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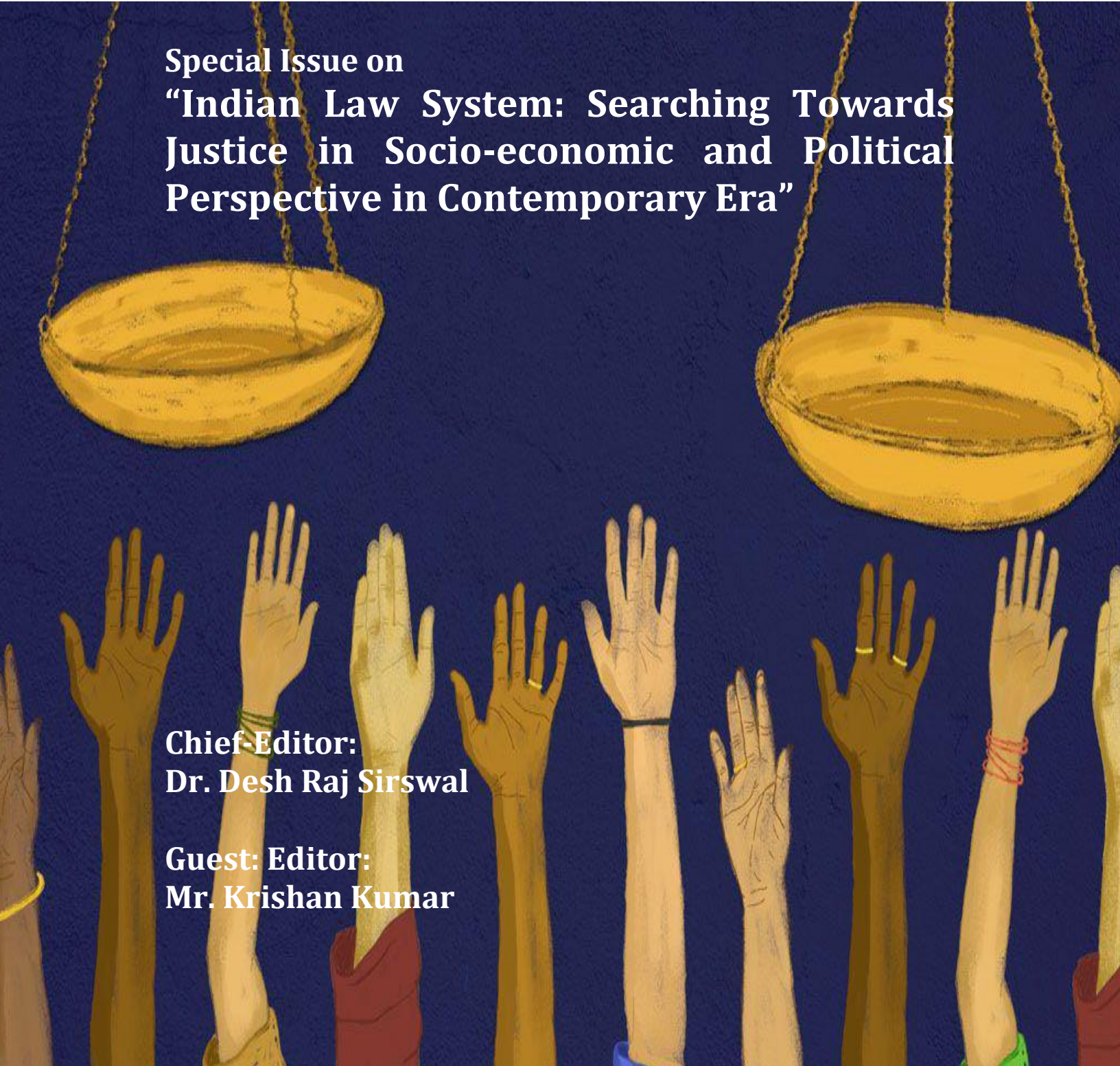
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Special Issue on
“Indian Law System: Searching Towards
Justice in Socio-economic and Political
Perspective in Contemporary Era”

Chief-Editor:
Dr. Desh Raj Sirswal

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Mr. Krishan Kumar



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Milestone Education Review (The Journal of Ideas on Educational & Social Transformation) is an online peer-reviewed bi-annual journal of Milestone Education Society (Regd.) Pehowa (Kurukshetra). For us education refers to any act or experience that has a formative effect on the mind, character, or physical ability of an individual. The role of education must be as an instrument of social change and social transformation. Social transformation refers to large scale of social change as in cultural reforms and transformations. The first occurs with the individual, the second with the social system. This journal offers an opportunity to all academicians including educationist, social-scientists, philosophers and social activities to share their views. Each issue contains about 100 pages.

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Foreword

The main objective of the criminal justice system is to safeguard and uphold the legal rights of an individual being a human, because human rights have been a very important issue for the judicial system from the beginning, yet discrimination has been a common exercise in Indian society for centuries on the grounds of colour, culture, caste, and religion etc. The pathological study of criminal law describes the mechanism for analysing the facts and evidence with objectivity, which could be able to maintain justice in society. How should this objectivity be maintained? This is the major issue at the front of Indian criminal law. In the field of medical science, pathology is the study of the causes and effects of disease or injury on human beings. Pathological labs have some parameters for the human body's conditions. Like that, the Indian law system has some measurements for justice, which are based on the IPC and the Indian Constitution, i.e., fundamental rights, fundamental duties, landmark decisions etc., yet there is always a need to analyse the parameters from time to time. This Volume will try to find out some major issues related to criminal law, which have become questions for laymen to scholars, like that of religious issues, caste matters, gender issues, cultural conflicts, technology effects on the justice system of India. Justice is a very important and sensitive issue because if you want to maintain peace in society, then we should promote the administration of justice. But Indian society is divided on the grounds of colour, culture, caste, religion, etc. As a result, this volume addresses some major issues of criminal law in India, such as criminal case trials in India, the impact of crime on victims and their families, custodial issues and bail law in India, juvenile delinquency, cyber crime, white collar crimes, environmental crimes, and, last but not least, crimes against children or women in India. There was a need to discuss the above-mentioned issues for the justice of society. I congratulate the editors because they did this job with their intellect. I also appreciate this volume, which will benefit for the judicial system of the entire world.

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Children's Rights in the Digital Age

Ashu Pasricha

Abstract

Digital media are the fastest growing in India, encompassing the Internet, social media and mobile. No group has been more affected than children by the communications revolution of the internet age. In affluent countries, online communication is now embedded in children's lives from their earliest years; in the UK, for example children aged 5–15 are spending two hours online each day. Many poorer countries, particularly the larger emerging economies, are catching up. In fact, mobile, with over 900 million subscribers, can lay claim to being the largest medium in the country, having overtaken all other forms of media through a growth of over 800% since 2006. Mobile devices are getting cheaper, access easier and time spent using them longer, leading to significant shifts in the Indian populace. Many mobile device users are at the bottom of the socio-economic pyramid. A 2010 United Nations report noted that more Indians content consumption habits of large sections have access to a mobile phone than to a toilet. Given the rising demand for network, access and services, it is believed that by 2050 there will be nearly 10 billion people on this planet and 2.6 billion of them will be children.

Keywords: Digital Media, Children, Rights, ICT

India is home to 17% of the world's children, and has the world's largest child population. Despite this, India's children are often neglected and their rights ignored. Of the 430 million children in India, an estimated 55% – a staggering 236.5 million – currently experience rights violation.

The growth of digital media is central to the narratives; one rejecting the rapidly advancing role of digital media in children's lives and the other embracing it. The Internet and social media currently have a relatively low user base, skewed towards the young, urban, English-speaking middle class. However, here too the user base is growing fast. Within digital media, websites offering extensive platforms for user-generated content (UGC) are among the most popular in India. Facebook, the leading social media website, is accessed by 97% of all social media users in India. Between November 2009 and March 2015, unique visitors to Facebook grew from 31.6 to 61.2 million. As of March 2016, Facebook claims a base of 80 million monthly active users in India. This is an astounding

50% increase over the user base of March 2017. With over 80 million social network surfers, a number rapidly growing, this medium will become extremely hard to ignore in the near future. Moreover, a significant increase is predicted not only in user numbers but also in inclusion across classes, particularly because of growing Internet connectivity through mobile phones whose penetration includes the poor in remote rural areas. The top social media websites accessed in descending order are Facebook, Google Plus, LinkedIn, Twitter, Orkut and Ibibo. Both Facebook and Twitter are also very popular with decision-makers, policy-influencers and CSO advocates.

Alvin Toffler in the Third Wave describes three periods of economic evolution: the Agricultural wave that kept going from 8000 B.C. to the mid-eighteenth century, the Industrial wave which endured until the point when the late twentieth century and the data wave which started in the 1960s and will keep going for a long time to come. As per him, the primary wave was driven by physical work, the second wave by machines and blue-shading specialists and the third by data innovation and information laborers.

The contemporary speed of progress, the growth of limit with respect to data transmission and the multiplication of interchanges media are altogether different from what has been knowledgeable about the past. The unprecedented blast of both innovation and data has significantly lessened the twin ideas of time and space.

Specifically Information and Communication Technology (ICT) has developed as maybe the most prevailing power in the worldwide arrangement of creation in spite of the fact that with critical consequences in every other circle of contemporary human presence. Enhanced correspondence lessened powerful separation for the transmission of data. Global phone and fax activity has turned out to be to a great extent momentary, modest and straightforward for people to get to.

The Internet gives a truly worldwide arrangement of correspondence and data. Satellite and digital TV and VHF radio have made a plenitude of decision in news and diversion. The expanded extension of data innovation in the previous couple of decades brought about an extraordinary development of "outsourcing" of administration on the planet over.

Amid the third wave, the procedure of data dealing with, transmission, stockpiling and recovery turned into the way to success and subjectively unique lifestyle. Accomplishment in pretty much in any field has turned out to be incomprehensible without data innovation. In cultivating, produce, instruction, policing, medication, diversion, managing an account or whatever IT is clearly set to change everything that people do in cutting edge social orders. Start of processing with broadcast communications is considered to spell the beginning of the new period of data and correspondence age.

Social media and digital technologies surround everyday life of urban city dwellers. The age of ubiquitous computing is almost here. As the technology is constantly developing in a rapid race, so are the applications and services that become utilized in everyone's daily life. Contacting with friends, organizing meetings, buying things and much more daily activities are happening now online. The new media and information technologies have impact on many aspects of everyday life in work, home or leisure

In this digital Era, social networking has already become a social norm for many of the new generation teenagers. Updating Facebook status, tweeting and posting photographs on Instagram have become everyday activities. Their life is reflected in social networking where there lies a lot of memories by posting images of their happy moments and recording some other emotionally important happenings and events.

Keeping in mind the modern trend of favoring virtual interaction over face-to-face contact, this paper, in opposition to several approaches stating that technologies can only encourage segregation of individuals, aims to present the ways of implementing ICTs tools in public spaces to regain their status as attractive places for people, incite meetings in real life and create lively city centers.

Each year, on 20 November, we celebrate Universal Children's Day. The day is linked to the Convention on the Rights of the Child and was first proclaimed by the United Nations on 20 November 1989 – long before the current digital era!

The UN Convention on the Rights of the Child (UNCRC) first defines a child to be

any human being under the age of 18; the definition of the child's age is particularly important in the child's right to protection. A second key definition is the right for the child to grow up in a family, while a fundamental aspect of the whole philosophy of the Convention is the right to respect and decide always in the "interest" of the child. The Convention is ratified by all states of the world (with the exception of the United States of America).

The social and economic impact of technology is widespread and accelerating. The speed and volume of information have increased exponentially. Experts are predicting that 90% of the entire population will be connected to the internet within 10 years. With the internet of things, the digital and physical worlds will soon be merged. These changes herald exciting possibilities. But they also create uncertainty. And our kids are at the centre of this dynamic change.

Children are using digital technologies and media at progressively more youthful ages and for longer timeframes. They spend a normal of seven hours daily before screens – from TVs and PCs, to cell phones and different computerized gadgets. This is more than the time kids go through with their folks or in school. Thusly, it can significantly affect their wellbeing and prosperity. What computerized content they devour, who they meet on the web and how much time they spend onscreen – every one of these variables will significantly impact kids' general advancement.

The digital world is a huge span of learning and excitement. In any case, it is in this computerized world that children are likewise presented to numerous dangers, for example, cyberbullying, innovation enslavement, indecent and rough substance, radicalization, tricks and information robbery. The issue lies in the quick and consistently developing nature of the computerized world, where appropriate web administration and strategies for youngster security are ease back to get up to speed, rendering them inadequate.

Children need special protection online and they need to be educated about how to steer clear of danger and how to get maximum benefit from their use of the Internet. To achieve this, children need to become digital citizens. The Internet exposes children to a wealth of opportunities, but also risks that may have a detrimental impact on their

human rights. Some of these risks include cyberbullying, data protection issues, online grooming, cybercrime and child sexual abuse material. With the right education and concerted efforts on behalf of member states, Internet service providers and educators, children can learn to successfully avoid these risks and to take advantage of the Internet's many opportunities.

The manner in which children utilize technology is altogether different from grown-ups. This gap makes it troublesome for guardians and instructors to completely comprehend the dangers and dangers that children could confront on the web. Accordingly, grown-ups may feel unfit to exhort children on the protected and mindful utilization of digital technologies. Similarly, this gap offers ascend to alternate points of view of what is viewed as adequate conduct.

So by what means can we, as guardians, teachers and pioneers, set up our kids for the digital age? Point of fact, it is basic for us to outfit them with digital intelligence



Digital Intelligence or ‘DQ’ is the set of social, emotional and cognitive abilities that enable individuals to face the challenges and adapt to the demands of digital life. These abilities can broadly be broken down into eight interconnected areas:

Digital identity: The ability to create and manage one’s online identity and reputation. This includes an awareness of one’s online persona and management of the short-term and long-term impact of one’s online presence.

Digital use: The ability to use digital devices and media, including the mastery of control in order to achieve a healthy balance between life online and offline.

Digital safety: The ability to manage risks online (e.g. cyberbullying, grooming, radicalization) as well as problematic content (e.g. violence and obscenity), and to avoid and limit these risks.

Digital security: The ability to detect cyber threats (e.g. hacking, scams, malware), to understand best practices and to use suitable security tools for data protection.

Digital emotional intelligence: The ability to be empathetic and build good relationships with others online.

Digital communication: The ability to communicate and collaborate with others using digital technologies and media.

Digital literacy: The ability to find, evaluate, utilize, share and create content as well as competency in computational thinking.

Digital rights: The ability to understand and uphold personal and legal rights, including the rights to privacy, intellectual property, freedom of speech and protection from hate speech.

Print media, with a present direct client base, and web-based social networking, with a present low client base, demonstrate the most noteworthy potential for utilization development and division extension sooner rather than later. Internet based life is as of now exceptionally prominent among youth, NGOs, rights-based promoters, columnists and persuasive chiefs – all key child rights stakeholders. In this manner, print and online networking present open doors for upgrading such

development by guaranteeing dynamic and quality consideration of child voices, child delivered content and the inclusion of different partners in the new extended media space that opens up.

Further, as a result of its wide achieve, the versatile stage opens up multitudinous openings. An imaginative idea in this field is the 'portable radio informal community' created by an Indian social tech organization to make a voice-based web based life stage for society's financially most distraught section: the provincial poor. This stage utilizes straightforward innovation and exploits the broad accessibility of cell phones, even in country regions, to make a space for sharing news and data. Through a keen IVR (intuitive voice reaction) framework that enables individuals to call into a number and leave a message about their locale, or tune in to messages left by others, the Mobile Vaani ([www. gramvaani.org](http://www.gramvaani.org)) is the provincial poor's Facebook and Twitter. It might be beneficial to consider extending and spreading the utilization of such imaginative strategies that consolidate broad versatile reach with other customary and new media structures to achieve a more extensive open through very much arranged and intelligent preparing.

Most media experts saw child rights-based news scope as exciting, urban-driven, and episode orientated, regularly with a political turn. The trigger for a media story is dependably an episode and a disaster fills in as a solid trigger point; the greater the catastrophe, the more prevalent the news thing. Occurrences, for example, child assault or child sexual mishandle are in this way promptly got by the media. Long-frame or digressive revealing is to a great degree uncommon; and arrangement based detailing or scope as to government productivity, e.g. the restoration of youngsters liberated in child work strikes, is woefully deficient. Columnists who set forth child rights-related stories are regularly demoralized by editors who encourage them to center rather around more hair-raising or exciting stories.

There have all the earmarks of being two key purposes behind the low amount and nature of child rights scope. Right off the bat, there is no unequivocal request from perusers and watchers, in this way the media is hesitant to swim into this region; as an

immediate outcome, there is no different child beat' in the Indian media. This, thus, prompts less stories and editors frequently appointing just junior journalists to cover child related stories. Also, there is amazingly constrained media comprehension of the child rights division, because of which numerous correspondents don't have the foundation learning or ability to suitably and extensively give an account of a kid rights issue or infringement that considers every single significant part of the circumstance; this prompts low-quality stories.

Quality TV programming exhibiting data on child rights and focusing on children as its group of onlookers is to a great degree uncommon. Many general amusement programs connect with child performing artists in cleansers or in aggressive reality appears, where various infringement of child rights occur, including 'mental mishandle' and youngsters being depicted in a grown-up like way, moving or mouthing discourse thought about improper for their age. There are a couple of prominent board syndicated programs that have contacted upon child rights issues however just a little level of the general points secured center around child issues. There are also several popular children's channels in India. Most of these offer a mix of high-quality local and international content, including locally produced animation. Some of the locally produced mythic animation programmes are very popular.

Four P's

The four P's verbalized here likewise draw on contentions made by analysts such as Greenberg and Weber (2008) about the digital propensity of 'Millenials' (those born since 2000), which emphasise what digital capability makes possible for many young people. The analysis which follows is offered not as an argument for technological determinism but rather in the spirit of better understanding children's lives and the implications for educators.

Pluralities: the virtual dimension to children's lives offers opportunities to engage and experiment with *places* to play, socialise and create, *people* to engage with and *activities* to participate in. *Extended literacies* (for example, with a greater focus on the visual) which are both possible and demanded in a digital medium enable exploration of other and multiple personal identities. Each of these pluralities inherent in the digital

context of children's lives, invites the posing of 'what if?' questions and also engagement in 'as if behaviours'. As Wegerif (2007) points out, digital space offers a dialogic medium for playing and learning which as Frasca (2003) notes, produce complex, reflective understandings in a community not often found offline. These pluralities are, then, dynamic. The dynamics exhibited in digital virtual spaces are characterised by Molesworth and Denegri-Knott (2005), as 'liminal'. Offering indeterminate, open, ambiguous opportunities, they enable transition between states or existential planes, and as such they argue that digital spaces provide arenas for shifts in culture.

Playfulness: in the varied online contexts they can inhabit, children and young people experience expansion of play worlds into extended make-believe spaces where 'acting as if' is a natural part of their exploration. At the same time these spaces - whether foregrounding social networking, gaming, generating content, or a combination of these - offer opportunities, driven by 'what if' thinking, to self-create through gaming, social networking and generating content of their own. Active players, the virtual worlds they inhabit alongside the actual, are emotionally rich spaces which offer complexity, connectedness and a networked playful world extending on into adulthood. An intriguing feature of this special digital playfulness is the sense in which it is possible to continue to play on as an adult into older age whilst other embodied options for playing (for example in the local play-park) are less accessible as a person grows older. Another aspect of this emergent and extensive playfulness is its umbilical link with consumerism; through their digital engagement, children and young people are actively engaged as discerning consumers.

Possibilities: in these virtual, multiple spaces for play, for connecting and constructing content, there are many opportunities for possibility thinking - or actioning the transition from what is to what might be. Broad and varied choices are offered, often enabling ways of co-constructing with others. These are highly creative spaces in which collaborative work (shared with others) and communal work (co-developed and co-owned) is developed; a distinction articulated by Craft *et al*, (2012).

Participation: continuous connectivity offers enticing opportunities for high participation. These are 'distributed social organisations' which are often self-managed

(Squire, 2006). Characterised by playfulness, pluralities and possibilities, and thus bringing together the first three P's articulated above, digital media seem to offer children and young people opportunities to take action, and to have their voices heard with relative ease. Online participation has an irresistible quality, which, drawing on Lyman *et al*'s (2004) analysis, can be understood as enabled by three elements:

- *Enacted imagination* (predicted by Hsi *et al*, 2005 and building on what Lyman *et al* refer to simply as 'imagination'). Hsi *et al* envisioned children could be 'creators, producers, and generators of imagination if provided with equitable access to digital media, human instructional resources, and technologies to develop digital fluency'. This turns out to have been highly accurate. A potent aspect of this *enacted* imagination, or imagination brought into action, is doing so with others.
- *Playful co-participation* (extending what Lyman *et al* name as 'communication'). The content generating, gaming and social networking inherent in digital technology assumes interaction with others and co-shaping of the social environment (Greenfield and Yan, 2006). What Lyman *et al* referred to in 2004 to as communication, seems more accurately in 2011 to be described as playful co-construction and co-participation given the stake felt by participants in, and access to, what is being developed – through instant messaging, blogs, chats, forums, e-mail, gaming, personal and other websites and so forth. In these co-participative playful spaces, the nature of friendship is itself changing (Palfrey and Gasser, 2008) although friendship online is frequently with people known in real life (Gross, 2004), nevertheless digital media make possible other connections beyond the embodied, here and now, connections meaning that playful co-participation can involve collaborating with virtual strangers. It should also be noted that gaming can be very serious; also that the use of gaming in education may not actually be motivational (Pelletier, 2009); the analysis in this article serves to articulate aspects of lived experience of children and young people outside of formal education (raising implications for education itself).
- *Making the voices of children and young people heard* Building on Lyman *et al*'s 'cultural production', which acknowledges opportunities through digital media for children and young people to make public co-representations of experience which are

then challenged, evolved, manipulated online by others, I would argue that such cultural co-production makes audible children's voices in a more political sense. The infrastructure itself is a potent tool for political engagement for children and young people as revealed in the work of Livingstone *et al* (2005) which showed how the technology itself offers and encourages creative civic participation and interactivity albeit in a spectrum of participation, ranging through what this particular research team called *interactors*, the *civic-minded* and the *disengaged* (ibid).

Digital media also offer children and young people opportunities to be highly visible (which of course brings risks including those of bullying, and to act as agents of change in their own lives and beyond (albeit within what are often highly marketized environments). Children and young people, then, are growing up in a vastly changing context. No aspect of their lives is untouched by the digital era which is transforming how they live, relate and learn. Digital natives, as Prensky (2010) characterises them, are able (and expect) to work with information very fast, and to 'read' a wide variety of data including moving images in non-linear, parallel and often highly playful ways. Fast, active, digital connectivity with others through hand-held pocket-sized devices, is assumed and is played out in social networking learning communities (Kukulka-Hulme *et al*, 2009), Sharples *et al*, 2005), where players are mobile and engage in connected interaction, immersive gaming and through designing and generating content which combines still and moving images and sound.

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Contemporary Issues of Criminal Law in India: An Overview

Krishan Kumar

Abstract

The main objective of the criminal justice system is to safeguard and uphold the legal rights of an individual being a human, because all things would be secondary in the parallel of human rights, but human rights have always been an issue for the judicial system, which includes the process of analysing the facts and evidence with objectivity. How should this objectivity be maintained? This is the major issue in front of criminal law, which creates pathology for the protection of both accused and victim human rights. In the field of medical science, pathology is the study of the causes and effects of disease or injury. The word "pathology" also refers to the study of disease in general. Pathological labs have established some parameters for the human body; we can even say that pathological analysis has analysed the causes and effects that occur in humans and affect their behaviour. The Indian law system has some measurements for justice, yet there is always a need for changes in the parameters as per the need of the time. This chapter will try to find out some major issues related to criminal law, which have become a question for laymen to scholars, such as religion, caste, gender, culture, and technology affecting the justice system of India.

Keywords: caste, religion, gender, justice, human, bail

Introduction

Unlike many aspects of criminal law, one is related to defense, because humans have the right to life, which can't be denied by the state even by the worst crimes committed by anybody. That is why some countries banned capital punishment, and as per article 21 of India, which provides safeguards to every citizen from the atrocities of the state or any other type, as article 21 says that "No person shall be deprived of his life or personal liberty except according to a procedure established by law." Thus, Article 21 secures two rights; the right to life and the right to personal liberty. Article 21 of the Indian Constitution is a fundamental right and is included in Part-III of the Indian Constitution. This right is available to all citizens as well as non-citizens alike. The Supreme Court has described this right as the "heart of fundamental rights". It cannot be suspended during an emergency.

The right to life in article 21 of Indian constitution does not mean animal existence or the mere act of breathing. It guarantees the right to a dignified life. Some of the rights that are currently included in the ambit of article 21 includes (mentioned in Menaka Case);

right to live with human dignity., right to the decent environment including pollution-free water and air and protection, against hazardous industries, right to livelihood, right to privacy, right to shelter, right to health, right to free education up to 14 years of age, right to free legal aid, right against solitary confinement, right to a speedy trial, right against handcuffing, right against inhuman treatment, Right against delayed execution, right to travel abroad, right against bonded labor, right against custodial harassment, right to emergency medical aid, Right to timely medical treatment in a government hospital, right to a fair trial, right of prisoner to have necessities of life. Women should be treated with decency and dignity. In the terms of pathology, these rights have become the parameters for the justice of an individual.

While numerous flaws and weaknesses impede the current criminal justice system, such as the slow pace of proceedings, bail issues, and so on, he (accused) will have an opportunity to share his/her views regarding his/her defense. The procedural method is time-consuming and typically tailored around the suspect's mindset, i.e., a structure reviewing the liberties as well as the objectives of the perpetrator rather than those of the sufferers. His is a question mark on the system. The current system has struggled to serve people with reliable as well as appropriate fairness while also guaranteeing that aggressive offenders face disciplinary actions. If we go back in history, there was no criminal law in Ancient Times. Society was uncivilized. Neither life nor property was safe in that society. At that time, people believed only in one thing: a life for a life. Then there is a need to find out how human beings survived in an uncivilised world. One answer came from the nineteenth-century side of Charles Darwin and Alfred Russel Wallace, which was based on the might is right, but in modern times, the state is working for inclusion, not exclusion, and its judicial system is aware of it.

It might be that it was the time of the theory of evolution. It is a shortened form of the term "theory of evolution by natural selection," which was proposed by Charles Darwin and Alfred Russel Wallace in the nineteenth century. The time changed and the people made laws based upon irreligion. They segregated the law according to their holy book and their culture. But it was also not the right way to get justice. The Indian Penal Code, which was introduced in 1860, is enforceable in part of the Indian Territory. It followed various English Common Law theories and concepts that were changed from time to time. One of the distinctive characteristics of the Indian Penal Code is that it follows the country's general code of criminal law. This includes the full spectrum of crimes. It is about security. Accident victims were linked to the human body, property, and reputation. Murder, abduction, rape, robbery, stealing, and other common crimes are listed below.

The term "defense" is commonly used, at least in a casual sense, to mean any set of identifiable conditions or circumstances which may prevent a conviction for an offence. Current law recognises a surprising number of such potential defences to conviction, ranging from amnesia to withdrawal. Upon examining the functions and the rationales supporting these rules and doctrines, five general categories become apparent. Failure of proof defenses, offence modification defenses, justifications, excuses, and none collator public policy defences are some examples. Failure of proof defences are nothing more than instances where , because of the " defence ," the prosecution is unable to prove all

the required elements of the offence , the objective conduct , circumstance , and result elements and their corresponding culpability requirements . Offense modifications are similar in that they essentially modify or refine the criminalization decision embodied in the definition of the particular offense. The remaining three groups of defenses—justifications, excuses, and no exculpatory public policy—year after year, massive numbers of criminal matters are registered in India's different courts, with countless cases still waiting at the end of each cycle.

That is why this chapter mentioned some major issues of criminal law in India, which have been raised by laymen to scholars. Social media is doing the character assassination for the TRP on the cases of rapes and murders; surrogate mothers face a lot of problems while there are a number of laws which should be followed during this mechanism of reproduction; acid attacks on women show that hard core punishment is not the real solution to crime; there is a need to analyse the contemporary issues related to criminal law and sociological study of crime; then genuine peace arises from a sense of brotherhood or sisterhood; from a sense of rest and concern for others.

Aristotle and his philosophy towards law

Aristotle views the state as natural. According to him, the state is a necessary condition for all humans. Like Plato, he doesn't differentiate between the state and society and, in a similar fashion, considers it essential for a good life. Thus, in his view, the state is a necessary condition of a good life. Any human being cannot survive in isolation, and thus, a man and a woman establish a household. A village is formed when a family expands itself, and when many such villages are formed, a state comes into existence. As and when a state is formed and society is organised, human beings can meet their needs.

It is for the same reason that the state's existence is as important and natural as the presence of a family or village. However, most human associations are flawed and help to fulfil one or a few facets of the good life, but that's untrue for a state. He viewed the state as being able to meet the whole or all facets of a good life.

It is important to understand why he perceived the state as natural for humans. According to him, there is no difference between an animal or a human being other than the fact that a human being has the desire and a sense of living a good life. What it means is that human beings become different from animals only if they exist in a state. It is the same desire to lead a good life that makes the formation of a state a natural thing to occur.

However, scholars later interpreted the state differently, i.e., Hobbes made the state and kingship everything; he supported absolute sovereignty, whereas Locke supported limited sovereignty, which sovereignty works for the will of the people and not any particular class; Locke's limited sovereignty has become a pathological dimension to provide justice.

The Supreme Court has said that there is a "pressing need" for the Union government to enact a law to restrain investigating agencies from arresting accused "unnecessarily" while stating that indiscriminate arrests are indicative of a colonial mindset and create an "impression of a police state," according to the Times of India. Delivering its verdict in *Satender Kumar Antil versus Central Bureau of Investigation*, a division bench of Justices Sanjay Kishan Kaul and M.M. Sundresh on Monday, July 11, lamented that "jails in India are flooded with undertrials".

While underlining that "bail is the rule and jail is an exception," the judges said the government may consider framing something like a "Bail Act" to streamline the process of granting bail. "Jails in India are flooded with under trial prisoners. The statistics placed before us would indicate that more than two-thirds of the inmates of the prison are under trial. Of this category of prisoners, the majority may not even be required to be arrested despite registration of a cognisable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate, but also include women. Thus, there is a culture of offence being inherited by many of them," Live law quoted the court as saying.

The judges said "unnecessary arrests" were due to violations of Section 41 (when police may arrest without a warrant) and 41A (any police officer may without a warrant, arrest any person who has been concerned in any cognisable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned) of the Code of Criminal Procedure (CrPC) and the directions issued in the *Arnesh Kumar judgment*. (The Wire, August 2, 2022)

For the urged of this statement, there is a need to analyse the criminal law of India and its major issues. Justice is a very important and sensitive issue because if you want to maintain peace in society, then we should promote the administration of justice. But Indian society is divided on the grounds of colour, culture, caste, and religion etc. but the most influential factor is caste. Caste is the pedagogy to understand Indian society. A single institution can't survive without the representation of caste's representatives, i.e., legislature, executive, and judiciary. So our statesmen dealt with caste issues based on their needs and the needs of society, for example, Mahatma Gandhiji accepted caste but with no superior and inferior, upper and lower concepts, and accepted it in the Varna System, saying that we are all God's sons and daughters. He accepted the beauty of Hindu religion, but untouchability and casteism are the sins of Hinduism. So that is why our constitution makers adopted affirmative action in the name of reservation. Now in the Legislature, executive and judiciary, all have been working properly and represent Indian society, not only a single class or caste. (K.K. blog)

The marginalised people have only one thing and that is education, as per Nelson Mandela. Dr. B.R. Ambedkar and constitution makers did work as pathologists also, but not in medical science but in social sciences. They made some parameters for the ruler like a pathologist makes for the diagnosis of diseases, i.e. the preamble of the Indian constitution, which describes the harmony of Indians (We the People of India);

fundamental rights; fundamental duties; directive principles; division of powers among legislature, executive, and judiciary; division of power between the centre and states etc.

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Justice System Under the Criminal Law In India

Prahalad

Abstract

The primary objective of criminal justice system is to safeguard and uphold the legal system, which includes social management of the law, order maintenance, speedy procedures, discipline of criminals, making criminals fit for habitation through the legal process, and consolation to survivors of atrocities. Numerous flaws and weaknesses hamper the present criminal justice system. The procedural method is time-consuming and typically tailored around the suspect's mindset, i.e., a structure reviewing the liberties as well as the objectives of the perpetrator rather than those of the sufferers. The current system has struggled to serve people with reliable as well as appropriate fairness while also guaranteeing that aggressive offenders face disciplinary actions. Many facets of the justice system need to be revisited, especially in view of the rising concerns of criminal justice rehabilitation.

Keywords: Criminal Justice System, Adversarial, Inquisitorial, Law Commission, Human Rights, Courts, Police, Bail,

Numerous Element of Criminal Law in India

The law of crimes is a multilevel institution made up of several parts that act with each other or individually to achieve a shared goal. These groups make rules that inform us what behaviour is banned and impose punishments for performing illicit behaviour. These rules compel authorities to judge on culpability, and rehabilitating institutions to penalize or seek to educate convicts. These are (Gaur 2019: 230)

- Legislative acts: As a result, the practice of the criminal law institution begins with legislative activities. The legislature, on the other hand, does not represent an

institutional aspect of the system other than to emphasize that the foundation of the entire network is based on the legislation they pass, and their excesses must be monitored or eliminated.

- Legal administration: The second component of the criminal justice system is policemen or law regulating sub-systems. The policeman is tasked with maintaining tranquillity, law, and harmony, deterring violence, and apprehending violators of the rules. The majority of law enforcement agencies cannot operate in the absence of a police force unit. Legislators may pass several pieces of legislation, but the statute may be broken with liberty if the policeman fails to operate. Police, as the major law administration authority, should concentrate not only on the measures of enforcing various regulations, but also on their fair implementation.
- Adjudication: It is a court procedure that is subsequently broken into two parts, namely:

Prosecution-The attorney chooses how a potential offender will be prosecuted by the judicial subsystem. When the attorney believes the matter is severe, official charges will be filed. Nonetheless, he lacks the capacity to interfere.

Court- The function of the judges in the criminal justice system is highly significant and crucial than that of the policemen. The Judge's principal objective is to administer justice that is "fair, equitable, swift, and impartial." To maintain people's trust in the legal system, jury must carry out their responsibilities with utmost caution and attention. The chairman must keep in mind that his judgment in the matter will provide the suspect and sufferer a favourable or negative picture of justice or inequity, regardless of whether the defendant is acquitted or convicted rightfully or unlawfully. The primary requirement for justice is a judiciary that is free, neutral, and efficient. It is illegal as well as unreasonable to convict someone in ignorance. In a liberal society, the "rule of law" is the functioning mechanism of justice. (collegium-system-indian-judiciary-needs-be)

- Detention institution: The crucial final element of law of crimes is prison. The Rehabilitation Operation makes an effort to change criminals so they won't breach the law repeatedly. It is thought that criminal punishment deters many people from breaching the law. In the correctional system, there are primarily two options: parole and jail, both of which have specific rights limits. In addition to serving as disciplinary or corrective institutions, recovery centers—which consists of prisons, infrastructure, and other rehabilitation programmes including courts, courts for minors, and prison shelters—should also be seen as indicators of how well the criminal law is working?

Flaws of Existing Criminal Law

When an individual discovers that he or she did not receive the help or cure that they anticipated, he or she eventually loses faith in the structure of government. As a result, the system has become separated from the individuals for whom it was designed and cultivated over period. Further facts and conditions, in the form of elements, may exist that contribute to the state's difficulties:

- A lack of openness.
- Matters that are pending.
- Difficult treatments.
- Inadequate cooperation and systemic approach.
- Bribery.
- Individuals' scarcity of knowledge.

A court must give up the secrecy surrounding its procedures if it supports the legal system as its primary tenet. Another critical concern in the Indian judicial system is the pending lawsuit. A frequent saying is that justice delayed is denied justice and according to a 2017 poll, the Apex Bench now has approximately 60,000 cases outstanding. There are around 20 and 30 million instances in different nations. There are over 400 openings for judges in the nation's 24 High Courts. There are multiple outstanding appeals before the Apex Bench, and the judicial power has been declared invalid by the lower benches.

Significantly, cumbersome procedural regulation usually causes delays in the outcome of actions. Lack of control over case files and legal processes is a major cause of delays in resolving issues. The problem is exacerbated by unnecessary delays caused by simple solicitations or "strike calls". Many elements of the Criminal Law, including police, attorneys, the judges, and prison services, are frequently deficient in understanding and collaboration. Corruption is an old evil that has existed from immoral times. Bribery in the courts is on the rise as a result of delays in justice, poor availability, and abuse of authority, bribing, and the onerous impeachment procedure. Finally, abuse, delays and misunderstandings between individuals are often a problem because of scarcity of knowledge and understanding of the statutes and their procedures. Speedy punishment has always been a requirement of criminal law. The right to a swift trial lies at the heart of criminal justice, and fairness is invariably refused. Individuals suffer in a variety of ways as a result of the extended court proceedings of lawsuits. While he is honest, he has already endured psychic pain, social exclusion, and even financial handicap. Despite the fact that he is guilty, the delay damages his trust in the criminal justice system and renders him sceptical. As a result, it is critical to reduce as much delay in judgment as feasible in criminal matters. Even though the right to quick justice is not officially defined as a basic principle in the broad scope of Article 21, it is inferred. Article 21 grants everyone the basic right not to be stripped of their life or freedoms, unless through certain legal procedures. The method for denying anybody of their freedom is now clearly not "fair, humane, or equal unless that system assures a timely trial for adjudication of such a person's culpability," according to Apex Bench in *Hussainara Khatoon v. Home Secretary of State of Bihar* Apex Bench, in *A.R. Antulay v. R.S. Nayak* concluded that the basic right guaranteed by Art. 21 guarantees a speedy trial to determine the responsibility of such a person.

As per Apex Bench of India, Justices S.B. Sinha and Dalveer Bhandari -Speedy trial is one of the facets of the fundamental right to life and liberty enshrined in Article 21 of the Constitution of India and the law must endure reasonable, just and fair procedure which has a creative connotation.

A few stages have been taken to facilitate the goal of open cases. Specifically, in light of the proposition of the eleventh Finance Committee, the Central Authority chose to lay out a synopsis court of 1734 to settle well established issues in the region. Includes simplification of courts, lower courts, and rules and procedures. The fast-track court would prioritize the resolution of old session matters and those including prison trials. Extended civil lawsuits would likewise take precedence over new ones. (Fast-track-courts)

The government has formed a committee on Criminal Justice Reforms of 24.11.2000, which submitted its report on 21.04.2003, by Dr. Justice V. S. Malimath (Malimath Committee Report)

The basic purpose of the committee is to establish justice, which means punishing those who are guilty and protecting those who are innocent. The committee advised that the project's primary emphasis be on the safeguarding of the imprisoned. The committee discovered that the judges were badly handling the massive backlog of ongoing and new matters. In various regions of the world, the typical ratio of judges to Indian population is 10.5 to 13 per million, compared to 50 Judges per million. While the Indian government has devised a framework for managing Fast Track Courts proceedings.

Violations of Rights of Human in the Criminal Law

These are rights that everyone is born with. This is unalienable and fundamental. Human rights are the fundamental freedoms that a person enjoys just by virtue of being a part of the human race. The criminal justice system, including the police, judiciary and prisons, plays an important role in strengthening human rights, thereby protecting the civil liberties of its citizens. Nonetheless, police and jail cruelty violates human rights ideals. The Indian Constitution, as explained in several Apex Bench judgements, guarantees security of human rights in accordance with global norms, such as in *Maneka Gandhi v. Union of India*. The Apex Bench ruled that no one should be arbitrarily arrested, detained, or exiled. As per Article 21, no one shall be stripped of life or personal freedom unless in accordance with the legal procedure. Since the Apex Bench judgment, the process under Article 21 has had to be fair, just, and rational, and it cannot be random, unjust, or inappropriate. In *Sunil Batra v. Delhi Administration* (AIR 1980), The

Apex Bench ruled that putting under trial detainees with offenders violates the standard of rationality under Article 19 or justice under Article 21. In *Sheela Barse v. Union of India*, The Supreme Court stressed that detention of minors is degrading and harmful to their growth and development and should not be detained. The court also ordered that if an allegation or first information report was filed against a child under the age of 16 carrying a maximum sentence of seven years in prison, the investigation would be completed within three months. If not completed within three months, the proceedings against the child will be considered discontinued.”

The Human Rights Commissions Act of 1993 establishes state and national human rights commissions to complain about violations of human rights and governmental apparatus, to prevent such violations, and to promote the effective implementation of the Constitution and national security.

Present Condition

Our law enforcement framework is obsolete, outdated, and male centric, taking into account that huge analysis is exacted at public and worldwide discussions when basic liberties issues are tended to. Where the analysis comes from our own basic freedoms advocates, researchers, creators, writers, the heads of law enforcement frameworks maintain cautious quiet, serious areas of strength for however comes from global (unfamiliar) outlets, like Amnesty International, World Watch, and so on. Actually, quietness and dismissal are generally agonizing and unrequested. The incongruity is that 2/3rd of the law enforcement framework including regulation penitentiaries actually mishandles basic liberties and sustains human maltreatment, and the small 1/3rd of the legal executive (specifically through a peak court) looks to secure and maintain common freedoms. To solve this dilemma, we established the NCHR, with all positive aspirations of resolving the problem and addressing serious human rights concerns in the nation. Unlike the Apex Bench, the Commission has a very comprehensive agenda, which makes little sense of optimism. The country is in a tough condition, both domestically and globally, since human rights breaches have become regular, and our views and sentiments are defined by a loss of faith. Our human rights record, according to Justice Krishna Iyer, is “proving deception and promise of absurdity.” Despite the fact that its instructions for

police, jails, and other institutions were followed rather than violated, the Apex Bench, the guardian for human rights, could only make minor revisions. The Writ Courts are too far away and too pricey to assist impoverished and uneducated sufferers of human rights infringement. The rights presently granted by the courts are fictitious in the apparent lack of cooperation. In addition, Justice Krishna Iyer stated:

“Rights, however, solemnly proclaimed and entrenched in great instruments are but printed futility, unless a puissant judiciary armed with legal authority. Remedial process and jurisdiction, operational and pragmatic, transforms the jurisprudence of human rights into public law of enforceable justice.”

Within the human rights regime, there is a significant mismatch among statutory pronouncements and enforcement capabilities. This indicates that the situation is characterized by serious violations of civic and diplomatic freedoms, financial, societal, and intellectual rights. (Human Rights 2022)

Major changes in the Indian criminal law

“The advent of the Information Technology Act, 2000, the Criminal Law Amendment Act, 2013, the Criminal Law Amendment Act, 2018, and several important judgments of the Apex Bench of India resulted in significant changes to these statutes”.

These modifications are intended to reform the whole legal system.

One of the most significant modifications made to these laws is the removal of the phrase “excluding the State of Jammu and Kashmir” in the “Jammu and Kashmir State Reorganization Act of 2019”. It is the first stages in ensuring that laws are applied consistently. (indian-criminal-law 2022)

Modifications Implemented in the Criminal Law Amendment Act, 2018

Rape of females and minors is made an offense under the Indian Penal Code (IPC) of 1860 and the Protection of Children from Sexual Offenses (POCSO) Act of 2012.

In IPC:

- The penalty under Section 376 has been increased as a result of this Act, with the sentence now ranging from 10 years to life sentences.
- A new sub- section was added after Sec. 376A-
 - a) Sec. 376AB- Strict penalty of at least 20 years in custody, life in jail, or capital punishment for rape of a girl under the age of 12.
- Certain sub- sections were added after Sec. 376D-
 - a) Sec. 376DA- It provides for prison life without parole for gang rapes on women under the age of 16.
 - b) Sec. 376DB- It stipulates that the sentence for gang rape on women under the age of 12 is life in jail.

In Cr P C:

- The times pan for investigating all rape instances has been decreased from 90 to 60 days under the Cr.P.C 1973, as a result of this Act.
- The Act prohibits anticipatory bail in instances of rape of underage girls under the age of 16, and any appeal against a rape conviction must be resolved within 6 months. (National Law Commission 1980)

Judgments that directed the growth of criminal law:

Vishaka v. State of Rajasthan

This incident included worksite sexual harassment. The Supreme Court outlined specific criteria for recruiters, other duty bearers, or organizations to follow in order to promptly avoid sexual harassment. These are known as the Vishaka Guidelines.

Aruna Ramachandra Shanbaug v. Union of India

The Apex Bench declared that people have the privilege to end their lives with honor, allowing for rules on voluntary euthanasia.

Mukesh & anr. v. State for NCT of Delhi & ors.

This judgement led to introduction of Criminal Law (Amendment) Act, 2013 and definition of rape under the Protection of Children from Sexual Offences Act, 2012, the Indian Evidence Act, 1872, Indian Penal Code, 1860 and Code of Criminal Procedures, 1973.

“National Legal Services Authority v. U.O.I

This lawsuit contributed in transgender people being recognized as a 3rd gender. The Apex Bench also directed the authorities to take them as minorities and to increase quotas in schooling, employment, and other areas.

“Shayara Bano v. Union of india – triple talaq judgement

The Apex Bench outlawed the outdated tradition of 'triple talaq,' which gave power to the Muslim males to impulsively end their weddings by saying the word "talaq" three times without having any provision for maintenance or severance.

Navtej singh johar v. Union of India – sec. 377 IPC Decriminalised, the Apex Bench stated that Sec. 377 was unconstitutional “in so far as it criminalises consensual sexual conduct between adults of the same sex.”

Suggestions for Improving the Criminal Justice System

Judicial backlog are harmful that kills the complete judiciary. Lawsuits have been ongoing in court for more than 15 years. Who is to blame: the policeman, the attorney, or the bench of judges? Delays in case disposal and backlog in criminal courts should be put on the criminal justice system or the policemen. Listed below are some proposals or aspects that must be capable of activating and strengthening legal procedures:

1. The competence of judicial officials and justices is appropriately expanded in lower and high courts. There should be no openings in the courts. With integrity, the judiciary draws fresh and brilliant individuals.
2. Given the powerlessness of legal authorities to determine defers in criminal cases, the abilities of senior adjudicators or justices might be abused by the foundation of exceptional courts to be driven by them.

3. India today aspires to be a completely digitalized nation. However, the Indian law has been rejected for an unknown reason. That ought not to be the reality. From beginning to end, the Indian legal system should be totally digital. It saves a lot of effort on contextual explanation.
4. The goal of our criminal justice system must be to bring justice as quickly as possible.
5. The judicial authorities must be thoroughly prepared. Forensic education should also be provided. In view of fast societal change, they will organize retraining programs. The entire spectrum of violations in respect of cognizable and ignorant offenses must be re-examined. Numerous unresolved incidents might be recognized.
6. The old and illogical acts must be repealed. The lawmakers should exercise caution in increasing the number of criminal statutes.
7. As a consequence of globalization and economic expansion, new types of violent activities such as structured crimes, insurgencies, and terrorism developed. A specialized police unit should be established to investigate these incidents. As a result, police and investigative agencies receive extensive preparation as well as modern facilities and infrastructure.
8. Police violence, police misbehaviour, jail maltreatment, and police abuse should all be dealt with properly and effectively. Senior police officials must form a committee to deal with the problem seriously, and unfair police officers should be reprimanded and made accountable to compensate survivors of their wrongdoing.
9. Correctional facilities must be improved.
10. Plea procedures may also be utilized to lessen the massive case backlog.
11. Finally, in light of the fact that the legal executive is a part of government, occasions in the courts ought to be equivalent to in other leader parts of government. Summer travels and expanded occasions in courts don't matter. The long stretches of work will be like those of each and every other government organization.
12. In addition to ensuring that citizens receive prompt justice, we believe it is critical to make the judicial system more affordable to them. Citizens are discouraged

from bringing their issues to court due to the hefty expenses of lawyers. According to Justice V.R. Krishna Iyer, the procedure must be “stagnant, informal, adaptable, empathetic, realistic, and free of legal difficulties”.

Conclusion

India faces the test of working on basic freedoms in the home-grown law enforcement framework by further developing the policing without compromising the social development and attachment of the country. Rather than confronting global analysis of the common liberties circumstance or effectively captivating in amendments and healing activities, the foundation of the National Human Rights Commission ought to truly endeavour to perceive basic freedoms infringement in wrongdoing counteraction exercises. . Responsibility has an effect. The settlement will comprise of fortifying the neighborhood common freedoms local area and eventually restoring its standing on the worldwide stage. It tends to be contended that assuming the law wiped out these gatherings, the Indian overall set of laws could be viewed as the most grounded general set of laws on the planet. Essentially, a reasonable man's confidence in the law can be re-established to the mark of misfortune.

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Comparative Study of The Juvenile Delinquency Cases Through International Perspective: Challenges And Opportunities

Mr. Sanjeev Ghanghash

Abstract

Children are the fragile most part of any society and that is why they need special protection. On the basis of their vulnerability, there is always a scope of their exploitation which ultimately leads their entrance in the environment of crime. So, it is the moral responsibility of the state to safeguard the interest of the children.

This study examines juvenile delinquency and justice from an international perspective. A major worry is juvenile criminality. Numerous juvenile offenders also have complicated needs as victims, necessitating a public health strategy that strikes a balance between welfare and justice approaches. However, there are inconsistent and insufficient legal systems, as well as a shortage of qualified workers, all over the world. Legal, psychiatric, and developmental sciences are all included into the multidimensional study of forensic child and adolescent psychology, which has been formed in the UK and other high-income nations globally. It is consequently a better method of addressing the issue of juvenile delinquency since its adoption of an evidence-based therapeutic intervention philosophy has been linked to larger reductions in recidivism than punitive techniques frequently used in several nations throughout the world.

Keywords: Juvenile, Justice, Criminality, international perspective.

Introduction

The menace of juvenile delinquency has been not restricted to India only, it has spread its arm to the whole world. Internationally also it has attracted so much of attention and so many legislations have been coming into force internationally to curb the problem of juvenile delinquency. Now in the times of globalization, the connectivity between the nations has increased multifold times and this connection has not been increased by air

only but it has increased through the internet and social sites and now people sitting in India and America are no longer a stranger to one another. Despite all these similarities between all the nations the delinquency rate is different in all the countries of the world. This makes arduous for us to determine the exact impact the juvenile delinquency has on the world population. The League of Nations had adopted so many of the measures to curb the menace of the juvenile delinquency and similar kind of measures had been taken by the United Nations but the same are not binding on all nations, those were only recommendations. India had adopted the convention of United Nations on rights of child in 1992. Right of children has been recognized worldwide. There were so many of the treaties and conventions that were given by the international platforms like: Declaration of the Rights of Child 1924, Geneva convention 1949, United Nation declaration of the rights of child 1959, international covenant on civil and political rights 1966, Convention against Torture and other Cruel, Inhuman or Degrading Treatment Or Punishment, 1984 and many more that had been adopted before 1989.

UNESCO proclaimed the year of 1979 as the international year of the child with the following objectives: -

- a.) To promote the advocacy on behalf of the children and to increase the need of giving the special care and attention towards children by the law and policy makers.
- b.) Development plans for the children should be a part of the economic and other development plans for having the long term sustained benefits for the children at both national level and international level.

So the internationally every country acknowledge the rights of every child who are accused of any penal laws enforced in respective countries in a manner consistent with the benefit and development of the children so that children must have the sense of dignity and worth toward the rights and freedom of the others in the society so that on attaining the maturity juveniles become the good human being in the society.

The well-being of a country depends on the welfare and good health of the children of that country, and therefore they need special kind of preservation and observation of the society and the State has a duty towards the children to take care of them. Children are innocent, helpless members of every society so that is why they need a special care and

protection so that they grew into the useful member of the society and make countries image good internationally. Children are the sculptures of the future of the nation so that's why they need special protection from all kind of abuses and exploitation and provide them with opportunity to grow in the healthy and safe environment. Giving birth to the child without having means to provide nourishment and neglects the child after giving birth to the child amounts to the implied offence.

The future of any country can be predicted based on the treatment they are giving to the children of their nation and what measurements they have taken in the direction of providing safeguards to the children and how far they are succeeded in their mission. Because the success of this mission only predict that how far the country succeed in implementing the provisions that are internationally accepted and failure of the mission shows that the country has taken the inadequate steps to curb the problem of juvenile delinquency. The World Youth Report (2003), described the juvenile delinquency around the world, shows that figures of children in difficult circumstances approximately increased from 80 million to 150 million between the period of 1992 to 2000. Internationally this menace has been reached to an another level and this has to be curb by taking proper measures otherwise the future of our planet earth is in peril and everyone has their own responsibility towards it.

Geneva declaration of the rights of the Child, 1924

This declaration recognized for the first time specifically, the existence of the rights of the children and responsibility of the adults and the state towards the children. After witnessing the repercussions of the world war 1, it was felt the need of special care and protection to the children. This declaration talks about the welfare of the children and recognize the rights of the child to development, assistance, relief and protection.

The needs of the children were discussed in this declaration in five points that are:-

- 1) Children who is hungry must be fed with food, the child that is ill must be provide treatment, the child that is backward must be given help by others, the delinquent child must be rehabilitate and the destitute children must be provide with shelter.
- 2) The child must be given with an opportunity for its development mentally and physically.

- 3) In the times of distress for the nation, the child must be first to receive the help.
- 4) The delinquent child must be trained in such a way that he must be capable to earn livelihood for himself.
- 5) The child must be nourished in such an environment that his talent must be devoted for the service of the nation.

Universal declaration of Human Rights (1948)

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty”.

Explanation- this article means that the all rights and freedoms enshrined in this declaration is to be given to all different kind of population living in the society irrelevant of that of which age is that person whether he is rich or poor, male or female and the same is to be given to the juvenile delinquents also.

“No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms”

Explanation- this article tells indirectly that no juvenile delinquent should be treated like a slave and it should be kept in mind that children are the future of nation and special care and protection should be provided to them from all kinds of exploitation.

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection”.

Explanation – this article of the declaration tells that everyone included the children has a right to have the adequate standards of living. And the same applies to the juvenile delinquents as well because they are not mature enough to think of what is good and what

is bad for them so they are in the position that the juvenile delinquents through the proper guidance and teachings, we can make them good citizens of the country and it is possible that on providing good art skills and training in different occupations they can earn good earning for themselves and for their families and there will not a single reason for them to enter into the world of crime again and they will live peacefully in the society with the other members of the society. This article also talks about the protection of children and their mother from any kind of exploitation in every aspect of their life so that they can enjoy their life to the fullest and do not of anybody in their life.

International Covenant on Economic, Social and Cultural Rights, 1966.

“Special measures of protection and assistance should be taken on behalf of all children and young person without any discrimination for reasons of parentage or other conditions. Children and young person should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labor should be prohibited and punishable by law.”

Explanation – this covenant contains 31 articles and this specific article deals with the children and it provides that special steps to be taken by the respective states in their country and make additions in their respective laws for the having the special protection and help to the children and young person without paying attention to the parentage of that children it means that protection should be provided to all either he is a child of poor or he is a child of a rich person.

International Covenant on Civil and Political Rights, 1966

“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. 2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile

offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status”.

Explanation – this article provides us information that all the person who are detained is to be treated with respect and provide humanly treatment within the prison. This article also tells that the juvenile delinquents are to be kept separated from the adult criminals and juveniles trial should be complete as soon as possible so that their rehabilitation can be done expeditiously. And punishment should not be the motive of the court, their motive should be the reformation of the juvenile delinquent.

“In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation”

Explanation –this article provides information that where the offender is juvenile in that case the procedure should not be the same as of adult criminals, the procedure should be adopted by keeping in mind the tender age of the offender and the need of promoting their reformation. Article 14 also tells us that the judgement in the case of juvenile should not be made public keeping in mind the future of the children.

“Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women”.

Explanation- this sub article points out towards the principle that the juvenile delinquents should not be treated like an adult criminal due to the special circumstances in the life of juveniles and most importantly we should not have the mind set of punishing the juveniles, we should have mindset of reforming the juveniles so that is why the most harsh punishment like death penalty should not to be given in any circumstances to the juvenile delinquents.

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation”

Prosecution has to prove more than the guilty mind against the juvenile offender. This article said that no accused shall be treated with torture and in human treatment in the jails and prison homes.

The United Nation minimum Rules for Administration of Juvenile Justice, 1985

These rules are also known as Beijing Rules framed in 1985. These rules were adopted on 29 November 1985 by the United Nation General Assembly. These guidelines laid out the common principles and rules for the investigation, prosecution, adjudication and disposal of juvenile cases and institutional and non-institutional treatment. The most important concepts of these rules and which till now had been ignored in the enactments are discussed as follow: -

- a.) The concept of diversion- the concept of diversion is to move away the child from the system. It is based on the basic principle that if the child has to gone through the criminal justice system then it results in the filthy mark of criminality on child and this will amplify the criminal content in him. Hence there is a need of minimizing the contact with the present criminal justice system. It also imposes the duty on the police and other authorities to divert the child away from the tough criminal system.
 - b.) The serious punishment must be detention only- the basic principle behind this rule is that the detention if imposed it must be for the shortest period of time and detention must not be a first wish of the court while dealing with the juvenile delinquents.
 - c.) Emphasize on the welfare of the young children- these rules ensure that any action taken against the juvenile delinquents must be taken by keeping in mind the circumstances under which the child had committed crime.
 - d.) Presumption of innocence- until the crime is proved beyond the reasonable doubt by the prosecution, child is presumed to be innocent.
 - e.) Opportunity to be heard- juvenile delinquent must have the opportunity to express himself freely in front of court and proceedings must be encouraging for the children.
 - f.) Goal of institutionalization- goal must be to helping the juvenile in becoming the good member of the society free from delinquency.
 - g.) Focus to be given on social background, family- for providing adequate service
- “In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity” .*

Explanation- this Beijing rule talks about the age of criminal responsibility. The minimum age differs due to history and culture of the society. The contemporary approach is to check whether a child is having a moral and psychological components of criminality; that is, whether a child, by virtue of her or his individual thinking and intelligence, can be held guilty for the delinquent behavior.

“The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence”.

Explanation- rule 5 of the Beijing Rule talks about the two important goals of the juvenile justice system. First is to promote the welfare of the juvenile and second is to provide punishment by keeping in mind the gravity of offence. The individual personal circumstances of the children should also to be taken into account like family situation, economic situation of the family and family background of the child. This principle is known as the “principle of proportionality”. This helps in reducing the penalty of the delinquents,

“Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings”.

Explanation- rule 7 emphasize on the point that shows the components of the fair trial. It also talks about the right to remain silent and speak with the help of the counsel and has right to appeal against the orders of the court to the higher authorities, right to remain silent also enshrined in the Indian constitution in article 20.

“The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labeling. In principle, no information that may lead to the identification of a juvenile offender shall be published”.

Explanation- rule 8 of the Beijing rule deals with the right to privacy of the juvenile delinquents and it shows us the stigma which is going to be attached with the name of children that he is criminal or a bad person throughout his life which will never let him to

start a new life after coming out of the reformatory institution. That is why the name of the juvenile delinquent should not be mentioned anywhere and his identity must be kept in disguise.

“Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority. The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules”.

Explanation- rule 11 of the Beijing rule deals with the rule of diversion and it means that wherever it is possible, juvenile delinquent is to be dealt outside the court without getting into the harsh procedure of the court, that most of the times bring fear in the mind of the children. This diversion system tends to protect the children from the stigma of the criminal in the eyes of the society and police and other authorities are empowered to dispose of the cases of the juvenile delinquents outside the court system. Rule 11 also has the provision of setting the case of the juvenile delinquent by the community based diversion system which means the other members of the society can bring the children on the right track through the guidance and discussions. In order to fulfill the above functions, police officers who exclusively deal with juveniles and who are specifically engaged in the safeguard of juvenile crime shall be specially trained. As police firstly came in contact with the juvenile delinquents so, it is most critical that they must act in an appropriate manner.

“Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time. Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults. While in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality”.

Explanation- Rule 13 talks about the detention of the juvenile delinquents in the prison and it tells that detention must not be the first choice of the court in dealing with the

matters of juveniles, it must be the last option. And if court finally decided to give imprisonment to the juvenile delinquent than it must be for the shortest period of time. This rule also provides that the juvenile delinquents in that case must not to be kept with the adult hardcore criminals otherwise it would be futile to make separate provisions for the children because like this the children will imbibe the characteristics of that criminals. This rule also provides that while the child is in the custody, all necessary care and protection must be provided to them. Both mental and physical assistance shall be given to the juvenile delinquents while they are in custody.

*“The disposition of the competent authority shall be guided by the following principles:
(a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;
(b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum; (c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response”.*

Explanation- rule 17 of the Beijing rule deals with the guiding principles to be kept in mind by the competent authorities while dealing with the juvenile delinquents and these principles talks about that the strict punitive viewpoint must not be appropriate in the case of juvenile delinquents, it may be a correct approach in the case of the adults. This rule also points out at avoiding incarceration of juveniles in the prison unless there is no other alternative punishment left that will preserve the public safety.

“Capital punishment shall not be imposed for any crime committed by juveniles”

“Juveniles shall not be subject to corporal punishment”

“The competent authority shall have the power to discontinue the proceedings at any time”

Explanation- the above rules are the most important rules of the Beijing rules. These rules are against the capital punishment for the juvenile delinquents because they are the delicate most part of our society and they don't have the fully develop mind to decide what is morally wrong and right. So if such children are destitute and abandoned and they

have nobody to teach them about the norms of the society than it is the duty of the intelligent being of the society to take the full responsibility to provide guidance to such children and if they do something wrong then capital punishment is not justified for them. This rule also provides that corporal punishment should not to be given to the juvenile delinquents. Corporal punishment means the use of physical force against the children in order to redress the juvenile delinquent. In corporal punishment the adults make the use of sticks, waist belts etc. to cause pain to the children. Various researches on corporal punishment on the children shows that this results in the juvenile delinquency, distorted relationship of children with their parents, depression, suicide etc. therefore this method is not suitable in redressing the juvenile delinquents, there are lot more methods by which we can reform the children like guiding them with the moral teachings and adopting the disciplinary method etc. The competent authority has the power to pause the proceedings at any time as they deemed fit.

The United Nation Convention on the Rights of the Child, 1989

This united nation convention on the rights of the child was adopted on 20th November, 1989. India ratified this convention on 11th December, 1992. This convention was very important internationally in framing the rights of the children. This convention is the basis of work of UNICEF. This convention is the most ratified convention internationally by the all the nations in the history. This convention has 54 articles. These articles consist of all the aspects of life of the children. This convention also explains that how government should act along with the adult members of the society so that all the children should celebrate their respective rights.

“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.”

Explanation- Article 2 of the convention talks about the nondiscrimination. “Non-discrimination” has been recognized by the Committee as a general principle of fundamental significance for execution of the complete Convention. Discrimination against the handicap young children reduces their living prospects and their standards of life. These children need the care, food, development and motivation offered from other children. There is also a need of an additional assistance in order to ensure their overall development and the accomplishment of their rights. In some nations, a clause against discrimination is added into their countries constitution and therefore applies to all children in entire nation. In others, principles against discrimination are covered in human rights legislations with special reference to young children.

“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”.

Explanation- Article 19 of the convention talks about the protection of children from all kinds of the abuses and violence. The State is under the duty to protect children from all forms of violence, injury, neglect and provide support to those who have been abandoned and mistreated and to find out the cases of abuse in the state. States authorities must take suitable steps to ensure that all children are preserve from all forms of exploitation by giving a special attention to all forms of abuse and neglected behavior that comes under this age group. Specifically, they must adopt special measures to develop the physical and mental wellbeing of juvenile with disabilities, who are vulnerable to such abuse, neglect. States authorities must also make sure that children affected by economic conditions, who are socially excluded are not indulged in criminal activities. In this regard, financial assistance need to be given to them to promote their welfare so that they will not indulge in anti-social activities to make the both ends meet. Policies and strategies that are adopted by the state should be reviewed regularly and get amended according to the need of society. In framing these measures, States has to take into consideration, the evolving capacities of children and involve them in developing measures designed to protect them from all kinds of violence.

“States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”

Explanation- the above mentioned provision is of Article 37 of the United Nations Convention on the Rights of the Child, 1989. And this provision is very important in terms of juvenile delinquents as many suggestions are provided in this article for the welfare of the children delinquents. The State is under duty to secure that no child must be an issue to cruelty, wrong treatment from other members of society, death penalty, imprisonment for life, corporeal punishment and illegal arrest or deprivation of liberty and freedom. A child who is bereaving of his liberty must be treated with respectful manner and in a way that is pertinent to his age. Children who are imprisoned must be separated from adult's criminals and have the right to meet with family, and have access to legal assistance. Juvenile delinquent who are imprisoned or detained in the prison must have the right to appeal to the higher authority, so that the justice must not be remaining haywire.

“States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human

rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law.

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.”

Explanation- Article 40 of the UN convention on the rights of child,1989 talks about the administration of justice for the juveniles. Children those are accused of, or having committed a crime, have the right to have a respectful behavior from the police

authorities because of their tender age. They must pay respect to the human rights of children. Children must be given an opportunity to have benefit from all the due process of law, including legal assistance and other benefits under law in preparing their defence like having the right to have a free legal aid and have the right against the press. States also has the provision of alternative procedures like setting of case and trial outside the court procedure by the diversion procedure. Measures to guarantee that resort to judicial proceedings and placement in the prisons can be avoided wherever there is possibility.

The United Nations rules for the Protection of Juveniles Deprived of their liberty, 1990

These rules are adopted by UN General Assembly on 14th December 1990. These UN Rules are useful for all the juveniles that are under the age of 18 years and who are deprived of their liberty. These rules are not binding on the respective states; these are only recommendatory in nature. These rules are very much important because they not only include the juvenile delinquents but also include those children who are bereaved of their liberty because of health and other reasons. It is significant to note that these rules provide high quality standards of human rights not only on being arrest of the person but also while he is in the institution. These comprehensive standard of human right are made available to the justice workers in their own countries language. These rules also suggests the states to include these rules into their legislation and review it time to time and amend it as per the need of the society.

“Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.”

Explanation- rule 17 of the UN rules 1990 deals with the presumption of the innocent for the juveniles who are under the trial and they should not to be treated like a criminal. This rule also talks about an alternative measure to be taken instead of sending them to the jails. United Nation has issued the guidelines for the framing an alternative measure

policy and this policy of must be based on the following criteria: • It must be overarching • pro-active approach must be there • participation of children must be there. A second alternative on which it is possible to decrease the cases of depriving a child of his liberty is through extra-judicial settlement of conflicts. it is useful when negotiations are based on the convenience and potential of the people concerned in the crime that is the juvenile delinquent and the victim and the circumstances leading to the crime.

“Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education”.

Explanation- Rule 38 of UN Rules for juvenile deprive of their personal liberty 1990, deals with the right of education. Some juvenile’s delinquents while in custody receive no education and learning. Certain kinds of minor children are especially at risk of violations of right to education and there are to many hurdles to their education or training. These are the children who are unable to speak the formal language or for children who are detained for tiny periods of time. Remedy to this problem is to create a special pre-trial confinement centres for juvenile delinquents.

The United Nations Guidelines for The Prevention Of Juvenile Delinquency, 1990

These guidelines are also called Riyadh Guidelines adopted by the general assembly resolution 45/112 of 14th December 1990. The meeting to adopt these guidelines was held in Riyadh that is why it is also called as Riyadh guidelines. These guidelines present the overall proactive approach for the prevention of the juvenile delinquency. These guidelines represent the detailed social strategies and economic strategies that include the almost every aspect of society like: family institution, school, media, policies, laws and administration for juvenile justice. These guidelines not only provide safeguard to gloomy situations but also promotes the overall wellbeing in the society. It ensures the

comprehensive development of the teenagers. It suggests the intervention of the society in dealing with the problem of juvenile delinquency and suggest that the conventional system of justice through the courts should only be a last resort. It consists of the plans that are to be implemented at every level of government and also suggest that there should be a co-ordination between the government agencies and non-government agencies. And the implemented plans must be evaluated regularly and can be amended in the times of need. It also suggests the participation of youth in this prevention. Riyadh Guidelines talks about the need to take care of the children who are destitute and helpless, who has the capacity to move towards the crime in the near future and it also suggest to sanction the status offences.

“Emphasis should be placed on preventive policies facilitating the successful socialization and integration of all children and young persons, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. Due respect should be given to the proper personal development of children and young persons, and they should be accepted as full and equal partners in socialization and integration processe”.

Explanation- guideline 10th of the Riyadh Guideline talks about the alternative solution of the problem of juvenile delinquency outside the formal justice system through the peer groups and voluntary organizations.

The Guidelines presents a good pro-active approach to prevention of the juvenile delinquency and for that reason called as very comprehensive. The Guidelines undoubtedly express a flourishing awareness that children are also human beings and it also demands the respect and care, an attitude which was very dominant in Western countries in the 20th century. The Riyadh Guidelines visualize a comprehensive approach for its execution. The guideline of securing social justice for children was strongly highlighted as a factor of protection. Indeed, the prevention was considered to be more than combating bad situations, but also to promote the welfare. The Riyadh Guidelines is a positive move in this direction. The Guidelines desires the nation parliament to enact and implement specific laws to promote the rights and welfare of young persons. Legislation must include the prevention of suffering, abuse, ill treatment. Good

Legislation needs to be enacted and implemented for provide opportunity for young children.

*“The institutionalization of young person should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance. Criteria authorizing formal intervention of this type should be strictly defined and limited to the following situations: (a) where the child or young person has suffered harm that has been inflicted by the parents or guardians; (b) where the child or young person has been sexually, physically or emotionally abused by the parents or guardians; (c) where the child or young person has been neglected, abandoned or exploited by the parents or guardians; (d) where the child or young person is threatened by physical or moral danger due to the behavior of the parents or guardians; and (e) where a serious physical or psychological danger to the child or young person has manifested itself in his or her own behavior and neither the parents, the guardians, the juvenile himself or herself nor non-residential community services can meet the danger by means other than institutionalization”.*¹

Explanation- 46 guideline of Riyadh guideline 1990 talks about that the institutionalization should be for the minimum period and that also to be given in the rare cases and the interest of the child should be of utmost importance. Member States must satisfy that there are sufficient legislative provisions to protect children from drug abuse, sexually harassment etc.

United Nations resolution on administration of juvenile justice (the vienna guidelines) 1997

This resolution of united nation gives an outline of information that is received from the of governments of different countries about the administration of the juvenile justice in their respected countries and how their nation is involves in framing of the provisions in their legislation and constitution about the application of the international rules and conventions and guidelines suggested from time to time for the administration of the juvenile justice system. These guidelines are proclaimed by the experts in meeting held in Vienna in February 1997. This document provides us a complete set of measures that are

¹Guideline 46th of Riyadh guideline 1990. Retrieved from <https://www.ohchr.org/EN/professionalinterest/pages/preventionofjuveniledelinquency.aspx> .visited on 6 may 2020 at 2.22 pm

to be implemented in the respected states for the well-functioning of the juvenile justice system in consonance with the convention adopted internationally at different times.

United Nation Ten Point Plan For Juvenile Justice 2000

Committee formed on the matter of rights of the child on 22nd September 2000, has organized a discussion on the violence against children. According to the penal in the meeting the following plan aims at reducing the violence against the juvenile in the justice system around the whole world. It is significant to make sure that the alternative justice system should take proper measures to prevent the violence against the children.

- This guideline says that the arrest should be for the shortest period of time and in no case more than 48 hours in the case of the juvenile delinquent.
- Every country should set the age of criminality and below this age there should be no criminal responsibility of the child delinquent.
- Warnings and admonitions can be taken as measures while dealing with the juvenile delinquents and harsh punishment must be avoided.
- Special courts for the juvenile should be established in the countries where the child under 18 years of age can be prosecuted.
- Contact of juvenile delinquent with his family must be maintained.

COMPARATIVE STUDY OF JUVENILE DELINQUENCY WITH OTHER COUNTRIES.

Juvenile Justice System in United Kingdom:

United Kingdom was the almost the very first nation who brings the special legislature on the juvenile delinquency. The British government in 1854, passed the Youthful Offenders Act. This act provides the authority to the court to put the young delinquents in the reformatory homes and it also provides the provision for the financial aid to these homes that are approved by the government inspector. Another Act called as Industrial Schools Act of 1857, this act give power to the courts to send the homeless children to the industrial schools and the minor persons who are regarded as the incurable by their parents are also to be sent to these schools so that their delinquent behavior can be cured. Probation Of Offenders Act of 1907 also talks about the juvenile justice system and suggest that the probation involves the termination of the sentence and also terminate the period under the observation.

The Criminal Justice Act of 1982, was enacted with the aim to strengthen the juvenile justice system in the country. This provides that the offenders of the age group 15-21 should provide the less imprisonment. The Crime and Disorder Act of 1998, gave approves to many white paper proposals. United Kingdom passed various laws that are dealing with the juvenile justice system in consonance with the various needs of the society that arose from time to time.

“This section applies where a youth court or other magistrates’ court is dealing with a person aged under 18 for an offence and— (a) neither the offence nor any connected offence is one for which the sentence is fixed by law; (b) the court is not, in respect of the offence or any connected offence, proposing to impose a custodial sentence on the offender or make a hospital order (within the meaning of the Mental Health Act 1983) in his case; and (c) the court is not proposing to discharge him absolutely in respect of the offence.

(2) If— (a) the compulsory referral conditions are satisfied in accordance with section 17 below, and (b) referral is available to the court, the court shall sentence the offender for the offence by ordering him to be referred to a youth offender panel. (3) If— (a) the discretionary referral conditions are satisfied in accordance with section 17 below, and (b) referral is available to the court, the court may sentence the offender for the offence by ordering him to be referred to a youth offender panel.

(4) For the purposes of this Part an offence is connected with another if the offender falls to be dealt with for it at the same time as he is dealt with for the other offence (whether or not he is convicted of the offences at the same time or by or before the same court)

(6) An order under subsection (2) or (3) above is in this Act referred to as a “referral order”.

(7) No referral order may be made in respect of any offence committed before the commencement of section 1 of the Youth Justice and Criminal Evidence Act 1999.”

Explanation- section 16 of the criminal courts act, 2000 provides that there is no offence committed by the person who is under the age that is prescribed by the law and authorities cannot impose the custodial sentence upon such person or court can make an hospital order if the health of the offender demands so. The youth offender panel to be

establish by the mandate authorities under section 39 of the Crime and Disorder Act of 1998.

Children Act of 2004, provides the provision for the framing of the children's commissioner for making the provisions for providing the services to the children by the local authorities, Service relating to the families for the overall development of the child mentally and physically. Child Benefit Act,2005 is the another act for the children passed by the British parliament. This act makes the provision that who are entitled for the benefit to be provided under this act and those are the persons who have not attained the age of 16. Another act Licensing (Youth persons) Act,2000 enacted in connection with the sale and administer of the intoxicating liquid to the person who is under the age of 18 years. The children who are below the age of 17years were kept under surveillance in remand home. The Children and Young Persons Act, 2008 provides the provision for the social work service that is to be provided by the local authorities.

Juvenile Justice System in United States of America:

Chicago Juvenile Court Act,1899 was the first landmark enactment in the history of America which deals with the juvenile delinquents. This enactment covers the children who violates the criminal law in America or any state ordinance and children who are below the age of 16 years. This act was further amended in the year 1905 and increase the age of boy to 17 years and to 18 years of girl. This enactment motivates the court to understand the child who violates the law rather than punishing them. This act talks about giving a separate imprisonment for the children and that too for the shortest period of time. Children Bureau was established under this act to investigate into the matters of the children and to report all the matters connected with the welfare of the children.

Juvenile Delinquency Control Act,1968 established for having a positive approach to the issue of the juvenile delinquency. American congress also passed another act called as the Omnibus Safe Streets Act of 1973, for controlling the delinquency among juveniles and the improve the existing juvenile justice system dealing with the delinquents.

The delinquent Act of 1974, laid down in front of us key demands that are necessary for the minors of America and that are: -

1. Deinstitutionalization of the juvenile offenders and transfer them from the various institutions to the family based surroundings.

2. A strong restriction on the justice system to put juveniles in the prisons.
3. In America the presence of the lawyer is not compulsory it is recommended only in courts so it should be made compulsory.
4. Special courts are to be set up to hear the juvenile's delinquents.

Juvenile Justice System in Canada.

Canada's juvenile justice system had undergone many changes till now. YCJA act of 2003 was enacted to reduce the rate of juvenile offenders in the country and to provide them the friendly environment for their treatment and this act promote the community based treatment for the delinquents. This chapter discuss about the advancement and growth of Canada's justice system for juveniles from the last twenty years. It considers the main reason that led to the enforcement of the YCJA and the implications the new law is having in country. The new legislation laid down some problems in present justice system, that have been not covered by empirical research to a significant degree. In this chapter, we provide various research findings that are useful for the policy framing and development.

Principles of the Canadian Youth Criminal Justice Act: -

The Act is framed on three basic principles. These state that the juvenile justice system is intended to: -

- Prevention of crime by referring to the circumstances under which a young person acquires an offending behavior;
- Reform young children who perpetrate criminal activity and reinstall them into community with the other members of the society; and
- To Ensure that a juvenile is properly rehabilitate in the society so that the other members of the society feels safe around them.

Conclusion

The Children's cover almost half of the total world's population. They are the future of humanity and are valuable asset of the nation. They inherit past from their parents and they themselves are the future of this country. They too have the right to live like all other adults of this country and also have right to grow freely. However, as the children are not conscious of their own rights, that is why they become the victims of abuse or got indulge in the delinquency.

At various national and international level, various initiative has been taken to provide them equal opportunities for their growth and development so that they become energetic citizen of our country having complete physical fitness, mentally conscious and morally strong, incurred with the various skills and full of motivation that are much needed by our society. There is a great need to protect the rights of the juveniles and prevent them from being exploited.

No child is criminal by birth, various factors and unfavourable circumstances of the society, innocence in children make the children an easy prey to criminality. There are various factors that are responsible for juvenile delinquency in our country like social, poverty, illiteracy, unemployment, economical, media influence on children, psychological factor, etc. among all of them most important cause lies with the family of the juvenile delinquent in which he lives. If any family member himself is a criminal that it is most probable that the child in family will also indulge in the crime and if on other hand, family members shows great concern in giving the good moral education at home and telling them the stories of Maha Bharat and Ramayana then it is evident that the child will move on the path of truth and morality and it would help to curb the problem of juvenile delinquency to a greater extent in our country, therefore the need is to find out the principal cause of the juvenile delinquency and then eradicate it totally, so that there will be no need to cure the children. Under this Act the courts are prevented to impart heinous punishment on the juvenile delinquents, the main aim and goal of this Act is not to punish but to rehabilitate the child. In this field, much endeavor are made by the Government by passing different laws. The motto regarding this problem is 'prevention is better than cure'.

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Criminal Breach of Trust under Indian Penal Code

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Abstract

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits 'criminal breach of trust.' The aim of this paper is to explore how the supreme courts & the high courts, in their various rulings have incorporated this concept.

Keywords: *Indian Penal Code, Criminal Breach of Trust, Entrustment, Property Criminal Misappropriation.*

Introduction

The Indian Penal Code, 1860 is the substantive law of crimes. It defines acts which constitute an offence and lays down punishment for the same. It lays down certain principles of criminal law. The procedural law through which the Indian Penal Code is implemented is the Criminal Procedure Code, 1973. Indian Penal Code consists of 23 chapters and more than 511 sections. It is a wrong committed by an individual in a society. It arises first when a state is organized, people set up rules, the breaking of which is an act called crime. Crime being a relative conception is an act defined by State as a crime. The concept of crime changes from time to time and as per the society.

Fundamental Elements of Crime

The basic function of criminal law is to punish the offender and to make people aware about the incidence of crime in the society. A criminal act must contain the following elements:

1. Human Being – The first requirement for commission of crime is that the act must be committed by a human being. The human being must be under legal obligation to act in particular manner and be physically and mentally fit for conviction in case he has not acted in accordance with the legal obligation. Only a human being under legal obligation and capable of being punished can be the proper subject of criminal law.
2. Mens rea: The basic principle of criminal liability is embodied in the legal maxim ‘actus non facit reum, nisi mens sit rea’. It means ‘the act alone does not amount to guilt; the act must be accompanied by a guilty mind’. The intention and the act must both concur to constitute the crime. Mens rea is defined as the mental element necessary to constitute criminal liability. It is the attitude of mind which accompanies and directs the conduct which results in the ‘actus reus’. The act is judged not from the mind of the wrong-doer, but the mind of the wrong-doer is judged from the act. ‘Mens rea’ is judged from the external conduct of the wrong-doer by applying objective standards.

Supreme Court in *Girjanath v. State* said that mens rea is a loose term. Intention, Negligence and recklessness are the important forms of mens rea.

(i) Intention:- Intention is defined as ‘the purpose or design with which an act is done’. Intention indicates the position of mind, condition of someone at particular time of commission of offence and also will of the accused to see effects of his unlawful conduct. Criminal intention does not mean only the specific intention but it includes the generic intention as well. For example: A poisons the food which B was supposed to eat with the intention of killing B. C eats that food instead of B and is killed. A is liable for killing C although A never intended it.

(ii) Negligence:- Negligence is the second form of mens rea. Negligence is not taking care, where there is a duty to take care. Negligence or carelessness indicates a state of mind where there is absence of a desire to cause a particular consequence. In criminal law, the negligent conduct amounts to mens rea.

- (iii) Recklessness:- Recklessness occurs when the actor does not desire the consequence, but foresees the possibility and consciously takes the risk. It is a total disregard for the consequences of one's own actions. Recklessness is a form of mens rea.
3. Actus Reus (act or omission): The third essential element of crime is Actus Reus. A human being and an evil intent are not enough to constitute a crime for one cannot know the intentions of a man. Actus Reus means overt act or unlawful commission must be done in carrying out a plan with the guilty intention. Actus Reus is defined as a result of voluntary human conduct which law prohibits. It is the doing of some act by the person to be held liable. An 'act' is a willed movement of body.

The Stages of Crime

1. Criminal Intention: It is the first stage in the commission of offence. Intention means doing any act with one's will, desire, voluntariness, malafides and for some purpose. In the IPC, all these varied expressions find place in the various sections of the Code. Intention can also be imputed under the law. For example, if a man drives in a rash and reckless manner resulting in an accident causing death of a person, the reckless driver cannot plead innocence by stating that he never intended to cause the death of the person. It may be true in the strict sense of term. But a reckless driver should know that reckless driving is likely to result in harm and can even cause death of the persons on the road, So, by virtue of definition of the word 'voluntarily' in the Code, a reckless driver who causes death of a person can be presumed or deemed to have intended to cause the death of the person.
2. Preparation: Preparation means to arrange necessary measures for commission of intended criminal act. Preparation itself is not punishable as it is difficult to prove that necessary preparations were made for commission of the offence. Under the IPC, mere preparation to commit offence is punishable as they are considered to be grave offences. Some of them are as follows:
 1. (i) Preparation to wage war against the government
 2. (ii) Making preparation to commit dacoity

3. (iii) Preparation for making fake coins or government stamps
3. Attempt: Attempt which is the third stage in the commission of a crime, is punishable. Attempt has been called as a preliminary crime. Attempt means the direct movement towards commission of a crime after necessary preparations have been made. When a person wants to commit a crime, he firstly forms an intention, then makes some preparation and finally does something for achieving the object; if he succeeds in his object he is guilty of completed offence otherwise only for making an attempt. attempt to commit a particular offence is a question of fact depending on the nature of crime and steps necessary to take in order to commit it.
4. Commission of Crime or Accomplishment:- The last stage in the commission of crime is its accomplishment. If the accused succeeds in his attempt, the result is the commission of crime and he will be guilty of the offence. If his attempt is unsuccessful, he will be guilty for an attempt only. If the offence is complete, the offender will be tried and punished under the specific provisions of the IPC.

Criminal Breach of Trust

The offence of criminal breach of trust, as defined under this section, is similar to the offence of embezzlement under the English law. A reading of the section suggests that the gist of the offence of criminal breach of trust is 'dishonest misappropriation' or 'conversion to own use' another's property, which is nothing but the offence of criminal misappropriation defined u/s 403. The only difference between the two is that in respect of criminal breach of trust, the accused is entrusted with property or with dominion or control over the property.

Entrustment

The first and foremost essential to be fulfilled for this section is "entrustment". Until and unless the accused is entrusted with the property the section cannot come into play rather, it would mean criminal misappropriation. The phrase used in section is "in any manner entrusted with property" which means it includes all types of entrustments into

its ambit, whether it be clerks, servants, business partners or any other person, provided they are holding a position of trust. It is wide enough to deal with all the cases, in which the property of the complainant or owner is voluntarily entrusted to the accused in any manner and is dishonestly misappropriated. the term "entrusted" found in the section governs not only the words "with the property" immediately following it but also the words "or with any dominion over the property". The entrustment may be expressed or implied.

In *Rashmi Kumar vs Mahesh Kumar Bhada* the Supreme Court held that when the wife entrusts her stridhana property with the dominion over that property to her husband or any other member of the family and the husband or such other member of the family dishonestly misappropriates or converts to his own use that property, or willfully suffers and other person to do so, he commits criminal breach of trust.

In the case of *Jaswant Rai Manilal vs State of Bombay*, it was held that when securities are pledged with a bank for specific purpose on specified conditions, it would amount to entrustment, same would go for the directors of the company, as to some extent they are in the position of trustee. However, if the money was paid as illegal gratification, there would be no question of entrustment.

Property

The definition in a 405 does not restrict the property to movables or immovable alone. In *R K Dalmia vs Delhi Administration*, the Supreme Court held that the word 'property' is used in the Code in a much wider sense than the expression 'moveable property'. There is no good reason to restrict the meaning of the word 'property' to moveable property only, when it is used without any qualification in s 405. Whether the offence defined in a particular section of IPC can be committed in respect of any particular kind of property, will depend not on the interpretation of the word 'property' but on the fact whether that particular kind of property can be subject to the acts covered by that section.

Dominion over Property

In the definition of Criminal Breach of Trust, the term property does not explicitly restrict itself to movable property. In the case of *RK Dalmia vs Delhi Administration*, it was held that the property in IPC mostly refers to movable property. But when the section itself does not restrict itself to the movable property then there is no limit to the kind of property being the subject of the offence. Hence, the interpretation of property as per the definition given in this section must be interpreted as per the facts of the each case.

The word 'dominion' connotes control over the property arising through that entrustment. The words "dominion over the property" connote control over the property arising through that entrustment. If a director of a company is in the position of a trustee and is handed over some assets of the company, then he can be said to have dominion over the property, i.e. control of assets. In a partnership firm although, the scenario is a bit different. Even though each partner is entrusted with the assets of the firm, it is not an entrustment which is meant under Section 405. Hence, the partners cannot be liable under this section unless and until there is a written agreement formed, making such entrustment over the partners.

In *Shivnatrayan vs State of Maharashtra*, it was held that a director of a company was in the position of a trustee and being a trustee of the assets, which has come into his hand, he had dominion and control over the same.

However, in respect of partnership firms, it has been held²⁹ that though every partner has dominion over property by virtue of being a partner, it is not a dominion which satisfies the requirement of s 405, as there is no 'entrustment of dominion, unless there is a special agreement between partners making such entrustment.

Explanations (1) and (2) to the section provide that an employer of an establishment who deducts employee's contribution from the wages payable to the employee to the credit of a provident fund or family pension fund or employees state insurance fund, shall be deemed to be entrusted with the amount of the contribution deducted and default in payment will amount of the contribution deducted and default in payment will amount to dishonest use of the amount and hence, will constitute an offence of criminal

breach of trust. In *Employees State Insurance Corporation vs S K Aggarwal*, the Supreme Court held that the definition of principal employer under the Employees State Insurance Act means the owner or occupier. Under the circumstances, in respect of a company, it is the company itself which owns the factory and the directors of the company will not come under the definition of 'employer.' Consequently, the order of the High Court quashing the criminal proceedings-initiated u/ss 405 and 406, IPC was upheld by the Supreme Court

Misappropriation

Dishonest misappropriations the essence of this section. Dishonesty is as defined in sec.24, IPC, causing wrongful gain or wrongful loss to a person. The meaning of wrongful gain and wrongful loss is defined in sec 23, IPC. In order to constitute an offence, it is not enough to establish that the money has not been accounted for or mismanaged. It has to be established that the accused has dishonestly put the property to his own use or to some unauthorized use. Dishonest intention to misappropriate is a crucial fact to be proved to bring home the charge of criminal breach of trust.

Proof of intention, which is always a question of the guilty mind or *mens rea* of the person, is difficult to establish by way of direct evidence. In *Krishan Kumar V UOI*, the accused was employed as an assistant storekeeper in the Central Tractor Organization (CTO) at Delhi. Amongst other duties, his duty was the taking of delivery of consignment of goods received by rail for CTO. The accused had taken delivery of a particular wagonload of iron and steel from Tata Iron and Steel Co, Tata Nagar, and the goods were removed from the railway depot but did not reach the CTO. When questioned, the accused gave a false explanation that the goods had been cleared, but later stated that he had removed the goods to another railway siding, but the goods were not there.

The defense version of the accused was rejected as false. However, the prosecution was unable to establish how exactly the goods were misappropriated and what was the exact use they were put to. In this context, the Supreme Court held that it was not necessary in every case to prove in what precise manner the accused person had dealt with or appropriated the goods of his master. The question is one of intention and not direct

proof of misappropriation. The offence will be proved if the prosecution establishes that the servant received the goods and that he was under a duty to account to his master and had not done so. In this case, it was held that the prosecution has established that the accused received the goods and removed it from the railway depot. That was sufficient to sustain a conviction under this section. Similarly, in *Jaikrishnadas Manohardas Desai vs State of Bombay*, it was held that dishonest misappropriation or conversion may not ordinarily be a matter of direct proof, but when it is established that property, is entrusted to a person or he had dominion over it and he has rendered a false explanation for his failure to account for it, then an inference of misappropriation with dishonest intent may readily be made. In *Surendra Prasad Verma vs State of Bihar*, the accused was in possession of the keys to a safe. It was held that the accused was liable because he alone had the keys and nobody could have access to the safe, unless he could establish that he parted with the keys to the safe. As seen in the case of criminal misappropriation, even a temporary misappropriation could be sufficient to warrant conviction under this section.

Forms of Criminal Breach of Trust:

"407 Criminal breach of trust by carrier, etc—Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine" "408 Criminal breach of trust by clerk or servant—Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine." The criminal breach of trust is more severe offence than criminal misappropriation as the offender in the breach has a beneficial position of a trustee. Thus, if a breach of trust is committed by the person who is entrusted with the property and not by a stranger, it is an aggravated form of Criminal Breach of Trust. "409 Criminal breach of trust by public servant, or by banker, merchant or agent—Whoever, being in any manner entrusted with property, or with any

dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine." The offence under Section 409 is the most severe one as the accused is a public servant and is entrusted in the same capacity. In order to convict someone under Section 409, it must be proved that the accused is a public servant and was entrusted with property or dominion over the property and has thus committed criminal breach of trust under this Section.[12] The property entrusted to accused should be given in the capacity of a public servant and not in any personal capacity. The public servant, as explained in the Section, need not be a government employee necessarily.

Conclusion

Hence, it's clear that for an offence to fall under this section all the four requirements are essential to be fulfilled. The person handing over the property must have confidence in the person taking the property. so as to create a fiduciary relationship between them or to put him in position of trustee. The accused must be in such a position where he could exercise his control over the property i.e; dominion over the property. The term property includes both movable as well as immoveable property within its ambit. It has to be established that the accused has dishonestly put the property to his own use or to some unauthorized use. Dishonest intention to misappropriate is a crucial fact to be proved to bring home the charge of criminal breach of trust. Two latest case laws-K.L. Agarwal vs State of U.P. And Another on 25 May, 2016,APPLICATION U/S 482 No. - 39908 of 2013

In this case the Regional Sales Manager and Regional Manager of applicant's firm approached the complainant at its firm and offered to appoint the complainant's firm as a Consignment Sale Agents after depositing a sum of Rs. 5 Lacs as a security money in favour of applicant's firm.

After the sale of food items in the consignment was done, the applicant firm failed to pay the commission, rent etc. of the food products to the complainant as per the terms

and conditions of the agreement deed and also stopped to send further the consignment of food products to the complainant in contravention to the business agreement entered into between them.

Learned Magistrate after recording the statement of the complainant under Section 200 Cr.P.C. and his witnesses namely Sanjay Ji (P.W.-1) and Sanjay Kumar Rai (P.W-2), summoned the applicant for facing the trial under Section 406, 420 IPC.

The applicants then appealed in the Allahabad High Court to quash this order.

In view of above, the court held that no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the accused, excepting the bald allegations that the accused did not make payment to the respondent no. 2/complainant. There is no iota of allegation as to the dishonest intention or misappropriation. To make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the accused rather it must be shown that the accused dishonestly retained the same. The mere fact that the accused did not pay the money to the complainant does not amount to criminal breach of trust. In the present case it appears a matter of breach of agreement between the parties hence it cannot be termed as 'cheating' or 'misappropriation'.

Mahabir Prasad vs The State of Bihar Patna High Court Cr. WJC No.1388 of 2018

In this case, the ex-Headmaster of a government school was running a hostel in the school premises. On the direction of the District Education Officer, FIR was registered under Sections 384, 420 and 409 of the Indian Penal Code. The inquiry report has gone to the extent saying that even the School Management Education Committee, the District Education Officer, the District Programme Officer and other officers who were contacted could only reply that they are looking into the matter or inquiring into.

This is being a case of failure of the administration in taking care of the hostel facilities of the school and in absence of any steps being taken by the school and the department, merely because the petitioner was running and managing the hostel to some extent that too with the knowledge and consent of the teachers and the Headmistress, no case of

extortion, cheating or criminal breach of trust is prima facie made out from reading of the inquiry report. This case is covered under one of the seven exceptions provided by the Hon'ble Supreme Court in the case of State of Haryana and Others v. Ch. Bhajan Lal and Others reported in AIR 1992 Supreme Court 604. The contention of the learned counsel for the State and learned Senior Counsel representing the respondent no. 8 that a prima facie case is made out is totally misconceived and this Court would not accept the same. In the result, the first information report giving rise to Laheri P.S. Case No.110 of 2018 is quashed. The Writ application is allowed.

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Importance of Human Values In Law

Seema Malhotra

Abstract

Law is generally understood to be a mirror of society- a reflection of its customs and morals – that function to maintain social order. Legal profession in India is one of the largest in the world. It is truly speaking a service -oriented profession which is often regarded as a Noble profession. Values of law lies at the heart of society- as human values. Human values are the virtues that guide us to take into account the human element we interact with other human beings. Human values are for example, faith, humanity, affection, empathy, acceptance, consideration and love towards other human beings.

Keywords: *Human Values, Law, Lawyers, Ethics*

Law is considered to be a noble profession. It is not a commercial undertaking where in lawyers can charge exorbitant fees from the clients. They are not supposed to even advertise their profession directly or indirectly. Legal profession is truly speaking a service-oriented profession where money plays a secondary role. Roscoe Pound has once said, "Historically, there are three ideas involved in a profession: organisation, learning, and a spirit of public service. These are essential. The remaining idea that of gaining a livelihood, is incidental. But, in reality in this modern age, these basic truths are neglected by some few. The role of a legal practitioner as an officer of the court is not only to protect the interest of his client; he should also have concern for the public good too. The main object of this paper is to study and analyse the importance of human values in law.

Human values

Value means worth. A value is a socially acceptable concept of what is important and to what degree. Values define how we treat others in any association. The effect of good values lasts lifelong in dealing with difficult or unfortunate or adverse situations that come along the way of life.

Values are beliefs that have an inherent worth in usefulness or importance to the holder," or "principles, standards, or qualities reflected worthwhile or desirable." Values institute an important characteristic of self-concept and serve as supervisory principles for person. In literature, it is documented that values are so indissolubly woven into human language, thought and behaviour patterns that they have fascinated philosophers for millennia. Yet they have proved so "quick-silvery" and complex that, despite their decisive role in human motivation, we remain desperately ignorant of the laws that govern them. (Toffler, 1969). Scott and Kluckhohn described value as a conception: explicit or implicit of desirable which influences the selection from available modes, means and end of action (1951).

Human values are necessity in today's society and business world. Human values are the features that guide people to take into account the human element when one interacts with other human. They have many positive characters that create bonds of humanity between people and thus have value for all human beings. They are strong positive feelings for the human essence of the other. These human values have the effect of bonding, comforting, reassuring and procuring serenity. Human values are the basis for any practical life within society. They build space for a drive, a movement towards one another, which leads to peace. In simple term, human values are described as universal and are shared by all human beings, whatever their religion, their nationality, their culture, and their personal history. By nature, they persuade consideration for others.

Ethics?

Ethics are a set of code of moral principles that decide what is right and wrong. *Ethos* in Greek means characters. Ethics are like value standards in society around us. 'Ethical' refers to the morally correct behaviour of a person or group. Ethics are applied, rather, are the foundation of every field.

There are three branches of ethics as per philosophy:

- Meta-Ethics: This branch of ethical studies focuses on the theoretical aspect. Answering questions like why, when, how to do a thing, how a situation originated, etc. is meta-ethics.

- Normative Ethics: It is also known as Prescriptive ethics. It includes questions that answer why an action can be right or wrong. The judgment of a situation is the key aspect of normative ethics.
- Applied Ethics: These ethics apply in specific fields like animal ethics, business ethics, bioethics, etc.

The Origin of Ethics

Ethics and ideals can be inter-related to gaining inspiration from each other. Rather, ideal examples of good people who did great deeds often motivate us to take their actions and conduct as role models in society. Ethics also arises from the religious beliefs of people.

There is a saying that goes like, “Always do the right thing because someone is watching you” is an example of just that. At yet other times, ideal demands are created by people to select the best out from of crowd.

In kindergarten, our teachers, and parents did teach us the use of ‘golden words’ that are Thank you, Sorry and Excuse me. That was a step towards making us realize the value of our actions.

Values and Ethics are like our mother tongue—these don’t need to be separately taught. A child learns values and ethics as a part of his growth and development, in which its family, school, and neighbourhood play an important role. As children grow up, their peers, teachers, influence, and shape their values. In adulthood, people are inspired by workplace environments.

In other words, the values a person has and the ethics he follows is moulded by the culture, type of people he is in contact with.

Professional Ethics?

A Profession is when many people follow the same kind of occupation and are related to each other as a part of an organized team or company. These professionals are

bound to their professions and colleagues by moral principles. It is usually studied under applied ethics.

The set of guiding principles of what is right and wrong at our workplaces, followed by us, can be said to be Professional ethics.

Professional ethics are characterized by the individual responsibilities, obligations of the employees and owners, and related professionals of any organization. They are accountable for their actions to their colleagues, clients, and customers as well as society.

Why is Ethics required at workplaces?

As we said, workplace or professional ethics drive the entire organization towards enhancement. Good ethical practices lead to increased transparency, productivity. This further leads to increased customer satisfaction and establishes trust.

Negligence, misconduct, unlawful activities in the organization cause these things to fall apart. But if ethics are followed voluntarily by people, if ethics cause better governing of the organization, these events can be prevented, and a bigger loss of the society can be prevented.

Characteristics of Professional Ethics

Organizations usually issue specialized Codes of Conduct for its employees, which include a list of Professional Standards to be followed.

- An ethical code of conduct lays down certain rules for employees in the form of their responsibilities, guidelines of colleagues, and clients relationship.
- They state appropriate performances and manners towards others, which will benefit the organization.
- These ethics also state the responsibility of professionals towards the company/organization and the common public.
- Integrity: Business integrity of any person plays a big role in defining their professional character.

- Right to Privacy: The professionals cannot disclose any private or confidential information to the company or others outside it. The Right to privacy of every customer must be protected. Personal data of customers and clients is to be kept confidential.
- The Loyalty of an employee towards his organization and occupation.
- Bias: Professionals cannot work for selfish needs by having biased or objective judgments. Decisions to be taken have to comply with just and fair practices.

Types of Professional Ethics

Professions include Doctors, Lawyers, engineers, corporate, and many such organized professional services.

1. Medical Ethics: These are issued by the National Medical Associations of respective countries. The Medical fraternity is responsible for mannered behaviour with the patients, respect their confidentiality. There are specialized laws for Euthanasia (ending the patients' life in case he/she is terminally ill and does not wish to suffer).
2. Judicial Ethics: Ethics are applied at every stage of any judiciary and legal action. Truth, Loyalty, the right decision, equality to everyone for the basis of judicial ethical principles.

Lawyers, while defending their clients shall not make any degrading remarks at others

3. Media Ethics: We all know how media bodies report false or twisted news to sensationalize it.

Honest, reliable news reporting is what is needed. For example, Journaling about an issue in the society with an unbiased view is the demand for ethics, but some journalists might directly claim unproved facts or false claims.

4. Other organizations like almost every corporate, educational institute, governmental institutes have their own Code of Conduct for managing their professional ethics.

Values can be called as subsets of Ethics, a wider subject. Values are the backbone of any ethical code. Values are the ones which reflect a person or group's upbringing, mentality, his goals, etc. These factors influence the formation of societies, communities or organizations, and their ethical sets.

A human being in his life learns numerous values like sharing and cooperation, equality, social justice, dignity, freedom, secularism, etc. We, as humans, are a part of many social organizations like schools, workplaces, markets, businesses, etc. Before that, we are a part of an environment formed by nature. Humans ought to abide by environmental values as well.

These values are very important for the holistic development of humans, their families, and communities. We apply these values all our lives but don't even come to know about it...it's that deeply restored in our memories. Values and ethics are key factors in the personality development of human beings. Many a time, these values add to our mental and spiritual well-being. Ignorance of values causes a person to drift away from the path to his goals, and such people often commit wrongdoings. Traditionally, this has been a common notion. However, if we say a person's values and ethics are shaped according to his upbringing and immediate surroundings, aren't we blaming society? In simple words, human values and ethics have a role in building society as we see it and vice versa.

Common human values are as under:

1. Brotherhood, friendship, empathy, compassion, and love.
2. Openness, listening, welcoming, acceptance, recognition, and appreciation.
3. Honesty, fairness, loyalty, sharing, and solidarity.
4. Civility, respect, and consideration.

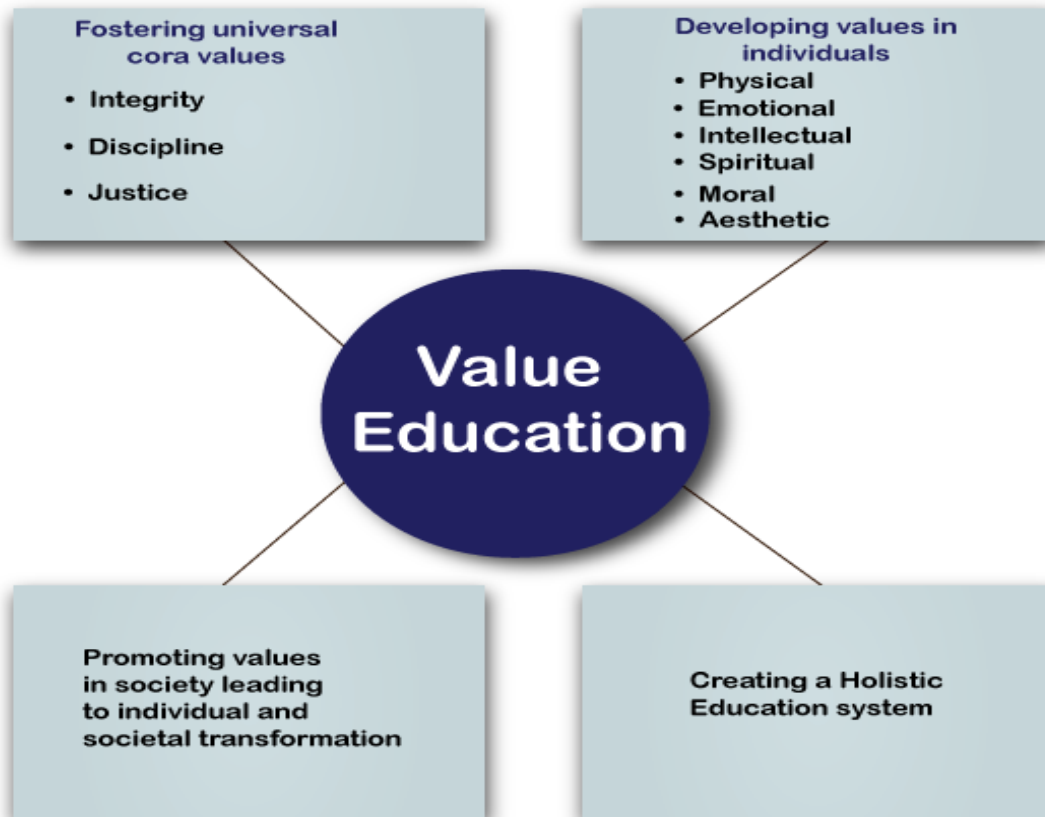
The function of these basic values enable every human to realize or maintain highest or human value for establishing relations of peace and yet it remains indefinable. Its understanding varies according to age (child, teen, adult), to one's education and surrounding culture. It is better assumed when combined with other values: a disposition that is deeper than graciousness, very close to consideration, and approaching appreciation. Truly, to respect someone, one must be able to appreciate some of his/her human qualities, even if one does not appreciate his/her opinions or past behaviour.

Several universal human values such as Truth, Righteous conduct, Peace, Love and Non- violence are directly associated to physical, intellectual, emotional psyche and spiritual facets of human personality. There is need and urgency to reinforce these values for a better and humane society.

Need of human values:

Value education is always essential to shape one's life and to give one an opportunity of performing on the global stage. The need for value education among the parents, children, teachers etc, is constantly increasing as we continue to witness increasing violent activities, behavioural disorders and lack of unity in the society etc. Value education enables us to understand our needs and visualize our goals correctly and also indicate the direction for their fulfilment. It also helps remove our confusions and contradictions and enables us to rightly utilize the technological innovations.

There are different views that call urgent need to inculcate human values in Indian society. Numerous traditional values which have been inherited from past remain valid and true to be adapted by future citizens but many fresh values to match confronting problems in emerging Indian culture. Presently, negative human values are in upper side. It may be because of neglect of value education which created vagueness and indiscipline in the mind of people (Satya Pal Ruhela, 1996).



The most essential human values that are particularly relevant to public law are – a rejection of unfairness and an insistence on essential equality, respect for the integrity of the individual and mercy.

Lawyers are considered as leaders of the society. They are one of the essential parts of justice delivery systems. They need to abide by rules and regulations for their professional ethics. The profession of law to them must be the means to enthrone justice, not entangle justice. Law infact, on the one hand discharging duties, lawyers need to work towards protecting and respecting the interests of their clients, colleagues, courts and the general public and on the other hand it is the duty of an advocate to uphold the dignity and decorum of the court. Further, it is not impossible to practise law without compromising the truth. The duty of a lawyer is always to place the facts before the judges and help their clients to arrive at the truth. A true lawyer is one who places truth and service in the 1st place and the emoluments of the profession in the next place only. Facts mean truth and once we adhere to truth, the law comes to our aid naturally.

Right along with the Universal humanity, there is another important value i.e. justice. As a person with a motive rather than serving to injustice and being a sheep in a herd that follows the same thing. In the present world, it is easily noticed that the professionals in their respective fields are starting to show a lack of human values and professional ethics in their professional life. Ranging from the fields of doctors to engineers to even lawyers, it is quite evident in their dealings specific to the field of laws.

It is necessary to demonstrate a just attitude in the face of situations and conditions encountered, is thought to be an appropriate role-model in raising righteous individuals who have internalized a sense of justice.

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Prejudices towards Dalits in India's Caste System: Constitutional Safeguards
Jyoti Sharma
Krishan Kumar

Abstracts

India society is a dilemma for the scholars due its structure and features; Caste has been a very important component of Indian society. As per this caste system Untouchables have no all rights comparatively others, this is the big issue for the scholars. Due to this caste division, some castes have been given a respectable status and some castes have been kept in a low category. So they called lower castes were given the name of Dalit category and they were deprived of the right to equality in terms of social, economic, political, religious etc. Thus due to caste discrimination in the society, the Dalit castes were pushed to the margins of the society. Of course, in order to study the entire marginalized class, it would also be appropriate to know that the marginalized class is not limited to the Dalit community only, but includes the disabled, transgender, women, economically weaker working class, etc., but my research. The main focused of the paper is to look for the possible responsible historical reasons in the background of the prejudices towards Dalits and find out the constitutional safeguards for their dignity.

Keywords: Dalits, Caste, Marginalized, Subaltern.

Introduction

The English equivalent of Dalit is Subaltern. Which means subordinate? This word was

Used for slaves. This word is not appropriate marginal word to bring the sensibility of Dalit into its fold. The existence of Dalit class can only be represented by the word Dalit in the correct sense. The word Dalit is derived from the Sanskrit 'dal' dhatu which means to break, to break, and to crush. In this way, in English, the meaning is taken from Oppressed, which means crushed, crushed or trampled human being. Jotiba Phule gave the name Dalit but B. R. Ambedkar did not accept this name, he accepted Scheduled Castes which is constitutionally accepted even today.

Different scholars have given different definitions about Dalit. Which are as follows: According to National Punjab "Dalit is defined as the downtrodden, low, low caste people".

According to Manu Smriti "Dalit Shudra, Chandal, Bhangi, Chamiyar etc. castes living outside the villages". "Dalit" has been defined in Mahan Kosh in two senses. First the meaning is mashed and crushed. The second meaning is of a low caste that has been trampled underfoot by a high caste".

After reading these definitions, it can be said that a Dalit is a person who belongs to a lower and lower caste. Even though he has money, he lives in a different place. His

inferiority lies not in being poor but in low caste. That is, a person who is a victim of caste discrimination who is exploited from both social and economic levels is called a Dalit.

Who is Dalit? There are three popular opinions regarding this:-

1. The exploited is Dalit.
2. Contagious Shudras
3. Untouchable Shudras

Marxism had divided the society into two classes, employers and workers.

The society which he called the Asian society divided the society according to the division of works/deeds within this varna division and caste division, Eklavas, Buddha Chetana, Jotiba Phule, Ambedkar, Gandhi etc. were born. The class division postulated by Marxism is not a static phenomenon. With the introduction of capitalism in the Middle Ages, caste bonds were broken, but the exploiter and the exploited class did not change. So only the exploited are Dalits in the true sense. The second view is that a Shudra is a Dalit. On the famous mantras (shlokas) of the Rigveda and on the laws of the Manu Smriti or Tulsidas who put women on par with the Shudras. The third view is that only untouchables are Dalits. The main basis of its opinion is Dr. Ambedkar Sahib's thought.

But I deeply regret that this civilization is so old that it has given birth to two crores of aborigines and nearly Punjab lakhs of criminal cases. What can this civilization be called? This is a civilization whose results are so thought-provoking? There is a fundamental flaw somewhere and I think, Hindus should consider that this kind of civilization is something to be proud of. They should think not once but a hundred times that they can be called civilized despite such consequences.

Undoubtedly, this situation is due to the Varna system, its worst form can be seen in the form of castes, Hindu society is based on the varna category from the beginning. But Hinduism divides them into Brahmins, Kshatriyas, Vaishyas and Shudras based on occupations.

Classes exist in every society. The decline of Indian society is also due to the fact that the upper classes here have given the shape of caste division to the classes for centuries. This caste division of India is based on birth. Here, once a slave reaches the age of untouchability, he can only get out of the cycle of caste division by dying. He can get salvation in the next life only by taking birth in the higher classes. The upper classes keep the lower classes economically and socially in order to control them. Thus, the main reasons for the emergence of caste division were economic. Dr. Bhimrao Ambedkar writes about Indian caste division blaming the institution of marriage. "As far as India is concerned, the caste structure here favors inter-gotra marriages rather than out-of-gotra marriages, in both cases the caste system persists". Marriages are universally appropriate; in both cases the caste system is maintained".

Examples of many mythological stories are found in India. Eklavyas are likely when Dalits or people from lower castes are given only severe corporal punishment because they have acquired education by accepting the traditional caste system. High caste, low caste, rich-poverty, exploiter-exploited are found only in other societies, but Indian

society could not escape from all these in any way. Through their ideological hegemony, the Hindus created such a net of slaves in the hearts and minds of the slaves that today's low caste people are looked down upon despite being rich. SC In his famous book Indian Society, Dubey has written about this hideous form of Indian caste division. "The Scheduled Castes, whom Gandhi called Harijans and who now call themselves Dalits—constitute about 16 percent of India's total population. The Scheduled Castes—Adivasis, Adivasis or Hirijans who constitute 7 percent of the population—are also in this category, though most of them remain free from the stigma of untouchability”.

Caste and untouchability existed in Punjab even before the medieval period and despite the emotional messages given by the saints of the Bhakti Movement and the Sikh Gurus through the medium of Bani, it continues to exist even today. Kabir ji, Ravidas ji, Namdev ji etc. devotees have strongly refuted casteism. Despite this, the current society is also not untouched by caste discrimination. Various shrines and crematoriums fill the gaps in the above statement.

The British allowed the spread of caste discrimination to undermine the roots of the great tree of India. He made Indians the first scheduled cast. The policy of divide and rule further cemented the caste divide. At that time Mahatma Gandhi was trying to end the caste division but on the other hand he was also giving the message to follow the Hindu scriptures and Vedas. stay In the capitalist era, the lower classes are not only kept away from justice but their sexual, social, mental and economic exploitation also continues. In this way, it can be said that we cannot consider caste division as the absolute basis of society, nor as an external structure instead of society. It belongs to both. Rituals of casteism are so deeply ingrained in human consciousness that even if the upper caste people are beggars or poor, they consider themselves higher than an IAS or PCS born in the Dalit class because of their high caste status. On the other hand, it can be said that Dalits could not be freed from inferiority even if they wanted to achieve higher positions.

But in Indian constitution has some *instruments of justice for Dalits, which are working as a safeguards for their rights such as Preamble, fundamental rights, fundamental duties, directive principales*. which are becoming more and more important for the security and justice of Dalits.

Rituals of casteism are so deeply ingrained in human consciousness that even if the upper caste people are beggars or poor, they consider themselves higher than an IAS or PCS born in the Dalit class because of their high caste status. On the other hand, it can be said that Dalits could not be freed from inferiority even if they wanted to achieve higher positions. Rituals of casteism are so deeply ingrained in human consciousness that even if the upper caste people are beggars or poor, they consider themselves higher than an IAS or PCS born in the Dalit class because of their high caste status. On the other hand, it can be said that Dalits could not be freed from inferiority even if they wanted to achieve higher positions.

According to Surinder Singh Jodhika:"Though Sikhism in Punjab has been against caste division since its inception, but still the disease of caste division has not been completely eradicated from the Sikhs. Many Dalits feel that they are discriminated against in Gurdwaras from the village level. But Dalits have found their own ways to oppose this

discrimination. The most important thing is that Dalits have built their own separate Gurudwaras”.

The main reason for the emergence of the caste issue is the presence of Christianity and Buddhism in Punjab. Basic Punjab is multi-religious with Hindu, Sikh, Musla, Christian and Buddhist religions mixed in, but the influx of Christianity and Buddhism is due to caste-based contagion and leprosy in the Punjabi community. Those Punjabis who adopted Christianity and Buddhism were mostly belonging to the lower castes and victims of caste discrimination by the upper castes.

Even though it is said that there is no caste and untouchability in India, the founders of the Baghti movement, the Sufis and Gurus, raised their voice against the caste system here, which is a support for the issue of caste division in the Punjabi community. As it is mentioned in many places in the Gurbani recorded by the Gurus.

Sangats and *Pangats* were established to end the caste divide, common reservoirs and places of worship were built. But the roots of leprosy of caste division have gone so deep that even the philosophy of the Gurus had no effect on them for a long time. In this way, casteism has also entered into Sikhism. It is proof that

Dr. In 1936, Ambedkar not only withdrew the suggestion of adopting Sikhism to free the Dalits from the caste system, but also did not think it necessary to consider it again.

In this way, in Sikhism, the community coming from lower castes is divided into two groups, Ramdasi Sikhs and Majhabhi Sikhs. The Ramdasiya Sikhs of the first faction consider themselves superior to the Ramdasiyasiks. It can be said that the rule of caste discrimination has spread in Punjab to such an extent that all other religions, including Sikhism, which reject caste, also include the status of caste.

Some sociologists also argue that Buddhism and Jainism made great efforts to fight against this social evil. Untouchables, called Chandals, also played a prominent role in Buddhism at that time. Many of the leaders who fought the freedom struggle believed that after independence economic progress would eliminate caste-based discrimination.

Even during the making of the constitution, the provision of reservation in jobs was also made, marking the historical injustice done by the society to the Scheduled Castes. Due to the practice of caste division, many movements were started for other classes who suffered backwardness in the society.

Of course, in the modern era, the spread of education, the development of people towards cities, various types of businesses and trades came into existence, trains, buses, cars, airplanes brought people together to explore their lives. made a part But despite doing all these things, neither casteism nor discrimination is decreasing.

With the help of western epistemology, the penetration of modernity will reduce some recognition of old values. But these facts are seen that when a person stuck in difficulties does not find anything for self-esteem, then his thinking is drawn to create an identity by religion and caste.

In light of the above, it can be said that the possibility cannot be denied that the caste discrimination will be eradicated with the economic progress or it will be abolished with the socialist revolution. The thinking of religion, casteism is very deep and profound in the society. Regarding the direction of this subject, if we talk together with all those revolutionary ideas, then the purpose of presenting this subject is the same whether it is

about the natives of America or the indigenous people or the black people living there or any It is about the workers in the society or the condition of Dalits or the pathetic condition of women. The main purpose/objective of presenting this subject is to move towards an egalitarian society and build the best society by eliminating all these gender divisions.

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Instructions to the Contributors

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