developments at the University of Guelph in Canada [9]. In 1976, Bernard Luskin launched Coastline Community College as a "college without walls" using television station KOCE-TV as a vehicle.

By the mid-1980s, accessing course content becomes possible at many college libraries. In Computer Based Training (CBT) or Computer-based learning (CBL), the learning interaction was between the student and computer drills or micro-world simulations.

Digitized communication and networking in education started in the mid 1980s. Educational institutions began to take advantage of the new medium by offering distance learning courses using computer networking for information. Early e-learning systems, based on Computer-Based Learning/Training often replicated autocratic teaching styles whereby the role of the e-learning system was assumed to be for transferring knowledge, as opposed to systems developed later based on Computer Supported Collaborative Learning (CSCL), which encouraged the shared development of knowledge.

The Open University in Britain [10] and the University of British Columbia (where Web CT, now incorporated into Blackboard Inc. was first developed) began a revolution of using the Internet to deliver

learning, [11] making heavy use of web-based training and online distance learning and online discussion between students [12]. Practitioners such as Harasim [13] put heavy emphasis on the use of learning networks.

Cassandra B. Whyte researched about the ever increasing role that computers would play in higher education. This evolution, to include computer-supported collaborative learning, in addition to data management, has been realized [14].

With the advent of World Wide Web (www) in the 1990s, teachers embarked on the method using emerging technologies to employ multi-object oriented sites, which are text-based online virtual reality system, to create course websites along with simple sets instructions for its students. As the Internet becomes popularized, correspondence schools like University of Phoenix became highly interested with the virtual education, setting up a name for it in 1980.

In 1993, Graziadei described an online computer-delivered lecture, tutorial and assessment project using electronic mail. In 1997, Graziadei described criteria for evaluating products and developing technology-based courses include being portable, replicable, scalable, and affordable, and having a high probability of long-term cost-effectiveness [15].

By 1994, CAL Campus presented its first online curriculum as Internet becoming more accessible through major telecommunications networks. CAL Campus is where concepts of online-based education first originated, this allowed to progress real-time classroom instructions and Quantum Link classrooms. With the drastic shift of Internet functionality, multimedia began introducing new schemes of communication; through the invention of webcams, educators can simply record lessons live and upload them on the website page. There are currently wide varieties of online education that are reachable for colleges and universities students. This form of high learning allowed for greater flexibility by easing the communication between teacher and student, now teachers received quick lecture feedbacks from their students. The idea of Virtual Education soon became popular and many institutions began following the new norm in the education history.

Online education is rapidly increasing and becoming as a viable alternative for traditional classrooms. According to a 2008 study conducted by the U.S Department of Education, back in 2006-2007 academic years, about 66% of postsecondary public and private schools began participating in student

financial aid programs offered some distance learning courses, record shows only 77% of enrollment in for-credit courses being for those with an online component.[16] In 2008, the Council of Europe passed a statement endorsing e-learning's potential to drive equality and education improvements across the EU [17].

Today, the prevailing paradigm is Computer-mediated communication (CMC), where the primary form of interaction is between learners and instructors, mediated by the computer. CBT/CBL usually means individualized (self-study) learning, while CMC involves educator/tutor facilitation and requires scenarization of flexible learning activities. In addition, modern ICT provides education with tools for sustaining learning communities and associated knowledge management tasks. For these reasons the University Grants Commission (UGC) is mandating the use of modern and innovated gadgets in teaching and learning activities.

Use of Advanced Technologies in Higher Education

Students growing up in this digital age have constant exposure to a variety of media as well as technological devices. Major high-tech companies such as Google, Verizon, and Microsoft are funding schools to have the ability to teach their students through technology which may lead to improved student performance [18]. These are such media and technological devices through which teaching and learning can be softened and strengthened compared to the traditional methods of teaching and learning process.

Media

Educational media and tools can be used for:

- Task structuring support–help with how to do a task (procedures and processes),
- Access to knowledge bases (help user find information needed)
- Alternate forms of knowledge representation (multiple representations of knowledge, e.g., video, audio, text, image, data).

Numerous types of physical technology are currently used: [19] digital cameras, video cameras, interactive whiteboard tools, document cameras, and LCD projectors. Combinations of these techniques include blogs, collaborative software, ePortfolios, and virtual classrooms.

Audio and Video

Radio offers a synchronous educational vehicle, while streaming audio over the internet with webcasts and podcasts can be asynchronous. Classroom microphones often wireless can enable learners and educators to interact more clearly.

Video technology [20] has included VHS tapes and DVDs, as well as on demand and synchronous methods with digital video via server or web-based options such as streamed video from YouTube, Teacher Tube, Skype, Adobe Connect, and webcams. Telecommuting can connect with speakers and other experts.

Interactive digital video games are being used at higher education institutions [21]. Podcasting allows anybody to publish files to the Internet where individuals can subscribe and receive new files from people by a subscription [22].

Computers, Tablets and Mobile Devices

Computers and tablets enable learners and educators to access websites as well as programs such as Microsoft Word, PowerPoint, PDF files, and images. Many mobile devices support m-learning.

Mobile devices such as clickers and smart-phones can be used for interactive feedback [23]. Mobile learning can also provide performance support for checking the time, setting reminders, retrieving worksheets, and instruction manuals [24].

Open Course-Ware (OCW) gives free public access to information used in under-graduate and graduate programs at institutions of higher education [25].

Social Networks

Group webpages, blogs, and wikis allow learners and educators to post thoughts, ideas, and comments on a website in an interactive learning environment [26]. Social networking sites are virtual communities for people interested in a particular subject or just to “hang out” together. Members communicate by voice, chat, instant message, video conference, and blogs, and the service typically provides a way for members to contact friends of other members [27]. The statistics support the likelihood of being able to bring these technologies into our classrooms and find successful teaching methods to employ their use in an educational setting. Social networking inherently encourages collaboration and engagement [28] Social networking can also be used as a motivational tool to promote self-efficacy amongst students. In a study by Bowers-Campbell Facebook was used as an

academic motivation tool for students in a developmental reading course [29]. Group members may respond and interact with other members [30]. Student interaction is at the core of constructivist learning environments and Social Net-working Sites provide a platform for building collaborative learning communities. Every student has his or her own learning requirements, and a Web 2.0 educational framework provides enough resources, learning styles, communication tools and flexibility to accommodate this diversity [31].

The popularity of social media and its rapid ascension into our daily lives is nothing short of astounding. Sites that weren't even around 10 years ago are now visited every day. What's more, 56 per cent of the faculty surveyed said they expect their use of social media to increase rapidly. The survey provides amazing facts about use of social media by raising the following questions.

1. Do you friend your students on Facebook?
2. Do you tweet, or use Twitter in the classroom?
3. Do you network on LinkedIn, and participate in its groups?
4. Does your college or university have a social media policy?

For the past two years, *Faculty Focus* conducted a survey on Twitter usage in higher education. This year they expanded the survey to include Facebook and LinkedIn, while adding a number of new questions as well.

Twitter, Facebook and LinkedIn all have their strengths and weaknesses, and they are better used for some things than others. But how are the three being used in higher education today? It's their hope that these survey results provide at least some of the answers while lending new data to the discussion.

Here are just some of the findings from Social Media Usage Trends among Higher Education Faculty, a 2011 *Faculty Focus* survey of nearly 900 higher education professionals:

1. Facebook is the most popular social media site for the people who took this survey. Nearly 85% have a Facebook account, following by LinkedIn at approximately 67% and Twitter at around 50%.
2. 32% have "friended" an under-graduate student on Facebook; 55% said they wait until after the student graduates.
3. 83% allow students to use laptops in the classroom; 52% allow smart phones.
4. 30% said their institution doesn't have a social media policy. About 40% weren't sure.

5. 68% have talked to their students about managing their online reputation [32].

Transcription Technologies

Tools and Techniques for Improving Course Accessibility At-risk learners those who have learning disabilities or who are not native English speakers can benefit from multi-modal access to lectures and presentations. It has become increasingly clear that one mode of delivering course material often is not enough for the varied learning styles, needs, and challenges of today's college students. Research has shown that one of the simplest ways to improve access to course content is to capture, caption, and transcribe your lectures and presentations [33]. A more intermediate approach could include using audio recording software like Audacity, Power-Point narration, or tools such as mp3 Direct Cut or Power Sound Editor. If the institution has invested in lecture capture systems such as Camtasia Relay, Mediasite, Tegrity Campus, Echo 360 or Panopto, there are even more options and much less work since the recording and synchronization are all automated.

Once the presentation is digitized, the next step is to transcribe it, Bain said, noting that this is often the most difficult aspect of offering students truly accessible course media. Some of the tools Bain recommends for converting speech to text include Dragon Naturally Speaking, Media Access Generator (MAGpie), CapScribe, and InqScribe. YouTube also offers a captioning feature that Bain called "promising" and there are a few research prototypes with speech recognition based transcription, including an IBM Research's Hosted Transcription Service and Synote [34].

Webcams

Webcams and webcasting have enabled creation of virtual classrooms and virtual learning environment [35].

Whiteboards

Interactive whiteboards and smart-boards allow learners and instructors to write on the touch screen. The screen mark-up can be on either a blank whiteboard or any computer screen content. Depending on permission settings, this visual learning can be interactive and participatory, including writing and manipulating images on the interactive whiteboard.

Screen-casting

Screen-casting allows users to share their screens directly from their browser and make the video available online so that other viewers can stream the video directly [36]. The presenter thus has the ability to show their ideas and flow of thoughts rather than simply explain them as simple text content. In combination with audio and video, the educator can mimic the one-on-one experience of the classroom and deliver clear, complete instructions. Learners also have an ability to pause and rewind, to review at their own pace, something a classroom cannot always offer.

Virtual Classroom

A Virtual Learning Environment (VLE), also known as a learning platform, simulates a virtual classroom or meetings by simultaneously mixing several communication technologies. For example, web conferencing software such as GoToTraining, WebEx Training or Adobe Connect enables students and instructors to communicate with each other via webcam, microphone, and real-time chatting in a group setting. Participants can raise hands, answer polls or take tests. Students are able to whiteboard and screencast when given rights by the instructor, who sets permission levels for text notes, microphone rights and mouse control.

A virtual classroom also provides the opportunity for students to receive direct instruction from a qualified teacher in an interactive environment. Learners can have direct and immediate access to their instructor for instant feedback and direction. The virtual classroom also provides a structured schedule of classes, which can be helpful for students who may find the freedom of asynchronous learning to be overwhelming. In addition, the virtual classroom provides a social learning environment that replicates the traditional "brick and mortar" classroom. Most virtual classroom applications provide a recording feature. Each class is recorded and stored on a server, which allows for instant playback of any class over the course of the college year. This can be extremely useful for students to review material and concepts for an upcoming exam. This also provides students with the opportunity to watch any class that they may have missed, so that they do not fall behind. It also gives parents and auditors the conceptual ability to monitor any classroom to ensure that they are satisfied with the education the learner is receiving.

Learning Management System

A learning management system (LMS) is software used for delivering, tracking and managing training and education. For example, an LMS tracks attendance, time on task, and student progress. Educators can post announcements, grade assignments, check on course activity, and participate in class discussions. Students can submit their work, read and respond to discussion questions, and take quizzes [37]. An LMS may allow teachers, administrators, students, and permitted additional parties (such as parents if appropriate) to track various metrics. LMSs range from systems for managing training/educational records to software for distributing courses over the Internet and offering features for online collaboration. The creation and maintenance of comprehensive learning content requires substantial initial and ongoing investments of human labor. Effective translation into other languages and cultural contexts requires even more investment by knowledgeable personnel [38].

Learning Content Management System

A learning content management system (LCMS) is software for author content (courses, reusable content objects). An LCMS may be solely dedicated to producing and publishing content that is hosted on an LMS, or it can host the content itself. The Aviation Industry Computer-Based Training Committee (AICC) specification provides support for content that is hosted separately from the LMS. A recent trend in LCMSs is to address this issue through crowd-sourcing [39].

Computer-aided Assessment

Computer-aided assessment, also but less commonly referred to as e-assessment, ranges from automated multiple-choice tests to more sophisticated systems. With some systems, feedback can be geared towards a student's specific mistakes or the computer can navigate the student through a series of questions adapting to what the student appears to have learned or not learned.

The best examples follow a formative assessment structure and are called "Online Formative Assessment". This involves making an initial formative assessment by sifting out the incorrect answers. The author of the assessment/teacher will then explain what the pupil should have done with each question. It will then give the pupil at least one practice at each slight variation of sifted out questions. This is the formative learning stage. The

next stage is to make a summative assessment by a new set of questions only covering the topics previously taught.

Learning design is the type of activity enabled by software that supports sequences of activities that can be both adaptive and collaborative. The IMS Learning Design specification is intended as a standard format for learning designs, and IMS LD Level A is supported in LAMS V2. Learning and has been replacing the traditional settings due to its cost effectiveness.

Electronic Performance Support Systems (EPSS)

An Electronic Performance Support System is, according to Barry Raybould, "a computer-based system that improves worker productivity by providing on-the-job access to integrated information, advice, and learning experiences" [40]. Gloria Gery defines it as "an integrated electronic environment that is available to and easily accessible by each employee and is structured to provide immediate, individualized on-line access to the full range of information, software, guidance, advice and assistance, data, images, tools, and assessment and monitoring systems to permit job performance with minimal support and intervention by others" [41].

Data system Student data systems have a significant impact on education and students [42]. Over-the-counter data (OTCD) refers to a design approach which involves embedding labels, supplemental documentation, and a help system and making key package/display and content decision [43].

Advantages of Technologies

Advantages of incorporating technology into the classroom are many in number and may include defray travel costs and the following:

1. *Easy-to-access Course Materials.* Course material on a website allows learners to study at a time and location they prefer and to obtain the study material very quickly [44].
2. *Student Motivation.* According to James Kulik, who studies the effectiveness of computers used for instruction, students usually learn more in less time when receiving computer-based instruction and they like classes more and develop more positive attitudes toward computers in computer-based classes [45].

Teachers must be aware of their students' motivators in order to successfully implement technology into the classroom [46]. Students are more motivated to learn when they are interested in the subject matter, which can be enhanced by using technologies in the classroom and targeting the need for screens and digital material [47] that they have been stimulated by outside of the classroom.

3. *More Opportunities for Extended Learning.* According to study completed in 2010, 70.3% of American family households have access to the internet [48]. According to Canadian Radio Television and Telecommunications Commission Canada, 79% of homes have access to the internet [49]. This allows students to access course material at home and engage with the numerous online resources available to them. Students can use their home computers and internet to conduct research, participate in social media, email, play educational games and stream videos.
4. *Wide Participation.* Learning material can be used for long distance learning and are accessible to a wider audience [50].
5. *Improved Student Writing.* It is convenient for students to edit their written work on word processors, which can, in turn, improve the quality of their writing. According to some studies, the students are better at critiquing and editing written work that is exchanged over a computer network with students they know [51].
6. *Differentiated Instruction.* Educational technology provides the means to focus on active student participation and to present differentiated questioning strategies. It broadens individualized instruction and promotes the development of personalized learning plans in some computer programs available to teachers. Students are encouraged to use multimedia components and to incorporate the knowledge they gained in creative ways [52]. This allows some students to individually progress from using low ordered skills gained from drill and practice activities, to higher level thinking through applying concepts creatively and creating simulations [53]. In some cases, the ability to make educational technology individualized may aid in targeting and accommodating different learning styles and levels [54].

The strength and weaknesses or assets and liabilities of the use of technologies in teaching and learning processes are seen in the following table:

Strength/Assets	Weaknesses/Liabilities
Just-in-time information Learn how to use technology (individually & in a small group)	Divided attention so some are missing the work of the group or having private study
Tools to make group more efficient & interdependent	Distraction and/or diversion of group work
Can be used to create "shared experience"	Time sink for searches
Instant tool to look up definitions quickly for group	Source reliability and validity
Projection of scribe work on screen	Computer operation and presenter control
Ability to save scribe work as .doc or .pdf files	File organization
Projection of notes, diagrams, pictures on screen	File sharing
Ability to save any notes, diagrams, pictures on screen	Not using the technology wisely
Instant question submission to weekly Synthesis & Integration Panel	Leaning on technology rather than learning
Emails to and from experts in group	Instant Evidence Based Medicine work (discourages preparation?)
Paperless educating/learning	Slows the group down
Easier to administer progressive disclosure	Greater preparation required on the part of the facilitators and the block case writers
Will eliminate paper copies	Technology training required
	Physical barrier to group participation

Suggested "ground rules" for heading off potential misuses of technology:

1. Discussion is still supreme (as opposed to reading off a screen).
2. Laptop work must be related to the groups tasks (no personal email, chat or other surfing/playing).
3. System should be used for sharing information (send to Blackboard and bring up in class as favorite resources).
4. Scribe should control the technology for the session.
5. Wrap up should include evaluation of how the technology is being used.
6. Group agrees on what they believe is appropriate use.
7. Give immediate feedback if technology is being used inappropriately.
8. Agree that it is not appropriate to look up work that should have been prepared in advance.
9. Purpose of technology is to enhance group effectiveness.
10. Quick look-ups allowed (less than 60 seconds)
11. Single, group-only computer. No individual users.

Note that the identified ground rules are simply suggestions for the group to negotiate. We encourage the facilitators to lead the group in a discussion so

the group has ownership. Our experience with this has consistently shown a more cohesive and unified group in terms of use of technology.

We feel this method helped us document some of the issues and moved us from victims to victors by allowing us to proactively begin to capitalize on emerging technologies as they become the new tools of the trade [55].

Criticism

Use of technology in education needs large scale spending of money. However, it is not sure that achieving improved students performances, outcomes and results from new technology based teaching [56].

New technologies are frequently accompanied by unrealistic hype and promise regarding their transformative power to change education for the better or in allowing better educational opportunities to reach the masses. Examples include silent film, broadcast radio, and television, none of which have maintained much of a foothold in the daily practices of mainstream, formal education [57]. There is a growing awareness that technology, in and of itself, does not necessarily result in fundamental improvements to educational practice [58]. Rather than having blind faith that technology will lead to improvements, it is becoming increasingly recognized that focus needs to be on the learner's interaction with

technology—not the technology itself. With that being said, technology should not be seen as a quick fix. It needs to be recognized as “ecological” rather than “additive” or “subtractive”. In this ecological change, one significant change will create total change [59]. Unless and until that happens, it is likely that expectations in learning outcomes will continue to exceed those observed in reality.

Electronic devices such as cell-phones and computers facilitate rapid access to a constant stream of sources, each of which may receive cursory attention. Michel Rich, an associate professor at Harvard Medical School and executive director of the Center on Media and Child Health in Boston, said of the digital generation, “Their brains are rewarded not for staying on task, but for jumping to the next thing. The worry is we’re raising a generation of kids in front of screens whose brains are going to be wired differently” [60]. Students have always faced distractions and time-wasters but computers and cell-phones are a constant stream of stimuli that poses challenge to focusing and learning. Although these technologies affect adults too, young people are more influenced by it as their developing brains can easily become habituated to constantly switching tasks and becoming unable to sustain attention [61].

As part of educational reform, new instructional materials and tests are being developed which are online and adaptive. This means that a computer will tailor questions to each student’s ability and calculate their scores. This initiative is pushed more by for-profit companies to increase the use of their products which is now a multi-billion dollar market. Online educational resources like Khan Academy is used as learning materials, but it is criticized for not looking into process and content but only the end result. Computer-based instructional model also encourages students to work individually rather than socially or collaboratively. Social relationships are important but high-tech environments may compromise the balance of trust, care and respect between teacher and student [62].

Massively Open Online Courses (MOOCs), although quite popular in discussions of technology and education in developed countries (more so in US), are not a major concern in most developing or low-income countries like India. One of the stated goals of existing MOOCs is to provide less fortunate populations (i.e., in developing countries) an opportunity to experience courses with US-style content and structure. However, research shows only 3% of the registrants are from low-income countries and although many courses have thousands of registered students only 5-10% of them complete the

course [63]. MOOCs also implies that certain curriculum and teaching methods are superior and this could eventually wash over (or possibly washing out) local educational institutions, cultural norms and educational traditions leads to digital divide [64].

Use of Technologies Must Comply with Information Technology Law

The use of technology in teaching and learning process rapidly is being used which is having advantages in effective learning activities. However, at the same time the technology is being misused and wrongly applied leading towards numerous problems such as corrupting the young minds due to pornography and affecting the privacy of the individuals. So, the use of the technology in an appropriate manner ensured in the Information technology laws which are needed to be observed and followed for maintaining culturally rich technosociety. The laws which provide for the better use of the technology for many purposes especially the educational activities are as follows:

The Information Technology Act, 2000

The United Nations General Assembly by resolution A/RES/51/162, dated the 30 January 1997 has adopted the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law. This is referred to as the UNCITRAL Model Law on E-Commerce. Following the UN Resolution India passed the Information Technology Act 2000 in May 2000 and notified it for effectiveness on October 17, 2000. The Information technology Act 2000 has been substantially amended through the Information Technology (Amendment) Act 2008 which was passed by the two houses of the Indian Parliament on December 23, and 24, 2008. It got the Presidential assent on February 5, 2009 and was notified for effectiveness on October 27, 2009. Information Technology Act 2000 addressed the following issues:

1. Legal Recognition of Electronic Documents
2. Legal Recognition of Electronic (Digital) Signatures
3. Offences and Contraventions
4. Justice Dispensation Systems for Cybercrimes

The Information Technology (Amendment) Act, 2008 as the new version of Information Technology Act, 2000 is often referred has provided additional focus on Information Security. It has added several new sections on offences including Cyber Terrorism

and Data Protection. A set of Rules relating to Sensitive Personal Information and Reasonable Security Practices (mentioned in section 43A of the ITAA, 2008) was released in April 2011 [65]. Some of the cyber law observers have criticized the amendments on the ground of lack of legal and procedural safeguards to prevent violation of civil liberties of Indians. There are also been appreciation about the amendments from many observers because it addresses the issue of Cyber Security.

Salient Features of the Information Technology Act, 2000

- Authentication of electronic records (Section 3)
- Legal Framework for affixing Digital signature by use of asymmetric crypto system and hash function (Section 3)
- Legal recognition of electronic records (Section 4)
- Legal recognition of digital signatures (Section 5)
- Retention of electronic record (Section 7)
- Security procedure for electronic records and digital signature (Sections 14, 15, 16)
- Licensing and Regulation of Certifying authorities for issuing digital signature certificates (Sections 17-42)
- Data Protection (Sections 43 & 66).
- Various types of computer crimes defined and stringent penalties provided under the Act (Sections 43, 66, 67, 72).
- Establishment of Cyber Appellate Tribunal under the Act (Sections 48-56)
- Appeal from order of Adjudicating Officer to Cyber Appellate Tribunal and not to any Civil Court (Section 57)
- Appeal from order of Cyber Appellate Tribunal to High Court (Section 62)
- Interception of information from computer to computer (Section 69)
- Act to apply for offences or contraventions committed outside India (Section 75)
- Investigation of computer crimes to be investigated by officer at the DSP (Deputy Superintendent of Police) level.
- Power of police officers and other officers to enter into any public place and search and arrest without warrant (Section 80)
- Offences by the Companies and firms (Section 85)
- Constitution of Cyber Regulations Advisory Committee (CRAC) who will advise the Central Government and Controller (Section 88).

New Provisions added through Amendments in 2008

- New Section to address technology neutrality from its present “technology specific” form i.e., Digital Signature to Electronic Signature (Section 3A).
- New Section to address promotion of e-Governance and other IT application:
 - a) Delivery of Service
 - b) Outsourcing – Public Private Partnership (Section 6A)
 - c) New Section to address electronic contract (Section 10A)
- New Section to address data protection and privacy (Section 43)
- Body corporate to implement best security practices (Sections 43A & 72A)
- Multimember Appellate Tribunal-Sections (49-52)
- Offensive messages and Spam (Section 66A)
- Pornography (Section 67A)
- Preservation and Retention of Data/Information (Section 67C)
- Blocking of Information for public access (Section 69A)
- Monitoring of Traffic Data and Information for Cyber Security (Section 69B)
- New section for designating agency for protection of Critical Information Infrastructure (Section 70A)
- New Section for power to CERT-In to call and analyse information relating to breach in cyber space and cyber security (Section 70B).
- Revision of existing Section 79 for prescribing liabilities of service providers in certain cases and to Empower Central Government to prescribe guidelines to be observed by the service providers for providing services. It also regulates cyber cafes (Section 79).
- New Section for Examiner of Digital Evidence (Section 79A).
- New Section for power to prescribe modes of Encryption (Section 84A)
- Punishment for most of offences was reduced from three years to two years.

- Mumbai Cyber lab is a joint initiative of Mumbai police and NASSCOM. There should be a definite forum to redress the grievances under the Cyber Space.
 - More Public awareness campaigns
 - Training of police officers to effectively combat cyber crimes
 - More Cyber crime police cells set up across the country
 - Effective E-surveillance
 - Websites aid in creating awareness and encouraging reporting of cyber crime cases.
 - Specialized Training of forensic investigators and experts
 - Active coordination between police and other law enforcement agencies is required.
 - Cyber security forum-Joint collaboration between India and U.S.
- Major provisions of the IT Act, 2000 ensures the use of the information and technology in right manner by prescribing punishments in the following manner:

Cyber Crime	Brief Description	Relevant Section in IT Act	Punishments
Cyber Stalking	Stealthily following a person, tracking his internet chats.	43, 65, 66	3 years, or with fine up to 2 lakh
Cyber Pornography including child pornography	Publishing Obscene in Electronic Form involving children	67, 67 (2)	10 years and with fine may extends to 10 lakh
Intellectual Property Crimes	Source Code Tampering, piracy, copyright infringement etc.	65	3 years, or with fine up to 2 lakh
Cyber Terrorism	Protection against cyber terrorism	69	Imprisonment for a term, may extend to 7 years
Cyber Hacking	Destruction, deletion, alteration, etc in a computer resources	66	3 years, or with fine up to 2 lakh
Phishing	Bank Financial Frauds in Elec- tronic Banking	43, 65, 66	3 years, or with fine up to 2 lakh
Privacy	Unauthorized access to computer	43, 66, 67, 69, 72	

Section 66A of the Information Technology Act provides for punishment for "Sending Offensive Messages". The Section can be read: 66(A) *Punishment for sending offensive messages through communication service, etc.: Any person who sends, by means of a computer resource or a communication device, - any information that is grossly offensive or has menacing character; or*

(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device,

(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine.

'Explanation.- For the purpose of this Section, terms "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, images, audio, video and any other electronic record, which may be transmitted with the message.

Section 66A has been criticized and challenged in Lucknow and Madras High Courts for its constitutional validity [66]. Recently the Supreme Court of India has struck down Section 66A as being violative of Article 19(1) (a) of Constitution of India [67]. Section 67 provides for the punishment for publishing or transmitting obscene material in electronic form. Section 67A provides for the punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form. Section 67B provides for the punishment for

publishing or transmitting of material depicting children in sexually explicit act, etc, in electronic form. Section 69 empowers the Central Government/State Government/ its authorized agency to intercept, monitor or decrypt any information generated, transmitted, received or stored in any computer resource if it is necessary or expedient so to do in the interest of the sovereignty or integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence or for investigation of any offence. They can also secure assistance from computer personnel in decrypting data, under penalty of imprisonment.

Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Information) Rules, 2011 [68]

The protection of personal information lies at the heart of the right to privacy; and, for this reason, it is an imperative legislative and policy concern in liberal democracies around the world. In India, although remedies for invasions of privacy exist in tort law and despite the Supreme Court of India according limited constitutional recognition to the right to privacy, there have never been codified provisions protecting the privacy of individuals and their personal information [69]. These rules can be regarded as the first law on the right to privacy which is narrated in the following manner.

Rule 2(i) defines the personal information: “*Personal information*” means any information that relates to a natural person, which, either directly or indirectly, in combination with other information available or likely to be available with a body corporate, is capable of identifying such person.

Rule 3 of the Sensitive Personal Data Rules provides an aggregated definition of sensitive personal data as follows:

Sensitive personal data or information of a person means such personal information which consists of information relating to:

- Password
- Financial information such as Bank account or credit card or debit card or other payment instrument details,
- Physical, physiological and mental health condition,
- Sexual Orientation,
- Medical records and history,
- Biometric Information,

- Any detail relating to the above clauses as provided to body corporate for providing service, and
- Any of the information received under above clauses by body corporate for processing, stored or processed under lawful contract or otherwise.

Provided that, any information that is freely available or accessible in public domain or furnished under the Right to Information Act, 2005 or any other law for the time being in force shall not be regarded as sensitive personal data or information for the purposes of these rules.

In accordance with the principle that certain kinds of personal information are particularly sensitive, due to the intimate nature of their content in relation to the right to privacy, to invite privileged protective measures regarding the collection, handling, processing, use and storage of such sensitive personal data, it is surprising that rule 3 does not protect electronic communication records of individuals. Emails and chat logs as well as records of internet activity such as online search histories are particularly vulnerable to abuse and misuse and should be accorded privileged protection.

Rule 8 provides for the Reasonable Security Practices and Procedures in the following manner: *A body corporate or a person on its behalf shall be considered to have complied with reasonable security practices and procedures, if they have implemented such security practices and standards and have a comprehensive documented information security programme and information security policies that contain managerial, technical, operational and physical security control measures that are commensurate with the information assets being protected with the nature of business. In the event of an information security breach, the body corporate or a person on its behalf should be required to demonstrate, as and when called upon to do so by the agency mandated under the law, that they have implemented security control measures as per their documented information security programme and information security policies.*

The Sensitive Personal Data Rules represent India’s first legislative attempt to recognise that all persons have a right to protect the privacy of their personal information. However, the Rules suffer from numerous conceptual, substantive and procedural weaknesses, including drafting defects, which demand scrutiny and rectification [70].

Information Technology (Intermediaries Guidelines) Rules, 2011 [71]

Rule 3 Provides for observance of due diligence by intermediary [72] while discharging their duties which are as follows:

1. The intermediary should publish the rules and regulations, privacy policy and user agreement for access-or usage of the intermediary's computer resource by any person.
2. Such rules and regulations, terms and conditions or user agreement should inform the users of computer resource not to host, display, upload, modify, publish, transmit, update or share any information that:
 - (a) Belongs to another person and to which the user does not have any right to;
 - (b) Grossly harmful, harassing, blasphemous, defamatory, obscene, pornographic, paedophilic, libellous, invasive of another's privacy, hateful, or racially, ethnically objectionable, disparaging, relating or encouraging money laundering or gambling, or otherwise unlawful in any manner,
 - (c) Harm minors in any way,
 - (d) Infringes any patent, trademark, copyright or other proprietary rights,
 - (e) Violates any law for the time being in force,
 - (f) Deceives or misleads the addressee about the origin of such messages or communicates any information which is grossly offensive or menacing in nature
 - (g) Impersonate another person,
 - (h) Contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer resource,
 - (i) Threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign states, or public order or causes incitement to the commission of any cognisable offence or prevents investigation of any offence or is insulting any other nation.
3. The intermediary should not knowingly host or publish any information or should not initiate the transmission, select the receiver of transmission, and select or modify the information contained in the transmission as specified in sub-rule (2): provided that the following actions by an intermediary should not amount to hosting, publishing, editing or storing of any such information as specified in sub-rule: 2.(a) temporary or transient or intermediate storage of information automatically within the computer resource as an intrinsic feature of such computer resource, involving no exercise of any human editorial control, for onward transmission or communication to another computer resource; (b) removal of access to any information, data or communication link by an intermediary after such information, data or communication link comes to the actual knowledge of a person authorised by the intermediary pursuant to the provisions of the Act.
4. The intermediary, on whose computer system the information is stored or hosted or published, upon obtaining knowledge by itself or been brought to actual knowledge by an affected person in writing or through email signed with electronic signature about any such information as mentioned in sub-rule (2) above, should act within thirty six hours and where applicable, work with user or owner of such information to disable such information that is in contravention of sub-rule (2). Further the intermediary should preserve such information and associated records for at least ninety days for investigation purposes.
5. The Intermediary should inform its users that in case of non-compliance with rules and regulations, user agreement and privacy policy for access or usage of intermediary computer resource, the Intermediary has the right to immediately terminate the access or usage rights of the users to the computer resource of Intermediary and remove non-compliant information.
6. The intermediary should strictly follow the provisions of the Act or any other laws for the time being in force etc.

Conclusion

Globalization and ICT (Information and Communication Technology) revolution in India has changed the form of information drastically. It made information more accessible portable and handy. However, there are threats of the same at the alarming level which can be understood by going through the statistics provided here. Today Cyber crime is a bigger threat to India in comparison to physical crime. In a survey conducted by National Crime Records Bureau (NCRB), Ministry of Home Affairs shows that cyber crime is increasing everyday in various forms. Cyber Crimes increased by 22.7% in 2007 as compared to previous year. Cyber Forgery 64.0% (217 out of total 339) and Cyber Fraud 21.5% (73 out of 339) were the main cases under IPC category for Cyber Crimes. 63.05% of the offenders under IT Act were in the age group 18-30 years (97 out of 154) and 55.2% of the offenders under IPC Sections were in the age group

30-45 years (237 out of 429). According to analysts at the Indian Institute of Science, Tax evasion, cheating on the Internet, identity theft, child pornography and other cyber crimes cause a loss of \$50 billion annually.

Recent trend shows that there has been a 100% increase in cases of publication or transmission of obscene material, including child pornography, using electronic means in just one year – 2012 to 2013. Statistics shows that 1,203 cases were reported last year as against 589 in 2012. The maximum number of 234 cases was reported from Andhra Pradesh, a nearly 74 per cent jump from 2012.

In a written reply to the Lok Sabha to a specific question by BJP MP Varun Gandhi, the Ministry of Home Affairs shared statistics according to which Kerala stood second with 177 cases. A total of 159 cases were registered in Uttar Pradesh as against only 26 in 2012. While no such cases were reported from Assam in 2012, the State recorded over 100 per cent increase with registration of 111 cases in 2013.

Cases went up from 48 to 81 in Rajasthan and in Maharashtra, there was 60 per cent increase in reported offences that are punishable under the Indian Penal Code and Sections 67, 67A and 67B of the Information Technology Act. Of the total 737 arrests, the maximum (167) were made in Uttar Pradesh and 130 in Maharashtra.

The reasons for this are lack of empirical data on child pornography is proving to be a hurdle to the allocation of resources for training, law enforcement and understanding of how to conduct investigations into such cases. "The National Crime Records Bureau (NCRB) statistics do not provide any information on child pornography cases. As a result, the gravity of the issue is not being appreciated. The entire system of data collation should be overhauled," said Vidya Reddy of Tulir–Centre for the Prevention and Healing of Child Sexual Abuse, a non-government organization [73].

Suggestions

1. Regulating Firms of Service Providers and Cyber Cafes: In India, Firms of Service providers and Cyber cafes have emerged as base for cyber crime including cyber terrorism. Various offences relating to cyber crime suggest that local cyber cafes have been used for sending threatening mails to any individual or to any high officials. Earlier, cyber cafes were required to create detailed records about their customer's browsing habits, but the same is not being abided by the Cafes.

2. Dispute Settlement: The IT Act provides various modes of dispute settlements. However, citizens are not aware of various kinds of commonly committed cyber offences, procedure for filing a case, resolving a dispute. There is also a lacuna of trained judges and skilled investigators.
3. Contractual Aspect: This unprecedented growth of internet, calls for a legal framework for e-commerce in India. IT act deals with some contractual aspect in E-commerce. However, several practical problems still exist when we form a contract.
4. Training for Judges and Skilled Investigators: We need to promote and facilitate the fair use of cyber space among general masses and also there is an immediate requirement of skilled investigators and trained judges for fair and effective dispute resolution.
5. India needs to address various questions; issues relating to cyberspace and the most appropriate way to start are the creation of a comprehensive legislation which should address broad area of cyberspace taking into consideration sectoral, institutional and individual requirements by introducing appropriate legal framework.
6. The amendments in several laws by the IT Act are a good beginning but several changes are still needed for the act to ensure both functional equivalence and technological neutrality.
7. International agreements by way of convention and cooperation are required for various dispute resolutions in International arena.

Laws are not the solutions themselves they need to be observed and implemented effectively by the concerned such as public at large and implementing agencies then only desired goals can be achieved to expected level.

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72. Section 2(1)(w) of the Information Technology Act, 2000 amended in 2008 defines the term 'Intermediary' which means "intermediary with respect to any particular electronic records, means any person who on behalf of another person receives, stores, or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes.
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Review Article

A Solution to Corporate Fraud

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Abstract

Law is the procedure to maintain harmony and balance in the society. Humans were the only subject of law, but after industrial revolution, the world has witnessed corporate giants holding more wealth than small economies of the world. Thus, corporates have placed themselves as subject of law. Each corporate has a CEO who dictates corporate policies which revolves around a sole motive of earning profit. The capital is collected by deposits from general public to conduct business. But in real practise, a handful of wealthy families control the entire corporate world. Occurrence of corporate fraud has become a common problem throughout the world. Such frauds can be controlled by identifying the distinction between personal and corporate funds. It is essential for ethical conduct of business. Ethical dilemmas arise from conflicting interests of parties involved. The core ways of handling frauds in organisations can be classified into two broad headings: Corporate Governance and Corporate Social Responsibility. Corporate governance is a prescribed set of system, process and principles which ensures fair and transparent governance of a company. Corporate Social Responsibility (CSR) shows the path of ethical conduct. It provides a philosophical foundation for responsibilities of corporations. CSR works to makes business effective and at the same time it makes the business organization a good and just society. It ensures the following of principles of contributive justice. The author proposes to reflect a solution for corporate frauds by combining the concept of corporate governance and corporate social responsibility.

Introduction

The rapid growth of trade and commerce has brought a dynamic change in the course of business. Gone are the days when sole proprietorship or simple forms of partnership used to dominate the business world. The consumer preferences have increases many folds and thus, a new form of business mechanism came into existence which is

known as company or corporation.

The word company has been derived from two Latin terms: *com* and *panis*. 'Com' means with or together and 'panis' means bread. Thus, originally the world 'company' denotes an association of people who took their meals together. In other words, company is an association of person incorporated for common purpose and thus evolved as a new form of business mechanism.

According to Justice Lindley, "a company is an

association of many persons who contribute money or money's worth to a common stock and employed it in some trade or business and who share the profit or loss arising there from. The common stock so contributed is denoted in money and is the capital of company. The persons who contributed it or to whom it belongs are the members. The portion of capital to which each member is entitled is his share. The shares are always transferrable although the right to transfer them may be restricted" [1].

A company is an association of persons who conduct business with common stock as contributed by the members of association. Industrial Revolution in nineteenth century had given momentum to conduct business by joint stock companies. Companies like British East India Company were incorporated to satisfy trading interests. These companies started crossing international borders in search of raw materials and thus the concept of transnational corporations evolved. The post-Second World War has witnessed a trading regime controlled by transnational Corporations. For example, in US half of the imports can be regarded as transactions involving transnational corporations. (Krugman & Obstfeld 2000). According to World Investment Report, these corporations influence the nature and size of world economy with their international transactions [2]. With huge capital in hand, these giants have started manipulating the funds. The first part of the paper focuses on the conceptual aspect of corporate fraud. The second section of the article throws light on certain instances of corporate frauds whereas the third section looks for reasons of corporate fraud. The fourth part emphasises on solution for corporate fraud.

Corporate Fraud

Webster's New World Dictionary defined fraud as the intentional deception to cause a person to give up property or some lawful right. Publication of misstatement by a corporation to deceive the shareholders and other stakeholders, is known as corporate fraud.

Bologna (1995) classified corporate fraud on the basis of victims: *internal* fraud and *external* fraud. Fraud is internal if the victim is internal. The board of directors, managers may suffer a financial as well as reputational loss and thus may be termed as internal fraud. On the other hand, external fraud deals with loss of investors, creditors, suppliers, customers [3]. Davia had classified corporate fraud as transaction versus statement fraud. Transaction

fraud represents embezzlement or stealing of organizational assets whereas statement fraud denotes misstatement of financial values. The objective of statement fraud signifies intentional enhancement of profit index to defraud shareholders and creditors [4]. In Davie's terminology, these two classifications can be termed as *financial statement balance* fraud and *asset- theft* fraud.

The present world has seen scams and frauds which have damaged economy globally. Collapses of high profile companies have raised the question relating to effectiveness of financial reports and credibility of audit committees. The purpose of publishing financial report and audit reports is proving futile as increase in corporate frauds have dampen the confidence of investors.

Few Instances of Corporate Fraud in India

Though there are numbers of corporate frauds have taken place in India yet a few have been discussed here to understand the problem at hand.

Satyam Scam

From Satyam Scam, Ketan Parekh Securities scam and NSEL scam, it appears that corporate fraud is turning into a major problem in India. Generally there are three categories of people who commit corporate fraud. They may be top officials like CFO or CEO or middle-level or low-level management staff [5].

Research shows financial audit reports are not the reliable source to detect fraud. Satyam Scam is one such example. Satyam Computers Services Private Limited was incorporated in 1987 in Hyderabad by Mr. Ramalinga Raju. It was a 'rising star' IT-service industry. Since 2005 Satyam won several awards. But, unfortunately immediately after bagging 'Global Peacock Award' for global excellence in corporate accountability, it become the focus of accounting fraud. On 7th January 2009, Mr. Raju disclosed to the Board of Directors of the company that he was manipulating company's accounts for years. One and half billion dollars were not existent in company's accounts. The company has been overstating accounts for several years. Mr. Raju along with global head of internal audit had opened several fake accounts to satisfy his greed of money. According to CBI reports, fraud can be traced back to 1999 when the company started showing double digit growth rate. Mr. Raju had violated all his duty of care as was imposed upon him as a fiduciary.

The objective of the fraud was to divert company's money into real estate investment business, show inflated profits and to make huge profit by selling state at higher price. Initially the gap between the accounts book and reality was nominal but with passage of time, gap became unmanageable.

Role played by Auditing Firm

Satyam has claimed \$1.04 billion in non-interest bearing accounts. According to accounting professionals, any company with such huge amount will either invest in interest bearing account or hand over the excess fund to shareholders. This raises suspicion on Price water house Coopers (PwC), global firm which audited Satyam's accounts since 2000. Moreover, the auditors never verified the figures independently about the money from the bank.

Another interesting point regarding PwC is that Satyam paid twice the money to PwC for auditing. Does that mean the auditing firm is an integral part of the whole scam? Furthermore, Price water house Coopers had audited the accounts of Satyam for nearly a decade and they could not discovered the fraud whereas Merrill Lynch uncovered the fraud within ten days [6].

Outcome of Satyam Fraud

Satyam share prices fell to 11.50 rupees. Merrill Lynch severed all ties with Satyam. PwC faced serious scrutiny from the whole sector. In fact, all other clients of PwC were also under suspicion. But, immediately after the declaration of fraud, steps have been taken to rescue Satyam. New Board of Directors was appointed without wasting any time so that the firm can survive the situation. The new board started looking for solutions to save Satyam from meeting same fate as Enron. On the other hand, Indian Government started investigating the fraud. The government had set up a time line of hundred days to sell off the company. Securities and Exchange Board of India (SEBI) appointed a retired Supreme Court Justice, Mr. Barucha, to supervise the auction. Finally, Tech Mahindra brought Satyam after making the highest bid and Satyam could be saved from meeting the same fate as Enron.

In January 2014, the Economics Offences Court convicted Mr. Raju and others to imprisonment for Satyam Scam. The male directors involved in the scam were imprisoned for one year with ten thousand rupees fine whereas female directors were granted a sentence of six months with five thousand rupees penalty [7].

Ketan Parekh Securities Scam

Ketan Parekh fraud started in 1990s which resulted in bringing down several co-operative banks in India. There is a striking similarity between Satyam fraud and Ketan Parekh fraud. Both frauds were committed with the help of top managements.

Although Ketan Parekh (KP) was a successful broker, he did not have enough money to buy large stakes [8]. According to analysis, KP borrowed from various companies and banks for fulfilling its objective. KP used to buy shares from the market at low prices and when prices go high, he pledged the shares with banks for getting funds. A small Ahmadabad based bank, Madhavapura Mercantile Cooperative Bank (MMCB) was the main partner in the fraud. First method they used was pay order route. KP used to issue cheque drawn on Bank of India (BOI) to MNCB, against which MNCB used to release pay order. Second route is issuing of loans to KP without sufficient collateral security. At the same time, KP was also collecting money with the help of other brokers and agents from the Mandvi branch of the same bank [9].

The pay order route turned out to be fatal for public sector banks like State Bank of India, Bank of India, and Punjab National Bank. The Global Trust Bank also issued loans to KP.

NASDAQ crash in December 2000 led to payment problems in the markets. Payment crisis in Calcutta Stock Exchange (CSE) was the major blow on business activities of KP. Brokers from CSE used to buy shares for KP. Officially the scrips were in the name of brokers but in practice KP had control over them. These scrips were the safety valve for KP and paid 2.5 per cent weekly interest to the brokers. By the beginning of 2001, the value of these scrips reduced to half. CSE brokers started pressurizing for payments and thus KP turned to MNCB for loan which MNCB honoured without any security.

Small investors, who lost almost every penny of their savings in the scam, believe the scam is the result of broker-banker-promoter nexus proved fatal. On the other hand, SEBI was also blamed of poor market intelligence.

Parekh was arrested and was in custody for fifty-three days and then released on bail in May 2001. Though Parekh is currently bared from stock trading, he is still operating through various companies and other actors [10]. CBI Court has convicted Parekh for cheating to two years of rigorous imprisonment. Aftermath of the scam resulted in reduced trading cycle. Thus trading cycle is now one day instead of one week. Forward trading was formally introduced

in the form of exchange-traded derivatives to endure a well regulated future market [11].

NSEL Scam

NSEL is promoted by Financial Technologies India Ltd. and National Agricultural Cooperative Marketing Federation of India Ltd. (NAFED). The scam was identified when National Spot Exchange could not pay its investors in July 2013. NSEL was promoted as a spot exchange and mere 100 shares were assigned to NAFED so that the brand name can be used.

NSEL got exemption from Forward Contracts Regulation Act (FCRA) 1952. The exemption was granted by the then head of Consumer affairs Minister, Mr. Sharad Pawar. The exemption was allowed only for one day forward contract to eleven days contract. Later in 2010, the company applied for registration of contracts exceeding eleven days to FMC. FMC did neither approved nor reject the same. NSEL went ahead with selling long term contract with the help of brokers. The Ministry of Consumer affairs had full knowledge of these illegal contracts but nothing was done to stop them.

In the beginning of 2012, FMC was appointed to collect data from NSEL for protecting investors' interest. One show cause notice was issued to NSEL for violating registration norms under FCR Act. It was realized only in 2013 that most of the underlying commodities did not exist and all the transactions were only on papers. Many borrowers got funds without any underlying commodity deposited. One of such borrower is a company owned by the son-in-law of the former chairperson Mr. Shankarlal Guru of NSEL. Moreover, minutes of the meetings were showed warehouses which existed only on paper.

Mr. Jignesh Shah, promoter, had powerful political connections. Thus, the company managed to escape for a long period of time. To add to the benefit of the company, there is no particular body to regulate spot commodity trading. The formal authority, Forward Markets Commission, has powers only on paper. There is no sanction attached to the authority. Another aspect of the fraud includes ex-officials being part of MCX and vice versa [12]. But later, Mr. Jignesh Shah was arrested. Shah has been charged with criminal misappropriation, forgery, criminal conspiracy and the MPID Act for defrauding investors [13]. This scam was a pre-planned and pre-mediated.

All three corporate frauds discussed in the paper prove certain commonality in frauds. The next part of the paper shifts its focus to such issues.

Issues involved in Corporate Frauds

Financial statement fraud includes three characteristics namely, opportunity, attitude or rationalisation and motive or pressure. **Cressey** (1986) calls these three factors as fraud triangle. Opportunity provides the circumstance for the management to commit material manipulation on financial statement. Rationalization relates to morals and ethical values. Fraudsters look for a way to reason their action. Lastly, motive is greed for profit. It is in scripted in human nature to look for some extra easy money. The target group for these fraudulent companies always involve people who are in need of extra money.

The next issue is related to transparency. Company accounts involve complex financial statements which allow the wrong doers to manipulate the financial statements to prove creditability of their companies.

Next in line is poor management information. When a company is not producing result and other reports in timely manner, it can be presumed that some accounts and reports are being manipulated. Many companies make their audit committee to report to their own Financial Directors. When the internal audit committee, work in non-independent matter, the likelihood of fraud increases. Many a times, signals of fraud are ignored by such authorities.

Corruption is one of the leading causes of fraud. Starting from the top level to lower level, officials become corrupt. Each official safeguards the other and thereby the magnitude of fraud increases to a great extent until it gets exposed. Thus, it is clear that corporate fraud happens because of various reasons and therefore the next section of the paper deliberates on a proposed solution to corporate fraud.

A proposed solution to corporate fraud

Corporations around the world are struggling with corporate frauds and it is an established fact that imposing strict legal framework is not helping to stop such occurrence. Such frauds can be controlled by identifying the distinction between personal and corporate funds. It is essential for ethical conduct of business. Ethical dilemmas arise from conflicting interests of parties involved. The core ways of handling frauds in organizations can be achieved by sharing of responsibility from both sides: Corporate Governance and Corporate Social Responsibility.

Corporate governance is a prescribed set of system, process and principles which ensures fair and transparent governance of a company. The

purpose of corporate governance is to promote the enterprises in timely disclosures of financial and other reports to address the major concerns of investors and other stakeholders. The process also helps enterprises to attract investment.

One of the common methods of good governance involve disclosure of financial and operating results. All corporate governance codes around the world, including OECD and ICGN principles, expressly require the board of directors to furnish such reports.¹⁴ Mere availability of guidelines is not enough. The board could easily identify the loop holes of the financial situations and thus can be easily manipulated. The investors should also equip themselves against such instances. Frauds do not happen in one day. Every manipulation signals detection. Investors can keep an eye on incentives for CEO and CFO. If the incentives are higher than their base salary then the executives will be more motivated for manipulating company books. Another signal can be late or amended fillings. It is the responsibility of the investors to dig a little further to determine whether it was a mere clerical error or deliberate misstatement [15].

On the other side, Corporate Social Responsibility [16] can be defined as a responsibility of enterprises should take in a process to integrate social, environmental, ethical human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders [17].

UNIDO defines CSR as a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders. CSR is also known as Triple Bottom Line Approach [18]. The three layers involve balance of economic, environmental and social imperatives.

In triple bottom line approach, the companies must take care of the economic interests of the shareholders. Corporations have to take responsibility of the actions taken by their agent. *Salomon versus Salomon & Co* [U.K 1897] had recognized separate identity of corporations from their agents but corporate veil should be lifted to punish the bad man [19] in cases of corporate fraud. The law has to focus on company's internal responsibility process along with external accountability. Therefore, it is always better to make the managers of corporations to distinguish between ethical and unethical conduct of business and not to let the bad man born in their minds.

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 19. Bad- man theory is a jurisprudential doctrine or belief, pronounced by Oliver Holmes J., according to which a bad person's view of the law represents the best test of what exactly the law is.
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Review Article

The Permission to Rape: Implications of Exception 2 to Section 375, IPC 1860

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Abstract

The following article is an analysis of Exception 2 to Section 375 of the Indian Penal Code, 1860. The provision is an exception clause to Section 375 of the IPC, 1860 which deals with the offence of rape and has been lately amended by the Criminal Law (Amendment) Act of 2013. While the provision is exhaustive and explanatory in detail, it gives a nod to and exempts marital rape. It states expressly that sexual intercourse by a man with his wife, who is not 15 years of age, is not rape. The provision is contradictory to not only its very own section but also to a number of other laws. Firstly, it allows for a man to rape his own wife. Secondly, it technically reduces the age of consent for a married woman, where in turn it also implies that there is no requirement of consent of a married woman. It is also not seen as criminal under the laws relating to domestic violence. There is no respite for a woman who suffers at the hands of her own husband, but if she was raped outside, the laws would help her. India is a signatory member of the Convention on the Elimination of all forms of Discrimination against Women, but has not done away with an expressly oppressing law. We are still stuck with the ancient laws based on the principle of *pativrata*. The article discusses in detail the foundation of the irrevocable consent, the development of law, the implications of the current law and the need and suggestion for changes.

Keyword: Rape; Judicial Separation; Decree; Pativarta; Separated Wife; Divorce

Introduction

The law relating to rape in section 375 of the IPC was amended by way of the Criminal Law (Amendment) Act 2013. The provision itself is descriptive and not much is left for implied meanings. Reading the provision while keeping in mind the Nirbhaya case draws home the gravity of the need of the amendment. It is a well drafted law that leaves no scope for haywire interpretations, except for its tragic nod to marital rape, or rather the continued legislative

endurance to it. The law relating to marital rape contradicts the provisions of the very same section it is included in. Section 375 provides the exception that "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape" [1]. However, the same provision also seeks to protect girls below the age of consent of 18 years with the provision that "a man is said to commit rape if he ... (has sexual intercourse with a woman)... with or without her consent, when she is eighteen years of age" [2]. The predicament arises because a woman under 18 years of age is very much capable of being the legally

wedded wife of a man, by virtue of child marriage being only voidable at the option of one party [3] and not void. So if we consider an illustration where a 16 year old girl is raped by her husband it would not be an offence, but if the same girl, married or not, was raped by someone other than her husband it would be the offence of rape.

The essence of the offence of rape comes from the mental condition of the victim. Her refusal to engage in a sexual intercourse or her inability to give consent determines whether the act was rape or not [4]. It is disrespectful to the individuality of a woman to say that she cannot decide what she does with her body once she is married. It is like attaching proprietorship of her body to her husband. This provision affirms the age old belief of wives being the property of their husbands. Vinita Chandra, in her book 'Gender Relations in Early India', talks about the foundations of today's chauvinistic approach towards women. She quotes ancient scriptures to emphasize on the concept of '*pativrata*.' Jayal has commented on the transition of the concept of the wife from *sahdharmini*, one who is true friend and confidante of her husband who reserves for herself the right to independent judgment, to the *pativrata*, who is but a mere devotee of that exalted all wise and all powerful God called *pati* (husband) for he is the Lord. What *pativrata* symbolizes so well is really the 'service role' of women. Servility and complete subjection to the husband is prescribed for the wives by all the *Smriti*-writers in general. Vyasa says that a woman has no separate existence from her lord in matters of piety, gain and desire. The *sastras* have laid down the dependency of love [5]. The ideology of *pativrata* negated the very identity of a woman, as well as her choice even in the matters completely personal to her [6], like the control over her sex life. Since the woman was constantly required for her services, she could never be allowed to have the choice of renunciation for acquiring religious merit [7], where renunciation meant the giving up of family life and abstinence. The need for the continuous submission of a woman to her husband came from the belief that the man's life would be incomplete without a wife as he could not beget children without her. Depriving women of any choice, agency, justice and resourcefulness; the *pativrata* ideology was designed as an effective tool towards the social exclusion of women [8] and gave the husbands a customary, or rather lawful right over the subjection of their wives.

Thus, there was no concept of rape within marriage in the traditional Indian marriage system and it got the legislative nod under the British Raj despite the initiative taken by the lawmakers to do

away with the exemption. In 1855 the government was urged to intervene in the practice of child-marriage by the initiatives of the *Brahmo* reformer A.K.Dutt. The government responded to all these efforts with the inclusion of married girls in the age of consent clause in the 1860 Penal Code, i.e., sexual intercourse with a girl under 12 years of age, even by the husband, was statutory rape. It was only when the law members introduced the Consent Bill in January 1891 with the dual objectives of protecting young girls from immature prostitution and child-wives from premature consummation that the distinction between the married and the unmarried girls in the consent provisions became a highly charged issue. This step would have done away with the marital rape exemption. The Bengali barrister Manomohan Ghose provided the most detailed objections to the Indian consent bill on the grounds of the marital rape clause. He argued that there was no moral or legal justification for the inclusion of marital rape in the former and its exclusion from the latter. Ghose dismissed the idea that the prior inclusion of the marital rape clause in the IPC 1860 was sufficient grounds to retain the clause in the 1891 bill; the earlier provision he argued had led to not a single successful prosecution of an Indian husband on the charge of marital rape. He argued, moreover, that since a child wife was already sufficiently protected by the existing provisions of the penal code that held a husband criminally liable for various acts which constituted an offence against his wife if she were under twelve years of age with or without her consent – there was no reason to reinforce the provision of marital rape in the penal code. According to Ghose, the colonial authorities had a devious plan in insisting on the marital rape clause; for they were not committed to challenging patriarchal privileges as such, but only to making a symbolic attack on the 'honour' of Indian male. On the one hand, in the marital rape clause the Indian husband was being denied the 'lawful access to his wife. On the other hand, Ghose also demonstrated that the colonial law undercut any real challenges to a husband's patriarchal privileges by assuring to every Indian husband the absolute right to the company of his wife [9].

Thus, the exception clause to rape with respect to married girls stayed in the 1860 Penal Code, which was adopted by a number of South-Asian countries. All these countries including Sri Lanka and Bangladesh, exempt marital rape as an offence. In India the clause was amended to increase the age from 12 years to 15 years. However, it is little solace as regards the Prohibition of Child Marriage Act, 2006 and moreover, for married women across India, the

exception clause is a sentence to a life of sexual abuse. As stated by *The Abuse Counseling and Treatment, Inc.*, "When a woman is raped by a stranger, she has to live with a frightening memory. When she is raped by her husband, she has to live with the rapist". We continue to follow a law which is more than 150 years old, given by a people who were not our own, and follow it despite having come a long way in terms of individual rights and liberties of the people and seeing a great social advancement across the globe. Moreover, the laws of the law-giving country, the United Kingdom have also changed over time.

The United Kingdom laws with respect to marital rape were based on the principle of Irrevocable Consent. In his *History of the Pleas of the Crown* (1736), Sir Matthew Hale made the following pronouncement: 'But the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband which she cannot retract'[10]. Hale's pronouncement was accepted as an enduring principle of common law. However, finally, the principle which put in distress all the married women in UK and in turns all the married of countries which were once colonized by the crown, was made obsolete, two centuries after Hale's pronouncement. The marital rape exemption was abolished in 1991 by the Appellate Committee of the House of Lords, in the case of *R v R*. Owen J clearly expressed his reluctant acquiescence with Hale's general pronouncement, and the need to extend the exceptions to the doctrine of implied consent as follows:

"I accept that it is not for me to make the law. However, it is for me to state the common law as I believe it to be. If that requires me to indicate a set of circumstances which have not so far been considered as sufficient to negative consent as in fact so doing, then I must do so. I cannot believe that it is a part of the common law of this country that where there has been withdrawal of either party from cohabitation, accompanied by a clear indication that consent to sexual intercourse has been terminated, that does not amount to a revocation of that implicit consent. In those circumstances, it seems to me that there is ample here, both on the second exception and the third exception, which would enable the prosecution to prove a charge of rape or attempted rape against this husband" [11].

With changing social views, and international condemnation of sexual violence in marriage, courts have started to apply the rape laws in marriage. On 9th of July 1993, India ratified the Convention on the

Elimination of all forms of Discrimination against Women [12], which guides the State parties towards abolition of laws discriminatory towards women. In 2011, the UN Women report *Progress of the World's Women: In Pursuit of Justice* stated that: "By April 2011, at least 52 States had explicitly outlawed marital rape in their criminal code" [13].

Add to the international efforts towards the criminalisation of marital rape, the widely known damage it can cause to the victims of the act. Marital rape can be more emotionally and physically damaging than rape by a stranger. Dr. Judith McFarlane and Dr. Ann Malecha found in their research that following sexual assault 22% of sexually assaulted women reported suicide threats or attempts compared to 4% of physically-abused only women. And not just the victims, the children of the victims more often than not require professional counseling. Children of sexually abused mothers, age 12 to 18, showed the same degree of depressive behaviors as children under treatment for depression, and appreciably more behavioral problems than youngsters of physically-abused only mothers [14].

However, when the Indian legislators sat down to draft the Criminal Law (Amendment) Bill, 2012, they went back to the ancient views of the *sastras*, and no heed was paid to the humanitarian concerns over giving permission to a man to rape his wife. The chairman of the standing committee on home affairs M Venkaiah Naidu said that leaving scope for the wife to accuse her husband of rape "has the potential of destroying the institution of marriage" [15]. The committee also tried to point out that the wife has the refuge of the provisions of cruelty against women [16] in section 498A of the Indian Penal Code. However, the section does not define cruelty or specify sexual act as being inclusive of it and its punishment may extend to 3 years only. The Hindu Marriage Act also has provisions relating to cruelty as grounds for divorce. However, refusal to have sex has also been made a ground for divorce by judicial pronouncements and it is considered cruelty in itself. Thus, a married woman is left with no relief if she is raped by her husband.

Recently two judgments of the Indian Courts brought to the fore the contradiction of the laws as relates to man and woman. In May 2014, a judge, Virender Bhat, officially confirmed that rape laws do not apply to married couples—once you're legally wed, forced sex is no longer a crime. He was hearing a case in which a woman alleged she had been drugged, then forced to marry, and then raped—in other words, she hadn't consented to the marriage or the sex. Bhat said there was no evidence that the

accuser had been drugged, but he also said that if the woman's husband had forced himself on her, that wouldn't qualify as rape under Indian law [17]. On the other hand, in August 2014, the Family Court in Mumbai granted a man divorce over wife's demand for excessive sex. The husband had approached the family court in January, saying that his wife was "adamant, aggressive, stubborn and autocratic". The man, in his petition told the court that she was showing an "excessive and insatiable desire for sex" and harassed him since their marriage in April 2012. He also alleged that she administered him medicines and also forced him to consume liquor and forced him into having sex and whenever he tried to resist it, she would abuse him following which he had to succumb to her pressure and persistent demands. He said his wife has made his life horrible with her "cruel behavior" and her "excessive prank for sex" has made it difficult for him to live together with her under one roof. Judge Rao allowed the petition and dissolved the man's marriage [18]. While the cases maybe technically different from the remedial point of view, it goes on to show the gravity of importance that is given to the right the man over his sexual independence and the need for the woman to be sexually submissive.

Very few countries, as 52 is a very small number considering the number of countries that are part of the United Nations, considers rape as what it really is. Rape, not only marital rape, but rape as it is, must be treated as an act of violence first and then as sexual assault. It is an act of violence against the body and mind of a woman and it must be punished. If domestic violence is an offence, rape, which has been called a graver offence than murder, must be declared an offence.

Article 2 of The Declaration on the Elimination of Violence against Women states,

"Violence against women shall be understood to encompass, but not be limited to the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation..."

Also, under the Protection of Women from Domestic Violence Act 2006, Section 3 gives the definition of domestic violence to include sexual abuse.

Definition of domestic violence-For the purposes of this Act, any act, omission or commission or

conduct of the respondent shall constitute domestic violence in case it:

(a) Harms or injures or endangers the health, safety, life, limb or well being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional and economic abuse.

Explanation-I For the purposes of this section:

(ii) "Sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman. ..." [19].

Section 20 and 22 afford the victim monetary relief and compensation against the accused [20]. Thus, although a victim of marital rape can seek relief under the act it is only civil in nature and the rape is not considered a crime.

This seems to go against the whole principle of wrongs against the public being criminal in nature, as is the case with rape of unmarried women and violence of any kind itself. The perpetrator of a criminal act is punished and the current law regarding marital rape is a loophole against violent acts especially of the sexual nature.

In addition to the implications towards the domestic violence laws of the country, Exception 2 to Section 375, IPC also negates the purpose of the laws relating to child marriage and age of consent.

As per the Indian Penal Code, the instances wherein the husband can be criminally prosecuted for an offence of marital rape are as under:

1. When the wife is between 12–15 years of age, offence punishable with imprisonment up to 2 years or fine, or both; [21]
2. When the wife is below 12 years of age, offence punishable with imprisonment of either description for a term which shall not be less than 7 years but which may extend to life or for a term extending up to 10 years and shall also be liable to fine [22].
3. Rape of a judicially separated wife, offence punishable with imprisonment up to 2 years and fine [23].
4. Rape of wife of above 15 years in age is not punishable [24].

However, if the girl was unmarried, she would get justice and the perpetrator be punished with imprisonment of either description for a term which shall not be less than 7 years but which may extend to life or for a term extending up to 10 years and shall also be liable to fine, no matter what the victim's age [25]. Especially, if the victim being unmarried was

under 18 years of age, sexual intercourse with or without consent would be rape as the age of consent in 18 years.

This evident contradiction in the law on the age of consent has fettered the battle against child marriage in India but the government has chosen to concede to the “social realities of the nation”. The Centre has told the Supreme Court that it was deemed “not appropriate and practical” to remove this anomaly since there were at least 23 million child brides in India, who constitute nearly half of all child brides in the world and an attempt to bring sex in child marriages on a par with age of consent as others will lead to various “social tensions”. Significantly, in October 2013, the government refused to sign the first-ever global resolution on early and forced marriage of children, led by the UN which was supported by 107 countries.

A recent PIL by organization ‘Independent Thought’ emphasized that Exception 2 to Section 375 of the IPC allows sexual relationship with a married girl at the age of 15 whereas under all the others laws, a person below the age of 18 is a child. This contradiction in law, the PIL said, encouraged sexual relationship with a girl child under 18 because she is married.

Responding to a PIL that demanded removal of this disparity on age of consent, the Ministry of Home Affairs (MHA) conceded that while it was making efforts “in a discreet manner”, to prohibit child marriage, making the age of consent uniformly as 18 would throw up several other issues and although it’s stand on the issue of marital rape was “pragmatic” since marriage, being a social institution, is the bedrock of the society and ought to be protected. The affidavit mentions stringency of the law on prohibiting child marriage but waters it down by saying: “It is a fact that child marriages do take place in India. The social, economic and educational development in the country is still uneven and child marriages are taking place” [26].

This nonchalant approach towards child marriage and more so towards the sexual relations within it are expressed by a certain silence in the Prohibition of Child Marriage Act, 2006 (PCM Act). Although the Act seeks to prohibit the solemnization of marriages of girl below the age of 18 years and boys below the age of 21 years, it is only voidable and not *void-ab-initio*. It prescribes penalties for the solemnization, promotion, and allowing of child marriages. The Act is, however, silent on sexual relations in a child marriage. It extends legitimacy to children born of child marriages thus indirectly acknowledging sexual intercourse within a child marriage [27].

However, a positive development in this area has been the enactment of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). The Protection of Children from Sexual Offences Act, 2012 (POCSO Act), was enacted to protect children from offences of sexual assault, sexual harassment and pornography and to provide a child-friendly system for the trial of these offences. Under the POCSO Act, the term “child” has been defined to mean “any person below the age of eighteen years” [28]. The Act does not recognize sexual autonomy of children in any form. Children can also be held liable for committing sexual offences under the Act. As a result, sexual interactions or intimacies among or with children below the age of 18 years constitute an offence. This note examines the implications of the POCSO Act on child marriages. The marital rape exception has not been grafted into the POCSO Act under which an act of sexual intercourse with a person under eighteen is an offence irrespective of the gender or age of the victim or the accused. Further, one of the grounds of aggravated penetrative sexual assault is penetrative sexual assault by “a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child commits penetrative sexual assault on such child”. This is punishable with a fine and a minimum term of 10 years imprisonment which may extend to life imprisonment. It is clear that under the POCSO Act, a spouse of a person below the age of 18 years can be prosecuted. Irrespective of whether the marriage has been contracted voluntarily, a person having sexual contact with a person less than 18 years can be punished. Further, it is now mandatory for those who have information about the commission of a sexual offence to report it to the local police. Now, the real step forward is taken by Section 42A of the POSCO Act which was introduced by the Criminal Law Amendment Act, 2013. This provision states:

“42A. Act not in derogation of any other law—The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of its inconsistency.”

The above provision essentially implies that in case of conflict between the provisions of the POCSO Act and any other law, the former will override. Owing to Section 42A of the POCSO Act, the exception under the IPC will not apply. Thus, in all cases of child marriage where the bride or groom is

below 18 years of age, a charge of aggravated penetrative sexual assault can lie against them under the POCSO Act [29].

This provision also raises the question over the futility of having an exception clause in IPC as it is only contradictory to an overriding law and will create confusions. Also, although the POSCO Act solves the problem of child sexual assault within marriage, the problem of marital rape of majors still persists. One of the reasons or rather the major reason why a child marriage is prohibited is because sexual intercourse and reproduction can have adverse effects on the health of a minor girl. But marital rape has an effect on the reproductive rights and health of major women too.

In ancient India, the need for both protection and control of wife originated out of a sense of necessity for the protection of one's progeny and as such, the lineage. Procreation was considered the most important cause for marriage and hence, one should unite with one's wife [30]. Procreating sons was obligatory for her, not a matter of choice. The husband wielded complete rights and control over her reproductive potential. The Manusmriti states, "Of the seed and the womb, the seed is superior." It is the duty of the husband to procreate progeny on the wife's person which has nothing to do with the welfare of the wife, but merely a fulfillment of religious and social obligation [31].

The importance of the right to self sexual determination of women is increasingly being recognized as crucial to women's rights. In 2012, High Commissioner for Human Rights Navi Pillay stated that:

"Violations of women's human rights are often linked to their sexuality and reproductive role. (...) In many countries, married women may not refuse to have sexual relations with their husbands, and often have no say in whether they use contraception. (...) Ensuring that women have full autonomy over their bodies is the first crucial step towards achieving substantive equality between women and men. Personal issues—such as when, how and with whom they choose to have sex, and when, how and with whom they choose to have children are at the heart of living a life in dignity" [32].

Suggestions

Article 2 (g) of the Convention on The Elimination of all Forms of Discrimination Against Women (which India has ratified) states:

"State parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of

eliminating discrimination against women and to this end, undertake:...(g) To repeal all national penal provisions which constitute discrimination against women" [33].

It is high time that the contradictory provision of Exception 2 to Section 375, IPC 1860 be repealed for its blatant discrimination against women and children and the expressed freedom given to men with respect to their right over their wives.

The implications of the provisions reach the practice of child marriage India and re-assert the need for strict prohibition of the act. While it is recognized that it is a far reaching practice with a lot of lives affected by it, steps need to be taken to curb this evil from growing any further. POSCO Act is a great step ahead in the direction of saving children from sexual abuse at the hand of the spouse but it needs to be made known to a large number of people. Awareness about the Act is of prime concern and must be first priority in curbing sexual assault against married minors who do not know about the law other than IPC.

Article 16(2) of the Convention on the elimination of all forms of discrimination against women states:

"The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages and official registry compulsory" [34].

If India makes a law in consonance with this article it will become extremely easy in regulating marriages and the application of the laws. To prohibit expressly and completely the practice of child marriage in India and to make registrations compulsory will help in curbing and eventually rooting out the ancient practice.

Putting all the suggestions and implications aside, and keeping a clear view of the raw problems and the solutions with the social customs and the law, it is ever so increasingly emphasized that there is a need for a Uniform Civil Code. It is an answer to all the issues in the country. It is obvious that it is a very difficult proposal to apply. The customary and personal laws of the country do not allow for a uniform code without upsetting a few ideologies. However, that is more political than social in nature. If the needs of the people are kept in the forefront, a uniform civil code will bring a lot of lives out of the shadows of abuse. This is the ideal system. The ideal system is difficult to achieve. However, it does not mean that it must not be tried to be achieved. Political difficulty and inconvenience needs to be replaced by

a will to change the system, and eventually the ideal will become a reality.

Conclusion

It is evident that the exemption provision of Section 375 does not only legalize rape in marriage but also raises contradictions relating to laws for women and child rights. It is a loophole as regards domestic violence, it is nod to sexual relations with minors, it is an implied consent to child marriage and it plays a role in the oppression of the reproductive rights of women. The provision has far-reaching effects and takes the development of women's rights several steps back with its legislative endurance. Moving in step with the world in the quest for freedom of women from oppression, by legislating in accordance with the conventions we have ratified and learning from the laws of other countries, India must endeavor to achieve a system where a woman does not have to live in fear every step of the way; not in the outside world and especially not in her own home.

References

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2. Section 375, Indian Penal Code, 1860 (as amended by Criminal Law (Amendment) Act, 2013).
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 - (a). penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or.
 - (b). inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or.
 - (c). manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or.
 - (d). applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person.

under the circumstances falling under any of the following seven descriptions:—

Firstly: Against her will.

Secondly: Without her consent.

Thirdly: With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly: With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly: With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly: With or without her consent when she is under eighteen years of age.

Seventhly: When she is unable to communicate consent.

Explanation 1: For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2: Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act.

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1: A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape'.

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 "498A. Husband or relative of husband of a woman subjecting her to cruelty.— Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
 Explanation.- For the purposes of this section, "cruelty" means-
 (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
 (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand".
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Review Article

Empowerment of Common Masses through Information Regime

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Abstract

The Right to information Act of India, which came into force on 12th October 2005 is acknowledged as a landmark legislation and a high watermark in the evolution of Indian democracy. RTI is the outcome of series of judgements of Supreme Court of India, actions by civil society institutions and a growing discomfort within the government about excessive control over information by public authorities. The enactment of the Right to Information Act, 2005 is a historic event in the annals of democracy in India. Information is power and now a citizen has the right to access information "held by or under control of" the public authorities. Concurrently, it is the duty of all public authorities to provide information sought by citizens. After the enactment of RTI Act, 2005 if a simple question is asked whether people empowerment had become or not then the answer will be in yes. It is the public who have to empower themselves, no public authority is going to empower the common masses. The public can be empowered by demanding more and more information's.

This paper is in establishing the synergy between the Right to Information and Peoples Empowerment.

Keywords RTI; Public Authority; Democracy; Common Masses; Empowerment

Introduction

The Government of India enacted Right to Information Act, 2005. The Act is to provide for freedom to every citizen to secure access to information under the control of the every public authority, in order to promote transparency, accountability and efficiency in the working of public authorities. Much of the common people's distress and helplessness is traceable to lack of access of information and lack of knowledge of decision making process. The task of development administration will become easier if steps are taken to make information available as a matter of right to the citizens.

The Need for the Right to Information

The main thrust of the movement for the right to information in India has seen this right as being closely related to survival. Food security, shelter, environment and employment are all bound up with the right to information. In the absence of information on these issues, people remain marginalized and excluded from their rightful place in society. It is for this reason that in India, the movement for right to information has been as vibrant in the hearts of marginalized people as it is on the pages of academic journals and in media coverage. The result of secrecy has been disempowerment of common people and their exclusion from processes which vitally affect their existence. Information on matters such as employment schemes, obtaining certificates for

various purposes, and recommendations for different types of loans, access to different poverty alleviation programs, irrigation, drinking water, sanitation and education is a must for ordinary people, whether provided proactively or on request. In recent years, the historic lack of information on these and other matters has been mitigated by factors such as the growth of democratic values, the 'information revolution' and the decentralization of governance through the Gram Panchayats (village elected bodies), which are responsible for all of the issues noted in the preceding paragraph. However, although political power has been decentralized, the problem of gaining access to information remains at the level of local officials, who are often reluctant to be open because they represent vested interests or are party to corruption and misappropriation of funds.

Need of the Sensitization of Government Schemes

Food, shelter, livelihood and education, the most important aspects of a person's life, are provided in most rural areas through numerous 'schemes' run by the central or State government. Food, for example, is distributed through the notoriously corrupt 'Public Distribution System'—a network of 'ration shops' which distribute subsidized grains and other essentials. Stock registers are poorly maintained and are not available for inspection by the public. Corrupt practices include the replacement of grains with poor quality stocks or even non-distribution on the pretext of 'unavailability'.

There are also schemes for providing housing, [1] employment [2] and education [3]. Funds for these schemes are routed through the network of bureaucrats from the central or the state government down to the village. Although meant for the poorest of the poor in the rural areas, these funds have been routinely misappropriated and/or misused on a scale which, even on a rough calculation, would amount to many times that of the better-known large-scale corruption scandals. In most cases, people do not know about the existence of these schemes, or at least salient details, such as their entitlements under the scheme, paving the way for them to be tricked into accepting less than their allocation through forgery. Furthermore, records are often tampered with, a relatively simple practice because no one outside the tight-knit governmental circle has access to them. For example, many records list fictitious beneficiaries of the schemes.

Land and lack of information about land entitlements and records is a major problem, especially since nearly two-thirds of the population

are dependent on agriculture. A regular complaint with rural people is the inability to access their own land records. To get a copy of their *patta* [4] is difficult. Not only are there delays and repeated time-consuming visits to various offices, but they also routinely have to pay bribes to the *patwari*, the *tehsildar* or the Block Development Officer (BDO) [5]. Lack of access to land records and knowledge about land laws have led to frequent instances of 'land grabbing' by powerful people. Here again, a common problem is the manipulation of records, especially where the beneficiary is a widow or an indigenous person. Health schemes are rarely advertised sufficiently to enable people to benefit from them. The anti-polio campaign is a case in point. The polio immunization program has received large amounts of government and international funding and yet many people are left out, due to ignorance about the scheme. This is compounded by an inability to monitor whether or not the vaccines have been administered properly, in part because information is not publicly available. In one incident in Uttar Pradesh, an epidemic of Japanese encephalitis broke out. Local health organizations were told that the preventive vaccine was not being manufactured at the responsible institute whereas in fact the government had simply failed to requisition the medicine. This only came to light long after the epidemic had broken out [6]. Consumer information is another area where it is important to have proactive dissemination of information, and consumer groups are fighting for stricter labelling laws on domestic as well as foreign products, especially food and medicines. Mandatory labelling of non-vegetarian products has recently been approved by the government under the Prevention of Food Adulteration Act [7].

Constitutional Guarantees

The recognition of the right to information is being included in the constitutional guarantees of freedom of speech and expression finds its genesis in Supreme Court decisions challenging governmental control over newsprint and bans on the distribution of newspapers. In a landmark case [8] the petitioners, publishers of one of the leading national dailies challenged restrictions in the Newsprint Control Order on the acquisition, sale and use of newsprint. The Supreme Court struck down the restrictions on the basis that they interfered with the petitioners' right to publish and circulate their paper freely, which was included in their right to freedom of speech and expression. The judges remarked: It is indisputable that by freedom of the press is meant the right of all citizens to speak, publish and express their views.

Freedom of speech and expression includes within its compass the right of all citizens to read and be informed. The dissenting judgment of Justice K.K. Mathew emphasized two aspects of freedom of speech and the individual interest in expressing oneself and the social interest in the attainment of truth. Regarding the latter, Mathew noted:

"Now in the method of political government the point of ultimate interest is not in the words of the speakers but in the hearts of the hearers" [9].

In a subsequent case, the Supreme Court held that media controlled by public bodies were required to allow both sides of an issue to be aired. Mr. Shah, the director of a non-governmental consumer rights organization, wrote a paper highlighting discriminatory practices by the Life Insurance Corporation, a government-controlled body. The Corporation published a critique of this paper in its institutional publication but refused to publish Mr. Shah's rejoinder. The Court held that a State instrumentality having monopolistic control over any publication is under an obligation to publish views contesting those it had presented [10]. The principle that the public have a right to receive information was even more clearly enunciated a few years later when the Court stated:

The basic purpose of freedom of speech and expression is that all members should be able to form their beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people's right to know [11].

In the area of civil liberties, the courts have tried to ensure a transparent criminal justice system, free from arbitrariness. The Supreme Court has specifically detailed all the information which must be recorded and provided to the accused or his or her family in order to achieve this objective. Listing the procedural safeguards for arrest and custody, the Supreme Court said, "Transparency of action and accountability perhaps are the two possible safeguards which this Court must insist upon" [12]. Furthermore, in *Prabha Dutt v. Union of India* [13] the Court held that there could be no reason for refusing permission to the media to interview prisoners on death row, unless there was clear evidence that the prisoners had refused to be interviewed. Thus, the right to acquire information includes the right to access sources of information.

The linkage between the right to life and liberty, guaranteed by Article 21 of the Constitution, and the right to know was clearly affirmed in another case by Justice Mukharji, who stated: *We must remember that the people at large have a right to know in order to take part in a participatory development in the industrial life*

and democracy. Right to know is a basic right to which citizens of a country aspire under Article 21 of our Constitution [14].

The right to access official information was further developed in a case where the respondent sought access to documents pertaining to the security arrangements, and the expenses thereof, of the Prime Minister. The Prime Minister claimed the right to decide whether disclosure of certain privileged documents was in the public interest or not. The Supreme Court noted:

'While there are overwhelming arguments for giving to the executive the power to determine what matters may prejudice public security, those arguments give no sanction to giving the executive exclusive power to determine what matters may prejudice the public interest. Once considerations of national security are left out there are few matters of public interest which cannot be safely discussed in public' [15].

The right to know has been reaffirmed in the context of environmental issues which have an impact upon people's very survival. Several High Court decisions have upheld the right of citizens' groups to access information where an environmental issue was concerned. For example, in different cases the right to inspect copies of applications for building permissions and the accompanying plans [16], and the right to have full information about the municipality's sanitation programme [17] have been affirmed. The overall impact of these decisions has been to establish clearly that the right to freedom of information, or the public's right to know, is embedded in the fundamental rights provisions of the Constitution. This position has been relied upon not only by independent advocates of the right, but also by official committees, as well as in the Objects and Reasons of the Bill on Freedom of Information, 2000.

Movement for Transparency

Most importantly, the Right to information has been made possible by continuous struggles, efforts and movement of many activists' and citizens' groups'. The Mazdoor Kissan Shakti Sangathan (MKSS), movement led by Aruna Roy, in May 1990 in a very backward region of Rajasthan's Bhim Tehsil, to assert their Right to information by asking for copies of bills and vouchers and names of persons who have been paid wages mentioned in muster- rolls on the construction of school, dispensaries, small dams and community centers. It spread quickly to other areas of Rajasthan and to other States. The attempts of Harsh Mandar the Divisional Commissioner of Bilaspur,

Madhya Pradesh in 1996 to throw open the registers of Employment Exchanges and the records of Public Distribution System to the citizens or the agitation led by Anna Hazare in Maharashtra in 2001 are some the examples. Consequently, the National Campaign for People's Right to Information (NCPRI), which became a broad-based platform for action, was formed in the late 1990s. As the campaign gathered momentum, it became clear that the Right to Information has to be made legally enforceable. Thus, it is amply clear that the movement for the right to information gained momentum after this right was recognized by several international documents. However, it took almost sixty years for full length legislation on the right to information to come into being. With the efforts of public spirited citizens who began a crusade against the attitude of secrecy of the government this golden piece of legislation saw the light of the day. It also needs to be mentioned here that the sensitized judiciary stood for the right to information time and again and finally the legislature first enacted the *Freedom of Information Act*, 2002 and thereafter the *Right to Information Act*, 2005.

Empowerment of Democracy and Governance through RTI

RTI promotes transparency in the governance process; it ensures accountability of the government to the public. Now public is more aware, although literacy rates are still very low and people are unable to understand what actually law is but then also those people who are literate and who know what this law is made for are using this law and also using their right to seek information for those who do not know how to use or how to get information from the public officials which they are willing to get. RTI is the finest piece of legislation which proves that law has a greater impact on building the society. RTI is building up a better society, a better democratic nation where government is run by its people. It helps in making of such a democratic nation where there is no existence of any democratic king, a king which is chosen by us but is not answerable to his citizens. The whole scenario has now changed after the enactment of RTI. Before this act there was also an act which was known as "The Official Secrets Act" and it saved the government and bureaucrats because of the deficiency in this law and hence India was deprived of what she has to be given. Pundit Jawaharlal Nehru once said, "*The constitution is after all some kind of a legal body given in the ways of Governments and life of people. A constitution, if it is out of touch with people's life, aims and aspirations becomes rather empty; if it falls behind those aims, it drags the people down. It should be something*

ahead to keep the peoples' eyes and minds up to a certain mark." Thus in a democratic nation like ours it is very important to participate in the governance and this could be done only by questioning about what and how government is working for us? How are we governed? How effective the policies are for us? What are the expenses? And all these came true due to the enactment of RTI, because it enables us to ask freely. RTI Act is powerful tool for ordinary citizens to try to overcome bureaucratic stonewalling and corrupt practices. Now after the 8 years of enactment there are millions of inquiries were made on the governance and even on the very petty things and public authorities are bound to follow. Nominal amount is charged hardly from 10 rupees-20 rupees and is free for the people who are below poverty line. It was RTI only through which India was able to find out the big scams which amounts in billions of dollars. Individual is free to ask and based on that he is free to act. By using RTI people can know about the services provided to them by the government, various policies of the government and thus give a chance to have a better understanding and a better overview of the functioning of the government based on which a person is able to utilize those services and policies in very better ways and are also able to decide whether to choose the same government or not based on the performances. All these become possible because of the RTI Act although people do not do the same but yes if once people start analyzing the government on the basis of its policies, functioning and governance which can only be evaluated properly with the help of RTI, that day is not very far when everyone will directly or indirectly effect the governance, and that day the dream of true democratization will come true.

RTI is not just the piece of legislation but also an important aspect of our society because this only act is sufficient to bring big social changes which everyone is seeking for. Although it is just to seek information but it is actually far away from that, it is not only for seeking information but actually a weapon in the hands of people to crusade various challenges and problems prevailed in the society. As per the cartoons by R.K Laxman, he clearly showed the power of citizens and also a hope in his cartoon. In his cartoon he portrayed RTI as weapon in the hand of people against the corruption and poor governance. In this act we can also find the glimpses of the dreams of Mahatma Gandhi who dreamed of active participation of each and every citizens and this act is able to bring real *Swaraj* in the society.

RTI brought various changes in the society which is not clearly visible in the society but its impact can be felt very strongly. There is a threat in the minds of

bureaucrats, politicians and whosoever is related to governance in any way. By this act not only the corruption can be crusaded but also big changes can be brought like poverty, overpopulation, unemployment can be eliminated because although these problems are more of social problems than legal, but such problems are the result of poor quality of governance and hence once the problem of poor governance is eliminated any nation will be able to fight with each and every problem later or sooner, because governance regulates the society and decides up to where and till what extent any society can rise.

RTI and Attitude of Government

RTI proved a threat to the government and forced them to behave like a servant. RTI completely changed the attitude of government towards the people. The Official Secrets Act helped them a lot in exploiting the citizens. Every kind of information was put under the secrets and anyone who was trying to disclose this information was put behind the bars. It was known as the "Black Law" and was practiced till 2005. Bureaucracy and government made a lot of money by not disclosing the information and they let India in the hands of corruption and monopoly of "Democratic King". But by the enactment of RTI every public official and anyone who is linked with the government was forced to keep the records of everything, even the record of investment of single rupee.

Government often comes with an argument that India is a developing country and it does not have enough resources to process so many information requests. On this Arvind Kejriwal gave an example about an office in USA, where 3 million RTI applications were filed and the USA government spend 30 million dollar to process those request because they believe in bringing transparency in the system, and once you are clear with your motive then resources are to come anyhow.

Within ten years of its enactment, there was a boom in the applications regarding information's from the government. The bureaucrat is now to consider himself not merely a powerful custodian of vital information, but a trustee. In a government committed to transparency, the civil servant becomes accountable for what he writes and how he performs his duties. He is required to be more responsive to the needs of his masters, and masters are the common people. RTI makes them realise that they are not the boss; they are actually servants working for "we the people". Within the 8 years of its enactment millions of applications were filed for the information in

Municipal Corporations, Finance Departments, Home ministry etc. And people came to know what the true colour of their government is.

Impact of RTI on Development [18]

The challenge of development is to improve the quality of life, which calls for increasing people's options for higher earnings, better education and health care, a cleaner environment and a richer cultural life. The record of long-term performance show that while there has been steady progress in improvement of the major indicators of development, the achievements fall far short of our expectations. At least, one third of our people suffer from all forms of deprivations, such as, inadequate livelihood support, lack of basis education and health care. Of the various factors attributable to slow progress, lack of effective mechanisms for sharing information and knowledge and people's participation in governance of development projects, is chiefly responsible. Since people's participation in decision making process is essence of democracy, they have the right to access information held by the public bodies.

In this backdrop, rights-based approach to development has proved to be very effective in realizing socio-economic goals, as this approach provides legal guarantee for realizing entitlements and promoting empowerment of people. And, the implementation of RTI provides a framework for promoting Citizen-Government participation in development process [19].

People can access information held by the Government to develop an understanding as to how they are affected or how can they benefit from the programs? While the Government has obligations to function in an open and transparent manner, people have right to observe and scrutinize decision making process, which forms the basis for seeking accountability of the Government. Of late, there has been massive use of right to know by the citizens, including the poor, who have sought to empower themselves with the new ideas, information and knowledge for changing the way they live in. The issue therefore is whether the use of RTI has helped in improving accountability of Government, resulting in realization of entitlements of poor, through effective delivery of services. RTI and has its linkages with the factors that affect the welfare of people.

Scheme Related to Poverty Alleviation [20]

RTI is used as a tool for facilitating effective delivery of socio-economic services. RTI empowers people to

seek details about their entitlements and, accordingly, to take informed decisions in all matters affecting them so as to secure equity and justice.

Recognizing the significance of right to know for ensuring free flow of information and good governance, the RTI Act exempts the poor from payment of fees of Rs.10/- for seeking information. And, the information is to be furnished within the stipulated period of thirty days, failing which penalty may be imposed.

An estimate reveals that at least 20 per cent of the information seekers are those who belong to BPL category. In rural areas, this share is as high as 37% of the total applicants. They have, in general, sought to know the details of services assured to them and the reasons as to why the services meant for them are not reaching them. In the RTI regime, the poor persons armed with information through the exercise of right to know, are getting increasingly involved in designing and implementation of poverty alleviation programmes, as discussed below

Guarantee of Income and Food Security [21]

The Governments the Centre and States have launched from time to time a number of schemes for providing wage employment to the poor, the benefits of which have hardly reached them due to ineffective implementation of programs, including rampant corruption. In the absence of right to information, it was not possible to create conditions for accountability of public servants or authorities, which resulted in both perpetuation of poverty and unproductive use of resources that were allocated for eradication of poverty. In this backdrop, the adoption of rights-based approach is significant to weed out corruption and to guarantee the reach of entitlements of poor persons.

Accordingly, almost all the poverty alleviation programs are designed such that a citizen can observe and scrutinize the public activities with a view to providing critical feedback for shaping the policies and programs that would assure optimum gains to society, particularly the poor. In this context, a mention may be made of the following schemes:

Implementation of MGNREGA [22]

With a view to providing work opportunity on demand for at least 100 days in a year and to secure livelihood of people in rural areas, MNREGA has been implemented. The right to work has thus been legally guaranteed and the manner in which entitlement for employment is to be claimed has been

clearly articulated. Rural poor have been effectively participating in the program for not only just to secure income security but also to build rural infrastructure, which is critical for raising productivity in the future. The development of rural infrastructure under the scheme would surely enhance productivity of various activities and augment further opportunities for employment and income.

The RTI has thus proved very effective in providing grounds for initiating remedial actions with a view to realizing the objectives of public policies. For urban poor, Jawaharlal Nehru Urban Renewal Mission (JNNURM) has been launched to provide basic services, namely, water supply and sanitation, transport, education, health care, etc. Through RTI, citizens ensure effective delivery of services in a time bound manner, which has desirable impact on poverty reduction and quality of life in urban areas.

Mid-Day Meals to School Children

As a measure of food security, all the school children are provided with mid-day meals in schools, which not only help in reducing nutritional deficiency among the poverty stricken children but also enhance their learning attainments due to adequate intake of balanced diets. All the stakeholders, mainly the students, teachers and parents, are able to observe and monitor the service delivery system. Since there has to be almost total openness in operationalization of the scheme, people have access to relevant information, which they utilize for improving effectiveness of the scheme. This, in turn, assists in reducing both food poverty as well as dropouts, which have been rampant among the children from poor families. In effect, the scheme improves physical health and learning abilities of children.

Integrated Child Development Scheme (ICDS) [23]

One of the components of this scheme is to provide nutritional support to children from poor families. The use of RTI by the target group, including the NGOs, has ensured effective implementation of the scheme to the advantage of the poor children.

Grant of Food Security and Pension for the Poor Senior Citizens

With a view to providing income and human security to the poor and destitute, financial assistance to families with low means of subsistence is provided to all poor persons, above 60 years. The grant of pension of Rs.500/- per month has been

universalized. Moreover, the destitute are entitled for 10 Kgs of food grains per month free of cost. Those who could not claim for their entitlements of pensions or free food grains, for different reasons, are able to do so through the use of RTI. There are umpteen numbers of instances which demonstrate that the people are accessing the above benefits that have been assured by the Government. The issue of livelihood being important as it affects life and liberty of people, information is furnished within 48 hrs as per the provisions of the Act.

Since these schemes, namely, ICDS, mid-day meals, NREGS and old age pension cover the entire target population, and the Government is committed to implement these schemes and is actually doing so, there is no reason why the food poverty cannot be annihilated over night. The RTI encourages everyone to ask the Government to explain as to why assured benefits are not reaching them. And, by asking this, grievances are redressed under the auspices of the Information Commission.

Delivery of Services under Subsidized Schemes

The Governments have launched a number of schemes which make essential services available to the poor at low rates. Under the schemes, such items as food grains, kerosene, sugar, etc., are provided to the poor in order to alleviate costs burden on them. Besides, subsidy is provided for housing, education and health services.

Public Distribution System (PDS) [24]

The implementation of schemes like Public Distribution System (PDS) has, till recently, been adversely affected by unacceptably poor quality of governance at all levels of execution of the scheme, resulting in leakages and siphoning of materials to non-poor. The issue of how to improve the quality of governance at all levels of public administration to curb leakages and plug loop holes has never been effectively addressed. However, under the RTI regime, which seeks transparency and accountability of public bodies, the quality of governance has begun to improve. As a result, the services meant for the poor are reaching them since the beneficiaries are using RTI to seek such details as the stock of supplies and distribution, rate lists, list of beneficiaries—the disclosure of which ensures weeding out of fictitious names. It has thus been possible to curb corruption and plug loopholes in the PDS, which, in effect, has improved the delivery of services and, thus, reduced incidence of poverty also.

Shelter for the Poor

Housing is recognized as one of the human rights since a shelter is essential asset that improves physical and mental well-being of people. Accordingly, under *Indira Awaas Yojna [25]* (IAY), financial support is provided to the rural poor for construction of houses as per their choice of design and requirement. The scheme is fully participatory between the Government and beneficiaries as per the guidelines which are in public domain. The identified beneficiaries, having known of their entitlements, are able to create effective demand for release of funds, for construction of houses. The instrument of RTI has helped in maintaining total transparency in operationalization of the scheme, which, in effect, minimize corruption and improve satisfaction level of target groups.

Human Capital: Education and Health Care

Education and health care are critical services for empowerment of people, in general, and the poor, in particular. In the knowledge economy, which is driven by new ideas and technologies, it is not possible to function and expedite the process of national development without enhancing the technical and professional competence of the entire manpower. The share of educated and vocationally trained labour force in the total manpower is one of the lowest, below 5% for the country, as compared to other countries, having a corresponding share of 60 to 80%, with which India has to compete in the global market.

The implementation of relevant policies and programs in the past has yielded less than desired results due mainly to lack of people's participation in delivery of services that empower the poor. The use of RTI has contributed to improvements in quality and quantity of services under the following flagship programs.

Sarva Shiksha Abhiyan [26]

Under this scheme, the Governments have committed to provide minimum school infrastructure for universalization of elementary education. In the absence of any question asked by the major stakeholders, mainly students or parents, quality of education was compromised and there was no check on drop-out or teachers' absenteeism. But, under the provisions of the RTI, the citizens have raised issues pertaining to management of the schools, mainly the availability of infrastructure support, teachers' attendance, students' enrolment and performance, implementation of mid-day schemes, utilization of funds and process of recruitment of teachers.

The Government has been providing financial assistance, including scholarships to the students from deprived groups, mainly women, SC and ST, minorities and physically challenged persons. Through the use of RTI, the target groups are able to claim for their entitlements, which was, however, not possible before the implementation of the Act. The participation of deprived groups in the educational processes has thus been encouraged. In effect, thus, there are signs of improvement in the schools' performance since the parents and the civil society have asked the school authorities to provide explanations in respect of all those activities, which are contrary to the accepted policies, norms and guidelines and people's expectations. In the areas of technical and vocational education, including higher education, the governments have articulated plans for expansion of facilities and improvement of quality of teaching and research. Through the use of RTI, the progresses made are monitored by the information seekers, who have raised issues and sought for details relating to the expenditures on various educational activities, namely, admissions and recruitment processes, conduct of examinations including disclosure of answer sheets. The involvement of students and teachers have thus exposed the extent to which relevant policies, norms and guidelines are followed, which, in effect, have been helpful in improving both internal and external efficiency of education system.

National Rural Health Mission [27]

Healthcare services have largely remained on paper due to lack of accountability of staff. Using the tool of RTI, the citizens have sought for details of primary health services. The disclosure of such details as stock of medicines and its distribution, procedure for procurement of medicines, attendance of medical staff and number of patients treated, etc., has resulted in better management of primary health centres. Thus, in pursuance of the goal of the Mission, access to primary health care has significantly improved, which is due to the use of RTI by the poor, who are ultimate beneficiaries of the rural health policy.

The people's pressure on improvement in health services in urban areas is even more pronounced as the Government hospitals as well as private hospitals have, of late, become somewhat more responsive to the needs of common man, who are duly aware of their human rights than those in rural areas. The RTI has thus created effective demand for improvement in quality of services provided by the hospitals.

Aam Admi Insurance Scheme [28]

Under the insurance scheme and family benefit scheme, the Government provides financial support to the specified groups of the poor families. Whenever there is perceived laxity or delay in extending the benefits to the beneficiaries, the implementation agencies have been called upon to explain the reason for delay or denial of assistance to the poor, failing which penal action are initiated against the responsible persons.

Basic Economic Infrastructure

An informed citizenry, armed with information obtained under the provisions of Act, have not only been promoting participatory governance but also putting considerable pressure on the Government for effective implementation of flagship programs like *Bharat Nirman* [29]. This program seeks to provide critical infrastructure like rural roads, electricity, water and sanitation for rural population. It is expected that the partnership between citizen and the Government would help create solid infrastructure, which, in turn, would create conducive conditions for improving quality of life. Over two hundred fifty public enterprises under the Central Sector have been engaged in development of infrastructure as well as various utility services in the areas of transport and communication, banking and insurance services, power, etc. Issues relating to efficient management of such enterprises have been raised to seek accountability in terms of the stated objectives. These include disclosure of details pertaining to costs and pricing policies, use of resources, choice of technologies, competition strategy, fairness and objectivity in finalization of tenders, recruitment and promotion of staff. An informed and enlightened citizenry has been able to create conditions for good governance through openness in functioning of public enterprises. In this regard, the following specific nature of cases may be mentioned:

- (i) Manipulations in tendering processes or outsourcing of various services have been major source of corruption or diversion of funds for private purposes. Scrutiny of the decision making processes have discouraged the Government companies from their indulgence in corrupt practices.
- (ii) The process of selection and award of retail outlets and domestic gas agencies, having been, of late, in public domain has not only checked malpractices in the selection process but also controlled black-marketing of subsidized

services, namely, petrol, kerosene and cooking gas.

- (iii) People have sought to know the adherence of environmental norms by the manufacturing companies for checking water and air pollutions, maintenance of ecological balance, etc., resulting in desirable impact on sustainability of environment. A large number of public enterprises under the States' sector have similarly been called upon to improve their performance and show results in terms of their accepted corporate social responsibilities.

Empowerment of Weaker Sections

The development initiatives have duly laid emphasis on protection of vulnerable sections of the society, mainly women, SC and ST, minorities and disabled persons. In almost every policy and scheme for promotion of welfare and empowerment of deprived groups, there are relevant components that assure the reach of specified benefits through the policy of preferential treatments and positive discrimination. Having known the entitlements for reservations in employment and admissions in educational institutions, scholarships, old age pensions, health insurance, etc., the citizens have begun to effectively realize the entitlements through the use of RTI. The deficiencies in implementation of policies, if any, have also been raised, which provide necessary feedback for formulating sound policies for empowerment of weaker sections. There are umpteen numbers of cases pertaining to human rights issues that have been raised by the affected persons and groups, who seek accountability of service providers and the concerned departments.

Conclusion

In the year 2006 there was a need felt of amendment in RTI although it was withdrawn later on when the then PM said that RTI should not impede administration. He was clear in his views that RTI should not be used for political purposes but for better governance so that the basic problems like corruption and ill-governance can be curbed. Politicians use the RTI for the political purposes to use it against each other; it should not be done because RTI should be used for fair means not for political means. Various cases are in news regarding the murder cases of various RTI activists, and this is actually a threat to the democracy, right to life of a person is infringed due to politicization in RTI. It created a kind of fear in

the minds of people and hence from time to time there was a demand of such a set of law under the RTI Act itself so that the RTI activists could be live freely without fear of losing their life and they can help in empowering the spirit of democracy. In the year 2012, an RTI activist named Shehla Masood [30] was brutally killed in Bhopal because she was one of the best RTI activists in M.P. and was very active as an activist. Till now CBI is unable to find out the actual reason that why was she killed. Similarly there are number of cases of murder of RTI activists.

Arvind Kejriwal the well known RTI activist [31] and who is considered as the father of RTI activism in India on the "*Swadeshi Jagran manch*" in Jaipur, Rajasthan said that corruption can be brought into light by using RTI, thus the job of RTI is done after providing information, but the basic problem lies within the further procedure, complain which is made against corruption on the basis of information provided by RTI is remained unheard, no further actions are taken by police, or by vigilance. Here comes the role of politicians, that how politicians suppress the case against them by misusing their power. So the problem lies within the proper implementation and the governance. Until and unless there is existence of improper governance no law can be implemented properly. In his speech, Arvind Kejriwal laid emphasis on the proper implementation of laws, and a real democratic state in which every citizen is to be heard and every decision to be made after consultant with general public as it was happened in our ancient India and as it is practiced in various developed countries. "Right to information is as critical for the existence of democracy as a parliament in a parliamentary democracy". Thus Right to know, as a tool to access public held information, has significant bearing on good governance, development and the implementation of flagship programs for alleviation of poverty. India's economy in the last three years has grown at unprecedented high rate of about 8 per cent per annum, which also coincides with RTI induced good governance. This is unprecedented in India's history of development. A common man, like an elected Member of Parliament (MP), is empowered to seek accountability of the Government in terms accepted policies and approved budgetary expenditures. The Central and the State Information Commissions have played a critical role in enforcing the provisions of the Act as well as educating the information seekers and providers. Without their statutory interventions, including use of penal provisions against the public authorities, the benefits of RTI could not have reaped by the citizens and the society. The implementation of the law on right to know for setting up information

regime, therefore, augurs well for strengthening the knowledge society as well as for increasing the accountability of public bodies. The trend in improvement in delivery of services, due to the perceived good governance, provides sufficient indication for alleviation of poverty, good health and liquidation of illiteracy in a much shorter duration than envisaged for the realization of Millennium Development Goals (MDGs) [32].

RTI has enabled people to participate in the process of development, which has resulted in reduction of corruption and establishing an open and participatory governance system. In effect, RTI protects and promotes the socio-economic interests of every citizen, particularly the poor, who are receiving the benefits of development as per their entitlements.

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2. The "Jawahar Rozgaar Yojana" Jawahar Rozgar Yojna was launched on April 1, 1989 by merging *National Rural Employment Program (NREP)* and *Rural Landless Employment Guarantee Program (RLEGP)*.
3. Such as the "Padho Badho" scheme in Madhya Pradesh.
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 22. The National Rural Employment Guarantee Act 2005 was later renamed as the "Mahatma Gandhi National Rural Employment Guarantee Act" (or, MGNREGA), is an Indian labour law and social security measure that aims to guarantee the 'right to work'. It aims to ensure livelihood security in rural areas by providing at least 100 days of wage employment in a financial year to every household whose adult members volunteer to do unskilled manual work. Starting from 200 districts on 2 February 2006, the NREGA covered all the districts of India from 1 April 2008.
- The statute is hailed by the government as "the largest and most ambitious social security and public works programme in the world". In its World Development Report 2014, the World Bank termed it a "stellar example of rural development". The MGNREGA was initiated with the objective of "enhancing livelihood security in rural areas by providing at least 100 days of guaranteed wage employment in a financial year, to every household whose adult members volunteer to do unskilled manual work". Another aim of MGNREGA is to create durable assets (such as roads, canals, ponds, wells). Employment is to be provided within 5 km of an applicant's residence, and minimum wages are to be paid. If work is not provided within 15 days of applying, applicants are entitled to an unemployment allowance. Thus, employment under MGNREGA is a legal entitlement.
23. Integrated Child Development Services (ICDS) Government of India sponsored programme, is India's primary social welfare scheme to tackle malnutrition and health problems in children below 6 years of age and their mothers. The main beneficiaries of the programme were aimed to be the children below 6 years of age, pregnant and lactating mothers, and adolescent girls. The gender promotion of the girl child by trying to bring her at par with the male child is a key component of the scheme.
 24. Public distribution system (PDS) is an Indian food security system. Established by the Government of India under Ministry of Consumer Affairs, Food, and Public Distribution and managed jointly with state governments in India, it distributes subsidized food and non-food items to India's. Major commodities distributed include staple food grains, such as wheat, rice, sugar, and kerosene, through a network of public distribution shops (also known as ration shops) established in several states across the country. Food Corporation of India, a Government-owned corporation, procures and maintains the PDS.
 25. Indira Awaas Yojana is a social welfare programme, created by the Indian Government, to provide housing for the rural poor in India. The differentiation is made between rural poor and urban poor for a separate set of schemes operate for the urban poor (like the Basic Services for Urban Poor). It is one of the major flagship programs of the Rural Development Ministry to construct houses for BPL population in the villages. Under the scheme, financial assistance

worth Rs.70, 000/- in plain areas and Rs.75, 000/- in difficult areas (high land area) is provided for construction of houses. 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-assistance to people in villages to construct their houses, themselves.

26. Sarva Shiksha Abhiyan (The Education for All Movement) (SSA), is an Indian Government programme aimed at the universalisation of elementary education "in a time bound manner", as mandated by the 86th amendment to the Constitution of India making free and compulsory education to children of ages 6-14 (estimated to be 205 million in number in 2001) a fundamental right. The programme was pioneered by Atal Bihari Vajpayee.
27. The National Rural Health Mission (NRHM) is an initiative undertaken by the government of India to address the health needs of underserved rural areas. Founded in April 2005 by Indian Prime Minister Manmohan Singh, the NRHM was initially tasked with addressing the health needs of 18 states that had been identified as having weak public health indicators. Under the NRHM, the Empowered Action Group (EAG) States as well as North Eastern States, Jammu and Kashmir and Himachal Pradesh have been given special focus. The thrust of the mission is on establishing a fully functional, community owned, decentralized health delivery system with inter-sectoral convergence at all levels, to ensure simultaneous action on a wide range of determinants of health such as water, sanitation, education, nutrition, social and gender equality. Institutional integration within the fragmented health sector was expected to provide a focus on outcomes, measured against Indian Public Health Standards for all health facilities. As per the 12th Plan document of the Planning Commission, the flagship programme of NRHM will be strengthened under the umbrella of National Health Mission. The focus on covering rural areas and rural population will continue along with up scaling of NRHM to include non-communicable diseases and expanding health coverage to urban areas. Accordingly, the Union Cabinet, in May 2013, has approved the launch of National Urban Health Mission (NUHM) as a sub-mission of an overarching National Health Mission (NHM), with National Rural Health Mission (NRHM) being the other sub-mission of the National Health Mission.
28. The Union Cabinet gave its approval for launching of Aam Aadmi Bima Yojana (AABY), from 2nd October 2007, covering the death and permanent disability for the benefit of rural landless households as detailed below: The scheme provides for insurance of head of the family or an earning member of the family of rural landless household between the age of 18 to 59 years against natural death as well as accidental death and partial/permanent disability. The annual premium payable per member is Rs.200, of which 50% shall be paid by the Central Government and the remaining 50% by the State Government. Available at <http://pib.nic.in/newsite/erelease.aspx?relid=30703> last accessed on 12.3.14
29. Bharat Nirman is an Indian business plan for creating and augmenting basic rural infrastructure.[1] It comprises projects on irrigation, roads (Pradhan Mantri Gram Sadak Yojana), housing (Indira Awaas Yojana), water supply (National Rural Drinking Water Programme), electrification (Rajiv Gandhi Grameen Vidyutikaran Yojana) and telecommunication connectivity
30. Shehla Masood (1973-2011) was an Indian environmentalist, wildlife and RTI activist. She was shot dead around 11:19 AM on 16 August 2011 by three persons who were hired by a local woman interior designer in front of her house in Bhopal while she was sitting in her car and was about to leave.
31. Arvind Kejriwal (born 16 August 1968) is an Indian politician and former civil servant who was the 7th Chief Minister of Delhi from 28 December 2013 to 14 February 2014. He is the National Convener of the Aam Aadmi Party (AAP). Kejriwal is a Mechanical Engineering graduate of the Indian Institute of Technology Kharagpur and worked for the Indian Revenue Service (IRS) as a Joint Commissioner in the Income Tax Department. In 2006, Kejriwal was awarded the Ramon Magsaysay Award for Emergent Leadership recognising his involvement in a grassroots

movement (Parivartan) using right-to-information legislation in a campaign against corruption. The same year, after resigning from the IRS, he donated his Magsaysay award money as a corpus fund to found the Public Cause Research Foundation, a non-governmental organisation (NGO).

32. The Millennium Development Goals (MDGs) are eight international development goals that were

established following the Millennium Summit of the United Nations in 2000, following the adoption of the United Nations Millennium Declaration. All 189 United Nations member states at the time (there are 193 currently), and at least 23 international organizations, committed to help achieve the following Millennium Development Goals by 2015.

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"Indian Journal of Law and Human Behavior" (See Rule 8)

1. Place of Publication : Delhi
2. Periodicity of Publication : Quarterly
3. Printer's Name : **Asharfi Lal**
 Nationality : Indian
 Address : 3/258-259, Trilok Puri, Delhi-91
4. Publisher's Name : **Asharfi Lal**
 Nationality : Indian
 Address : 3/258-259, Trilok Puri, Delhi-91
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[1] Flink H, Tegelberg Å, Thörn M, Lagerlöf F. Effect of oral iron supplementation on unstimulated salivary flow rate: A randomized, double-blind, placebo-controlled trial. *J Oral Pathol Med* 2006;35:540-7.

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Article in supplement or special issue

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Corporate (collective) author

[4] American Academy of Periodontology. Sonic and ultrasonic scalers in periodontics. *J Periodontol* 2000;71:1792-801.

Unpublished article

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Personal author(s)

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[7] Nauntofte B, Tenovou J, Lagerlöf F. Secretion and composition of saliva. In: Fejerskov O, Kidd EAM,

editors. Dental caries: The disease and its clinical management. Oxford: Blackwell Munksgaard; 2003. p. 7-27.

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[8] World Health Organization. Oral health surveys - basic methods, 4th edn. Geneva: World Health Organization; 1997.

Reference from electronic media

[9] National Statistics Online—Trends in suicide by method in England and Wales, 1979-2001. www.statistics.gov.uk/downloads/theme_health/HSQ_20.pdf (accessed Jan 24, 2005): 7-18. Only verified references against the original documents should be cited. Authors are responsible for the accuracy and completeness of their references and for correct text citation. The number of reference should be kept limited to 20 in case of major communications and 10 for short communications.

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