La Senatus Scriptors

Volume 1

Issue: 1

April-May, 2020

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SENATUS SCRIPTORS
LAW JOURNAL
VOLUME 1: ISSUE 1
April-May, 2020

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ADOPTION OF AN ADOPTED CHILD:
A Second Chance?

*Shubhani D Krishan**

ABSTRACT

Amongst Hindus, adoption is a sacred process. It does not merely stand for transfer of a child from one set of parents to another but along with it, the duties, rights and everything of that child. This paper looks into the issue which has not been given due consideration and the same is stated in the title of this paper. The process of adoption has been brought up in the Juvenile Justice Act, a Central Law and the same has been rejected in the personal law. This paper focuses on the reasons for the above-said statement in the light of adoption and the plausible recommendations to the laws which currently deal with adoption in India, specific to Hindus.

KEYWORDS:
Adoption, Hindu Adoption and Maintenance Act, children, second adoption, Juvenile Justice, update, trauma

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I. INTRODUCTION

Adoption is more than just a process. It stands for hope and continuity. Working as a two-ended mechanism, adoption has been around for ages, where the child on one hand gets an alternative home which he needed, while a family gets the child they desperately hoped for. In the midst of hope and worth, very often clarity takes a set-back. The earliest roots of adoption can be traced back to the ancient Mesopotamian civilization in the *Code of Hammurabi* which lays down a detailed description of rights of people who adopt, their duties and their responsibilities.[1] In ancient Roman, the *Codex Justinianus* talks about the adoption traditions back then, clearing further that "*adoption is a part and parcel of age old customs*".[2]

The Hindu law has also, in a similar fashion accepted the concept of adoption. Earlier, there existed only two reasons behind adoption under the laws of Hinduism, namely-continuation of lineage and for the purpose of last rites. There has been an acute debate whether the entire concept of adoption had evolved from a secular motive or whether the religious motive overpowered the controversy.[3] By the end of the entire controversy that arose, it was concluded that the object behind the Hindu law, in terms of adoption is the one above stated, being two-folded. In one of

the landmark Supreme Court cases on adoption under Hindu law, the court was of the opinion that,

"Having a consensus view with the earlier decisions of Privy Council has stated that the validity of an adoption has to be judged by spiritual rather than temporal considerations and that devolution of property is only of secondary importance."[4]

In another case also, the Court opined that the main objective behind the entire process of adoption is spiritual benefit, more than any other benefit.[5] This leads us to the fact that most of the provisions which Hindu law has on various aspects of personal laws in India, functioning at this time, are based on the principles which were followed even in the ancient times.

However, the problem was that these rituals were very scattered and scanty and the actual codification paved its way only during the post-colonial times. Even after constantly struggling with issues of caste and creed, Hinduism has seemed to make its peace with actual societal concerns through the Hindu Adoption and Maintenance Act, 1956 since it does not prohibit or

[1] 3, Prince J Dyenely, *The Code of Hammurabi*, American Journal of Theology, 12 (1904).
[2]Paul Krüger & Iustinianus, *Codex Justinianus*76 (Weidmann ,1989).
[3]Mayne, *Hindu Law and Usage*, 184, (11th Ed., Higginbothams, 1953).
[4]Chandra Sekhar Mudaliar v. Kulandaivelu Mudaliar, AIR 1963 SC 185.
[5] Guramma v. Mallapa, AIR 510 (SC:1964)

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restrict adoption on the basis of the mammoth caste divide in the country.[6] Even under the HAMA, the adoptions cannot be of two types; secular and sacramental. All the adoptions made amongst Hindus post the enactment of the Act are under the ambit of being wholly secular in nature. Even if a Hindu wants to abide by the old norms which were laid down by the Hindu law, he can do so, but they still fall under the purview of being non-sacramental and secular in nature, as per the laws of the present which govern the Hindus.[7]

Obviously, religion cannot be separated from mythology, which always means that some or the other part of old norms of Hindu jurisprudence will stick and pave their way even into the present scenario. Despite the numerous attempts to make such personal laws harmonize with the ongoing procedures and laws and in consonance with the welfare principle, it is usually found out that some or the other loophole does emerge, leaving behind quite some problems for the society to face. This can also mean that there remain few portions of the Hindu law which are not very much in adherence to the present legal and societal scenario and as a last resort, there are times when the Hindu law on adoption and maintenance does fall short and does not seem to fulfill its requirement.

II. CRITIQUE

The requirement of adoption arises of the necessity of continuity of lineage in Hindu law. This has been a rule which has been followed via the applicability of Hindu jurisprudence for ages and ages. The Supreme Court of India after decades of petitions, analysis and scepticism came up with the definition of adoption in the case of *Lakshmi Kant Pandey v. Union of India* to be:

"A process by which the adopted child is permanently separated from biological parents and becomes a legitimate child of adoptive parents with all rights, duties and responsibilities attached with the relationship transferred."[8]

This definition, undoubtedly lays down a very solid foundation as to what adoption really means, however, certain aspects of adoption have still not been completely explored and most of the provisions of the Hindu law very conveniently remain silent on such issues. Adoption, with due respect, has come a long way and has undergone many modifications and amendments which have made it a very detailed and structured procedure. In spite of these changes and codifications, there are uncountable instances where HAMA, 1956 fails to stand by itself and requires leaning on the Juvenile Justice (Care and Protection of Children) Act, 2015. This is solely because of the fact that since Hindu law has emerged out of various schools of thought and their customs and thus it still continues to have a canon-view unlike the JJ Act, 2015 which has to take into consideration a larger mass of people depending on it in addition to the reason

[6] 45, N Balu, *Adoption - Some Unsolved Issues*, Journal of Indian Law Institute, 537 (2003).
[7] Dr. Paswan Diwan, *Modern Hindu Law*, Allahabad Law Agency, 240 (23rd Ed., 2016).
[8] Lakshmi Kant Pandey v. Union of India, 12 SCC 735 (2010).

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that it has a more modern approach towards the justice system. Due to the *shastric* aspect of Hindu law, very few have even dared to venture into its prospects and lacunae it has created. It can also be seen that rather than being open to more exploring; "*there remains hardly any room for more options.*"[9]

In spite of laws which relate to adoption have come a long way, it is always of immense importance that they have material on law read supplementary to them. It is understandable that it is practically impossible to expect a law to be self-sufficient in all its spheres; however, it should be made sure that with changing times and amendments all across, the laws should also keep up with such modifications, rather than being dependent on the new changes that are brought by other legislations completely. The JJ Act is a central Act and on the other hand, HAMA is a specific law. When in conflict with one another, very evidently, HAMA will prevail over the former. But, what would be the point of prevalence when the provisions of HAMA would not be sufficient to deal with the lacuna so posed. The JJ Act will go in vain since its provisions will be overshadowed by the provisions of the specific Act in force. The major problem which this entire scenario brings into picture is insufficiency of laws. Since there are plenty of instances where the specific Act falls short of provisions to deal with the problems posed, it is of utmost importance to stick to the ideas given in Acts like the JJ Act, 2015.

III. HINDU ADOPTION AND MAINTENANCE ACT, 1956:

Adoption under Hindu law does not have a very vast definition. It has certain essentials, which have been laid down in Section 6 of HAMA[10]. In Section 6(iii) of HAMA, it is specified that certain persons who are eligible for being taken into adoption and few are not eligible for the same. This leads to the fact that adoption of a child who has been previously adopted by someone has not received the consciousness it deserves to. Cutting out an entire section of children from being adopted is clearly against the norms of the society. Even though there exists a provision which throws sufficient light on persons who may be adopted under the Hindu law in HAMA, 1956, it completely forbids the adoption of a child who has been already adopted, by stating the following section:

"Persons who may be adopted-

[9] 7, G. Sarkar Sastri, *A Treatise on Hindu Law*, 342 (1936).

[10] **Requisites of a valid adoption**. —No adoption shall be valid unless—(i) the person adopting has the capacity, and also the right, to take in adoption; (ii) the person giving in adoption has the capacity to do so; (iii) the person adopted is capable of being taken in adoption; and (iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.

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> *No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely-*
> *(i) he or she is a Hindu;*
> *(ii) he or she has not already been adopted;*
> *(iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;*
> *(iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption."*[11]

It can be noted that under HAMA, certain qualifications and disqualifications are compulsory to be abided by in order to follow the process of adoption and deem it to be valid in nature. Very clearly, the above Section sidelines the concept of adoption of a boy or girl who has been adopted earlier.[12]

Section 10(ii), HAMA, 1956 makes it clear that the Hindu law does allow adoption only in cases where the child has not been adopted earlier. It is observed that,

"*an adoption made cannot be cancelled by the adopter, natural parents or any other person.*"[13]

This makes it lucid that this provision makes the adoption of a child irreversible, which may sound apt if not thought about further. This leads us to the concept of *abandoning*. It can be clearly understood that adoptive parents giving away their adopted child for adoption again is a strict moral and legal infringement. In spite of this, there can be instances where a child is declared to be *foundling*. It can be defined as:

"A foundling child is one who is found by someone else and his parents are unknown, where as an abandoned child would refer to a child who has been found by someone else and his parents are known."[14]

This basically means that by the New Hindu law, adoption of foundling and abandoned children seems to be valid; however, it has not been expressly mentioned as such. The provision simply lays down that adoption of an adopted child is not legitimate and the adoptive parents have no right to give away a child they have adopted earlier. The provision is in direct collision with the idea it puts forward. An abandoned child might be one who has been abandoned not necessarily by his biological parents but by his adoptive parents as well. The HAMA, in such a situation would be self-contradictory and inconclusive. In terms of defining the terms *abandoned* and *foundling,* the provisions of HAMA again fall short and reference has to be made to the more conclusive and comprehensive JJ Act, 2015. It is saddening to realize that the sole statute that deals with everything and anything on concepts of adoption and maintenance under the Hindu law has completely forgone even the possibility of a second chance to a child who has been abandoned by his or her adoptive parents. Agreeing to the fact that even a slight room for

[11]Hindu Adoption and Maintenance Act, Section 10 (1956).
[12]Dr. S.R Myneni, *Hindu Law,* Asia Law House, 365 (1st Ed., 2009).
[13]Nand v. Bhupindra, AIR 181 (Cal:1966).
[14]Supra

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adoptive parents to waive off their responsibility of the child they adopted cannot be accepted at any cost; it would still be incorrect to never imagine such a scenario happening at any time. There have been instances where adoptive parents have abandoned their children in nursing homes, state authorities, which has led to furthermore violation of rights of children in addition to which the Hindu statute very conveniently waives off the rights of such children completely, cutting them of their very minimal rights and privileges, which any child born in this country should not and cannot be deprived of.

IV. THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

It would be an understatement to say that the JJ Act, 2015 has not emerged as a heroic legislation in terms of adoption, its extent and the perspective it puts forward. The legislature has tried its hardest to come up with a foolproof legislation which compensates for the loopholes of other personal laws. When in conflict with HAMA, the JJ Act seems to neutralize the problems which the former causes. In its very interpretation clause, the Act lays down the definition of an abandoned child to be:

*""abandoned child" means a child deserted by his **biological** or **adoptive parents** or **guardians**, who has been declared as abandoned by the Committee after due inquiry"*[15]

The JJ Act strives to clearly establish the fact that a child who has been abandoned by his adoptive parents can be given into adoption legally again which can be understood from the provision as stated:

> "*In case of orphan and abandoned child, the Committee shall make all efforts for tracing the parents or guardians of the child and on completion of such inquiry, if it is established that the child is either an orphan having no one to take care, or abandoned, the Committee shall declare the child legally free for adoption.*"[16]

A very big aspect which the JJ Act, 2015 brings out is the consideration of all sorts of children who may require assistance of the State for welfare. Since the Hindu specific law in relation to adoption completely calls off even the possibility of a second adoption of a child, it would be unfair for any other legislation also to abandon the idea absolutely. In addition to this, India is a

[15]Juvenile Justice (Care and Protection of Children) Act, Section 2(1) (2015).
[16]Juvenile Justice (Care and Protection of Children) Act, Section 38(1) (2015).

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signatory of the **United Nations Convention on Rights of Child, 1959 (UNCRC)**, which makes it mandatory for the country to abide by the welfare principle of children as well. Rights like that of nutrition, shelter, care and those of against exploitation, neglect, make it a crucial contemplation for the authorities of the country to take notice.[17] It can be observed further that the provisions of this Act have been laid down in such a manner that the chunk of children which was going unnoticed and neglected gets their fair share of recognition. Since HAMA doesn't provide for the adoption of children who had been previously adopted but require assistance of the state in order to be adopted again, it is apt for a central Act to intrude and make certain amends to the entire procedure. Under JJ Act, 2015, course of action for inter-country adoption of an orphaned, abandoned or surrendered (OAS) child is dealt by the Section 59 of the Act. It puts forward that if an OAS could not be positioned with an Indian or non-resident Indian potential adoptive parent even though there was joint attempt of the Specialized Adoption Agency and State Agency inside sixty days from the date the child has been affirmed officially free for adoption, such child shall be free for inter-country adoption.[18]

The entire focus of non-restriction of adoption of a child who has been adopted earlier should be connected to welfare and not pre-described norms. Very obviously, there is no doubt that giving away the power to adoptive parents to abandon their adopted children would lead to further complications and breach; however, the possibility of adoptive parents abandoning their children cannot be completely ignored just because it is ethically and legally wrong. Thus, the **Central Adoption Resource Authority (CARA)** can consider such an adoption to be valid and free, legally. It has been observed that in India, 6,650 children were adopted between the years 2017-19, out of which 278 children were given back by the adoptive parents to the adoption agencies.[19] These statistics are a clear indication that there are numerous cases of adoptive parents leaving off their adopted child, back in the hands of the authorities which initially helped them adopt the child. Instead of directly blaming these parents who gave their children back and dissecting this entire issue posed, it is high time the government realizes that prompt action is also a very essential requirement in a case like this. In the midst of the blame-game played between the society and the authorities responsible for adoption, some light should also be shed on the child who has been through this entire trauma.

[17]120, V. Mathumitha & V. Udayavani, *A Critical Analysis on Juvenile Justice Act, 2000,*International Journal of Pure and Applied Mathematics, 2812 (5th Ed., 2018).
[18]Child Welfare Committee (CWC), Regulation 6 and 7 of AR (2017).
[19]Ministry of Women and Child Development, *Adoption Statistics*, Central Adoption and Resource Authority (March 10, 2020, 10:09 pm) http://cara.nic.in/resource/adoption_Stattistics.html

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V. REQUIREMENT OF REFORMS IN HINDU ADOPTION AND MAINTENANCE ACT, 1956

While framing laws, it is of utmost essentiality that all prospects are kept in mind, wide and clear. The Hindu law, even though codified, centuries after its emergence, has been able to keep up with the modern world quite well. However, there do come up instances when in order to match up with the fast pacing world, crimes and wrongs, the law needs to evolve and harmonize with it. HAMA requires certain additions, modifications and renewals as well. A very direct prohibition on adoption of an adopted child is violation of certain rights which any human possesses. An abandoned child cannot be kept from his right to be adopted again since this would be in direct contravention with Article 21 of the Indian Constitution.[20] Also, in terms of the constitutional violation of this provision, under the scope of Article 14 of the Constitution, no child can be deprived of a home just because he or she has been previously abandoned by his or her adoptive parents since this would mean a clear wrong considering the equality principle. A clear infringement of these two Articles of the Constitution further makes this provision questionable and ignorant. The most sacred document of the country also puts forward how the state is empowered to make special provisions for women and children in times which call for such situation.[21] Thus, rights of abandoned children of adoptive parents require to be recognized separately instead of blankly stating that further adoption is completely invalid under Section 10(ii), HAMA, 1956. Completely agreeing to the fact that adoptive parents giving away their child is an act which cannot be justified, no matter what, the Act needs to take into consideration some last resort if such a case arises rather than turning a blind eye towards the entire issue. In order to avoid ardent misuse of such a provision, it would be considered better to hold such adoption valid only if "*extreme conditions*" arise which are beyond the control of these adoptive parents. The duty of the law making authorities is to take into account the worst possible scenarios and frame laws in accordance to the prevailing circumstances. Just because that the mutual agreement between the public and such authorities on the topic that a particular situation would be wrong in nature, does not mean that the situation is out of the purview of the law making authorities and the laws they come up with. All the crimes which have been mentioned in the Indian Penal Code, 1860 are laid down with their prescribed punishment so that even in the worst possible cases of such crimes being committed, there is a law to resort to. Just because these crimes are morally wrong in nature, doesn't exclude them (they aren't excluded) from the ambit of being laws made on them.

It should be taken into assessment that a child is the future of the nation. Every child has the right to grow under favorable conditions, without being exploited and not cared of. If a law

[20] *"No person shall be deprived of his life or personal liberty except according to a procedure established by law."*
[21] Constitution of India, Article 15(3) (1950).

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strives at making this possible, it is the duty of the country to promote such attitude for the welfare of the individuals who will make the future possible.[22] The welfare of children should be of paramount nature in all matters. The reason behind this perception is that though children are the individuals who will take the nation forward, they still form a class which is vulnerable and oppressed, requiring constant care and protection from those who can provide it to them.

This also makes it necessary for HAMA to have additional provisions in respect to the rights of children who have not been made a part of the Act. Neglecting an entire set of children who might be subjected to exploitation or exclusion from the rights which any child in the country deserves, at least, is hear-aching. According to the Hindu norms, second adoption does not hold valid ground. This, to an extent makes sense because adoption means that the child taken into adoption is now a legitimate child, with all those rights which a legitimate child possesses [23] and after being granted all such rights, it would not be correct to take away these rights from the child, making him an orphan again, technically, since his chances of getting adopted again by a family would be zilch.

In consonance to the provisions of the JJ Act, it is high time that personal laws also start getting amended according to the requirements that the present and future pose. Relying on the central Act is obviously a very feasible option, but once in conflict, the personal law, which is specific in nature, will prevail over the former, making it extremely thorny for the better law to prevail. Since HAMA denies a second adoption where as JJ Act doesn't, the conflict between the two will lead to very disturbing results. Thus, there is a dire requirement of changes in HAMA for the betterment of the personal laws and people at large.

VI. IMPACT, CONCLUSION AND SUGGESTIONS

The air around the notion of a second adoption is remarkably untouched. It has not been very evidently brought under the notice of the public how harmful this ignorant aspect of HAMA is and what it showcases. Adoption is a dignified act, which brings contentment to kids, who were forsaken, or orphaned. This gives a probability for the kindly side of society to excel through. It's an advantageous program where the child is treated as the natural born, actual child and given all the care for, affection and attention it deserves. In case of adoption, the noticeably different laws for Hindus and Non Hindus create quite some technical and emotional problem. The non-Hindu parents, who may want to take on a child and treat him/her as their very own are not lawfully permitted to identify themselves as the parents or assert the child as their own. Hence,

[22] 22 ,Asha Bajpai, *Child Right in India: Law, Policy and Practice*, Oxford University Press, 504 (2003).
[23]Sita Bai v. Ram Chandra, 2 SCC 544 (1969).

there has been some uniformity which such parents expect in the midst of a cry for help.[24] This brings us to the fact that even after years of work that has been poured into making legislations flawless and effective, there are always a few places where disappointment strikes hard. Since Hindu law does not permit the adoption of a child who has been adopted before, a major portion of children, whose rights have not been thoroughly recognized yet, continue to be in ruins. Definitely, the authorities of government work brilliantly in assuring that special homes are provided for the betterment and welfare of such abandoned children, however, a home with parents and family can never be kept at par with a special care centre. It would be unfair to a child, at any cost to be deprived of something he can get in future.

The psychological impact on a child who has been abandoned, technically for the second time is traumatizing. In the midst of all these chaos, if the child is only referred to a special home, under the watch of government agencies, he or she will always be under the impression of themselves being at fault somehow, feeling dejected and unworthy of parental love and affection. In the matter of them being left by their adoptive parents, a concern which also arises in addition to the mental impact is the reason behind all this in the first instance. The real question which is to be kept in front of the society is to why adoptive parents are even considering leaving behind a child which they desperately hoped for. Do they forget what a boon having a child is or are they unable to carry out the responsibility which they took up on themselves? The recorded data on all these aspects under adoption laws in India is so meager that it becomes extremely concerning to realize that such a quintessential chunk of child rights in India has not been getting the consciousness it requires and deserves. This entire notion of *un-adopting* a child surely pricks, but its happening cannot be forgone on the grounds of ethics alone.
When it comes to the welfare principle in general, procedures, whims and fancies take a backseat and all that matters is the interest of the child. This not only means that only HAMA requires noteworthy amendments in its totality, but all laws and agencies pertaining to adoption in India require to come at par with the principle of best interest and welfare of children. This surely can be achieved even by educating and nurturing children in special homes if they are given away even by their adoptive parents, however, a better way to execute this entirely would be allowing a child to be given for adoption even after the above situation has arose. The child should never end up feeling unwanted or have a feeling of always being a subject of special care homes.

In conclusion, Hindu law needs to clean its air, open its ambit and spread itself to more possibilities. Keeping a view so restricted that it hampers the welfare principle can never prove to be of any good to the society. One of the major concerns that might arise even after a second adoption is validated by the authorities and Courts in India, is the seamless delay which CARA leads to in a proper adoption procedure which will also lead to numerous problems for the child so un-adopted and being wanted to be adopted again. In current times, adoption has been the

[24]Vasant P Pethe, *Hindus, Muslims and Demographic Balance in India*, Economic and Political Weekly, 75 (1973).

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unsurpassed means to refurbish family life to a kid, destitute of his or her genetic family, but it is not the magic potion for the manifold problems that cause children to be left alone, abandoned or orphaned. Since Hindu personal law does not properly lay down even the definitions of a child who has been abandoned or orphaned or surrendered, it becomes an extremely tedious task to leave in all the Hindu Adoption and Maintenance Act, 1956 to deal with this issue. This provokes the law to have a better definition and more provisions in respect to this problem. We also need to understand the problem of over – population.[25] This means that, not only does the problem lie in the crux of Hindu law and its non-adherence to the current norms of adoption and welfare, but also in the way we function as a society, under the burden of corruption, over-population and lousiness of procedure.

[25]Ranjit Sau, *Stability and Development in South Asia: A Common Minimum Agenda*, Economic and Political Weekly, 177 (2003).

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CLINICAL LEGAL EDUCATION: TRACING THE GROWTH

*Priyanshi Sarin**

ABSTRACT

The term 'Justice' has been subjected to various philosophical and political interpretations, rendering lack of any universal definition. As per various notions, it is a concept of rightness, fairness, morality, and victory of truth and virtue over evil instincts.[26] Clinical legal education plays an important role to make poor people, underprivileged sections of the society acknowledge the principle of justice and seek the same without any financial roadblocks. Clinical legal education as a pedagogic technique focuses on the learner and the process of learning and intends not to create future lawyers who are mere craftsman manipulating advocacy skills in the traditional role of conflict resolution in court. Rather, it aims to develop perceptions, attitudes, skills which would enable a holistic development and sensitize the lawyers about the social impediments and their obligation to overcome those. It enables law students, to undertake the responsibility of equitable distribution of the legal services in society and in upholding the basic elements of 'professionalism' such as competency, ethical values, etc.[27]In the contemporary era, it is imperative to expose law students to the practical facets of legal profession, motivate them and empower them to formulate and implement effective policies which resolve the situation of access to justice or social justice in the country.[28] Thereby this paper analyses the initiatives and prospects of clinical legal education in India.

KEYWORDS
Clinical Legal aid, teaching, innovative methods, evolution, pedagogy, reach out to public.

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[27]Taking Lawyering Skills Training Seriously, 10 CLIN. L. REV. 191 (2003)
[28] Margaret Barry, Clinical Legal Education in the Law University: Goals and Challenges, 2007 INT'L J. CLINICAL LEGAL EDUC. 27, 50 (2007).

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I. EVOLUTION AND DEVELOPMENT OF CLINICAL LEGAL EDUCATION IN INDIA

In India, recognition of the difficulties that the majority of the population faced when they tried to access justice through legal institutions provided the impetus for the free legal aid movement. In 1948, the Radhakrishna Commission[29] stressed the need for legal professionals to bring about social change. Later, in 1958, the 14th Report of the Law Commission of India recognized the importance of incorporating both academic and vocational skills within professional training, and recommended that University training should inculcate practical knowledge and suggested that seminars, discussions, mock trials, and simulation exercises should be introduced.

A. Background

Prior to the Advocates Act 1961, law students were required to complete certain courses on procedural subjects offered by the State Bar Council and acquire training in apprenticeship under the chamber of senior advocate. The arrangement was unsatisfactory because of the lack of integration between the University education in law and the practical training. The Bar examinations and the system of apprenticeship were not organized in a manner to provide the

[29] REPORT OF THE RADHAKRISHNA COMMITTEE, available at http://14.139.60.153/bitstream/123456789/4866/1/Report%20of%20the%20Radha%20Krishan%20Committee%20Uttar%20Pradesh_D3958.pdf

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best educational and professional experiences to the new entrant to the Bar. The Council of India, therefore, in consultation with the universities, devised a new curriculum uniformly applicable throughout India under which the necessary practical training has to be incorporated within the course-structure.

In the contemporary era, the definition of 'practical training' has expanded considerably, and specifically points towards inculcating soft skills which enable lawyers empathise with those in need of their services.

B. Timeline

- In 1969, a legal services clinic was set up by some teachers and students of Delhi law faculty as a purely voluntary activity, primarily to provide legal services to inmates of prisons and custodial institutions. It organised a week-long orientation course informing the students about the clinical programmes and encouraging them to participate voluntarily.[30]

- In 1973, the Expert Committee on Legal Aid of the Ministry of Law and Justice, under the Chairmanship of Justice V.R. Krishna Iyer recommended introducing clinical legal education with a focus on poverty issues in the law schools.[31] It proposed including law educators and understudies in legitimate guide programs. They portrayed legitimate guide benefits as 'each progression or activity by which lawful establishments are sharpened to react to the financial real factors' of India.[32] The expert committee's 'idea of linking legal aid and law schools had a practical element; given the extent of the need for legal services for the poor and the limited resources available, this made perfect sense[33]. Finally, the

[30] Shuvro Prosun Sarker, Empowering the Underprivileged: The Social Justice Mission for Clinical Legal Education in India, 19 INT'L J. CLINICAL LEGAL EDUC. 321, 340 (2013).
[31]Id at 174 (The Committee "observed that students' encounters with the problems of poverty and exploitation would change their outlook when they became lawyers, and as a result they would not treat clients simply as facts but as living neighbours.")
[32] Govt. of India, Ministry of Law, Justice and Company Affairs, Processual Justice to the People: Report of the Expert Committee on Legal Aid (1973).
[33] Frank S. Bloch and M. R. K. Prasad, Institutionalizing **A** Social Justice Mission **For** Clinical Legal Education: Cross- National Currents From India And The United States, 13 Clinical L. Rev. 165,169 (2006-2007).
26 See generally generally Govt. of India, Ministry of Law, Justice And Company Affairs, Equal

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Committee recommended, using laws students to provide legal aid in two stages; first in preliminary processes, and then in the actual conduct of petty cases.

- The Juridicare Committee on Legal Aid[34] presented its report in 1977 resounding the thoughts of the past master advisory group and planned progressively engaged suggestions identifying with lawful guide plans. These were more focused on reaching the most helpless members of society and identifying the broadest possible assistance types that could be made available to them under the law, including education, community development and community organizing. The Committee articulated that legal aid is not only legal representation and assistance in litigation, but it also includes other things such as legal advice, arbitration and conciliation, creation of legal awareness, promotion of meaningful communication in legal and national development and reform of law and legal process.

- In 1981, the Committee for Implementing Legal Aid Schemes, headed by Justice P.N. Bhagwati, then Chief Justice of the Supreme Court of India, insisted that court-oriented legal aid programs alone cannot provide social justice in India and thereby concentrated more on the promotion of legal literacy, the organization of legal aid camps to carry legal services to people's doorsteps, training paralegals to support legal aid programs, establishing legal aid clinics in law schools and universities, and bringing class actions through public interest litigations.[35]

- In 1985-86, two Lok Adalats were organized in Delhi by the Delhi legal aid clinic. Even Aligarh Muslim University organised few legal aid camps and helped to organise a Lok Adalat.[36]

- The Legal Services Authorities Act was enacted in the year 1987 giving statutory recognition to Lok Adalat.[37] This Act obligates the states to provide free legal aid to poor

[34] Govt. of India, Ministry of Law, Justice And Company Affairs, Equal justice-Social Justice: Report Of The Juridicare Committee (1977).
[35] Frank S. Bloch, supra note 7, at 175.
[36] Ajay Pandey, Experimenting with Clinical Legal Education to Address the Disconnect between the Larger Promise of Law and its Grassroots Reality in India, 26 MD. J. INT'L L. 135, 158 (2011).
[37] Lok Adalats have also been described as preventive legal aid services within the contemplation of the Legal Services Authorities Act, 1987. See N.C. Jain, "Legal Aid, its Scope and Effectiveness of the Legal Aid Rules in this

persons. Besides this, the Act provides for the establishment of permanent Lok Adalats which is one of the important modes of ADR.[38]

- In 1994, a Committee chaired by Justice Ahmadi dealt elaborately with law school teaching methods The Ahmadi Committee Report proposed enhancing the talk strategy with the case strategy, instructional exercises, and other present day procedures for imparting legal education. It also recommended that the procedural and practical subjects must be made compulsory and be taught by experienced lawyers. The Committee also suggested making Professional Ethics a compulsory subject, with a minimum of 50% marks. Further Further, it suggested that all the new methods should become mandatory.[39] In accordance with this, the Law Commission of India, in its 184 report, felt that legal education is fundamental to the very foundation of the judicial system and took up reformation of legal education, *suo moto.*[40] *It* followed up on a number of recommendations of the Ahmadi Report, including its recommendation that the Law Schools should supplement the lecture and case method with the problem method, moot courts, mock trials and other modern teaching methods. The Commission also recommended that Clinical Legal Education may be made as a mandatory subject.[41]

- Another significant step was taken in 1997 when the Bar Council of India directed all law schools to incorporate four Practical Papers into their curricula[42]. Paper I requires instruction in litigation skills; Paper II requires instruction in drafting skills; Paper III

Regard", AIR Journal 184 (1996); The Lok Adalats are also part of the campaign to take justice to the people and ensure that all people have equal access to justice. See Law Commission of India, 222nd Report, Need for Justice-dispensation through ADR etc., (2009)

[38]*P. T. Thomas* v. *Thomas Job*, AIR 2005 SC 3575; See also Vijaykumar Shrikrushna Chowbe and Priya S. Dhanokar, "Lok Adalat – A Strategic Forum for Speedy and Equitable Justice", available at: http://papers.ssrn.com (last visited on 21.04.2012); Lok Adalats have also been described as para judicial Institutions. See Tulika Sen, "Natural Justice and Lok Adalats", (2007) PL February 7.

[39] Report of Committee on Reforms in Legal Education and Regarding Entry into Legal Profession, in LEGAL EDUCATION IN INDIA IN 21 sT CENTURY: PROBLEMS AND PERSPECTIVES, p. vi. (Koul A.K. ed., All India Law Teachers Congress, Delhi University, Delhi, 1999)

[40]Law Commission of India, 184th Report (2002) at 95

[41]The Legal Education & Professional Training and Proposals for Amendments to the Advocates Act, 1961 and the University Grants Commission Act,1956

[42] Bar Council of India, Circular No. 4/1997 (Issued on October 21, 1997); *see* UNDP Study, *supra* note 21 (Covering seven major states: Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Orissa, Rajasthan, and Uttar Pradesh).

requires instruction in ethical and bar-bench relations; and Paper IV requires public interest lawyering.

- In 2004, the United States Education Foundation in India (USEFI) in association with Vanderbilt Law School introduced a Fulbright Vanderbilt Scholarship in Clinical Legal Education. Under this scheme every year one person involved in legal aid would be send to Vanderbilt Law School to study the Clinical education in USA. This program had given the much needed exposure to the Indian faculty to advance Clinical programs that are successfully running in USA.[43]

- The first regional training program was conducted in association with Christ Law College at Bangalore in 2006. Second training program for Central region was conducted at National Law University, Bhopal. The third training was conducted at the Symbiosis Law College, Pune for Western Region. The Fourth training program was conducted in association with Indira Gandhi National Open University, Delhi. The last training program was conducted at National University of Juridical Science, Kolkata.

- The first Curriculum Development Committee (CDC) of the Bar Council of India was constituted for the purpose of facilitating Universities and Institutions to formulate the course design in various courses in Law. It consisted of Shri. N. L. Mitra, member of the Legal Education Committee of BCI as its Convener; and Mr. J.R.Beniwal, Vice Chairman of the Bar Council of India; Professor Ranbir Singh, VC of NLU, Delhi; Dr. Balraj Chauhan, VC, RMLNLU, Lucknow; Dr. Gurjeet Singh, VC, RGNLU, Patiala; M. K. Balachandran, Director, Amity Law School, Delhi; Vijayakumar, UNHCR Chair Professor, NLS, Bangalore and recommended that the high standard of legal education is to be achieved without unduly pressurizing only at memory level but also emphasizing the skill of application of law and detailing the fact analysis with lawyers' analytical precision, to be properly evaluated.[44]

[43] Meredith J. Ross, A Systems Approach to Clinical Legal Education, 13 CLINICAL L. REV. 779, 806 (2007).
[44] Report of the Curriculum Development Committee (CDC), I, Bar Council of India, 6 (BCI, New Delhi 2010) available at www.barcouncilofIndia.org/.../Preliminary_observationNew _Microsoft **A** _Word_ Document.doc.

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- Subsequently, five regional trainings were offered in 2007 through the (SAFCLT) and the Menon Institute of Legal Advocacy Training (MILAT) to promote legal education.[45]

- The possibility of network lawyering in India as an approach to guarantee access to equity and lawful strengthening for the oppressed is picking up significance as 'backing in the interest of a gathering is viewed as increasingly productive and practical, especially whenthe bunch all in all is at chances with the social, monetary, social, and political situation.[46]Jindal Global Law School looks to reproduce the NGO-graduate school network model through meetings, distributions and exploration on its effect. They host an annual conference on good rural governance and citizen participation and in 2011-12 held regional conferences across India.[47]The Institute of Rural Research And Development and Jindal offer training to interested NGOs and academic institutions to deliver training and support to rural communities.

Lastly, the most significant power which bears duty regarding directing legitimate guide benefits broadly, the National Legal Services Authority (NALSA), has thought of a significant arrangement of rules in accordance with the Bar Council of India's obligatory center goals in 2011. NALSA gave the National Legal Services (Legal Aid Clinics) Regulation on tenth August, 2011. This regulation in reality serves as the implementation mechanism for legal aid clinics in cooperation with the local authorities.[48]

II. IMPLEMENTATION ISSUES

[45]Ajay Pandey, Experimenting with Clinical Legal Education to Address the Disconnect between the Larger Promise of Law and its Grassroots Reality in India, 26 MD. J. INT'L L. 135, 158 (2011).
[46]Sopriyo Routh, Experiential Learning Through Community Lawvyering: A Proposal for Indzan Legal Education, 24 Pac. McGeorge Global Bus. & Dev. L.J. 1,116 (2011).
[47]In 2011, Regional Good Governance and Citizen Participation Conferences have been held at Assam University,Silchar; J.S.S. Law College, Mysore, Karnataka and Chanakya National Law University, Patna, Bihar.
[48] National Legal Services Authority, National Legal Services Authority (Legal Aid Clinics) Regulations 2011, available at http:/fnalsa.gov.inlschemes.htrnl (last visited on Jun. 04, 2013).

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Despite high-level endorsements, progress towards establishing clinical programs in Indian law schools has been meek. Even though, the regulatory authorities and other administrative bodies that oversee legal education have taken many initiatives to increase access to justice for the underprivileged, they have failed due to bureaucratic hassles. The Report of the Law School Based Legal Aid Clinics, 2011 has very effectively pointed to all of the reasons why the legal aid programs at law school clinics have not been running well.[49]

A. Shortcomings

1. The desire to pursue opportunities in the global market made it difficult to keep the focus on legal strategies that would protect the rights and immediate needs of the poor. Most Indian law students and their families aspire for legal careers that are lucrative, and these goals have not been sufficiently connected to the benefits of implementing clinical programs and teaching methods in our country. Further, India has a large chunk of middle-class population, who struggle to meet their own financial obligations and this reduces the motivation to undertake legal matters and contribute their skills and talent free of cost.

2. The number of students attending law schools in India does not necessarily represent vocation or an expectation of entering the profession; students also enter law school as a matter of opportunity or indecision.[50]

3. Lack of experience in clinical teaching, the demand on teaching resources that clinics make and the Bar Council's failure to provide institutional support for the clinical legal education contributes to the difficulty in realizing the desired change.[51] Due to unattractive pay package it is almost impossible to hire services of good lawyers for promoting clinical education in Law Schools. In addition, law in India does not allow

[49]Report of the Law School Based Legal Aid Clinic (2011), available at http://www.undp.org/content/dam/india/docs/astudy-of law school based legalservices_clinics.pdf (last visited on Jun. 04, 2013).

[50] Deban Satyadarshi Nanda, Integrated Clinical Legal Education, 2 ASIAN J. LEGAL EDUC. 170, 174 (2015).

[51] Frank S. Bloch & Iqbal S. Ishar, Legal Aid, Public Service and Clinical Legal Education: Future Directions from India and the United States, 12 MICH. J. INT'L L. 92, 113 (1990).

full-time law professors to practice law.[52]This is regarded as a major hurdle in developing effective CLE in India,[53]as this prima facie, deprives law schools of working on real cases with real clients.

4. A recent UNDP report surveying 39 law schools with legal aid cells found that although 82% of those schools had faculty designated to supervise legal aid cells, 63% of those schools did not give academic credit to students. [54]The study further pointed out that there is no workload reduction given to faculty who are designated to supervise legal aid cells and sometimes communities are not even aware that the law schools provide free legal services.[55] Consequently, clinical legal education in India has not reached its full potential.

5. In respect to rural areas, there are strong language barriers which prevent para-legal volunteers and lawyers from serving the poor. Most of the underserved clients speak only the local state language, while the students who come to the law universities often come from several Indian states. The students and faculty share Hindi and English, but these languages are often not shared by the poor.

6. Most Indian law schools do not have formal clinical legal education programs. Some law schools have 'legal aid cells' but they are neither directly supervised nor formally incorporated into the curriculum and are often voluntary student-run organizations. Secondly, law students do not receive course credit for their work in the legal aid cell. For example, like in many other law schools in India, Amity Law School also offers a

[52] The Advocates Act, No. 25 of 1961, INDIA CODE (1961); Bar Council of India Rules, Gazette of India, 2001, part VI, ch. II, § VII, 49 (Sept. 6, 1975) ("An advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practice
[53] Bloch & Ishar, supra note **19,** at 119; Jane E. Schukoske, Legal Education Reform in India: Dialogue Among Indian LawTeachers, 1 JINDAL GLOBAL L. REV. 251, 265 (2009).
[54] UNDP Study, supra note 21, 16, 20.
[55]Id., 33-44.

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'legal aid cell' supervised by a faculty member, who has many other responsibilities, and where students do not receive any credit for participation.[56]

7. To some extent, the goal of practical training has not been met since most of the law Schools have failed to supervise the work of the students in lawyer's chambers and court observation. This has resulted in the submission of either fake cases or merely copying from others' journals.[57]

8. Law Schools that are either operated or aided by the government, struggle financially and thereby due to financial constraints, Law Schools are unable to promote schemes like Legal Aid, Legal Literacy and Legal Research.

At last, the Bar Council of India's obligatory order to bring the four down to earth papers into the educational program was invited just apathetically by graduate school specialists as their staff came up short on the aptitudes and experience important to show the course appropriately or 'basically, law personnel neither had a dream for, nor appropriately comprehended, the estimation of these papers.[58]

III. IMPORTANCE OF CLINICAL LEGAL EDUCATION IN INDIA

The domestic law provisions on human rights in India, flowing from the Indian Constitution, are well aligned with the international human rights law regime.[59] Although, theoretically human rights and equality before law are well settled, the grass root realities are different. Therefore, it is particularly important for the legal community to address this disconnect between theory and

[56] United Nations Development Programme India, Access to Justice for Marginalised People: A Study ofLaw School Based Legal ServiceClinics, 2011, available at http://www.in.undp.org/content/dam/india/docs/a_study_of_law school based legal services clinics.pdf.
[57]Legal Education in India: Problems and Perspective, 19 J.I.L.I. 337, 337-48 (1977)
[58] Frank S. Bloch, supra note 7, at 180
[59] In addition to the key human rights covenants, the ICCPR and ICESCR, India has also passed the Protection of Human Rights Act, 1993. The Protection of Human Rights Act, 1993, amended by the Protection of Human Rights (Amendment) Act, 2006, No. 43 of 2006, INDIA CODE (2006), vol. 30. Vishaka v. State of Rajasthan, A.I.R. 1997 S.C. 3011, 3015; see also Apparel Exp. Promotion Council v. A.K. Chopra, A.I.R. 1999 S.C. 625, 634

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practice. If this disconnect is not appropriately addressed and bridged, the law and its promises will continue to delude a majority of the Indian population; most of the fundamental Constitutional promises[60] will remain unfulfilled, and the rule of law will have a chimerical existence.

Thus, to achieve the Constitutional goals and to uphold the principle of rule of law, clinical legal education becomes not an option but a mandate.

IV. ROLE OF JURISTS, LAWYERS AND STUDENTS

A. Jurists

Jurists play a pivotal role in analysing the policies and initiatives taken by the Parliament as well as the stance taken by the Judiciary upon any area of law. Their opinion helps to amend the policies and make it more effective.

The most prominent jurist N.R. Madhava Menon, initiated the first Law School Legal Aid Clinic in Delhi University in 1969 and has helped to organize clinical programmes at several law schools within India and outside the country. Further, he has interpreted the legal aid provisions in the country and it's judicial application in several books such as the Indian Legal Profession (1983), Legal Education in India (1982) etc. He articulated that the substantive laws and procedural rules can be learnt better through practice in a clinical setting than by lectures or discussion.[61]

Upendra Baxi, another eminent and acclaimed jurist has also chaired various committees which recommended the necessary changes to be adopted in imparting legal education so as to make it fruitful for the luminaries as well as the society.[62]

[60] Reflecting these promises, the Preamble to the Constitution of India reads: WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation
[61] N.R. Madhava Menon: "The Canadian Law Teaching Clinic", Indian Bar Review (Editorial), Vol. XI (3) 1984
[62] REPORT OF CURRICULUM DEVELOPMENT COMMITTEE 1 (UGC, NEW DELHI, 2000).

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D.K. Sampath, a leading advocate and legal aid activist based in Chengelpet, Tamil Nadu has pioneered the Rural Concilliation Programme and set up a number of Alternate Dispute Resolution Centres in several parts of South India and also has helped to structure and develop the clinical legal education programmes at NLSIU. [63]

In terms of international perspective, Prof. Kenneth-L Penegar, at the Annual meeting of the Association of American Law Schools in 1981 recommended steps to broaden the horizon of clinical legal education such as conducting more experiments in clinical courses, disseminating information about the legal services being offered by law institutes to communities, collaboration of lawyers with social workers and psychologists, creation of alternate dispute mechanisms etc.[64] Further, the judicial wing is the ultimate interpreter of legislative policies and schemes which increases the threshold of responsibility upon them to uphold the constitutional principles and provide legal aid. The Supreme Court in *Sheela Barse v. State of Maharashtra*[65], stressed that the arrangement of legitimate help for a poor or poverty stricken blamed captured and put in danger for his life or individual freedom was an established basic ordered not just by Art. 39A yet additionally by Arts.14 and 21 of the Constitution. Without legitimate help, shamefulness may result.

B. Students

A democracy's well-being is dependent on participation of its citizens and the exercise of vigilance and vibrance by them. The establishment of law clinics is done by the college; its functioning and successful operation depends upon the enthusiasm and commitment of students.

In law clinics, students gain valuable legal skills while delivering much-needed legal services to underprivileged communities and these twin goals are often cited to motivate implementation of clinical legal education.[66] In clinics, students learn to think beyond their own concerns and determine means to enhance the welfare of society as a whole; they also garner key skills for examining policies, laws, and circumstances from the perspectives of multiple stakeholders and communities. They develop empathy towards persons in oppressed positions and advocate for the equal needs of their clients. By working with clients who are from marginalised groups,

[63] A Handbook on Clinical Legal Education, Eastern Book Company (1998), pp. XXIII 312, Rs.285/- by N.R. Madhava Menon (Ed.).
[64] Meredith J. Ross, A Systems Approach to Clinical Legal Education, 13 CLINICAL L. REV.779, 806 (2007).
[65] (AIR 1983 SC 378)
[66] D.W. Tushaus et al., India Legal Aid Clinics: Creating Service Learning Research Projects to Study Social Justice, 2 AJLE 101 (2015).

students learn to identify the inequalities in the legal system and political structure so they can work towards solving them as law students and also as lawyers.

Vital human rights case tries to utilize the authority of the law to advocate for social change for the benefit of people whose voices are in any case not heard.[67] It can give wide access to equity and legal review to all people or class of people that are in a place of destitution, helplessness, handicap and avoidance as a rule. Thereby, the law students who will subsequently shape the future of our legal system should devote some time out of their normal working hours towards this, for instance taking one pro-bono case per month minimum. This way would be feasible for them and the society would also not suffer.

In India, there are some examples of public interest litigation by law students[68] and also their zeal towards law reform activities. The Legal Aid Society of the West Bengal National University of Juridical Sciences (NUJS), Kolkata has been involved in seeking justice for scheduled castes population in Puri District, Odisha since 2010.They have filed specific complaints with the Odisha State Human Rights Commission regarding right to water, right to enter into the temple for the scheduled caste population and, free and compulsory education for the scheduled caste children.

Thereby it can be deduced that students' involvement in legal literacy, legal aid and para-legal services has opened a new dimension to Clinical education in India in the form of public interest litigation and would go a long way in promoting clinical legal education in India.

C. Lawyers and Judiciary

To conclude the narrative of legal aid being unfolded by the Indian Judiciary, it must be mentioned that the appellate courts under the leadership of the Supreme Court have devised an extraordinary form of jurisdiction under the name of *Social Action Litigation* commonly known as *Public Interest Litigation69(discussed above)* famously undertaken by activists such as Prashant Bhushan and M.C. Mehta.

[67]Litigation Report: Global Human Rights Litigation, Open Society Justice Initiative (Feb. 2012), available at http://www.soros.org/sites/default/filesflitigation-report.20120228.pdf

[68] Students of the V. M. Salgaokar College of Law, Goa have successfully filed 14 public interest litigations before the Mumbai High Court (Panaji Bench) on various issues ranging from the use of helmets to violations of Coastal Regulation Zones. See V. M. Salgaocar College of Law, http:/wwwv.vmslaw.edu/.

[69]Peoples Union for Democratic Rights V. Union of India AIR 1982 SC 1473

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This has achieved some astonishing results like radical democratization of the teaching of locus standi; each resident may now move toward courts for vindicating the infringement of human privileges of co- - come, face to face with all their disorderly measurable styles of argumentation and still be conceded in the court. The intent behind this is to establish that protection of law is not just available to a fortunate few where a status quo is maintained but to individuals irrespective of their financial conditions who are allowed to enjoy their political and civil rights.

V. SUGGESTIONS

In accordance with the Bar Council of India mandate of incorporating a functional clinic within every law school/college, it is suggested that each law school or college should establish their clinic in rural or semi-urban areas. It may be established in association with any local NGO or municipality or Panchayat authority. It should be open at the weekends like Saturday evening or Sunday morning because the prospective client could be free to attend. The ideal student group for a clinic should not exceed 25 for each Saturday evening or Sunday morning. The forth year and fifth year (in case of 5 year LL.B course) students or second year and third year (in case of 3 year LL.B course) students should be divided into several groups to run the clinic each Saturday evening or Sunday morning and these groups should rotate as per their convenience. Further, students doing the work shall be given some form of benefit, or reinforcement so as to feel motivated.

State Bar Councils and Bar Associations should play an active role in implementing the clinical programs in each state. State Bar Councils with the help of local Bar Association may provide some mentor lawyers for the students in a particular clinic. The mentor lawyers, in-cooperation with the designated clinical faculty, may supervise the works of the clinic students in Saturday evening or Sunday morning. This would not only build a working relationship between the senior lawyers and the future lawyers but also enable learning of professional ethics and etiquette by budding lawyers.

In terms of institutional modifications, law as a dynamic subject should be taught using techniques which differ from the conventional modes of learning and special emphasis should be laid on certain key skills which help one cater to societal needs such as problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counselling, negotiation, litigation and alternative dispute resolution procedures, organization and management of legal work, and recognizing and resolving ethical dilemmas[70] by the professors.

[70]MacCrate Report Legal Education and Professional Development – An Educational Continuum, 1992 A.B.A. Sec. Legal Educ. & Admissions to Bar 213 at 138-221.

In order to advance this self-directed professional development, it is desirable to give a decisive role to the students even in the planning and implementation of the activity.

An in-house clinic (one run by the university for purposes of teaching its students and providing service to the community or a hybrid clinic (one that collaborates with an existing legal services office to provide representation)[71] shall be established in every law university. Symbiosis offers valuable legal services under the name of Community legal services care.

Due to diversification of language and culture in our country, which is identified as one of the shortcomings, interpreters are necessary to assist with the complex communication needed for competent representation. Law universities may need to hire interpreters to work with their students in an in-house clinic, or as part of facilitating the interface in a hybrid clinic setting.
The success of any scheme or policy naturally depends upon the availability of resources and thereby it is urged to sought funding of law school clinics from the State and Central Legal Aid Boards/Committees for the effective functioning of law school legal aid clinics.
A provision can be incorporated in the Advocates Act which provides full-time instruction for professional LLB degree and maintains a legal aid clinic as part of its teaching programme where poor persons receive free legal aid, advice and related services.

Direct representation of clients in courts and tribunals through a college based aid clinic is indeed the highest form of clinical experience that professional education can offer, which can be implemented atleast at the ground level. Once students are assigned Lok Adalat work, they must be prepared with material and discussion on the institution of Lok Adalat, its objectives and limitations, its methods and procedures.[72]

Finally, the UGC must take some steps to develop the faculty standard for clinical teaching in law. It should start a faculty development course on clinical legal education for staff of law schools who are in charge of teaching practical papers.

[71] Beauty and *the Beast* – Hybrid Prosecution Externships in a Non-Urban Setting, 74 Miss. L.J. 1043 (2005).
[72] Madhava Menon "Designing a Simulation-Based Clinical Course: Trial Advocacy" (in) A Handbook On Clinical Legal Education P. 178.

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VI. CONCLUSION

In the end, the author[73] believes that law universities have both an obligation and a unique opportunity to prepare a generation of lawyers who would approach the law with a commitment to provide social justice. Thereby law schools should more effectively connect the substantive education they provide to professional practice by enhancing the number of workshops, field visits etc. In the end, it is the citizens and individuals who ultimately contribute to the success of any scheme or social welfare legislation. Thereby inculcating sensitivity to pro-bono services, providing training in practical aspects of law such as drafting and pleading are primarily the tasks of the lecturers and to acquire wisdom from such teaching as well as implementing the same depends upon the law students. Having said this, it cannot be denied that while the legislature gives a formal backing to any initiative, it cannot be solely blamed for the failure or fallouts of any public policy for that matter and thereby law students should commit themselves and divert their time and energy towards this noble work, if not completely then partially. Partially because, it cannot be refuted that law students are burdened with their academics, co-curricular and extra-curricular activities and the professors indulge in research work, administrative work apart from their job of conducting lectures. Therefore it is strongly suggested that special 'incentives' should be offered to those who associate themselves in promoting clinical legal education in India.

[73]Madhava Menon "Designing a Simulation-Based Clinical Course: Trial Advocacy" (in) A Handbook On Clinical Legal Education P. 178.

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MEDICAL NEGLIGENCE: NOT AN ACT OF GOD, ITS PRETTY CLEAR CUT

Rupa Paul[*]

ABSTRACT

Attacks on doctors and hospitals are quite common. The research questions that address this issue are: What are the safety measures that can be taken to protect doctors from mob attacks? Does training the current generation of doctors to improve the communication between the patients and doctors becomes an urgent need? What are the Kinds of violence that doctors face from the patient's relatives and what are the psychological issues they result in doctors? What should a doctor do to avoid violence? What should the patient's family and society at large do to prevent violence? This study is to identify the violence rate in Indian healthcare. The methodology involves explanatory approaches and development of an integrative framework to facilitate the understanding of violence occurs in hospitals. At least 19 states of India-including West Bengal, the epicenter of the protests, passed what is called the Protection of Medicare Service Act, known as the Medical Protection Act (MPA). The main concern is the absence of adequate economic investment in healthcare e.g. only 1% of the GDP of India. The services rendered by the doctors are covered under the provisions of the Consumer Protection Act, 1986 and a patient can seek redressal of grievances from Consumer Courts. Case laws are crucial sources in law in adjudicating various problems concerned with negligence arising in medical treatment.

KEYWORDS
Methodology; Violence; Medical Protection Act; Healthcare; GDP

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I. INTRODUCTION

Over the most recent couple of years, reports of savagery against doctors that prompts unfortunate hurt or murder are standing out as truly newsworthy over the world. A few occurrences have been accounted for from India as well; however, this menace has not been highlighted adequately. Whether the rise in reporting of violence truly represents an actual increase within the prevalence of the condition or simply represents the increased awareness within the era of electronic mass media and improved telecommunication system needs further assessment.

Though such violence against doctors were known in western countries, it hardly made any news, and there was not much discussion about this in Indian medical journals before a decade , as they were probably infrequent.

The present research aims to determine the following:

a) To deal with the heightened anxiety about the disease as well as finance needed for the treatment of disease seem to be an important component of initiation of violence and the doctor should train himself/herself for anxiety alleviation techniques.
b) To identify better, training have to be provided for doctors to tackle this situation or ~~not~~ by reducing long waiting periods for the patients in the waiting rooms and trying to improve patient contact as much as possible.
c) To have a superior comprehension of vandalism and savagery in a medical clinic or facility as a criminal offense; any socialized society ought to have low resilience for such egregious acts
d) To frame the responsibilities of patient's relatives, media, government, and other political parties.

In government hospitals and primary health centers across the country, particularly in West Bengal and Maharashtra, violence by patient's relatives, local goons, and political leaders has been reported. Here, cash isn't the explanation yet uneasiness, long holding up period, non-

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accessibility of critical examinations, over the top postponement in referral, unhygienic and incredibly packed condition in crisis and different wards are a portion of the reasons, given that Electronic and print media additionally don't have a genuine comprehension of the difficulties looked by the doctors. In the majority of the European nations, the human services cost is borne by the administration, and regularly, the main contact of the patient with clinical help is with assigned general experts who make house calls day and night. Hence, there is no financial anxiety for medical treatment in these countries which is lacking in India. The first point of contact here is a junior doctor or an intern who is working day and night for patient care. But due to lack of resources, several crucial investigations are not performed in some hospitals and this leads to harassment and anger among the crowd without properly understanding the actual situation.

According to common law jurisdictions, a tort causes a claimant to suffer loss or harm, resulting in legal liability for the one that commits the tortious act who may be a doctor, a nurse or any other management staff in a hospital. It can include the intentional infliction of emotional distress, negligence, mental harassment, financial losses, injuries, invasion of privacy. Negligence in terms of patient implies an absence of intention to cause harm which a patient complains as careless or unreasonable conduct. But mere unreasonable conduct without damage is not actionable though it may be sometimes a punishable offense. Such conduct, when followed by patient's relatives can cause harm to a doctor giving rise to liability for negligence.

Generally, there are two theories about negligence in the law of tort. They are as follows:

A. **Subjective Theory-** This theory denotes the 'State of mind'. This state of mind varies from person to person and the person is liable only for his intentional acts and not otherwise. It always involves a personal element. If a person has acted to the best of his ability then he cannot be held liable for any type of negligence which is often misunderstood by the patient or their family members.

B. **Objective Theory-** According to this theory, negligence is a type of conduct that a reasonable man can avoid with a reasonable degree of quality care and caution.

Therefore, negligence can be broadly seen in two perspectives. The 'objective theory' gives an independent identity to the concept of 'negligence' in the law of tort. Medical negligence, in today's context, is not seen just as a 'state of mind'. A patient when goes to a doctor expects a certain level of care and alert from him which is understood in the administrations gave by a doctor. A doctor can't escape from his liabilities taking the reason that he acted as well as could be expected. His capacities should coordinate the capacities of a doctor who is pronouncing a similar support of a sensible degree and providing quality treatment to his patients 24/7. Negligence can occur at various stages. It may happen when a doctor may misdiagnose a problem, fail to treat the injury or illness properly, administer the wrong medication, and fail to adequately inform a patient about the risks of a procedure or about alternative treatments which

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results in violence among the patient's relatives causing severe harm to the doctors and public property in the hospital.

II. LITERATURE REVIEW

Health-care professionals are at the highest risk of violence in their work among all other professionals. Health-care workers are many times more likely to be injured, particularly because a doctor often deals with a person when he/she is in a stressful and emotionally taxing situation. Writing recommends that 40% – half of therapists will be genuinely assaulted by a patient, and these occasions will in general happen right off the bat in one's vocation. Dr. Wayne S Fenton, Assistant Director of the National Institute of Mental Health was executed by his patient with schizophrenia during treatment in 2007, and comparable cases have been archived in the writing. Because of the expanding reports of viciousness against doctors, wellsprings of worry among doctors are seen as dread of brutality, trailed by dread of being sued. In an overview, doctors detailed that 62% of them couldn't learn their patients with no dread of viciousness, and 57% had considered recruiting staff at their working environment for their well-being. In a tertiary care hospital in Delhi, 40% of doctors reported being exposed to violence in the last few years. The purpose of conveyance of crisis administrations is consistently the most typical of viciousness and obnoxious attack is a typical type of brutality. Outrage, dissatisfaction and touchiness are the most widely recognized manifestations experienced by the doctors who were exposed to brutality. Out of those who were exposed to violence, only 44% reported the incident to the authorities because of the fear of being beaten up by the patient's relatives outside the hospital premises.

The Indian Medical Association has announced that 75% of doctors face verbal or physical maltreatment inside emergency clinic premises especially in government medical clinics. The revealed episodes of vicious wrongdoings against doctors in India have been expanding from 2006 to 2019, with the most elevated viciousness rate happening in Delhi, Maharashtra, Uttar Pradesh, and West Bengal. As of late, reports of doctors getting whipped by patients and their family members are found via web-based networking media. Pretty much every doctor is stressed over savagery at their working environment, and not many doctors are prepared to maintain a strategic distance from or manage such circumstances.

III. Research Gap and Motivation of Research

If we look at a policy level, India's health-care is spending close to 2% of the total budget, which is dismal in number when compared with other countries. The Indian government's share in the

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health-care delivery is around 20%. The most dominant role in the health-care delivery is provided by government or small hospitals having up to thirty beds, but here, due to poor insurance penetration, the patient has to spend money from his/her own pocket to the point of catastrophic poverty. As a result of this, patient's relatives are susceptible to violence and aggression at the time of billing due to huge billing amount at the time of discharge of patients. Indeed, even government medical clinics are not saved of savagery because of poor accessibility of offices, which is featured by the way that solitary 1 lakh doctors are working in government segment rather than a sum of 9 lakh specialists in the nation. This outcomes in long working hours and poor workplace for government doctors, which commits them defenseless to making errors and inclined to viciousness.

In any case, the current impression of benefit making by scarcely any doctors has injured the picture of the all the doctors in India. With the appearance of current medication, it has brought about expanding the expense of medicinal services all inclusive, yet because of low proficiency rates in India, there is an unreasonable desire that paying more cash would spare one's life, i.e., better results are normal regarding the treatment of the patient.

A doctor may receive only 30% of the total amount of bill paid for each patient. Since doctors choose the examinations or different costs that will be required by a patient which is combined with such a large number of thrilling news that report doctors cheating for different tests and reports by the media, it has driven the normal man to accept that it is normal for a doctor to compose over the top tests to gain cash.

The public feels that since media show numerous doctors getting pounded each day while the culprits are never appeared as rebuffed, they can assume control over the issue when they feel cheated by a doctors. This results in brutally beating the doctors inside hospital premises. There is an immense responsibility for patients, their relatives and society at large to prevent this violence.Questions among patients and medical clinics or specialists are not to be figured out viciousness; in a socialized society, there are roads of dispute redressal committee or public relations department which should take care of all these cases.
There ought not be over desires on the result of the treatment in a genuine case. A few patients make it alive, while a few patients may not. This ought to be obviously comprehended. There ought to be an understanding that vandalism and savagery in an emergency clinic or center is a criminal offense and a cultivated society ought to have low resilience for such terrible acts. Barely any political pioneers appear to censure such brutality today yet shockingly they some of the time attempt to legitimize the circumstance.

IV. Research Methodology

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To address the proposed research questions, this study is based on a systematic literature review as an useful way to identify the violence rate that is increasing day by day against doctors in India.
Methodology used to analyse the open questions would be: (1)Concerning the information union technique (2) interpretative and logical methodologies was received, trying to surpass portrayal as the sought after objective, being reasonable, (3) improvement of an integrative structure to encourage the comprehension of what, how, and why savagery happens in clinics.

Figure 1 describes Paribaha Mukhopadhyay, one of the two junior doctors at NRS Medical College and Hospital who was beaten by a group of 200 men who came on trucks after 75-year old patient passed away at the hospital.

Figure 1 NRS Medical College junior doctor assaulted

Figure 2 describes an orthopaedic doctor at the Government Medical College at Dhule, Dr Rohan Mhamunkar, was beaten up allegedly by relatives of a patient who had suffered a severe head injury. Dr Mhamunkar was brutally beaten up badly as a result of which, he suffered blurring of vision in one eye.

Figure 2 Orthopaedic doctor thrashed by patient's kin

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Figure 3 describes a few outraged relatives of 26-year old deceased brutally bashed up a resident doctor with a scalpel.

Figure 3 Angry relatives brutally beat up resident doctor demise of patient in Pune

V. LIMITATIONS OF RESEARCH

This present study has been carried on few selected hospitals of Kolkata, India and enquiry was also made on few selected healthcare professionals and patients based on Convenience Sampling due to shortage of time, financial resources and inability to get permission within stipulated time ~~in some hospitals to carry out this research~~. In future this research can be carried out in various geographical areas and results of violation obtained can be compared. Moreover this present research lacks in-depth Statistical Analysis and with adequacy and sufficiency of primary data this shortcoming can be overcome in near future with active research activities.

A. Scope for Further Research

Future research projects should take into consideration other variables that may influence the understanding of doctors the patient related behavioural characteristics that are associated with violence and can only be solved through proper training of doctors. There is no appropriate medical clinic security which ought to be fortified and should be appropriately interlocked with close by police headquarters. No arms/ammo by persistent or their family members ought to be permitted inside the medical clinic. There must be lucidity on the fee of various investigations, rents and other expenses within the hospital. There should also be a correct complaint redressal system within the hospital which is a challenging task for the scope of further research.

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VI. CONCLUSION AND RECOMMENDATIONS

An investigation of hazard factors related with savagery against specialists found that:

- Younger specialists or junior specialists face increasingly physical brutality since they are at the principal purpose of contact
- Female doctors face less violence compared to male doctors.
- Division of obstetrics and gynecology revealed the best paces of savagery, trailed by the drugs department with allied specialties, and surgery department with allied specialties.
- Verbal brutality is consistently the most well-known type of viciousness. In the crisis office, 100% of specialists announced a verbal savagery.

Factors related with viciousness to healthcare workers in India are as follows:

a) Absence of post doctorate training in emergency medicine
b) Lack of emergency resources like blood, laboratory services, relevant drugs etc.
c) Wrong beliefs among patients that hospital should give its service free/or almost free with discounts.
d) There is always high work load particularly in government hospitals.
e) Media portrays wrong image of doctors all over India which results in creating violence among members of patients.
f) There is political interference in hospital which helps the public beat the doctors.
g) Lack of security and surveillance around the hospital is one of the factors associated with violence to healthcare workers.
h) There is unrestricted public access to all areas in hospitals which creates overcrowding and thus violation and damage of public property

From a hospital administrator's point of view, it is indeed very disappointing as there are no readymade shortcuts on the offer to improve the outcomes. Moreover, it is important to realize that health is a social phenomenon and a public hospital is a social institution that cannot be studied in isolation from the societal conditions in which it operates. The investigation introduced here is in similarity with the real world. Taken generally speaking, the open human services framework in the nation remains at intersection where there is little in the current framework that merits coordinating. The government needs to put effort to see how overcrowding in every hospital can be prevented. No nation can build hospitals for approximately 1300 million patients, but it is possible to build a hospital for 1300 million citizens

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who are largely healthy. To keep roughly 1300 million individuals sound in a nation like India is a humongous errand.

Nourishment, vaccination, well-being training, contamination control, individual cleanliness, access to clean water, unadulterated milk, unadulterated food, offices for work out, play area, and so forth are essential prerequisites everywhere throughout the country. The administration should focus its exercises on preventive medication in each open and private clinics. The legislature should carefully rebuff the unlawful conduct of anyone who hurts the specialist and vandalizes the medical clinic. Certain nearby factors, for example, horde mindset and lawmakers assume a significant job in affecting brutality which regularly forms into emergency in different medical clinics.

Demise of a friend or family member is regularly utilized by the neighborhood government officials to show their quality by stripping and harming medical clinics' property vivaciously. This issue is exceptionally basic in little essential wellbeing communities that need offices. At the point when specialists preclude the accessibility from securing these offices, particularly in government emergency clinics they are confronted with dangers and scares to treat at any expense, by the neighborhood lawmakers who are included by patients' family members regularly. In the event that viciousness happens in spite of playing it safe, it's significant for the foundation to watch the specialists in question, and yet to not meet displeasure with outrage. It is always recommended by hospitals to address their grievance to the public relations department in case of private hospitals and hospital committees in case of public hospitals, to take note of the problems faced by a patient who is actually genuine or misconducted.

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A COMPARATIVE STUDY OF FALSE CONFESSION AND ITS COMPLIANCE TO DIFFERENT NATION

Deeksha Karunakar & Deepika Teotia *

ABSTRACT

Sir William Garrow once said, "Innocent until proven guilty". This statement has been followed in every legal aspect. But is the statement true as it seems? Sometimes an innocent person is landed as guilty of the crime he never committed, due to his admission of committing the crime in front of the authorities. These misleading statements are provided under pressure, threat, undue influence from others or by any other means. The confession statement costs an innocent his entire life. This paper will focus on such matters which showcase that innocence can't be proven by anybody in any matter even if their statement states otherwise.

KEYWORDS
Confession, Admission, Pressure, Threat, Statement, Guilty.

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I. INTRODUCTION

Confession evidence is undoubtedly one of the best pieces of evidence of guilt under the criminal justice system. What is more evident than the confession of the guilty of his crime unless the confessing statement is false in nature? Even though the justice system is precisely and advently made, there can be some flaws in it as well. The existence of false confession is worldwide. This kind of confession is obtained by legal authorities from the suspect through unconstitutional methods. Such methods include threats, undue influence, polygraph tests, brain-

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mapping, narcoanalysis, etc. Sometimes the lower intelligence quotient of the suspect makes them confess the crime under pressure or threat.

The importance of a confession in a crime is as much as the forensic evidence (like: - DNA Analysis, Fingerprint Report, Blood-Spatter Analysis, etc). In most of the cases, the confession is only considered valid, only if it collaborates with the autopsy report and the circumstances of the crime scene. But in some cases, the connection between the confession and the crime is brought out by the authority and the information is fed to the suspect, thus leading their statement/confession to collaborate with the circumstances of the crime. The most appalling point is that even though confession plays a major role in criminal justice system, it hasn't been defined in any codified law in the world except in Police and Criminal Evidence Act[74] where the criteria of getting an admissible confession for the court have been laid out. But without a proper definition, how can 'confession' play an important role in giving justice?

II. DEFINITION

Even though the term 'confession' has not been defined under any codified law, it has been provided with some meaning by the dictionaries and cases.

As per Merriam Webster[75], the term 'confession' means, *"a written or oral acknowledgment of guilt by a party accused of an offense"*.

As per Lexico Dictionary[76], the term is defined as *"A formal statement admitting that one is guilty of a crime"*.

As per an Indian case, Pakala Narayana Swami v. Emperor[77]Lordship Atkin stated that *" no statement that contains sell exculpatory matter can amount to a confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed. Moreover a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not of itself a confession"*.

In U.S. Supreme Court, Miranda v. Arizona[78], it was stated that, *"confession could not be admitted as evidence, and established the rights of persons accused of crimes"*.

[74]*Police and Criminal Evidence Act, 1984* (HMSO 1984).
[75]"Confession" (*Merriam-Webster*) <https://www.merriam-webster.com/dictionary/confession> accessed September 29, 2019.
[76]"Confession: Definition of Confession by Lexico" (*Lexico Dictionaries | English*) <https://www.lexico.com/en/definition/confession> accessed September 29, 2019.
[77]AIR (1939), 41 BOMLR 428; (*Pakala Narayana Swami vs Emperor on 19 January, 1939*) <https://indiankanoon.org/doc/516808/> accessed September 29, 2019.
[78]US Legal, Inc, "Confession Law and Legal Definition" (*Confession Law and Legal Definition | USLegal, Inc.*) <https://definitions.uslegal.com/c/confession/> accessed September 29, 2019.

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In U.K.'s Police and Criminal Evidence Act, 1984[79]the term has been defined as, *"includes any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise".*
In Canadian common law, confessions are derived directly from English decisions and legal principles.[80]

III. PRINCIPLE OF *QUID PRO QUO*

In most countries the principle of *quid pro quo* is followed in the criminal justice system. The doctrine of quid pro quo is a Latin term for *'Something for Something'*.[81] This particular principle is followed in the justice system to get information or confession of the crime from the guilty.This principle is used in interrogation and in different procedures laid down to get a confession from the suspect for guilt of crime, where if the suspect confessed to the crime, he will most probably get less charged for the guilt of the crime. But this principle also has its downfalls, because it leads to pressuring a suspect for the crime they most probably didn't commit, since sometimes the interrogation procedures required for a valid confession leads to unintended threat or pressure to the suspect by the authorities.
There have been cases in which such promises had been made to the suspect which is unlawful in nature. It is illegal for any authority to make any kind of promise or threat to the suspect to get a confession.[82]
The quid pro quo is an important principle but it has to be used with effective measures. The increase in the rate of false confession is significant; the growth of the victims of false confession is humongous and has reached the heights of unlawful means from lawful authorities, to deliver 'justice' even if it will lead an innocent behind the prison.

[79]Police and Criminal Evidence Act, 1984, S.82(1).
[80]"Confession (Law)" (*Wikipedia*September 1, 2019) <https://en.wikipedia.org/wiki/Confession_(law)> accessed September 29, 2019.
[81]"Quid Pro Quo" < https://legal-dictionary.thefreedictionary.com/quid pro quo> accessed September 29, 2019.
[82]"COLUMN ONE : Getting Suspects to Confess : How Far Can Police Go? Hardball Tactics Are out but Using Forgeries and Lies Can Be OK, under the Rules of Interrogation. Some Defense Lawyers Fear Even the Innocent Can Fall Victim to Such Deception." (*Los Angeles Times*September 21, 1995) <https://www.latimes.com/archives/la-xpm-1995-09-21-mn-48363-story.html> accessed September 29, 2019.

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IV. STATISTICS OF FALSE CONFESSIONS

The statistics of victims of false confessions has grown in quite an extensive scale worldwide. The recent study conducted by the University of Michigan and Northwestern University law schools, on false confession provided its data under the name of National Registry of Exoneration concluded *'Around 73% of false confession in Homicide cases'*.[83]
In the Wall Street Journal, it was reported by Zusha Elison, *'Around 38% victims of false confession are below 18 years of age; 11% victims are adults which in numbers is 1,155 individuals who were wrongly convicted and later cleared with all charges'*.[84]
A 2011 study published in Law and Human Behaviour by Jennifer T. Perillo and Saul M. Kassin of CUNY's John Jay College of Criminal Justice[85], reported the highlights of their test as follows:-

> *"In the first experimental group, 43 of 71 participants admitted to the experimenter that they had pressed a computer key that they were directed to prevent from doing so; an additional 10% admitted to pressing the key to a study observer. A second experimental group testing subject responses to cheating charges produced nearly the same percentages of false confessions. The second experimental group, 94% of participants expressed some degree of certainty in their own innocence: 24 (73%) were completely certain, 7 (21%) were somewhat to mostly certain; 2 (6%) said they were somewhat certain of their guilt. Despite the fact that most participants knew they were innocent, however, a majority agreed to confess. In the second experimental group, 75% of those who confessed in the bluff condition explicitly cited the bluff as the reason for that decision. Reasons cited for the confession included wanting to finish the study and feeling sorry for the experimenter".*[86]

The study was to understand how victims reacted to accusations and lead to a false confession. The study concluded that the majority of the people in the group were innocent and were made to believe that they did the act which was restricted to do.
According to the study of the Innocence Project, 30% of all DNA exonerations involve false confessions as well as the study by the National Registry of Exonerations estimated 182 out of 1432 known exonerations involved a false confession as a contributing factor.[87]

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[83]Weigel M and Wihbey J, "False Confessions, New Data and Law Enforcement Interrogations: Research Findings" (*Journalist's Resource*April 3, 2015) <https://journalistsresource.org/studies/government/criminal-justice/interrogation-lie-bluff-false-confession/> accessed September 29, 2019.
[84]Ibid.
[85] Ibid.
[86]Ibid.
[87]Henry JS, "The Truth About False Confessions" (*HuffPost*November 22, 2014) <https://www.huffpost.com/entry/the-truth-about-false-con_b_5857094> accessed September 29, 2019.

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A report by Law professor Richard Leo of University of San Francisco of California, stated that *'20% of the U.S. suspects invoke their rights of self incrimination, to appear co-operative'*.[88]
The growth and existence of false confession leads to different measures to avoid any such circumstances under the codified laws recognized globally.

V. PERSPECTIVE OF DIFFERENT COUNTRIES REGARDING FALSE CONFESSION

Every country has their own legal concept on confessions which the following subdivisions will discuss:

A. USA

In the past 30 years of the United States, more than 12% of the conviction turned out to be of wrongful nature due to false confession. The techniques that US authorities mostly follow to get confession consist of polygraph tests which were introduced in 1962 by John Reid, and confrontational tactics introduced by Prof. Fred Inbau. These two techniques have been claimed to provide 85-90% of success rate. But, it has also been criticised by law enforcement to provide false confession from the suspect.[89]
In the US, it is valid for police to lie about the evidence and use coercive methods during interrogation, which subjects them to hours of verbal abuse, mental and physical exhaustion, resulting in the suspect confessing as it will be the only way to end the whole process.[90]
Half the states in the US had taken preventive steps to avoid any false confession by recording the custodial interrogation. Even in 2017, the US police authority announced it will not be utilizing the polygraph test as a part of their evidence. In a recent study, it was concluded that, 30% of the false confessions are from Illinois state, as well as, 70% of the victims of false confession were mentally disabled or were suffering from intellectual disability.[91] Since the states

[88]StarrJun D and others, "This Psychologist Explains Why People Confess to Crimes They Didn't Commit" (*Science*June 14, 2019) <https://www.sciencemag.org/news/2019/06/psychologist-explains-why-people-confess-crimes-they-didn-t-commit> accessed September 29, 2019.
[89]Al Jazeera, "Coerced to Confess: How US Police Get Confessions" (*USA | Al Jazeera*March 20, 2019) <https://www.aljazeera.com/indepth/features/coerced-confess-police-confessions-190313080319051.html> accessed September 30, 2019.
[90]Hall TL, *The U.S. Legal System* (Salem Press 2004).
[91]Ohlsen S, "False Confessions: Examining What Increases the Odds of Wrongful Conviction" <https://pdfs.semanticscholar.org/392a/b00cad27b7afb5d483913f4971ab81fd22f9.pdf> accessed September 30, 2019

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of the US have their own codified laws, many states have taken up preventive methods by recording the interrogation and few more have taken judicial actions regarding the same.

B. UK

Unlike any other recognized codified laws, the UK had established the meaning of confession under their Police and Criminal Evidence (PACE) Act, 1984. Apart from recognizing the illicit methods used by authorities in interrogation, it has also recognized sleep deprivation and low self confidence as an influence leading to false confession.[92] The PACE had mandated the audio recording of all the confessions by the suspect and provided the right of legal representation of the suspects as well as limiting their detention on charges. A programme namely PEACE had been organized with the help of psychologists to train senior police officers for conducting an interrogation.[93]

Unlike US laws, police in the UK are not allowed to lie to their suspects, under any circumstances. The laws in the UK had recognized the importance of skilled police officers to conduct interrogation to avoid any circumstances leading to false confession.

C. Canada

The Canada laws are different from the US in some aspects. Here the police are allowed to lie in interrogation to get a voluntary confession from the suspect, but it is upto the verdict of the judge to decide whether the confession is considered voluntary based on the circumstances of the interrogation.[94]

The Canadian law, allows the verdict of the supreme court to ensure the admissibility of the confession in the case based on the circumstances; the interrogation is recorded and represented to the court, and if by any means the court finds the confession to be stated under pressure or the vulnerable nature of the suspect lead him to confess the crime he didn't commit, then the confession will not be considered valid in the court.

Canada uses the procedure termed as 'Mr.Big'[95], in which undercover police officers evoke confessions from suspects in unsolved cases. The confession is gained by the undercover officer by making a fake criminal organization and gaining the trust of the suspect. The confession

[92]"Suspects Confess to Crimes They Didn't Commit - Here's Why" (*Napier*) <https://www.napier.ac.uk/about-us/news/suspects-confess-to-crimes-they-didnt-commit-heres-why> accessed September 30, 2019

[93]"How the UK Police Interview Suspects" (*Innocence Project*December 21, 2012) <https://www.innocenceproject.org/how-the-uk-police-interview-suspects/> accessed September 30, 2019.

[94]"Canadians Are Sometimes Pressured to Confess to Crimes They Didn't Commit" (*CBCnews*) <https://www.cbc.ca/passionateeye/features/canadians-are-sometimes-pressured-to-confess-to-crimes-they-didnt-commit> accessed September 30, 2019.

[95]"Mr. Big (Police Procedure)" (*Wikipedia*July 13, 2019) <https://en.wikipedia.org/wiki/Mr._Big_(police_procedure)> accessed October 1, 2019.

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under this isn't considered as false confession, since it doesn't involve any kind of pressure on the suspect to gain confession, but the fear of safety might lead the suspect to false confession.[96]

D. India

The term 'confession' has not been defined under any codified law in India, including Indian Evidence Act, 1872 and Criminal Procedure Code, 1974. But it does provide a proper procedure to get an admissible confession from the suspect for the court. The confession to the police during interrogation is not considered as a valid confession under section 25.[97] Under Section 164 of Criminal Procedure Code, it has clearly stated that for a valid confession, it must be recorded in the presence of Metropolitan Magistrate or Judicial Magistrate along with the advocate of the accused of an offence.[98]
The Indian laws put the duty of gaining a valid confession under Magistrate rather than police officer. Also, it provides full freedom to the accused to confess an offence. By providing the power to the Magistrate, it will be the court of law which is preventing any chances of false confession which can occur in police interrogation.

VI. COMPLICATIONS DUE TO FALSE CONFESSION

The identification of the nature of confession, whether true or false, is essential to protect the innocent against wrongful conviction as well as to maintain the legitimacy of the criminal justice system. Wrongful conviction itself is a disgrace to the criminal justice system. It is violating the basic principle of the justice system, i.e., the protection of an innocent. The criminal justice system spend time and their resources at the time of investigation, the trying and conviction of the suspect[99]; if the conviction happened to the innocent, the whole burden then lies on the system to find the actual offender. Another burden of wrongful conviction lies on the defender

[96]"Causes of Wrongful Convictions" (*Innocence Canada*) <https://www.innocencecanada.com/causes-of-wrongful-convictions/#ftn3> accessed October 1, 2019.
[97]Ranchhoddas R and Thakore DD, *The Indian Evidence Act* (Bombay Law Reporter Office 1919).
[98]Ahmad E, *The Code of Criminal Procedure, 1973: (Act No. 2 of 1974): Alongwith State Amendments* (Ashoka Law House 1984).
[99]Preston O, "Applying Deception Detection to True and False Confessions: A Novel Approach to Conducting Experiments in Legal Psychology".

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to prove the circumstances created by the respective authority that lead the suspect to confess the crime he didn't commit.
Another complication is the mental and physical trauma the suspect had faced due to the wrongful conviction. The trauma faced by such victims leave a mark in their lifestyle when they are freed from the charges.
The main essential of a true confession is its collaboration with the circumstances of the crime scene and other evidence; so the question that arises is how can a situation lead to false confession and its collaboration with the crime scene?

VII. SITUATION LEADING TO FALSE CONFESSION

Why would a crime be admitted by someone who is innocent? Research briefs us that there is no obvious solution because there are several distinct psychological variables that can cause somebody to make a false confession.[100]
As per the study conducted by Prof. Saul M. Kassin of William College, there are three different types of false confession which are done based on its circumstances, which are discussed further.

A. Voluntary False Confession

This kind of confessions is given without any outside influence. It has been noted that people who voluntarily provide false confession either want to become famous or are [101]mentally disabled. But there are also circumstances where the person is trying to protect the actual criminal by falsely confessing to the crime.

B. Complaint False Confession

[100]Montaldo C, "Why Do Innocent People Make False Confessions?" (*ThoughtCo*April 2, 2018) <https://www.thoughtco.com/why-innocent-people-make-false-confessions-972222> accessed September 30, 2019.
[101]Hollingsworth G, "Voluntary Confessions" (*LegalMatch Law Library*June 25, 2018) <https://www.legalmatch.com/law-library/article/voluntary-confessions.html> accessed September 30, 2019.

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Complaint false confessions are one of the types of coerced confession. Such confession is done by people either to escape from bad situations or to avoid real/implied threat.[102] These confessions are made due to immense pressure on the suspect at the time of interrogation so that to avoid any further questioning, he confesses to a crime which he hasn't committed.

C. Internalized False Confession

Internalized False Confession happens to make the suspect believe that they were the participant or in fact had committed the crime, by the respective authority during the time of interrogation. The suspect confesses guilt to the crime even though he has no reconciliation of the crime.[103] Such types of confession are usually made by youngsters and highly suggestible individuals. It can also be made when the suspect is tired and confused by the interrogation or is exposed to false information by interrogators. Under this type of confession, the suspect can also feel threatened by the authority which leads them to false confession and further to false conviction.

VIII. CASE STUDY

False Confession has come into notice in different countries due to different cases. The following are few cases which showcased false confession.

A. US

1. Brendan Dassey v. Michael A. Dittmann[104]

[102]Woody White Law PLLC, "3 Main Types of False Confessions: Woody White Law Firm PLLC" (*Woody White Law PLLC*November 6, 2017) <https://www.woodywhitelaw.com/blog/2017/01/3-main-types-of-false-confessions.shtml> accessed September 30, 2019.
[103]"Internalized False Confessions - Web.williams.edu" <https://web.williams.edu/Psychology/Faculty/Kassin/files/Kassin_07_internalized confessions ch.pdf> accessed September 30, 2019.
[104]AIR (2017); "FindLaw's United States Seventh Circuit Case and Opinions." (*Findlaw*) <https://caselaw.findlaw.com/us-7th-circuit/1882179.html> accessed September 30, 2019.

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This case was held in 2007, for the rape and murder of Teresa Halbach. It was an open and shut case, based on the detailed confession provided by a 16 year old Brenden Dassey, who was an accomplice with his uncle Steven Avery for the rape and murder as well as the mutilation of Teresa Halbach.

The major question that arose in the case was whether the confession of Brenden Dassey was coerced or true. Dassey was interrogated for four times over the 48 hours period and the tape of the same was provided to the Supreme Court showcased, where the investigators are giving the facts of the case to Dassey, which he doesn't appear to know.

As per attorney Laura Nirider from Northwestern Pritzker School of Law's Center on Wrongful Convictions of Youth, the interrogation video of Dassey showcases a boy being manipulated by experienced police officers to accept the guilt of the murder.

The Wisconsin Court of Appeals upheld Dassey's conviction stating that the interrogation was excessively coercive. Dassey had gone through his Miranda Rights[105] before the interrogation and his mother consented to the interview. The interrogation took place without Dassey's lawyer because he wasn't assigned any lawyer at that time.

The appeal was ruled in Dassey's favour at the federal court but the full appeal was overturned in the panel discussion. Judge David Hamilton stated that *"Dassey spoke with the interrogators freely, after receiving and understanding Miranda warnings, and with his mother's consent; the interrogation took place in a comfortable setting, without any physical coercion or intimidation, without even raised voices, and over a relatively brief time. Dassey provided many of the most damning details himself in response to open-ended questions".*

At the trial in the Supreme Court, Dassey was represented by Seth Waxman, a former U.S. Solicitor General. He represented former prosecutors and psychologists who clearly stated that the confession was coerced and the juvenile was easily manipulated by the authorities.

The court held that the circumstances of this case are the one given greater consideration and denied the fact that investigators fed the information of the case to Dassey.[106]

2. The Central Park Jogger Case[107]

[105]"What Are Your Miranda Rights?" (*Miranda Warning*) <http://www.mirandawarning.org/whatareyourmirandarights.html> accessed October 1, 2019.

[106]Barnes R, "Supreme Court Won't Hear the Case of Brendan Dassey, Sentenced to Life as a Teen and Featured in 'Making a Murderer'" (*The Washington Post*June 25, 2018) <https://www.washingtonpost.com/politics/courts_law/supreme-court-wont-hear-the-case-of-brendan-dassey-a-teen-sentenced-to-life-and-featured-in-making-a-murderer/2018/06/25/6f97336e-787c-11e8-93cc-6d3beccdd7a3_story.html> accessed October 1, 2019.

[107]AIR (1989);"Central Park Five: The True Story behind When They See Us" (*BBC News*June 12, 2019) <https://www.bbc.com/news/newsbeat-48609693> accessed October 1, 2019.

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In this case, five teenage boys namely Kevin Richardson (14), Raymon Santana (14), Antron McCray (15), Yusef Salaam (15) and Korey Wise (16), were found guilty in rape and assault of 28 year old Trisha Meili.
All five boys confessed to the crime after hours of interrogation without the presence of any lawyer and being deprived from food and sleep. They were convicted, even though the confession of all five boys didn't collaborate with each other and with the crime. The DNA evidence was also inconsistent with the boys.
The four boys namely Yusef Salaam, Kevin Richardson, Antron McCray and Raymond Santana - each spent about seven years in prison while the fifth, Korey Wise, spent 13 years behind bars.[108]
In 2002, a man came forward and confessed to the crime and DNA evidence from the crime matched to his. The five men were released and in 2014, they reached a settlement of $41 million dollars with the city.[109]

A. UK

1. The Murder of Lesley Molseed[110]

In this case, Stephen Kiszoko, an intellectual disabled man was wrongfully convicted for the sexual assault and murder of Lesley Molseed, and served 17 years in prison before the conviction was overturned.

Due to his mental disability, Kiszoko confessed to the offence but was later proven innocent by the evidence. This case is known as 'The Worst Miscarriage of Justice'. The evidence which proves the innocence of Kiszko was suppressed by three members of the investigating team at the time of Kiszoko trial. The three members were initially charged for the miscarriage of the justice in 1993 but were dropped later on.[111]
Later in 2006, Ronald Castree's DNA matched the DNA evidence found at the crime scene, which led to his arrest and sentencing to life imprisonment.[112]

[108]Ibid.
[109]Dwyer J, "The True Story of How a City in Fear Brutalized the Central Park Five" (*The New York Times*May 30, 2019) <https://www.nytimes.com/2019/05/30/arts/television/when-they-see-us-real-story.html> accessed October 1, 2019.
[110]Siddique H, "Timeline: Lesley Molseed Murder" (*The Guardian*November 12, 2007) <https://www.theguardian.com/uk/2007/nov/12/ukcrime.haroonsiddique1> accessed October 1, 2019.
[111]"Suspects Confess to Crimes They Didn't Commit - Here's Why" (*Napier*) <https://www.napier.ac.uk/about-us/news/suspects-confess-to-crimes-they-didnt-commit-heres-why> accessed October 1, 2019.
[112]"Murder of Lesley Molseed" (*Wikipedia*September 26, 2019) <https://en.wikipedia.org/wiki/Murder_of_Lesley_Molseed> accessed October 1, 2019.

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2. Murder of Teresa De Simone[113]

This was a classic case of voluntary false confession. Sean Hodgson was convicted for the murder of Teresa De Simone because of his confession to the police, but he pleaded 'not guilty' in the court. The personality of Hodgson in real life,
i.e., of a compulsive liar cost him 27 years of imprisonment.[114] After 27 years of serving in prison, he was released by the Court of Appeal, based on the result of advanced DNA analysis which proved his innocence.[115]

A. Canada

1. The Murder of Leopold Roy[116]

On August 9th, 1967, Leopold Roy was stabbed to death by an unidentified attacker. His wife, Mildred, described the attacker to the Ottawa Police, which led to the lineup of twin brothers Romeo and Donald Phillion. Since Donald has a solid alibi he was released; Mildred was unable to fully identify Romeo as the attacker and so Romeo was released.[117]
In 1972, Romeo was arrested for an armed robbery of a taxi driver; during his interrogation Romeo confessed to the murder of Leopold Roy. He was charged and found guilty for the murder and was sentenced to life in prision.
After 20 years of his serving, he was released from the charges through the Innocence Project at Osgoode Hall Law School, based on the investigation report which provided Romeo a solid alibi and confirmed his innocence.
The reason behind his voluntary false confession has been explained by Dr.Gudjonsson as to be motivated to seek attention and not being able to distinguish between fact and fantasy.[118]

[113]AIR (2009); "Miscarriage of Justice: The Murder of Teresa De Simone" (*Absolute Crime*) <http://www.absolutecrime.com/miscarriage-of-justice-the-murder-of-teresa-de-simone.html#.XZM38S4zZrQ> accessed October 1, 2019.
[114]Addley E, "Police Finally Name Teresa De Simone's Real Killer" (*The Guardian*September 17, 2009) <https://www.theguardian.com/uk/2009/sep/17/teresa-de-simone-killer-identified> accessed October 1, 2019.
[115]Ibid.
[116]"Romeo Phillion Case" (*Romeo Phillion Case | The Canadian Encyclopedia*) <https://www.thecanadianencyclopedia.ca/en/article/romeo-phillion-case> accessed October 1, 2019.
[117]Ibid.
[118]"Romeo Phillion" (*Innocence Canada*) <https://www.innocencecanada.com/exonerations/romeo-phillion/> accessed October 1, 2019.

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2. The Murder of Brigitte Grenier[119]

This is one of the cases where the Canadian technique which was also known as 'Mr.Big' was used. Kyle Unger was charged for the murder of Brigitte Grenier and was sentenced to life in prison due to his confession to an undercover police officer under Mr.Big operation.
Unger who after serving 14 years in prison and was granted bail after it, was found not guilty of the murder charges based on the hair microscopy comparison evidence. It was believed that Unger confessed in the Mr. Big operation because of greed, fear and violence. The promise of money, power and friendship made to him by the undercover officer lead him to confess for a murder which he didn't participate in.[120]

A. India

1. Kotkhai Rape and Murder Case[121]

This case showcased the extent of the brutality that police officers go through to get a confession. Five innocent men namely Deepak, Rajender, Suraj, Subhash and Lokjan were charged for rape and murder offence in Kothkai, Shimla.
The third degree torture faced by them was only to extract confession from them. The torture lead to the custodial death of Suraj. The 8 police officers fabricated the evidence and registered a false case against Rajender to kill Suraj inside the lockup.[122]
The polygraph test, brain mapping and narco-analysis test that were conducted at the Directorate of Forensic Science on these accused, resulted in them being innocent and falsely accused of the crime.[123]They never confessed to the crime, since they were innocent. Thus, this case showcases the involvement of officials to take out a false confession from an innocent.

[119]Ibid.
[120]"Kyle Unger" (*Innocence Canada*) <https://www.innocencecanada.com/exonerations/kyle-unger/> accessed October 1, 2019.
[121](*Zahur Haidar Zaidi vs Central Bureau Of Investigation on 19 January, 2018*) <https://indiankanoon.org/doc/74982440/> accessed October 2, 2019.
[122]Tribune News Service, "Police Brutalities, False Confessions in CBI Chargesheet" (*Tribuneindia News Service*December 7, 2017) <https://www.tribuneindia.com/news/himachal/police-brutalities-false-confessions-in-cbi-chargesheet/509195.html> accessed October 2, 2019.
[123]Press Trust of India, "Custodial Death in Kotkhai Rape Case: SC Transfers Case from Shimla to Chandigarh" (*Business Standard*May 7, 2019) <https://www.business-standard.com/article/pti-stories/custodial-death-in-kotkhai-rape-case-sc-transfers-case-from-shimla-to-chandigarh-119050700726_1.html> accessed October 2, 2019.

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2. Aher Raja Khima Case[124]

This is another case of official brutality to get a confession from an innocent person. The appellant of the case stated that the confession taken from him was a result of 'frightening of beating' by the police officer.
As a result, he confessed to the crime he didn't commit. Later at the trial, in front of the Committing Court, he stated the confession is false and was done out of fear. The Court further investigated the matter and found the appellant not guilty of the crime and was released from all the charges.[125]

IX. CONCLUSION

False confession has been recognized globally as an issue. The miscarriage of justice continues till this day, even through the strident process described in codified law to get an admissible confession. The voluntary false confession to get famous and seek attention isn't the fault of the authority, if only other evidences were given the same importance as per the confession in the case. The coercive method used by authority to gain confession is the miscarriage of justice and misuse of the power assigned to them. Gaining a confession for the crime is an essential element to get a conviction but the existence of false confession shows how much importance should be given to precious evidences like DNA analysis, hair microscopy comparison, etc. The precious evidence will help to evaluate the confession of its true nature. Sometimes the unskilled authority during interrogation feeds the information to the suspect; this sometimes leads the suspect to falsely confess because they want to overcome the process of confession and are able to collaborate with the confession with the information provided to them by the authority. It is necessary to understand the psychological aspect of the suspect at the time of interrogation. Sleep deprivation, mental illness, fear, etc plays a role in getting a false confession. Even though the procedure is being fully followed, these psychological aspects let the miscarriage of justice happen. Though the confessions are now being recorded and taped, and the chances of miscarriage of justice are low, yet the behind the scene of the recorded tape isn't known. The possibility of the coerced confession is almost high to get a valid confession. It should be noted that all the evidence plays an equal role in a crime. The more precious is the evidence, the more there are chances of serving justice. The consistency must be noted between all the evidence and

[124](*Aher Raja Khima vs The State Of Saurashtra on 22 December, 1955*) <https://indiankanoon.org/doc/718964/> accessed October 2, 2019.
[125]"Aher Raja Khima v. State Of Saurashtra ." (*CaseMine*) <https://www.casemine.com/judgement/in/5609aaf4e4b014971140b53c> accessed October 2, 2019.

the confession. It has been said that *"Justice consists not in being neutral between right and wrong, but in finding out the right and not upholding it, wherever found against the wrong"*. This quote itself states that justice is about finding the right and to sustain with it. Justice can only be considered as served when an innocent doesn't land behind bars, especially if they have been coerced to confess a crime they didn't participate in. *"Ignorance allied with power is the more ferocious enemy justice can have"*. As long as this kind of ignorance continues, miscarriage of justice will also continue along with it.

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THE HISTORY BEHIND A DECLARATION OF INDEPENDENCE: KOSOVO AND ITS IMPACT ON THE WORLD

Manu Sharma[*]

ABSTRACT

Secessions occurred throughout history and will continue to do so, in the face of oppression, better economic prospects, and for a variety of reasonsPast cases of severance have included that of Pakistan in the parcel of India in 1947, the split away of Singapore from Malaysia in 1965, Bangladesh from Pakistan in 1971, States rising up out of the separation of for-mer the Soviet Union, and the six free breakaway States of the previous Yugoslavia, including Croatia, Bosnia-Herzegovina, and Slovenia. Even with past withdrawals, it is profoundly mistaken to propose that Kosovo would trigger a flood of new severances. Kosovo's street to freedom was brutal, with up until now extraordinary global inclusion, and has made significant restriction. Kosovo additionally is a reverberating case of a recently free State's reliance on international acknowledgment of its status. On the off chance that anything, Kosovo would serve to deflect other people who may accept that a one-sided assertion of autonomy is a simple panacea to fix all ills.This article aims to deeply analysis the journey of Kosovo in gaining independence and how international law has played an extraordinary role in dealing with the whole trivia.

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I. INTRODUCTION

On February 17, 2008, Kosovo, the seventh nation to declare independence from the former Yugoslavia geared itself to become the youngest sovereign entity of the world. For Albanians living in Kosovo, the secession signifies the successful conclusion of decades of violent struggles, bombardments, murder, rape, pillage and sacrifice. For the worldwide network, it represents the start of profound disunity and political fighting. Different countries that were against the freedom of Kosovo did as such, for the essential motivation to forestall the statement of autonomy in Kosovo from turning into a point of reference for future secessionist developments. Koso-ceptance of its status. On the off chance that anything, Kosovo would serve to dissuade other people who may accept that a one-sided presentation of freedom is a simple panacea to fix all ills.This paper deeply analysis the journey of Kosovo in gaining independence and how international law has played an extraordinary role in dealing with the whole trivia.

II. DISTINGUISHING KOSOVO: THE ROAD TO INDEPENDENCE

Looking at the records of the world secessionist movement, Kosovo's is a unique and novel experiment. The genesis of the issue starts with a violent secessionist movement operated in the backdrop of the ethnic cleansing of Albanians in Kosovo by the state of Serbia. Subsequently, international diplomatic and military intervention happened to avoid what they termed as humanitarian catastrophe and for the very first-time validity of humanitarian intervention was asserted by all nations other than the UK. Moreover, for the very first-time military intervention, in the form of NATO bombardments, took place without the express authorization for the

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Security Council (UNSC), post facto Security Council authorization was asserted to justify this use of force under 51 of the UN Charter.[126]
The legality of this 'use of force' by NATO was contested aggressively by the Former Republic of Yugoslavia (hereinafter FRY), before the International Court of Justice (ICJ), implying the level of international institutional involvement in the conflict in 1999. Kosovo became a protectorate of the UN by virtue of UNSC Resolution 1244[127] which was passed with an express agreement to facilitate a final political solution for the country, one which provides for the substantial self-sustaining government while maintaining the territorial integrity of former Yugoslavia. The UN, in supporting the cause of Kosovo's independence made a conscious decision to stay away from the mandate, thus creating a complex situation which can be distinguished from many other nations currently facing secession.

III. HISTORICAL OVERVIEW

Toward the start of the Balkan clashes, the Federation of Yugoslavia comprised of eight units and six republics to be specific Serbia, Croatia, Montenegro, and Bosnia-Herzegovina and two self-sufficient territories, Vojvodina and Kosovo. The self-rule of these regions was because of many years of fierce and rough suppressions by predominant moral gatherings in the district. Unexpectedly, it is a similar independence that likewise denoted the start of the advanced slaughter of Kosovo. Au-tonomous areas, in contrast to the republics, were not viewed as the bearers of the Yugoslavia sway and were subordinate in the status to the republics. Examining the self-sufficient state, it is to be remembered that they had no privilege of severance.

In any case, Kosovo was pronounced as an independent district, rather than a republic because of the socioeconomics of the populace in the state which comprises of 90% ethnic Albanian dominant part with around 120,000 ethnic Serbs. Ethnic Albanians were said to have their country somewhere else and consequently these self-ruling re-gions populated by the Hungarian majoritarian in Vojvodina and Albanians in Kosovo were giv-en a lesser status than the republics. The underlying battle of the Albanians in Kosovo rotated around the need to progress from a self-governing district to a republic. The struggle symbolized severe harassments and discriminations against the minority Kosovo Serbs by Kosovo Albanians, which coincided with the rise of nationalism in the nation of Serbia. These events climaxed in the year 1989 to

[126]United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, art.51. Available at: https://www.refworld.org/docid/3ae6b3930.html [accessed 10 May 2020].
[127]UN Security Council, Security Council resolution 1244 (1999) [on the deployment of international civil and security presences in Kosovo], 10 June 1999, S/RES/1244 (1999), available at https://www.refworld.org/docid/3b00f27216.html [accessed 15 May 2020]

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culminate in the removal of autonomy of Kosovo. The second phase of the battle, concentrated on restoring self-rule and after Bosnia and Slovakia picked up their freedom, the center move ed to picking up autonomy from Yugoslavia. The underlying obstruction spins around political and peaceful developments sorted out by the League for a Democratic Kosovo (LDK).3 LDK created an equal government, tax collection and instruction framework inside Kosovo. The non-violent movement worked well for quite a few years, until the lack of progress towards independence and increased Serbian violence, subsequently resulted in the formation of Kosovo Liberation Army (KLA), group of Albanian militants who fought relentlessly up till 1999 to secure independence.

In the months preceding the NATO bombing, the Kosovo Albanians were harassed, discriminated and tortured. Around 1000 Albanians were brutally murdered in the internal conflict. They were forced out of their homes by the Yugoslavian military, paramilitary units and Serbian police in massive numbers leading to the allegation of ethnic cleansing. After the NATO forces took charge and undertook "Operation Allied Force"[128] and during the period of international conflict, approximately 10, 000 people were killed, mostly the Kosovo Albanians and mostly at the hands of the Yugoslavian military. According to the Report of the Independent International Commission on Kosovo, during the climax of the international conflict approximately 90% of the population was displaced, either escaping the conflict or as a result of ethnic cleansing.[129]

IV. TRANSITION FROM INTERNAL TO AN INTERNATIONAL CONFLICT

A. HUMAN CATASTROPHE AND OPERATION ALLIED FORCES

The main basis in distinguishing Kosovo from other high- risk nations having cultural, ethnic or linguistic diversity lies in the unprecedented high level of international as well as regional

[128] UNSC, 'Rambouillet Accords: Interim Agreement for Peace and Self Government in Kosovo', 8/ 1999/648 (June 1999). https://peacemaker.un.org/sites/peacemaker.un.org/files/990123_RambouilletAccord.pdf

[129] Independent International Commission on Kosovo: The Kosovo Report, (2006) https://www.law.umich.edu/facultyhome/drwcasebook/Documents/Documents/The%20Kosovo%20Report%20and%20Update.pdf

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involvement in Kosovo. The Security Council Resolutions 1160,[130]1199[131] and 1203[132] in 1998 acting under Chapter VII of the United Nations Charter, condemned the violence and declared that the internal conflict in Kosovo is a 'threat to international peace and security' and demanded that Yugoslavia comply promptly and effectively with the '*Rambouillet agreement'*.[133] The Council also expressed concern at the 'impeding human catastrophe' and promised further action if the parties did not reduce hostilities. Direct approval to utilize power in Kosovo, as a general rule, neglected to appear as advocates of military intercession dreaded a Russian veto on any such order in the Security Council which made its working stopped. In the setting of the equivalent and the substance of raising viciousness, On March 24, 1999, NATO propelled a 11-week airstrike. The assaults occurred without the express approval of Security Council approval. In the repercussions and during the NATO military intercession, advocates, including the United States, defended the airstrikes as important to keep away from a 'philanthropic calamity'. The United Kingdom, at the Security Council, directed its arguments on the appearance of a new doctrine of 'Hu- manitarian Intervention'. Other countries like Germany after prolonged parliamentary debates and discussions and Belgium, in the ICJ case concerning the legality of the use of force, concurred with the UK and based its jurisdiction on humanitarian intervention. This was the first time in the history that a legal argument for humanitarian intervention was presented at an international forum, where there was also a genuine blatant human rights violations.

Prior to the summon of the philanthropic intercession as a defense in Kosovo, States were hesitant to use it even in certifiable cases of helpful crisis. The in-tervention of Vietnam in Cambodia, to out Pol Pot answerable for the Khmer Rouge decimation in 1978[134], activities by Indian in Pakistan, to make sure about freedom for Bangladesh and end repres-sion in 1971,[135] and activity by Tanzania in Uganda to expel Idi Amin in 1979[136] were supported dependent on

[130] UN Security Council, Security Council resolution 1160 (1998) [On the letters from the United Kingdom (S/1998/223) and the United States (S/1998/272)], 31 March 1998, S/RES/1160 (1998), available at https://www.refworld.org/docid/3b00f1622c.html [accessed 14 May 2020].

[131]UN Security Council, Security Council resolution 1199 (1998) [The situation in Kosovo], 23 September 1998, S/RES/1199 (1998), available at: https://www.refworld.org/docid/3b00f14f40.html [accessed 14 May 2020].

[132]UN Security Council, Security Council resolution 1203 (1998) [Kosovo], 24 October 1998, S/RES/1203 (1998), available at: https://www.refworld.org/docid/58207bc87.html [accessed 12 May 2020].

[133]NATO LIBRARY, 'OPERATION ALLIED FORCE': NATO IN KOSOVO, 10 YEARS LATER', Thematic Bibliographies No. 8/2009https://www.nato.int/structur/library/bibref/them0809.pdf

[134]James Lufty, 'Humanitarian Intervention: The Invasion of Cambodia', NYLS Journal of International and ComparativeLaw, Vol 2, Issue 1, (1980). https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1055&context=journal_of_international_and_comparative_law.

[135] Park, Daniel C., 'India's Intervention in East Pakistan: A Humanitarian Intervention or an Act of National Interest? JCAS, Vol.1, Issue 3 (February 2016). https://utsynergyjournal.org/2016/02/16/indias-intervention-in-east-pakistan-a-humanitarian-intervention-or-an-act-of-national-interest/.

[136]George Roberts (2014) The Uganda–Tanzania War, the fall of Idi Amin, and the failure of African diplomacy, 1978–1979, Journal of Eastern African Studies, Vol. 8, Issue 4, (August 11, 2014)

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self-protection. Prior to Kosovo, humanitarian intervention was asserted only once that was in the aftermath of the Iran- Kuwait war[137] when the UK, France and US used armed forces to establish safe havens for Kurds in northern Iraq. Even here, the intervention was not presented as a legal argument and was espoused only by Tony Blair as the Prime Minister of UK to a domestic forum. Thus, the NATO humanitarian intervention in Kosovo was uniquely different from anything experiences before and was a strong factor in establishing and maintaining international interest and stakeholders in the conflict and subsequent independence.[138]

B. UNITED NATIONS INVOLVEMENT IN THE CONFLICT

In the international legal system, international relations must be in accordance with Article 2 (4)[139] and Chapter VII[140] of the UN Charter. Article 2 (4) prohibits the threat of force or use of actual force in international relations between states. Chapter VII makes it mandatory for states to obtain Security Council's authorization prior to the use of the force. However, Article 51 provides for the exception on the absolute prohibition on the use of force and allows the states unilateral or collective self-defense, until the further necessary actions are being taken by UNSC to maintain peace and security.

The Security Council Resolutions dealing with Kosovo did not authorize the NATO's action and indeed such sanction was a practical impossibility with Russia's threat to veto any such mandate. Lack of such express authority did not hinder NATO action as the majority of NATO states took the view of the Security Council Resolutions 1160, 1199 and 1203 which indicated the implicit authority to use force when required to further the aims of the Council which includes maintaining peace and security of the region, preventing the escalation of violence and the impending humanitarian catastrophe, and to persuade Yugoslavia to implement the provisions of the Rambouillet agreement. Alongside this, the dependence was likewise positioned on the post facto Security Council approval to fortify the lawful situation of the bombings. The prominent exclusion of any reference to the bombarding effort in post-war Security Council's Resolution 1244, managing the recreation of Kosovo was taken by individuals states. This was indeed a

https://www.tandfonline.com/doi/abs/10.1080/17531055.2014.946236?scroll=top&needAccess=true&journalCode=rjea20.

[137]Kenneth Roth, ' Was the Iraq War a Humanitarian Intervention?', Journal of Military Ethics, Vol.5, Issue2, (June 2006)
https://www.researchgate.net/publication/263132721_Was_the_Iraq_War_a_Humanitarian_Intervention.

[138] Oisin Tansey, 'Kosovo: Independence and Tutelage', Journal of Democracy, April (2009). https://www.researchgate.net/publication/45513645_Kosovo_Independence_and_Tutelage.

[139]United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, art.2, cl. 4. Available at: https://www.refworld.org/docid/3ae6b3930.html [accessed 20 May 2020].

[140]*Id.*, Chapter VII.

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novel new development throughout the entire existence of the world. This likewise shows the just because post facto Security Council approval was introduced as a legitimate legitimization on the utilization of power.

V. REBUILDING KOSOVO: UNITED NATIONSAND ICTY

After the NATO bombings, Yugoslavia went into a harmony concurrence with its partners. Under this understanding, Yugoslavian ward over Kosovo was suspended and the United Nations was ordered under UNSC Resolution 1244 to affirm its purview over the zone to help set up significant independence and self-government in Kosovo. Since 1999, the UN has been associated with Kosovo, modifying the common organization, legal executive and political structure to facili-tate the last political settlement. The direct presence of the UN, the jurisdiction given to it by FRY and the Security Council and its involvement in the independence process, presents some semblance of legitimacy in Kosovo's independence process. This degree of involvement is absent in many other high-risk nations.[141]
Additionally, the presence of an ad hoc international criminal tribunal, the International Criminal Tribunal for former Yugoslavia, with jurisdiction over the escalating conflict, at the time of hostilities, is another rare occurrence and symbolizes extensive international involvement in the conflict.

VI. KOSOVO AS A PRECEDENT

For a small nation like Kosovo, it has outdone itself in presenting the international legal order with multiple first-time incidents. The legal justification for humanitarian intervention, reli- ance on implied authority coupled with post facto Security Council authorization on the use of the force and the case before the ICJ on the legality of the NATO bombing has sent ripples through the waters of international law. However, even protagonists, including the UK, USA and Germany, have been quick to point out that none of the aforementioned incidents should be regarded as precedents for future action.[142]
However, on the other hand, it is difficult to see the independence of Kosovo as a prec- edent to most of the current secessionist movements. Unquestionably in Sri Lanka, Russia and China

[141] Frank Dietrich, 'The status of Kosovo: Reflections on the legitimacy of secession', Journal of Ethics & GlobalPolitics,Vol 3, Issue 2, (2010)https://www.tandfonline.com/doi/pdf/10.3402/egp.v3i2.1983?needAccess=true.
[142]NATO & OTAN, 'THE KOSOVO CASE STUDY', (2013). https://www.recoveryplatform.org/assets/publication/Kosovo_CaseStudy/Kosovo%20Case%20Study.pdf.

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secessionist developments didn't appreciate the wide worldwide help that was experienced by KLA..[143] Particularly in Sri Lanka, global intrigue, up until this point, has been showed as benefactor meetings, political intercessions and irregular articulations censuring activities of warring gatherings. Security Counsel under Chapter VII has not censured the circumstance as a danger to harmony and security. Undoubtedly, no country has, lately, compromised military activity against the administration or the radicals. Global intrigue has been insignificant in Sri Lanka when com-pared to that of Kosovo. As a result, global partners are lesser in numbers and their weights on the legislature are not of a similar level experienced by Serbia in 1998 and 1999.[144] Unless mass outrages happen, as violations against humankind and decimation, retaliation of the world network, to the degree of compassionate mediation is far-fetched.

It is profoundly far fetched that the contention will grow into a universal clash to the level experienced in Kosovo. The most equivalent circumstance with Kosovo is found in the Kurdish controlled locale in Northern Iraq. Much the same as Kosovo Albanians were from neighboring Albania, Iraqi Kurds have their sources from neighboring Turkey. Similar to Kosovo, the Kurd minority was repressed by Iraqi governments and was subject to persecution. From 1991, up until the US war in Iraq, the UK, US and France militarily intervened to protect the minority. It was the first time that UK espoused humanitarian intervention, although it was in Kosovo that the UK espoused a doctrine to that effect and other nations acknowledged the permissibility of the use of force to avoid a humanitarian catastrophe. The use of force for the military intervention to protect the Kurds, much like in Kosovo, was not authorized by the Security Council. Never the less the protagonists relied on implicit authorization offered by Security Council Resolution 688. Today, the Kurdish region enjoys autonomy within a greater Iraq. Although the persecutions have subsided, similarities in the situations that lead to the independence of Kosovo, is much greater in Northern Iraq, than in Sri Lanka.

VII. IMMEDIATE AFTERMATH OF INDEPENDENCE

The immediate aftermath of independence and the problems that Kosovo is currently facing should cure all those who believe that independence is an easy panacea for all evils. Kosovo is facing multiple problems both at international and domestic fronts. In the international arena,

[143]Armend R. Bekaj, 'The KLA and the Kosovo War: From Intra- State Conflict to Independent Country', (2010) https://www.berghoffoundation.org/fileadmin/redaktion/Publications/Papers/Transitions_Series/transitions8_kosovo.pdf.
[144] Bill Piersol, Gary Horne, Urike Lechner & Agatino Mursia, 'KOSOVO CASE STUDY - FIRST 18 MONTHS: MARCH 1999 TO SEPTEMBER 2000', (May 1, 2009).
http://www.dodccrp.org/files/case_studies/Kosovo_case_study.pdf

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the European Union, proponents of the liberation of Kosovo from Serbia, and a vital factor in its final independence and immediate future is in disharmony. Several members including Spain, Cyprus and Romania have emerged as formidable opponents to a unified European Union recognition of an independent Kosovo. Major powers including Russia, China, India, and Brazil, stalwartly refuse to recognize Kosovo as a separate entity from Serbia. Russia's ominous decision to veto United Nations' membership of Kosovo resonated cold war rhetoric.[145]
Serbia, from which Kosovo declared independence, continues to declare the succession illegal, and stoutly refuse to recognize a separate nation. It continues to exert influence on parts of northern Kosovo, where approximately 60,000 Kosovo Serbs continue to profess allegiance to Serbia and are expected to participate in the Serbian local government elections scheduled in May.[146] Following combative considerations, Serbia is to proceed with the intrigue installment of a Kosovo advance, an obligation that would commonly rest with the free State. Additionally, Serbia threatens to reduce, if not sever, diplomatic ties with nations recognizing the independence and halt negotiations on its accession to the European Union.[147]

VIII. CONCLUSION

From the above discussion, it can be concluded that the situation of an independent Kosovo remains exceedingly precarious and unbelievably volatile Refusal of most of the world to acknowledge Kosovo's freedom, so far, represents noteworthy snags in its cases of authenticity. Notwithstanding, similar countries concur that while freedom isn't the most attractive alternative, it might be the least destabilizing for Kosovo. This is uplifting news for Kosovo. Conversely, the developing fracture between changeless individuals from the Security Counciland within NATO foreshadows any jubilation and symbolizes mounting problems for the future of Kosovo and the world.

[145] Anna Moller- Loswick, 'Should Kosovo Become Independent?' (November 18, 2013) https://www.e-ir.info/pdf/44353
[146] Christopher J. Borgen, 'Kosovo's Declaration of Independence: Self-Determination, Secession and Recognition', American Society of International Law, Vol 12, Issue 2, February 29, 2008. https://www.asil.org/insights/volume/12/issue/2/kosovos-declaration-independence-self-determination-secession-and.
[147]' THE KOSOVO REPORT: CONFLICT, INTERNATIONAL RESPONSE, LESSONS LEARNED', Oxford UniversityPress(2000).
https://reliefweb.int/sites/reliefweb.int/files/resources/6D26FF88119644CFC1256989005CD392-thekosovoreport.pdf.

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GREEN CRIMINOLOGY

*Vainy Chetan Kacharia**

ABSTRACT

This research paper provides an overview of green criminology . Across the world there is significant evidence that humans produce extensive ecological harms that damage the local and global ecosystems and have deleterious effects on the species that live in those ecosystems. These ecological damages are types of natural confusion . This research paper targets giving the reasons that lead to ecological criminalization by people and one of the principle issues and worry of this n before nature.

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I. INTRODUCTION

Environment [148]is the framework in which man lives; it includes atmosphere, hydrosphere, lithosphere, and biosphere. Main components are air, water, organisms and solar energy. In this framework of race, man carries out his social and productive activity. Environment is the framework of life and source of wealth and production. **Preservation**[149] of their systems and rational use of their sources assists in productivity. It is also the surrounding in which man lives with other living and non-living creatures which means of life and factors of survival are available.

There is a significant amount of eco crime that is unquestionably unethical and immoral; industrial pollution; violation of rules and regulations established on animal cruelty or environmental conservation rules, etc. However, there are many actions that come beyond the limits of existing regulations, which greatly affect the ecosystem, such as lawful forestry operations in rainforests.

Criminology, in its initial and narrowest context, holds to the traditional legal concepts of crime and wrongdoing, concentrating on such actions that are considered so dangerous as to be described by the State and those who perform those activities as criminals or at least some individuals who are already found performing these crimes and the criminal justice system is effectively handling them.

Green criminology[150]is also a focal place on criminology and environmental concerns. In its narrowest, but least controversial, conceptualization, green criminology is concerned with infringements of regulations intended to preserve the environment and wildlife (such as statutes limiting waste or banning hunting).

Let us now take the other half of the question. 'Green' of course applies to keeping the natural world into account. But there's a number of definitions even here as to what precisely it means. Is 'green' simply a description of an established natural ecosystem or does it imply a world we care about? Is there (or ought to be) a caring obligation (or, in a more legalistic context, a caring

[148] Environment: The circumstances, objects, or conditions by which one is surrounded . descending from the middle French Preposition environ " around", environment in its most basic meaning is " that which surrounds".
[149] Preservation here stands to mean:- to take utmost care of the available resources in such a way that future generation are not deprived from its use
[150] The term Green Criminology was first coined by M J Lynch (1990)

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responsibility)? What do we mean by 'the natural world' ? The world's (ever declining) wild areas or just rural areas where people control biodiversity (such as forests , plants, etc)? Urban environments include biodiversity, and a clear knowledge of the theory of ecology reveals that the natural environment cannot be isolated from the reality of human society.

In the larger theoretical context of mainstream criminology, environmental injury is 'abuse towards the environment,' and green criminologists try to explain exactly how it happens and when, where and when it occurs. Green criminologists often concentrate on people who conduct such offences ('criminals' in conventional criminology) and who (or what) struggles when **offences**[151] are perpetrated ('victims').

Green Criminology alludes to the investigation of natural wrongdoings and damages influencing human and non-human life, eco-systems and the biosphere. Green Criminology has a global focus and has emerged as a response to environmental problems such as deforestation and pollution.
Green criminology, in its wide sense explores and analysesthe causes, outcomes and pervasiveness of environmental crime and harm. Green Criminology also examines the replications and aversion of the above-mentioned (civil, criminal and regulatory) and also by non-regime entities and social movements, as well as the construal and mediated representations of environmental crime and harm.

Green Criminology is a form of ' **TRANSGRESSIVE CRIMINOLOGY**' – moves away from traditional criminology and extends the notion of 'harm' to include harms against non-humans. Green Criminology is radical in two major ways:

7 Rather than focusing on law breaking behavior, it looks at the causes and consequences of the harm done to the environment – even if the harm done is legal.
8 Unlike most criminology, it is concerned with harm to animals and plants and ecosystems.

There is no agreed definition of '**HARM TO ENVIRONMENT**[152]'. Halsey and White (1998) point out that the notion of harm ' INHERENTLY IDEOLOGICAL' it is constructed through the political process with competing interest groups seeking to have the definition of harm accepted.

[151] Offences here can be referred to be so grave and dangerous in nature which are committed by human actions to the environment
[152] Halsey and White haave pointed out notions of harm to environment but there is no precise definition

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A coherent approach to Green Criminology can only be constructed when there are global standards regarding the environment.

Sociological approaches to understanding environmental harm and the role of green crime

1. Some sociologists believe that we should just focus on individuals and groups which breach the environmental laws laid down by the governments and international bodies.(example SITU AND EMMONS , 2000)

This means just focusing on those environmental harms which break the law, for example examine the causes of international trade in endangered species.

CRITICISM: This ignores the harm done to the environment by the powerful people in pursuit of their profit and more advanced life. Many environmental harms are not illegal because powerful groups such as TNCS have shaped environmental laws in their interest.

2. Other sociologists argue that Criminology should focus on any act that harms the environment. Even those acts which aren't illegal.

In ***M.C. Mehta v. Union of India***[153]**,** the question of whether the mining operation in region up to 5 kms from the Delhi-Haryana boundary on the ridge side of Haryana and even on the hills of Aravalli causes environmental devastation and what guidelines must be devised? These recommendations were accepted by the Hon'ble Supreme Court in principle.

⇒ Mining operation should only be permitted on the grounds of **sustainable growth**[154] and in compliance with the strict conditions.
⇒ The hillside range of Aravalli must be preserved at all times. In the event that, given extreme circumstances, there is an enduring adverse impact on the ecosystem of the Aravalli hills, at a later date the complete suspension of mining operation in the region will have to be considered
⇒ Violation of each of the provisions would carry the possibility of mining lease cancellations. The **mining operation** shall only proceed in strict accordance with the terms stipulated.

Environment and its protection and preservation from various kinds of pollution have become one of the most important contemporary issues and a main dimension of challenges. The world

[153] M.C. Mehta v Union of India, (civil) 4677 of 1985
[154] Sustainable growth in simple terms and in reference with the said case means attainable growth.

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has discovered that pollution accumulations have posed considerable danger to the quality and continuation towards corrupt life.

Although green criminologists are indeed involved in environmental damage, there are two separate green interpretations:

→ ANTHROPOCENTRIC APPROACH

→ ECO-CENTRIC APPROACH

II. ANTHROPOCENTRIC APPROACH

Anthropocentrism[155] is a **human centered approach** and it is assumed that they are responsible for a severe environmental problem that threatens biodiversity from global warming and many such grave disasters to ozone depletion and water scarcity. Anthropocentrism is considered by most as the central problem in the concept of environmental philosophy.

For example, deforestation triggers global warming where tree erosion absorbs low carbon dioxi de and thus brings more greenhouse gases into the atmosphere.A domino effect of such would lead to severe climate changes resulting in the extinction of various species due to habitat-sabotage (Wilson 2003).

In 2016, the police registered 4,732 environmental offences which rose 790% to 42,143 cases in today, according to NCRB's latest crime data released on October 21, after a year's delay. As many as 29,659 cases were under the tobacco law.

Anthropocentrism[156] is a term that characterizes a position which accepts the human beings as the most significant species on the planet implicitly humans are considered to have a **moral status** than the other species due to their presence of human dignity and their presence of human soul. Nature seen as an external environment is generally viewed as having instrumental

[155] Anthropocentrism a much-misunderstood concept according to many sociologist
[156]Anthropocentrism is also known as homo-centrism or human supremacism

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values and thus its preservation of conservation is premised on its values for human needs such as its used as a resource or the ecosystem services as it provides.

For example, in Japan **whales** are valued for human use. Such anthropocentric perspectives are deeply imbedded in many modern and human cultural and conscious acts with human considerations being at the center of environmental concerns. Anthropocentrism is often contrasted with **eco-centric perspectives**[157] a term for wide variety of beliefs that see humans as superior.

Data released by the National Crime Records Bureau show an eight-fold rise in environmental crimes between 2016 and 2017. However, 70% of the offences recorded are under the Cigarette and Other Tobacco Products Act, 2003 – such as smoking in public and use of plastic in packaging for tobacco products – which have only a minor environmental impact, experts said

One of the views of anthropocentric approach is that humans are at the center. The anthropocentric approach is individual-centered, focusing on the biological, intellectual and moral supremacy. Anthropocentric approach is a kind of perspective, where man observes nature and the other species as to be treated, appropriated and dispose of in such a way as it best fits to the interest of human-beings. Humans are also known to be the primary perpetrators of destructive activities; damage is done while human casualties are involved.In other terms, humans determine the instrumental **importance of nature** and other organisms, and very little regard is given to the effect that humans have on the climate as well as environment until socio-economic considerations play a significant role.

- For example, the use of Rhino horn as a medicine (a functional human purpose) or consuming caviar - unfertilized sturgeon eggs - as a delicacy (a symbolic human purpose) has been prioritized over the survival of those species.

[157] Eco-centric perspective believes nature above everything else whereas anthropocentric perspective is completely contrary to the former perspective

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III. ECOCENTRIC APPROACH

Eco-centric approach[158] is committed to protecting Earth's ecosystem as a whole and the operation of its life-supporting processes. It is a point of view that considers the ecosphere (organisms and the environments in which they live) as important.

Human beings are not at the peak of the food chain from an **eco-centric viewpoint**[159]but are part of a larger environment and subject to ecological rules. A dialectical interaction between humans and nature occurs from this eco-centric viewpoint. The emphasis is on the 'everything is connected to something else' ecological theory. this approach believes nature to be above man. Ecological contact between organisms also plays an significant role in the evaluation of the wildlife trade's adverse practices. The ecology and its values are above human concerns and human beings are morally and ethically liable for mitigating damage and maintaining the natural environment and dignity of non-human organisms.

Legal trading in animals will also be detrimental, because it exceeds acceptable rates or does not have a stable climate. Fish and forestry **overexploitation** were strong evidence of its devastating effects on animal ecosystems. Collective human interests can be met from an ecocentric viewpoint, according to the requirement that ecological equilibrium is preserved.

In **Bishnoi Movement**[160], Spotted dears and black buck were two important tribes in Bishnoi Movement. In village Khejri, which was a protected area there grew Khejri trees (maintain the balance in eco-system , a plant which stores water). In 1730, Abhay Singh wanted to build a palace along with which he wanted to build a fort for which he required woods which can be obtained only from trees. So , he sent his soldiers to fell the trees. Abhay Singh had no idea of the significance of Khejri trees. Soldiers there upon the orders went to fell the trees. When the soldiers started to feel the trees , a woman named Amrita Devi went and hugged the tree and gathered momentum in a couple of hours. The soldiers were so ruthless that while chopping the trees they also started to chop the humans. It was said that there was less of greenery and more of redness. This was a protest against deforestation which is one among the aspects of green crime. This was the first environmental movement. In this movement , nature was above man. i.e. eco-centric approach.

[158]Eco-centric is yet another path to ethics with the world
[159] Eco-centrism views the natural world as one huge system of which all parts are intertwined.
[160] BISHNOI MOVEMENT is a known as turning point in the history of eco-development struggles in the region around the world.
The main demand of the people in these protests was that benefits of the forest should go to the local people. It is also known as the ' hug the tree movement' .

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Should man deforest trees for industrialization? Should man kill animals for his interests? Should gasoline vehicles be used always? What are our obligations towards environment? How do you expend life and protect nature?

Mukherjee's view is similar to the eco-centric approach where he says as humans are conditioned by certain things, What is that, that conditions nature/ environment?

Human actions and human behaviour is significant in conditioning environment. Mukherjee talks about subsistence economy to overgrazing. This view is very much related to **Gandhian approach**[161]which – buy only what you want to use (economy of permanence). Subsistence economy is based on the Gandhian approach which was practiced in the ancient society that is hunting or gathering as per the requirement and not overgrazing . Environment was respected and a conserving society emerged out of the practice. But now, there is shift from subsistence economy to overgrazing. That is , not just consume as per the requirement but produce in such large amounts so that profits are made out of the production and which directly leads to overgrazing consuming even more than the requirement. In **subsistence economy** , nature and land is respected.

IV. THE BIG PICTURE: ENVIRONMENT V/S DEVELOPMENT

Environmentalist in the earliest stage of development were often opposed of the thought of developing the planet at the cost of environment. They were of the opinion that once the forests were chopped off for vacating lands for farming, the human life on earth will end in a very short period of time. However eventually the commercialist managed to argued on the above thought of environmentalist where they managed to convince them about the need for development of farms is important for the betterment of mankind in the present. According to me the development of farms is essential for the betterment of mankind for if the human life is not supported and protected in the present what is the point of securing it in future by maintaining the forests, for there would be no human life left in the future to enjoy the environment. However, no matter how huge is the urge for development there should always be balance between the **Environment and the Development**[162].

[161] Gandhian approach focuses on economy of permanence which means buy only as much as per the requirement. Overgrazing leads to distortion of resources.
[162] Environment v Development is the most controversial and most debated over the time. Environmentalist share an eco-centric viewpoint whereas Industrialist have an anthropocentric approach. Development at the cost of environment is a major issue which is questioned.

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Environmentalist further claims that it is the environment which supports the human health and helps the human life on Earth to prosper to its fullest. On the other hand, according to me Development does not mean always luxury and negligence towards environment. Some countries with strong governments are actively and effectively pursuing strategies to **maintain a balance** between them and also to slow motorization by providing high quality public transport.

Development is essential for the economic growth of the country in the worldwide. However, it is of utmost beneficial if the development is one sustainable development for it helps maintaining an equal balance between development and environment and it could also help in raising the standard of living of the mankind. Various governments have also set rules and regulation for development which is in assistance with the environment.

Environmentalist (how to reconcile the demands from environmental groups which are not taken seriously by the policy makers of the world and on the other hand to keep the growth story going). This is very unfortunate that every-day the issue of environment is becoming increasingly clear that without appropriate environment, development is impossible. One of the first and most important requirement of development is to have a **healthy environment** and huge trees like olden times form the first link between the natural world and the material world, because they sequester the carbon dioxide. The harvesting of solar energyand the supply of materials to the material world and therefore trees , particularly in the urban environment , must be taken with great care because it is not possible to maintain plant's and tree's healthy life cause of the growing rates of pollution and because of the increasing human intervention and therefore an adultery in the urban environment. Trees are one of the main ingredients that make dry and drab conditions in the urban environment livable.Indeed, when the newspaper flashes the headline that too many trees are to be cut down , the announcement itself is an irony in the sense that a majority of such tree houses, millions of nests and bird life will simply disappear entirely. According to the environmentalist trees are symbolic but along with them there is a whole biota , the whole food chain and many other important ecosystem resources that are literally washed away. Water harvesting , many other environmental modulations and micro climate everything change drastically bringing them back is very easy to say but very difficult to achieve.

It is more to consider millions of people who are poor, starving of hunger, etc. than to conserve natural resources, ecosystem, etc. Environmentalists claim that technology is pushing us to environmental destruction rather than benefitting the country(planet). The one who belongs to the area of development seeks to dominate the environment sector as they think and feel that:- Development is the secret to a nation's growth and that more and more technical innovation would help citizens and the future, as technology and advancement together would make our life better and we will be more prosperous and our life will be very simple.

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V. DOES DEVELOPMENT HAVE TO MEAN DAMAGE TO THE ENVIRONMENT

Infact, we can have it other way round that development can support the environment and vice-versa. Trees have not been given the attention and the merit and the importance that they deserve. A day to day example with this is when we go to a place and see all the trees which are on the road are lining in cyclic . they are normal canopy and are absolutely weak and also, they do not give a right appearance of a healthy trees and even under such condition's trees are likely to be cut which is one of the most difficult conditions. It is unfortunate to discuss Environment vs. Development. In fact , one of the most important ingredients of development is wholesome environment ,so the question is not this versus that , the question is that environment has to be given a very respectable position in the development itself. A development without favorable environment is meaningless . For example: Cape where one can find that a lot of things have been done but water is not there , now what is the kind of environment and what is the kind of development. It serves no purpose.

- A healthy and a wholesome environment is the principle component of development

And unless this philosophy permeates from top to the bottom in every department , it will be sure that development will be very much ruthless on environment and if we do not care for environment development losses all its meaning and its purpose. Development and environment should go hand in hand. Debate is not basically between environment v development but it is simply how one is going to stick to the laws of the land. The fact of the matter is that when the laws of the land have to be implemented it should be done with all seriousness in letters and spirits and tough choices have to be made.

In yet another*M.C.Mehta v. Union of India*[163] ,guidelines for the change of industries were given in conjunction with the Delhi Master Plan. Order provided to retain the land rendered accessible as green belt for the general good by the changing factories for lung space. The right to a clean and safe environment is a constitutional right and therefore Court ruled by Moving the sectors to another place means two things. One, it reiterates the right to a safe ecosystem free from emissions. Two,it does so at the expense of advancement and innovations i.e. development.

VI. ENVIRONMENTAL DIMENSION OF ARTICLE19

[163]M.C.Mehta v. Union of India , 1993 Sup (l) SCC 434

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A. FREEDOM OF SPEECH AND EXPRESSION AND ENVIRONMENTAL PROTECTION

Article 19(1) (a) guarantees every citizen a fundamental freedom of speech and expression. However, it is very important to note that this freedom is not absolute. Like other freedoms this too is subject to certain reasonable restrictions as specified in Article 19(2) of the Constitution. In India most of the environmental jurisprudence has developed by judicial activism. Most of the cases before the Court as a result of PIL in which the people exercised their freedom of speech and expression sometimes by writing letters to the Court or otherwise by filing petitions before it. Freedom of press is an important aspect of the freedom of speech and expression. The press is popularly known as the Fourth Estate. And the traditional role assigned to it is that of a public educator.

Today ,we are having a very vibrant and active media which enables bringing to light many stories which otherwise would have lost in time. In recent times we have seen the judiciary taking note of the press items and even at times acting upon it. A burning example of this is the **'Rape of the Rock**[164]**'** case, a news item published in Indian Express. Here, exemplary fine was imposed on the erring Coca Cola and Pepsi, industries for polluting the environment.

In yet another ***M.C. Mehta v Union ofIndia***[165]**,** directions were issued to Kanpur Municipal Body for disposal of waste. Licenses for establishing new industry to contain condition for treatment of trade effluent. Existing industries must set up ETP and action to be taken for polluting water. Also, innovative directions were given to Central Government to teach children about protection and improvement of natural environment including forest, lakes, rivers and Wild Life. Children are the asset of the nation. A healthy child of today can become an able citizen of tomorrow. Hence this direction of the Supreme Court is of great value. A PIL under Article 32 of the Constitution was filed against tanneries in Kanpur by M.C.Mehta. The petition included within its scope to include all industries along the banks of river Ganga. Directions were given to relocate the polluting industries. The Court reaffirmed the Polluter Pays Principle holding that one who pollutes the environment must pay to reverse the damage by his act.

In ***Moulana Mufti Syed Md. Noorur Rehman Barkativ. State of West Bengal***[166]**,** the High Court of Calcutta observed that excessive noise certainly pollution in the society. Under Article 19(l)(a)read with Article 21 of the Constitution ,the citizens have a right to decent sleep ,right to

[164] India's Forest Conservation Act , 1980

[165] **M.C. Mehta v Union of India,** Kanpur Municipal Body

⇒ [166] Moulana Mufti Syed Md. Noorur Rehman Barkativ. State of West Benga AIR 1999 Cal 15 at 25- 26

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live peacefully and to have leisure which all are necessary ingredients of the right to life guaranteed under Article 21 of the Constitution.

MAJOR ENVIRONMENTAL CRIME

Environmental crime encompasses the spectrum of actions that contravene environmental legislation and pose serious damage or danger to the environment, human safety or both.Considered the third largest criminal industry in the world by Interpol (International Police Agency) - after the drug and arms trade - wild animal trade poses a significant challenge to the sustainability of the world's biodiversity.Indiscriminate Logging: Primary source of deforestation. According to the Brazilian authorities, the Amazon devastation – the world's largest rainforest – intensified to a 29 per cent rise in deforestation in 2013

B. IMPACT OF RIGHT TO KNOW ON ENVIRONMENT PROTECTION:

The **right to know**[167]is especially critical in environmental matters. For example, government decisions to site dams may displace thousands of people and deprive them of their lifestyles and livelihood. A responsible government , therefore ought to wisely publicize its rivers , development plans, an ought to be receptive to public feedback.

Access to government records, helps litigants construct the necessary fact base for legal actions. For example , information secured from municipal records has enabled urban environment groups to expose the complicity between agencies and private builders.

The Bombay High Court in its unreported judgement in the Bombay environmental Action Group v Pune Cantonment Board , considered whether a recognized environmental group has a right to examine municipal permissions granted to private builders. The environmental group believed that , construction on five plots within the cantonment was illegal and therefore it sought inspection of relevant municipal documents. The cantonment board however refused to grant inspection , forcing the group to petition the court. The court was pleasedtogrant permission.

⇒ [167] Right to Information Act, 2005

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Environment-Related Offences In India		
	2016	2017
The Cigarette and Other Tobacco Products Act, 2003	NA	29659
Noise Pollution Acts (State/ Central)	NA	8423
The Forest Act & The Forest Conservation Act, 1927	3715	3016
The Wildlife Protection Act, 1972	859	826
The Environmental (Protection) Act, 1986	122	171
The Air (1981) & The Water (Prevention & Control of Pollution) Act, 1974	36	36
The National Green Tribunal Act, 2010	NA	12
Environment & Pollution – Related Acts (Total)	**4732**	**42143**

Source: National Crime Record Bureau, 2017

VII. EFFECTS OF ENVIRONMENTAL CRIMINOLOGY

1. Effect on Human Healthiness: Human safety can be on the receiving end as a consequence of environmental destruction. Areas subjected to toxic air contaminants can trigger respiratory problems such as influenza and asthma. Millions of citizens are believed to have died of air contamination owing to indirect consequences.

2. Damage to Biodiversity: Biodiversity is vital for preserving ecological balance in the context of pollution management, nitrogen regeneration, water source security and climate stability. Deforestation, global change, overpopulation and emissions are only a handful of the major factors of biodiversity depletion.

3. Ozone Layer Depletion: It is the ozone layer that is responsible for shielding the Planet from toxic UV rays. The existence of chlorofluorocarbons, hydrofluorocarbons in the environment is triggering degradation of the ozone layer. It will release dangerous radiations back to earth because it would deplete.

4. Loss for Tourism Industry: : Environmental degradation can be a major boon for the tourism industry which relies on tourists for their daily living. For most visitors, environmental

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degradation in the form of lack of green cover, lack of habitats, massive landfills, elevated air and water emissions will be a major turn off.

5. Economic Effect: The massive burden that a nation can have to pay owing to environmental pollution will have a significant economic effect in terms of green cover regeneration, garbage maintenance and endangered species protection. The economic effect of tourism industry may also be in terms of damage.

NATIONAL CRIME BUREAU RECORD

Pollution, whether of air, land or water, has become synonymous with India's growth story, with evidence of damage visible across the country. Delhi and Mumbai are appraised among the most dirtied urban areas by the World Health Organization. However, the ongoing information discharged by the National Crime Records Bureau (NCRB) on natural wrongdoing attempts to paint an alternate picture. A more intensive gander at the information, which incorporates all violations recorded under the Forest Act, Wildlife Protection Act, Environmental Protection Act, Air (Prevention and Control of Pollution) Act and Water Act, places things in context.

VIII. SUMMARY OF SURVEY

As per my survey with our human intellectuals I feel honour to summarize and bring into description about the thoughts and ideas our people our environment feels; I felt great and lucky to do this project as I was given this excellent and unique opportunity to recognize about the realistic efforts that our elders are taking to maintain this globe in unity and if this continues we shall all be successfully by next 10 years.

I would like to thank all my teachers and Principal who chose me for this topic and gave me an opportunity to present the same.

Please fine my summary on survey done by me and I hope it will fulfil your expectations. Also, I would like to notify you that 70 people took initiative to complete this survey of our project. I am glad to get such a positive response.

A well-designed survey, opinion poll, or census can help us to know the reaction of the people about their understanding on our topic Green Crimes. So out of our 70 respondents, 51.4% consist of male respondents and 48.6% consist of female respondents.

I have divided this survey in 4 age groups where the percentages of repliers comprise as per below details in the table :-

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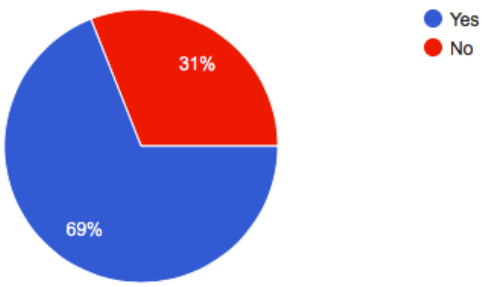
AGE GROUP	RESPONSES (%)
18- 25 years	*72.9%*
26 - 40 years	*20%*
40-60 years	*5.7%*
60+ years	*1.4%*

The professions of all these age groups is quiet a miscellanea and it would get really tricky to draw them precisely thus I would just simply draw the same by mentioning overall work sectors and area they may belong to like maximum of them are students accounting to 31% roughly, few one's are CA and rest of them come under accountant, executive, musicians, business, lawyers etc. and let me not forget a very little proportion of retired and home makers group.
Though their professions are not so common but I am so relieved to get a very positive reception towards their responses for ecological awareness which speaks of 65.7% as Good, 24.3% as Great and only 10% as Bad.

Do you sort your home waste (i.e. separate dry waste and wet waste) ?



Now I have this huge urge to describe about waste management by our citizens as it is major concern for Green Criminology.
As per the survey 65.7% of people separate dry waste and wet waste where else 34.3% still lack to follow that. Most states even lack to keep separate waste containers on the roads.
I would like to show few suggestions I have received from the people about suggestions for separating big and small waste.

Respondent 1 - Colours of waste bags or symbols may be made.

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Respondent 2 - These days domestic garbage is segregated and put to use so that it may either be recycled or reprocessed. This prevents pollution and increase of land-fills, which is harmful to humans, the flora and fauna. Segregating garbage into separate bins helps those who collect it to dispose them off in the right way. The usual practice that is followed in segregating garbage is to separate them into three: 1. Organic, compostable and biodegradable waste such as vegetable peels, food left-overs, etc. 2. Recyclable and non-recyclable materials like plastics, bottles, boxes etc.

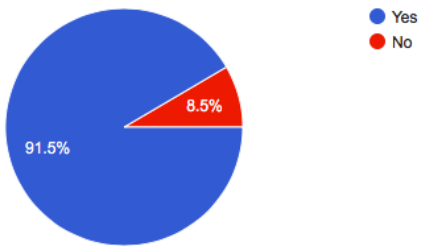
Now let's see how many of them are still using plastic bags instead if heavy penalties being levied on the states. Well my survey states 87.1% people use lien bags but 12.9% still fail to do so and according to my personal observation I Feel more 30% of overall crowd are still using plastics and They are hiding thr same or maybe we can simply say Government is turning a blind eye to this situation.

92.9% of my audience feels that we must in majority help government and take a strict action towards a legal punishment to people who does intentional pollution.

And let's not forget the fact how much the pollution has already affected our health; 91.4% of the crowd feels strongly about pollution affecting them and the environment.

Pie chart : **Do you think local pollution has already affected your health?**

And now I would like to bring an end to my summary by simply sharing views of people who loves to spend time with nature and who has few opinions about environment.



Changes people would like bring locally?	
Respondent 1	"Maintaining and keeping area spit free and dust free"
Respondent 2	"Plant more trees, stopping people to waste water"
Respondent 3	"I would like the authorities to enforce the strict rules against people who litter on their land as well as in the water"

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Opinion on environment, in general?	
Respondent 1	"My opinion on today's environment is that it's in a devastating state its highly polluted but it can be saved by taking various steps such as using eco-friendly things , proper disposals spreading awareness"
Respondent 2	"Education and information"
Respondent 3	"All the products we use should be eco-friendly. Once we dispose it , they should help with the environment. Just like how water is absorbed in the earth these products should be naturally absorbed"

Thank you again for this project.
I hope I have covered all points here and posted a satisfied answer through this survey.

IX. CONCLUSION:

Nature has its own way of expressing joy, sorrows and happiness. gives a bigger reason and some new desirables for organizations to make progress toward and encourages them recharge their duties to fundamental objectives like effectiveness , practical development and investor esteem

GOD CREATES WORLD
WORLD SHELTERS MAN
MAN POSSESS HEART
HEART CHERISHES LOVE
AND ONLY THAT LOVE CAN SAVE OUR MOTHER EARTH FROM THE DREADFUL CLUTHES OF POLLUTION.

Gandhiji has rightly said that Earth has enough resources for everyone's need but not for anyone's greed. And this greed has led men to the vicious web of pollution, global warming excessive industrialization , over population and environmental degradation. Industrialist are always trying to feather their own nest at the cost of the environment. Conservation of nature is dire need of the hour. Vigilant and environment friendly citizens, powerful media , responsible government and compassionate industrialist can certainly save our Mother Earth from this vicious web of pollution. So, let us act like responsible citizens and work towards a better tomorrow.

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Human Being has marked wounds on the soul of nature in the greed of money and power but now the time has come when we should heal these wounds with medicines of love, compassion , care. So,

LET'S HEAL THE WORLD
MAKE IT A BETTER PLACE
FOR YOU AND FOR ME
AND FOR THE ENTIRE HUMAN RACE.
IT SEEMS TO ME THAT WE ALL LOOK AT NATURE TOO MUCH BUT LIVE WITH IT VERY LITTLE.

- **OSCAR WILDE**

Nature is the most beautiful gift bestowed by Almighty on his humble mortal beings . Nature rejuvenates an refines our mind, body and soul. Nature soothes and heals the deepest wounds of life by its charm. It is cheaper and better than therapy. The mystic beauty of nature nutures love and care for our mother earth in young minds. it whispers us to take care of its pristine beauty and commands us to obey the law of nature.

MITIGATION MEASURES

There are ways which can help to decrease degradation in our environment. Some of these include:

- Conserve energy
- Purchase recycled products
- Conserve water
- Talk with others about the impacts of environmental degradation
- Do not litter or throw waste into inappropriate places
- Join an awareness group

The damage that we cause to the environment is currently not counted as a cost in economic and social terms. This lack of "environmental value" has allowed us to over-exploit "free" natural resources - which are, of course, not free. It has likewise prompted over-creation of modest products with short life expectancies which are generously disposed of into the earth after use, and afterward new modest merchandise are bought and disposed of again, and this cycle goes on and on - affecting the planet's capacity to restore its environmental services in good time.

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It was once said by Oscar Wilde,' It seems to me that we all look at nature too much and we live with her too little'. In our nation our precursors had developed a technique to ensure the abundance of nature-trees. Trees used to be revered as a god and heavenliness was connected to them. Trees are boon bestowed on mankind. They maintain equilibrium in environment. However, the virginal forest offers a strong temptation to encroachers and exploiters. It also attracts 'mafias' to cause illegal trading of wealth of forest. Thus, playing foul with nature has caused large scale devastation of forests. Except if and until we make a start in developing more trees, we will before long arrive at a phase of no-arrival. Our nation will transform into a huge and unfriendly waste land. Municipal awareness must be stirred and a feeling of duty should be stirred among the majority. Each kid ought to be instructed that planting a sapling and sustaining it to its full development is a strategic life. Those harming the flora in any manner should be punished in a deterrent manner similar causing to an injury to human being. Planting of trees is the most noble act. One generation plant them and the second and the third reaps its fruits. Thus, if these messages are registered well with Indians then India can once again can regain it lost grandeur in nature's vernal show.

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THE ABROGATION OF ARTICLE 370

Kumawat Aneshkumar *

ABSTRACT

The State of Jammu and Kashmir was acceded to India by Maharajah Hari Singh's Instrument of Accession in late 1947 with a condition of plebiscite and sovereignty of its people. Article 370 was inserted in the Indian Constitution as a temporary provision which gave special status to the state of Jammu and Kashmir. But by Presidential order of 2019, Article 370 was scrapped and State of Jammu and Kashmir lost its special status. Jammu and Kashmir were converted into two union territories. This paper discusses the constitutional validity of such presidential order and move of converting the state into a union territory. Further, it also discusses changes made by such abrogation and its possible outcomes.

KEYWORDS:
Article 370, Special status, Jammu and Kashmir, Constitutional validity.

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I. INTRODUCTION

J&K was under Presidential rule from late 2018. In August 2019, by issuing a Presidential order, Article 367 and 370 of Indian Constitution were amended. Then the president issued another order which declared Article 370 to be inoperative. This Presidential order altered the special status of J&K. Lastly; Parliament passed an act by which state of J&K was converted into two union territories namely J&K and Ladakh. This paper discusses the constitutional validity of such orders as a recommendation of the Constituent Assembly was a must for scrapping article 370. Further Supreme Court in its landmark judgment declared Article 370 to be permanent.

Part 2, of this paper, discusses how Article 370 was inserted into the Indian Constitution. While the Constitution of India was being prepared, the issue of Kashmir was on the stalemate, it was pending before the United Nations Security Council. Several resolutions were proposed by the council to both the nations but nothing fruitful came out of this. It was unclear how long will it take to get the Kashmir issue resolved. Thus Article 370 was inserted in the Indian Constitution as a temporary provision.

Part 3 of this paper talks about how several modifications were made in Article 370 after its insertion. Presidential order of 1950 added many subjects of Union list to apply to J&K. Order of 1952 replaced Maharajah with Sadar-i-Riyasat. Presidential order of 1954 added emergency provisions, Supreme Court's jurisdiction, and fundamental rights to be in line with Indian Constitution.

Part 4, examines how Presidential order of 2019, Scrapped article 370 and J&K was turned into a Union Territory. Part 5, critically analyzes Constitutional Validity of such abrogation and conversion of a state into a union territory without the concurrence of its legislative assembly. Lastly, the paper discusses changes brought by abrogation of Article 370 in several application of laws in J&K and reaction of people towards this move.

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II. INSERTION OF ARTICLE 370 IN THE INDIAN CONSTITUTION

In brief, when India became independent, the Constitution of India was being prepared. But J&K was in uncertain position and the issue of J&K was pending before U.N. Security council. Though Maharaja Hari Singh had signed the instrument of accession, a promise of a plebiscite was done by India to people of J&K and world. Until the situation becomes normal in J&K, something temporary has to be put in the Constitution. Henceforth Article 370 was inserted as a temporary provision in the Indian Constitution. The underlying spirit of this provision was that the Indian Government will not use its powers on J&K without the consent of its people subject to certain exceptions.

Right from summer of 1946, the fourth most populous princely state of India[168] was facing the dilemma of accession. In early July 1947, Sardar Patel wrote a letter to Prime Minister of J&K, Ramchandra Kak and Maharaja, Hari Singh.[169] He tried to convince that by history and traditions Kashmir's best interest lies in joining the Indian Dominion.[170] By 15th August 1947, except Kashmir, Hyderabad, and Junagadh, most of the princely states had acceded to India[171].

In a letter written on 15 October 1947, by Mehr Chand Mahajan, the Prime Minister of J&K to British Prime Minister, he asked that Dominion of Pakistan should be asked to deal fairly with J&K and adopt good conduct.[172] But on 22 October 1947, raiders invaded Kashmir who was mainly Pakistani Nationals.[173] Some of the members were from the Pakistani army on leave.[174] The attack aimed to foment an internal revolution in Kashmir.[175] On 24 October 1947, Maharajah of J&K Hari Singh desperately asked for help from Government of India.[176] Then on 26 October 1947, the Maharaja of J&K Hari Singh, signed the instrument of accession and announced that Kashmir would accede to India.[177] The instrument of accession was conditional on the will of the people to be taken by plebiscite when law and order have been restored in the state.[178]The instrument also said that nothing shall be deemed to commit Maharajah for

[168] K.M. Munshi, Indian Constitutional Documents: Pilgrimage to Freedom(Mumbai: Bharatiya Vidya Bhavan 2013), vol.2, at p.366
[169] S.Gopal (ed.), Selected Works of Jawaharlal Nehru (Hyderabad: Orient Longman Ltd., 1982), vol. 15, at p. 406.
[170] Ibid.
[171] V. P. Menon, Integration of the Indian States (Hyderabad: Orient Blackswan Pvt. Ltd. 2014), at p.354.
[172] V. P. Menon, The Story of the Integration of the Indian States (Orient Longmans Ltd. 1956), at p.396.
[173] Ibid.
[174] Supra note 4, at p. 356.
[175]Durga Das (ed.), Sardar Patel's Correspondence: 1945-50 (Ahmedabad: Navjivan Publishing House, 2015 reprint), vol. 1, at p. 64.
[176] Supra note 5, at p. 397.
[177] Supra note 8, at p. 77.
[178] Supra note 5, at p. 399.

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acceptance of any future constitution of India or any arrangement with Government of India.[179] On 27 October 1947, Indian troops landed in Srinagar.[180]Unfortunately, tribesman never fully withdrew from Kashmir as Nehru referred the issue to United Nations Security Council on 1 January 1948.[181] India approached the Security Council to call upon Pakistan to stop assistance to invaders in J&K. Several resolutions were proposed by the Security Council to which both the nations never agreed and the matter reached on a Standstill.

Now, when Constitution of India, was being drafted a need was felt to insert a temporary provision concerning J&K, as its issue was on a stalemate in Security Council and instrument of accession was already signed with India. It was B.N. Rau, who first proposed the idea of transitional provision for J&K.[182]On 17 October 1947, Gopalaswami Ayyangar moved that a new clause article 306A be inserted into the Constitution which was eventually renumbered as Article 370. In brief Article 370 gave the following provisions to J&K.

A. LIMITED POWER OF PARLIAMENT

Parliament's power to make laws for the State was limited to only those matters of Union and Concurrent list which were mentioned in the Instrument of Accession[183] and such other matters which President may specify with the consent of the Government of the State.[184]This means Centers Legislative Powers were limited to only 3 subjects defence, foreign affairs and communications. All other Constitutional powers of Central Government required consent of the State Government. Further concurrence was provisional and was to be ratified by States Constituent Assembly.

APPLICABILITY OF ONLY FEW ARTICLES OF INDIAN CONSTITUTION

Only Article 1 of Indian Constitution (Article 1: India that is Bharat shall be a union of states) and this Article itself was to be applied to J&K.[185]

[179] Clause 7, Instrument of the accession of Jammu and Kashmir.
[180] Supra note 4, at p. 360.
[181]Valmiki Choudhary (ed.), Dr Rajendra Prasad: Correspondence and Select Documents (New Delhi: Allied Publishers, 1994), vol. 8, at p. 390.
[182] Supra note 4, at pp. 85-86, 88.
[183] Article 370(1) (b) (i), the Constitution of India 1950.
[184]Article 370(1)(b)(ii), the Constitution of India, 1950
[185] Article 370(1) (c), the Constitution of India 1950.

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B. CESSATION OF ARTICLE 370, THE RECOMMENDATION OF CONSTITUENT ASSEMBLY OF STATE MUST

One of the most prominent features of Article 370 was that it can cease to be operative or can operate with modifications by Presidential orders. Provided, the recommendation of Constituent Assembly of State was must for such order.[186]Further Article 370 mentions that State governments need for concurrence lasted only till the State Constituent Assembly was convened. Once the State Constituent Assembly finalized the Scheme of Powers and dispersed, no further extension of power was possible.[187]

III. MODIFICATIONS IN ARTICLE 370 OVER DECADES

TheInstrument of Accession originally limited the Centers Legislative Power to only 3 subjects. But over the years, through Presidential Orders under Article 370(3), significant changes were made to Article 370. In fact in Lok Sabha in 1963, Nehru said that Article 370 had over a period of time, therefore been "eroded".[188] Following Presidential Orders were made which brought significant changes in Article 370:

A. PRESIDENTIAL ORDER OF 1950

This order came into force on 26 January 1950.[189] Thirty-eight subjects from the Union List were mentioned as matters on which the Union legislature could make laws for the State. Certain articles in ten of the twenty-two parts of the Indian Constitution were extended to Jammu and Kashmir, with modifications and exceptions as agreed by the state government.[190]

B. PRESIDENTIAL ORDER OF 1952

This order was published on 15 November 1952. By this order word "Maharajah" was replaced with "Sadar-i-Riyasat" [191]with respect to Article 370. This order abolished the Monarchy of J&K.

[186] Article 370(3), The Indian Constitution of India 1950.
[187] Article 370(2), The Constitution of India 1950.
[188]A.G. Noorani, Article 370: A Constitutional History of Jammu and Kashmir (New Delhi: Oxford University Press, 2011) (Kindle Edition), at p. 5177.
[189] C.O. 10, The Constitution (Application to Jammu and Kashmir) Order, 1950
[190]Das Gupta, Jyoti Bhusan (1968), Jammu and Kashmir, Springer (2012 reprint), ISBN 978-94-011-9231-6
[191]Supra note 21, at p. 2191.

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C. PRESIDENTIAL ORDER OF 1954

This order came into force on 14 May 1954.[192]This order inserted Article 35A into the Constitution of India. It said that a law enacted by the legislature of J&K would not be void for conferring special rights on the permanent residents of the state. Further Fundamental Rights of Indian Constitution, the jurisdiction of Supreme Court of India, application of Article 356(National emergency) was extended to the state of J&K as well.

Finally, the Constituent Assembly on 17 November 1956 enacted a constitution of J&K. It said that J&K shall be an integral part of India[193] and thereby doing away with the need to hold a plebiscite.In addition to these original orders, forty-seven Presidential orders were issued between 11 February 1956 and 19 February 1994, making various other provisions of the Constitution of India applicable to Jammu and Kashmir.[194]Acts passed by the Indian Parliament have been extended to Jammu and Kashmir over a period of time.[195]

- All India Services Act
- Negotiable Instruments Act
- Border Security Force Act
- Central Vigilance Commission Act
- Essential Commodities Act
- Haj Committee Act
- Income Tax Act
- The Central Goods and Services Tax Act, 2017
- Integrated Goods and Services Tax Act, 2017
- The Central Laws (Extension to Jammu And Kashmir) Act, 1956
- The Central Laws (Extension to Jammu and Kashmir) Act, 1968.

[192] C.O. 48, The Constitution (Application to Jammu and Kashmir) Order, 1954.
[193] Article 3, The Constitution of Jammu and Kashmir 1956.
[194] Article 370 of the Constitution of India, The Wikipedia, https://en.wikipedia.org/wiki/Article_370_of_the_Constitution_of_India ,19 May 2020.
[195] Central Enactments applicable to the state of Jammu and Kashmir, 19 May 2020.

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IV. ABROGATION OF ARTICLE 370 AND SUCCESSIVE PRESIDENTIAL ORDERS

J&K was under Presidential rule from 19 December 2018 and power of the legislature of state was exercisable by or under the authority of Parliament of India.[196]Then on 5 August, 2019 President issued a new order which superseded the Constitutional order of 1954.[197]This order also amended Article 367 and Article 370 of the Constitution of India. It replaced the expression Constituent Assembly of the State in Article 370(3) with Legislative Assembly of the state.[198]Further, it also mentioned that reference to the [person of Legislative Assembly shall be construed as governor of the state.[199]

Since Presidential rule was applicable in J&K from 19 December 2018, Parliament of India was acting as Legislative Assembly of State and President as Governor of the State. Parliament could, therefore, ask for the concurrence of President to amend or repeal Article 370.
Eventually, on 6 August 2019, President issued an order and thereby declaring Article 370 inoperative or redundant.[200] Further, on 9 August 2019, State of Jammu and Kashmir was converted into two Union territories namely Jammu and Kashmir with Legislative Assembly[201] and Ladakh without legislative Assembly.[202]

V. ANALYZING CONSTITUTIONAL VALIDITY OF ABROGATION OF ARTICLE 370

A. *WITHOUT RECOMMENDATION OF CONSTITUENT ASSEMBLY OF STATE.*

In State bank of India vs. Santosh Gupta,[203] the Honorable Supreme Court of India held that State of J&K had, "no vestige of sovereignty outside the constitution of India and J&K constitution is subordinate to India's Constitution. However, the Court also said that the

[196] Egazette.nic.in,http://egazette.nic.in/WriteReadData/2018/194042.pdf , accessed on 19 May 2020.
[197] Section 1 (2), The Constitution (Application to Jammu and Kashmir) order, 2019, C.O. 272.
[198] Article 367(4) (d), added by The Constitution (Application to Jammu and Kashmir) order, 2019, C.O. 272.
[199] Article 367(b), ibid.
[200] Declaration under Article 370(3) of the Constitution, egazette.nic.in, http://egazette.nic.in/WriteReadData/2019/210243.pdf, accessed on 19 May 2020.
[201] Section 4, The Jammu and Kashmir Reorganization Act 2019.
[202] Section 3, ibid.
[203] (2017)2 SCC 538.

president cannot issue an order ceasing to make Article 370 operative without the recommendation of the Constituent Assembly of J&K.
This implies that unless the Constituent Assembly of J&K was convened again for recommendation no such order can be made whereas constituent Assembly already got dissolved. Article 370(3) which says that Article 370 itself cannot be modified without the recommendation of the Constituent Assembly of the State. By changing the definition of Constituent Assembly of the State in Article 367, President has changed the Article 370 without Constituent Assembly concurrence.
But by interpreting the guidelines given in Damnoo's case[204] above argument gets change. In this case, the Supreme Court allowed the word Governor to be used instead of 'Sadar-i-Riyasat'.The rationale behind it was that office of 'Sadar-i-Riyasat' was no more in existence and thus presidents order has just done what Supreme court in successive interpretations would have done. A similar line of Interpretation lays down that as Constituent Assembly was no more in existence thus replacing it with Legislative Assembly just supports the Supreme Court's view.

B. THE PROMISE OF SOVEREIGNTY OF PEOPLE OF JAMMU AND KASHMIR

Maharajahs Instrument of accession clearly said that nothing shall affect the sovereignty of this state and its people[205]. The instrument of Accession was the basis of J&K's accession to India which thrives for the sovereignty of its people. Further, India even made the promise to the world and people of J&K to have a plebiscite for their accession. It was people of J&K who believed in India and by their, Constitution became an integral part of India.[206]
Thus, by intellectual drafting of the Ministry of Law and Justice, though not letter but somewhere spirit of Article 370 and Instrument of accession has been violated.

C. FEDERAL STRUCTURE OF THE INDIAN CONSTITUTION

Federalism is the heart of the Indian Constitution. Article 3 of Indian Constitution says that views of the state assembly must be taken by the President before changing the boundary of any state or formation of a Union Territory.[207] Though once again because of the presidential order, it was parliament itself who was acting as legislative assembly of state and thereby doing away with any concurrence with legislative assembly. This is against the spirit of Article 3 of the Indian constitution.

[204] (1972) 1 SCC 536.
[205] Clause 8, Instrument of the accession of Jammu and Kashmir
[206] supra note 26.
[207] Article 3, The Constitution of India 1950.

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VI. CHANGES BROUGHT AFTER THE ABROGATION OF ARTICLE 370

After Kashmir's special status is gone, people from anywhere in India will be able to buy the property and permanently settle in the state. Rule of RTI will be applicable now. CrPC (Criminal Procedure code) will be applied in J&K instead of RPC (Ranbir Penal Code).[208]Now Kashmiri women married to Non-Kashmiri can inherit property.[209]
National Commission for Safai Karamchari Act, 1993 will now apply.[210] All other central acts and laws like Prohibition of Child Marriage Act, Protection of Women from Domestic Violence Act, Reservation for Tribals and Dalits will be applicable in the state now.[211] J &K will have only one flag now that is of India. Assembly duration of Union Territory will be 5 years instead of the previous 6 years.[212]

VII. THE REACTION OF INDIANS FOR ABROGATION OF ARTICLE 370

Majority of people in India welcomed the move of abrogation of Article 370 whereas many others severally criticized it. Opposition leader Ghulam Nabi Azad described the move as the murder of the Constitution and the democracy by the BJP-led government.[213] "Our wings have been cut off. The special status as a bridge between India and Kashmir and now it is broken " said one of the businessmen from Srinagar.[214] "PM said Kashmiris will now be able to sleep fine but I am in shock. I haven't slept for days. It is true that a few families ruled and ruined us. I will wait and see what the government has in store for us, especially the youth," said a man walking

[208] No special status, No separate Constitution: J&K, before Article 370, Indiatoday.in, https://www.indiatoday.in/india/story/no-special-status-no-separate-constitution-jammu-and-kashmir-before-and-after-article-370-1577601-2019-08-05, accessed on 17 May 2020.
[209] Infographic: Before and after Article 370,businesstoday.in, https://www.businesstoday.in/current/economy-politics/infographic-before-and-after-article-370/story/370816.html , accessed on 17 May 2020.
[210] Abrogation of Article 370:DIPR, J-K highlights benefits for women, SC's, ST's, OBC's, business-standard.com, https://www.business-standard.com/article/news-ani/abrogation-of-article-370-dipr-j-k-highlights-benefits-for-women-scs-sts-obcs-119090700479_1.html , accessed on 17 May 2020.
[211] Ibid
[212] Supranote 41.
[213] Article 370: NDA has cut off India's head says Ghulam Nabi Azad, thehindu.com, https://www.thehindu.com/news/national/article-370-nda-has-cut-off-indias-head-says-ghulam-nabi-azad/article28821970.ece, accessed on 18 May 2020.
[214] Kashmir Diaries Part1: Angry Kashmiris say Article 370 abrogation cut off our wings, indiatoday.in, https://www.indiatoday.in/india/story/kashmir-diaries-part-1-angry-kashmiris-say-article-370-abrogation-cut-off-our-wings-1596268-2019-09-06, accessed on 18 May 2020.

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adjacent to the Dal Lake.[215]
I am overwhelmed, emotional, jubilant said one of the entrepreneurs from Jammu.[216]President of Kashmir Sabha, Pina Misri said "It should have been done long back."[217] Dr.Senge Sering, a leader from PoK (Pakistan Occupied Kashmir) too hailed the scrapping of Article 370.[218]

VIII. CONCLUSION

The truth is whether abrogation of Article 370 is constitutional or unconstitutional is a matter of legal scrutiny. This matter is already been challenged before the Supreme Court. But what's more humanitarian is that decades-old issue will get solved now. Whether it's from Pakistan or India there would be no collateral damage to Kashmir valley which has witnessed thousands of lives of its own people as well as of Indian army jawans. Years of military rule, firings and bullets all around, victims of pellet guns many of whom have lost their vision, innocents being turned into the terrorist in name of Jihad, young hands had guns instead of books in their hand.
It is no exaggeration to say that the abrogation of Article 370 will bring significant, changes in state and will liberate our valley from unemployment, poverty, terrorism, corruption, illiteracy.

[215] ibid
[216] Govt move on Article 370 draws an emotional response from people across the country, timesofindia.indiatimes.com, https://timesofindia.indiatimes.com/india/govt-move-on-article-370-draws-emotional-response-from-people-across-the-country/articleshow/70540055.cms, accessed on 18 May 2020.
[217] ibid
[218] PoK leader hails scrapping of Article 370, thehinduatanbusinessline.com, https://www.thehindubusinessline.com/news/pok-leader-hails-scrapping-of-article-370/article28836177.ece, accessed on 18 May 2020.

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THE NON-DUALISTIC REALITY OF IDEALIST INDIAN PHILOSOPHY

Francesca Fowler[*]

In Indian philosophy, the conception of reality has been largely debated upon amidst the various schools. This essay seeks to understand the journey through which the non-dualistic Idealist schools of Indian Philosophy reached their respective conceptions of reality. The schools of Indian philosophy are largely divided into two sections, *āstika* and *nāstika*: those that believe in the authority of the Vedas and those who do not. The Idealists, or Vedānta school come under the*āstika* schools but are preoccupied principally however with a particular part of the Vedas. The word Vedānta directly translates to "end of the Vedas"[219]The 'end' here was at first thought to mean only the Upaniṣads, the last literary contributions of the Vedic period. Three broadly categorised forms of literature can be distinguished as follows; hymns and mantras compiled in different Saṃhitās, i.e., Rg* Veda, Yajus and Sāmas consisting of hymns written in praise of deities such as Agni, Indra, Varuna, Mitra and so on; the second was the Brāhmanas which contains treatises and rituals that were considered guides for when one entered life and was made to perform the daily household rituals; and the last of which being the Upaniṣads which discussed philosophical problems.

The very word Upaniṣad means "that which gets man nearer to God" (Datta; Chatterjee 1939: pp 388). Regarded as the secret teachings or meanings of the Vedas (*rahasya*). These writings were many and developed in various schools or *śākhās* at different times. Thus for the Vedāntans, there arose a need to systematize the various teachings in order to attain the harmonious *rahasya*from them. Bādārayana's *Brahma-sutra* or *Uttara Mīmāṃsā* undertook this task. This sutra was quite brief and therefore was open to varied interpretation which inspired multiple commentaries that aspired to elaborate the doctrines of Vedānta in their own light.

[*] Manipal Centre for Humanities, Karnataka.
[219]King R. 1999. *Indian Philosophy: An Introduction to Hindu and Buddhist Thought.* Edinburgh University Press. Edinurgh. Pp 52-57

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Saṅkara, Rāmānuja, Madhva and so on were the authors of the chief commentaries which led to them becoming the founders of their own schools of the Vedānta.
The primary question the schools of Vedānta proposes is such: what is the relation between God or Brahman and the self or *ātman?* The Madhva believe that God and the self are two separate entities which make the dualistic school or *dvaita* whereas Saṅkara believes that Brahman and *ātman* are the same, also known as monism, non-dualistic or *advaita.* Rāmānuja also believes in the *Advaita* thought to some degree but has a fundamental difference from Saṅkara which will be elaborated upon in detail later. Rāmānuja's school is called qualified monism or *viśiṣṭādvaita.*

The *Advaita* schools both coincide on two certain principles: one is that God or Brahman is absolute and the other being their rejection of all other schools' theories on reality. In dissecting these two principles, one is first beset with asking the question of how Vedāntans arrived at monotheism. It is clear from the earlier contextualisation of the Vedas that the earlier Vedic texts or *śrutis* were hymns to deities that were then considered to be the realities "underlying and governing the different phenomena of nature" (Datta; Chatterjee 1939: pp 392). It is argued, therefore, that the Vedas are polytheistic. However, when reading in further detail, one remarks that in each of the praises of these varied deities, they are extolled in the hymns as "the Supreme God". Orientalist Max Müller coined the term henotheism to signify that the raising of the gods to a supreme position was not mere poetic hyperbole but a real belief that the various gods are manifestations of one underlying reality. A passage from the Rg-Veda highlights this: "The one reality is called by the wise in different ways: Agni, Yama, Mātariśvā".(Ekkam sad viprā bahudhā vadanti…). (Datta; Chatterjee 1939: pp 393)
From excerpts of the puruṣasūkta, we find a passage describing "the Man was greater still: this whole world is a fourth of him" "ruling over immortality" "he covered all the earth and stretched ten fingers' length beyond it."[220] This describes that all existence is conceived as parts of one person or *puruṣa.* This describes the immanence and transcendence of God as well as of a supreme reality that God pervades and that God is also beyond. The theological term for this is panentheism, where everything is not equal to God, but everything is in God, who is also greater than everything. It is thenceforth in the Upaniṣads that this is discussed philosophically. They shift the subject of interest from the Vedic deities to the self or *ātman.* The Upaniṣadic belief that there exists an all-pervasive reality which underlies all things and from knowing which (*ātman-jñāna*) immortality is attainable. This reality is often referred to as Brahman or *ātman,* and the twoare used interchangeably. Whilst the accounts of creation mentioned in the Upaniṣads do not tally, they do maintain that Brahman is both creator and material cause of the world, a reality that is indescribable and unthinkable.[221]Saṅkara and Rāmānuja both reject the realist theories on the

[220]Rg-veda 10.90 (Peterson's translation)
[221]Datta D, Chatterjee S. 1939. *Introduction to Indian Philosophy*. Calcutta University Press. Calcutta. Pp 387 – 455

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reality that it is a product of *gunas* or material elements that combine to form objects (Sankhya), or that the world consists of atoms from which matter developed. Both of them agree that an unconscious cause cannot produce the world. Where they differ, however, is exactly that the world arose out of the one reality or Brahman (or *ātman*). He believes that within the omnipotent Brahman, there exists both *acit* and *cit*: unconscious matter and finite spirits. *Acit* is the source of all the material objects of the world and is thus called*prakṛiti* (root). This might be similar to the Sankhyan belief of it being an uncreated eternal reality, however, Rāmānuja diverges from this as he maintains that it is a part of Brahman that is controlled by Brahman just as the human soul controls the body. He creates multiple, finite objects as a spider spins his webs. It is through the realization of our soul (*ātman-jñāna*) being a part of Brahman that we are liberated from the cycle of rebirth. The world is real, as real as Brahman. Saṅkara, however, denies this plurality of Brahman. He asserts that there is only one God and he is infinite. Brahman is compared to a juggler who conjures an illusion of the world that is reality. This magical power that allows this is referred to as Māyā. He believes that there exists only one real reality. We perceive the world wrongly as we ignore the reality and superimpose an illusion. Māyā is therefore said to be of the nature of ignorance. Through the teachings of Vedānta, and constant meditation until one realises the truth (the removal of ignorance) that liberation is possible. The liberated soul attains pure consciousness, untainted by imperfections and attains unity with God. It is then that one can say "I am Brahman". Though the Advaita Vedānta schools produce many questions within the philosophers' mind about the validity of their arguments, it is clear to see the journey that their beliefs have taken from monotheism to their monistic beliefs in reality.

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ADVAITA VEDANTA : LAYERS OF REALITY

Francesca Fowler[*]

ABSTRACT

The question of reality is one that has been debated upon by the various schools of Indian philosophical thought without cease. For the Idealist school, there exist layers to reality. If peeled away one by one, is it possible to achieve an ultimate reality? Can reality have an ultimate at all? In daily life, one is frequently made aware of the dichotomy of appearances against reality. Money is but a piece of paper that we conventionally call currency. A photograph of a man is also really only paper that has the appearance of a man. Images in a mirror may appear to be real objects but they are but a reflection of the same. The distinction between the real and the apparent is utilized philosophically by the idealist school of Indian thought, the Vedāntan school, to explain the relation of God to the world, to reality. This paper seeks to explore the intricacies of reality through the lens of the Advaita Vedāntan school of thought. To further complicate the notions of the illusoriness of reality, we will be analysing the idealist school in opposition with the realist school.

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I. INTRODUCTION

Before we begin, it is important to note that the distinction the Vedāntans make between the empirical world (vyāvahārika), which is the phys and the conventional, and the transcendental (pāāmārthika) i.e. the absolute or irrelative, is merely an extension of the difference between appearances and reality. To elaborate on this effect, we see as follows:

II. ABSOLUTISM OF ADVAITA VEDANTA:

The basic premise of the Advaita Vedānta school is as follows in this paraprased verse by T. M. P. Mahadevan. "S□ an□ kara puts the entire philosophy in half a verse when he says: Brahman is real: The world is an illusory appearance; the individual soul (jīva) is Brahman alone, not other. The non-duality of Brahman, the non-reality of the world, and the non-difference if the soul from Brahman – these constitute the teachings of Advaita.[222]

The first point that S□ an□ kara makes in this premise is that Brahman or God is real (sat). S□ an□ kara conceives the real as the absolute, the eternal being that is Brahman. In like vein, S□ an□ kara conceptualises the unreal (asat) also in absolute terms; absolutely nothi,ng. Reality is therefore, absolute or singular. To state that there could exist duality, or plurality would be to suggest that Brahman is not absolute; this would be a sacrilegious affront to the idealist school. A realist, the Nyāya-Vais□ esika would combat this by demanding, what of the particularities of the world? The multiplicity and plurality of things? If everything that is real is absolute in Brahman, how can an idealist explain the differentiation of the world? For example, the Nyāya-Vais□ esika state that there exists a universal essence of an object, which causes and is found in the particularities of the empirical world. This essence is not dependent upon the particulars;however, it can be acknowledged through the particular. This can be seen in cats as they have their many differences i.e. colour of fur, length of tail and so on, when one cognizes these entities, despite their differences, one still calls them all cats. This the Nyāya-Vais□ esika would argue is because of the essence of the universal that exists within the partic,ular. An, idealist however would deny all existence of particularities. This goes against ta he very tenet of singularity of God and the absolutism of Brahman. How then do they explain the variation and differentiation in the empirical world? In one sense, it is not real as it is anything but eternal. This world is fleeting. Nor can it be unreal as it has some form which appears to any, which is not nothing, not a non-entity. A common example of non-entities iisdvaitic works are that of a hare's

[222]Mahadvan, T. M. P. , *Outlines of Hinduism.* Bombay: Chetana limited, 1971: 141

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horn or a barren woman's son. They are non-existent. If both real and unreal, then, the world is but an illusion. This in Sanskrit is sadasadvilaks□ an□ a. When one looks upon a rope and perceives it to be a serpent, a snake, the snake is neither existing nor is it non-existent. It cannot logicallySbe established (siddha). Put simply, one gathers that the objects of the empirical world are not ultimat,ely real, however are of a certain order or nature of reality. They are appearances. However, these appearances are dependent upon something. This can be ascertained from the fact that when perceiving rope to be a snake, the appearance of the snake is dependent upon the rope. Yet the rope does not depend upon the appearance of the snake. We will touch upon this dependency in further detail later on in the paper.
The next tenet or statement S□ an□ kara makes is that the jīva is identical with Brahman. What is jīva? Jīva is the self, man or soul which is better known amongst all the schools, albeit in their own contexts, as Ātman. It is a consciousness of the self that is not illusory like the empirical world. This man or soul is central to the vedāntan doctrine. The soul is bound to the body because of its karma. As the soul is embodied, it is limited by the constraints of the body. However, S□ an□ kara affirms that the body is not real. He accepts that the identity of the soul is Brahman and explains that when the illusory nature of the body is realized, all tht is left is the soul, or ātman which is nothing but God. *"There us an "unqualified identity between the sderlies the apparently finite man, and God.*[223]"Therefore, Brahman and Ātman are used interchangeably in advaitic vedāntan discourse.

III. MONISM IN ADVAITA VEDANTA:

The word Vedānta directly translates to "end of the Vedas" (King, 1999: pp 57). The 'end' here was at first thought to mean only the Upaniṣads, the last literary contributions of the Vedic period. Three broadly categorised forms of literature can be distinguished as follows; hymns and mantras compiled in different Saṃhitās, i.e., Rg* Veda, Yajus and Sāmas consisting of hymns written in praise of deities such as Agni, Indra, Varuna, Mitra and so on; the second was the Brāhmanas which contains treatises and rituals that were considered guides for when one entered life and was made to perform the daily household rituals; and the last of which being the Upaniṣads which discussed philosophical problems.
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[223]Chatterjee S. C., Datta D. M., An Introduction to Indian Philosophy. Calcutta. Calcutta University Press. 1939.

inspired multiple commentaries that aspired to elaborate the doctrines of Vedānta in their own light. Saṅkara, Rāmānuja, Madhva and so on were the authors of the chief commentaries which led to them becoming the founders of their own schools of the Vedānta.

The primary question the schools of Vedānta proposes is such: what is the relation between God or Brahman and the self or ātman? The Madhva believe that God and the self are two separate entities which make the dualistic school or dvaita whereas Saṅkara believes that Brahman and ātman are the same, also known asAmonism, non-dualistic or advaita. RāmāAuja also believes in the advaita thought to some degree but has a fundamental difference from Saṅkara which will be elaborated upon in detail later. Rāmānuja's school is called qualified moniAm or viśiṣṭādvaita.

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From excerpts of the puruṣasūkta, we find a passage describing "the Man was greater still: this whole world is a fourth of him" "ruling over immortality" "he covered all the earth and stretched ten fingers' length beyond it."* This describes that all existence is conceived as parts of one person or puruṣa. This describes the immanence and transcendence of God as well as of a supreme reality that God pervades and that God is also beyond. The theological term for this is panentheism, where everything is not equal to God, but everything is in God, who is also greater than everything. It is thenceforth in the Upaniṣads that this is discussed philosophically. They shift the subject of interest from the Vedic deities to the self or ātman. The Upaniṣadic belief that there exists an all-pervasive reality which underlies all things and from knowing which (ātman-jñāna) immortality is attainable. This reality is often referred to as Brahman or ātman, and the two are used interchangeably. Whilst the accounts of creation mentioned in the Upanishads do not tally, they do maintain that Brahman is both creator and material cause of the world, a reality that is indescribable and unthinkable (Datta; Chatterjee 1939: pp 403).

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IV. MULTIPLICITY OF THE UNIVERSE:

We find ourselves at a loss when Śaṇkara identifies the universe with Brahman. However, this is not done in the same fashion as with jīva. Vācaspati states that he denies the 'many' but does not affirm the'one'. (Chatterjee, S. C. ; Datta, D. M. 1939).[224] This is said of Śaṇkara when he is addressing this diversity of the universe. Śaṇkara is referring to two kinds of diversities that are present, one displayed by the universe and the other displayed by the individual subjects. One finds oneself in a world full of the material. Although we exist withn it as conscious entities, or subjects. Brahman is singular, and yet there exists this multiplicity. Brahman is whole, one but there exists this dichotomy of material and immaterial. How do these conscious entities experience this material reality? Is there an ultimate reality that could possibly be underlying these entities? How do the idealists battle this contradiction of the materiality and immateriality of the universe in the wholeness or oneness of Brahman?

V. MAYA AND THE LAYERS OF EXPERIENCE OF REALITY:

Śaṇkara regards divan ersity and multiplicity as illusion (mithyā or māyā). Śaṇkara himself found himself at odds with Upaniṣadic teachings of the disappearance of multiplicity upon the realization f Brahman (Chatterjee, S. C. ; Datta, D. M. 1939: 412). How could the world disappear if it were real? Śaṇkara states that with the dawn of the knowledge of true reality, i.e. Brahman, will not make the empirical world disappear but only dispel the illusion of what appears to be real. It is because the conscious beings are ignorant of this reality (ajñāna) that we believe the empirical world to be real. It is due to the ignorance of the rope that we believe the snake to be real. Māyā does not affect Brahman, it does not deceive him. Śaṇkara associates māyā with prakṛiti or material cause. But this is only meant that the creative power of māyā is the s urce or the origin of the world-appearance. This prakṛiti of māyā should not be confused with that of the Sāṁkya doctrine where prakṛiti is an independent reality of its own. The prakṛiti of Śaṇkara is entirely dependant upon Brahman. He believes that within the omnipotent Brahman, there exists both *acit* and *cit*: unconscious matter and finite spirits. *Acit* is the source of all the material objects of the world and is thus called*prakṛiti* (root). This might be similar to the Sankhyan belief of it being an u,ncreated eternal reality, however Rāmānuja diverges fro,m this a,s he maintains that it is in fact a part of Brahman that is

[224]Sharma, Arvind. *Sea-Shell as Silver: A Metaphorical Excursion into Advaita Vedānta.* New Delhi. D K Printworld (P) Ltd. 2006.

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controlled by Brahman just as the human soul controls the body. He creates multiple, finite objects as a spider spins his webs. It is through the realization of our soul (*ātman-jñāna*) being a part of Brahman that we are liberated from the cycle of rebirth. Śaṇkara calls the illusory modification of any substance, even that of Brahman, as vivarta. In the example of the serpent and the rope, the illusion of the snake is superimposed onto the real rope. This imaginary attribution of a thing onto a place where it does not exist is called adhyāsa or projection. The snake is projected onto the rope. Likewise, the world is projected onto Brahman.

One begins to visualise this superimposition or projection of realities, albeit illusory ones, over Brahman much like the layers of an onion form around its core. Likewise, there are layers to the experience our conscious entities have of reality, illusory and ultimate. Śaṇkara states that there are three such layers to how we experience reality. One is akin to the dream state or prātibhāsika, the relative reality or vyāvahārika, and the waking state - pāramārtika. The dream reality is the ordinary experience of illusion, of the snake-rope type, and are considered the lowest form of existence. It is called prātibhāsika-sattā as the illusory objects exist, sat, as long as they appear to some mind. The conscious entity reflects itself onto the unconscious entity, making it real. The objects of normal experience or practical and empirical experience, vyāvahārika is superior to the experience of the dream state. It is only when achieving the waking state or pāramārtika can one comprehend the relative nature of vyāvahārika. The dream state is dependent on the vyāvahārika, and this state is dependent on the waking state. They are real when compared to the dream state, yet unreal when compared to the waking state. They are both empiricall,y and transcendentally real. It is however, in outright contradiction to that of the waking state or supreme experience. This is achieved hrough the realisation of Brahman, or Brahma-jñāna. This is but another name for Ātman or Brahman and is the absolute existence or ultimate reality conscious beings can achieve.

VI. THE NYAYA-VAIS□ ES□ IKA THEORY OF ERROR:

For Nyāya-Vaiśeṣika, true knowledge of reality can lead to the liberation from the cycle of rebirth. The world for Naiyayikas is constituted of twelve objects: " the self, the body, the sense organs, sense objects, judgement or apprehension, the mind or internal organs, activity, defect, rebirth, pain and release."[225] Unlike the idealists, the Nyāya-Vaiśeṣika conceive Ātman as an object of cognition or perception. And idealist could ask, who then is the

[225]Roodurmum, P. S. *Bhāmāti and Vivaran□ a schools of Advaita Vedānta.* Delhi.Motilal Banarsidass Publishers. 2002

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cognizer? The pramātā? If ātman itself is an object of cognition, who is cognizing it? The Nyāya-Vaiśeṣika school is quite radical with its response when it argues that ātman is not ony just an object of knowledge, prameya, but is also the substratum of knowledge, as listed in the guṇas or qualities of reality.[226] For the Nyāya-Vaiśeṣika, erroneous knowledge is termed as mithyā-jñāna or false knowledge. This is classified as apramā. Dreams, svapna are also considered false knowledge to the realists. They state that it is the delusion of recognizing the non-self as self. When a shell appears as silver, there is nothing wrong with the shell itself. The shell remains real. The silver is also real. It exists and is an object of perception. However, the error begins when the perception of the silver which is not present here but elsewhere is perceived in an the place of the shell. To the realists, error is the false apprehension of reality. For the idealists, the error is in the belief in the reality of the illusion. However, that illusion is very much real until the conscious entity is made aware of that error. It is a matter of ignorance, ajñāna. The idealist's conception of mithya is that of a burning power akin to a flame that is not separate from reality.

VII. CONCLUSION:

The idealist school argue the existence of an ultimate reality beyond that of the illusion of the empirical. While the realist might believe in the materiality of the world, the structure of argument of reality in relation to the relationship between ātman and the world is sounder than the controversial and complex argument of the realists regsarding the nature of ātman as both object of knowledge, and cognizer. Thus, the idealist school's argument holds strong in opposition to the realist argument.

[226]King, Richard. Indian Philosophy: An Introduction to Hindu and Buddhist Thought. Washington D C. Georgetown University Press. 1999. pp 128 to 146.

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SALUS POPULI EST SUPREMA LEX: WELFARE SYSTEM IS A SUPREME LAW

Divya Praveen Kumar Jain & S. Shaalini[*]

ABSTRACT

India is one of the fastest-growing economies in the world, which is administered by an established and detailed written constitution. The agenda of the welfare system in India should be the supreme law. In our Indian constitution, Part IV of Directive Principles of the State policy has been laid down by the norms that are devoted to the people's welfare. The administration has to take up responsibilities for the welfare that serves the common good to the public. This article examines the challenges, effects, and reasons for urban-rural differences in this issue. The agenda of the article is to represent the significance of public welfare in Indian society when it comes to health, safety, and welfare amid urban-rural society with the concept of Salus Populi Est Suprema Lex and the necessity of government for implementing the legal maxim as a core agenda while including public participation amid heavily blended society including the principles of traditional democratic theory. Our opinion based on our findings has been clearly stated as to how the government can work on improving the efficiency of each pillar of society.

KEYWORDS:
Welfare system, Health, Urban-rural difference, Governance, Indian system

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I. INTRODUCTION

India is a diverse country. Indian society consists of individuals with different caste, creed, ideology, tradition, religion, and socio-economic background. Indian individuals follow their own culture, norms, belief, and traditions based on urban or rural societies to which they belong. All over India, people or social groups that belong to any religious group and background are categorized according to their various important qualities. India's complex society is very transparent despite their vast differences in urban and rural life. In urban society, as individuals engage themselves in non-agricultural occupations like business, industries, etc. and are progressively aware of modern technologies. Thus, they are evolved in education, health care, employment opportunities and other infrastructures when compared to rural people whose primary occupation is agriculture. It is the major source of income for the individuals living in rural areas, who also believe it to be a way of life. Hence, they are not as developed as their urban counterparts.

Urban-rural differences are innumerable. To balance those differences, there is a requirement for proper 'Governance'. The difference in the nature of governance in the rural areas and in

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urban areas also has to be noted as they are served by local bodies' i.e Panchayats and Municipal Corporation or the area committee respectively. In rural areas, the government must focus on social amenities like education, transportation, communication, health care, and basic infrastructures which can help to obscure the differences in urban-rural areas. Also, a government that has influences over a large population should aim at health, safety, and the welfare of the public in both urban-rural areas. The importance of the government's role in addressing the crisis to attain health equity can be observed when looking at the present situation of the pandemic outbreak of COVID-19 as it is a communicable disease that can exert enormous strain on overextended health systems.

A good regulation system is fundamental to provide successful welfare for an individual. The rule of the law must be "fair, just, and right". Salus Populi Est Suprema Lex(a Latin legal maxim), which implies the safety or welfare of the public in general, should be a supreme law. Its basic motive implies that law exists to serve the common good of the public. The aim of this article is to represent the significance of public welfare systems in Indian society in terms of health, safety, and welfare for urban-rural communities, using the concept of Salus Populi Est Suprema Lex. It also aims to point out the necessity of government to implement this legal maxim as a core agenda, along with the participation of diverse public as part of traditional democratic theory.

A. CHALLENGES THAT CAUSE URBAN-RURAL DIFFERENCES

India's economy is the fastest growing economy in the world. But rural India has made very little contribution towards it. It has been taken rather as a liability by the administration. Rural India has been barely getting any criticalness in the financial plans of the nation. Most of the plans for rural India are simply assisting with giving a fundamental vocation to the individuals and not for the upliftment of the rustic economy.The reason which led to urban-rural differences is the lack of social amenities, quality of life, livelihood opportunities, etc in rural areas. There are also other major differences like infrastructure, education, and health care in rural and urban areas. To bring about significant changes in the glaring urban-rural divide situation, the government has been taking a lot of welfare measures without neglecting the rural population of the country. There is a clear perception that almost all of India's challenges and opportunities lie in the rural hinterlands of the nation.

II. URBAN- RURAL DIFFERENCES

A. IMPACT DUE TO URBAN - RURAL DIFFERENCE

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The urban-rural divide has led to the generation of two opposites of the same nation i.e., India and Bharat. In reality, India is urban and progressive, whereas Bharat is rural, underdeveloped, and backward. In rural areas, the labour force is still dependent on agriculture as their source of income. The salary of workers living in rustic regions is extremely low attributable to the little size of landholdings, absence of current procedures and gear, and openings that have been a pushed factor for individuals to move from provincial regions to urban regions. The urban power remains the standard paying little mind to the per capita GDP of India as the nation additionally will in general keep on changing into urbanized economies with higher mechanical and administration base. Further, the per capita pay in rustic India has stayed stale throughout the years because of a mix of government strategies and control. The observed differences are explained in the following table:

HEALTH	URBAN	RURAL
Healthcare facilities	Very high	Fewer service providers
Basic health conditions such as Asthma, Arthritis, etc.	Relatively low	Very High
Availability of healthcare insurance	Wide options available	Very limited option
Health awareness	Very high	Very low
Infant mortality rate, maternal mortality rate, life expectancy	Mortality rate is low in Urban	Mortality rate is Very High in Rural

SANITATION	URBAN	RURAL
Awareness	Sanitation is an integral part of Urban Infrastructure and hence better awareness	Poor Awareness

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Access to Toilets	19 % of Urban dwellers lack access	50 % of rural dwellers lack access
Disposal of Human Waste	Integrated Sewerage handling ,including its treatment	Open Defecation

IC FARE	N	L
Government Assistance	Several Employment opportunities exist	100- day wage Employment
Fair Price Shop	Though it is extended in Urban as well, it is not applicable for all sections of the society	Essential commodities sold at reasonable prices to the poorer section
Housing	In Urban LIG reservation is addressing the same.	n Mantri Gramin Awaas Yojana – Housing for Rural Poor meets the need.

III. DETRIMENTAL EFFECTS ON LIVING CONDITIONS

Due to the effect of the increased population caused by higher competition in employment opportunities in urban areas, this urban-rural rift has also created rising of slums mainly in Urban localities. There is mass migration of people from rural areas to urban cities which lead to congested cities. Also, such shifts lead to uncontrolled population rate, an increase in crime rates, poverty, unemployment, discrimination, etc. The other effects are the skewed policies linking to

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the expansion of capitalism, the forceful acquisition of lands from poor peasants, and the negligence of rural agricultural development which further worsen the situation.

A. BARRIERS IN COURSE OF PROGRESSION

In the Indian constitution, article 14 of the directive principle guarantees free education for girls and boys up to the age of 14. But it has failed in achieving women's education in the rural areas owing to their poor nutritional status, very low income and little autonomy within the household. Girls in rural areas enroll themselves in school but discontinue their education because of family responsibilities. Also when girls attain puberty, their families stop them from going out even to schools/colleges as they still believe that girls going out after attaining puberty is committing a SIN. Similarly, they prefer the son's education over daughter's education, as they believe that MEN will be the breadwinner of the family always. Rural residents often also face barriers in getting the required quality healthcare facility. The main reason for not being able to access such facilities could be that rural residents are not having sufficient access and appropriate healthcare services. We are aware that to have good healthcare access, one must also have financial means to pay for services such as health or dental insurance, which is missing in rural society. In addition, Infrastructures in rural areas are not well developed which results in low use of these services. Transportation services may poor as they are not easily accessible, and the inability to take paid time off from work to use such services is also among other issues that are worth mentioning. Rural residents usually have concerns about taking care of mental health, addiction to alcoholic substances, sexual health, pregnancy, and also common chronic illnesses due to uneasiness or confidentiality concerns.

B. *ANTICIPATED AND UNANTICIPATED HEALTH ISSUES*

Health is an essential component for ensuring a good and better quality of life. Large crowds of the Indian public continue to fight hopelessly and are constantly getting defeated in their battle for survival and health. In many cases, even before birth, malnourishment of the mother reduces the life expectancy of the foetus. In rural India, over 50 percent of families are living in poverty and ill-health, and many children die due to diseases associated with lack of sanitation and potable water like diarrhoea. The research conveys that less than 10 percent of the rural population does not have access to toilets; lack of sanitary conditions and shortage of clean drinking water directly affects the anticipated health conditions of almost all the rural people. Due to the lack of primary health care, it is difficult to initiate any development program. The

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urban population is concerned with emerging unanticipated health diseases with pandemics like AIDS and other communicable diseases which still exert immense strain on the overstretched health systems. In the urban areas, the general health of the public may get affected if any imbalance prevails in any one of the aspects listed in the figure given below:

IV. APPLICATION OF PUBLIC WELFARE-GOVERNANCE

India is viewed as a government assistance state, and it is likewise the biggest vote based system on the planet. The individuals in India have been considered as the incomparable expert in our nation, as announced by The Preamble of the Indian Constitution. In our constitution, PART IV of Directive principles of the state policy have laid down the norms that are devoted to the people's welfare. The elected representatives are responsible for establishing a government mechanism for public health, safety, and welfare.

A. HEALTH, SAFETY, AND WELFARE MEASURES

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The agenda of the government is to provide basic needs and requirements to the public in contribution to social determinants of health like living conditions, nutrition, safe drinking water, sanitation, and awareness on hygiene. The importance of the government's role in addressing these factors while attaining health equity can be observed when looking at the present situation of the pandemic outbreak of COVID-19 as it is a communicable disease that can exert enormous strain on overextended health systems. The second plan that the legislature centers around is the fast urbanization because of expanding populace and urban movement. Public well-being and security has become a key issue that needs dire consideration as it is a key column for quality life in urban areas. Well-being administrations incorporate policing, traffic the executives and mass transportation, crisis and calamity the board, security and security of basic foundations and public spots. The third agenda is the contribution to "social welfare" which has been the core agenda of our policymaking from the time of independence. Programs and schemes have been initiated related to social welfare issues like agriculture and rural development, employment, labour welfare, inequality, socio-legal problems like honour killing, etc.

B. REGULATIONS AND ENFORCEMENT IN HEALTH SECTOR

In the health sector, the role of government is crucial while addressing various challenges and causes to develop good health in public. The impacts are the imbalances that lie in the social, political, and financial components that lead to an absence of progress on social variables of wellbeing. The most significant key job in directing India's general wellbeing framework is played by the Ministry of Health and Family Welfare (MOHFW). In consideration of the present crisis, on March 11, the cabinet secretary of India enforced the section 2 epidemic disease act, 1897 in all states and union territories in India. It empowers the state government to take special measures and regulations towards the contagious epidemic disease. The government has taken various measures to control the ongoing issue of COVID19 by sealing of state borders, national lockdown by invoking the Disaster Management Act 2005 and has implemented various schemes for the migrant labours and daily wagers. [227]The Swachh Bharat Mission was launched on October 2, 2014 to achieve universal sanitation coverage, to improve cleanliness, and eliminate open defecation in the country by October 2, 2019. The National Rural Drinking Water Programme (NRDWP) aims at assisting states in providing adequate and safe drinking water to the rural population in the country. In 2018-19, the scheme was allocated Rs 7,000crore which accounts for 31% of the Ministry's finances.

[227] Krishn Kaushik, Deeptiman Tiwary, Abantika Ghosh (March 30, 2020, 7:17 am) https://indianexpress.com/article/india/india-lockdown-govt-migrants-state-borders-sealed-coronavirus-6337921/

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C. AWARENESS AND REFORMS

The role of the state focuses on social guidelines that are framed to address poverty, welfare programmes, structural changes and implementation, urban-rural differences, inequality, education and to bring about adequate changes in health, safety, and welfare sectors. But it has failed to serve their duty towards the people as there is still a gap in preserving, promoting, and protecting social harmony. As there is still inequality in women's oppression along with caste, work, and class biases the government must focus on removing not only poverty but also inequality amidst different factors by investing more in primary healthcare and education. As per the changing needs with changing times, social welfare policies should also change, and the state must adapt to these changing needs and provide services as per the requirements. For example, in the 1970s education was not a crucial requirement of society, but in today's society, it is immensely important**.** The government needs to create awareness in the society and implement programs, schemes, policies, and campaigns relating to health, safety, and welfare measures like sanitation, safe drinking water, education, traffic management, and other socio-legal problems.

V. ANALYSIS ON GOVERNANCE STRATEGY

A. ANALYSIS ON RURAL DEVELOPMENT SCHEMES

As pointed out earlier, around 67 per cent of India's population is still living in rural areas. Hence the Government of India, in its every 5-year plan focuses more on spending on its several schemes for rural development and modernization. This is also expected to reduce Urban-rural migration. Though the Government announced various Rural Development Schemes / Programmes, the following important schemes are identified for analysis.

SCHEMES	OUTLAY
Mahatma Gandhi National Rural Employment Guarantee Programme (MGNREGP)	23000.00

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Pradhan Mantri Gram Sadak Yojana (PMGSY)	15000.00
National Rurban Mission (NRuM)	2000.00
Pradhan Mantri Krishi Sinchai Yojana (PMKSY)	1200.00
Modernization of Commissionerate of Rural Development.	1200.00

ANALYSIS:

SCHEME HIGHLIGHTS	**MGNREGP**	**PMGSY**	**NRuM**	**PMKSY**	**MCRD**
Objective	Improvement of livelihood **security of the** households in rural areas	To establish rural connectivity by connecting unconnected habitations with all-weather resistant roads of high quality	To stimulate local economic development, improve basic services and create well organized Urban-rural clusters	Rain water conservation, construction of farm pond, water harvesting structures, small check dams, contour bunding, etc. are included under this program	The objective of this scheme is the modernization of Commissionerate of Rural Development
Scheme	All unskilled	178000	Clusters would	65Million	The main

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Coverage	Labourers in Rural Area - Both Men & Women	habitations were connected	be developed by providing economic activities, developing skills & local entrepreneurship , and providing infrastructure amenities.	Hectare of land covered under irrigation.	components of the scheme are modernization, maintenance and procurement of equipment, replacement of vehicles/hiring of vehicles at the Commissionerate, District level Offices, and other Offices comes under the Commissionerate of Rural Development.
Cash Benefit	100 days of Guaranteed work with wage@ Rs.202 per day for every Financial Year [228]	No Direct cash benefit	No Direct cash benefit	No direct cash benefits. However, Rs 65634.93 crore was released for 93 Irrigation projects under this scheme.	No Direct cash benefit

[228] *Comptroller and Auditor General of India (2013).* India". The *Comptroller and Auditor General of India (CAG). Archived from the original on 11 September 2012. Retrieved 29 October 2013.*
https://en.wikipedia.org/wiki/National_Rural_Employment_Guarantee_Act,_2005#CITEREFComptroller_and_Auditor_General_of_India2013

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Applicability for women	1/3rd Beneficiaries are women	Not Applicable	Urban-rural clusters including women and Tribal	Not Applicable	Not Applicable

Some programs are indeed aimed at poverty alleviation (e.g., self-employment programs, training programs, food, and social security programs, etc.) though some were politically motivated, e.g., Garibi Hatao and 20- point program. However, the basic aims of attaining community participation, elimination of social evils, and improving the quality of life are yet to be achieved.

B. ANALYSIS ON URBAN DEVELOPMENT SCHEMES

About 30 percent of India's populace lives in urban groups. The quick paced urbanization, which is firmly associated with the general financial advancement, has driven the urban areas to experience some genuine difficulties on the financial front, for example, joblessness, abundance load on existing framework in urban communities like lodging, sanitation, transportation, wellbeing, training, utilities, and so forth. To improve the lives of the people, especially the urban poor, the Ministry of Housing and Urban Development has been actively introducing new schemes and reinventing the existing schemes which deal with these specific issues.
Out of the various Urban Development Schemes / Programmes announced by the government, the following important schemes are identified for analysis.

SCHEME	SCHEME FOCUS
Smart Cities Mission	To develop 100 smart cities across India with high-quality infrastructure with provision of basic amenities, education, health services, IT accessibility, digitization, e-governance, sustainable development, safety, and security
Pradhan Mantri Awas	Providing 20 million reasonable houses for the urban poor

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Yojana (PMAY) (Urban) or Housing for All	including slum dwellers by March 2022 [229]
Swachh Bharat Mission - Urban (SBM - U)	Universal sanitation coverage in urban areas
Jawaharlal Nehru National Urban Renewal Mission (JNNURM)	Jawaharlal Nehru National Urban Renewal Mission was a city-modernization scheme with an investment of over $20 billion
AMRUT (Atal Mission for Rejuvenation and Urban Transformation)	Includes provision of water supply amenities, sewerage networks, storm water drains, urban transportation, and open green spaces, across the certain 500 Indian cities.[230]

C. CEFFECTIVENESS OF SCHEMES ON URBAN-RURAL DIVIDE

While many of the above schemes have benefitted various sectors, the effectiveness of these schemes can be gauged by the success of these schemes which is the driving factor for Urban-rural divide. In India, a large population of migrants is incessantly migrating to cities such as Delhi, Mumbai, Bengaluru, Chennai and Hyderabad from Jharkhand, Bihar, Orissa, Chhattisgarh, Uttar Pradesh and Madhya Pradesh for jobs and for a better standard of living. According to the recent Economic Survey report, 8 to 9 million people migrate for work opportunities within India annually. The survey noted that there has been an increase in migration, which is accompanied by economic growth. The rate at which women migrated was near twice the rate at which men migrated.

[229] Ministry of Housing and Urban Affairs website
http://pmaymis.gov.in/#

[230] ATAL MISSION FOR REJUVENATION AND URBAN TRANSFORMATION
Ministry of Housing and Urban Affairs, Government of India
http://amrut.gov.in/content/innerpage/coverage.php

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The growth comes despite disincentives, such as domicile provisions for the working population, lack of portability of social benefits, legal and other entitlements upon relocation. About 30 percent of India's populace lives in urban groups. The quick paced urbanization, which is firmly associated with the general financial advancement, has driven the urban areas to experience some genuine difficulties on the financial front, for example, joblessness, abundance load on existing framework in urban communities like lodging, sanitation, transportation, wellbeing, training, utilities, and so forth. The main objective of this initiative is:

- Connecting the rustic urban separation by guaranteeing offices and administrations.
- Invigorating nearby monetary turn of events while concentrating on decrease in neediness and joblessness in country regions.
- Regional development
- Pulling in interest in country zones.

Government Initiatives on Urban-Rural Development Programmes through Traditional Democratic Theory

The Government introduced the above measures as core agendas in the areas of health, education, sanitation, and basic infrastructure which are essential for the improvement of livelihood security of the public in rural areas. While doing so, the most appreciable and unique factor which the government adapted is that they have ensured the benefits that reach all the sections of the rural society by following the guiding principle of the Traditional Theory of Democracy which propagates the right of everyone to take part in the initiatives of the government. This is evident from the following examples:
Mahatma Gandhi National Rural Employment Program (MGNREGP) addresses the need of unskilled labourers, while Pradhan Mantri Gram Sadak Yojana (PMGSY) ensures connectivity of all rural inhabitants. Similarly, PMKSY covers 65 Million Hectares of rural land under irrigation. In line with urban-rural development initiatives, urban development has taken care of high-quality infrastructure under smart cities scheme and Pradhan Mantri Awas Yojana (PMAY) which addresses Housing for all urban poor including slum dwellers.
It can also be inferred that Social awareness about the developmental schemes among the masses plays a critical role.

VI. BETTERMENT IN ENABLING PUBLIC ISSUES

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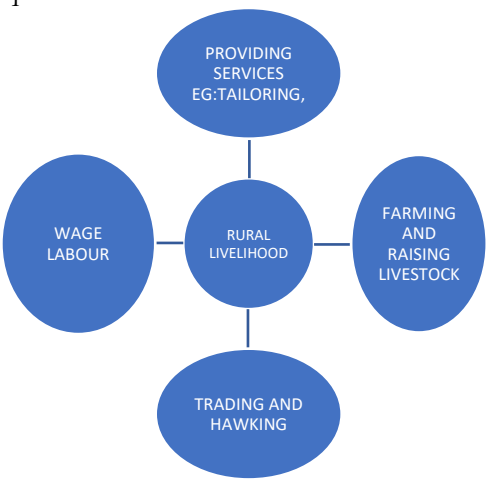
A. URBAN DEVELOPMENT

Urban planning is a project that talks about the design of cities and other infrastructures in urban areas. Urban planning primarily concentrates on detailed land use and zoning. The main challenge for urban development of low-income households is the planning of the construction. Also, for every square kilometre of urban expansion, sufficient water resources augmentation should be made available as per the norms. With growing urbanization and rapidly increasing population, the country is working hard to transform itself over the next few decades in transportation. One of the biggest challenges in urban settings is the availability of affordable housing in urban areas. The present Urban Planning has completely failed in addressing this key requirement.
To overcome the shortcoming, the government can adopt the following measures:

- 100 % Implementation of Rainwater Harvesting in both Residential and Commercial places
- Seawater Desalination capacities to be increased to supplement water deficiency.
- Provision of Public Places in the expanded city development plan, which is currently missing.
- Non-usage of Farming/cultivation land for city expansion, thereby protecting Green Environment and agriculture.
- Encouraging Terrace farming in Urban buildings to improve Green cover.

RURAL LIVELIHOOD

A livelihood is a source of making a living. It includes people's capabilities, assets, income, and the activities that are required to secure the necessities of life.



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Unlike Urban places, in most of the rural areas, the majority of the population is engaged in farming which is the chief source of earning a living. Some of the common farming and non-farming activities are shown in the above diagram.

B. CHALLENGES:

Rural livelihood poses a great threat, as the rural population is often in a state of poverty where they lack even the basic requirements for survival. A rural household with multiple sources of income through various earning activities has healthier chances of surviving financially than a household that has only a single source of income. Research shows that chronic poverty, illiteracy, non-availability of HYV inputs, lack of capital formation, flood and drought, poor agricultural marketing services and not having the required knowledge about demandable crops are the real hardships that the rural people face every day. In recent years, land-based livings of small and marginal farmers are increasingly becoming unsustainable. As their land has failed to support their families' requirements, they are forced to look at alternative means for supplementing their livelihoods. The above-mentioned challenges need to be addressed to enable the betterment of rural livelihood.

Some of the suggestions are:

1. Delivery of quality education and training in a variety of skills in rural areas is recommended to attain sustainable rural livelihoods.
2. National Rural Livelihood Mission (NRLM) is a GOI'S initiative for poverty alleviation. NRLM focuses on promoting self-employment and organization for rural poor. This will be a pushing factor for creating SHG (Self Help Groups) for the poor and make them capable of self-employment. This is rated as the world's largest initiative to improve the livelihood of the poor among such initiatives.
3. Provision of basic amenities and infrastructure facilities through innovative programs and schemes.

C. COMMUNITY PARTICIPATION

Community participation is observed as an effective means of public support towards the administration. The term participation is construed in various ways depending on the level of involvement it entails through the services provided by the government like the health care facility, policies, and programs, etc. They can also involve themselves into various social activities or campaigns like Swachh Bharat Abhiyan where the community or the public can generate awareness among them about cleanliness and bring behavioural changes concerning sanitation practices. Community participation plays an important role in real 'decision making' as well as in

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recognizing problems in the society, electing the right leader, planning and execution, implementation, and evaluation of programs.

VII. CONCLUSION

"Government of the people, by the people, for the people, shall not perish from the earth"
~ABRAHAM LINCOLN

In today's time, we are all aware that in India the government is not in compliance with the obligations of a welfare state. Salus Populi Est Suprema Lex has to be made the supreme agenda with the concept of traditional democratic theory. The concept of traditional democratic theory promotes the majority rules or decisions which are implemented by the administration and should be done without violating minority rules, including the public's active role while decision-making and acknowledging the worth and dignity of all people. Therefore, both the community participation and government should work hand-in-hand in a heavily populated, cultural, and religiously blended society. The involvement of community participation can bring in a lot of difference. It ensures that the changes are made in affected areas and by making sure that the government responds to its citizens. The role of state in passing legislation, schemes, or yojanas, cannot be restricted while addressing the issues like well-being and livelihood of farmers; empowerment of women socially, politically, and economically; provision of equal opportunities for the scheduled caste; scheduled tribes and religious minorities in the areas of education and employment, etc.

Out of all schemes outlined above, MGNREGA has taken a big stride in ensuring public welfare. Although the Government has taken various measures for protecting public welfare in the form of social programs, many of them have not achieved their intended targets. Further, most of the social programs currently implemented focus on rural poor, and in our opinion, the country has to give equal weightage by focusing on urban poor as well.

To conclude, the government is required to invest more in education, health, agricultural sector, financial services like banking and other infrastructures, etc. and to provide public goods instead of delivering subsidies to maintain a consistent rural livelihood. Further, in developing countries like India, when exponential economic growth takes place, the government should strengthen and have robust health and safety systems to maintain its inclusive growth. Thus, the governance blueprint in a country like India must have Salus Populi Est Suprema Lex as a basic core agenda along with the principles of traditional democratic theory.

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LEGALIZATION OF MARIJUANA

Alagappan Narayanan & Yoagesh Manikannan[*]

ABSTRACT

The issue of legalizing Marijuana is not a new one. It has been banned due to several reasons, but its scope for misuse is first in the list. It has to be noted that the Food Drug and Administration around the world has approved THC (tetrahydrocannabinol), one of the innards in Marijuana to treat nausea and improve appetite. It is scientifically proven that alcohol causes severe damages to body parts unlike marijuana, which can be used for medicinal uses and it is even approved by FDA in several other countries. The Indian Government can impose certain inhibitory measures to people on using marijuana and ensure a balance between the right of a person and protecting the Human Rights, rather than totally restricting the use of marijuana. Thereby, restricting the use of marijuana is totally one– sided and discriminatory in nature. This paper throws light on the benefits of using marijuana, the need for protecting the right to health and the responsibility of the state in doing it. The author, hereby, affirms that legalization of Marijuana will pump massive growth to our GDP.

KEYWORDS

Legalising Marijuana, medical uses, Indian government, alcoholic drugs, safe, right to health.

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I. INTRODUCTION

In India, Cannabis has been in use since 2000 BC. There are different names for marijuana, mostly known as cannabis, weed, ganja, bhang, chars, and the list goes on. The earliest records cannabis was found in the Vedas. They considered cannabis as a guardian angel, and also as a source of happiness. People used it for energizing themselves whenever they were in stress or confusion. Lord Shiva has been frequently associated with the cannabis called bhang till date. During middle ages, soldiers used to drink bhang before entering battles. The soldiers believed that the herb gave them strength and courage to kill people. People in India, particularly the followers of Lord Shiva celebrate Holi and Shivaratri by consuming bhang or ganja. Therefore, the practice of smoking as a tradition has been present in the roots of India for decades. It is the backbone of Indian Ayurvedic industry as it is also renowned as the penicillin of Ayurvedic medicine.

In 1985, a Bill titled "Narcotic Drugs and Psychotropic Substances Act, 1985" was passed by both the houses of parliament. It prohibits a person from producing, manufacturing, cultivating, selling, purchasing or consuming any narcotic drug. If a person consumes any narcotic drug, he or she will be punished under this act. This act extends to the whole of India and to all persons on ships and aircraft registered in India. Despite it being illegal, there are six cities in India where one can get cannabis. They are Jaisalmer, Varanasi, Noida, Pushkar, Mathura and Hampi[231].

The government's prime income is from tasmac outlets. If they legalize marijuana they will get huge profit and the Indian Economy can sail smoothly. If India does not legalize and control marijuana they may miss out on a sector which holds huge market potential. Thereby,

[231] https://www.whatshot.in/delhi-ncr/you-can-get-marijuana-legally-at-these-6-cities-in-india-c-13804

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legalization of marijuana will not only boost the economy but also aid the health of individuals to live a happy life.

II. BENEFITS OF MARIJUANA TO INDIVIDUALS

- The good part about usage of marijuana by HIV/AIDS AND CANCER PATIENTS is that it increases food and calorie intake in them and thereby help them to gain weight and body mass[232].
- A recent study found out that THC present in Marijuana might be able to prevent HIV from fully blown AIDS.[233]
- CEREBRAL MALARIA is a life threatening disease that affects million of people every year. It has the potential to cause permanent neurological and behavioral defects. It has been discovered that cannabinoid (CBD) that is present in marijuana can decrease the neurological damage caused by the disease.
- Marijuana can be used to control the use of other harmful drugs as it has fewer side effects and some medical benefits as compared to alcohol, cigarettes and many other drugs[i].
- Marijuana can help and prevent DIABETICS as it stabilizes blood sugar levels, reduces neuropathic pains, provide relief from muscle cramps, relieves gastrointestinal pain and cramping, and keep blood vessels open which decreases blood pressure and improves circulation.
- Many people may suffer from CHRONIC PAIN regularly; Cannabinoids which is present in marijuana can activate the receptors in central nervous system and prevent such type of pain. Marijuana can be useful for nerve pain (neuro therapy) [234]as well.
- Endocannabinoid plays a major role in preventing headache disorder migraine, trigeminal, chronic headaches and idiopathic intracranial hyper tension.
- Treat glaucoma: Glaucoma is the second leading cause of blindness worldwide which affects more than 60 million people. Primary open angle glaucoma (POAG) is the most common form which is a slowly progressing disorder that destroys cells in the eye's retina and then degrades the optic nerve. Researchers have not yet found what triggers POAG, but they have found three risk factors which develop the disease namely age, race and elevated intraocular pressure. While the first two factors can't be controlled, the third one called as elevated intraocular pressure can be controlled by using marijuana. Elevated

[232]https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3538401/
[233] https://www.labroots.com/trending/cannabis-sciences/8711/cannabis-hiv-becoming-aids
[234] https://www.medicalnewstoday.com/articles/322051

intraocular pressure results from blockage in the flow of fluid that helps the eye maintain its rigid shape and this leads to glaucoma. A study from 1970 clearly shows that when marijuana is smoked, it reduces intraocular pressure in normal person as well as person with glaucoma. Thus, it can prevent from blindness.

- Stop cancer cell from spreading: According to an international research team[235], Tetrahydrocannabinol, the main psychoactive ingredient in marijuana could be used to reduce the growth of tumor in cancer patients. A research study from 2009 found that in a process known as autophagy, brain cancer cells death was induced by THC. In an experiment, the researchers used samples of human breast cancer cells in mice to induce tumor and targeted it with doses of THC which reciprocated an anti tumor response. A research conducted by an American association for cancer showed that Marijuana works to decelerate the growth of tumor in brain, breast and lungs, considerably.
- Decrease anxiety: A study in the journal of affective disorder published by scientists at Washington State University showed that smoking marijuana can significantly reduce anxiety. In 2017 national survey, more than 9000 Americans found that 81% believed marijuana had health benefits. Nearly fifty percent of the respondents believed that reducing anxiety as a potential benefit. A review from 2015 supports the cannabidiol as a helpful treatment for anxiety, particularly social anxiety. A research by the Harvard University **s**uggests that cannabis reduce anxiety, which also improve the mood of smokers and acts as a sedative when given in a lower dose.
- Reverse carcinogen effect: In research studies, it was found that medical marijuana can destroy cancer cells, reduce tumor growth and control from spreading. Smoking tobacco increment CYP1A1 protein levels in human lung tissue which is the purpose behind disease development. In 2010, an investigation tried THC, CBD and CBN (synthetic mixes found in pot) and found that CBD ruined the CYP1A1 protein. Further exploration found that when contrasted with different cannabinoids, CBD demonstrated progressively viable hindrance of CYP1A1 protein. In a landmark 1974 study, it was discovered that THC a chemical substance that gets you high, has the potential to reduce the growth of tumor in Lewis lung adenocarcinoma. A research from 2008 shows that THC has the capacity to reduce a tumor's ability to grow new blood vessels. A study in the journal of the American medical association showed that cannabis improved the function of lungs as well as increased the capacity of lungs. A research held over a period of 20 years, tested over 5,115 young adults who has the risk factor of heart disease, found out that only those who used pots showed an increased lung capacity, compared to tobacco smokers who lost the function of lungs overtime.[236]
- Prevention from concussion and trauma: A study published in the journal showed the possibilities of cannabis to help heal the brain after a concussion or other traumatic

[235] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6837267/
[236][236] https://www.healthline.com/health/medical-marijuana/benefits-of-marijuana

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injury. In that study an experiment was done on mice where the use of cannabis lessened the bruising of the brain. After a traumatic injury it helped with healing mechanism. Many of marijuana's protective benefits are provided by a framework of Endocannabinoid system. The protection of THC against the damage of Brain has also been observed with lab animals in controlled pre-chemical studies.

III. COMPARING ALCOHOL WITH MARIJUANA

A. OVERDOSE

Drinking alcohol is not life threatening in most cases. If alcohol is consumed too much, it can be fatal. According to CDC, nearly 88,000 deaths that are related to alcohol occur every year.[237] Half of these deaths happened because of binge drinking. When compared with alcohol, the number of marijuana related deaths is almost zero. In a study, researchers found that a fatal dose of TCH would be between 15 and 70 grams. For an idea, consider a typical joint that contains half a gram of marijuana. If you want to overdose on marijuana, you have to smoke between 238 and 1,113 joints in a day which is lot. In 2016, over 3 million lives were claimed by harmful use of alcohol including alcohol poisoned victims, and those who got cancer and stroke owing to heavy use, according to a WHO report. In comparison, marijuana death toll is zero. The Daily mail and The Independent said that a study done by New European research on comparing the mortality risk of 10 legal and illicit drugs showed that cannabis was 114 times less deadly than alcohol.

B. DRUNK AND DRIVE

Driving drunk is very dangerous than driving stoned. Marijuana is the second most identified medication in drivers engaged with fender benders. An investigation found that when Marijuana was included, the chances of being in an auto crash were expanded by 83%. Be that as it may, liquor expanded the chances of being in a car accident by 2,200%, which is very high when compared with marijuana.

[237] https://drugabuse.com/marijuana-vs-alcohol/

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C. PREGNANCY

During the first few weeks of pregnancy, using alcohol can cause long lasting effects on the unborn child. Over 3.3 million women are at a risk of exposing their baby to alcohol, according to CDC. During pregnancy, if you use alcohol, you are at a risk for having childbirth with physical, behavioral and intellectual disabilities which are called FASD (fetal alcohol syndrome). According to CDC, in the time of pregnancy, there is no known amount of alcohol that is safe to consume. Many studies found that there may be a link between using marijuana during pregnancy and low birth weight. The most commonly used illegal drug during pregnancy is marijuana. So it's hard to tell the effect of marijuana use, since there are not enough studies done on the subject.

D. CHRONIC ILLNESS

Using alcohol for a long time in excess amounts can result in liver cancer, lung cancer, colon cancer, epilepsy, ischaemic heart disease. Marijuana is mostly limited to lung issues (particularly when used with tobacco) and psychotic episodes in severe cases. Nobody has reached that threshold till now. Psychotic episodes are also dangerous results of alcohol. Thus, the overall the risks associated with alcohol consumption set the scale far off balance.

E. BRAIN HEALTH

A study included the brain images of 853 adults between the age of 18 and 55, and 439 teenagers who were aged between 14 and 18 years.[238] These members were changed in their utilization of marijuana and liquor. The analysts found that especially the grown-ups who had been drinking liquor for a long time were related with a decrease in volume of grey matter and in white matter integrity. There was no impact on the structure of grey or white matter in either teenagers or adults who used marijuana. The researchers believed by these findings that drinking alcohol is likely to be much more harmful to brain health than using marijuana.

IV. CONSTITUTIONAL RIGHT

[238] https://www.medicalnewstoday.com/articles/320895

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Health is one of the basic requirements of human beings. The Right to health is a vital right without which none can exercise their basic human rights. Article 21 of the **Indian** constitution allows a border conception of health which is conflictual with the state's interest (that restrict the use of marijuana to protect the health and welfare of citizens) and individual's right (where people can do anything to keep their mind, and body healthy and happy without affecting other citizens.) In the case of CESC.LTD vs. Subash Chandra Bose239, the Supreme Court held that public health is also included in the right to live with human dignity as enshrined in article 21. Health is the most important factor in national development. Hence, the government is under obligation to protect the health of people. Every person has a fundamental right to acquire quality healthcare that is affordable, accessible, and compassionate as upheld in the case Mohd.Ahmed (minor) vs. Union of India & ors240.The health and strength of a citizen is an integral fact of right to life. The aim of fundamental rights is to create an egalitarian society, to free all citizens from coercion and restrictions, and to make liberty available for all as upheld in the case C.Ganesh vs. the central Administrative.241 "Healthy body is the very foundation of all human being." Health does not mean mere absence of sickness but would mean complete physical, mental, and social well being. Therefore, the right to health is a fundamental right as upheld in the case Confederation of ex-Servicemen vs. Union of India242.Section 31-A of Narcotic drug and psychotropic substance act, 1985 completely eliminates judicial discretion in sentencing. This arrangement is violative of article 21 of the Indian constitution as maintained for the situation Indian damage decrease organize versus Union of India13. It is likewise essential to consider the meaning of wellbeing given by WHO as it expresses that "A condition of complete physical, mental, otherworldly and social prosperity and not simply the nonappearance of malady or ailment". It is significant for the state to consider both which is useful for residents and which is good for people. The State is, however, not justified in banning marijuana –which is fragment of right to health and thereby, to exercise fundamental rights in general.

V. RIGHT TO HEALTH

The foundation of all Human activities is healthy body. Recently, a petition was filed in Delhi High Court regarding the legalization of Marijuana to which the court did not grant prayer. Using of marijuana is erroneously treated as criminal instead of considering it as a public health issue. Even several medical researchers say that there is a strong evidence of medical benefits of marijuana in in instances of sickness and spewing related with cancer chemotherapy and spinal

239 1992 AIR 573
240 W.P.(C) 7279/2013
241 W.P.No.11583 of 2011
242 SCR 872; 2006

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cord injury. It is also cited that how boundless the government can be considering its willingness to give a blind eye to bhang shops in country even though bhang and marijuana come from the same plant. So the main objective is to change the complete ban into one of *reasonable restriction.* The time has come to change the perception of cannabis as a *hard drug* and not conglomerate in the same category like heroin or cocaine. Many parts of the World are warming up to the idea in legalization of marijuana, especially countries which have severe restriction on the use of marijuana like India. It is High time for our government to seriously consider the medical benefits of marijuana which will help in India's healthcare system.

The Dutch government made a slight change in the prohibition of the use of marijuana, while the government of Netherlands did not totally legalize marijuana but did not prosecute the pot-smokers.[243] The main objective of this method is to safeguard the health of individual users and people around them and the society as whole. It is clearly seen that legalization of marijuana will also benefit the health of individuals. All that it requires is proper planning and right implementation of policy.

VI. RESPONSIBILTY OF STATE

Atharva Veda that belongs to the ancient times says that one of the five most sacred plants is cannabis. They consider cannabis as a source of happiness, joy giver and liberator. In 2012, Colorado and Washington became the first two states to legalize Marijuana for medicinal and recreational purposes. This law legalizes the use of marijuana for people above 21years. Even growing of marijuana is possible with limitation of plants. There are also alterations on how much cannabis someone can legally possess. In some cases legalization also paves way for legal sales and the home growing of marijuana. Legalization of marijuana will boost the economy to a great extent. It will bring down the complete black market under the regulation of government. Colorado has legalized marijuana since January 1, 2014. The result for Colorado benefits after legalizing marijuana for recreational and medicinal use has reached almost $927 million to date in tax revenue[244]. Countries like USA have made huge profits after legalizing marijuana. India can also make huge turnovers if it legalizes marijuana. There must be proportionality between the privilege and limitation on one hand and the privilege and obligation on the other.

It will make an irregularity, if undue or unbalanced accentuation is set upon the privilege of resident without thinking about the essentialness of obligation. Part 1V of the constitution identifies with the Directive principles of state strategy. Article 38 was presented in the constitution as a commitment upon the state to keep up social request for advancement of

[243] https://www.ft.com/content/f9d61f58-d78c-11e8-ab8e-6be0dcf18713
[244] https://www.cnbc.com/2019/02/12/colorado-pot-industry-sales-top-6-billion-since-adult-use-began.html

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government assistance of the individuals. By the constitution (forty second amedment) act, 1976, Article 51-A was added to exhaustively express the essential obligations of the residents to commend the commitment of the state. Fundamental Duties of a citizen includes the duty to develop scientific temper, humanism and the spirit of inquiry and reform. It is our Country's responsibility to give proper guidelines on usage of marijuana. Age restrictions should be made. No citizen below 21 years should use marijuana, if any citizen who is below 21 years uses marijuana, the government should take strict actions on them, so that other people will not take it as granted. Even Our government can initiate some awareness programmes regarding the usage of marijuana. Government should prohibit the supply and use of marijuana with exceptions for medical and recreational purposes. Hence, it is our responsibility to take proper measure on usage of marijuana and legalize it for medical purposes.

The history on ban of marijuana clearly imposes that there was no appropriate scientific or legal impose on ban of marijuana. It all started in the Unites States in early 1900's just after Mexican revolution. The new Americans purchased with them their local language, culture and customs. One of these traditions was the utilization of cannabis as a medication and relaxant.. Mexican immigrants referred this as "marihuana" while Americans were familiar with "cannabis." The first ever policy formed on restriction of marijuana is the Marijuana Tax Act, 1937. The main reason for ban of marijuana is to demonize Mexicans and the leading charge given against it is criminal insanity and its role as gateway to other drugs. So, it is clearly seen that there is no scientific purpose for the ban of marijuana. Since 1985, marijuana was legal in India. It was banned under Rajiv Gandhi government because of the pressure from the Americans. The Rajiv Gandhi government then enacted a law which is the narcotic drug and psychotropic substance act in 1985 for regulating the use of drug all over India.

VII. CONCLUSION

It is time to realize that even though marijuana is considered as hard drug, it is less addictive when compared to alcohol. If marijuana is legalized in our country, people should be made to get license for the use of marijuana, even for selling and manufacturing it. The same will act as a great barrier for people who use it illegally. It is the responsibility of the state to create appropriate programs on legalization of marijuana. THC which is used in marijuana helps to cure various diseases and must be allowed to maintaining a healthy lifestyle. Denying the use of THC violates the right to health guaranteed by our Constitution. Marijuana is proven safer when compared to other drugs like heroine, cocaine , cigarettes etc. Hence, marijuana should be distinguished from those drugs. The freedom for the use of marijuana should be a guaranteed right. Marijuana should be legalized for medical and recreational purpose.

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DRUG LAWS AND SOCIETY

Muskaan Rafique[*]

Drug laws and society are interlinked to each other. The aim of the topic is to look upon the various drugs that are consumed by the people especially by the youth. Though India has an Act for the prohibition of consumption and production of drugs, it has not been successful enough in reaching the public.
Drugs have a lot of influence on youth's behavior towards their society and it can change their social perspectives totally. Abusers are persons who have been consuming drugs for their own personal reasons like family issues, educational stress or peer pressure. Peer pressure being the most common of them all, it is always the friends that acknowledge us to try it.
More importance should be given on children during their adolescents as that's the most common age to fall for things like these. Drug abuse is something that is very rapidly growing in our country and the youth are the ones who are affected by it the most. Since the availability of drugs is also easy now, more importance should be given to eliminate its access as it will only put the future of the young ones at stake.
Drugs can be damaging to our health which is the most important concern as self-consumption without medical checkup is illegal because it causes a lot of harm to our system.
The society and the legislation should give more importance in tackling and cutting the root cause of drug marketing so that the youth are saved from the harmful effects of it.

Drugs have been impacting our society since a long time which could be seen by the laws on prohibition of drugs. The narcotic drugs and psychotropic substances Act 1985 also known as the NDPS Act has been made by the parliament to prohibit the use and sell of any narcotic substance.
Despite having an Act for a long time, the use and sell of drugs has never come to an end. It is altogether a whole world of itself where the students all around the country are easily able to access it through their peer's contacts. It could be seen that it is becoming a way of life in the youths of this generation.

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Earlier it was used for medicinal purposes and was prescribed freely by physicians for treating many ailments. Drug has been used in India for a very long time as the oldest drug in India is opium and alcohol.Opium came to existence in India through the Arab traders. It was during the Mughal rule when opium cultivation happened and after the fall of Mughal Empire, the cultivation of opium was passed to the East India Company and was exported to China. Later China banned the export of opium due to opium addicts.

After independence, the control on cultivation and manufacture of opium was passed to the government of India. To control the production of opium throughout the country, the Government organized a Central Bureau of Narcotics to look upon and control the cultivation and production of opium. License for the cultivation of opium was issued by the Central Bureau of Narcotics to cultivators eligible for it with the conditions of Central Government.

Alcohol is another very old drug in India and post-independent India had a widespread usage of alcoholism. The government of India appointed a committee to examine the alcoholism rate in India and it was concluded by the committee that the same is growing at a fast rate.

Though the Central Bureau of Narcotics has been prescribing the amount of opium to be cultivated through its frame and with the purchase of it by the Central Bureau of Narcotics, the farmers are still illegally selling it in the markets.

There are also many drugs that are available like cannabis, cocaine, morphine etc. which are commonly used. They are classified as:

- Soft drugs

Soft drugs are the ones that does not have an effect on our body or mind like the hard drugs and are less damaging compared to the other ones. Marijuana, mushrooms are some drugs that fall under this category.

- Hard drugs

Hard drugs are the ones that have a strong effect on one's body and mind. It is also used in medicines as heavy painkillers. Heroin, morphine, cocaine are some known hard drugs.

There are also other kinds of drugs having, varied effects on our mind and body, which can cause the user to hallucinate, dilute and to make him/her mentally unstable. It can also kill the user's appetite while some drugs activate their hunger by exciting them. These are some of the ill effects of drug consumption, which can impact peoples' blood pressure dangerously. Different kinds of drugs have different kinds of effects on one's body.

There is an Act that prohibits drug abuse, as using of drugs by self-administration without the approval of a registered medical practitioner is illegal. Despite this act, the use of drugs is growing actively in recent times. Even though it has medicinal values and of use, it is harmful if consumed excessively. It has to be also noted that many deaths of youths have taken place due to drug abuse which is one of the hard truths of Indian society. The illegal production and consumption of drugs has been actively taking place all over India, during which occasions of

violence and crime has been committed. Also, the money collected from the young peddlers is used in illegal businesses.

Many medicinal drugs are also being abused as they are also illegally sold and bought. The laws for the production and consumption of drugs didn't have their impact which could be seen in reality, as they live only in writing and the implementation and review process is still in need to be put to action.

The use of drugs has affected the society detrimentally as addicts resort to illegal activities to earn money and buy drugs. Drugs make the user's mind unfairly judgmental as a result of which he/she commits crimes.

The society looks at abusers differently and ignores them along with their families which further deepen the problem. Most drug users commit offences because they are neglected and have emotional distress. These conflicts only make them susceptible to further neglect and stress.

In general, drug users belong mostly to the productive age group of 18-35. Drug abuse has impacted youths psychologically, physically and morally. It is estimated that in India most students are active in consumption of alcohol or drugs before reaching their ninth grade. Uttar Pradesh is known to have a very large amount of its youths as consumers of alcohol or drugs from a very young age. Not only Uttar Pradesh but other states like Mumbai, Punjab, Bihar and many more are also witnessing the same trend.

The society has both positive and negative impact on the drug addicts. It has always viewed the drug addicts as a bad influence on society.The most important thing for the society to keep in mind while treating the family of a drug addict or the addict himself is not to be judge and treat the addict in the right perspective. Families have high influences on a child's behavior. It is of utmost importance that parents need to give due attention to the child in its growth stage, to deter him from peer group pressure, which is one of the most common reasons of drug usage. This tender age also makes them try drugs out of curiosity without knowing their consequences and gradually become addicted and dependent on them, thus ruining their future. The children of nuclear families are the ones who are more prone to drugs, due to negligence and the changed pace of life in big cities, as their parents are busy professionally.

To cope with the consumption of drugs, counseling sessions in rehabilitation centers have to be given more importance by the government so that the drug addicts could recover fast. It's not always the addicts who should be blamed. Rather than arresting or treating them negatively they should be fairly dealt with, by identifying the issue and addressing the same. This would help in the care and support required to change themselves.

To eradicate the production and consumption of drugs totally from the society, it is very important to look at the root cause of it. The root cause is the societal transformation which has taken place in the present generation especially with the Indian joint family system which has broken into individual family systems. The above mentioned change that has affected all aspects of life has impacted the transformational growth of a child to adulthood. A sense of isolation, a lack of belongingness and low expressions of emotions of day to day issues and problems has

impacted the age group with weaker mental health which draws them into the use of narcotics and psychotropic substances to escape from their realities temporarily.

The factors of time spent with their loved ones and the low emotional care that they receive in nuclear families where both parents are working further isolates the child who resorts to the use of drugs. This issue is growing at a fast rate which needs to be addressed not by the deterrent system of redresses but more by a counseling cell where individual cases of abusers can be identified and categorised to help them. Framing laws alone would not address this sort of societal issues but more social reformations need to be brought in to have a positive impact on this serious issue as the same can impact future generations.

If this issue is critically analyzed, it would root down to more of a psychological crisis which is impacting the society at large in contemporary times. Reformative course of action needs to be initiated not only by the government through varied legislations but also by involving voluntary organizations to work on this field. Also future scopes could be widened through mandatory rules towards such changes that take place in the social front.

Further rules and regulations need to be established for developing varied activity centers to attend and engage the addicts for a productive cause which would raise their self-confidence.

Hence, the problem of drug abuse needs to be addressed from various fronts and ways to reduce the impact of the same. Strong legislations need to be brought to focus on the source of production and the supply chain and limiting the production of drugs to legitimate demands. The problem needs to be addressed legally by surveying and identifying specific geographic areas of drug misusage and rules and regulations should be made area specific.

Priority needs to be given more to societal change rather than the drug laws to reduce the trend of growth of drug abuse. This would help the upcoming generation to have a right and healthy perspective on their lives and avoid the detrimental impact of drugs on their selves and their families at large.

Hence, a social upliftment is the urgent need of the time rather than drug laws which could only focus on the production and supply chain restrictions. The Drug laws should also have in its ambit the productive scope for the users in them rather than only having deterrent punishment which would further cause psychological distress and the way of life of the upcoming generation.

Hence drug laws should be entwined with societal change and more adaptable and reformative in nature to reduce the impact of drug abuse in the society at large. They should be deterrent not to the affected but rather to the source of the supply.

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VULNERABLITY OF INDIAN JUDICIARY AND COMPARATIVE ANALYSIS

Nagajothi.P & Barathkumar.K.M[*]

ABSTRACT

What is Justice and how do we avail it? For common people, Justice is always associated with delays and expenditures that don't prove useful in the longer term. This paper is going to deal with comparative analysis of judiciary in different countries. Particularly, Indian Judiciary and its ramification on people will be looked into. Majority of the Indian working class feels that going to the court will extract large effort from them and will make them spend enormous money which they earned. This article will also analyse the "World Justice Project" for a sharp understanding of the judiciary systems all over the world. The report shows that the rule of law is weak in many places around the world. Denmark, Norway and Finland hold best positions in the field of justice. Eventually, India occupied the 69th rank in the world and 98th rank in civil justice which explicitly shows India's position in the Judiciary. Most of the countries in the list of the best performances in Judiciary have laid down judges and jurors *i.e. the person who is assisting a legal judge. The major problem faced by the Indian judiciary is pending cases which exceed 3crores at present. The Indian constitution itself provides Article 21 for Right to speedy trial since the courts are facing sluggish syndromes. There were many instances when judgments were delivered after a long journey of trials. For example, The Nani Gopal Paul vs. State of West Bengal case was filed in 1800 which is still in hearing. This paper gives a statistical analysis of justice system and focuses on the cause of delay in justice and tries to give remedy to that.*

KEYWORDS:

Indian judiciary system, World Justice Report, Delay in justice, Reasons for procrastination of justice, Need for reforms in judiciary

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I. INTRODUCTION

Access to justice is one of the fundamental human rights. Justice is also necessary for the protection of economic, social, cultural, civil and political rights and to fight poverty and tackle inequality. Yet, accessing justice is not easy for many people particularly, socially excluded people. It is the concept of moral correctness based on ethics, rationality, law, equity and fairness. Justice can only be achieved by equality. This can be according to which goods are to be distributed in the form of wealth, respect, opportunity and what can be distributed equally between individuals, families, nations, races and species. According to the World Justice Project 2017-2018[245], India was placed 97th rank in the civil justice system, 66th rank in the criminal justice system and globally India was placed at 62ndrank out of 113 countries in the justice system. And the 2020 World Justice Project[246] reveals that India is going back from position 62nd to 69th rank in the world. It shows that India is not good in justice which should be fastened and fair. In India, a lot of cases are pending in the various courts and it takes a lot of time to give judgment. The rise in inequality and exclusion is a threat to social cohesion, economic growth and human progress. The major reasons for this are the lack of judges and courts, slow pace and the presence of corruption in investigations. As per Corruption Perceptions Index 2019[247], India was placed at 80th rank in the global level as corruption is one among the major problems in the Indian judiciary.

II. HISTORY OF INDIAN JUDICIARY

India has a record of legal system starting from the Vedic period during which the concept of justice was linked to religion. Most of the kings' courts dispensed justice according to the 'Dharma'. The laws in India shifted with religion to religion and with ruler to ruler. The court frameworks for common and criminal issues were built up during the time of Mauryas (321-185 BCE) and the Mughals (sixteenth - nineteenth hundreds of years). In medieval occasions, the proclamation 'ruler can't take the blame no matter what' was applied as the lord played a significant role in the judiciary system. The king was the superior judge in his kingdom. With the arrival of the British in India, the judicial system in

[245]World Justice Project's research team, (Mar. 16, 2018), https://worldjusticeproject.org/sites/default/files/documents/WJP_ROLI_2017-18_Online-Edition_0.pdf
[246] World Justice Project's research team, (Mar. 11, 2020), https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf
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India was reintroduced on the basis of Anglo-Saxon jurisprudence. The Anglo-Saxon law is a body of legal principles that were followed in ancient England.

A. MAYOR'S COURT

The story of India's judiciary system started with the Mayor's court. In 1661, the Royal Charter was passed and under this charter, the Governor-in-Council of Madras and Surat presidency were empowered

> *'To judge all persons belonging to the said presidency or that shall live under them in all causes, whether civil or criminal, according to the laws of this Kingdom and to execute judgement accordingly'.*

Be that as it may, this force was not practiced at Madras for two decades. In 1678, the Governor-in Council concluded that they ought to have two sittings for each week to hear and pass judgment on the cases as indicated by English law. Under the Charter of 1726, a Mayor's court was set up at Madras, Bombay and Calcutta administrations. The distinction between the old Mayor's court and the new Mayor's court was the old Mayor's courts were of the organization and the new Mayor's courts were of the King of England. Be that as it may, the French involved Madras thus this framework was suspended till 1749. After the French gave up Madras, the contract of 1753 was passed to evacuate the troubles of the past sanction. As indicated by the new sanction, the Mayor's court was put under the Governor-in-Council.

B. SUPREME COURT OF CALCUTTA

The Regulating act of 1773 established the Supreme Court of Fort Williams at Calcutta in 1774. The court consists of Chief Justice and three more judges but later was reduced to two.

C. RECORDER'S COURTS

There was a need to establish new courts due to increase in number of companies. So, on February 1, 1798, the king issued a new charter to establish two Recorder's courts at Madras and Bombay. The court consists of one Recorder, one Mayor and three Aldermen

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of the corporation. The functions and powers of the Recorder's Courts are the same as that of the Supreme Court of Calcutta.

D. MOFUSSIL ADALATS

Mofussil means rural, and these courts were established for the places away from the Company's Presidency towns. The Mofussil Faujdari Adalat courts were established for criminal cases and Mofussil Diwani Adalat courts were established for civil cases. The appeal from these courts was taken to Sadar Nizami Adalat (for criminal cases) and Sadar Diwani Adalat (for civil cases).

E. ESTABLISHMENT OF HIGH COURTS

In 1801 and 1824, the Supreme Courts were established at Madras and Bombay respectively. In 1861, the Indian High Courts Act was passed to establish more High Courts in India. Thus, the Supreme Courts of Calcutta, Madras and Bombay were replaced as High Courts. Later High Courts were established at Lahore (1865), Allahabad (1875) and Patna (1912). The court consists of Chief Justice and not more than 15 other judges. The appeal from the High Court was taken by the Privy Council.

F. SUPREME COURT OF INDIA

The Government of India Act, 1935 was passed to establish a Supreme Court in Delhi. The court consists of a Chief Justice and not more than six other judges. In 1949, the Privy Council Jurisdiction Act was abolished and the Supreme Court became the superior court in India.

III. DELAY IN JUDGEMENTS OF INDIA

According to National Judicial Data Grid[248], Nani Gopal Paul vs. State of West Bengal[249], case number AST/1/1800 of the Calcutta High Court is the oldest case with the case year

[248] National Judicial Data Grid, https://njdg.ecourts.gov.in/njdgnew/index.php

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mentioned as 1800. The last hearing date of the case was 20th November 2018. At present, 3, 24, 00, 647 cases are pending in Indian courts out of that 83,801 cases are pending for more than 30 years. In total 48, 18, 858 cases are pending in the High Courts across the country, accounting for 69% of all such cases pending in 24 High Courts. Allahabad High Court, the country's largest high court, has 7, 33,179 pending cases out of which 46,659 cases are pending for more than 30 years. At the current rate of disposal, it will take 324 years for all the pending cases in subordinate court to be disposed of.

A. REASONS

a) The inadequate number of judges and courts- Over 3.5 cases are pending across courts in India but according to the department of justice data[250], there are only 16,438 judges in the sub-court, 1079 in the High Court and 32 in the Supreme Court.
b) The inefficiency of judges- the inefficiency and lack of knowledge of judges is one of the reasons for delay in judgements.
c) The habit of taking adjournment by the advocates- the absence of advocates in the courtroom delays the judgement.
d) Endless amendments of the law- continuous changes in the law lead the judges and advocates to a confused state.
e) Absence of work culture in the courts- due to negligence in work the judgments are delayed.
f) Inadequate quality of justice- due to wrong judgements the clients go for appeal.
g) Lack of punctuality among judges- the unnecessary leaves taken by the judges and late appearance of judges in the courtroom are one of the reasons for the delay of judgements.
h) Inadequate staff in the courts- the staff in the courts is less in number.
i) Budgetary allocation- India spends only 0.08% of GDP on the judiciary[251].
j) Inadequate strength of the police force- speedy investigation by the police has not been achieved due to reasons like corruption.

IV. REASONS BEHIND DENMARK'S FIRST POSITION IN THE WORLD JUSTICE PROJECT REPORT

[249] *Nani Gopal Paul vs. State of West Bengal*, AIR 1966 Cal 167
[250] Department of justice, (May. 16, 2020), https://doj.gov.in/
[251] Niyati Singh, Indiaspend, India Spends only 0.08% of GDP on Judiciary, Crippling Reforms, (Nov. 30, 2019), https://www.indiaspend.com/india-spends-only-0-08-of-gdp-on-judiciary-crippling-reforms/

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Denmark's legal system is based on two-tier principle i.e., the client has the option of appealing to the ruling of one court to a higher instance. The higher court can either give the same judgement or can change the lower court's judgement. The accompanying reasons are ascribed for Denmark's first situation in the World Justice Project report:
a) The constitution shields the adjudicators from being terminated or moved to an alternate activity.
b) Greater Independence. On first July 1999, the Act on the Judicial Appointments Council produced results. The Danish Court Administration is an autonomous organization under the court of Denmark. The organization is the piece of the Ministry of Justice but it has a Managing Director and an Executive Committee to take independent decisions. The ministers cannot change decisions made by the administration.
c) Accountability- the Court makes correct, Justified and clear decisions promptly.
d) Credibility- the Danish court is impartial and neutral and the Judges appear in the courtroom at the correct time.
e) Boards and Councils- conflicts and disputes are also settled by institutions other than the court. The Danish Press Council and Danish Consumer Council are formed to settle conflicts. Tribunals are also formed to solve the conflict between two companies.
f) Preliminary Statutory hearing- when the police arrest a suspect and detain the suspect for more than 24 hours, the preliminary hearing is held. During this hearing, the Judge determines whether the police are permitted to continue detain the suspect.
g) The digitisation of the court system- the civil case procedure is completely digitised and the database of judgments is accessible to the general public.
h) Low corruption- according to Corruption Perceptions Index 2019, Denmark is the country with least corruption.

A. FOUR MAIN OBJECTIVES OF DENMARK JUDICIARY

1) Short processing times for cases- every day, courts make multiple decisions that affect the individual or the company. The case processing time must be short and uniform across the country.
2) More consistency in the performance of tasks- the courts must implement a range of projects aimed at achieving more consistency in their work procedures.
3) Contemporary communication- communication must be comprehensible and contemporary so the public can easily understand the decision of the court.
4) Continue to be an attractive public workplace- the courts should be an attractive workplace able to attract and retain highly qualified employees.

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B. LAY JUDGES AND JURORS

Lay Judges and Jurors are not judges with a legal background but they are equally ranked with legal Judges and can share the same responsibilities for decisions. They are involved in the court decision as well as in any orders and decisions made during the proceedings. When a decision is made in a case, the lay judges and jurors have the right and duty to express their views based on the information presented in the court. Lay Judges are used in criminal cases; cases before a district court are decided by one legal judge and two lay judges and cases before a High Court are decided by three legal judges and three lay judges.

C. JURY CASES

Jury cases are cases conducted when the prosecution claims punishment by imprisonment of four years or more or in which the accused may be committed to custody or other detention. District courts have three legal judges and six jurors. At least two legal judges and four jurors should agree on the question of guilt. If the judgment is appealed, a jury will also be used in High Court. Three legal judges and nine jurors are used in the High Court. At least two legal judges and six jurors must agree on the question of guilt. In Supreme Court cases, only legal judges are used and no lay judges and jurors are used.

D. CITIZEN'S DUTY

Lay Judges and Jurors must be of the age group between 18 and 70. They must be entitled to vote in parliamentary elections and should not have been convicted of any offence. For every four years, each local authority makes a list of lay judges and jurors from the residents of that particular municipality. The court of law must be independent, so that the ministers, attorneys, assistant attorneys, ministry staff members, civil servants and staff members of the police, the prison service or the Danish national church and other recognised religious communities cannot act as lay judges or jurors.

V. JUSTICE IN CANADA

Canadian legal system is based on English and French systems. Even though the department of justice comes under the ministry of justice, it acts as an independent one.

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The judges are appointed by the Canadian Judicial Council (CJC), which has 41 members. It is chaired by the Chief Justice of the Supreme Court of Canada. The CJC promotes efficiency, consistency and quality judicial service in these courts and also develops Ethical Principles for the Judges. Their main purpose is to maintain independence, integrity and impartiality among the judges. If they find evidence of misconduct of any judges, the CJC may recommend the ministry of justice to remove that judge from his office. Then the ministry of justice seeks the approval from both the House of Commons and the Senate to remove the judge from his office.

The Canadian judiciary has four levels of court:

1) Provincial and territorial (lower) courts which investigates criminal offences, money matters and family matters.
2) Provincial and territorial superior courts which deals with more serious crimes and hears appeal from the lower court
3) Provincial and territorial courts of appeal and the federal court of appeal, which hears appeal from the superior court
4) The Supreme Court of Canada is the final court of appeal for Canada.

A. JUDICIAL INDEPENDENCE

Judicial independence is a cornerstone of the Canadian Judiciary system. The judiciary is separated from the legislative and executive. The judiciary is isolated from the legislative and executive. The standard of legal freedom has three parts:

1. Security of Tenure

Once the adjudicator was named, he is qualified to serve on the seat until retirement (age 75 for government named judges, age 70 in some common/regional locales). Judges must be expelled by the parliament.

2. Financial security

Judges are allowed adequate compensation and annuity so they are not liable to pressure for budgetary contemplations. In Canada, the government cannot change judges' salary without receiving the recommendations of an independent compensation commission.

3. Administrative independence

Only Chief Justice can interfere with the courts' legal process and the execution of their judicial functions. Several institutions are established to make the judiciary independent;

these incorporate the Canadian Judicial Council, the Commissioner for Federal Judicial Affairs, the National Judicial Institute and the Courts Administration Service.

E. JURY DUTY

A jury is a gathering of residents, taking part in a preliminary for somebody blamed for a criminal offense. In Canada, the jury is comprised of a gathering of 12 residents chose from the region where the court is found. Under the rules of an appointed authority, the jury will tune in to the reality of the wrongdoing and choose whether the individual charged is liable or not. If there is a possibility of a prison sentence of five years or more, then the jury will participate in the trial. Even if there is a possibility of less than five years of imprisonment, there is a chance to choose a trial by jury. The jury is selected randomly. Since the court of law must be independent, the healthcare professionals, fire fighters, employees of jails, penitentiaries and other corrections institutions, sheriffs and police officers, members of the Canadian forces, lawyers and law students, officers of court and justice of the peace, an elected or appointed member of the government cannot act as jury.

VI. INVESTIGATION AND PROSECUTION IN FRANCE

In France, the criminal investigation is also carried out by the public prosecutor and investigating magistrates. They have the right to give police instructions during an investigation. The investigating judges have judicial power as well as the investigating power. However, the investigating judge is not involved in the investigating phase in all the cases. The investigating judge is involved only in serious cases. In less serious cases, the supervision of the police is normally entrusted to public prosecutors. For this type of crime, the investigating judge is involved only after following a specific request made by the public prosecutor. The investigating judge decides whether the case should be closed or taken to the court. The French criminal system still relies on the investigating system under the direction of the instructing judge. The victim of an offence is also entitled to summon a suspected perpetrator before a court or before the investigating judge in order to vindicate his rights. Prior to the court hearing, the evidence is gathered by the investigating judge or by the public prosecutor through the police investigation. Victims can also gather evidence and ask either the investigating judge or the public prosecutor to initiate the proceedings.

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A. ROLE OF THE VICTIM

The victim also plays an important role in the investigation and trial. As per the preamble of the Criminal Procedure Code, the judiciary is bound to safeguard the interest of the victim and to give guidance and assistance to him. The victim can make himself as a party to the case and can involve himself in all the stages of investigation of the case. If the victim spends some money for the investigation, the state will compensate the victim.

VII. REASONS FOR THE LOWEST CRIME IN THE NETHERLANDS

For the last few years, crime rates in Netherlands have continued to fall annually[252]. In fact, between 2013 and 2018, 29 prisons were closed in the Netherlands and turned into temporary asylums, housing and hotels due to reductions in crime. The quantity of detainees in the Netherlands in 2006 is 20,463 which were diminished to 10,464 of every 2017, a reduction of practically half. Because of the lessening in the jail populace, the quantity of jail staff has additionally diminished by 53% since 2012. The primary purpose behind the decrease in crime percentage is the National crime prevention policy of the Netherlands. The crime prevention in the Netherlands is focusing on four main subjects: juvenile crime, violence, business-related crime and integrity.

A. PREVENTION OF JUVENILE CRIME

In 2003, the Netherlands government introduced a programme for youth correction, an action plan against the juvenile. Youth correction contains 58 activities aimed at the prevention of crime and the reduction of recidivism. Every young person that commits a crime will be subject to punishment or corrective measures. Only corrective measures that have been proven to be effective will be useYouth correction contains 58 exercises focused on the avoidance of wrongdoing and the decrease of recidivism. Each youngster that perpetrates a wrongdoing will be dependent upon discipline or restorative measures. Just restorative estimates that have been demonstrated to be viable will be utilized.

[252] Netherland prison insider, https://www.prison-insider.com/countryprofile/netherlands-2019

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B. PREVENTION OF VIOLENCE

The branch of equity stepped up and build up the program 'prevention of violence.' The department of justice invited schools, cities, sports clubs and other organisations to come forward with ideas for the developments of codes of conduct in their domains. Their motive is to create norms and values in society. The students have to comply with the code not only at school but also at trainee posts and even in the neighbouring shopping centre.

C. PREVENTION OF BUSINESS-RELATED CRIME

The business-related crime is an essential issue due to the harmful effect on business in particular and the economy in general. In some areas, crime control is seen solely as a public responsibility, especially of the police. Crime prevention and private responsibility are therefore hardly taken seriously.

D. INTEGRITY

Legal persons and government organizations are increasingly interested in screening the integrity of the legal persons and the natural persons they want to do business with. Government organizations don't want to grant permits to criminal organizations; they don't want to grant a contract for building or for delivering services to criminal organizations. Legal persons who take great pride in their integrity don't want to do business with legal persons who don't care about integrity. Neither governments nor legal persons want to hire people who are a risk factor because of their criminal record.

The department of Justice provides Dutch society with three instruments for screening integrity.

1. The Permission to register a limited company
2. The Statement of moral conduct
3. The Integrity advice

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VIII. JUSTICE DELAYED AND HURRIED IN INDIA

A. JUSTICE DELAYED IS DENIED

In Maneka Gandhi vs. Union of India[253], the Supreme Court held that the law must be fair, just and reasonable. At the point when a citizen seeks justice to the court it requires some investment to give decisions and till the announcement is given, the reason for which equity was requested, gets died. There applies the quote 'justice delayed is justice denied'.
To process the investigation, facts, arguments, moral values, laws and documents and to come to a reasonable judgement, it takes a lot of time. The people have to appeal in the district court first, then in the High Court and then in the Supreme Court to get the fair or desired judgement which shows how the case runs for a long time.
The remedy is that when a citizen approaches a court, before going to the court of law; he or she may go to the Law and Order court where the facts, documents, evidence and investigation will be done at the root level in a good manner. Hence, when a person appeals to the court of law, only the argument with the implementation of the law will take place and judgements are given at a reasonable time.

B. JUSTICE HURRIED IS JUSTICE BURIED

If we hasten the present legal system to deliver justice within limited time then there would be a lot of burden on the judges. This might result in unreasonable judgements and make the justice system to be at fault. As innumerous cases are pending in the district court and lakhs of cases are pending in the High Court, hastening the judgements may lead to disasters. This could make one person's happiness into another person's disaster.

IX. CONCLUSION

The study reveals the comparative analysis of the judiciary of countries such as Denmark, Netherlands, Canada, France, and India. This paper covers the pros and cons of the judiciary system of India and explained the dispute faced by the people and the judiciary. To make the judiciary more reliable, India has adopted certain amendments such as Arbitration and conciliation Act, Tribunals, and other quasi-judicial bodies but the

[253] Maneka Gandhi v. Union of India, 1978 AIR 597

objective of justice does not meet the end because of them. The time has come to modify the legal and judicial systems in order to provide quality justice at the right time so that people who are looking for justice in one day or sooner or later cannot be buried with delay. The study suggests certain ideas: primarily, to increase the number of courts and appoint more qualified judges- Though Indian judiciary is best qualified to solve the pending cases, increasing the number of courts and appointing qualified judges is still necessary. Secondly, to bring in Tribunals and quasi-judicial bodies- Bringing in tribunals for property-related claims, to gather evidence and investigation procedure will reduce the courts' burden. Thirdly, to improve physical and technological infrastructures in the court- Only the development of the physical infrastructure is not enough. Introducing online system for filing cases and digitisation of the court system will speed up the process of justice delivery and noticeable actions can be taken to reduce corruption as corruptions during the investigation made the procedures slower. The investigation should be hastened and free from corruption. Finally, by employing Lay judges and jurors: Countries like Denmark, Canada and France are having lay judges and jurors in the trial, to make the judiciary transparent. Likewise, if Indian judiciary implemented lay judges and jurors the judiciary will be more transparent. The parliament should look out for the changes that could be made in the judiciary in order to remove the notion of obtaining justice with delay.