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Editor’s Insights

Panchayati Raj Institutions as tool for Empowerment at Grassroots

Nupur Tiwari
Indian Institute of Public Administration, New Delhi

Abstract
Higher GDP rates during the recent years have not helped the larger masses in getting integrated with the process of development. The present pattern of growth has the potential of widening the inequality. If this inequality increases further, social displacement will result and it will be a major obstruction to higher growth. Being closest to the people, the Panchayats and their elected representatives have the feel of the pulse, the sufferings of the people and local conditions. The involvement of Panchayats ensures greater transparency in working and fund utilization than in execution carried out by central or state agency, many a times. It is important that Local governance be brought centre-stage as the principal governance reform to reinforce economic reform in such a manner as to secure inclusive growth. Local self-government, offers this opportunity, as communities, citizens, right from the Gram Level, can participate in the designing of the development in their area. When grass-roots planning processes strikes deep roots, economic empowerment is both strong and sustainable.

Keywords: Panchayats, Governance, Participation, Inclusion, Empowerment, India

Introduction
Panchayati Raj in India is designed to strengthen the totality of our democratic institutions and practices. The system of governance inherited by India has its roots in the feudal-imperial legacy of the past, largely modified and adapted by the British to meet their colonial ends. The efforts of leaders of freedom struggle who upheld the principle of self-reliant villages did not reflect much in the new constitution framed after Independence. In India, the local governance system had no constitutional backing till the 73rd and 74th constitutional amendments of 1993. With the passing of conformity act all the states and union territories are expected to initiate activities for decentralization. The devolution of powers to the Panchayati Raj institutions in different states has not been uniform. A few states like Kerala, Karnataka and West Bengal did much to devolve 3Fs (funds, functions and functionaries) at the grass root level. But in most of the states a great deal of confusion as regards the nature of the transfer itself prevailed.

Experience over a decade and a half shows that the decision to devolve and the trigger to do so has always been driven politically. However, since in different states, the impetus has come from different political parties, it is difficult to say that one or the other party has been more Panchayat friendly than the other. It would be more accurate to say that within each political party, there are divided views on Panchayati Raj. However, no party today can openly question Panchayati Raj, which would be political suicide.
The other lesson that can be drawn from States that have devolved or are currently
devolving with reasonable success, is that in all of them, the bureaucracy has played its part
in proper design of systems, when backed by the political signal to devolve. Most such
states, brought out a road map on devolution, which was widely discussed in public, before
going ahead with a devolution plan. Behind successful devolution, there have always been
cabals of champions, from politics, the bureaucracy and civil society, who have contributed
collectively to its success. Politically driven decisions to devolve, without sufficient backing
in terms of changes in administrative and executive design have tended to flounder, with
adverse consequences on those who motivated such changes.

In India it has now been accepted that higher GDP rates during the recent years have not
helped the larger masses in getting integrated with the process of development. It is
important that Local governance be brought centre-stage as the principal governance
reform to reinforce economic reform in such a manner as to secure inclusive growth.
Inclusive Growth “is growth pro-poor”, the bulk of the population of this country feel that
they have not benefited in any obvious way from the development of the last decade.”
There is need to reconceptualise inclusion as not only recognizing the usual marginalized
communities or sections of society as beneficiaries but by including them as thinkers who
think and “know” differently, and whose presence in designing, is the real inclusion. There is
need to give the excluded agency inclusion - to include knowledge and analysis and
experience of minority groups, women and other excluded and deprived sections of society,
in development design. “Inclusion” needs to be reconceptualised, as “agency”, the think
side of action.

Local self-government, offers this opportunity, as communities, citizens, right from the
Gram Level, can participate in the designing of the development in their area. With the
arrangements that have been made in the constitutional amendment to give voice to
historically discriminate against groups such as women and the SCs and STs, this is the space
where inclusion can really take place. Local self-government makes the link between
political and economic governance, and could lead to the alternative paradigm. The
Panchayati Raj system, the movement to devolve power, to deepen democracy in India, is a
movement for economic and social justice, and provides the vehicle to implement the vision
of inclusive growth in India. It is necessary to recognize that we cannot secure inclusive
growth without inclusive governance. And it is this, fundamental conundrum which local
government in our system is attempting to address. If gram Sabhas are largely non-
functional and most elected representatives (other than Panchayat Presidents) left
uninvolved and, therefore, frustrated, this is because even as they see more and more
money being poured into rural areas, they also see that much of it is beyond their control or
responsibility. But it is critically important that over the next decade and not much longer
than that we actually succeed in empowering our institution of local self-governance with
the functions, the finances and the functionaries that are essential to running of effective
local self-governance.

In India, the participatory planning that has been institutionalized in the state of Kerala has
been accepted as a good practice to emulate. Besides, functioning of Grama Sabhas capacity
building activities, gender mainstreaming, grievance redressal mechanism, Nyaya
Panchayats and poverty reduction strategies have been highlighted as innovative models for replication.

**Transition to the New System Under Way**

In India constitutionally mandated PRIs have moved into the second stage so the need is to set in motion second-generation reforms. Elections have been held [thrice in most places] and the relevant functions have also been devolved, as intended, in most states. Considering activity mapping as the foundation for sound Panchayat Raj, various states have prepared it on the principle of subsidiary. This involves identification of functions, within a given sector and desegregations of these functions into tasks, activities and responsibilities for the devolution for the three levels of Panchayats. However, there has been much less action in devolving funds and functionaries, which are the other two legs on which the structure must rest. The extent of financial devolution varies from state to state. While some have devolved a significant proportion of the state budget to the PRIs, many others have not yet done so. It was expected that local bodies would become financially independent along with a constitutional guarantee of existence breathed through five yearly elections. But there are doubts and financially local governments are largely dependent on state governments. State governments have a large number of powers to inspect, dissolve, remove and audit the functioning of local governments. Bureaucratic stranglehold may not be absolute but functioning of local government has been restricted.

By contesting and getting elected to Panchayati Raj Institutions, women have shattered the myth of their own passivity - that women are not willing to enter politics. For women, successful grassroots experience has meant a chance to form coherent voice, to be heard and to make a difference in their communities; however women’s representation in the decision-making positions with monitoring power is still negligible. The present rules of the game and decision-making procedure do not allow a greater participation of women and in the absence of women, there is no effort to recognize or change the game. The very absence of women at these levels thus leads to preservation and reinforcement of male-oriented and male benefiting types of decisions. The reservation in Panchayats has provided for the erosion of the traditional gender, caste, class roles and hierarchy but it has still to cover a long and difficult process. Women not only have to fight for their right to be more than proxy members but also to break the barriers of gender division of labour, illiteracy, low level of mobility, seclusion, lack of training and information, which still continue to exist without enough support from the power structure. Women’s low self-esteem at the household level and their new role in local politics where they are now expected to function as leader creates a contradiction between women’s role at home and in local government. The fact that the participation of women could be better if they had functional education and also training on the various intricacies involved in the political field.

There is much importance of ICT in enhancing Panchayat capacity so that they can perform their constitutionally and legislatively mandated functions better. When it comes to e-governance Gram Panchayat has unique importance for the reasons of Primacy of Gram Sabha and its impact on the Gram Panchayat and requirement of keeping the Gram Sabha (the citizenry) well informed, by the GP. E-governance can help at aiding Gram Sabhas to take better informed decisions. E-governance can help in dissemination of internal processes of Gram Panchayats: (agendas, resolutions, voting record); proceedings of Gram
Sabhas and action taken, Progress reports, Dissemination of data (family surveys, property lists, BPL lists, pensions, censuses), Services data: (education, health, water and sanitation), Natural Resources and biodiversity data, Databases on Panchayat members and staffing details, Availability of government and private infrastructure and village habitat planning. It is important to position IT as decision making support system for Panchayats. It was also projected as important tool for transparency, disclosure of

**There is much to do—and much to learn**

Cynics are fond of pooh-poohing decentralisation in India on the ground that all that is decentralised is corruption, and therefore, one needs to analyse why such a widespread negative impression about PRIs has taken root. Much of it is a matter of selective memory and autosuggestion – ignore the good stories and highlight the bad. However, the functioning of Panchayats is quite distinct from that of higher level governments. First, being closer to the people, a lot more corruption gets exposed to public view and compared to corruption at higher levels. Second, while grass root level institutions have distinct advantages in localising government, they also face proximate political and social pressures that make traditional virtues of public administration such as impartiality, neutrality and anonymity difficult to realise locally. Third, regardless of whether PRIs are elected on a party basis or otherwise, they are political institutions. Elected members have constituencies both in the geographical and socio-political sense. One cannot avoid legitimate aspirations to nurse constituencies in today's context of highly competitive electoral politics and one must accept that there is bound to be a tendency to favour a region, a group of people or even individuals in developmental decision-making. Fourth, unlike legislators, PRI elected representatives are vested with executive authority and are empowered to take decisions having financial implications and authorise expenditure from public funds, decide levels of taxation, exercise power of collecting taxes and regulatory powers which are of a quasi-judicial character.

Two things need to be done to make Panchayats more inclusive and effective as local governments. First inclusiveness has meaning only if Panchayats are given responsibilities in the letter and spirit of the constitution. Unfortunately, Panchayati Raj is often a charade in several States and political rhetoric hides their marginalization. Both the centre and the States need to bring in real devolution, which can be differentiated from the charade that Panchayati Raj has often become, as follows:

<table>
<thead>
<tr>
<th>Real Devolution:</th>
<th>Not-so-real devolution:</th>
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<tr>
<td>Clear role assignment,</td>
<td>Somebody else (above or below) responsible for Panchayat performance</td>
</tr>
<tr>
<td>Power to spend money</td>
<td>Somebody else (above or below) responsible for Panchayat performance</td>
</tr>
<tr>
<td>Power to tax</td>
<td>Limited power to collect resources</td>
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<tr>
<td>Discretion in spending money,</td>
<td>Scheme bound expenditure</td>
</tr>
<tr>
<td>Power to hire fire and control staff,</td>
<td>Staff owned and assigned by higher level governments,</td>
</tr>
<tr>
<td>Direct Accountability.</td>
<td>Somebody else (above or below) acting for the Panchayats</td>
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Second, Decision making processes in Panchayats need to be better defined, to diminish the possibility of elite capture, proxy participation, single point decision making and corruption. The formula for improving PRI functioning would follow a four-fold path; simplify, inform, review and hold accountable for non-performance or mal-administration. Some key steps in this regard are as follows:

(a) Well functioning Gram Sabhas are essential.

(b) Just as in the case of most government offices, a thick veil of secrecy hides inefficiencies, arbitrariness, corruption and nepotism from public gaze in PRIs too. An example of the secrecy that surrounds executive action in PRIs is seen in the selection of beneficiaries for various schemes. The logical transparent sequence ought to be the laying down of the selection criteria, publicising them, calling for applications through the Gram Sabha, processing them with reference to the criteria, making selections and ending with publicly explaining the rationale of the selection made. When there is a great deal of arbitrariness in decision making at the local level, records will not show how the choice was arrived at or whether various options and possibilities were analysed and on which criteria the final decision was made. Fairness at the cutting edge will need to be seen and corroborated by full disclosure, whatever may be the inconvenience and cost involved for the administration. Therefore, systems that ensure easy access for the citizen to information must be put into place. If the right to information is to have any meaning, information will have to be systematised and packaged in a manner that makes sense to those who seek it.

(c) We need to systematise the process of recording decisions, to ensure the democratic functioning of Panchayats There are seven linked aspects of ensuring that PRIs work more democratically as described below:

(i) The emphasis on consensus in decision making should be approached with caution, While true consensus is appreciable, an unnecessary emphasis on consensus could stunt the growth of democracy. Consensus undermines democracy in two ways. First, in a consensus, the strongest voices prevail automatically. Thus it is easier for a situation of elite capture to prevail if business rules of representative bodies expressly prefer consensus in decision making. Reservations in favour of women and the socially disadvantaged do not make much sense in a consensus situation because one can just as easily silence the poor. The second disadvantage of a consensus situation is that elected representatives can hide behind a consensus decision to avoid responsibility and accountability to their voters. Therefore votes have always to be recorded. This is an important aspect of democratic PRI functioning. If there is a consensus or unanimity, even this should be recorded. The record of voting by individual members in PRI meetings could become the most important mechanism of opening up the proceedings to the public, particularly if there is express provision in the law for disclosing the voting pattern to the public. Mandatory public display of resolutions of the pris along with the record of members voting for or against them will enable the public to know what their members are doing for them. They will know how their member has articulated their concerns in meetings. More than anything else, this alone will be an effective Mechanism Of Downward accountability.
(ii) Procedures for conduct of meetings will have to be laid may be necessary, in order to ensure that those who do not feel up to articulating their concerns in an open meeting can still make their presence felt in decision-making.

(iii) A strict quorum requirement will diminish the scope of marginalization in decision making.

(iv) Ensure that the body is collectively responsible for its actions. The requirement of collective responsibility is another method of increasing accountability of the body to the people. Once a member knows that his position is also in jeopardy as he is also vicariously responsible for wrong acts of his colleague-members in the body, there is a greater price to be paid for being a passive spectator to the proceedings. Members will be induced to participate meaningfully and there will be peer pressure on each other not to take wrong decisions.

(v) Make decision making committee based. Most Panchayat legislations provide for Standing Committees in Panchayats, but these provisions are neglected and hardly operationalised. Committee based decision making diminishes the scope for elite capture and allows for the articulation of all voices.

(vi) Put in place mechanisms to open up the process of decision-making is opened up to public gaze. Ordinarily, meetings shall be open to the public. There must be full disclosure of facts in meetings, so that reasoned decisions can be taken. One method of doing this is to ensure a prior circulation of the agenda for a meeting and if necessary, allow one meeting to intervene before a decision is made. Thus a resolution can be introduced in a particular meeting and discussed, but voting could be held in the next meeting of the body.

(vii) Intervals between the rotation of reservations for women and SC and ST representatives need to be extended. If reservations are rotated after every 5 year term, it leaves very little incentive for the member elected on a reserved seat to perform, because he or she knows that next time around, there will only be a remote chance of being elected as she will not have the benefit of reservation in the same seat.

(d) Provide a right to recourse to an independent institutional mechanism that gives speedy relief to the aggrieved effectively bolsters empowerment through Panchayats. With greater devolution and decentralisation there will be a need to investigate independently complaints made by individuals, groups and even the Government relating to defective administration by local bodies. An Ombudsman system could provide a convenient and relatively low-cost mechanism to deal with complaints of mal-administration.

Conclusion
Panchayati Raj is a silent revolution and most importantly, this system has included the marginalized sections, in the process of governance and these groups have found a place in Indian polity and a new broad-based political leadership and wisdom is emerging. A large number of women and other marginalized classes have come to power as a consequence of reservation provided to them in Panchayats and it has rekindled the hopes of the local citizenry.
The Constitutional specification of the role of Panchayats in ‘planning for economic development and social justice’ and ‘implementation of schemes’ towards these ends, and further, the critical role assigned to the ‘gram sabha’ and district planning are but the building blocks for creating a more just, equitable and vibrant society. It is here, in imagining the locality where lives are lived and everyday experiences are produced and reproduced, that the conceptions of state, civil society and market must intersect privileging the democratic ideal of citizenship.

We can conclude that the present pattern of growth has the potential of widening the inequality. Such unequal opportunity structure weakens the positive role of growth in reducing poverty and making growth inclusive. If this inequality increases further, social displacement will result and it will be a major obstruction to higher growth. To achieve inclusive growth, it is crucial that the poor are integrated with the dynamic sectors of growth. We cannot overlook the fact that being closest to the people, the Panchayats and their elected representatives have the feel of the pulse, the sufferings of the people and local conditions. The effectiveness of providing services through local bodies cannot be overemphasized as they know their real requirements, and are familiar with every nook and corner of the village and, above all, they are answerable to the people. The Panchayati Raj institutions are eminently suited for service delivery as they can ensure equity and/or equitability in the provision of services (in view of their nearness to the people), inclusiveness (in view of the assured representation available to all sections of the society in the Panchayati Raj Institutions), accessibility, transparency, local participation, accountability and sustainability of services.

The involvement of Panchayats ensures greater transparency in working and fund utilization than in execution carried out by central or state agency, many a times. Panchayats should be given powers to decide on technology, cost, location, infrastructure and beneficiary selection; and since they have a role in rural housing, primary health care, water and sanitation in many states, should be given these functions by the coordinating authority. Adequate resources should be provided to PRIs to build up their capacities and Sensitization and training of PRI members on related areas will have to be promoted and capacity for the same should be institutionalized in the existing institutional framework in the states.

In a mature and responsible administrative system where power is in the hands of the people and their democratically elected local government institutions, relief operations, day-to-day running of civic services, providing medical assistance, etc. could best be done by the local government. Gram Sabhas can play a very meaningful role in selecting the beneficiaries, prioritizing the beneficiaries to ensure gender and equity concerns and also in deciding the appropriate rehabilitation or reconstruction programme that is needed for the communities.

Moving from a model of central provision to that of decentralization to local governments introduces a new relationship between national and local policy makers, while altering several existing relationships such as that between the citizens, elected politicians and the local bureaucracy. Such inclusive governance, besides ensuring political empowerment, through enabling people to control their own destiny, would also yield significant inclusive
Social empowerment through inclusive governance would help safeguard social, ethnic and cultural values of people, which in turn would lead to building trust of their governments in tribal communities. Active participation of people in the political processes and in grassroots planning will bring about the desired transformation of the region by establishing peace and setting in motion the wheels of progress towards prosperity. When grass-roots planning processes strikes deep roots, economic empowerment is both strong and sustainable.

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Women in India constitute about fifty percent of the country’s total population but they have been treated discriminatory because of the gender bias of the prevalent patriotic values of Indian society. The dominant patriarchy has denied women equality of status and opportunities in socio-economic and political spheres. During the last fifty years, several attempts have been made to bring about effective decentralization, both political and economic, with limited success. Objectives of this paper are to explore the extent to which PRIs have contributed towards change in the position and status of women in India and whether they have been actually empowered or do they live in the same state of subordination and deprivation as earlier. The study was conducted on the basis of case studies related to women in Panchayat in different states of India. The study revealed that mere presence of women is not necessary synonymous with their participation, there is a difference between formal power and effective power. The point that is raised for some cases is analytically posing the dichotomy between seat reservation as an instrument of development for gender equality and women’s empowerment and formal power and effective power to achieve this goal. The coexistence of obstacles and possibilities for elected women tends to picture the elected women either as ‘proxy women’ or as empowered politicians.

**Keywords:** Grassroots Democracy, Gender, Local Governance, Elected women, Effective power, Proxy women, Panchayati Raj Institution, Women’s Empowerment, India

**Introduction**

Patriarchy as the dominant social form circumscribing all other social stratifications is witnessed in India also along with rest of the world. Studies on Indian women in politics, in aggregate, indicate that women in Indian society have been fallen vulnerable to fundamental social, economic and political rights. The social hierarchies and inequalities that exist in Indian society had deterred the women for centuries to play an active role in
the field of power including participation in political institutions. The dominant patriarchy has denied women equality of status and opportunities in socio-economic as well as political spheres. There are differences amongst women in terms of class, caste, status, space (rural-urban divide) etc. Rural Indian Women have been always treated as “Object” of development rather than the “Subject” of development. Though it is argued that national development would be more effective with active share of men and women in all its activities, in terms of government policies and programmes that we have undertaken we have shifted the focus from the concept of women’s development to women’s participation in the social and political sphere consequently to lead towards women’s empowerment. But, the presence of women is not necessary synonymous with their participation, there is a difference between formal power and effective power. The point that is raised for some cases is analytically posing the dichotomy between seat reservation as an instrument of development for gender equality and women’s empowerment with formal power and effective power to achieve this goal. The coexistence of obstacles and possibilities for elected women tends to picture the elected women either as “proxy women” or as empowered politicians. The basic objectives of this paper are to explore, to what extent these new arrangements have contributed change in the position and status of women in India. Have they been actually empowered or do they live in the same state of subordination and deprivation? The study was conducted on the basis of case studies related to women in Panchayat in different states of India.

This paper is organized as follows: section I delineates the Panchayati Raj Systems in India: a way towards democratic decentralization and Women’s Empowerment. Section II explores elected women either as “proxy women” or as empowered politicians as a result of their participation in Panchayati Raj Systems in India through case studies collected from different states of India. Women’s experience of PRI has transformed many of them. The elements of this transformation include empowerment, self-confidence, political awareness and affirmation of identity. Section III presents the conclusion of the paper.

Panchayati Raj System in India: A Way Towards democratic decentralization & women’s Empowerment

‘Decentralization’ means devolution of central authority among local units close to the areas served. Authority devolves by this process on people’s institutions, and it is democratic decentralization. The team headed by Balwantrai Mehta (1956) recommended ‘democratic decentralization’. According to this committee to delegate the powers, responsibility and resources for planning and execution of the development programme to people’s institutions. As per the recommendations of the committee it was aimed to secure the maximum participation of the rural people in their own development programmes.

The committee made several recommendations for better community development through community participation on democratic lines. But they were interested in making improvement of the house-keeping functions of the women. They seem to have taken a conservative attitude to women. Women as participants in the decision-making process did not draw adequate attention of the committee.

The Committee on Panchayati Raj Institution headed by Ashok Mehta (1978) laid stress on the need for recognizing and strengthening women’s role in the decision-making processes
of Panchayats. The Ashok Mehta Committee acknowledged the need for associating women with the processes of decision-making, but could not give a clear direction.

During the last fifty years, several attempts have been made to bring about effective decentralization, both political and economic, with limited success. However, the year 1992 marks a new era in the federal democratic set up of the country. The idea that produced the 73rd Amendment was not a response to pressure from the grassroots, but an increasing recognition that the institutional initiatives of the preceding decade had not delivered, that the extent of rural poverty was still much too large and thus the existing structure of government needed to be reformed. It is interesting to note that this idea evolved from the Centre and the state governments. It was a political drive to see Panchayati Raj Institutions (PRIs) as a solution to the governmental crises that India was experiencing. The Constitutional (73rd Amendment) Act, passed in 1992 by, came into force on April 24, 1993. It was meant to provide constitutional sanction to establish "democracy at the grassroots level as it is at the state level or national level". A million women have been elected at the village, block and district levels, following the landmark 73rd Amendment to the Constitution of India (1992), reserving 33 percent of the seats in Panchayati Raj Institutions for women. The process of decentralization has provided representation of women in the political decision-making process. The 73rd Amendments to the Constitution of India provide the legal basis for direct democracy at the local-level in rural areas. The amendments stress the need to bring people belonging to marginalized groups into the political process by reserving seats for women and for people belonging to the Scheduled Castes (SC) and Scheduled Tribes (ST). It is envisaged that by mandating not less than one-third of the seats for women in local government bodies, the governance process at the local government level will reflect the voices of women and the concerns and issues that confront them.

There was a lot of opposition and criticism on this 33% reservation to the women at PRI level. Critics argued that women are not experienced enough in politics and they will be only “dummy political leaders”. Some people argued that it will encourage in the creation of new categories of reservation which is discriminatory in democracy. Despite lot of resistance against this policy change the amendment offered an opportunity to put women at the helm of affairs in the PRIs. It is highly desirable to explore, to what extent these new arrangements have contributed change in the position and status of women in India. Have they been actually empowered or do they live in the same state of subordination and deprivation?

Elected women either as ‘proxy women’ or as empowered politicians as a result of their participation in Panchayati Raj Systems in India through case studies collected from different states of India

Women's experience of PRI has transformed many of them. The elements of this transformation include empowerment, self-confidence, political awareness and affirmation of identity.

Empowering women: Panchayati Raj System gave the rural women the ability to coerce and influence the actions and thoughts of powerless (Power Over). Democratization involves the creation of new knowledge and values, in effect a paradigm shift that brings about the
meaningful empowerment of groups relegated to subordinate positions. The following dialogues drawn from an extensive case study analysis reveals the ground realities.

Respondent No. 1 Panchayat Pradhan of North 24 Parganas, West Bengal said:

“During one Household survey for BPL (Below Poverty Line) list, local school teachers were appointed to do the job. But it was later found out by that me that the school teachers unofficially appointed local boys who even came to my house to do the BPL survey! And most surprisingly, boy went to just one house where he collected information for rest of the villages at one go. I had reprimanded the school teacher who did this, but from next time I involved Anganwari workers who did the survey sincerely and the corrections were made”.

Self-confidence gained through belonging to local organisations seems critical to enabling women to step out of unequal relationships. This sense of freedom is even more profound when the group to which women belong is the PRI. This freedom is carried into the very activity of politics by these women. There is a visible difference, a sense of excitement, in the women of rural India (power within).

Respondent No. 2 from Rampurhat Panchayat samity, district of West Bengal said:

“That who can lie have got into the BPL list. BPL (Below Poverty Line) estimate is manipulated and has a lot of discrepancies. The deserving people are left out and due to wrong measurement undeserving people are introduced.”

Women have gained a sense of empowerment by asserting control over resources, officials and, most of all, by challenging men.

Respondent No. 3 Sarpanch of Ramlapally Gram Panchayat in the district of Karunagar, Andhra Pradesh said:

“Whenever there is any problem in the villages, they come to me. We are more responsive to the community, we look after, we pay attention, and we are truthful and so the people come to us.”

She has launched programs for adult education, digging wells for drinking water and repairing school buildings. She said:

“I am not highly educated, but I know my responsibilities towards society. Education is necessary but at the same times self -determination and grit, which a woman has in plethora playing a significant role to combat these hindrances.”

Respondent No. 4, Anchal Samity Member (ASM) of Mirbuk village, East Siang district, Arunachal Pradesh said:

“We are elected because the people expect us to do something good for society.”
The women Panchayat leaders are actively taking part to uplift the common people at the grassroots level. They are at different levels of awareness. Local people of each area comes to know about different types of schemes are sanctioned through different sources.

Respondent No. 5, gram Panchayat pradhan, Puri Sadar, Orissa, said:

“Women representatives can make enormous difference in case of awareness generation in the society. She can take initiative in giving training to rural women for their economic upliftment. I arrange different training programmes for them.”

She also mentioned:

“In my Gram Panchayat, previously no women used to come to male Gram Panchayat Pradhan for any help, but now local women felt at ease and started coming frequently to me for help whether it be domestic violence or anything. Rural women feel free to approach.”

The community psychology literature views empowerment in part as the building of self-knowledge and self-esteem of the individual to reduce ‘feelings of alienation and enhance feelings of solidarity and legitimacy’ (Asthana, 1996). Individual empowerment therefore is ‘... the reciprocal influences and confluence of macro and micro level forces that impact the emotional cognitive and behavioural aspects of individuals’ (Speer 2000), and entails changes in meaning which revolves around beliefs, values and behaviours; competence or self-efficacy, that is the belief of being able to carry out particular tasks or roles; self-determination or the choices individuals have in initiating or regulating their actions; impact or the degree to which one influences the outcomes of others and how people understand and relate to their social environment and the role of collectives in community life (Speer, 2000; Spreitzer, de Janasz et al., 1999).

Understanding politics: The incorporation of women into Panchayati Raj (local-level governance) institutions in India, following the statutory reservation of 33 percent of these electoral positions for women, has been hailed as a significant step. Panchayati Raj Institution has given many women a greater understanding of the working of politics. PRI has helped to change local government beyond simply increasing the numerical presence of women.

Respondent No. 6, Zilla Parishad Member of Sille-Oyan Block, East Siang district, Arunachal Pradesh boldly pointed out that

“Women are also human being, so they have also right equal to men. Thus, with the changing time and space the marginal gap between men and women has disappeared. Women have equal right and opportunities to participate in politics in compare with men. And interestingly, they are proving to be best at every field”.

Respondent No. 7, an ASM of Pasighat block commented,

“Women should take in Kebang2 and a women’s wing should be introduced under Kebang. All the women of Arunachal Pradesh should be together to discuss for eradication of poverty”.

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Respondent No. 8, ASM of Rani Village, Arunachal Pradesh said:

“Some people crack jocks on us telling that, our country is under Petikut (inner skirt) government. From grassroots to high level, women are ruling. In a positive sense, this means women play a vital role in governing our nation”.

Respondent No. 9, Gram Panchayat Pradhan, Meboobnagar, Andhra Pradesh said:  

“Reservation of seats for Scheduled Caste and Scheduled Tribes, people from deprived groups have a better chance of being elected members. Earlier, only persons with money, higher class and of the upper castes could be elected to any position of importance.”

Due to their political attachment their interactional position in the society has been elevated and they tend to involve themselves in community work, which has once considered men’s sphere, and they have got a hold on decision making both inside and outside the household. After Constitutional reservation of seats at PRI, special constitutional rights are made for women to participate in politics.

**Affirming Identity:** Women’s involvement in PRI has helped them affirm their identity as women and shared experiences.

Respondent No. 10, Gram Panchayat Pradhan, Kalchini, Jalpaiguri District of West Bengal said:

“Men in our society consider women to be capable of household responsibilities only, we want to prove that we too can be independently able to take decisions, we too can walk along with them and bring change in this country”.

Respondent No. 11, Panchayat Pradhan for 15 years, Madhya Pradesh, said,

“District Magistrate came to visit my Panchayat office on Sunday without any prior information and demanded to know my working progress so far and how I am managing the GP. I said that today is a holiday, even your own secretary won’t come to work today, and then how dare you ask me to obey orders? I am a Pradhan of this Panchayat. Please go back to your office and summon me on a working day.”

This shows her confidence, inner strength and self-recognition comes from her capability to work and increased individual consciousness which changed her ability to transform aspiration into action.

**Changing Priorities**

The PRI Act has provisions, which enforce community participation, especially of the women, poor and the marginalized sections of the region. Some of the ways in which women, through PRI, is changing governance are evident in the issues they choose to tackle; water, alcohol abuse, education, health and domestic violence, economic activity.

Respondent No. 12, Gram Panchayat Pradhan, Karim Nagar, Andhra Pradesh:
“Previously the upstairs room of the Panchayat office was used for drinking and gambling, which is turned into a training centre for Self Help Groups members. Now even, exhibitions are carried out to sell their products. More women started coming to Panchayat.”

Most of the Women Panchayat member admitted that no matter from which party do the leaders represent, rather they should have alliance with people. They also focus their discussion regarding development schemes implemented in the locality. Panchayat leaders discuss on mode of distribution the facilities to beneficiaries among the different blocks and segments of the area.

Respondent No. 13, Panchayat Pradhan of South 24 Parganas, west Bengal said, “Regular meeting of mothers and health workers are organized to discuss about health related matters, thus awareness regarding health had been increased.”

Respondent No. 14, Pradhan of GP Kalchini in the Jalpaiguri District of West Bengal mentioned “During my tenure special facilities were obtained by women in case of marriage and also helped families to rehabilitate after head of the family dies unexpectedly”.

But apart from that there were some women who admitted that they communicate with people through their husbands or any other male member of the family. The reason behind that were the domestic workload and the traditional norms and values of the society.

Respondent No. 15, Zilla Parishad Member, Birbhum Zilla, West Bengal, explained “I cannot communicate directly to the people. My husband does this. Being a woman I cannot mix-up with the common people who are mostly men. But our husband can do this. People tell their problems to him. He conveys it to me.”

The above statement shows a clear picture of the traditional norms of the society. For these women it is very normal that their husbands or other male family members of the family perform their duty. But it does not support the concept of —proxy women because as it can be seen from the statement that the women representatives go to talk with the people but they only talk to the women because tradition hinder them to talk to men. There is also evidence that the burden of domestic works also restrain them to communicate with the people.

Respondent No. 16, ASM of Yupia circle, Papum Pare district, Arunachal Pradesh, comments: “Public give lots of tension whenever some contract are sanctioned on our area, even if the contract is of low budget many people apply for that contact work. And it is impossible to sanction each and every one”.

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Women leaders also face problems within family and at social levels. At their home, the women are loaded with domestic work, so they have very tight schedule to fulfill their responsibilities as both a family holder and public leaders. Society also gives equal pressure to the leaders. In a broader sense, there are two types of obstacles face by women leaders, family obstacles and society obstacles or both. Again this statement shows that these women are not proxy but they accept the help because they really do not get time for going out and talk to the people. There is also a suggestion that if there is more open society and the domestic works will be shared between the members of the family these women can also attain good communication skill. Some other women also informed that as there are costs and other cost of refreshments, they can’t attend the meetings regularly because their economic condition does not allow them to do so.

As respondent No. 17, Panchayat Samity Member, Andhra Pradesh explained the problem:
“The meeting place is far away from my home that I cannot go by foot. And I am not in such condition to spend money on public transport.”

Thus the study supports the conclusion of Buch’s (1999) work that the causes for failure to attend meetings are generally related to domestic work and the inconvenience of distance. It also indicates the deep impact of economic condition of persons on their work. Furthermore it was obvious to know that if they do not attend meetings then who manage their panchayat related work. When asked about most of them stated that their husbands manage the work. Here this can be seen as an extension of the previous category where male members of the family help these women to perform the duties. However this is only one dimension of participation in meetings.

Respondent No. 18, Khairabad, Sitapur district, Uttar Pradesh stated:
“I have so many questions in my mind and want to ask it in the meetings but the male members in the meeting do not give chance to speak. Attitude of the male members towards our opinion is very derogatory. It discourages women to raise any issue.”

Another reason that deters women to raise any issues is lack of education. Respondent no. 19, district of Karunagar, Andhra Pradesh said,
“I am not educated enough to explain my problem properly. I normally do not speak in meetings. I feel nervous to speak.”

Conclusions
Many obstacles to the realization of PRI’s transformative potential remain. Skepticism about decentralization persists in many quarters. There continues to be a resistance to really devolving power and funds from centres of (male) power to the periphery. Women still face considerable handicaps to their involvement in politics; for example, inadequate education, the burden of reproductive and productive roles, a lack of self-confidence and the opposition of entrenched cultural and religious views.

A number of factors limit the active engagement of women in the political sphere. In spite of all these the 73rd Amendment has created an opportunity and has been the prime mover in the process of empowerment for large number of rural women to take part in the public
institutions. Democracy has become more participatory in the process of implementing it. In many places, women have been functioning well and have engendered the development process, although in a limited sense. The myth of being a proxy woman gets disproved, according to my study. Despite the constraints, they are playing an extremely important role, which needs to be recognized. Even now half of the women are illiterate and their economic contributions don't get acknowledged. But a good beginning has been made to achieve the long-neglected gender justice.

End-notes

1 Report of the Committee on Panchayati Raj Institutions, Department of Rural development, Government of India, pp. 301 (New Delhi, 1978).

2 The traditional polity of Adi tribe of Arunachal Pradesh.

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Gender and Language: A Study of Social Movements in India

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Abstract
Gender is a broad spectrum that permeates every aspect of human lives. Language and forms of knowledge is one such domain that facilitates man-woman hierarchies. Interestingly, the pervasive character of gender biases thrives within social relations through literature and interaction, and vice versa. It’s no coincidence that the most powerful spaces at every joint have been occupied by men. Dominant forms of literatures are not only authored by men but also express a male-centred perspective in its outright neglect of the women’s point of view. Even among alternative visions of social movements, there is a possibility of dominant gendered spaces. The literatures produced by them, the words chosen to communicate their ideas and disseminate agendas are often said to be gendered. In fact, feminists accuse such movements of marginalising women’s contributions by limited mention of even their names in the literatures produced. My concern here is to make a survey of the gender and language theoretical discourses and use it as an entry point for the study of social movements in an increasingly globalising world including India.

Keywords: Language, Gender, Social Movements, India

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Introduction
There are diverse theories on the origin and nature of language. Right from Charles Darwin to Noam Chomsky, people have drawn epic tools to define the remarkable evolution of something as diverse and deep as ‘language’. How it evolved and affected humans and vice versa, is a matter of great curiosity among scholars from diverse backgrounds. Feminist scholars particularly drew attention to unexplored spaces linking language to gender identities. Robin Lakoff rightly says that these sorts of intersection invoke the “most agonising, complex, diverse and ultimately insoluble issues facing our society” (Lakoff, 1992, p.199). Such engagements thus, help understand ‘how, what and why’ of gender issues, from various angles.

For research convenience, the paper is divided into two major parts: the first deals with language and gender – theoretical backgrounds while the second deals with the case of social movements in India.

Language and Gender: Theoretical Background
Bakunin rightly says ‘there are no neutral words’. Meaning, every word has a history and symbolises face as well as place value (Ahem, 2001, p.111). Debates around gender and language is broadly divided into two poles where on one side it’s believed that “masculine
generic” terms are not biased, they are just “grammatical convention” while on other side, it is believed that masculine generics facilitate invisibility of women (Weatherall, 2002, p.1). Though engagement between language and gender is a step forward in understanding the roots of gender and challenging patriarchy but these enquiries also deepen concerns over gender based assumptions of heterosexuality and overall essentialism. To this, the gender theorists say their intentions are to highlight the primacy of social construction over the physical (Bergvall, 1999, p. 276).

Noteworthy, language helps us to understand the broader social landscape. It is a tool for individual and community communication of emotions, beliefs, conventions, and culture. One’s beliefs are influenced by and reflected in language and knowledge system. Gender is one such stream that manifests in language. Language plays an important role in determining as well as reflecting the socio-cultural patterns. By identifying how women are seen in different cultural settings, women can understand their social birth and makeup. Robin Lakoff rightly says, “our language use embodies attitudes and referential meanings” (Lakoff, 1973, 45). In his famous article titled, “Language and Women’s Place”, Lakoff says that women have a different style of speaking and their way of expression communicates and produces at the same time their subordinate social position (Ekcert and Ginet, 2003 p. 1). Clearly, language can be used as a tool of oppression and rightly argued, “it is learned as part of learning to be a woman” (Ibid). This reminds one of Simone Beauvoir’s work The Second Sex and her famous words ‘one is not born, but rather becomes a woman’. Language, thus, is one of the agencies for the creation of a myth/image of a woman.

Subordination, marginalisation of women is not a new trend. It is witnessed at every major site of power whether it’s social, economic and political sphere. Language and knowledge system is one such terrain that happens to re-establish masculine version as the dominant, universal truth. The earliest concerns about gender and language can be traced to linguistics and feminist theory and political practice. Gender has been invoked as an explanation for use of certain words, grammar, tones, pronunciation. According to Ann Weatherall, awareness about the equations between language and women’s social status can be found in nineteenth-century publications of the women’s movement and feminist philosophy (Weatherall, p.11).

Victoria Bergvall was another scholar who summarised the overall discourse on language and gender into three major streams: “that women’s language is regarded as deficient when compared to men’s; it fundamentally reflects men’s dominance over women; or that it arises from difference in the socialization patterns of women and men” (Bergvall, 277). Eckert- Ginet too gave a comprehensive analysis similar to the above. According to Penelope Eckert and Sally McConnell-Ginet, over the years the debates and research on the study of language and gender were bifurcated into two different paradigms – which came to be called as the difference and dominance approach. The difference approach proposed that women and men speak differently because of fundamental differences in their relation to language, perhaps due to different socialization and experiences early on. Analysts associated with the dominance framework generally argued that differences between women’s and men’s speech arise because of male dominance over women and persist in order to keep women subordinated to men.
Scholars like Sara Mills have actually attempted to understand the meaning of ‘sexist’ language and locate its areas of operation. According to her, the sexist language is a blanket that covers a wide variety of phenomenon ranging from generic pronouns, to sex-specific words that are demeaning to women (Mills, 1992, 183). However, one may argue that the user sometimes, may not even know that they are part of this exploitative structure. After all, “the speakers did not make the language” (Eckert and Ginet, p. 3). Such a stand has been backed by certain academic linguistic groups who view language as a “system beyond the reach of those who use it” (Ibid.). Presumptions that come from discursive practice and gender discourses is an important factor in analysing roots of gender stereotypes. Such factors according to scholars like Eckert and Ginet, if unchallenged lead to further “naturalization” particularly in case of women (Ibid. 197). These differentiations clearly are so internalised in and around us that it is often difficult to locate natural from manipulated.

Moving on, Mills goes on to define the features of a gender free language wherein it does not mark the distinction between women and men. She goes on to propose the methods of dealing with sexist language by altering language use. Whether its personal or political sites, one can intervene in the process of making new meanings and attitudes rather than being just a subject to it (Ibid. 188).

An interesting entry point for the study of this relationship can be through power dynamics. Sara Mills is of the view that a person’s relations to language are constantly the subject of negotiation. Opposing Dale Spender’s stand, she argues that instead of looking at language as ‘man made’, one can view it as the system with possibilities for women. Here, one has to be careful in avoiding assumptions of ‘women’ as a homogeneous group. Moving on, Sara Mills comes back to the fact that instead of looking at women as passive victims of patriarchal languages, it is more “productive” to theorize power wherein women are seen as part of negotiation and capable of resisting oppressive social and discursive system (Mills, p.10).

Survey of the above theories and debates highlights the fact that the relation between language and gender is marked by endless intersections. Even research in these areas is difficult than it looks, meaning analysing using a language that is embedded in the patriarchal and phallocentric knowledge system is not neutral in full sense. Answer to the gendered language is not to plan an overoptimistic strategy to work outside the accepted structure but to mend the loopholes in knowledge through synthesis of the old and new. There is need for greater debates on possibilities between language and gender.

Situating Social Movements in India

Social movements or collective actions like any other public platform may have gendered patterns worth examination. Feminist researches in the past have brought to light the inability of such formations to provide equal spaces to women or fully recognise women’s contributions for that matter. In other words, feminist studies aim at making women’s experiences visible, render them important, and “use them to correct distortions from previous empirical research and theoretical assumptions that fail to recognise centrality of gender” (Taylor, 1999, p. 11). More importantly, it aids redressal of crucial questions within collective actions as to how movement history interprets women’s lives; how one
learns/unlearns to become man or woman in collective culture and do women’s stories get space in the broad movement history.

Whether it is radical movement or religious movement, gender questions are often treated as secondary. Position of women in their working groups and their proposed alternative system are often unclear. No movement in India is immune from gender related controversies. This section is a gender based study of such social movements using the lens of language and knowledge system theories.

Before engaging into a gendered study of social movements in India, it’s necessary to understand what social movements mean? Social movements often are seen as both the cause as well as the product of history. There is no neat definition of ‘social movements’. Although such formations may exhibit some common features, not all movements necessarily want to be called a ‘social movement’. However, the sociological understanding of ‘social movements’ defines it as the combination of characteristics like a ‘protest’, ‘collective’, ‘change-oriented’. Some scholars described it as ‘crowd phenomenon’ and detrimental to societal stability while others see it as a tool for societal improvement. They are generally seen as phenomena of the modern era and industrialised society, whether located in the First world or not (Roth and Horan, second paragraph, p.1). Among all the approaches, Marxist approach to social movements was far more detailed. Social movement (revolution) in the eyes of the Marxist was a vehicle of change, class consciousness, and capture of power. According to Marx and Engels, capitalist mode of production is the root cause of all social oppressions and collective class struggle against such oppression is the only way out.

A country like India has witnessed a wide range of collective activities right from socio-religious movements to radical movements. Not surprising, question of gender in all such formations remain marginalised. Whether it is their own history or their contemporary agendas, tone of literature is often gendered or there is absence of even the women related terms. The tactics the movement participants use in the form of slogans, attires, symbols, signs are also worth examining.

Whether it is the Telangana Struggle (1940s), Bodhgaya struggle of the 1970s, or the Naxalite movement (1960s onwards), women’s position remained subordinated (Stree Shakti Sangathan, 1989, p. 15-23 and Louis, 2002, p. 142-144). These communist led, male dominated movements failed to recognise and fulfil aspirations of women participants despite their tremendous contributions. In particular, Naxalite movement kept attracting women into cadres, without a detailed agenda for their overall upliftment. At later stages, some of these women were advised to go back to their homes when the movement lost momentum. Clearly, male-dominated movement failed to understand the deep implications of radicalism on women’s lives and identities during and after their association with the movement.

If looked into the above mentioned movements’ literature, it will be clear that most (communist led) movements were least concerned with gender issues. Question like sex, marriage, children were ignored in the name of ‘higher political causes’. At the later stages, even mainstream left parties like CPI (ML)-Liberation (descendent of Naxalite movement)
hardly ever talked of the women’s issues, and categorised them as ‘personal’ issues. Matters of revolutionary marriages and children although once or twice raised in their party documents, they were not included in their main agendas. Women’s leadership was another issue that was given little attention. Their slogans, symbols were neither women-oriented nor remotely gender concerned. Though they often talked of rights but they failed to steer attention to ‘equal’ rights for men and women.

Coming to other kinds of social movements like religious movements, promising alternate systems are also not immune from above shortcomings. Although these movements are generally based on innovative spiritual/religious ideas, many at times they forward orthodox traditions in a new package. In their documents they represent women as the bearer of sacrifice, manners, generosity, but symbol of sex lust. In India, religious movements like Brahma Kumaris, Satya Sai Baba can be defined to this category. Although all such movements call themselves as liberatory, it is surprising to see that their teachings hardly ever define a framework for women’s empowerment. Audience of most of their literatures is also not clear. In audio-videos of these movements, women are generally showed as modestly clad, with utmost attention to celibate practices. Particularly the Brahma Kumaris’ literature portrays modern, working women as bad and diverted from their true nature (Mahila Adhyatmik Sashaktikaran, p. 5). Even pictures in some of their text shows women wearing a bindi, saree, with wedding chains around their neck in positive light while women in western outfits are shown in poor light (Ibid., 4). According to some scholars, such instances are evidences of reinforcing stereotypes in the garb of spirituality.

Lastly, these movements whether radical or religious fail to reach out to their female participants. In an attempt to satisfy collective goals, they sometimes subsume individual identities. Even their language and knowledge system reflect least attention and concern for gender equality.

Conclusion
No doubt, our idea of the world is inevitably mediated by language. It constructs and deconstructs reality for individual through a combination of sounds and signs called language. The problem arises when this reality is painted differently for two sets of people i.e. males and females. Language sometimes might be used as a gendered tool against women. However as mentioned earlier, language both reflects and influenced by gender structures. Social movements are one such platform that is expected to materialise an alternative system but sometimes subsumed by such gendered linguistic structures. In my opinion, in order to be called a liberatory formation, these movements must retrospect and aim at reviving and recognising women’s contributions, foremost in their language use.

End-notes
1 In the Telangana struggle, communist leaders failed to recognise women’s contribution. In terms of distribution of land, women were not counted as individuals. Bodhgaya movement was a movement led by Chhatra Yuva Sangharsh Vahini (a youth organisation) against the feudal order of Bodhgaya Math, (Bihar). Women constituted large part of this movement, whose main aim was to fight for equal rights of men and women.
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The Third Gender and Gender Self-Identification in India: A Review

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Abstract
In a historic ruling on April 15, 2014, the apex court of India, in the case of NALSA v UoI, (NALSA, 2014) declared that Hijras, Eunuchs, apart from binary gender, be treated as “third gender” for the purpose of safeguarding their rights and that these persons have the right to decide their self-identified gender. Interestingly, this ruling came in the wake of another January 2014 ruling, wherein another SC bench had “turned the clock back” on homosexuals by withdrawing the legal protection granted to them by the Delhi High Court in 2009. The judgment does give some brilliant and original jurisprudential interpretations of the intentions of the framers of our Constitution with respect to sex stereotyping and gender self-identification while reaching their conclusions. This paper seeks to analyse the Constitutional bases for recognition of the rights of this community to gender self-identification as well as make an attempt to highlight the importance of the aforesaid ruling for Indian law making and social justice aims.

Keywords: Hijras, Gender Self-Identification, Social Justice, Gender justice, Third Gender

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Introduction
In the recent past, there had been mounting controversy and general disagreement and debate over the legal and societal position; and rights of gay and other third-gender groups in India. Questions that have jostled for answers include concerns over whether they are to be dreaded and rejected as a force that threatens to corrupt our cultural beliefs whilst within our midst; or that they are to be merely ignored and hidden away, being denied the basic rights and privileges that other citizens enjoy. On the other hand, there also exist groups who choose to see an expression of only the nature’s diversity in them and wish to welcome them as “another color within the rainbow of human variety.”(Wilhelm, Tritiya Prakriti). Peculiar to India, especially its Hindu majority, hijras, i.e. persons who are usually PAGMBs [persons assigned gender male at birth] and rarely persons with intersex variations but identify with the characteristics, roles and behaviours conventionally associated with the feminine (Chapter 1, Expert Committee Report, January 2014); have been treated with caution and mixed acceptance. The ancient Vedic literature and subsequent writings on Hindu mythology and beliefs continually recognised the third gender and those of mixed gender identities [Lord Vishnu’s Vaamana avatar, Lord Shiva’s Ardh-narishwar form, Shikhandi, and Arjuna’s assumption of a mixed gender role as Brihanala in the Mahabharata, etc.] and assigned specific gender roles for these persons of the “tritiya prakriti” (Wilhelm,
Tritiya Prakriti; Nanda, 1999), as well as modern practices still recognise the “shagun” [good omen] of having hijras visit Hindu households on occasions of celebrations like child birth, marriage and festivals, consequent to the Ramayana narration of Lord Rama having conferred upon them the power to bless such occasions for badhai. (NALSA, 2014 at ¶13). On the other hand, owing in major part to a skewed version of these religious beliefs, the hijra and transgender community has also come to be feared. Nobody wants to be approached by one of them – “be nudged with their elbows, stroked on the cheek, taunted, cursed and flashed.” (Dutt, 2002). And no-one wishes to incur the wrath of the curse of an unappeased hijra. (Sindhe, 2012; Hartless and Weems, 2011).

From a legal stand-point, the legislations in our country too did little to recognise those of the third gender. Two archaic British Raj laws – The Criminal Tribes Act of 1871 (repealed in August 1949) and the prohibition vested in S.377 of the Indian Penal Code (still in existence), set the stage for harassment and surveillance by the police of these persons. The 1871 law, by the sub-title “An Act for the Registration of Criminal Tribes and Eunuchs,” required the local government to keep a register of the names and residences of all eunuchs who were “reasonably suspected of kidnappings or castrating children or committing offences under Section 377 of the Indian Penal Code.” (Sindhe, 2012) S.377, that criminalized all penile-non-vaginal sexual acts between persons, including anal sex and oral sex, came to include transgender persons as they were also typically associated with the prescribed sexual practices. An Allahabad High Court decision in Queen Empress v. Khairati (1884) is also noteworthy, wherein person was arrested and prosecuted under S.377 on the suspicion that he was a ‘habitual sodomite’ and was later acquitted on appeal. (Mukherjee, 2014) However, once the 1871 Act was repealed and replaced by a more inclusive and reformative law, that was eventually renamed the Habitual Offenders Act 1952 with the tribes being now called the “De-notified Tribes”. Even though no Central legislation in India openly recognised the third gender, gender-sensitivity within the Indian bureaucracy took a small step, with “eunuchs” being given the option to enter their sex as ‘E’ instead of either ‘M’ or ‘F’ in passport application forms on the internet, in 2005 (The Telegraph, 2005). Later in 2009, India’s Election Commission gave those recognising themselves as ‘transsexuals’ an independent identity by letting them choose their gender as "other" on ballot forms.(BBC News, 2009). However, until the NALSA decision, there was no other express acknowledgement of their legal status as a third gender except in a few states. State of Tamil Nadu is one such state that has taken several positive steps for their welfare.

The NALSA decision came as a much welcome respite to third gender activists and transgender persons alike, as it heralded the beginnings of a new era of inclusivity and protection of the law. The petition had raised pertinent questions like – “(could) the word “person” gradually replace “man” and "woman" in the text of legislations? Why are there so few gender-neutral toilets? The Supreme Court ha(d) the opportunity not just to address the immediate concerns of the transgender community, but also to radically change the way we think of gender.” (Narrain, Siddharth, 2013). The landmark ruling asks the Centre and state governments - “to treat them as socially and 'economically backward classes', to enable them to get reservations in jobs and education...to grant them all facilities including a voters ID, passport and driving license....to take steps for bringing the community into the
mainstream by providing adequate healthcare, education and employment.” (Mukherjee, 2014).

The Constitutional basis of NALSA – The ‘holy trinity’ of Articles 14, 19 and 21 for Trans-genders

The Preamble’s “Equality” aims and Articles 14, 15 and 16: The Preamble of the Indian Constitution establishes the objectives and goals of the Indian polity. Among these are to secure to all its citizens social, economic and political justice and liberty of thought, expression and belief; equality of status and opportunity and to promote among them fraternity so as to secure their individual dignity. (Pal and Pal, 2013 at p.17). The Supreme Court has emphasized that the words “fraternity assuring the dignity of the individual” have “a special relevance in the Indian context….because of the social backwardness of certain sections of the community…who had been looked down upon in the past” (Sawhney, 1993, at p. 3, 391)

Article 14, the guarantee of the fundamental right to equality, grants equal protection of the laws to each “person”. It is an essential feature of Indian Constitutionalism and a basic idea of the “Rule of Law” as propounded by A.V. Dicey, that everyone is equal before the law.(Pal and Pal, 2013 at p.9). Thus the underlying object of Art.14 is to secure to all persons, the equality of status and opportunity referred to in the Preamble of our Constitution.(Natural Resources Allocation, 2012 at p. 94). This aspect of non-discriminative equality of status and opportunity, to all “persons”, irrespective of their gender was expressly laid down by the apex court in NALSA thus – “Article 14 does not restrict the word ‘person’ and its application only to male or female. Hijras/transgender persons who are neither male/female fall within the expression ‘person’ and, hence, entitled to legal protection of laws in all spheres of State activity, including employment, healthcare, education as well as equal civil and citizenship rights, as enjoyed by any other citizen of this country.” (NALSA, 2014 at p. 54). It was further clarified, based on the conclusions in the Expert Committee Report, that – “Both gender and biological attributes constitute distinct components of sex.

Biological characteristics, of course, include genitals, chromosomes and secondary sexual features, but gender attributes include one’s self image, the deep psychological or emotional sense of sexual identity and character. The discrimination on the ground of ‘sex’ under Articles 15 and 16, therefore, includes discrimination on the ground of gender identity. The expression ‘sex’ used in Articles 15 and 16 is not just limited to biological sex of male or female, but intended to include people who consider themselves to be neither male or female” (NALSA, 2014 at p. 59). Thus, via these conclusions, the apex court further strengthened the ideas of human dignity which are necessary for the human ‘personality to flower to its fullest’ and cannot be realized if a person is forced to grow up and live in a gender, which they do not identify with or relate to (Lawyer’s Collective, 2014). The court based its findings not only on having gauged the intention of the framers of the Constitution, but also on principles of international human rights law, especially on sexual orientation and gender identity, by stating that these must inform the understanding of the protections and guarantees under the Constitution (Lawyers’ Collective, 2014; NALSA, 2014 at p. 47-48).
However, concerns remain over an observation made at paragraph 34. The court opined that, for transgender persons who have undergone SRS, i.e. Sex Re-assignment Surgery, the test to be applied is not, “the “Biological test”, but the “Psychological test”, because psychological factor and thinking of transsexual has to be given primacy than binary notion of gender of that person. Seldom people realize the discomfort, distress and psychological trauma, they undergo and many of them undergo “Gender Dysphoria’ which may lead to mental disorder.” And then further at paragraph 106, it was held that – “a person has a constitutional right to get the recognition as male or female after SRS, which was not only his/her gender characteristic but has become his/her physical form as well.” This seems to suggest that while for those transgender persons who psychologically identify themselves as belonging to the third gender, the requirement of SRS is not there, but if a transgender person wishes to self-identify as a male or female, because of a psychological factor, without having had reassignment surgery, such person’s freedom to do so is curtailed. (Dutta, 2014) This apparent damage is remedied by the eventual ruling that – “any insistence for SRS for declaring one’s gender is immoral and illegal.” (NALSA, 2014 p. 129).

The “right to life with dignity” for trans-genders – Article 21 expansion

It is now an established proposition that Art.21, which “embodies a constitutional value of supreme importance in a democratic society”(Francis Coralie, 1981); is open to the most expansive of interpretations, covering a variety of Rights, which go to “constitute the personal liberty of man” and “personal liberty makes for the worth of the human person” (Maneka Gandhi, 1978). The right to dignity forms an essential part of our constitutional culture which seeks to ensure the full development and evolution of persons and includes “expressing oneself in diverse forms, freely moving about and mixing and comingling with fellow human beings”. (Francis Coralie, 1981). Thus, the apex court held in NALSA that – “Recognition of one’s gender identity lies at the heart of the fundamental right to dignity. Gender, as already indicated, constitutes the core of one’s sense of being as well as an integral part of a person’s identity. Legal recognition of gender identity is, therefore, part of right to dignity and freedom guaranteed under our Constitution” (NALSA, 2014 at p. 68).

Here, it is seen that, basing itself on an empathetic reading of the plight of the transgender person, the judgment puts in place a comprehensive regime of rights, recognising them as humans with a right to life, with dignity (Narrain, Arvind, 2014).

Sexual identity, freedom of expression and gender self-identification – Article 19

The Maneka Gandhi decision gave birth to the principle of ‘mutually reciprocative’ as well as ‘mutually inclusive’ reading of Arts. 14, 19, 21 and 22; both in context and content. A nexus was established between these Articles and it was laid down that the expression “personal liberty” ought not to be read in a narrow and restricted sense and that any procedure depriving a person of his or her “personal liberty” must be assessed against the Art. 19 freedoms attributes yardstick. The freedom of speech and expression enshrined in Art. 19(1)(a) is regarded as the first condition of liberty.(Pal and Pal, 2013 at p.1428). This freedom of expression has been expanded to include that of freedom to express one’s self-determined gender identity as – “Article 19(1) (a) of the Constitution states that all citizens shall have the right to freedom of speech and expression, which includes one’s right to expression of his self-identified gender. Self-identified gender can be expressed through dress, words, action or behavior or any other form. No restriction can be placed on one’s
personal appearance or choice of dressing, subject to the restrictions contained in Article 19(2) of the Constitution” (NALSA. 2014 at p. 62).

It is pertinent to note that while making this observation, the SC pointed out that in other parts of the world like the UK, Argentina and Germany a transgender person has only the choice of transitioning from female to male or vice versa, the third gender not being provided as an option (NALSA. 2014 at p. 35-41). In some other countries like Pakistan (Khaki, 2009) and Nepal (Pant, 2007), the court recognised what it calls the “rights of the third gender”. However, as a historic first, the Indian apex court took the principle of self-determination of gender to its logical end by noting that persons can identify as either male, female or third gender. By doing so it recognised the complexity of gender identity and made space for a range of possible ways of identifying oneself. (Narrain, Arvind, 2014) The court thus guaranteed to the trans-genders, the right of self-identification of their gender, while at the same time acknowledging that one’s choice of attire is an expression of individual liberty, protected under the right to freedom of expression. And thus, transgenders’ manifestation of their identities through them wishing to cross dress and identify themselves as female, is also an element of trans-identity protected under nondiscrimination and equality guarantees. (SOGI Casebook, 2011 at p. 159)

Impact of the NALSA Ruling
Impact for the “third gender”: The apex court has cleverly tried to craft a “charter of transgender rights” (Not just His and Hers, 2014), while acknowledging that the “moral failure lies in society’s unwillingness to contain or embrace different gender identities and expressions” (NALSA, 2014 at p. 1). The judgment engaged in some originalist reasoning that broadly interpreted "sex" to include sex-stereotyping, (Robson, 2014). In the closing paragraph, the judgment not only requires the government to recognize a “third gender” and to grant “legal recognition of their gender identity such as male, female or as third gender,” but also directs the government to take positive steps in education, health provisions, and “seriously address” various problems. (NALSA, 2014 at p. 129). And the guideline for these steps is envisioned to be the Expert Committee Report – “…Expert Committee has already been constituted to make an in-depth study of the problems faced by the Transgender community and suggest measures that can be taken by the Government to ameliorate their problems and to submit its report with recommendations within three months of its constitution. Let the recommendations be examined based on the legal declaration made in this Judgment and implemented within six months” (NALSA, 2014 at p. 130).

Thus, the implications of NALSA are far-reaching. As legal status has now been accorded to third gender, transgender persons are entitled to enjoy ‘full moral citizenship’. The decision will go a long way in “stopping egregious police practices of stripping, feeling up breasts and genitals and subjecting transgender persons to intrusive body searches or medical examination to ascertain their gender. Discrimination in the areas of public employment, health care, education and access to services will be open to challenge and redress. Transgender women may be able to seek protection under gender-specific laws for women” (Lawyer’s Collective, 2014). However, these changes will not come overnight. The judgment’s undoubted progressiveness - in that it projects India’s openness to finally recognising the transgenders as “equal”; does somewhat overshadow its extreme
belatedness. It will nonetheless, be a reminder to us of the “unacceptable ways that our society and law treat people of difference — with contempt, injustice and violence — and paves the way for a more humane and inclusive world for people who may or may not be like you or me, but that in no way makes them less human.” (Equal in every way, 2014)

Concerns for the homosexuals and S.377, IPC: In some respects, the NALSA judgment is in sharp contrast to the one in Koushal v Union of India. It is ironic that, while at paragraph 17 of the judgment, Justice Radhakrishnan observes that S.377 has been abused and misused against the “transgender community”, and Justice Sikri in his summary also points out that – “Section 377 of the Indian Penal Code was misused and abused as there was a tendency, in British period, to arrest and prosecute TG persons Under Section 377 merely on suspicion. To undergo this sordid historical harm caused to TGs of India, there is a need for incessant efforts with effervescence” at para 110, they stop just there and do not further delve into the issue, opining that the apex court has already settled the matter. Justice Radhakrishnan also notes at para 19 that “gender identity is one of the most fundamental aspects of life... it refers to each person’s deeply felt internal and individual experience of gender... including the personal sense of the body which may involve a freely chosen modification of bodily appearances or functions by medical, surgical or other means and other expressions of gender, including dress, speech and mannerisms.”

Thus, the judges do not clearly distinguish gender identity from sexual orientation, but the matter isn’t this simplistic. But the question then arises – if one’s gender identity and its expression is now protected, shouldn’t also one’s sexuality and its manifest expression, also be protected? Further, when discussing the meaning of “sex” for Arts. 15 and 16, the court also includes both gender and biological attributes as “distinct components of sex.” This runs counter to the reigning understanding of both the terms: sex, as the biological or physiological features of a person, and gender as the socio-cultural construction of what it means to be masculine or feminine.(Mukherjee, Anindita, 2014)

Also, at para 20, Justice Radhakrishnan observes that “Each person’s self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom and no one shall be forced to undergo medical procedures, including SRS, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity...” As explained earlier, to the extent that Article 19(1)(a) protects core expressions of our identity, it includes our sexual identity. So even if the Court doesn’t wish to collapse conduct and identity – even if it wishes to hold the two to be separate – “the logic of NALSA leads inexorably to the conclusion that at the very least, in criminalising conduct, S. 377 criminalises the expression of homosexual identity, and therefore suffers from a 19(1)(a) problem” (ICLP Blog, 2014).

Conclusion
The NALSA decision, recognised trans-genders as the third sex, allowing them equal access to education, healthcare and employment, and prohibiting discrimination against them. The move reflects a growing wave of recognition of the rights of trans-genders internationally (Matharu, 2014). And to pass on a stronger message, the judges went further to classify trans-genders as ‘other backward classes’, thereby making them eligible for affirmative reservations in education and public employment. Apart from ushering in a new era of
inclusion and open-mindedness, from a purely academic perspective, the judgment also reads as a wonderful piece on Constitutional Interpretation and India’s commitment to its International law human rights obligations.

Another very positive impact of the NALSA decision is that, in its wake, the SC finally decided to conduct oral hearings and accepted the curative petition filed by NAZ on April 22, 2014, in the Koushal case (Ratnam, 2014). The NALSA rationale of reading both “gender identity” and “sexuality” into the constitution, is the basis to reopen the Koushal case, as opined by senior lawyer Anand Grover (Ratnam, 2014).

This judgment also expands the meaning of privacy, links it to autonomy and extends it to our core right to be who we are. It eliminates state regulation of not only the privacy of our homes, but also the primacy of our thoughts. ‘Its potential efforts go beyond even the larger LGBT community. This judgment is a part of our collective constitutional heritage’ (Lahiri, 2014).

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Open Defecation in India: Issues and Challenges

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Abstract
India continues to be the country practicing highest number of open defecation. Unhygienic environment, resulting from, open defecation causes serious health issues. Apart, from health issues open defecation has been one of the major reasons for sexual crimes committed against women. Hence, open defecation is a serious threat to health and gender discrimination. This paper is written with a serious concern that unnoticed encouragement of open defecation has been result of various stigma caused to human being especially against women. Hence, first, this paper would deal with issues giving rise to open defecation. Second, measures taken in international arena and by Indian government to eradicate open defecation. Third, suggestions are given to overcome the problem of open defecation, finally, bringing in a zero open defecation India. This paper concludes apart from tough governmental plans, awareness program, and monetary support to build individual toilets to family it has emphasized strict penalty for open defecation would reduce practicing open defecation.

Keywords: Open Defecation, Heath issues, Rape, India

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Introduction
Indian religions and culture emphasize on cleanliness, but why did it allow practicing open defecation? Though, this could be a drawback raised out of non-invention of toilets in the olden days and it would not have caused serious effects on health due to meagre population. But now too, this practice continues and people are in no mood to change, besides, supporting their arguments for open defecation. There are so many reasons for practice of open defecation. The two major reasons for practicing open defecation are poverty and behavior of people. The open defecation arising out of poverty could be completely eradicated if Indian government evolves with an effective plan to help every house to build individual toilets and by building enough number of toilets in public. But how to bring in the change in behaviour of people, who consider open defecation, helps them in maintaining a healthy life style. The sole solution would be to seriously penalize the open defecators by taking deterrent measures and to encourage more awareness Programme in rural areas by preaching the drawbacks of open defecation to completely eradicate this practice.

This paper would extensively deal with issues giving rise to open defecation, measures taken by India and International actors to control open defecation and finally come up with suggestions to eradicate open defecation. This paper stresses the need to penalize open
defecators with effective statutory provisions and address the above issues that give rise to open defecation through correct government measures, in order to, achieve zero open defecation and bring in a safe India to live in.

**Issues giving rise to Open Defecation**

More than half of all people in the world who defecate in the open lives in India. The following are the issues giving rise to open defecation. Poverty has forced people to practice open defecation. Poverty had hampered people from constructing their individual toilets. But, there arises a question if sufficient toilets are built, whether open defecation would end. The answer would be absolutely “No”, because, it is not only a problem of infrastructure, but completely a problem of sanitation behaviour. Part of a research team that recently surveyed over 3,000 rural households about their sanitation behaviour found, in four north Indian states, almost half of households that have a working toilet have at least one person who defecates in the open. Half of the people who do so told interviewers that they do so because it is pleasurable, comfortable and convenient.

Access to water is one of the most important reasons for open defecation. Water has been added to the list of expensive products and affordability for a common man to use enough water for his basic needs has become a daydream (Report, 2010). Water mystery has deprived people to take a proper bath. Some bath with 3 mugs of water too. If this is the water condition for bathing, then how people could be expected to flush their toilets which minimum requires 20 liters of water? Hence, these are the reasons for unclean toilets leading people to defecate in open.

Overcrowding of urban areas by rural people, who move for employment has resulted in space constraint to building toilets. The number of toilets in urban is so low to accommodate large population to soil (Bank, 2009, p. 20). If space is a problem government should take steps by restraining rural people moving to urban areas for employment, by creating enough employment opportunities in rural areas. Hence, overall rural development could also reduce population in urban areas.

Lack of political will, to fix the problem pertaining to sanitation is another drawback (Bank, 2009, p. 125). Clogging of water pipelines and blocking of drains results, lack of proper use of toilets leading to uncleansed toilets, thereby forcing people to resort open defecation. This result from lack of political will to fix the problem immediately. People in India complain that manholes or sewage seepage and blockage are not attended, sometimes attended with delay and even after attending, the problem persist due to improper finish of work. The water pipelines are denied checking periodically. Municipalities fail to utilize the tax collected from its citizens to check and fix the problem pertaining to sanitation. As many as 95,000 toilets and 58 ‘Mahila Sulabh Shauchalaya’ were constructed across 612 Gram Panchayats under the Nirmal Bharath Abhiyan scheme. However, due to lack of maintenance the toilets in most of the Gram Panchayats of Kanpur Dehat are in shambles. Hence, this is the result of lack of political will to maintain the constructed toilets.

Failure to provide adequate information to improve health is another short coming. Open defecation causes innumerable water borne diseases like Diahorrea and cholera leading to death in children and adults. Recent research reports have suggested that open defecation
affects growth of the children and thereby affecting the human gene to its core and has resulted in transformation of genetics. Hence, addressing the above issues by Indian government would bring zero open defecation.

Measures taken by India and international actors to control open defecation
In 2003 the United Nations Committee on Economic Social, and Cultural Rights, an international expert body provided with an authoritative commentary on the International Covenant on Economic, Social and Cultural Rights, adopted as General Comment No. 15 on the right to water. General Comment No. 15 on the Right to Water lays out the obligations of states to take measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation. In her 2009 report, Caterina de Albaquerque, the Special Rapporteur on the Right to Water and Sanitation defines sanitation as: A system for the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene. States must ensure without discrimination that everyone has physical and economic access to sanitation, in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity. The same is addressed in our Indian constitution in Directive Principles of State Policy and in sui generis laws. Hence, at first hand we shall discuss about constitutional provisions that connect with decent health and dignified sanitation facilities.

Though state provide immense right to Indian people through our constitution, right to health is not addressed directly. Instead, measures to protect health of people have been imposed on state as duties under Part IV of the constitution, containing Directive Principles of State policy. Article 38 imposes liability on State that states will secure a social order for the promotion of welfare of the people but without public health we cannot achieve it. It means without public health welfare of people is impossible. Article 39(f) implies that a child should be provided with opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Article 47 stresses the duty of state to raise the level of nutrition and the standard of living and to improve public health. Article 48A ensures that State shall Endeavour to protect and impose the pollution free environment for good health. Hence, these articles in its strict sense would imply state to take measures to protect health of individuals. This implies that duty of state to provide proper sanitation facilities to protect health of individuals (The Constitution of India, 2007).

Apart from state, the panchayats and Municipalities inserted through 73rd Amendment Act 1992 in Part IX of the constitution plays an important role in improving and protecting health of people. Article 243G says “State that the legislature of a state may endow the Panchayats with necessary power and authority in relation to matters listed in the eleventh Schedule”. The entries in this schedule contain sections related to improve sanitation and health of people and water supply for domestic industrial and commercial purposes.

Apart from constitutional provisions, Indian government has created Sui generis laws like “National Urban Sanitation Policy” (NUSP) in 2008 and Nirmal Bharath Abiyan (NBA) for coming up with 100% sanitized society. National Urban Sanitation Policy instructs states to come up with their own detailed state-level urban sanitation strategies and City Sanitation Plans. It suggests usage of multi-stakeholder City Sanitation Task Force to achieve 100%
sanitized society. Environmental considerations, public health implications and reaching the unserved urban poor are given significant emphasis in this policy. Funding options are laid out including direct central and state support including through existing schemes, public-private partnerships, and external funding agencies.  

Nirmal Bharath Abiyan is a policy to improve rural sanitation. The UPA government has come up with Mahatma Gandhi National Rural Employment (MGNREGA) to include works relating to rural sanitation in collaboration with the NBA. MGNREGA has pooled money for NBA project to set up Individual Household Latrines. The Ministry of Drinking Water and Sanitation has not engaged any Non-Governmental Organizations (NGOs) to work on rural sanitation and no funds have been released to them for the same. However, as per NBA Guidelines, NGOs can assist Panchayat Raj Institution in Information, Education and Communication and Capacity Building activities leading to demand generation, construction and use of sanitation facilities. NBA has also introduced Nirmal Gram Puraskar Yojana for villages that achieve 100% sanitation. The goal of the NBA is to achieve 100% access to sanitation for all rural households by 2022 and establish “Nirmal Grams”. Thereby, transform rural India into “Nirmal Bharat” by adopting community saturation approach.  

Hence, NUSP and NBA will bring in necessary changes in Urban and rural sanitation by rendering 100% sanitized society respectively.

Suggestions to overcome Open Defecation
The former rural health minister Jayaram Ramesh, while addressing a conference on “child height and stunting; early-life disease, water quality and sanitation” said that the malnutrition paradox in India cannot be understood and addressed without looking at the sanitation issues. He also stressed the services of rural health workers and Women Self Help Groups (SHGs) are necessary to address the problem. Because as many 25 lakh rural women are part of SHGs. Hence, women self-help group could help in to solving defecation problem. Alok Kumar in India Infrastructure Report published in 2007 by the UNICEF has given a best illustration of Bihar where SHG has helped to enhance sanitation and hygiene under Total Sanitation Campaign. Hence, the support of SHG could be availed in other states too to enhance their hygiene by using latrines. States like Haryana campaign on “No toilet, No bride” resulting in 330 villages go free of open defecation. Hence, this could be followed by other states to achieve zero open defecation.

Second, the government has to construct free use public toilets in public places like Bus stand, Railway station, Schools, courts, temples, parks, market places and other palaces as it deems necessary. These toilets should have proper water supply, with persons employed by government with decent salary, to maintain toilets cleanliness and repair. Though, through Programme of NSUP and NBA, Indian government funds individual to build Individual House Hold Latrines. But it is not certain whether people use the money for constructing toilets or an additional living room or for any other purpose. Instead, government could provide employment for unemployed youths by producing materials for building toilets, involve them in constructing toilets, and allow them to supervise whether people of every household uses toilets or not by allotting them certain area.
Third, for lack of water supply to use in toilets, on one hand, government could invest in research to innovate toilets, which could serve the purpose with less quantity of water. On the other hand, states could encourage people by saving water from rain water harvesting and improve the quantity of ground water level. Next would be rationing of water to individuals, despite their rank of rich or poor. Because, even water tax would allow rich people to use more, this would deprive poor people of their share. The poor though ready to pay more for improved services on supply of water and sanitation, the potential revenues collected from low income group is not large to invest in major investments. To solve the equity problem, the subsidies should be specially directed towards the lower income population. Unfortunately, at the opposite, higher income populations drew most of the benefits from any subsidy Programme. Hence, Cost-sharing arrangements and beneficiary participation, if not sufficient, are essential to guarantee the correct policy regarding government subsidies (Porto, 2004).

Fourth, campaigning against open defecation and its impact on development on health of an individual through self-help groups, NGO’s and by renowned personalities with effective measures like constant advertisements, cause based movies in television could improve the individual to remain hygienic. Like rewards for cities and municipalities for achieving Zero open defecation, effective campaigners could be encouraged with reward if they could achieve people using indoor toilets with recognition, money, power and pension for life. This would involve more people to involve themselves for a noble cause like 100% sanitized society.

Fifth, people defecating in open could be subjected to deterrent punishment by bringing open defecation as a serious offence as per section 269 and 270 of IPC. Indian Penal Code (45 of 1960) in Chapter XIV mentions offences and punishment affecting the public health, safety, convenience, decency and morals. Especially, sections 269 and 270 provide an act committed negligently and malignantly likely to spread infection of disease dangerous to life respectively (Indian Penal Code 1860, 2003). Hence, this section indirectly covers people who defecate in open, because they pollute the environment and naturally likely to spread the infection of any disease dangerous to life. But open defecators are not punishable under section 269 as it mentions the phrase “unlawfully” and no where there is an Indian Act, which mentions open defecation is unlawful. Open defecators are not punishable under section 270 of IPC because it cannot be declared a malignant action, because this has been the impact of mismanagement, lack of infrastructure and lack of political will on part of government. The same way open defecation cannot be declared as a public nuisance and punished under section 268 of IPC, because majority of people who practice open defecation are poor and denied of proper sanitation facility. Hence, in order to declare open defecation as an offence Indian government should provide proper sanitation facility to its people. By making open defecation as an offence we can also bring change in behaviour of people who practice and consider open defecation is comfortable, convenience and healthier.

Sixth, In 2009 Asian Development Bank, published “India’s Sanitation for All: How to Make it Happen” this report examines the current state of sanitation services in India and offers six recommendations that can help key stakeholders work toward universal sanitation coverage in India: scaling up pro-poor sanitation programs, customizing investments, exploring cost
effective options, applying proper planning and sequencing, adopting community-based solutions and forging up innovative partnership. Hence working on these recommendations by Indian government would eradicate open defecation.

Finally, Pathak's model could be implanted by Indian government to overcome the problem of open defecation. Pathak has been proposing Indian government to install toilets that includes two tanks with holes that turn excreta in to fertilizer, which does not require much maintenance. This has been used by many countries and model is a successful all around the world. This model is patent free and can be used by anyone in the world without a fee. The only problem that lies with Indian government is raising fund to install these toilets. Pathak has put forth that the amount for raising these toilets would be 16 times more than the investment made by Indian government since 1999 to construct toilets. Hence, Indian government has to concentrate on raising funds and encourage philanthropist to invest on building toilets. Corporates could be encouraged to utilize their share of profit on the realm of corporate social responsibility to build up many toilets and maintaining them, as this would make their contribution effective for protecting environment (Meharothra, 2014).

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Hence, the suggestion can be worked out if public participation and partnership from community organization succeeds in achieving zero open defecation.

Conclusion
Open defecation not only affects the defecators but also the people in neighborhood who do not practice open defecation. Open defecation affects the growth of children by impacting genetics. Hence, sanitation reflects an emergency not only for health, but also for the economy. Because open defecation brings in diseases that brings premature death and unproductive individuals.

Apart from health issues, it is a proven fact that crimes against women has been in increase due to open defecation. A lack of toilets also deters tourists, with at least three studies showing India poses the highest risk to travelers of picking up multiple drug-resistant strains of fecal bacteria (Meharothra, 2014). By following the above suggestions and especially concentrating on penalty to open defecators, India could zero open defecation. In order to, bring change in mind of people who believe in taboo that open defecation is healthier and save them from getting polluted should be punished as for practicing untouchability and polluting the environment. The penalty should be deterrent and the punished should not dare to do the act again of committing open defecation and should serve as a lesson to others who practice open defecation.

End-notes
1 http://indiasanitationportal.org/18749
2 CESCR, General Comment No. 15: The Right to Water, para 37(1).
4 http://indiasanitationportal.org/78
5 http://indiasanitationportal.org/18752
Pathak is the founder of Sulabh International.


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Abbreviation used:
IHHL: Individual House Hold Latrines
IPC: Indian Penal Code
MGNREGA: Mahatma Gandhi National Rural Employment
NBA: Nirmal Bharath Abhiyan
NGO: Non-Governmental Organization
NUSP: National Urban Sanitation Policy
SHG: Self Help Group
UNICEF: United Nations Children's Fund
UPA: United Progressive Alliance
Decoding Gender Discrimination in Indian Patriarchal Society

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Abstract
India is considered to be a very religious and culturally a rich and diversified country. However, gender biasness and discrimination is an issue leading to destruction. For the betterment of the country, it is very important to treat both the sexes equally. There is a need to advance the social role of women. There are two basic beliefs. First, men and women are treated as two different kinds i.e. discriminated, and second, this discrimination is wrong and should be overturned. To solve this problem, it is necessary to know the root cause. One of the most contributing factor is that our society is based on ‘patriarchy’. A patriarchal society is where men dominate women which often leads to the exploitation of women. Women are being discriminated because of socially generated differences rather than biologically constructed differences. Gender is a political construction based on stereotyped feminine and masculine characteristics of women and men. Hence, we must look forward to remove the social and gender inequalities, injustices, and take steps to overcome this problems which pose a big threat to the existence of a peaceful society.

Keywords: Gender, Discrimination, Patriarchy, India

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Introduction
Patriarchy in our society can be described as the unequal power relationship between women and men. It is characterized by present lifetime as well as the historical period. Patriarchy treats women as oppressed and disadvantaged. This discrimination takes place in every aspect of life but it can be noticed particularly in institutions, places where decision-making is an important aspect, employment, industry, etc. Women suffer discrimination and violence created by men which also represents patriarchy. Discrimination in society, class, race, sexuality, etc. shows that women are at a level down from men. Feminists use the concept of ‘patriarchy’ to describe the power relationship between men and women. The term literally means ‘rule by father’, and can refer narrowly to the supremacy of the husband- father within the family, and therefore to the subordination of his wife and children. It refers to the ‘male supremacy’ or the ‘male dominance’ within a family. Patriarchy also refers to the male dominance in other walks of life: in education, at work, and in politics. Patriarchy is therefore commonly used in broader sense to mean quite simply ‘rule by men’, both within the family and outside.

A suffocating patriarchal shadow hangs over the lives of women throughout India. Indian culture is a patriarchy which thinks that men should dominate everywhere. We treat women as second class citizens who cannot think or act independently. Their ordeal starts
even before they are born. However, even though India is moving away from the male dominated culture, discrimination is still highly visible in rural as well as urban areas, throughout all strata of Indian society. From all the sections, castes and classes of society, women are victims of its repressive, controlling effects. Those subjected to the heaviest burden of discrimination are Dalit or ‘Scheduled Castes’. Their pervasive negative attitudes of mind remain, as do the extreme levels of abuse and servitude experienced by Dalit women. They experience multiple levels of discrimination and exploitation, much of which is barbaric, degrading, appallingly violent and totally inhumane. There are several traditions and reasons which demonstrate India’s patriarchal traditions. First and foremost of such traditions is the Dowry Tradition, because of which much of the discrimination against women arises, where the bride’s family gives the groom’s family money/ and or gifts. Dowries were made illegal in India in 1961, however the law is almost impossible to enforce, and the practice persists for most marriages. Unfortunately, the iniquitous dowry system has even spread to communities who have not traditionally practice it, because dowry is sometimes used as a means to climb the social ladder, and to accumulate material wealth.

The bridegroom’s demand for dowry can easily exceed the annual salary of a typical Indian family, and consequently be economically disastrous especially in families with more than one or two daughters. Secondly, women in India are considered as a Liability: Though the Indian Constitution grants equal rights to men and women, strong patriarchal traditions persist in many different societal parts, with women’s life shaped by customs that are centuries old. Hence, daughters are often regarded as a liability, and are made to believe that they are inferior and subordinate to men. There are several reasons as to why men are regarded as an asset for the family whereas women are as a liability: Men are considered capable of earning money, carrying on the family line, and are also considered to be able to provide for their ageing parents, and of bringing a wife into the family. Also particularly in Hindu religion men play a very important role in performing the rituals. On the other hand the women are considered incapable of earning money, and are seen as economically and emotionally dependent on men. While they help in domestic duties during childhood and adolescence, they go to live with their husband’s family after marriage, which means loss of money due to dowry traditions. This is why the birth of a daughter is not celebrated whereas the birth of a son is considered a great honor and is celebrated in a grand manner.

Discrimination against women starts within the womb of a mother or as an infant, then as a child, then after marriage, and finally even as a widow. Thus we can see that how the women are discriminated against at each and every step of their lives. India is one of the few countries where males outnumber females; the sex ratio at birth is, that is, the number of boys born to every 100 females, is quite imbalanced in India, where the Sex Ratio at birth is 113 according to the 2011 census; also there are local differences between the North/ Western regions such as Punjab, or Delhi where the sex ratio is as high as 125, whereas in the Eastern/ Southern India the sex ratio is 105. Hence, preference for male child persists, quite often because of financial concerns as the parents cannot afford the heavy amount of dowry for their daughter’s marriage, and so the child sex ratio is quite less in India (refer to Table No. 1 at the end). This leads to some of the most gruesome acts when it comes to gender discrimination, such as: Selective abortions, Murdering of female babies, and/or Abandonment of female babies. Though ‘parental sex discrimination was legally banned in 1996, the law is nearly impossible to enforce and is not even familiar to all Indian families.
Parental tests to determine the sex of the fetus were criminalized by Indian law in 1994, but the imbalances in child ratio at birth clearly point out to gender selective abortions. In total 11 million abortions take place annually and around 20,000 women die due to abortion related complications.

As a child, girls are again discriminated and are often treated differently from male children in terms of nutrition and healthcare, which means that the male offspring is given a more preferential treatment. This is a major reason for high levels of malnutrition. This leads to harmful consequences for women: They never reach their full growth potential, and develop anemia, which causes many problems while pregnancy, complicating child bearing and resulting in maternal and infant deaths. As far as education is concerned, again women occupy a secondary position in terms of literacy. According to the Census of India conducted in 2011, the literacy rate of women in India is 54% whereas the literacy rate for men is 76% (Refer to Table No. 2). India’s constitution guarantees free primary school education for both girls and boys up to the age of 14, but primary education in India is not universal, and often times not seen as really necessary for girls. Their parents might consider it more important, that they learn domestic chores, as they will need to perform them once they get married. This results in one of the lowest female Literacies of the world.

Child marriage is another menace in the Indian society. As the common Hindu phrase: “The younger the groom, the cheaper the dowry” suggests, that if the marriage is fixed at a younger age, the parents of the female have to pay lesser amount of dowry which leads in child marriage. Girls married off as children many a times move in with their husband and in-laws right after marriage. In that case, many child wives are inclined to experience domestic violence, marital rape, deprivation of food, and lack of access to information, healthcare, and education. Thus, the vicious cycle of illiteracy and abuse is likely to be continued and passed on to their own daughters. The prohibition of Child Marriage Act 2006 prohibits marriage below the age of 18 for girls and 21 for boys, but according to UNICEF’s “State of the World’s Children 2009” report, 47% of India’s women aged 20 to 24 were married before the legal age if 18, with 56% in rural areas. The report also showed that 40% of the world’s child marriages occur in India.

After their marriage also, the discrimination against the women continues. There is mainly a bias towards men and their superiority in marital relationships. Though the women are ought to be respected, protected and kept happy by their husbands, they are also kept under constant vigilance, since they cannot be completely trusted or left to themselves. Under the existing cultural and social ethos of India, a married girl/woman is no longer considered to be a part of the family of her birth, instead she has become a part of the family of her groom. Hence, after marriage the woman leaves her parental home and lives with her husband’s family who is supposed to take care of her and keep her in his custody, whereas the woman is required to assume all household labor and domestic responsibilities. In certain parts of the country women are taught from their birth to be submissive not only to their future husbands, but also to their in-laws. Accordingly, the society mandates a woman’s obedience to her husband and in-laws. Any disobedience would bring disgrace to both the woman and family, and might lead to the woman being ostracized and neglected by her own family. There is no cultural or religious tradition behind one of the most ghastly incidents of female oppression, but the prevalence of the dowry tradition has supposedly
lead to ‘Bride Burning’, or any other form of murdering of the wife by the husband and in-laws who claim, that she died in a domestic accident, so that the widowed husband would be free to marry again and collect another dowry.

Women also face discrimination as widows
The Indian government has enacted numerous laws to protect widow’s rights, including prohibitions against traditional practices, such as the burning of widows (Sati). A widow is still seen as a liability in some parts of the Indian Society, which might result in her being abandoned by her in-laws. As her originating family often unwilling to take her back as well, she might be left on her own, without any education, skills, or financial assistance. Instead she is subjected to many restrictions, and might be required to shave her head permanently, or to wear white clothes for the rest of her life. She is also not allowed to enter in any celebration e.g. weddings, as her presence is considered inauspicious. Widows are also not allowed to remarry. Child marriages may lead to child or teenage widows who are bound to be isolated and ostracized for the rest of their lives. There remains a strong bias against gender equality in those societal parts of India, where patriarchal traditions prevail. Consequently, any inheritance of a deceased husband or father passes down to the oldest son while the wife or daughter does not receive any financial benefits, which shows that women are discriminated.

The structural hierarchy of Indian society, which puts patriarchy at the top of gender cycle, has been predominant in deciding how women lead their lives in India and elsewhere across the globe. With the Badaun gang-rape and murder case in the spotlight and Samajwadi Party leaders’ lack of empathy, the issue of gender-based violence is surmounting on a daily basis. From the records, India has clearly lost the plot to curb the rising cases of rapes, laxity in convicting criminals and providing security to women. It is always women who have to face the brickbats and toe the line. Whether it is curbing freedom, being married off at an early age or giving preference to the boy child, this prejudice stems from the fact that parents treat the girl child as a liability rather than an asset. Jawaharlal Nehru, Leader of India’s Independence movement, and India’s first Prime Minister quoted: “You can tell the condition of a Nation by looking at the status of its Women”. Now, having looked at the status of women in India, if we analyze this quote we can clearly state that India is not in a healthy condition, as the women are being oppressed and are disadvantaged sections in the society. Sustainable and long-term development is not possible without the participation and empowerment of women.

Only if they participate in the economic and societal development, the full potential of the Indian Society will be unfolded, as Kofi Annan quotes: “Gender equality is more than a goal in itself. It is a precondition for meeting the challenge of reducing poverty, promoting sustainable development and building good governance.”
Table 1 (Child Sex Ratio)

Table 2 (Literacy)
Gender Justice and Equality through the Monocle of Social and Legal Interface

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Abstract
Gender equality and justice has been an outrageous issue from many years. India faces umpteen number of challenges in the promulgation and safeguarding social and gender justice. Our paper is trying to go underneath the wellspring of the vital cause of gender disparities. The pivotal question that our paper seeks to answer is “How far the issue of social and gender justice is being addressed by the instrument of political governance”. According to the survey of world economic forum 2013 gender inequality is being prevailed everywhere and employability has been judged on the basis of gender which is a sheer breakage of women civil liberties. Social justice is a key parameter to up class the position of a woman in the society so that she will get a better exposure in other endeavours.

Keywords: Status of Women, Gender Justice, India

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Introduction
Gender justice and equality has been a debatable and an imperative issue to address in the modern politico-socio arena and governance. Society has provided us with ample of values, ethics and morals which are unequivocally providing no grounds to discriminate between men and women. Society is an amalgamation of men and women, their efforts and contributions is the key to stabilize peace and harmony. Our society taught us to treat women as ‘shakti’ and do worship its power and grace.

Participation of women in various aspects is a pivotal issue to take into conformity with the mainstream scenario and their politico-socio status. The modern world where we live, those values that are the foundation of humankind should not be undermined otherwise this place will sink into crises that can never recollect. One major concern we are confronting with is increasing rate of sexual violence and abuse and major cases of domestic violence for dowry. In this paper, we will meticulously indulge in a discourse with the present condition of women in our society. Quite a few issues related to their rights and civil liberties will be dealt in order to escalate the awareness about their condition and position. There are several things, we tend to forget and ignore in furtherance to women rights and liberties, such as participation in governance, economic activities, health and survival, fostering societal peace and planning. To keep a check upon them is paramount to give birth to a constructive interference of humanity and to reach the goals of development process.
Role of Political Governance and Participation of Women

Socrates and Plato, the great philosophers, explicitly emphasized upon the participation of women in the political sphere and guardianship for attaining wisdom and harmony, as there is no difference between men and women in terms of qualities and strengths. Democratic governance involves developing institution and process that are more responsive to the needs of ordinary citizens. The call for the time speaks about enriching social and political institutions, here the role of the democratic and political governance is to inculcate various measures, which are binding towards harmonious upgradation of those who are marginalised and excluded from the mainstream of political and social arena. It should address issues related to inequalities prevailing and associated with gender. For an example, if the current scenario is considered then the vision of Mr. Narendra Modi’s Government 2025 is also producing a great endurance for enlarging the scope of women’s participation in political governance and heading towards developing the Nation at a higher pace.

These policies have envisaged a great vision. However, if it is inclined towards the real change that will only bring some real gain, which is a grey area and a great concern for that matter. In India, there were several occasions when efforts have been made towards designing a constructive interference but some or the other difficulties always polluted the path. It has witnessed the world’s one of the drastic changes in its conventional political scenario, the inclusion of PRI’s (Panchayati raj institutions) through the eyeglass of 73rd and 74th amendments in the Indian Constitution. For the very first time Women have given, a share through reservation of one-third seats in the PRI’s and this accoutrement widened the ambit of women’s participation at the grass root level. In addition, government has introduced sundry quotas for escalating the women participation and representation at different levels of governance. However, there are many loopholes and underpinnings that undermining the growth of these initiatives. If we vouch into the reality, a different picture will draw before our eyes. Today, if we access any village’s Panchayati governing council then, a flabbergasted fact will be that most of the women representatives or members belong to elite group of classes of that particular village. Nevertheless, women participation is there but that is not a direct one, an indirect regulation by some influential males of elite classes of that village. India has been a place of holy pilgrimages and many other pious destinations that boast of a pure soil with integrity and justice. However, this depiction of Indian culture will be construed folly and filthy if we are not going to pursue a commonality in men and women, in their abilities as individuals and in the area where perseverance is the key and temperament is the source of rationality. Role of the political governance broadens the ambit of vision we have for social justice and gender equality: It can act as a harbinger in implementing certain laws, which are lacking at providing a carapace to women in the modern Indian society. The rampant increase in the rate of crimes against women is also an alarming instance where impeccable government’s intervention is needed. Secondly, a responsible government owes a duty of strengthening safety and security issues of its
people by intensifying the sexual surveillance of citizens, disciplining the sexual behaviour of individuals and regulating and monitoring sexual conduct through law enforcement agencies.\(^6\)

**Gender Equality and Justice In the light of laws**

Indian society is always construed as a cultural and ethics based junction of values but the harsh picture of veracity is also a part of that land which ostensibly boasts of religious ethics and moral conduct. If we look behind and scale the history of Indian immoral practices then the veil of ignorance will torn apart. The barbarous practice of sati system, child marriage, dowry demands, widow’s exploitation, female infanticide, nebulous property rights, etc. are just making a synopsis of what women have been facing till now irrespective of the fact that the country is developing and evolving. In Indian society, girls are socialized from their tender age to be dependent on males; their existence is always subject to men.\(^7\) From the childhood itself, girls are not treated at par with the males. They are taught to give respect to every command of the elder males. Moreover, they are always kept behind the gas stoves and forced to do what they have been asked, mutely and numbly. The patriarchal system in India made women to live at the mercy of men, who exercise unlimited power over them.\(^8\)

Several legislations had enacted by the legislatures (British and Indian) in order to ameliorate the condition of women and render justice to their disposal:

- In 1829, Abolition of Sati was prioritised
- In 1856, Widow Remarriage got legal assent
- In 1870, Female infanticide was prohibited
- In 1872, Inter-caste, Inter-community marriages made legal
- In 1891, age of consent raised to 12 years for girls
- In 1921, women get rights to vote in Madras Province
- In 1929, Child marriage restrain act passed
- In 1937, Women get special rights to property inheritance
- In 1954, Special marriage act enacted
- In 1955, Hindu marriage act passed
- In 1956, Suppression of Immoral traffic in women and girls act enacted
- In 1961, Dowry prohibition Act passed
In 1981 Criminal Law Amendment Act executed

In 1986 The Indecent Representation of Women (prohibition) Act portrayed

In 1987 Commission of Sati (Prevention) Act playacted

Likewise, several enactments are being sanctioned until this date to bring gender parity in industrial and economic set up. That will be discussed under the purview of economic disparities in the next section.

The initiatives taken by the virtue of political governance are trying to take in hand the problems faced by women in day-to-day life in an Indian society, nevertheless discrimination and victimisation of women is not coming to a halt. The Indian constitution is the bedrock of law and policy in India. It is a religion of law, through which we vouch into the litigiousness of every act, every reaction and rights of the people. There must had been firm things in the mind of the framers of the constitution for the fortification of women rights as they have enshrined quite a few provisions, which act as a carapace to women civil liberties.

Article 14 provides equality before law and commands to not discriminate or exploit because of gender. Article 15 defines the rights of the women and safety of the same through legal jurisprudence. Article 16 protects the equal opportunity in matters of public employment. Additionally, articles 17, 18, 20, 21, 22 and 23, envisaging a legal framework for shielding women's civil liberties. Moreover, to shoulder the responsibility of safeguarding and supervising all the laws and provision, a strong judicial set had been envisioned, and undoubtedly, it has stood firmly whenever the stern tasks have been assigned to it for imparting justice. Some of the landmark judgements by Indian judiciary are as follows:

CB Mutthama v Union of India

In this case, the validity of Indian Foreign service (conduct in discipline) rules of 1961 was challenged under which a woman employee has to sign a written permission before her marriage is solemnised that her employment can be terminated at any course after her marriage or she may has to resign. Supreme Court straight forwardly slashed the ruling as it was against article 14 and 16 of the Indian constitution and abrogating a woman to continue in foreign services even after her marriage. In addition, Supreme Court predicated that men and women are not different in the eyes of law. If the rule is discriminating because of societal interpretation of consequences of a marriage then it should be discarded.

Air India v Nargees Mirza

Supreme Court in its ruling struck down the provisions of rules stipulated termination of a woman from the airhostess services once she becomes pregnant. Therefore, providing a carapace to women employee from discrimination.
In this case, Supreme Court held that stridhan property of a married woman should not be placed with the man as dowry is totally prohibited and the property is a sheer deed of love presented to her by the parents and should be used for her usage only.

Vishakha and others v State of Rajasthan
Supreme Court stood firmly against the sexual harassment at the workplace and recommended the Parliament to enshrine laws to protect women from this assault. With reference to which sexual harassment at the workplace (Prevention, Prohibition and Redressal) Act and Rules, 2013 have been notified by the ministry of women and child development.

Similarly, at several instances, the Indian Judiciary has rectified the underpinnings in the protocol of laws and its functioning in order to address the sensitivities of social and administrative set up of the country. This has incepted a hope of goodwill and provided a vision to the dreams that are thriving for gender equality through the monocle of social and legal interface.

Economic Discrimination and Gender
“Women are paid less than men because they choose to low-paying jobs.”
“Men earn more because they are made to do high-earning jobs.”
“Men have a greater responsibility in supporting the family than the women and therefore have a greater right to the job.”

Such are the accepted wisdom, which are very popular when it comes to the wage gap between male and female. This and many others arguments and defenses are put forward by those who justify and argue from the sides of male dominance in the society. Gender, is not only related to the social role and status, but also has great economic significance, perceptible in long-term outcomes. Gender equality represents a key factor for unlocking the economic potential of nation-states and for leveraging economic growth.

Economic Discrimination is different rates of compensation for the same ability or output, based on factors such as the worker’s age, ethnicity, race, religion, or sex. Whilst we contemplate about economic discrimination in Indian context, the disparity between the rich and poor and between the men and women occupy most of the debates. India is a land where culture and tradition has a strong hold on every part of the society. In India, women’s participation outside the home is viewed as inappropriate, subtly wrong, and unquestionably perilous to their chastity and womanly virtue. When a family recovers from an economic crisis or attempts to improve its status, women may be kept at home as a demonstration of the family’s morality and as a symbol of its financial security. Well-off and better-educated families may send their daughters to school, but are able to afford the cultural practice of keeping women at home after schooling is complete. Such cultural reasons are known for creating barriers for women to work. Even inside India, the land of diversity, the same pattern is not found everywhere. India of North has less women participation in labor and industrial sector as compared to Southern regions where women have comparatively higher freedom in the society. An important conclusion which can be drawn out from these statistics is that, in the south, where more freedom is given and the
education rate is high, the problem of gender gap and gender discrimination is less as compared to other areas.

We now try to look over the problems, their possible reasons and their solutions when it comes to removing or diminishing the gender gap. The biggest problem in analyzing the status of this country is to know the difference between a poor or a rich, developed or developing nation. Many researchers have found difficulties whenever they try to scrutinize the status of the countries. They assert that the developed countries are rich because of its greater technological progress, a higher rate of investment and saving, better education, skill levels and infrastructure. Nevertheless, over the past three-four decades, the World Bank and IMF have spent a lot of money on developing countries, which ended in disenchantment, causing no change in the GDP rate differences of Developed and Developing Nations. This strained people to change their focus to culture and social infrastructure of the developing nations. When these things gained attention in determining the economy of the country then the need to understand the role, status and behavior of the neglected population until now, i.e. women, arose.

When the focus shifted from the wealth to the social wealth, a very new concept of development emerged. Today, it is not about increasing the Gross Domestic Product only. Development in poor countries, as Amartya Sen argues, should not be about increasing their GDP and increasing the wealth, real development will be achieved when the people enjoy the freedom associated with wealth like the freedom to choose and the freedom to become educated. When you restrict a particular class to enjoy their freedom, they act as disincentives to economic growth. Women in India make up for almost half of the total population and the restrictions and the lack of freedom given to them can be attributed to the failure of Indian economy to stand amongst the developed nations. India, in the process of neglecting women from the economy has wasted a lot of its human resource because there has not been any proper utilization of the best possible and available resources.

A recent survey and the report by Institute for Women’s Policy Research illustrated that women earn less than men even in the women dominated jobs. The notion that men can do the work more effectively has been accepted by largely all the fields. The cardinal issue for the emergent disparity between men and women is “globalization”. The effects of globalization widen the gap between men and women in terms of the access to the political and economic power. The main reason why this problem has always remain hidden and unnoticed is that they are caused by structural attitude and social problems, and reporting them and compiling their data becomes an almost unworkable task. Government from time to time has tried to remove or to minimize the gap. However, the inequality still prevails. In developing countries like India, the main problem is not the different wage rates, but the differential access to wage employments. The discrimination still persists, even in promotions, where a men get privileges and the women, on the other hand, gets increased workload as is evident from the stats provided by women commission of India.

Therefore, for economic development it is crucial to try and to erode the discriminatory social norms by encouraging policies and education that underline the value of women in society and particularly in the labor market. We need to think about targeted policies that
change social norms and society’s perceptions of what women are capable of. There is a role for the government in financing projects like Mahila Samakhya, a women’s empowerment project launched in 1986 by the Ministry of Human Resource Development, which through the building of village level collectives, seeks to bring about a change in women’s perception about themselves and that of society regarding women’s traditional roles. Respect for human rights, democracy, rule of law and transparency are those factors which are necessary, but not sufficient to guarantee equal opportunities for men and women in the country. Positive gender discrimination is also necessary. Meanwhile, political will is a decisive factor in achieving gender equality.

Suggestions and Analysis

- In order to attain genuine gender equality in several steps should be taken:
  - The appropriate legislation for achieving gender equality should be strengthened and its implementation should be guaranteed by the public/state and private sectors.
  - Women should be given legal advantages, as their household function requires special treatment.
  - Gender awareness activities should be widely implemented in order to explain the meaning of gender equality, how to achieve it and what benefits society and the country will gain by ensuring gender equality.
  - Appropriate social infrastructure needs to be created to support women’s involvement in the labour force.
  - Special state aid programmes should be initiated to recognize and facilitate women’s household functions.
  - Structural gender discrimination should be overcome by legal means and appropriate transparent systems based on equal rights and merit should be initiated.
  - Gender statistics should be applied more widely.
  - The gender impact of any law and policy should be examined before it is implemented.
  - The gap between salaries in masculine and feminine sectors should slim down by eradicating vertical segregation.
  - All this if properly implemented can very effectively solve the problems of Economic and social discrimination in gender.

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Role of Social Enterprise in Women’s Empowerment: A Case Study of Sadhna

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Abstract
Sadhna is proud to have completed ten years of functioning as a social Enterprise that is co-owned by 700 women of Rajasthan. Seva Mandir a NGO in Udaipur started a small appliqué work program in the year 1998-the patchwork program (as Sadhna was called then) with a group of 15 women. The journey in the early years seemed long and difficult but there was probably more to it. The hard work and persistence paid off and Sadhna in 2004 became registered as for- Profit Mutual benefit trust with 235 members. Sadhna continues to walk with pride and confidence by attempting to make a remarkable change in the lives of ordinary rural women .Sadhna’s task doesn’t get fulfilled by alternative means of income generation but it goes on to make the poor women aware about their individual and social responsibilities and thus empowering them. Sadhna has continued its efforts in increasing the number of its artisans (beneficiaries) every year. Sadhna regularly interacts with its artisan members through meetings and workshops and tries to solve their problems/issues arising both at a personal and professional level. The foundation and the mission of Sadhna has always been to be committed to empower women, both economically and socially and enhance their self-esteem. Making its artisan members, self-sustainable and give them access and control over a significant financial and social resource, a status in their family and society.

Keywords: Artisans, Social Enterprise, Empowerment, India

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Women Empowerment
Women face many social challenges today whether it be making soaps and incense in order to secure an income for her family to raising children amidst the harsh economic crisis. A woman is dynamic in the many roles she plays. In the village of War here in Maharashtra 400 women stood up and raised their voices to ban alcohol and drugs. Women have withstood perennial health problems due to the lack of toilet facilities and are forced to use fields and open spaces for defecation. Gender equality is, first and foremost, a human right. A woman is entitled to live in dignity and in freedom from want and from fear. Empowering women is also an indispensable tool for advancing development and reducing poverty.
Empowered women contribute to the health and productivity of whole families and communities and to improved prospects for the next generation.

The importance of gender equality is underscored by its inclusion as one of the eight Millennium Development Goals. Gender equality is acknowledged as being a key to achieving the other seven goals. Yet discrimination against women and girls - including gender-based violence, economic discrimination, reproductive health inequities, and harmful traditional practices - remains the most pervasive and persistent form of inequality. Women and girls bear enormous hardship during and after humanitarian emergencies, especially armed conflicts. There have been several organisations and institutions advocating for women, promoting legal and policy reforms and gender-sensitive data collection, and supporting projects that improve women's health and expand their choices in life. Despite many international agreements affirming their human rights, women are still much more likely than men to be poor and illiterate.

They usually have less access than men to medical care, property ownership, credit, training and employment. They are far less likely than men to be politically active and far more likely to be victims of domestic violence. The ability of women to control their own fertility is absolutely fundamental to women’s empowerment and equality. When a woman can plan her family, she can plan the rest of her life. When she is healthy, she can be more productive. And when her reproductive rights — including the right to decide the number, timing and spacing of her children, and to make decisions regarding reproduction free of discrimination, coercion and violence — are promoted and protected, she has freedom to participate more fully and equally in society. Women’s empowerment is vital to sustainable development and the realization of human rights for all. Where women’s status is low, family size tends to be large, which makes it more difficult for families to thrive. Population and development and reproductive health programmes are more effective when they address the educational opportunities, status and empowerment of women. When women are empowered, whole families benefit, and these benefits often have ripple effects to future generations. The roles that men and women play in society are not biologically determined - they are socially determined, changing and changeable. Although they may be justified as being required by culture or religion, these roles vary widely by locality and change over time.

Social Enterprise

The term ‘social enterprise’ came about from recognition that in the UK and across the world, there were organisations using the power of business to bring about social and environmental change without a single term to unite them. Since the term started being more widely used in the mid-1990s, there has been a lot of discussion and sometimes confusion about what social enterprise is. At Social Enterprise UK we feel we must be clear but pragmatic when it comes to defining social enterprise. Here are what we believe are the characteristics of a social enterprise.

Features of Social Enterprises

- Clear social and/or environmental mission set out in their governing documents
- Income through trade
- Reinvestment of major part of profits
Sadhna: Initial Phase
Sadhna, the women’s enterprise set up by Seva Mandir has now completed ten year. The paper talks about the challenges and the successes. The steady feature is that the commitment, courage and tenacity of both artisans and staff in making Sadhna a very special experiment. The everyday struggles for equality, recognition and respect- both are simple and profound and that is what has kept everyone going. On, the economic front , this year saw no change in the low growth trend on the last few years. Sales only grew by 5% and production by 7%. And even this modest increase in production and sales came from the increased use of silk fabrics than an increase in the total number of pieces produced or sold.

The total number of artisans involved with Sadhna, has also for the first time since inception reduced from 697 to 657 this year, 30 new women joined Sadhna during this year and, 70 existing members dropped out. While some of this can be attributed to the overall economic environment, but it is also the case situation WHICH calls for introspection and out of the box thinking from our side. However, the year has also not been without its year of silver linings –two of the artisans were invited to take part in the republic day parade and not only did they meet the president of India, but also showcased their art before the entire nation. And the collector of Rajsamand gave a certificate of appreciation to Sadhna as a part of the Republic Day celebrations at Rajsamand. Another big milestone was the inauguration of the Common Facility Centre at Delwara –an initiative that has been in the making for many years. The First conversation around this happened in Delwara in 2001 on a warm bright November morning, when at the end of a very inspiring meeting, Prof. Mary Katzenestein asked the women about their dreams. And the women of Delwara said they would like to have their own space.

Mary returned from a friend’s wedding and decided to make this the wedding gift- she promised the women that she would help them get started with money for the land. But, it took women and Sadhna five years to find the land.And another couple of years till NABARD joined hands, and they got the money to make the building. Finally on 22\textsuperscript{nd} June this year the Women’s owm Common Facility Centre (CFC) was inaugurated by Mr. Jiji Moumen, the CGM of NABARD -a poignant and most fulfilling moment for everyone. In summay, the years have been good. Sadhna with its enviable band of artisans and staff its enormous goodwill and with a supporter like Seva Mandir will be successful.

Since its registration as an independent entity in 2014, Sadhna has been a learning experience with new challenges and opportunities helping the enterprise to grow over the years. Although, the growth cannot be measured in terms of volumes and members but by overcoming business and social challenges its almost winning half the journey. Seva Mandir being the backbone of Sadhna has played a major role- right from initiating the income generation program (appliqué and patchwork program) in 1988 till date.Sadhna’s Growth also lies in the collective strength of its member artisans who have continuously supported the enterprise in good and hard times. Today the enterprise consists of 657 registered
members from different locations based in and around Udaipur and Rajsamand district of Rajasthan. There are 46 groups in total comprising of each 15-20 women each. Out of the total 46 groups, 6 are tribal groups comprising of 105 artisans. There are 7 stitching groups comprising of 72 artisans.

**Turn-around Phase in Sadhna**

Sadhna’s artisan members this year have reduced from 697 to 657. 30 women joined the membership and 70 members dropped out this year. This has been a crucial phase for Sadhna. If we look at the other side of the coin, the phase definitely shows a positive side of Sadhna. The objective of Sadhna is not only empowering women but also to make them socially and economically stable and having control and access over significant financial and social resources. The development of Udaipur city along with opening of new malls and other similar organizations like Sadhna has created new job opportunities for the women. The brighter side is that it is achievement for Sadhna that it trains its artisans over the years and allows them the independence to choose options for becoming economically stable and confident to take their own decisions. These artisans have emerged as confident and responsible citizens of the society and negotiation power has increased. Empowerment today has no doubt led to development of artisans as they stand as strong decision maker.

Sadhna conducted a survey at educational level and skill level and the findings are as given below:

- Literate Artisans- 25%
- Illiterate Artisans- 75%
- Skilled Artisans-42%
- Semi-skilled artisans- 31%
- Unskilled artisans-27%.

Over the years Sadhna has tried to make a change in the lives of the artisans by not providing them economic and social security but also to upgrade their skills through skill development trainings and workshops. Keeping in mind the social aspect, Sadhna conducts training programmes and workshops for its artisans every year. This helps to motivate them and brings out the best in them. These training programs bring forward various social issues arising in their villages and personal problems which are tackled by our social manager. Through, the support of Trifed, Sadhna has conducted Design Workshop Training (DWT) and Primary Level Training (PLT) for Bhil basti artisans. Advance Level Training (ALT) was provided to 20 Bhil basti artisans in order to improve their efficiency and skill so that their output can be increased with good quality and exquisite handwork. Sadhna in collaboration with ILFS Skill School Jaipur has provided Sewing Machine Operator (SMO) Training to 30 artisans at CFC Delwara. These tailoring artisans have been absorbed by Sadhna at Delwara office.
Exposure Tours

Akashara – a workshop was conducted. The main aim of conducting exposure tours and workshops are to showcase crafts from different states and to display best handcrafted quality work. The object of study is even to study exports, what factors should be taken while producing products that are to be exported focus on product quality etc., The best thing that is learnt is sample for the customers based on the market forecast and take the feedback.

Social Security for Artisan Members

The artisans need for a safe secure future by applying for various pension, health and provident fund schemes to a large group of artisans has been a challenging task for Sadhna. Every year Sadhna makes efforts to provide the artisan members with various social security schemes like- Scholarships, health insurances, medical check-ups etc. Sadhna had applied for scholarships for 142 students of the artisan families out of which 140 received scholarships. The total amount received against 140 students is 168000. The reason of sending less application forms over the years were that BPL families were getting the benefit from the schools themselves and as per the decision taken by LIC they can avail the benefit of scholarship either from them or from their respective schools or LIC.

Artisans ID cards from Development commissioner (DC) Handicrafts were issued to 161 artisans this year, out of which 80 artisans availed loan facility of Rs. 25000 each. All Sadhna artisans have been benefited from Janshree Bhima Yojana. An ESI scheme was introduced last year and from this onwards all Sadhna artisans are covered under ESI. The artisan this year through maturity benefits, general illness, operation and other hospitalization benefits etc. 15-20 artisans have availed maternity benefit this year that covered their wages even though they were not working. Also the artisans who have done good work and are earning higher wages are benefited more through the scheme as they are getting best medical facilities/treatment in private hospitals free of cost which otherwise they couldn’t have afforded. This has motivated other artisans who try and work better to avail the facilities from ESI. Internal Loan facility of Rs. 5000 was provided to 15 artisans.

Production and Sampling

The total amount of production for the current year stands to Rs. 2,30,90,200 and the estimated growth is of 7%. This is due to increase in number of pieces and production of silk items through Fab India order which are high in value. The number of factors affect the sampling are increase in manpower, increase in the production unit leading to increase in expenditure. On the other hand there were shortage of artisans due to which we were not able to meet the expected delivery lines. Also value addition to the product has become more complicated which makes it difficult for the artisans to work. Another progress was that Sadhna reviewed a new opportunity to do high end work plan through Plan Denmark order by production of khadi jackets. This was a learning experience for the artisans who showed the skill and efficiency. Sadhna focused on small buyers by developing samples as per the design specification.

Market Promotion and Branding

Sadhna has marked its products in both, retail domestic and international markets. Advertisments of retail outlets have been in magazines and in visitors guide book like Go
Udaipur etc. which help a lot of tourists to reach out to Sadhna. New hoarding has been set up at Airport and at busy areas within the city. Sadhna this year has focused on social media marketing and has tried to makes its presence on Facebook. New arrivals, update of events and upcoming exhibitions were highlighted which helped to promote sales. Sadhna has worked on its website trying to give it a new look. New product catalogue and arrivals have also been updated.

**Fair-Trade Forum**

India is actively involved in promotion of its brand and being a member, Sadhna launched Fair Trade branch at both its retail outlets within Udaipur city. The objective of the same was to promote Sadhna Products under fair Trade Brand and also promote the products of other Fair Trade members.

**Sales of Sadhna Products**

The total sales figures for the years are Rs. 3,51,45,214 an increase of 4.8%. Sadhna’s intra sales performance for the last five years have improved. Fab India orders have been increasing over the years, but this year there have not been visible growth.

**Table 1 Comparative Sales Chart for The Last Five Years (Figures in INR)**

<table>
<thead>
<tr>
<th>Channels</th>
<th>2009-10</th>
<th>2010-11</th>
<th>2011-12</th>
<th>2012-13</th>
<th>2013-14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sadhna Stores</td>
<td>30,88,786</td>
<td>33,58,653</td>
<td>38,00,735</td>
<td>29,35,129</td>
<td>31,16,136</td>
</tr>
<tr>
<td>Exhibitions</td>
<td>31,47,164</td>
<td>26,50,390</td>
<td>32,43,908</td>
<td>35,59,447</td>
<td>36,38,956</td>
</tr>
<tr>
<td>Domestic orders (excluding Fab India)</td>
<td>51,06,558</td>
<td>40,99,506</td>
<td>31,42,178</td>
<td>15,84,908</td>
<td>39,62,571</td>
</tr>
<tr>
<td>Fab India Order</td>
<td>1,25,13,280</td>
<td>1,46,20,114</td>
<td>1,85,31,056</td>
<td>2,09,88,627</td>
<td>2,10,29,123</td>
</tr>
<tr>
<td>Export Orders</td>
<td>25,22,365</td>
<td>42,60,289</td>
<td>43,48,206</td>
<td>54,40,207</td>
<td>40,14,240</td>
</tr>
<tr>
<td>Total</td>
<td>2,63,78,153</td>
<td>2,86,31,306</td>
<td>3,27,80,44</td>
<td>3,35,42,501</td>
<td>3,51,33,506</td>
</tr>
</tbody>
</table>

Over, the years Sadhna has received constant support of the buyers who have constantly worked with them and supported their cause. Sadhna has always thanked its buyers who have continuously worked with them and supported their cause. Sadhna whole heartedly thanked its buyers who contributed to the success journey and growth namely- Mata Traders, USA, Sustainable threads, Press Alternatives Co. Ltd. and Shiho Yamaski, Japan.

**Conclusion**

Over the past years Sadhna has been facing problems in sourcing the fabric which has been major reasons for delay in supplying the customer order. To overcome this Sadhna has made serious efforts to tap new suppliers and visit the existing suppliers to study and analyze the problem in delay in receiving the fabric.
Web Resources
www.thp.org
www.jaipurrugs.org/
www.hic.in/empowerwomen.htm
www.womenempowermentinindia.com
www.artofliving.org------case studies
asianphilantrophy.org/a-reminder-of-the-importance-of-womens-empow.
Httfs://www.unfpa.org/gender/ic/-07.htm
www.womenempowerment.org.in
sitesresources.worldbank.org/__womens__economic__empowerment.pdf
www.sadhna.org
www.womenempowermentinindia.com>womenempowernemt
www.udaipurblog.com>social
www.udaipurtimes.com/sadhna_a_womens_handicraft_enterprise_of_Sewa
www.sevamandir.org/empowering.org/empowering_women
www.sevamandir.org/annual report 2011-12 with audit report.pdf
www.fsdinternational.org/node/277
www.india.youth-leader.org>adult
www.ashanet.org/projects_new/___/876/sevamanidr_field_visit.doc
International Humanitarian Law: Indian Perspective

Abidha Beegum V. S.
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Abstract
Human rights form a fundamental component of any democracy (Landman, 2013). Its enforcement attaches a significance of equal measure. It is imperative therefore for any country that purports to uphold and observe the principles of democracy to put in place strong legal frameworks and institutional structures to ensure the attainment of human rights. In order to gain a substantial insight to this topic, it is imminent to first gain an in-depth understanding of what international humanitarian law means, what it encompasses and the its modus operandi. The United Nation has made significant legislative and institutional strides towards ensuring that both member and non-member states treat their citizens with dignity and humanely. In these regards, International Human Rights Law, which is intended to advocate for and to protect human rights at international, regional and domestic fronts, suffices. Made up of treaties between member states, international humanitarian law contains obligations and penalties for non-conforming states. Member states ratify the treaties as a sign of legally binding themselves to the obligations therein. Some members ratify the treaties in whole while others take it in part. A majority of the members domesticate the treaties through national legislations. The treaties that make up international humanitarian law range from regional treaties to international treaties. This paper tries to analyze the position in India and how far India ensuring its enforcement.

Keywords: International Humanitarian Law, United Nations, India

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Internally Displaced Persons (IDPs): Concepts, Implications and Theories
The definition and conceptualization of interior uprooting and IDPs has not seen all inclusive understanding. While numerous backer a compact definition that anxieties evacuating by clash, roughness or oppression, others see inward uprooting as a more extensive idea epitomizing any individual or persons evacuated by these reasons notwithstanding regular catastrophes and advancement\(^1\). Just two unmistakable peculiarities are all around acknowledged as qualities of inside removal: automatic or pressured development, and the event of such development inside national outskirts\(^2\).

This exposition receives a changed form of the meaning of IDPs displayed in the Guiding Principles on Internal Displacement (GPID), centering just on IDPs uprooted by clash: Persons or gatherings of persons who have been constrained or obliged to escape or to leave their homes or spots of ongoing home, specifically as an aftereffect of or to dodge the impacts of equipped clash, circumstances of summed up brutality, infringement of human
rights or common or human-made catastrophes, and who have not crossed a worldwide fringe³.

The IDP idea is extraordinary because of its political, social and compassionate intricacy and the clashing nature of talk encompassing IDP insurance. While the circumstances that create inside relocation are similar to those that deliver exiles, a large number of the needs of IDPs and of refugees are totally unrelated. Refugees, having crossed a universal outskirt, are ensured by International Humanitarian Law (IHL) and International Human Rights Law when states oppose impulse to act and diminish their anguish. IDPs, interestingly, are compelled to depend on the security of the state. Inner removal is consequently frequently imagined as a local issue; yet close by the horrible infringement of human rights that happens when IDP needs are unprotected, IDPs represent a risk to security and solidness in a country, locale and the global framework⁴.

**Legitimate Measures for Protection of the Internally Displaced**

IDP assurance at last falls under the obligation of the state in which they are relocated⁵. Subsequently, issues relating to the assurance of IDPs lie in clash with ideas of state sway. Under the sanctuary of sway, states have damaged human rights, denied assurance to IDPs, and banned global support to IDPs in their region. In spite of the fact that the GPID state that offers of backing from universal on-screen characters ought not be viewed as an unwelcome impedence in a State’s inner issues, India has communicated expect that such mediation would bring about infringement of state power and that ‘philanthropic support' would turn into a defense for the obstruction of capable states in the undertakings of weaker states. A remarkable absence of help systems and formalized assurance frameworks brings about an absence of essential human flexibilities for IDPs when the state neglects to give security. Rather, they fall into a hole unprotected by hard law and depend on state agreeability with delicate laws and universal standards, for example, the GPID. While states are starting to recognize the significance of the GPID, there is no legitimate commitment to do so and there is no formal global lawful skeleton by which IDP rights are recognized and implemented. In 2006, no global organization had a formal order through which a commitment to help IDPs was organized. Fuse into household law has been constrained, with India holding no legitimate order in its Protection of Human Rights Act to secure the inside uprooted. Around the world, just seventeen nations have concocted enactment or approaches particularly went for tending to IDP needs.

Regularly under risk of assault by their legislatures, numerous states have given negligible security to IDPs dislodged by clash and human rights infringement. Further issues emerge when states adjust their origination of IDPs to deny insurance or to secure just a certain gathering of IDPs⁶. The unmistakable quality of dissident equipped gatherings in numerous social orders has additionally raised compassionate concerns when these gatherings test state power and can control certain gatherings of individuals or regions because of the shortcoming of the state. In spite of the fact that Guiding Principle 2 states that that the GPID must be seen "by all powers, gatherings and persons independent of their legitimate status and connected without any unfriendly refinement, adherence to IHL in equipped bunches' medication of such individuals has been to a great degree constrained.
Protection of Internally Displaced Persons in India
This section deals with the Indian government’s reactions to the insurance needs of Internally Displaced Persons (IDPs) in two Indian locales: Jammu and Kashmir and the Northeast. While exiles have pulled in universal consideration and accept a formalized, organized framework for assurance, IDPs fall into a great extent unaddressed classification where obligation is seemingly with the state in which they are relocated. In India, however, the administration's reaction systems have been unsuccessful in tending to IDP needs, it has regularly dismisses the support of worldwide associations and endeavored to address its IDP circumstance locally at the state level.

Notwithstanding the contrast in beginnings and reason for uprooting between the two districts, there has been a discernible distinction in how state governments have reacted to the needs of their subjects. In Jammu and Kashmir and the Northeast, two unique circumstances of clash instigated dislodging have emerged that vary definitely in reasons, character of relocation, and gatherings included in removal. Despite the fact that the numerous ethnic gatherings that constitute the Northeast could be contrasted and the ethnic and religious gatherings that embody Jammu and Kashmir, revolts and radical outfitted gatherings contradicting Indian guideline of the state in Jammu and Kashmir have detailed an alternate nature to the tribal, ethnicity-based clash in the Northeast. Government reactions have been greater to IDPs in Jammu and Kashmir than to those in the Northeast.

Starting with an applied review of IDPs, this study introduces two separate instances of uprooting and IDP reaction techniques by state governments, dissecting contrasts in the reactions to viciousness and dislodging in the two locales. With reference to government parts in clash and demeanor to those influenced by savagery and uprooting, it further explores the way of relocation in both areas and inquiries why the Indian government has reacted in distinctive ways. These disposition and parts have molded political investment that give themselves to distinctive reactions to clash incited removal. In Jammu and Kashmir, reactions have been connected with government goals to battle Muslim aggressors looking for autonomy or promotion to Pakistan. In the Northeast, there is a relationship between reactions to IDPs and the legislature's abnormal state of inclusion in driving clash and removal, with oppressive conduct to a few gatherings and an unwillingness to help assets to insurance.

Local Level Responses: The IDP Situation in India
Removal in India has been principally brought on by equipped clash and ethnic roughness, frequently focusing on citizens and powerless gatherings. The Indian IDP circumstance contrasts others, for example, in Colombia where the national government has consolidated the GPID into the legitimate framework. In India, refusal of uprooting has dominated the production of household enactment for IDPs. National obligation has been acknowledged just for those removed by the Kashmir clash, despite the fact that these individuals are recognized as "vagrants" as opposed to IDPs in place for the legislature to abstain from giving help on helpful grounds and deny state shortcoming in securing natives. In spite of the fact that there are in excess of 650,000 IDPs across the country, there is no focal government organizations or approach for checking and executing methods for IDPs and the State Human Rights Commission (SHRC) in the semi-self-governing Jammu and Kashmir has
no strategy to oversee issues of interior dislodging. India has precluded the right to gain entrance from securing worldwide orgs in a few regions, accepting that 'humane help' is turning into an exterior under which bigger states can meddle in its undertakings. Furthermore, the administration has set confinements on staff from philanthropic alleviation organizations in Assam, Nagaland and Manipur.

The absence of a government office to screen uprooting has created huge coordination issues in reacting to IDP needs. State governments have been designated the part of reacting to human rights issues relating to clash and IDPs in their domains, and reactions are built at the state level. This has raised issues because of state laws, for example, the Armed Forces Special Powers Act (AFSPA) in the Northeast, and the parallel Armed Forces (Jammu and Kashmir) Special Powers Act, both of which allow the presentation of 'irritated territories' whereby government security staff are permitted excessive and unjustified utilization of over the top energy. As per the United States Government: Under the AFSPA the administration can proclaim any state or union domain an "exasperates territory," an affirmation that permits security strengths to flame on any individual to "keep up peace" and to capture any individual "against whom sensible suspicion exists" without educating the prisoner of the justification for capture.

This demonstration has permitted much relocation to happen and proceed, especially in the Northeast where it has been utilized to target ethnic gatherings, for example, timberland occupants in Assam and has brought about military operations that constrained 1,500 villagers from their homes in Manipur in 2010 State association in the reason for removal has brought about a circumstance where reaction to IDP needs has been negligible. The absence of help systems for IDPs has prompted assurance being a long way from satisfactory when measured against global standards and measures for IDP security and human rights, with a concerning contrast between state government reactions in Jammu and Kashmir and the Northeast.

**Strategies**

This study utilizes a blending of explanatory procedures and strategies to comprehend why state governments react to IDP needs in diverse behavior. With the end goal of information dissection, it uses grounded hypothesis to secure instruments of examination that could be utilized to look at information and form hypotheses after information gathering. This includes, in this study, looking for examples in both essential and optional sources by evaluating security and wellbeing procurements and selecting four fundamental rights that might be analyzed: lodging, nourishment, wellbeing and training. These classes will be utilized as instruments of investigation and interrogated over the two careful investigations to distinguish pointers and make the distinction between state government reactions in the Jammu and Kashmir and the north-eastern areas. Moreover, the AFSPA is utilized as a pointer to distinguish intermittent conduct by state governments and government-unified local army to IDPs. Through investigative correlation, this study will recognize variables and measure up them over the two cases to uncover the causal components influencing the different results. It draws from Mill's system for distinction to look at qualities of the two separate circumstances of clash and interior dislodging, concentrating on contrasts that highlight potential purposes behind the solid differentiation in state government reactions.
To further differentiate the two connections of inward dislodging, this study applies Weber’s idea of perfect sorts to an examination of the two detailed analyses keeping in mind the end goal to investigate how security measures contrast with worldwide standards and guidelines. Through this, the diverse qualities of the two cases and the courses in which connections impact government reactions get obvious. Thus, the utilization of the perfect sort can exhibit how diverse circumstances can produce distinctive social courses of action and conclusions. Furthermore, this study receives components of the negative case system in analyzing the nonappearance in Indian government reactions of what is normal by universal standards and measures. As a blend of the system for distinction and degenerate case investigation, such a method concentrates on what is not express in information. Thus, this strategy is utilized to figure out if Indian state governments preclude the presence from claiming IDPs in their regions, or modify their definition so as to escape obligation to execute security measures, with a specific end goal to sidestep worldwide standards and gauges. Hence, explanations behind dissent in the two cases could be further researched.

**Conclusion**

The contrast between state government reactions to IDPs in Jammu and Kashmir and the Northeast is emphatically obvious in the writing. Diverse reactions to the reasons and determination of clash notwithstanding procurements throughout the time of dislodging and execution of long haul procedures has brought about a greatly changed reaction to the inside uprooting circumstance in the two states. The absence of a government organization to screen and ensure IDPs has incredibly helped the propagation of insufficient and unjustified state reactions to security needs, which, in the Northeast, have been led along ethnic and religious lines. While this is intensely corresponded to the state government’s association in the clash, and the view of specific gatherings as radicals or terrorists in the Northeast, the Jammu and Kashmir State Government’s longing to battle Pakistani Muslim activists has prompted an ideal medicine of Hindu Pandit IDPs. Despite the fact that the AFSPA has had solid outcomes in both areas, security compels in the Northeast have all the more emphatically misused this law so as to target specific ethnic gatherings, encouraging and uplifting ethnic divisions, strains and dislodging. Thus, lesser procurements to IDPs have come about because of government disavowal and there is negligible distinguishing of the needs of IDPs.

Eventually, the political diversions and state of mind of the state governments have dominated reactions to IDP needs, directing measures taken, the gatherings to whom help is given, and how needs and rights are secured. In both circumstances, these have been dictated by the way of the clash and security circumstance nearby the legislature’s part in clash. Where the administration is in critical part the culprits of the clash, IDP needs are less inclined to be secured, as is clear in the Northeast. Where the casualties of the clash are adjusted to government engages, as exhibited by the instance of the Kashmiri Pandits, insurance and restoration of IDPs turns into a more noteworthy necessity for the state government. With the unlucky deficiency of a national schema for the assurance of IDPs and the nearby checking of human rights, state governments are liable to keep on reacting to IDP needs in feeble, inadmissible and shifted conduct which is subject to political plans and hobbies.
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AFSPA and Human Rights

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Abstract
In this paper, my major concern is with the arbitrary law-enforcement by the state in the name of promoting security, but in the process sacrificing the basic human rights of the people. The case study, which I will be using, is that of the Armed Forces Special Powers Act (1958), a law enforced in India to ensure peace and security in ‘disturbed areas’. The aim of this paper is to capture and explore the tension between guaranteeing fundamental freedoms and ensuring the security of citizens, and how this balance is often compromised by states leading to situations of crises. The paper will analyse the theoretical underpinnings of the debate, mainly focusing on the ‘role of the state’ and ‘liberty vs security’, through the social contract theory amongst others, but locating these within the framework of ‘human rights and justice’. This tension will be critically analysed through the lens of a ‘rights-based’ critique of the case study and extending it to propose a solution to this issue.

Keywords: Political theory, Security dilemma, AFSPA, India

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Introduction
The world over, states have used their limitless power to repress populations inside their territory using draconian laws. One such example is – The Armed Forces (Special Powers) Act of 1958, applicable to the northeastern region of India and Jammu & Kashmir, which violates a number of basic human rights such as the right to life, the right not to be tortured or ill-treated, the right to liberty and security, fair-trial rights, the right to privacy, and the right to freedom of assembly. (Chadha, 2012) The provisions of the act are in direct violation of the democratic rights enshrined in the Indian Constitution. The Act has been at the heart of controversy regarding human rights violations in the region, such as arbitrary killings, torture, cruel, inhuman and degrading treatment and enforced disappearances. (Asian Legal Resource Centre, 2011) There have been grave human rights abuses perpetrated by the state through the armed forces and government forces in areas where the AFSPA is in force.

It is important to critically analyse and understand the arguments put forward by the social contract theorists, in particular Hobbes and Locke, especially with respect to the role of the state and security. The social contract theorists specifically considered the question of liberty and security, as it is one of the primary duties of the state to protect and secure its citizens, both from internal as well as external threats. Both liberty and security are not
necessarily in conflict with each other, but are interrelated to each other. For this paper, we shall only look into the aspect of internal security since this paper is concerned with a specific case study. I will try to examine the tension between rights and security through the social contract theory. This tension has to be understood around the ‘liberty vs security’ debate. (Noorani, 2007)

Today, we can witness modern states tackling the issue of provision of security and order inside their territories. Let us attempt to understand this dilemma by analysing the Hobbesian and Lockean states. One of the defining characteristics of the modern nation-state is its ability to use force legitimately. Hobbes advocated a strong government, which he believed, was crucial for a safe society. In the Hobbesian state, there are some essential tasks, which have to be performed by the government, one of them being to provide security. In the Leviathan, Hobbes says that the state is allowed to “do whatsoever he shall think necessary to be done, both before-hand, for the preserving of Peace and Security, by prevention of Discord at home and Hostility from abroad”. (Hobbes) He is vouching for the enforcement of preventive measures for the fulfilment of the goal of security rather than take corrective measures afterwards. The coercive power of the state can be used to protect its populations but also at the same time be a source of threat to the same population. (Sorenson, 1996) How can we assume so easily that the same state, which people have created by establishing their trust in it, will not act in the same way as people would in the so-called ‘state of nature’? (Claudia, 2005) This is indeed very problematic and provides for states to legitimately use violence against their own populations without any effective mechanism to overthrow the government, as people have already reposed their trust in it.

As opposed to Hobbes, Locke has a libertarian view of the state and his main problem with government is that the more tasks the government has, it is more prone to violate the rights of the people. Thus, governments can use their power to protect and defend certain rights, but at the same time use these unending powers to violate the rights of the people in a serious manner. Locke is worried about the problem of creating a state, which governs in a strong and effective manner, but not as strong as it would abolish the rights of the people. Locke believed in minimal and limited powers for the government. (Appadorai, 2000) In the Lockean state, the powers vested to the government are not arbitrary, and if the government loses the trust of the people, it can be dissolved and replaced. The ideas of trust and consent of the people are strongly established in a Lockean state.

Now, if we were to compare Hobbes and Locke, I would argue that AFSPA is in line with the Hobbesian state and understanding of security. Hobbes would have defended such a law, even if it meant repressing the rights of the people. I don’t think the same can be said about Locke though, because Locke emphasised on the protection of natural rights and for him this function preceded the goal of providing security. In my opinion, Locke would have not vouched for such a law since it violates the basic rights of the people. The state has absolute monopoly over the legitimate use of force, and this property can lead to abuses of power and authority, which is worrisome for Locke. Balancing security and liberty is an ethical dilemma, which contemporary states have to face today. This dilemma is evident in the consequent discussion of the controversial act AFSPA. The Armed Forces Special Powers Act of 1958 has been ridden with controversy and has witnessed strong arguments, both for its retention as well as revocation from both sides since many years. It has been defended by
the state and the armed forces on the grounds of being an ‘essential and effective enabling mechanism to ensure peace and security.’ Whereas, citizens as well as human rights organizations and NGOs have strongly condemned and criticized the act as they view this law to be incompatible with human rights. Many argue that such a law has no place in our vibrant democracy today. In 1997, the constitutional validity of AFSPA was challenged in the Supreme Court but the court upheld its validity. The Court only cautioned the government with regard to the implementation of the act.

What is the source of the validity and legality of AFSPA from a constitutional perspective? Even though Article 355 of the Indian Constitution clearly states that “It shall be the duty of the Union to protect every State against external aggression and internal disturbance”, it is also qualified in the same sentence by ... “and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution.” In the context of internal security, interpreting this article becomes very important because it gives constitutional validity to laws such as the AFSPA. I believe that it is important to read this article in conjunction with Article 21 of our Constitution, which talks about the protection of personal life and liberty. Even though AFSPA can be justified through a reading of Article 355, it clearly violates the rights guaranteed to the citizens under Article 21. Thus, there is a contradiction of sorts, and even though the Supreme Court has upheld the constitutional validity of the act, there has been a lot of criticism of the judgment on the grounds that under the garb of ‘national security’, the court has given in to the demands and wishes of the armed forces and the government. Even though the government of the day is powerless and cannot alter the fundamental rights granted to the citizens of the country, it could draft and pass laws that effectively end up curtailing their rights.

The fact that the act violates India’s international obligations under the International Covenant on Civil and Political Rights, is also not a strong argument for its repeal, since even though India is signatory to the treat, there is no practical mechanism to make sure that the obligations are actually adhered to in practice. This is one of the weaknesses of the international human rights regime – the lack of substantive international law enforcement mechanisms. The idea of human rights was conceived to protect the individual against the state. The state has traditionally been the protector of the rights of the people, and often acts against non-state actors such as armed rebel militias to protect its citizens; but in this process, there lies the possibility of the state turning violent against its own citizens. (Howard-Hassmann, 2012) The possibility of arbitrary arrests, torture and other grave abuses looms large. We can already witness and observe the grave human rights abuses in the operationalization and implementation of the internal security function of the state, and this material reality has led to a strong critique based on human rights. When applied in practice, laws such as the AFSPA have come to undermine human rights in a substantive manner, thus questioning the usefulness and relevance of such laws in democracies like India where human rights should be the guiding principle for the government.

I am of the opinion that there is an urgent need to amend and review the AFSPA (if needed, even repeal it). With the newly elected government in power, there are a lot of skepticism as well as hope with respect to the internal security policy. The deployment of the army in internal security duties in specific areas for prolonged periods needs to be assessed with a people-centric approach. It is perhaps the misuse of the law, which has led to such
widespread protest and call for repeal of AFSPA. Even though these questions remain unsolved, there is no doubt that the state and the armed forces need to come up with a better mechanism than the already existing act to ensure peace and security within the regions designated as ‘disturbed’. Such a mechanism should take into consideration the basic freedoms as well as civil and political liberties of the residents of these areas. (Ahmed, 2011) A balanced, fair, just and proportionate mechanism must be worked out to achieve both these dual objectives – maintaining internal security as well as protecting human rights. I don’t think these goals are incompatible and mutually exclusive – they can definitely exist together, even though balancing them is a huge challenge. The challenge in front of states is to reconcile the idea of human rights with internal security, and to make these two conceptual categories, which are often assumed to be contradictory, stand mutually together, and not in conflict with each other. (Grondona, 1978) The state must protect and honour the human rights of its people, not only because it is a constitutional duty; but also because, otherwise it might lead to an erosion of the legitimacy of the state and such a scenario can have dangerous consequences and implications.

References


Refugee Problem and Human Rights:
An Unparalleled Indian Dichotomy

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Abstract
The colossal exodus of various races in Europe during Second World War and their systematic extermination has led to worldwide concerns for the human rights of such Refugees. This has forced lawmakers to develop new principles in Jurisprudence. India is one such country which has been greatly affected by both the types of migrations; Internal and External. Former is widespread in the North-Eastern region of country mainly due to tribal conflict whereas latter extends to India acting as host for large number of refugees chiefly from Tibet (China), Bangladesh, Nepal, Pakistan Occupied Kashmir and so on. But, ironically, Indian government has till date not ratified UN Convention on Status of Refugees and yet applies its colonial era law; Foreigners Act, 1946. Also this government has not accorded refugee status to the people from PoK. Recently, the Andhra Pradesh High Court ruled that a certain group of Tibetans born in India to be given citizenship. Bangladeshi refugees have also spread throughout and it has become difficult to keep tab of them, thus affecting internal stability of country, particularly in Assam which has recently led to series of violent clashes and movements there. Above mentioned are few instances alongwith some other aspects which the paper shall attempt to analyze. The Positivist law shall be analyzed based upon decided case laws and jurisprudential aspects and an attempt shall be made to apply Hart-fuller debate in High Court’s decision on Tibetan matter and possible consequences. Also it shall try to investigate reasons as to why Government refuses to implement UN convention despite many calls for it and how do these all have affected Human Rights of Refugees.

Keywords: Refugee, Jurisprudence, Positive Law

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Introduction
The 20th century saw an unprecedented level of human rights violation where the perpetrator has not been any other element of society other than the State machinery itself. The level of violation of such rights has been enormous which took a toll of millions. In Stalin’s purges alone it is estimated that more than 20 million people were forced into labour camps where about half of them died, similarly, his contemporary Adolf Hitler massacred six million Jews in entire Europe in a systematic executions carried out at various concentration camps throughout Germany and in its neighbouring countries. These purges, clubbed with several other techniques of the “racial” extermination, led to an unprecedented level of human migration till then to escape victimization in modern State
system. This unprecedented level of degenerating human dignity led to major hue and cry in the international level amongst intellectuals and lawmakers to plan and draft such laws which protect interest of those set of individuals who not only are victim of persecution are the population of their own country but the victim of Government persecution as well. In 1951 the convention relating to the Status of Refugees was drafted and signed by many countries around the globe in an attempt to ensure protection and asylum to refugees from different countries. Currently 145 countries are its members.

But India, being one amongst the major receivers of such refugee population has till date not entered into the treaty charter. Many attempts have been made to force India into signing this treaty but it has always refused. The fact that India has been receiving large flux of such refugees into its territory on humanitarian grounds has though been appreciated around the globe, but it has been criticized for arbitrarily dealing with Refugees and trying to avoid the principles of International law, particularly in context of Human Rights. One major factor which governs this attitude of Indian government might be that it also has an uncontained problem of internally displaced people who are victims of ethnic disputes. The Courts has therefore come to play a pivotal role in ensuring that refugees are protected against from any persecution and be provided with every possible aid while at the same time also making sure that it doesn’t hamper law and order.

History of Refugee in India

International Influx: The understanding of the complications and problem which have arisen in dealing with refugee problem vis-a-vis administration and law enforcement agencies is rooted in the way the wave of refugees have influxed. India has a history of receiving refugees on the humanitarian ground since ancient times. The coming up of various refugees in India can be broadly categorized into four major waves which have some other group of refugees coming in parallel to it. The first wave and first recorded instance of such an influx was when Zoroastrians community sought for refuge in India to escape persecution in their own land in Iran with the coming up of Sassanid empire, in around sixteenth to seventeenth century. The second wave was during the partition of India in 1947, when the major exchange of population took place on both the sides of border with the then East and West Pakistan. Once the lines were established, about 14.5 million people crossed the borders to what they hoped was the relative safety of religious majority. Based on 1951 Census of displaced persons, 7.226 million Muslims went to Pakistan from India while 7.249 million Hindus and Sikhs (and very small amounts of Muslims) were forced to move to India from Pakistan immediately after partition. About 11.2 million or 78% of the population transfer was on the west, with Punjab accounting for most of it; 5.3 million Muslims moved from India to West Punjab in Pakistan, 3.4 million Hindus and Sikhs were moved from Pakistan to East Punjab in India; elsewhere in the west 1.2 million moved in each direction to and from Sind. The initial population transfer on the east involved 3.5 million Hindus moving from East Bengal to India and only 0.7 million Muslims moving the other way. This was followed with the third wave of Tibetan Refugees who sought asylum in India after China annexed Tibet and abolished the government there in 1958, though this exodus has been continuing till date. The major wave came in 1970s when large number of Bangladeshis emigrated from their homeland to India in search of security and avoiding the persecution and human rights violations.
Internally Displaced People: India is a diverse country with people of different identities and culture living together but homogenously concentrated at regions of their origin.\(^5\) The major difficulty arising out of this diverse nature has led to conflicts particularly in North-Eastern states of India, which inhabits large number of tribal community who are often in conflict with each other. This has led to major disturbances in this part of country and has also caused a displacement of people in neighbouring states. The intensity of such an ethnic trouble has been responded by implementing of harsh laws like Armed Forces Special Powers Act, 1958, which gives wide ranging powers to Armed forces to tackle any such problem of internal disturbances. It must be remembered that the ethnic tensions has led to direct clashes of such insurgent groups with government which has taken a shape of non-international armed conflict which must have been governed by Geneva Convention Additional Protocol II, but here again, Government of India did not sign it and adopt its own methods of dealing with such complications.

Reasons for Indian Indifference towards Convention
Security considerations rank high on India’s list of priorities, given its geopolitical influence in the region and its vulnerability to cross-border infiltration due to the porous nature of its borders. Taking this factor into account, anti-refugee law legislators argue that the proposed law would encourage more refugees to enter India, with promises of increased legitimacy, more rights and government services, which will increase the threat of social, economic and political insecurity. Mahendra P Lama in his report ‘Managing Refugees in South Asia’\(^6\) provides a three-dimensional model to explain the risk to national security through refugee movements that present different threats due to

- **Strategic-level security**, when Refugees are armed and when the Government loses control over the refugees.
- **Structural-level security** is threatened by increasing demands on and conflict over scarce resources.
- **Regime-level security** is threatened when refugees enter the domestic political process and create pressures on the government.

Legal provisions in India
India does not any specific law to deal with the refugee problem and has been applying the provisions of the colonial era Foreigners Act of 1946 to the same people. But a careful reading of this law shows that it primarily focuses on the dealings of foreigners in general terms, as against the Refugees who have come here for the purpose of safeguarding their rights against their own home country. As such it is mostly the executive orders and bye-laws which are issued to deal with these matters. Refugees encounter the Indian legal system on two counts. There are laws which regulate their entry into and stay in India along with a host of related issues. Once they are within the Indian territory, they are then liable to be subjected to the provisions of the Indian penal laws for various commissions and omissions under a variety of circumstances, whether it be as a complainant or as an accused. These are various constitutional and legal provisions with which refugees may be concerned under varying circumstances.

Constitutional Provisions
There are a few Articles of the Indian Constitution which are equally applicable to refugees on the Indian soil in the same way as they are applicable to the Indian Citizens.
The Supreme Court of India has consistently held that the Fundamental Right enshrined under Article 21 of the Indian Constitution regarding the Right to life and personal liberty, applies to all irrespective of the fact whether they are citizens of India or aliens. The various High Courts in India have liberally adopted the rules of natural justice to refugee issues, along with recognition of the United Nations High Commissioner for Refugees (UNHCR) as playing an important role in the protection of refugees. The Hon'ble High Court of Guwahati has in various judgements, recognised the refugee issue and permitted refugees to approach the UNHCR for determination of their refugee status, while staying the deportation orders issued by the district court or the administration.

In the matter of Gurunathan and others vs. Government of India and others and in the matter of A. C. Mohd. Siddique vs. Government of India and others, the High Court of Madras expressed its unwillingness to let any Sri Lankan refugees to be forced to return to Sri Lanka against their will. In the case of P. Nedumaran vs. Union Of India before the Madras High Court, Sri Lankan refugees had prayed for a writ of mandamus directing the Union of India and the State of Tamil Nadu to permit UNHCR officials to check the voluntariness of the refugees in going back to Sri Lanka, and to permit those refugees who did not want to return to continue to stay in the camps in India. The Hon’ble Court was pleased to hold that “since the UNHCR was involved in ascertaining the voluntariness of the refugees’ return to Sri Lanka, hence being a World Agency, it is not for the Court to consider whether the consent is voluntary or not.” Further, the Court acknowledged the competence and impartiality of the representatives of UNHCR. The Bombay High Court in the matter of Syed AtaMohammadi vs. Union of India, was pleased to direct that “there is no question of deporting the Iranian refugee to Iran, since he has been recognised as a refugee by the UNHCR.” The Hon’ble Court further permitted the refugee to travel to whichever country he desired. Such an order is in line with the internationally accepted principles of ‘non-refoulement’ of refugees to their country of origin.

The Supreme Court of India has in a number of cases stayed deportation of refugees such as Maiwand’s Trust of Afghan Human Freedom vs. State of Punjab; and, N.D.Pancholi vs. State of Punjab & Others. In the matter of Malavika Karlekar vs. Union of India, the Supreme Court directed stay of deportation of the Andaman Island Burmese refugees, since “their claim for refugee status was pending determination and a prima facie case is made out for grant of refugee status.” The Supreme Court judgement in the Chakma refugee case clearly declared that no one shall be deprived of his or her life or liberty without the due process of law. Earlier judgements of the Supreme Court in Luis De Raedt vs. Union of India and also State of Arunachal Pradesh vs. Khudiram Chakma, had also stressed the same point.

**Arrest, Detention and Release**

There is yet another aspect of non-refoulement which merits mention here.\(^7\) The concept of ‘International Zones’ which are transit areas at airports and other points of entry into Indian territory, which are marked as being outside Indian territory and the normal jurisdiction of Indian Courts, is a major ‘risk factor’ for refugees since it reduces access of refugees to legal remedies. This legal fiction is violative of the internationally acknowledged principle of non-refoulement. In the matter of a Palestinian refugee who was deported to New Delhi International Airport from Kathmandu was sent back to Kathmandu from the transit lounge of the Airport.\(^8\) He was once more returned to New Delhi International Airport on the
ground of being kept in an ‘International Zone’. Such detention is a classic case on the above point barring legal remedies to the detained refugee. The only relief in such a case is through the administrative authorities.

Articles 22(1), 22(2) and 25(1) of the Indian Constitution reflect that the rules of natural justice in common law systems are equally applicable in India, even to refugees. The established principle of rule of law in India is that no person, whether a citizen or an alien shall be deprived of his life, liberty or property without the authority of law. The Constitution of India expressly incorporates the common law precept and the Courts have gone further to raise it to the status of one of the basic features of the Constitution which cannot be amended.

The Indian Constitution does not contain any specific provision which obliges the state to enforce or implement treaties and conventions. A joint reading of all the provisions as well as an analysis of the case law on the subject shows international treaties, covenants, conventions and agreements can become part of the domestic law in India only if they are specifically incorporated in the law of the land. The Supreme Court has held, through a number of decisions on the subject that international conventional law must go through the process of transformation into municipal law before the international treaty becomes internal law. Courts may apply international law only when there is no conflict between international law and domestic law, and also if the provisions of international law sought to be applied are not in contravention of the spirit of the Constitution and national legislation, thereby enabling a harmonious construction of laws. It has also been firmly laid that if there is any such conflict, then domestic law shall prevail.

Addressing Refugee Problem

India has taken numerous steps and measures to fulfil its international obligations in respect of refugees. Some of the more important ones merit detailed mention.

Entry into India: The Government of India have followed a fairly liberal policy of granting refuge to various groups of refugees though some groups have been recognised and some other groups have not been, often keeping in view the security concerns of the nation. However, the emerging trend of past refugee experiences bear testimony to the fact that entry into India for most refugee groups is in keeping with international principles of protection and non-refoulement. Further, such entry is not determined by reasons of religion or any other form of discrimination. It may be pointed out that India has granted refuge to Buddhist Tibetans, Hindus and Christians of Sri Lanka, Hindus and Muslims from the then East Pakistan, Hindus, Muslims, Christians and Buddhists from Bangladesh and Sikhs and Muslims from Afghanistan etc.

Work Permits: There is no concept of work permits in India, although refugees who are granted residence permits do find employment in the informal sector, without facing any objection from the administration. In fact, Tibetan refugees have been granted loans and other facilities for self- employment. Similarly, most Sri Lankan Tamils have been granted freedom of movement within the camp areas, enabling work facilities for them as casual labour. Similarly, Chakma and Afghan refugees have also been engaging in gainful, even if it is in minor forms of employment.
Freedoms: Generally, refugees are allowed freedom concerning their movement, practice of religion and residence. In case of refugees whose entry into India is either legal or is subsequently legalised, there is limited interference by the administration regarding these basic freedoms. However, those refugees who enter India illegally or overstay beyond permissible limits, have strict restrictions imposed upon them in accordance with the statutes governing refugees in India i.e., The Foreigners Act, 1946, Foreigners Order, Passport Act etc.

Handling Refugees Legally: From the moment of entry of a refugee into the Indian territory, the laws of India would apply to him/her. Therefore, enforcement and security personnel who have to deal with refugees cannot overlook the legal requirements which have to be adhered to by them. In the following paragraphs an attempt has been made to identify some common situations which may be faced by enforcement and security personnel in dealing with refugees. An attempt has also been made to suggest possible courses of action within the legal framework.

The main purpose of this attempt is twofold. Firstly, it will help to focus on the need for showing due concern for human rights. Secondly, it is also important to create awareness about the unavoidable compulsions, which forced the person concerned to take refuge in the country and the inherent and unmistakable poignant human situation in the entire episode. It is pertinent to remember that the circumstances and facts pertaining to each refugee may be peculiar and different from the rest. In such cases, therefore, it is extremely important to ascertain, understand and appreciate the background of the compelling circumstances of each of the cases so that the law of the land may be applied in the most appropriate manner. It is in this context that the legal provisions, directions and guidelines, if any, issued by competent courts as also the practical experience gained in dealing with such cases, would come in handy.

Keeping the above aspects in view, some of the more important situations relevant to security personnel are enumerated below. An attempt has been made to highlight the more feasible options which could be considered in dealing with refugees. It goes without saying that these options have to be exercised within the legal frame-work of the country.

Conclusion
As per orders of Karnataka High Court to the Election Commission of India was directed to enrol around 48000 Tibetan refugees into voter’s list to participate in General Elections. The court here read the provisions from the Indian Citizenship Act, 1955 and held that children of Tibetan refugees born in India between the cut-off date of 1950 and 1987, as mentioned in the Citizenship Act 1955, be considered Indian citizen and allowed to vote. This is a huge step forward where we find that how Court has taken a positivist law a step further and help refugees in provide a greatest right to vote. The India has its own contention in signing the convention and this is justified as it has been facing a lot of internal disturbances and has been a huge receiver of international refugees seeking asylum. Signing any convention of such a nature would only affect India’s unhindered attempt to provide safeguard to its refugee. Despite this Indian administration has been blamed time and again for being careless in dealing with refugees and also its red-tapism approach. All this can be
meted out by good governance and healthy law. Courts have major duty to make sure that they protect the rights of refugees here.

**End-notes**


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Abstract

Culture it is argued influences values, world-view, and the structures of human relationships. To quote Hudson (1997 b, p.8), ‘culture tells us what to want, to prefer, to desire, and thus to value.’ Culture as an explanatory variable is gaining wider appeal among the International Relations scholars. It acquired plausibility especially in the post- Cold War period. The post- positivist critiques or Alternative theories (as Robert Cox dubs them) emphasize the role of “culture” in comprehending International Relations more strenuously in the last fifteen years. Culture has also become the focus of foreign policy scholars who try to grasp the cultural influences on the decisions of leaders of various states. With globalization’s flexing arms compressing the world into a “global village” (as is often presented by its proponents), scholars increasingly attribute rise of a global culture, which renders enquiry and explanation revolving around “culture” necessary. Social Constructivism has reached its pinnacle with cultural explanation of international relations in Richard Ned Lebow’s book, A Cultural Theory of International Relations. Interest in studying culture has also increased after works like Clash of Civilizations and Soft Power gained popularity. This makes us infer culture is a relevant field of inquiry in International Relations. The unanswered question is whether culture can explain or predict actions/decisions/policies of states in the international system. This paper will attempt to critically reflect on culture and its role or otherwise in international relations.

Keywords: culture, international relations, social constructivism, soft power, clash of civilizations

[Acknowledgements: The Author would like to dedicate this article to Danish Haidar.]

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Introduction

Culture as an explanatory variable escaped the scrutiny of International Relations (I.R.) scholars till almost the last decade of 20th century. I.R. scholars were preoccupied with power politics, peace, war, political Idealism, national interest, economic interdependence, security, conflict and cooperation, hegemony etc. since its inception in 1919. Their major concern was avoidance the re-occurrence of another catastrophic World War. Even the mainstream paradigms like Idealism, Realism and Marxism paid hardly any interest to the role of culture in understanding and explaining World Politics. A decade into the 21st century and many scholars including Yu Xintian, James Ferguson, Monika Mokre, Iver B.
Neumann, Alexander Wendt, Martha Finnamore, Thomas Hylland Eriksen, Iver B. Neumann and others emphasize the need for scrutinizing the role and impact of “culture” in International Relations. Yu Xintian went as far as to point out that even though “mainstream” International Relations Theory (IRT) has many achievements to its credit and far reaching influence, “ignorance of cultural research has become its fatal weakness.”

It was only after the collapse of the Soviet Union that culture was realized as a concept with the potential to explain the events of world politics. Social Constructivism gained prominence especially after it claimed that studying a state’s political culture could help to a large extent in understanding that state’s behaviour at the international level. This claim to a large extent was supported by the enquiry into collapse of the Soviet Union. Social Constructivism for most part derives its major inspiration from sociological concepts of structure and agency while strenuously emphasizing culture’s influence on foreign policy of states. Feminist theorists (under the Postmodern and Postcolonialist approaches) and other Feminist International Relations scholars stress the role of culture and “nurture” in sustenance and preservation of a patriarchal system which is not pre-given or normalized by “nature”. From this panoramic view, it becomes clear that cultural factors can play an important role in International Relations Studies. Some scholars like Jongsuk Chay, Lapid and Kratochwil, Julie Reeves, Gienow Hecht and Schumacher, go a step further and accord a determining role to culture in International Relations Studies. Before delving into the study of culture in I.R. it becomes pertinent that adequate attention is paid to what constitutes culture.

Understanding Culture
Culture is a fuzzy term. It has been described as a notoriously ambiguous concept. Since it came under scientific scrutiny in 1871, it has remained a slippery notion; many scholars find difficulty in defining it or capturing its essence as it is very inclusive, making it very challenging to decide what it excludes in its definition. Culture, due to its excessive currency in commonplace as well as in academic circles has come to be regarded as a self-evident concept “which needs no explicit discussion or clarification.” But it is precisely due to its self-evident nature that this concept needs extensive analytical understanding.

Edward Taylor first defined the concept of culture in his book, Primitive Culture in 1871 as, “that complex whole which includes knowledge, belief, art, mortals, laws, customs and any other capabilities and habits acquired by man as a member of society.” Culture is the learned behaviour of a society or a subgroup according to Margaret Mead. Clifford Geertz describes culture as “simply the ensemble of stories we tell ourselves about ourselves.” In the anthropological definition, Hall argues, the word “culture” is used to refer to whatever is distinctive about the “way of life” of a people, community, nation or social group. And when the same word, “culture” is used to describe the “shared values” of a group or of a society, it has a more sociological emphasis.

As more and more research work was carried out on culture in anthropology, culture came to implicitly represent different things to different scholars: from “culture is an abstraction” (Kroeber and Kluckhohn who compiled 162 definitions of culture) to culture is learned behaviour; from material objects being seen as constitutive of culture to culture existing only in the mind, and from culture consisting of observable things and events in the external
world to culture consisting of ideas alone. Some scholars have even defined it as a "Rorschach of a society".

Some scholars argue it is more important what "culture" does than what it is. Culture, they explain is a source of identity and control mechanism and is also structure or framework that gives meaning to particulars. Culture, other scholars maintain, builds on shared system of beliefs, attitudes, values, expectations and norms of behaviour. Still others underline culture as an overall way of life of people that includes language, religion, ideas, dress, customs, codes, institutions, government, law, work of art, morality, rituals and ceremonies and symbols.

From the various definitions of culture it can be inferred that culture comes into being only in a society. People living together for generations create a pattern of behaviour, both implicit and explicit, to survive the natural environment and preserve themselves from the attack from the alien or the "other" cultures. This acquired behaviour is transmitted through symbols and through external manifestations like artefacts and traditions. The core of values and ideas that are passed down for generations, are both products of various actions and also become or have potential for conditioning elements of future action.

**Culture in International Relations**

Many schools opine that it is after the collapse of the Soviet Union that culture as an independent variable in International Relations gained currency in the 1990’s. And it is often argued that it is around this period that Critical theory also arose in the 1980’s. There was an increased interest in culture as a “source of conflict” which came to be interpreted as part of the need to imagine the anarchical international system to be always in conflict. Adherents of the Realist School view the world necessarily in terms of clash or conflict due to lack of order. Huntington, following their tradition, in 1993 argued that any clashes in future will be based on civilizational lines in the post-Cold War world. But there were some visionary scholars who recommended the need to study culture in International Relations as early as 1979. Geoffrey Barraclough, in *Turning Points in World History*, concludes his book with, “…. [On] culture and civilization ....perhaps more than is often realized- the future depends.”

Emphasizing the focus on culture in the 1990’s, Sherin Fahmy observes, “The economic and political issues transformed into remarkably cultural and traditional ones.” Theoretically, culture has been gaining prominence also after Richard Ned Lebow published his work, *A Cultural Theory of International Relations* in which he argued that to theorize and develop meaningful insights in international relations it is necessary to understand the nature of society in which nations interact. It can be argued that culture was easily employed as it is “un système d'exclusion,” according to Michel Foucault (in 1971) Even Adam Kuper argues, “culture is always defined in opposition to something else.” All these developments drove culture, until then ignored in International Relations, into prominence as a significant area of research in International Relations Studies.

**Rising Dilemma**

Despite the emphasis very few scholars take time and space in their strenuous arguments to define what they mean by culture and its role in the international scenario. As Batora and
Mokre rightly point out, “...... the roles and conceptualizations of culture in world politics are ambiguous and often multiple in any given situation.” “While the importance of culture has been on the rise in the realm of international relations, its role in this field remains underspecified in the academic literature.”

Studies on Culture in International Relations:
According to Sherin Fahmy, the different aspects of culture in the realm of International Relations Studies are categorized under four different categories: “Studies working on the weight of culture in general, studies working on the role of religion as a fundamental basis of cultural formation, studies working on the concept of soft power and studies working on the concept of psychological war.” Yu Xintian identified three prominent theories that study culture in International Relations namely, Clash of Civilizations, Soft Power and Constructivism.

Shift in Role of Culture
From being categorized only as the basis of moral thrust in the international system to being recognized as a variable with the capacity to change, mould, move and influence national behaviour and national interests, culture has come a long way which will be dealt with.

1. Culture as a Source of Conflict and Source of Cooperation: James Ferguson argues that it was with Huntington that the notion of civilizational (as the highest level of “cultural” organization) differences leading to conflict began. Civilizations are presented, by Huntington, as “cultural” entities which include elements of language, history, religion, customs, institutions and self-identification. He argues that even if war does not occur, cultural differences will tend to lead to more misunderstandings and intensify competition. He presents all these arguments in the post – Cold War world, where global politics “has become multi-polar and multi-cultural for the first time in the history,” according to Xintian. This take was criticised by numerous scholars who also saw culture as a source of cooperation. The most important criticism was “no single dominant global culture has completely filled the global system, and we do live in a multi-polar and multi-civilizational world.” And inter-civilizational communication may also lead to dialogue, adaptation and mutual learning. Hence, culture is studied both as a source of conflict and a source of cooperation.

2. Culture in Foreign Policy: The relationship between culture and foreign policy is not only old but a staunch one. “Culture is certainly an important element which affects foreign policy,” observed Ferguson. Throughout history, national leaders have used culture to justify their stands and acts. George Kennan was of the opinion that ideology (as part of culture) of another nation when studied would help understand that nation better. Scholars like Northrup also emphasized the need to study culture in foreign policy studies. Batora and Mokre are of the opinion that assessing the role of culture in foreign policies is based on varying and partly contradictory understandings of culture and its functions in society. Culture has not only served as a means of overcoming local, ethnic, and socio-economic borders and divides to create national communities but also exclusion of those not belonging to these identities, due to creation of collective identities. Culture was used, by many states, as a tool to attain or achieve their national interests a few times too often in world history by using it as soft power, diplomatic tool, propaganda and ideology.
Culture as Soft Power: The role of culture in International Relations Studies escalated with Joseph Nye’s monumental work *Soft Power - The Means to Success in World Politics* (2004) notes Yu Xintian. Nye first coined the term in his 1990 book, *Bound to Lead: The Changing Nature of American Power*. He defined soft power as ‘The ability to get what you want through attraction rather than through coercion.” He also noted that soft power “could be developed through relations with allies, economic assistance, and cultural exchanges.” He argued that this would result in “a more favourable public opinion and credibility abroad.”

There are throughout history instances when culture was used to promote a good image abroad. By having a favourable image and identity, a nation could always maintain and develop good foreign relations with any number of neighbouring, as well as, far away nations. Major Powers like France and USA, have developed elaborate schemes for promoting their culture abroad.

Culture’s Use in Propaganda and Ideological Battles: Culture is extensively used as propaganda. During the Cold War, the United States of America “waged a war of words and of ideas that attacked communism, promoted capitalism and democracy, defended U.S. foreign policies, and advertised the American way of life in order to win the Cold War.” This is a classic example of use of its culture by a state for propaganda. And with rise of media and technology, “the end of the Cold War” it has been argued “has brought about more propaganda, not less.” It is also used in ideological battles in International Relations. Both Soviet Union and USA tried to win over states on their side by promoting their culture in their ideological confrontation.

Culture as a Diplomacy Tool: Culture has been an active part of diplomacy. Diplomatic relations were strengthened by projecting the versatility and vibrancy of a state’s culture. Their attractiveness was further enhanced by promotion of their language, music and food. For example, Alliance Française, an international organization with its headquarters at Paris operates with the sole aim of spreading French language and culture throughout the globe. R. James Ferguson, indicates since 1920s, governments have tried to use culture in foreign affairs to promote their language, music, media and views overseas. He further calls attention to cultural diplomacy, giving example of operation of British Council throughout the world which is an example of promotion of language and culture as part of nation-to-nation diplomacy through student exchange programmes through scholarships etc. is widely used by many countries with the aim of showcasing their exclusive cultures. Hence, culture is massively used in their diplomatic relations by the states.

3. Culture Molds Foreign Policy: There is a growing literature on the role of culture in International Relations that deals with the ways and methods in which domestic culture of nations influences their foreign policies and perceptions about the international system. A substantial amount of literature on these lines is being produced by Social Constructivists, Feminism and other alternative approaches to International Relations, though not necessarily only by them. There are also studies being made to demonstrate that it is not just domestic policy that influences the foreign policy but sometimes the international order/system/ structure that influences and shapes the domestic policies of nations.

*Domestic Culture Shapes Foreign Policy:* Culture, it is argued influences the decisions of leaders and restricts government actions through popular pressure. Most of the time,
domestic culture informs actors, i.e., states, about the kind of world system they should strive for. Different cultures in different societies have varying views of how the world should be constructed like the “tribute system” envisioned by the Chinese in the imperial past.

Social Constructivism, tries to emphasize that the concepts like anarchy and sovereignty acquire meaning through actual social interaction. They consider culture as a determining factor. Constructivism argues that states do not know beforehand or a priori what their interests are. The national identity and interest of any state is formed on the basis of its historical – cultural context and conditions. Michael Barnett explains “…..culture informs the meanings that people give to their action…..” Peter Katzenstein argues that states differ internally in their make-up and this, impacts upon their behaviour in the international system.

Feminism is another approach in International Relations Studies that stresses the role of culture in shaping actions of nations in the international scene, which is for most part influenced by Patriarchy. Domestic culture which is heavily under the control of patriarchal system prompts nations to mould their foreign policy along aggressive lines, characterized by masculine traits that take no account of security of women or children in case they go to wars or have military conflicts. Many IR Feminists argue that the discipline is “inherently masculine in nature,” which is moulded by domestic cultures of various nations.

**International Structure Shaping Domestic and Foreign Policy**

When international order or system is envisaged, it is most often forgotten or ignored that International relations “in its broadest sense is itself the product of the interaction of different cultures.” And this system operates on commonly agreed upon International Laws (in majority of instances or at least the nations strives for it based on normative values) that are creations born out of interactions between different nations. The resultant culture is powerful enough to mould and influence domestic policies. For example, China and India (among many other nations) strenuously try to project themselves as adhering to Human Rights, in order to maintain their global image because of pressures from the international system which underlines Human Rights as fundamental goal that each nation should strive for. From this it becomes clear that the international structure (as Constructivists define it) influences the units, i.e., the states and other actors.

Apart from the pressures of the international system, many a times the international organizations influence state behaviour, thus infringing upon and shaping nation’s culture. Martha Finnemore tries to establish that the internationalist organizations are involved in the process of social construction which determine national interests. She in her seminal work, *National Interests in International Society*, argues that the “interests” are not preordained and “out there” but are constructed through social and interstate interaction. Her case studies were UNESCO, Red Cross, Geneva Convention and the World Bank’s influence on attitudes to poverty.

**Perception Matters**

From all the discussions and arguments what becomes apparent is that culture by itself may not play a determining role. It may play some significant role if the actors on the
International scene perceive that in certain areas, culture has a significance of its own. Lynd’s take on it is stronger, “It is people, not culture, that does things. Culture does not ‘work,’ ‘move,’ ‘change,’ but is worked, is moved, is changed. It is people who do things.” It highlights the dimensions of the role culture can play in International Relations. Given the conflicting interpretations the term culture is subjected to, it appears that culture with all the ambiguities and complexities attached to it is in no position to direct or steer any leader or state into deciding on any matter that may be detrimental to any state’s national interest. It is always the people i.e., the leaders and their advisers (themselves steeped in a particular culture), foreign policy scholars, diplomats and foreign affairs ministers who if they think culture is important will make culture work (when there is no other means or way/ when there is a need for explaining certain actions of states’ behaviour) or call for change in foreign policy in name of culture. Ultimately, it is not always culture that does things or moves things or changes things. It is employed, used, misused and abused by these people for their benefit, their state’s benefits or for directing their nation’s attention on newer things that they themselves personally hold sacred/ important/ essential. Hence, whenever culture is used as an explanation or justification of actions of states, it should never be taken for granted/accepted without a pinch of salt/without scepticism. As Sherin Fahmy points out, “the cultural dimensions of international relations and the areas they often tend to cover [are]: tools of external interference, determinants of foreign policies, topics of worldly issues, and space for multinational interactions.”

One way of explaining the phenomena of International Relations and culture may be stated as follows: Since the very beginning culture has been used/misused/abused by the national leaders and other important actors in international relations. Culture is used with what can be described as “selective amnesia”: when and where nations’ perceive their national interests are being enhanced or accentuated by employing culture as a means it is cited. But once it is perceived as playing no role, it is conveniently dropped. For instance, regional organizations even when they state their purpose as strengthening cultural bonds have never been observed to extend support to another state plainly on the basis of culture, especially if the act is sure to hamper its state’s interest. ASEAN can serve as a good example in this regard. While national interest and cultural interests can be related in some ways, it may be argued that culture alone may not be decisive in determining national interest, especially in the context of globalizing world, where monetary and profit making considerations reign supreme. In other words, capitalist culture creates money making and profit maximising culture. To quote Matthiesen, “Political leaders and business managers alike can therefore be expected to avoid excessive emphasis on cultural differences”, in the global economic interactions where cultural barriers can limit trade. As Batora and Mokre in their introduction state, “States sometimes can over emphasise cultural aspects because of lack of clarity in the perception and practices in foreign policy matters. They make use of the image of their nation’s culture and society to enhance their interest in international system.”

Even though Social Constructivism along with other post-positivist approaches clamour for the increasing role of culture in International Relations Studies, evidence shows that states are the major actors who decide the action and give appropriate reaction in international relations, based on their perceived national interests. No state walks an extra mile to benefit another only because it shares same or even similar culture with it. Under
globalization, the tendency is to promote economic trade and business interests. And as Matthiesen argues, “While cultural concerns may play a role in international politics, it is in the basic, shared interest most countries to achieve and maintain economic prosperity.” Here, culture occupies a back seat most of the time. Culture plays a role if it can promote business interests. To put it in a broader context, the statement by James Ferguson may be taken into account, “……Culture is a real force in international relations, but is no magic cure to conflict. Put another way, cultural factors may be much too dispersed an influence to deal with major economic, environmental and social problems unless expressed directly through powerful institutions.”

There are many other scholars like Yu Xintian who emphasize the role of culture being used to direct behaviours of states and their peoples to push forward the international community in the direction of peace, democracy, justice, civilization and prosperity. In another place, she even argues, “Guiding or directing cultural change will be one of the main tasks of governments and leaders of countries in the world.” This tantamounts to assign a prescriptive and normative role to culture. They belong in the category of something that can be aspired or desired. There is little empirical evidence to show that nations have indulged in such idealistic and normative goals yet. Many eminent scholars are willing to assign a big role to cultural factors playing a significant role in International Relations Studies. But our study shows that we are still far away from such a notion where culture can be assigned a determining role.

Apart from the problem of lack of empirical evidences, another fact that cannot be ignored is that culture is always in a flux. It keeps changing as it’s very dynamic. No culture is constant: there is heavy borrowing and lending that leads to “acculturation” perennially in international system due to many reasons including globalization and technology and communication revolution. Hence, a concept that is not fixed/concrete/coherent/definitive can scarcely be expected to guide any meaningful action and serve as a guide to any decision in international relations.

References


Abstract
In the present geostrategic global scenario post 9/11, India & Pakistan has been playing a dynamic role in molding and reshaping the power politics and geopolitics of the larger neighborhood and has also impacted the international politics significantly. Their growing military strength, potent nuclear arsenal and heated talks, has in some way or other not only influenced the global geo politics but has compelled from time to time various super powers to shift their onus toward the region. Foreign policies of these nations striving to either protect their own sovereignty or to enhance their interest in the international foray have brought larger players in the strategic prism. One such super power and crucial issue that has affected and influenced the South Asian Region politics is ‘China factor’ in the relationship between these two neighbours. China has been the most formidable aspect in accessing and influencing the internal as well as external strategic decision making policies of India and Pakistan, one being the mightiest among the countries of the Islamic world and the other being the most influential developing country in contemporary world politics. The present paper is an attempt to study the intricacies of relationship and their effects in the Indian-Pakistan relationship and focus on how and to what extent such relationship has affected the conflict ridden South Asian subcontinent, in the days to come.

Keywords: India, China, Pakistan, United States, Geopolitics, Strategic Locations

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Introduction:
In international politics bilateral and trilateral relations between strategically vital nations has always been a very crucial factor for regional as well as international stability and peace. The present paper is an attempt to study one such vital trilateral relationship between three Asian neighbours - India- China and Pakistan. Being nuclear states, sharing the same colonial history and international borders with each other, India, Pakistan and China has turned out to be the three major strategic players in the geopolitics of South-Asia. China has been the most formidable state actor in influencing the internal as well as external strategic decision making policies of India and Pakistan, one being the mightiest among the countries of the Islamic world and the other being the most influential developing country in contemporary world politics.

Relations have grown between these three nations on the basis of necessity, prestige, historical legacy and regional and international strategic moves. The conflict between India and Pakistan continues to threaten international peace and security for the last seven decades. The equation that China has been playing in respect to India and Pakistan
separately has fueled more fire to the animosity than pave any path of resolutions. The impact which these three nations exert on the sub-continent is at present a matter of critical concern for all the international scholars. However before one could make a final assessment of the future of South Asia and China, India and Pakistan respectively, one need to assess how these relations developed to have a better understanding of the conundrum.

**Pakistan-China Relations:**
The relations between China and Pakistan are based on three main pillars- trust, respect, and mutual benefit. After independence, Pakistan was the first Muslim, and the third non-communist, country to accord diplomatic relationship with China in 1951. Since then, bilateral relations between both these nations have continued to grow, encompassing areas of defense, security, trade, economic cooperation, energy, infrastructure, water management, mining, agriculture, education, transport, communications, science and technology. Pakistan and China share a rare unanimity of views on regional and international issues and they enjoy a robust relationship in the defense, political and diplomatic fields, which have led to a birth of a cordial all weathered friendship.

In past seven decades, the two countries have established their bilateral relations in multi-dimensional ways, which has evolved in a manner to serve the interests of both countries. Although the diplomatic relationship of Pakistan with China was established in 1951 but the bonding between the two countries strengthened from the 60’s when Pakistan supported China’s seating in the UN in 1961. A year later Pakistan further showed its deep faith and essence of friendship for China in the Sino-Indian War of 1962, when despite being the ally of the West; did it did not considered China to be the aggressor country and blamed India for the border conflict. This bold act of Pakistan where on one hand an open challenge for India, on the other reflected the sheer commonality of interests that was emerging between Pakistan and China. As an act of reciprocity during the visit of former Pakistani President Ayub Khan’s to Beijing on March 1965 the Chinese leaders promised him that “if India commits aggression into Pakistan territory, China would definitively support Pakistan.” Thus by the time the 1965 Indo- Pakistan War erupted, Pakistani-Chinese relations were well established because both countries’ national interests merged together. It became clearly evident when in the wake of the war the Chinese Government gave a three a ‘three-day ultimatum’ to dismantle all Indian military works on the disputed Sikkim-Chinese boundary or else “bear full responsibility for all the grave consequences arising there from”. It was in the wake of that war that China became Pakistan’s main supplier of arms and ammunitions. China became an important and alternative source of military and diplomatic support for Pakistan. It was mainly their peripheral geo strategic and geo political benefits in the sub-continent and mutual antagonism against India that basically facilitated this rapprochement. Moreover it was the Chinese desire to strengthen and expand their sphere of influence with Asian and Muslim nations that this relationship started taking a strong base.

Both these Asian neighbours with this shared sense of an evolving geostrategic environment gradually came much closer to each other in various ways. Not only in strengthening the regional strategic bonds but Pakistan even played a very significant role in developing pathways of communication between the US and China that resulted in Henry Kissinger’s visit to China followed by the historic President Richard Nixon’s visit and consolidation of
Sino-US relations and the “Shanghai Communiqué, which prompted India to sign a Treaty of Peace, Friendship and Cooperation with the Soviet Union in the 1970’s.\(^5\)

The Indian nuclear explosion of 1974 introduced a new dimension to the strategic balance in the region and gave fresh impetus of expanding avenues in Pakistan-China defense cooperation. This had been “well documented in Western media and intelligence reports” and according to these reports, China was the first country to supply Pakistan with weapons grade uranium to make at least two nuclear bombs, much to India’s consternation. Between 1971 and 1978, China assisted Pakistan in multiple ways from building defense-related mega projects, T–59 tanks, the F–6 Aircraft Rebuild Factory, sixty MiG-19 fighter jets, 150 tanks and other weapons as part of a $300 million economic and military aid agreement\(^7\). Even during the time of the Iranian Islamic Revolution in February 1979, which had threatened peace and stability in the region, China stood firmly by Pakistan. It also condemned the invasion of Afghanistan as a ‘hegemonic action’ that posed a threat to peace and stability not only for the region but for the entire world\(^8\).

Similarly, on the same tune Pakistan always supported China on almost all issues important to Chinese national interests like that of Taiwan and Tibet. During the post cold war decade of 90’s when Pakistan was under sanctions of United States because of its various defence amendments brought about in preview of Pakistan’s nuclear weapons development programme, China assisted Pakistan in strengthening its nuclear and conventional defence capabilities by promising “full and absolute support to Pakistan against foreign aggression and interference including nuclear blackmail.”\(^9\) This extensive nuclear cooperation reached its peak in the 1980s and early 1990s, and included a secret blueprint for a nuclear bomb, highly enriched uranium, tritium, scientists and key components for a nuclear weapons program complex.\(^10\) Further the supply of military hardware including medium range Shaheen-1 and intermediate range Shaheen-11 Missile, JF-17 aircraft, F-22P frigates with helicopters, K-8 jet trainers, T-85 tanks, F-7 aircrafts, Hong Niao cruise missile which was rechristened as ‘Babar’ small arms and ammunitions has further reinforced the military and strategic ties between the two\(^11\).

Since the late 1990s, two countries acknowledged the fact that in order to sustain a comprehensive cooperative relationship, substantive economic cooperation, matching the level of political and strategic cooperation was absolutely necessary and they focused in boosting their economic ties with each other. In the last few years, through frequent interaction between the leadership of the two countries, the two sides have been able to determine a vision for the direction of their bilateral economic relations.

However, relationship between China and Pakistan has recently faced some snags raison detre Pakistani government’s inability to control and curb terrorism and insurgency in its own territory. Such terrorist groups are openly supporting and participating to promote terrorism and violence in China’s Uighur province in the Xinjiang region which remains to be a major security threat and concern for the Chinese administration. China is also apprehensive about Pakistan’s nuclear and conventional defence equipments falling into a wrong hand which has been clearly elaborated by some western analyst.\(^12\) Moreover the rising power profile and relationship between India and China and Western Economic giants
remains a concern to Pakistan. Economically India remains to be a much better partner than Pakistan and the rising India China trade remains proof of that.

But despite such bitter trails these two nations has always maintained the geo-strategic and regional policy on much higher sides and had moved ahead in retaining a relationship of trust, respect, with each other. The speech of former Pakistani P.M Mr. Aziz on September 27, 2005 at an international conference clearly vindicates the fact, where he said “Pakistan and China enjoys all weather friendship based on complete trust and confidence..... From Khunjruba to Gawadar, the symbols of Pakistan-China friendship dot the landscape.”

Currently, Pakistan and China are cooperating closely in the development of the Gwadar deep sea port, which post-operation will enhance economic activity in Pakistan and provide important access to the Gulf and the oil sea trade routes for China’s rapidly developing western regions. At present, a number of important projects such as the upgrading of Karakorum Highway (which links Pakistan with China), Thar Coal Mining, upgrading of Pakistan Railways, and Power Generation Projects—both nuclear and nonnuclear—are some examples of this expanding economic cooperation. Besides this, the two sides have signed a large number of agreements on economic cooperation. China has opened up its western region adjacent to Pakistan for trade and investment in order to reduce the economic disparity between its developed coastal regions and other underdeveloped areas. Once developed, this region would be a hub for economic activity between China, Central Asia, and South Asia. Moreover Pakistan’s entry into the Shanghai Cooperation Organization as an observer and China’s entry into the South Asian Association for Regional Cooperation (SAARC) as an observer would allow Pakistan-China bilateral economic relations to grow from a regional perspective.

Sino-India Relations
After attaining independence India sought to play a greater role in world politics being the beacon to resolve issue of the developing and third world countries. On that principle India became the first non-communist state to formally recognize the People’s Republic of China (PRC) and gave stress to initiate a period of bonhomie between the two. India accepted the Chinese suzerainty over Tibet, and recognized it as an autonomous region of China and to “lessen the tensions that exist in the world today and help in creating a climate of peace”. On April 24th 1954 the signing of the Panchsheel Agreement in Beijing between Chinese Premier Zhou Enlai and an Indian government delegation gave a solid start to this relationship of mutual trust. This agreement along with some fruitful 1950s border negotiation, marked the high point of India-China relations, celebrated by the slogan Hindi-Chini-bhai-bhai (India and China are brothers).

But despite of such cordial and friendly beginning the course of relationship between the two Asian neighbours took a complete different turn in the subsequent days to come. With the advent of Cold War, China began to see India as threatening its perceived leadership of the Third World. Controversies soon emerged regarding the Indo-Tibetan border and the Sino-Indian border in general. Two areas were of particular concern: the eastern sector (145,000km²), which the Indians called the North East Frontier Agency (NEFA) and which the Chinese viewed as South Tibet; and the western sector (34,000km²), which included most prominently the Aksai Chin plateau, bordering Kashmir, Xinjiang and Tibet. Some analyst
have stated that, during the late 50’s the US Central Intelligence Agency and Chiang Kai-shek’s agents financed and trained Tibetan rebels within the Indian Territory. In March of 1959, following an uprising against Chinese rule in Tibet, Dalai Lama fleeing to India created significant tensions between the two nations.

Things turned out to be worse when again in the year 1956, the Communist Party of China promulgated its first official map of China and the surrounding area, rejecting the McMahon line (first demarcated by the British colonial authorities in 1914) showing large swathes of Indian Territory within the borders of China. The Indian government reacted angrily, accusing the CCP of arbitrarily extending China’s borders. This became personified by ongoing border disputes between the two sides, beginning in 1959 with Chinese incursions into Ladakh and the North East Frontier Agency (NEFA). In due course, these tensions between the two led to Sino-Indo war on October 1962, which ultimately resulted in Indian defeat and large stretches of its territory being occupied by Chinese forces till date. The 1962 war almost brought an end to the much expected diplomatic and economic relations between Beijing and New Delhi; instead bolstering the positions and relations between Pakistan and China in the region. India-China relations remain bitter during this entire period due to frequent border skirmishes - such as at Nathula on the Sikkim- Tibet border in September 1967 and at Somdurong Chu in 1987.

However, the process of rapprochement between the two initiated because of international pressure and the diplomatic relations were reinstated in 1976. During the 80’s China implemented its economic reforms and announced a policy of ‘peaceful expansionisms’. Notably after the visit of Rajiv Gandhi in 1988 bitter relations somewhat thawed, when both sides agreed to deal with the issue of LAC (Line of Actual Control) peacefully and bilaterally. This came in force in September 1993 after the visit by Indian Prime Minister Narasimha Rao, where the landmark agreement was signed on maintaining ‘Peace and Tranquility on the Line of Actual Control (LoAC)’. This agreement significantly improved relations and included force reductions. In 1996 President Jiang Zemin became the first Chinese head of state to visit India since the 1962 war.

But the Sino-Indian relations were constantly tested and went through sever strains even after the process of rapprochement. In 1998 when India went ahead with its nuclear tests P.M Vajpayee wrote a letter to the President of United States clarifying that the test were conducted to protect national security as China was ‘an overt nuclear weapon state’, and ‘Pakistan a covert nuclear weapon state.’ On the same tone on May 2, 1998, Indian Defence Minister George Fernandez described China as the ‘number one threat’ for India. Process of normalizing the relations was initiated by the NDA Government when in the year 2000 President K.R. Narayanan visited Beijing and became the first India head of State to visit China. In 2003 both the head of Governments made significant attempts in coming closer to each other, while opening new economic avenues, border trade in Nathula, indirectly recognizing Sikkim to be an integral part of India, initiating dialogues at a level which was never done before. Financial institutions of both nations were opened at each mainland, air routes were opened up and trade between the nations crossed the billion dollar mark. Thus gradually the process of normalization of relations between the two Asian giant’s grew step by step. Since then the diplomatic and trade relationship between the two nations have increased tremendously, with frequent high level mistrial meeting, friendly
visits, bilateral agreements, trade and commerce, strategic economic dialogues etc gradually India and China came much closer to each other in ever field. Not only in the regional bilateral relations but India and China have now come to cooperate each other in various global multilateral frameworks too. Such as the BRICS, G20, WoT, Global Warming (Kyoto Protocol), Asian countries development programme etc.

However, issues like continues incursion by the PLA inside disputed territories between India and China, providing staple visas to people of Arunachal Pradesh has been major irritant in the relations. The amount of economic growth and bilateral trade hat was foreseen in 2003 has not been achieved in the last 10 years due to allegation of economic dumping and lingering mutual suspicion and misconception between the two nations.

In the late 90’s and early 20th century there were two important international events which caused ramification in China, Pakistan and India relations as well as beyond the region. First, there were the Indian and Pakistani nuclear tests in May 1998. However, China did not abstain or veto United Nations Security Council Resolution 1172 (6 June 1998) condemning the Pakistani and Indian nuclear tests. Secondly, it was the 9/11 attack which completely changed the scenario and the ‘China factor’ in the India-Pakistan relations. China which was an open friend and supporter of Pakistan suddenly took a neutral stand in the entire scenario. Moreover US’s led Operation Enduring Freedom and the Global war against fundamentalist Islamic terrorism and jihad brought Pakistan to the frontline showing the fallacies of terrorism being used as state policy which ultimately boomerangs on the state itself.

Conclusion
Today, without doubt the Pakistani policy makers continue to believe that their country remains central to China’s vision of South Asia. Indeed many of them extend the logic that it’s the recent trends in international terrorism and the changing equations between India and US which has provided added reasons for the closeness between China and Pakistan. Similarly both the Chinese and Indian leadership can perceive that long standing detachment and animosity nurtured on long standing disputes would remain harmful for both the economies. India has made attempts to adopt many Chinese models which cater to urban planning economic growth as well as resource utilization. China similarly is making attempts to imbibe Indian models of Local Self Government, conflict building mechanism within center and states within their own nations.

Yet they continue to face the pressure of their new regional level interface which still remains very fragile in the future, prone to major changes either due to decisions by short sighted statements or rapid change of international scenario. The recent period has also seen the three major players of Asia –China, India and Pakistan together - not only taking steps in improving their bilateral relations but also becoming joint partners in regional forums like the ASEAN, Shanghai Cooperation Organization, SAARC and much more,. In the present decade leaders of both Pakistan and China have gradually began to accept the reality of emerging India and has become increasingly willing to positively reciprocate to India’s engagement overtures. But given the fact that their past had been tensed for such a long time their future remains indefinite. Perhaps, given the virtual lowering of their inter-state threats the greater challenge today’s comes from their domestic constituencies and
limitation. It is in this context that there is a strong need to revive debate in India on the nature and significance of China-Pakistan relations in order to evolve a better understanding and policy response on these issues. Moreover the recent high expected visit of Indian Vice President Hamid Ansari to China in the commemoration of six decades of Panchsheel definitely shows a hope of new beginning in the bilateral relationship between the two Asian giants. As, Sidhu and Yuan consider that ‘it is in interest of all parties- Beijing, Islamabad and New Delhi to work towards establishing a strategic restraint regime.’

Relations between India, China and Pakistan depends entirely on the farsightedness of the leaderships of each of the three nations to initiate and establish an amicable environment based on economic, social and cultural linkages which could be the base to decimate the prolonged aura of mutual suspicion, hatred and mistrust which might open up avenues of resolving important strategic disputes.

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Changing Dynamics of Global Governance of Intellectual Property: An Analysis

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Abstract
Global governance is referred to as an ongoing inquiry into managing the dynamics of a more global world order of today. It is deliberately linked to globalization, but it transcends the latter. This paper provides the linkage between global governance and intellectual property (IP). The author highlights the Trade Related Aspects of Intellectual Property Rights (TRIPS) and emerging regime dynamics of IP. It re-examines the narratives of both the pro-IP advocates (especially concerned with TRIPS) and opponents to provide a comprehensive worldview of the current global IP regime. The paper finally brings forth valuable insights into the changing global governance of IP enforcement with a strong emphasis on the new challenge for developing countries.

Keywords: Intellectual Property (IP), Global Governance, Globalization, Enforcement, World Trade Organization (WTO), World Intellectual Property Organization (WIPO).

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Introduction: Globalization and Global Governance
Gover...
found that their interpretative scope regarding rights or opportunities are largely defined or rather limited by the way the US or the EU wants it to be. 'IP in global governance implicates both micro and macro-interplays of regime theory. The prevailing regime complex that contextualizes international IP assists in the deployment of regime theory to explore the tensions and overall counterhegemonic landscape that characterize oppositions to the TRIPS Agreement. Consequently one of the operational features of the IP regime complex is the politics and the process of regime shifting or forum shifting (Braithwaite and Drahos 2000) by both developed and less developed countries through specific and multi-party treaty and non-treaty forums that are now part of global governance framework for IP. The very contesting nature of IP rights granted and made easily available demands that we need to look at them ‘from all perspectives-local, regional, global and also holistic. One consequence of such a multifaceted approach is that we are bound to encounter clashes between national, transnational, international, customary and socio-economic rules as they relate to specific objects, works and ideas’ (Dutfield and Suthersanen 2008: 4). This provides ample opportunities for the WIPO to inquire into the legalese of the existing global IP rights and its implications so that the 21st century knowledge economy can grow with lesser interruptions and there could be a balance between the developed and the developing nations.

‘The concept of governance depicts enduring multifarious ways, processes and dynamics through which individuals, many institutions (private and public) and regimes manage common, diverse and conflicting interests (CGG 1995a & b). The emerging global governance would come ‘in a way that accommodates a broad range of stakeholders and publics’ (Sell 2004: 363-4). Thus, the evolution, interaction and unravelling of globalization and international regime dynamics in the IP arena makes IP a subject matter of global governance.

The emerging international IP governance shows the evidence of forum shifting or regime shifting in the last more than a decade or so since the advent of the TRIPS in 1995. Thus regime shifting is defined as ‘an attempt to alter the status quo ante by moving treaty negotiations, law making initiatives or standard setting activities from one international venue to another’ (Helfer 2004 & 2009).

TRIPS Agreement and Emerging Regime Dynamics of IP

How the TRIPS Agreement negotiated during the Uruguay Round of talks (1986-94) of the General Agreement on Tariffs and Trade (GATT) has a longstanding impact on shaping the international IP governance would be discussed in this section. The coming of the TRIPS could be termed as ‘a victory for those multinational companies determined to raise international intellectual property (IP) standards and boost IP protection in developing countries’ (Deere 2011). The TRIPS Agreement is not a sui generis system for the international protection of IP. In fact, it traces its historical and juridical roots to several earlier international agreements, two of which dates back to the nineteenth century. The Paris Convention for the Protection of Industrial Property of 1883 and the Berne Convention for the Protection of Literary and Artistic Works of 1886 were precursors of the TRIPS Agreement’ (Richards 2004: 4). The historic Paris Agreement needed members to provide national treatment for foreign innovations in the areas of patents, trademarks, industrial designs, appellations of origin, and utility models, whereas the Berne Convention had the same provision for copyrights only. ‘National treatment however does not require nations
to provide any particular standard of protection. It merely requires that whatever level is provided to domestic works also be provided to foreign works.

Essentially, then Paris and Berne Conventions amount to non-discriminations agreements in the areas of IPRs rather than agreements that establish minimum standards’ (ibid). But these two historic agreements were hardly accepted internationally. This happened because many of the countries felt that these agreements would be a disadvantage for harnessing the benefits of technological transfer and development. It is noted that in 1893, the Paris and Berne Conventions were merged into a single secretariat which later came to be under the control of the WIPO. In 1974, WIPO became an integral part of the UN to help nations develop multilateral norms governing IP, national legislation and finally provide a platform for negotiating international treaties. However, ‘WIPO operated under the same constraints as its predecessor agreements. That is while some members of WIPO attempted to press for effective minimum standards for IP protection, there was within the organization considerable resistance to these attempts as well. Neither was WIPO endowed with an effective mechanism to enable it to enforce what minimum provisions its membership was able to agree to’ (Ryan 1998). In fact, the inadequacies of the WIPO have finally led to the birth of the TRIPS.

‘The conclusion of TRIPS represents a revolution in the history of IP protection. By establishing a universal, comprehensive, and legally binding set of substantive, minimum IP standards, TRIPS both strengthens and supplements the earlier patchwork of international IP agreements (Okediji 2003: 315-85). Thus the primary function of this agreement is to establish and enforce the basic minimum standards and protection for IP across the world. But it is very clear that the agreement was not aimed to bring harmonization of IPRs because the signatory nations of the WTO have all the freedom to devise their own national regimes for protection of IPRs even what has been provided under it. ‘It does require that nations adhere to the main provisions of the Paris and Berne Conventions while calling for nothing that derogates nation’s obligations to one another under those agreements. Thus for example the basic principles of national treatment and the most favoured nation are strongly enshrined in the TRIPS Agreement’ (Richards 2004: 5).

Though the TRIPS Agreement has generated fresh controversies between the developed and the developing nations, yet the controversies related to IPR are considered age old. Thus ‘the debates between developed and the developing countries over TRIPS reflect tensions that inhere in the provisions of IP rights and which have accompanied IP regulation since its inception’ (Deere 2011: 5). In fact, the origins of formal IP protection could be traced back to 15th century Venice when the first patents were issued and to the late 17th century England established the foundation for first copyright laws. Drahos correctly notes, ‘TRIPS works the global phase in the evolution of intellectual property law making’. The policy makers across the world have to brainstorm how they will secure their national resources and best utilize them on the face of an irreversible global IP regime. The TRIPS Agreement represents a quintessential breaking point and a touchstone for locating the regime dynamics in the new international intellectual property order (Oguamanam 2012: 64). As Kranzer advocates that international IP regimes reflect ‘sets of implicit or explicit principles, norms, rules, and decision making procedures around which actor’s expectations converge in a given area of international relations (1983: 2). It is the states which play a crucial role in
devise the international regimes and accordingly they change them in course of time to suit their interests.

‘Since World War II, the US has been making and breaking regimes as it suits its national and international interests, and the ideational beliefs’ (Kranser 2009: 8). Today as at the time of first efforts to make ‘property out of knowledge’ IP law making is a political process ‘in which particular conceptions of rights and duties are institutionalized; each settlement prompts new disputes, policy shifts, and new disputes again’ (May and Sell 2005). Thus, the historic initiative taken by the WTO to globalize the IP rights so that innovation and development can go hand in hand, has brought forward a long standing and much bitter struggle between the developed and the developing nations. May notes that ‘since the late 1800s, developed countries worked to develop, strengthen, and harmonize international IP laws and to internationalize IP protection’ (2000; 2002). Gradually, ‘from bilateral arrangements, the first multilateral IP arrangements emerged. To administer these treaties, governments created an international secretariat which ultimately became the WIPO. Overtime, a global IP system emerged, comprising a dynamic set of national, regional, and multinational legal institutions. By the mid-1980s, there were some eighteen international IP treaties (covering topics from patents, trademarks and geographic indications to industrial designs), most of which were administered by WIPO’ (Deere 2011: 7). It has been observed that because of loose enforcement mechanisms or flexibilities inherent in TRIPS, the WTO members have the opportunity to exercise discretion over the level and form of IP protection largely within their respective borders.

It is worth mentioning that in the 20th and in the beginning of the 21st centuries, we have witnessed America’s neo-liberal market economy model which is mainly driven by information technology. And ‘IPR was the need of the hour to encourage, protect and enforce the new innovation in various fields made in the US and in Europe, particularly in developing countries. Therefore, the inclusion of IP into a more encompassing WTO was nothing but to promote and establish the market-oriented neoliberal economic rules in new horizons. Though many developing countries (including India) initially opposed, but they had to crumble down to the US pressure and ‘not only were they lured by the carrot of access to the largest markets in the world, they were also faced with the stick of coercive crippling sanctions under the US’ new trade regime headed by the office of the US Trade Representative (USTR) (Drahos and Braithwaite 2004; Reichman 2000). Even the ‘less developed countries were promised some respite from US-led bilateral pressure if a uniform comprehensive multilateral regime on IP could be put in place’ (Reichman 2000).

In fact, the TRIPS system wanted to resolve the issue of rule diversity that badly damaged the institutional mechanism of WIPO. As Oguamanam notes, ‘It sets out a global IP system that covers all regimes of IP with binding, albeit minimum, substance content and incorporated by reference the agreements administered by the WIPO. Under TRIPS state’s obligations to protect IP are no longer optional, neither is there any crippling ambivalence regarding the substantive content of the international IP regime or the extent of state’s commitment to them. Accession to the TRIPS Agreement is automatic and compulsory for all members of the WTO, thus a more streamlined membership register, in contrast to the confusion with the WIPO-administered treaties (2012: 65). Also he argues that TRIPS draws in the resolution of IP disputes among the WTO member states, into the hard-edged WTO
binding dispute settlement system which incorporates retaliatory trade sanctions for erring states. This is a sharp contrast to the pre-existing WIPO mechanism in which the International Court of Justice (ICJ) had jurisdiction over the IP disputes emanating from the WIPO administered treaties—a jurisdiction that was never exercised. So with this, the TRIPS introduced a system seemed to be more rigorous, complete and restricted in comparison to the WIPO system. Its ‘one size fits all’ global regime of IP (Dutfield 2000) has extended patents and all IPRs widely to each area of technology and creativity with very little discrimination.

Article 7 of the TRIPS Agreement which is headed ‘objectives’ states that ‘The protection and enforcement of IPRs should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technical knowledge and in a manner conducive to the social and economic welfare...’ (Blakeny 1996). But when we examine the veracity of this promise, we can have negative outpours coming in from across the developing nations particularly as a result of the implementation of the TRIPS.

Developing countries were never involved in the making of international IP treaties during the colonial period. ‘Only in the post-colonial era did distinct developing country concerns about international IP regulation emerge culminating in their fight for a New International Economic Order (NIEO) and a North-South stand off on reform of the international IP system in the 1970s and 1980s (Patel et al. 2001).

Richards (2004) strongly argue that ‘the TRIPS Agreement is not in the best social welfare interest of the poor countries and that its effective imposition on them by the rich countries has far more to do with the exercise of real political and economic power than it does with the positive economic benefits the Agreement’s supporters claim it can deliver.’ Again throughout the TRIPS negotiations, development economists and legal experts debated evidence regarding the relationship between IP and development (Correa 2000; Watal 2001). But the IP proponents argue that stronger IP protection would encourage foreign direct investment (FDI), innovation and technology transfer, and spur the development of national cultural and creative industries. In the face of growing trade in counterfeit medicines and other products, proponents presented stronger IP protection as a way to help protect public health and safety (Deere 2011: 9). In reality, it seems developing nations a difficult time to upgrade their nascent IP regimes to gear up to accept and adjust with one of the most modern IPR regime brought out by the TRIPS. Therefore, ‘in their detailed enunciation, these changes (by the TRIPS Agreement) represent a marked strengthening of substantive IP standards’ in a direction (radically) opposed to the social interest sensitivities of developing countries and their economic sovereignty guaranteed under the pre-TRIPS framework. Consequently, the entrance of the TRIPS into the global IP equation has yielded a culture of disaffection against the agreement by developing countries akin to one that prevailed against the (pre-TRIPS) WIPO framework by developed countries’ (Oguamanam 2006).

But even before IPRs became trade related, the WIPO was very successful in helping developing nations making their IP laws. The assumption of the relationship between IPRs and economic development is generally accepted as an article of faith. For example an
entire division of WIPO is concerned with cooperation for development (Pugatch ed. 2006: 19). The United Nations Conference on Trade and Development (UNCTAD) which became representative of the views of developing countries has produced a number of studies calling for the improvement of the ways in which patent and trademarks laws operate in the transfer of technology (UNCTAD 1975 and 1981). A number these issues and other vital omissions in the TRIPS, like non-accommodation of indigenous or traditional knowledge, seriously undermines the Agreement’s social interest deficit phenomenon. ‘In the post-TRIPS, less developed countries became quickly frustrated with the failure of the US and its European allies to deliver on the promised carrot i.e. the opening of their markets to less developed countries, especially in regard to access to agricultural produce, textile and other export opportunities in foreign markets, including reductions in agricultural subsidies and concessions on imports of tropical products (Abbott 1989; Correa and Musungu 2002: 2).

Another disturbing trend was the unilateral trade sanctions imposed by the US despite its repeated assurances on developing nations, in fact helped in mobilizing them against the hidden agenda of the TRIPS. It has been observed that for the poorest nations, the promised potential return of higher IP protection remained a distant reality because of serious hurdles they faced at home. Again ‘to administer and enforce IP reforms undertaken to implement TRIPS, developing countries faced the cost of financing and enhancing relevant government agencies and the opportunity cost of employing scarce human capital to administer IP rules in the face of more pressing social challenges (Finger and Schuler 2000). This was an extra burden on already cash trapped nations and on the other hand, developed countries were fast in implementing the TRIPS requirements which directly put the former’s cart behind the latter. Therefore the lagging behind phenomenon of the developing nation’s altogether has been once again accelerated by the TRIPS with the full support of the global capitalist forces. Further Finger and Schuler points out that ‘to implement TRIPS, most developing countries needed to develop or import the relevant legal expertise and depended on external assistance to surmount the considerable financial, technical and institutional challenges.’ These issues have fully raised an anti-TRIPS banner on many provisions of the Agreement and NGOs, Civil Society Organizations (CSO) policy think tanks have highlighted and expose them around the world.

Many scholars identified the negative effects of implementing the patent system already prevailed, o developing countries. These negative effects are:

a. The high direct and compliance costs of the system which acts as a deadweight to the innovative process by distracting resources from more useful activities.
b. The occurrence of restrictive practices in patent licensing which has the effect of dampening the already small domestic industrial R and D efforts.
c. Patent monopolies imply higher prices for consumers and industry as well as distortions in the allocation of resources.
d. The mystique of patent system can distract attention from the more important phases of the innovative process such as development and marketing (Manderville et al. 1982).

In 2002, the World Bank estimated that TRIPS implementation would generate net losses for Brazil of US $ 530 million, for China of US $ 5.1 billion, for India of US $ 903 million, and for
Finally critics warned that while stronger IP promotion might foster positive outcomes, but this would surely require the right conditions, carefully tailored policies and laws, and a range of complementary measures. Some of them emphasized that these same IP rules could also slow down industrial development by constraining opportunities to copy and adapt technologies (Fink and Maskus 2005).

Changing Global Governance of IP: Challenges for Developing Countries

There was striking diversity in the approach that developing nations took towards the implementation of the TRIPS in their nascent IP system. ‘Most notably developing countries took varying advantage of the legal safeguards, options, and ambiguities in TRIPS, now commonly referred to as the TRIPS flexibilities’ (Deere 2011). This suggests that not all developing nations were unhappy with the implementation of the TRIPS. In fact many of them came up with much higher IP standards than what was prescribed in the TRIPS provisions. And some of them could not implement the provisions in time and repeatedly asked for more time to do so. Though they tried to adjust with the new international IP standards, yet their approaches varied widely across the developing world. This has significantly obstructed the goal of achieving the international harmonization of IP standards as prescribed in the TRIPS Agreement. Developed countries prompted the negotiation of TRIPS by advancing the idea that ‘IP protection would help developing countries attract FDI, promote technology transfer, stimulate domestic innovation, and increase their global competitiveness’ (Ryan 1998).

However, practically speaking, developing countries have to counter unilateral pressures and sanctions from US, massive overhauling of their IP administration, finance mobilization, domestic political and industry pressure etc. to implement this agreement. One of most significant issue concerning developing countries is the access to essential medicines at affordable prices in the post-TRIPS era because of the introduction of the product patent element in the agreement. This has given a free hand to the MNC’s in the health sector to dictate terms in the manufacturing of essential medicines though national governments have measures to control the same. Therefore, many scholars are of the opinion that TRIPS is coercive by nature in contradiction to what its proponents claim the internally adopted strong IP measures would benefit the member countries. These critics stipulate that TRIPS in future may become ‘one of the most effective vehicles of western imperialism in history’ (Hamilton 1996). The updated IP rules and standards were supposed to enhance the price of seeds, medicines, and educational materials, which many countries in the developing world normally import. In this regard, critics like Tansey and Rajotte eds. (2008) argues that ‘IP rules that circumscribe the ability of farmers to save and share seeds could pose threats to global food security and the livelihoods of the world’s billion plus small scale farmers’. In fact, it was highly realized that the developing and the LDC’s may not fully achieve the benefits of international IP regime launched by the TRIPS. Because, it was found that ‘conclusions to the contrary ignore distributional realities: members differ in terms of their levels of wealth, economic structures, technological capabilities, political systems and cultural traditions. They have different needs and aspirations and require different intellectual property systems’ (Yu 2003). So, a uniform IP package devised by the TRIPS
Agreement would create a kind of western hegemonic structure over the developing and the LDCs across the world.

Again, it is strongly felt that the North-South technological gap has continued to grow since the adoption of the Agreement. Fears that the enhanced protection given to IPRs will not effectively promote the development process, but limit instead the access to technology, have been voiced by many developing countries’ (Correa). Therefore many experts like Harvard economist Sachs warned that ‘poor will be ripped off unless some sense and equity are introduced into this runway process.’

The developing countries have been facing numerous problems when it comes to the implementation of the TRIPS Agreement. The first of these is weak institutional, technical and financial capacity. The second is the political process of IP decision making in developing countries (Deere). Most of the IP offices in developing countries are armed with various powers, but the officials often take an indifferent attitude towards IP experts. It has also been observed that the strength of IP offices is often consolidated by limited coordination on IP decision making and policy making across government ministries, either with respect to internal IP issues or with respect to positions taken in international forums (ibid). It is found that most of these IP offices are financed through fees paid by foreign applicants, external donors, IP offices of developed countries and WIPO. Hence, they need to rely on them heavily and hardly implement required IP reforms in time and in the interest of their development.

Again, lack of political attention and coordination in national capitals of developing countries is a major problem. Therefore, there is an urgent need to make IP policy making processes that can easily map and coordinate ministries, civil society organizations, NGO’s, research community and all international agencies and relevant offices efficiently.

Concluding Remarks
The author would argue that instead of automatically agreeing or adopting the US or EU interpretations of some of the vital provisions of the TRIPS or any other global compact having direct impact on the developing nations, ‘it would be better for countries to craft their rights, exceptions and limitations as they see fit, as long as their interpretations of these are consistent with their international obligations’ (Dutfield and Suthersanen 2008: 4). Thus, the legitimacy and effectiveness of the TRIPS is highly questionable in regard to its implementation in developing nations. Even free trade advocates like Wolf (2005: 217) clearly exposes the hypocrisy of TRIPS and outlines it as rent extraction device for many developing countries, with potentially devastating effects on education, public health, and economic development. It has been observed that even those nations who were supposed to gain the most out of TRIPS implementation, has witnessed the benefits moving towards only a particular section of their society.

Archibugi and Filippetti (2010: 144) argue that ‘the real winners from TRIPS are not advanced countries, but rather the large corporations that pressed for its adoption.’ Therefore, TRIPS has failed to provide what it has outlined in its broad spectrum of goals and objectives. Primarily its one size fits all agenda cannot be accepted as a solution to all the ills of developed and developing countries in regard to IP protection and enforcement.
In the long run the too much emphasis on ‘private rights may even serve to inhibit innovation and spread of knowledge in developed countries...' (Hesse 2002).

This work would strongly urge the developing nations to reconfigure their demands, priorities and international obligations on the fast growing scholarship which claims that ‘in another era, a nation’s most valuable assets were its natural resources-coal, say, or amber waves of grain.......in the information economy of the 21st century, the most priceless resource is often an idea, along with the right to profit from it’ (Kanter 2005).

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Implication of TISA on Trade of Services

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Abstract
The pluri-lateral negotiations on a Trade in Services Agreement (TISA) have attracted much attention in trade policy circles. Policy and economic implications are intensely debated given the number and economic importance of participants. This paper aims to provide insights into the market access issues arising in such negotiations. TISA market access commitments would go well beyond GATS commitments and services offers tabled in the Doha Round. Further, and more importantly, exchanging 'best PTA' commitments would not meet the participants' most important export interests. An introduction has been given to explain what TISA is basically. The importance of services has been discussed. The basic reason of emergence has also been brought to light. Membership of TISA, its dynamics and implications has been dealt with. The objectives of this agreement have also been outlined. Further main elements of the agreement have also been brought to light. Moreover the architecture has also been looked into. Multi-lateralisation and its effect have been discussed. Lastly, entry of China and its implications on the world have been seen. Some recommendations and conclusion on the state of this agreement has also been mentioned.

Keywords: Trade in Services Agreement (TISA), International Trade Agreements and Negotiations, Preferential Trade Agreements (PTAs)

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Introduction
The Trade in Services Agreement (TISA) is the most promising opportunity in two decades to improve and expand trade in services. Initiated by the United States and Australia, the TISA is currently being negotiated in Geneva, Switzerland with 50 participants that represent 70 percent of the world's trade in services. The last major services agreement, the General Agreement on Trade in Services (GATS) was established by the World Trade Organization (WTO) in 1995. Since then, the world has evolved dramatically from the result of technological advances, changing business practices, and deeper global integration. The TISA can establish new market access commitments and universal rules that reflect 21st century trade.

Australia has a strong interest in progressing services trade reform, both in terms of improved services market access commitments and as a way to generate momentum in multilateral negotiations more broadly. The services sector accounts for around 70 per cent of Australia’s economic activity, employs four out of five Australians and plays an important role in international trade, accounting for around 17 per cent of Australia’s total exports.
The Importance of Services

The services sector is the world's largest employer, and produces 70 percent of global gross
domestic product (GDP). In the United States, services generate more than 75 percent of
the national economic output and provide 80 percent of private sector jobs. According to
the U.S. Office of the Trade Representative, if U.S. business services achieved the same
export potential as U.S. manufactured goods, then U.S. exports as a whole could increase by
$800 billion.

The TISA has the opportunity to address major and fundamental barriers to trade in services
affecting the United States and the globe. Some barriers to services trade include limited
movement of data across borders, unfair competition from state-owned enterprises, lack of
transparency and need for due process of law, and forced local ownership and
discrimination in obtaining business licenses and permits.

Basic Reason of Emergence

In order to overcome the stalemate of the Doha negotiations, at the 8th Ministerial
Conference of the WTO in December 2011, Ministers acknowledged the impasse and issued
"elements for political guidance" providing for a commitment "(...) to advance negotiations,
where progress can be achieved, including focusing on the elements of the Doha
Declaration that allow Members to reach provisional or definitive agreements based on
consensus earlier than the full conclusion of the single undertaking.(...) Ministers recognise
that Members need to fully explore different negotiation approaches while respecting the
principles of transparency and inclusiveness." In that spirit, WTO members advanced
negotiations in the area of trade facilitation and certain other areas. Also, certain WTO
members led by the USA and Australia started floating the idea of a stand-alone agreement
on trade in services to advance the DDA negotiations amongst the willing WTO members.

The group of countries potentially participating in the negotiations on the Trade in Services
Agreement for which data are available represent a very substantial share of EU exports and
imports of commercial services: 58% of EU exports and 59% of EU imports. The overall
average figures are however mostly determined by a sub-set of countries as the USA,
Switzerland, Japan, Norway, Australia and Canada alone represent almost 50% of both EU
exports and EU imports. With the majority of these countries the EU has already signed, is
negotiating or is starting to negotiate ambitious bilateral agreements that include both
goods and services liberalisation.

However, there is also a group of countries with which either the EU has agreements where
services commitments could be deepened (e.g. Mexico and Chile) or has no FTA including a
services chapter (Australia, New Zealand, Pakistan, Switzerland, Paraguay, Taiwan and
Turkey). These countries together represent at least 22% of EU exports and more than 20%
of EU imports of commercial services, which amount to 123 and 90 billion Euros
respectively. It is noted that the EU is also an important trading partner for these countries.
This is not only the case for smaller countries, but the EU27 represents e.g. for the US 32%
of its export and 34% of its imports of commercial services.
Membership
Since discussions began, participation in the TISA has expanded from 16 to 23 parties, with the European Union representing its 28 Member States, for a total of 50 WTO Members. As of September 2013, participants in the TISA include Australia, Canada, Chile, Chinese Taipei (Taiwan), Colombia, Costa Rica, European Union, Hong Kong, Iceland, Israel, Japan, Liechtenstein, Mexico, New Zealand, Norway, Pakistan, Panama, Paraguay, Peru, Republic of Korea, Switzerland, Turkey, and the United States. It has been reported that China and Uruguay have formally asked to join the negotiating group.

TISA parties collectively account for around 70 per cent of global trade in services. The group represents a range of developed and developing economies and will expand to include other WTO Members as the negotiations progress. China and Uruguay recently indicated interest in joining the negotiations.

Objectives
TISA parties have agreed on a framework for the negotiation of the high-quality and comprehensive services-only trade agreement. The objective is to negotiate an agreement which is compatible with the WTO General Agreement on Trade in Services, will attract broad participation, and will support and feed back into multilateral trade negotiations. The TISA will set a new standard in services trade commitments, capturing the progress that has been made through unilateral liberalisation and in free trade agreements outside the multilateral system. Many of the current parties already have relatively open services markets. Locking in existing market access would provide certainty for Australian services suppliers. As participation continues to expand, the TISA could offer significant additional benefits, particularly for Australian business if countries from our region join and liberalise to meet level of ambition.

The TISA negotiations will cover all services sectors. In addition to improved market access commitments, the negotiations also provide an opportunity to develop new disciplines (or trade rules) in areas where there has been significant developments since the WTO Uruguay Round negotiations. There negotiations will cover financial services; ICT services (including telecommunications and e-commerce); professional services; maritime transport services; air transport services, competitive delivery services; energy services; temporary entry of business persons; government procurement; and new rules on domestic regulation to ensure regulatory settings do not operate as a barrier to trade in services. These negotiations are still in the early stages but will likely reflect developments in other free trade agreements.

These have often remained unaddressed in many of the previous bilateral negotiations or involve countries not currently participating in TISA. Addressing better these export interests would require going beyond an exchange of 'best PTA' commitments among TISA participants – with the more difficult policy and negotiating decisions that this implies – and/or seeking to expand the group of participants. We also discuss the different forms that such a pluri-lateral agreement may take vis-à-vis the WTO framework.

The dynamism and importance of trade in services contrast sharply with the sluggishness of WTO negotiations in this area, where the latest serious attempt to move things forward
dates back to mid-2008, on the occasion of the so-called services 'signalling conference'. Faced with that state of affairs, and against the background of a proliferation of preferential trade agreements (PTAs) covering services, a group of WTO Members, the so-called 'Really Good Friends of Services' (RGFs) agreed on 5 July 2012, to start preparing negotiations on an International Services Agreement to reinforce and strengthen the global services market.

Discussions on the TISA have been intensive over the last months. They have focused on a framework of rules (e.g. on data flows, state-owned enterprises) and on the agreement's liberalization modalities (i.e., negative vs. positive list approach to scheduling commitments, or a combination of both). Market access negotiations have not yet started in earnest, though the participants' initial market access offers are scheduled to be submitted in November. These initial offers are to take the form of a hybrid approach that builds on the GATS, but that provides for commitments on national treatment to be undertaken for all service sectors on the basis of a negative list. It has been estimated that the agreement would offer the European Union a potential EUR 15.6 billion and the United States EUR 10.4 billion (De Micro, 2013).

Main Elements of the Agreement
Although the negotiation of the agreement would be outside of the auspices of the WTO, the current potential members of the agreement share the understanding that the agreement should be brought back to the WTO and GATS, when the agreement attracted a critical mass of WTO-members. The agreement should be ambitious, comprehensive in scope and commitments taken should reflect in principle as closely as possible the autonomous level of liberalisation (i.e. binding the existing practice). Also, the negotiation is aimed at providing for new or improved market access. Moreover, new and enhanced disciplines should be elaborated on the basis of proposals brought forward by the participants. Such proposals are expected to be made in the area of domestic regulation (e.g. authorisation and licensing procedures), international maritime transport services, Information- and Communication Technology ('ICT') services (including cross-border data transfers), e-commerce, computer related services, postal and courier services, financial services, temporary movement of natural persons, government procurement of services, export subsidies and state-owned enterprises. This list is neither an exhaustive list, nor does it mean that it was agreed that in all those sectors there will be new and enhanced disciplines.

Architecture
In terms of architecture of the future agreement, convergence could be found that the agreement would be based on the GATS, whereby some GATS core articles (inter alia on definitions, scope, market access and national treatment, general and security exemptions) would be incorporated. This would ensure a future possible integration of the agreement into the GATS. There would be additional provisions to govern how each member could take commitments. There was a general understanding that market access commitments should be taken as in GATS. In terms of national treatment, the agreement could contain the possibility to be applied on a horizontal basis to all services sectors and modes of supply. Exemptions to this horizontal application would then have to be listed in the countries’ national schedule of commitments. There was also convergence that commitments should in principle reflect the actual practice (“standstill clause”) and that future elimination of
discriminatory measures should be automatically locked (so-called “ratchet clause”) unless an exemption is listed.

**Multi-lateralisation**

Unlike in the DDA negotiations, the possible future agreement would for the time being fall short of the participation of some of the leading emerging economies, notably Brazil, China, India and the ASEAN countries. It is not desirable that all those countries would reap the benefits of the possible future agreement without in turn having to contribute to it and to be bound by its rules. Therefore, the automatic multi-lateralisation of the agreement based on the MFN principle should be temporarily pushed back as long as there is no critical mass of WTO members joining the agreement. Such a temporary push back can be achieved by ensuring that the future agreement fulfils the conditions of an economic integration agreement as set out in GATS Article V, i.e. the agreement should have substantial sectoral coverage, provide for the absence or elimination of existing discriminatory measures and/or the prohibition of new or more discriminatory measures. At the same time, there was a common understanding to include an accession clause for interested WTO members and to elaborate a pathway to the multi-lateralisation of the agreement, i.e. the agreement should define the mechanisms and conditions for subsequent multi-lateralisation.

**China at the Door**

On the occasion of the visit of the President of the People's Republic of China, Xi Jinping, to Brussels, the EU announced its strong support for China joining ongoing negotiations to liberalise trade in services. The EU’s position is reflected in the EU-China joint statement issued at the Summit.

TISA is an initiative open to all WTO members interested in further liberalising trade in services. Launched in March 2013, the talks currently involve 23 WTO members, although the negotiations themselves are not being held within the WTO itself due to a lack of unanimous support among the organisation’s membership.

As noted, there is some concern that China’s actions during the Information Technology Agreement (ITA) earlier this year – when Beijing scuppered the talks by asking for too many products to be exempt from the agreement – might serve as a warning for the TISA and TPP talks. In other words, letting China join may be an equivalent of opening up the city gates to a giant wooden horse, left as a gift by the Greeks.

Such fears may have been at least partially allayed this week when China agreed to compromise on its ITA exclusion list, paving the way for the talks to resume sometime in the next few weeks, possibly by the end of October. Of course, we still cannot be sure whether the Chinese compromise is sufficient enough to allow the talks to get earnestly underway, but presumably Beijing is aware of what would be considered reasonable by the other negotiating partners.

In what could be further good news, depending on Beijing’s ultimate intentions, alongside its announcement on the ITA compromise, Beijing also formally requested to join the Trade in Services Agreement (TISA) negotiations.
Obama may not have made it to Bali, but China took the opportunity to assure other negotiating partners, as well as the U.S. officials present in Indonesia, that it would not be attempting the “Trojan Horse Option” pondered by Pacific Money in September. As of the time of writing, the United States has still not presented China’s request to join the TISA talks to the other members. Whether or not the existing members decided to take China at its word remains to be seen, so some of the optimism that has met the announcement should probably tempered for the time being.

China has stated its interest in joining the Trade in Services Agreement (TISA) negotiations, according to a BNA report. If it formally joins the negotiations, China’s participation would add new dimension and complexity to the talks, and would correspond with China’s stated intention to pursue “proactive strategies” to strengthen its services sector. The TISA negotiations, launched in 2013, seek to remove barriers and increase market openings originally covered in the 1995 General Trade in Services (GATS) agreement. The TISA negotiations currently include 50 participants, representing 70 percent of global GDP.

Further, if China does join the TISA other ASEAN countries would also consider joining the TISA in which case 80% of world’s Services trade would be regulated under TISA. If this happens and India remains a non-member it will be the loser in the end. China’s participation in TISA could mean further openings of its services sector for US companies, particularly given renewed negotiations of a US-China bilateral investment treaty, which China has agreed to negotiate on the basis of pre-establishment national treatment. China has already acknowledged that this approach will mean the elimination of its Catalogue Guiding Foreign Investment in Industry, which details restrictions on foreign investors in both the services and manufacturing sectors.

Conclusion
As far as services are concerned, the TISA is the single most significant development to have emerged in the trade negotiating arena over the last couple of years. As such, it may have wide – and unpredictable at this stage – implications for the multilateral trading system. In its current format, TISA negotiations cover almost 70% of world services trade, and include major trading partners, such as Canada, the EU, Japan, the Republic of Korea and the United States. For some – if not all – of these trading partners, TISA represents major export opportunities. For example, almost 80% of US exports and 90% of US imports through commercial presence would be covered by this agreement. Still, this seemingly bright picture gets more nuanced when we look in detail at the composition of TISA. First, many of the trading partners involved in TISA negotiations have already extensive links with each other through bilateral or plurilateral PTAs. The second striking feature of TISA – as it currently stands – is the absence of some of the most dynamic emerging market economies, including Brazil, China, India, South Africa and ASEAN countries.

The recent expression of interest by China to join the negotiations – which may also incite others – can change this nuanced picture and instil a different dynamic to this project. TISA participants, as well as their constituencies, are certainly allowed to have high expectations on the outcome of these negotiations. An analysis of past PTA negotiations shows that extending each country's 'best PTA' commitments to all other TISA participants, coupled with a similar level of commitment by newcomers to preferential negotiations, would
already be a significant outcome when compared to the levels of bindings achieved in the GATS.

If TISA is to better address participants' key areas of export interest, a first scenario is that participants go beyond what they have so far agreed to do in their pre-existing PTAs. In various cases, this would involve difficult political and trade policy choices. Whether a 'services-only' agreement would provide sufficient trade-off options to facilitate such decisions remains to be seen. A second scenario involves expanding the number of participants to the negotiations. While this increases the likelihood that key export interests be addressed, this may also have an impact on the negotiating dynamic, as new entrants (e.g., developing economies that were not part of the 'Really Good Friends') bring their own different negotiating interests. And should the number of participants expand significantly, this may further raise questions regarding the link to, and impact on, the WTO services negotiations.

End-notes

1 European Union includes: Austria, Belgium, Bulgaria, Cyprus, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom

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Politics and Economics of Mining in Goa

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Abstract
Goa is a minerals rich state with iron ore, manganese and bauxite deposits in various parts of Goa. Mining has been major sources of revenue generation as well as employment generation. Since colonial days of Portuguese rule it has been the source of revenue to the state and corporate as well as employment and unemployment to various sectors of society. Mining industry largely resisted Indian rule in Goa and even succeeded in keeping Portuguese colonial rule intact till 19th December 1961 when Indian government ordered Army intervention and got Goa under Indian rule. The paper is based on critical engagement of the author with mining industry since 2001 soon after China boom led to steep rise in exports of Goa’s ore that varied from 35% to 50% of India’s export share even though Goa’s Geography is just 0.11% of India’s land mass. The paper seeks to identify some key trends of the politics and its response to the increasing resistance to mining industry in Goa that led to the Shutdown of mining industry after Shah Commission report was submitted in the Indian Parliament in late 2012.

Key words: Mining, Goa, Water

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Introduction
Goa has been the focused Geography of mineral extraction since 1929 when erstwhile Portuguese colonial state granted first of the 791 mining leases covering over 67,000 hectares of land. Mineral survey was carried on by German geologists in the second decade of the twentieth century commissioned by the Colonial government. Very soon however the potential of the mineral extraction noticed and process of granting of mining leases set off in motion. Portuguese colonial government granted separate mining leases in different parts of Goa’s landscape as concessions in perpetuity. These mining leases continued to be the key identifier of the leases till 21st April 2014 when Supreme Court declared these leases as illegal and new policy and process of mineral extraction to be decided by Goa Government. Between 1929 and 2014 politics and governance took on varied forms and trends with mounting public opposition to mining industry. In this paper word ‘politics’ is denoted as power struggle between various contesting groups. The word ‘governance’ is used to refer state attempts to manage these groups either by co-options of groups opposing mining or by repression by deploying police force and judicial and parliamentary intervention. Although mining affected local farmers in local mining areas, it never turned into an issue of any significant opposition at a scale as it has been the case over the past 15 years.
Inception and governance of mining in Goa

Portuguese colonial State tested Goa’s geology during the second decade of the twentieth century with the expertise from German professionals. The process of survey was completed with the assessment of mineral deposits in Goa and first time opened out for private prospecting of underground minerals in 1929. The nature of the mining industry during colonial times was essentially manual. In fact the industry continued in this manner till 1970’s when the industry went through the process of mechanization. The two types of mining led to spectacular difference in terms of production and its consequences on exports as well as environmental costs. They all shot up.

The mining prospecting was governed through the colonial regime of type of permissions known as concessions. They were granted in perpetuity to Concessionaires. This means legally the possession of the mine would be legally restricted within the family of the one who was granted these concessions – in perpetuity – automatically transferred to next generation of the Concessionaire. This is a kind of legal system that came to clash with the Indian legal system after Goa was made part of India in 1961 as the miners refused to pay taxes to the Indian government. In couple of cases the miners even won the cases. Gosalia and Salgaonkar are two examples on this. Supreme Court even observed on 1961 Goa liberation in Gosalia case judgment that Goa ‘was annexed through conquest’. In Salgaocar case Bombay High court restrained Indian government in 1985 from treating Portuguese granted mining Concessions as mining leases as defined under Mines and Minerals Act, 1957; and thereby preventing collection revenue from mining companies.

The governance mechanism of mining industry placed Goa in confrontationist position with India. Indian Parliament had to pass special law in the Parliament to resolve this imbroglio. This law came to be known as Goa, Daman and Diu Mining Concessions (Abolition and Declaration as Mining Leases) Act, 1987 (MMDR). This law received the assent of the President of India on 23rd May 1987. Section 4 of this Abolition Act abolished mining concessions and declared that with effect from the 20th December, 1961, every mining concession will be deemed to be a mining lease granted under the MMDR Act and provisions of MMDR Act will apply to such mining lease. Section 5 of the Abolition Act further provided that the concession holder shall become lease holder under the MMDR Act in relation to the mines in which the concession relates and the period of such lease was extended upto six months from the date when Abolition Act received President’s assent, i.e. upto 22nd November 1987. On 14th October 1987, sub-rules (8) and (9) were inserted in Rule 24A of the Mineral Concessions Rules, 1960 (MC Rules) which deals with renewal of mining leases in Goa, Daman and Diu. Daman and Diu retained their status as Union Territories after Goa was granted Statehood on 30th May 1987.

Abolition Act was challenged by mining companies before the Bombay High Court in a writ petition. The High Court passed interim order permitting the mining companies to carry on mining operations and mining business in the concessions for which renewal applications had been filed under Rule 24A of the MC Rules. Subsequently, the High Court held in its judgment dated 20th June 1997 that the Abolition Act was valid but Section 22(i)(a) of the Abolition Act would operate prospectively and not retrospectively. The mining companies that held concessions filed Special leave petition against this judgment of 20th June 1997. On 2nd March 1998, Supreme Court passed an interim order permitting the concessionaires to
carry on mining operations and mining business in the mining areas for which renewal applications have been made on the condition that the lessee pays to the Government dead rent from the date of commencement of the Abolition Act i.e. 23rd May 1987.

This saga of litigation leaves ample evidence that, mining companies was interested in retaining their hold over mines in perpetuity and was not interested in accepting Indian laws to govern Goa’s mineral wealth. Consequently they were compelled to accept Indian laws for governing Goa’s mineral wealth. Mining companies succeeded in getting rid of retrospective application of Abolition Act to the State of Goa. This means that from December 1961 to May 1987 – for over 25 years - mining companies in Goa did not pay any rent to the State government or to the National government. This means mining companies carried on the mining in the State of Goa without paying rent to the State for a quarter of a century. This is a historical plunder of Goa’s minerals that has escaped public scrutiny hitherto. This act of mining companies is completely anti-national in nature. It is the order of the Supreme Court in March 1998 that directed mining companies to pay dead rent from 1987 till 1998 for over 10 years and subsequently to accept Indian legal regime over the governance of the Goa’s mining industry. The politics of protest of the mining companies in the form of litigation at Bombay High Court and at the Supreme Court of India allowed them to carry on the mining trade without paying mandatory rents for 25 years from 1961 to 1987. The mining industry prospered. State coffers deprived of revenue under MMDR Act.

**Growth and politics of mining industry**

The mining industry delayed transition from Concessions to lease, and this transition period legally came to an end in 1998 with Supreme Court verdict as has been observed in above section. The transition was not just legal; it was also in terms of speed and technology as much as transition between styles of governance and Politics of two countries – Portugal and India in two different continents – Europe and Asia. The pace of growth of mining industry was rather slow with relatively lesser damage to ecology chiefly due to non-mechanized nature of mining industry. The decade of 1970s saw gradual mechanization of mining industry in Goa that changed very essence of mining industry. Non-mechanized mining or hand mining as it was known was restrictive in its pressure to land surface. Mechanized mining changed all this and pressure extended to below the surface on ground water sources. This is more so as high powered water pumps were deployed to pump out ground water in order to make way for extraction of minerals deep below the surface. This led to depletion of water table and drying up of water bodies such as wells, ponds springs. Gradually evergreen western ghats mountains turned into deep mining pits in several villages in Goa. The villages such as Pissurlem, Advalpal, Sirgao are well known examples.

Transition of technology in mining belt of Goa also brought about sporadic protests at the village level in the decade of 1970s. Village protests were chiefly composed of farmers whose paddy fields were affected due to mining activities. The protests in the villages of Mayem and Sirgao were met with deployment of police force and arrest of the protesting farmers. Protest then died off due to absence of capable leadership that could resist repression and co-option, and mining companies prospered ripping through water bodies, paddy fields, dumping overburden topsoil leaving the landscape with deep open craters. Number of villagers simply made to assent to the will of mining companies by providing donations to the village temples where in a Brahmin performed religious rites as well as
held tremendous influence over the village and wider political affairs. India’s age old, time tested caste system helped mining companies to maintain divisive politics to keep unity of the villagers a distant dream till 2007 when resistance took organized and sophisticated form.

In this way mining established its sway in Goa. Gradually villages that were strong in agriculture specially rice cultivation were disrupted and made dependent upon mining industry for employment. Self-sufficiency in terms of food and water of Goa’s villages was effectively destroyed and simultaneously mining industry prospered. In 1948 while Goa was still Portuguese colony 100 tonnes of iron ore got exported to Japan. Even since Japan has been largest destination of Goa’s iron ore exports. Japan’s economy was in ruins around that time after nuclear bombing by United States of America during World War II in August 1945. Import of Goa’s iron ore and manganese facilitated rejuvenation of Japanese economy as much as it facilitated ruining of Goa’s existing and potential food and water security, polluted and silted Goa’s rivers such as Kushavati, Valvanti, Bicholim, and other tributaries of Mandovi and Zuari rivers etc., claimed innumerable lives in terms of road accidents involving trucks transporting iron ore. Japan however cannot be singled out in this respect as after year 2000 Goa’s export to China dramatically swung upwards. As per 2010-11 data published by Goa Mineral Ore Exporter’s Association, export to China for that year stood at 48,935,697 tonnes to distant second Japan at 3,472,251 tonnes with difference of nearly 43,000,000 tonnes. Other importers for this year includes South Korea (1,091,828 tonnes), U.A.E (76,900 tonnes), Qatar (25,000 tonnes), Pakistan (83,333 tonnes), Thailand (69,710 tonnes), Netherlands (484,600 tonnes), Rumania (159,430 tonnes), Italy (26,000 tonnes). Total exports for the year stood at 54,424,849 tonnes.

**Stoppage of Mining**

While the mining industry performed spectacularly well and crossed 54 million tones in terms of exports in the year 2010-11 it had to catch up with the trail of corruption, illegalities and environmental degradation charges besides those of negatively affecting tribal communities in Goa. Mining industry was accused publicly by various protesting groups, individuals, politicians, media etc. It was suspected that large scale mining, trade and transportation was being carried on illegally, without lawful authority especially of iron ore and manganese ore. It was also suspected large scale failure of the management, regulatory, monitoring systems that were meant to deter, prevent, detect and punish offences relating to mining, storage, transportation, trade, and export of such ore, done illegally, without lawful authority. It was also suspected that official records, including records relating to land and boundaries has been tempered with to facilitate illegal mining. It was also suspected that there has been large scale destruction of forest wealth, damage to the environment, prejudice to the livelihood and other rights of tribal people, ecological and social damage to forest dwellers and other persons in mined areas has taken place besides considerable financial losses caused to the Central and State Governments.

In order to investigate into these aspect and also to suggest remedial measures Central government notified appointment of Justice M.B.Shah Commission under section 3 of the Commissions of Inquiry Act,1952 on 22nd November 2010. Justice Shah visited Goa and issued notices under his powers to the concerned authorities and submitted the interim report to the Ministry of Mines, Union of India on 15th March 2012. Justice Shah
Commission report was tabled in Parliament along with the Action Taken Report of the Ministry of Mines on 7th September 2012. In a voluminous work Justice Shah observed “It was apparent that concerned departments of the State and IBM (Indian Bureau of Mines) have failed to control illegal mining for the reasons best known to them.” Further, Report recommended “All mining activities should be stopped with immediate effect including transportation for all mining leases where there is no approval or clearance of the Standing Committee of the NBWL and are falling within 10 kms of eco-sensitive buffer zone.”


On 5th October 2012 Supreme Court issued notice that all mining operations in the leases identified in the report of Justice Shah Commission and transportation of iron ore and manganese ore from those leases, whether lying at the mine-head or stockyard shall remain suspended, as recommended in the report of the Justice Shah Commission. Supreme Court in its verdict on 21st April 2014 declared entire mining in Goa as illegal: “the deemed mining leases of the lessees in Goa expired on 22.11.1987 and the maximum of 20 years renewal period of the deemed mining leases in Goa expired on 22.11.2007 and consequently mining by the lessees after 22.11.2007 was illegal”.

The Supreme Court further directed that “until the final report is submitted by the Expert Committee, the State government will, in the interest of sustainable development and intergenerational equity, permit a maximum annual excavation of 20 million MT from the mining leases in the State of Goa other than from dumps”. It is however not defined as to what the Supreme Court of India is meant by sustainable development in the context of mining as every mine is creating the problem of depletion of water table and no sustainable mining is possible at all.

Conclusion
The position that Supreme Court has arrived at capping at 20 million tones is based on studies on road conditions for mining carried on by Indian School of Mines, Dhanbad, Jharkand and it has no relevance to other parameters to refer to sustainability of ecology and life except in case of road accidents – truly concocted way of looking at sustainability. In fact Goa government had submitted in the Supreme Court during the course of this case that capping should be at 45 million tones till the roads are widened and dedicated for mining purpose. The process of arriving at capping at 20 million tones ignores impacts on ground water depletion, destruction of forest, effect on public health, serious threats to agriculture and food security and subsequent social consequences. Only when these
parameters are taken into consideration it can be termed as sustainable. Otherwise it is mockery of the word used to cover up what is the opposite of sustainable used only to create camouflage for mining industry. It must be noted that consequences of mining is more serious and irreversible than consequences of ban on mining industry in Goa. The reasons are well documented by Shah Commission Report. Loss of jobs and bank loans are far less serious consequences than depletion of ground water and creation of ecological refuge as witnessed in Sirgao and Pissurlem villages. There is need for subjecting the phrase of ‘sustainable development’ to a deeper scrutiny as the way Supreme Court has deployed it to provide escape route to mining is very dangerous precedent.

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Urban Water Supply: Contestations and Sustainability Issues in Greater Bangalore

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Abstract
The move towards privatization of public utilities such as water sector in India, particularly in the metropolitan areas, has gone hand in hand with the growing gap between demand and supply of water. With fiscal discipline being the key mantra of successive governments, cost recovery as a policy goal is prioritized over access to water and sanitation. This paper is a critical assessment of Greater Bangalore Water and Sanitation Project (GBWASP), which aims to provide piped water to more than twenty lakh residents in Greater Bangalore. The implementation of the Karnataka Groundwater Act, 2011, and the debates around it are also examined in detail. The four main arguments are: huge gap between rhetoric and ground realities when it comes to the implementation of GBWASP and the Groundwater Act; the contestations between the elected representatives and bureaucrats have implications for urban governance; the axes of dispute between the Bangalore Water Supply and Sewerage Board and citizens have changed over time; the politics of negotiating access to water also bring questions of sustainability to the fore.

Keywords: Borewell, Privatization, Water

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Introduction
The Greater Bangalore Water and Sanitation Project (GBWASP) was launched in 2003 in Bangalore and is implemented by the Bangalore Water Supply and Sewerage Board (BWSSB). The project has two components: a water supply one and an underground drainage one. This paper shall focus on the first. This project represents a watershed in the history of Bangalore’s water politics in that for the first time we see a novel structure in terms of its financing, with the United States Agency for International Development (USAID) playing a pivotal role in its design. Two distinguishing features of this project are:

a. Beneficiary Capital Contribution (BCC, collected as ‘GBWASP charges‘): for the first time, capital contributions were sought from all citizens and business enterprises seeking water connection to recover the costs of investment beforehand, which ostensibly made them ‘stakeholders’ in the project.

b. Market borrowings: market borrowings are accessed by issuing municipal bonds on behalf of the urban local bodies (ULBs) involved.
This shift in the policymaking from the welfarist approach where the state incurred a 100% of the expenditure towards a neoliberal style of governance involving ‘responsibilization’ whereby the state raises the funds required for the implementation of the project through market borrowings and upfront financial contribution from the residents is illustrative of the emphasis of decision makers on market principles of efficiency and cost recovery over equity and greater accessibility. The underlying notion is the Thatcherian principle that people have to take care of themselves; otherwise, there would be ‘welfare dependency’, with people being ‘passive recipients’. This model suggested by the USAID’s Financial Institutions Reform and Expansion (FIRE-D) was preferred by the KUIDFC over Housing and Urban Development Corporation Limited’s (HUDCO) offer of a loan for the financing of the project.

The second legislation that I would like to examine is the Karnataka Groundwater (Regulation and Control of Development and Management) Act, which was passed by the Karnataka Legislative Assembly in November 2011. Under this act, all commercial and domestic borewell users have to register themselves with the BWSSB, the failure of which shall entail borewell disconnection. Failure to compliance could also result in a penalty of up to ten thousand rupees and/or imprisonment up to three years. The act came into force in December 2012 in Bangalore Urban District after a severe water crisis in the summer of 2012. The BWSSB initiated a registration drive in 2013.

Once again, this legislation shows how the poor, the majority of whom depend on groundwater sources for their domestic and commercial needs, get adversely affected as they are required to pay an extra sum of fifty or five hundred rupees respectively in addition to their monthly water bill. According to data collected from the BWSSB, one out of every five households in Bangalore has a borewell connection along with BWSSB connection. This means that the monthly water bill itself will come up to around two-three hundred rupees, which is quite high relative to the income-level of the people who live at the periphery of Bangalore. The trade-off between sustainability and access to basic needs shall be discussed in a while.

Methodology

The paper is based on an ethnographic study on water politics in Greater Bangalore which was conducted during May-June 2014. Data on the GWASP and the Groundwater Act were gathered through more than sixty in-depth interviews with BWSSB officials, ward committee members, journalists, and researchers. These interviews were supplemented with media articles. Fieldwork was conducted in the 159th and 160th wards of BBMP i.e. in the areas of Kengeri and Rajarajeshwari Nagar respectively. Formerly a near bankrupt town municipal council (TMC), the two areas were among the eight ULBs officially incorporated into BBMP in 2007. The nature of the interviews was semi-structured, which facilitated me in getting information on perceptions of GBWASP and Groundwater Act, understanding different rationalities of payment, and the politics of engagement with the state in this regard.

Water politics as a case of discrepancies between rhetoric and realities

At first, the project stated that residents had to make a lump sum payment, with the amount varying with respect to the nature of the entity (residential or commercial), type of entity (individual house or apartment), and area occupied (for instance, owners of
residences of area less than 600 square feet were recognized as ‘urban poor’ and were exempted from it). After protests and several rounds of negotiation with the officials, an alternate mode of payment was agreed upon: residents could pay the ‘GBWASP charges’ over a period of twenty four months, which would be added to their monthly water bill. Even so, for residents of revenue layouts and informal settlements, who have to first regularize their land tenure, get their khata patra, and then pay the requisite amount specified by BWSSB, it came up to a considerable figure, sometimes of the range of one’s monthly salary.

The above instance exemplifies the fact that the ‘peripheralized middle class’ of Greater Bangalore used payment as a bargaining tool for gaining legitimacy and respectability in the eyes of the State (Ranganathan 2014). It shows how rule is compromised over and accomplished (Li 1999) and how market-oriented rationalities, rather than merely being contested, eventually do gain legitimacy. Moore’s understanding of ‘hegemony’ particularly suits this context: a process by which the subordinated are recruited into projects of their own rule through ‘identifying their particular interests with a more universalizing one’ (Moore 2005:11, quoted in Ranganathan 2014). Malini Ranganathan contends, “The political agency of the peripheralized middle class does not show signs of resistance so much as it demonstrates a range of tactics... often in ways that reproduce rather than challenge given power structures” (ibid). While there was resistance to the payment of BCC till 2009, such protests are no longer visible, at least not to the same extent. This was corroborated in my interviews with residents and BWSSB officials that residents, even those from low-income neighbourhoods, pay GBWASP charges. Whether or not they get water on time is a different matter altogether.

With respect to the Groundwater Act, while the stated purpose of tracking groundwater exploitation seems noble enough, the mechanisms the BWSSB has adopted in its attempt to materialize it have been shoddy. The water supply board launched a registration drive in early 2013 announcing March 31 as the deadline. With only a thousand people registering by then, coupled with other delays, the deadline had to be extended two more times, and the BWSSB finally closed registrations on July 31 (New Indian Express 2013). Even so, out of the 1.75 lakh odd connections which exist in the city according to a BWSSB executive engineer, around 50,000 people had registered their borewell connections. This shows that the BWSSB has not been successful in this process.

However, the problem does not end here. In fact, the complications begin here. With the threat of imprisonment and fine looming large, residents most of whose borewells had dried up were left in a dilemma as to whether or not to register. The following extract illustrates the point: “I have been trying to register my borewell although it has dried up and we don’t get any water from it. The bank would not simply accept my application because it has a problem with the application number given by BWSSB for registration. Why should we should deposit Rs 50 for a borewell which doesn’t yield water? We had to dig a sump to store water some months ago by spending around Rs 50,000. Also, the quality of water we get from BWSSB is not good,” asked Ashok Venkataraman, a resident of Basavanagudi.” (Times of India 2013). The BWSSB officials were clueless when asked about this. The engineer-in-chief told that they were yet to hold a meeting to decide on the matter.
While the water supply component of GBWASP was originally intended to be completed by 2008, it is still far from being so. Several localities such as Mahadevapura, HBR Layout, C V Raman Nagar, and Kengeri are not serviced properly. Many respondents who had paid the required GBWASP and related charges had not received water supply after almost a year. Even in those areas which are getting water supply, the residents are not receiving water every day. The whole point of launching GBWASP Cauvery Stage IV Phase II was to provide 24/7 access to all residents which are covered under this project. But, that has not materialized as yet. Low-income neighbourhoods such as Janata Colony and Jagajyothi Extension in the Kengeri ward receive water only twice a week, that too in inadequate amounts as a result of which they have had to resort to sourcing water from private tankers. Each load of water typically costs around six hundred rupees, and they had to get two-three loads per month, which is quite high considering the income level of the residents.

**Contestations between citizens and bureaucrats**

While there were initial disputes regarding BCC, they were ‘resolved’, by way of negotiating with the BWSSB through elected local representatives. With the bringing of eight ULBs under the aegis of Bruhat Bangalore Mahanagara Palike (BBMP), the residents of these former City and Town Municipal Councils (CMCs and TMCs) no longer enjoyed the political space and leverage they once did. Elected representatives were no longer consulted about the feasibility of the project and the mode of negotiation for the residents changed. Parastatal agencies (in this case the KUIDFC) which report directly to the state government did that.

In case of the Groundwater Act, the BWSSB (at least the top brass) was thinking of forming squads to crack down on unregistered borewells and tubewells. What is important in this regard is that the state or even the bureaucracy cannot be taken a single entity. That would obscure the complexities that emerge in the politics of water reforms. In this context, the response to water crisis differed between the higher echelon engineers and secretaries and low-rung officials.

While the top bureaucrats, far removed from ground realities, thought crackdown was the way to go, the inspectors at service stations and junior engineers differed from this. In our interview, the BWSSB inspector, when asked to comment on the engineer-in-chief’s claim of disconnecting ‘illegal’ connections, said that they caused the water supply board a loss of around four-six crores per month. Even so, he thought that the claim of disconnection was practically impossible, because elected representatives would surely bring pressure on them to prevent or stop such an endeavour, the obvious reason being that water is a basic need, something without which one cannot survive, and therefore people would go to great lengths to ensure that they can access water, one way or another. Solomon Benjamin’s (2008:723) concept of ‘occupancy urbanism’ rightly captures this phenomenon. ‘Occupancy urbanism’ implies politics that is essentially centred on land relations by which low-rung officials are influenced to get access to services and regularise tenure.

In both cases, one can see a pattern of top-level bureaucrats and parastatal agencies drafting watershed legislations while being totally distanced from realities. This gap between rhetoric and reality adversely affects the urban poor who have to incur great costs
as the state withdraws itself from the water sector and constricts the sources of water available for the poor to meet their daily needs.

To rub salt on one’s injury, then there is the issue of corruption. To gain insights into how deep-rooted corruption is in water sector in Bangalore, I interviewed journalists and independent researchers, apart from residents of Kengeri and Rajarajeshwari Nagar. One unanimous response was that corruption existed when it came to applying for new connections, although corruption was not reported with respect to service, in case of a repair or billing. Notwithstanding, one of the respondents said that the officials had to be given a bribe for pretty much everything, and the residents from the unplanned, low-income neighbourhoods ended up paying a lot more as they had to start from scratch. Some respondents, despite paying the requisite charges (bribe included) which amounted to 25000-30000 rupees had not received water, with the BWSSB officials giving them flimsy excuses such as non-submission of proper documents etc.

**Sustainability issues: A change in the incentive structure?**

The irony with respect to GBWASP is that, while the residents who had paid for the new water connections didn’t receive a drop of water with their borewells also dried up, the BWSSB had been flushing out millions of litres of water every day. When enquired as to why this was happening, the sloppy excuse that was given was that the extra 150 mld (million litres of water a day) was drawn to clean the pipes.

A key issue that emerged in the context of GBWASP and the Groundwater Act is that of the incentives to opt for corporation or Cauvery water. As of now, residents pay more to get corporation water than they pay for borewell. In other words, citizens have no incentive to choose the former over the latter with the exception of long-term sustainability. Notwithstanding the fact that over 16000 borewells have gone dry in the city, people tend to do a short-term cost-benefit analysis, which leads them to opt for a borewell connection. For instance, several residents of Gandhinagar whom I interviewed had approached the BWSSB for a new borewell connection, and not a Cauvery connection. In fact, they had been fighting about it with the officials, with the reasons being rather straightforward. If one opts for a borewell connection, one has to pay fifty rupees for a one BHK house, and three hundred rupees for an apartment. On the other hand, if one chooses Cauvery connection, one will end up paying at least Rs. 500 per month, not including the amount they might have to pay in case they source water from private tankers (depending on the frequency of water supply from the board). Therefore, it makes sense economically for people to choose a borewell connection over corporation connection. Nonetheless, this poses serious challenges to the groundwater table of Bangalore, whose only other source of water lies a hundred kilometres away.

The BWSSB has to not only change its incentive structure to make the choice of corporation water more viable, but has to strive to minimize the gap between its rhetoric and reality. If daily water supply is ensured (which is the stated goal of GBWASP), then people would have a feasible alternative to groundwater sources, which are unreliable. This is because, in the short-run, while it might make sense to opt for a borewell connection, the fear of it drying up is always present among the residents. In other words, the BWSSB can tap this insecurity and make it less attractive. However, before that, it has to first make sure that pipelines are
laid in all the areas which are covered under BBMP and that water is being supplied in sufficient quantities. According to data collected by The Hindu (2013), about ‘34 percent of the 900 mld goes unaccounted for thanks to ‘illegal’ and free connections’. But, the illegality of these connections is itself not straightforward. Rather, the access to and payment for services are leveraged for recognizing ‘legality’ of land tenure and citizenship.

Conclusion
In conclusion, the paper argues that the huge gap between rhetoric and ground realities when it comes to the implementation of GBWASP and the Karnataka Groundwater Act have adversely affected the urban poor in Greater Bangalore. The axes of dispute between the BWSSB and citizens have changed over time: in 2007-08, it was more around GBWASP; in 2014-15, it is more around the Groundwater Act. While the issue of corruption is prevalent, it is not ubiquitous: people bribe the officials when getting a new connection, but not for subsequent services. The politics of negotiating access to services has changed for several neighbourhoods over time, especially after the eight ULBs were incorporated into BBMP in 2007. Because parastatal agencies report directly to the state government and not local representatives, who do not have a voice in the decisions taken with respect to these policies and legislations, residents of revenue layouts and informal settlements find it even more difficult to get basic utilities. The lack of appropriate incentives has resulted in people preferring borewell connections over Cauvery water resulting in a loss of around four-six crores to the state. This needs to be changed, not only from an economistic perspective, but more importantly, because of the sustainability issues that surface thereof.

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The Supreme Court has recently (June 4, 2014) permitted Sahara group to sell its properties in order to raise money to partly comply with the orders of Supreme Court of depositing Rs.20000 crores with SEBI. The SEBI is supposed to utilize this amount for refund of debenture amount to debenture holders. However Rs.5120 crores is already deposited with SEBI but it (SEBI) is not able to identify the investors for refund of debenture amount. It is amply clear from the chronology and arguments raised in the paper that SEBI v/s Sahara episode is not the case for protecting the interests of investors but it is the case of money laundering. The paper discusses how the money raised from sale of properties is going to deteriorate financial position of Sahara group whereas directors of Sahara are not being punished for the actual crime (money laundering) committed by them. Thus, they are being (or shall be) set free at the cost of the corporate they are heading.

Keywords: Money laundering, SEBI, Corporate Governance

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Introduction
March 4, 2014. Turning point in the life of Subrata Roy, Chief of Sahara conglomerate, which has 4500 offices and one million workforce. (Subramanian, 2013). The group is in the business of Real Estate, Infrastructure, Finance, Media, Hospitality, Cricket and Formula one. Mr Subrata Roy has employed top lawyers of the country to defend him in every court of law including Supreme Court (SC). He is very efficient in searching loopholes in the law. He has friends in all the political parties, in particular Bharatiya Janata Party (BJP) and Socialist party (SP). He was very confident that he can do anything he wants to do and no one can touch him. But nothing came to his rescue and SC sent him to Jail along with two Directors of Sahara.

SEBI v/s Sahara Episode
In 2008, Sahara India Real Estate Corporation and in 2009, Sahara Housing India Corporation launched Optionally Fully Convertible Debenture (OFCD) issues. In Jan. 2009 SEBI received complaints about illegal nature of OFCD issues. In June 2011, SEBI held this sale of debenture illegal and ordered refund. On 31/8/2012 Supreme Court upheld SEBI orders and directed Sahara to refund Rs. 24,029 crores to investors. On 5th Dec. 2012 Supreme Court granted extension to Sahara for refund of amount to investors in two installments in addition to immediate payment of Rs. 5120 crores to SEBI. Though the Sahara handed over
the draft of Rs 5120 crores to SEBI, has failed to pay the rest of the amount, attracting second contempt proceeding against it on 24-07-2013. Thereafter, as an interim arrangement, Supreme Court asked Sahara to deposit title deeds of its property worth Rs 20000 crores to SEBI. However, Sahara played mischief by submitting title deeds of highly overvalued properties. Convinced that Sahara is not complying with its orders, Supreme Court had issued orders in November 2013, restraining Sahara Chairman Subrata Roy and 3 other directors from leaving the country and also banning sale of any properties.

November 2013 order of Supreme Court was warning signal to Subrata Roy but he did not take a heed of it and failed to appear before Supreme Court on 26 February. It was but natural that Supreme Court ordered arrest of Subrata Roy in order to secure his presence before it on 4 March 2014. Accordingly he was arrested on 28 February and produced before Supreme Court on the stipulated date. On this date Supreme Court has ordered to keep Mr. Subrata Roy in judicial custody till submission of concrete offer for refund.

**Are the investors genuine?**

One very important aspect overlooked by media and therefore by common man is that SEBI is unable to locate the individual investors of Sahara, for safeguarding whose interests SEBI has approached the Supreme Court. Sahara has already deposited Rs. 5120 crores with SEBI in Dec. 2012 as a part compliance of Court order dt. 5/12/2012. This amount is supposed to be refunded to investors. Out of Rs. 5120 crores, SEBI has disbursed during one full year a paltry sum of Rs. 30 lakhs only, almost a negligible amount. SEBI’s allegation had been that “Out of thousands of Sahara investors, it (SEBI) found only 68 genuine investors” till 6th February 2013. Total number of investors is 3 crores. Sahara in its full page advertisement dated 17/3/2013 has claimed that “SEBI knows since we have written so many times that millions of very small investors run their tea stalls, are small vendors etc. who are on highways. Their address may be Mr. X, NH-21, Gorakhpur. Millions of Rural people do not have House No, Mohalla etc. There are large numbers of small investors who do not own their houses and accordingly have shifted their addresses from time to time”.

**Is it money laundering?**

It may be possible that few hundred or few thousand investors may not have proper addresses. But how is it possible that 3 crores investors are not traceable? Any prudent man can conclude that Sahara has indulged in Money laundering activity, just on paper showing that 3 crores investors have invested in OFCD issue.

From the very beginning of the case, Sahara is pleading that it has refunded the amount to investors. It is a big question mark whether it has really refunded the amount. Since SEBI could not trace investor for refund of Rs.5120 crore already deposited by Sahara to SEBI as per Supreme Court directives, there are likely to have two possibilities:

1. Sahara has already refunded, as claimed by it, the amount to investors and therefore no investor is left unpaid.
2. Sahara had not collected OFCD amount from genuine investors and only fake names have been recorded.
The second possibility seems to be more probable. However, in either case, Sahara is not liable to pay back money to true investors. On this background Sahara was pleading every now and then is that there are no dues to be paid.

**Whether sahara needs to payback?**

There is half-truth in Sahara’s argument that Sahara is not liable to pay back to investors. When there are no true investors whom to pay? Naturally, Sahara does not have any liability to pay. And another half part of the Sahara’s argument is plain lie that Sahara has already paid Rs 22000 crores out of 24000 crores. When there are no true investors, to whom such a big amount has been paid!

Assuming that (though it is hard to assume) the 3 crore investos are genuine and Sahara has already refunded the amount to most of them. So in this case also Sahara is not liable for payment of Rs 24000 crores. The unpaid investors, as claimed by Sahara, are liable to receive Rs 2000 crores, for which Sahara has deposited Rs 5120 crores with SEBI on 5th December 2012. (How generous Sahara is, making additional payment of Rs 3120 crores to SEBI!) So the liability of making payment is not with Sahara, but it is with SEBI.

The real strength of the Sahara group is that it has purchased large quantum of land all over the country. Subrata Roy himself once claimed that Sahara has 36,631 acres of land (Suhas Yadav, 2013), though he claimed on 10th April 2013 that his personal property is worth only Rs 5 to 6 crores (BS Reporter, 2013). Sahara’s policy so far was to buy the land but not to sale any piece of land. Subrata Roy once said (Suhas Yadav, 2013) that since his companies are not listed on any exchange, he need not sale the land to improve EPS.

**Black money and economy**

It is well known that buying or selling of land involves lot of black money. Indian economy at present is in stagnation (may be even stagflation as inflation is still not under control). The one of the (and major one) reason of stagflation is black money. Black money is a cause as well as effect of inflation. Real Estate and black money go hand in hand.

The Governments, past and present, talk of bringing back black money stashed in Swiss Banks only to mislead and fool ill-informed public. First, there must not be any major amount of black money in Foreign Banks as a percentage of total black money existing. Second, it is very difficult to bring back the same due international laws ant treaties. The crux of the problem is how not to allow further generation of black money. No Government would like to proceed in that direction, not even so called “Progressive”, “Clean” and “Pragmatic” Modi Government.

The black money is right here in India. The most important destination tostash black money is real estate and not Swiss Bank. Even if some amount of black money is sent abroad it comes back “Laundered” through “Round tripping” The budget presented by present Government on 10th July has not made any attempt to plug this hole.

The holders of black money are corporate, politicians and Government officers. If only two reforms are brought, namely, election reforms and land transaction reforms, 90 % of the
black money generation will be arrested. It is necessary to plug demand side of black money (Sonawane, 2013). Neither Congress nor BJP has intentions to do that.

**Sahara and black money**

How could Sahara Purchase so much of land? Subrata Roy is not known for carrying ancestral property. But his nexus with politicians is well known. That could be the likely source of black money to buy lands. The large amount of black money seems to have been attempted to launder through OFCD issues of two of the Sahara group companies by showing fake names of the investors as genuine names. Before this laundered money could be invested in some business, SEBI held the said OFCD issues as illegal and ordered it’s refund. The SEBI order was upheld by Supreme Court. Sahara came in real trouble. It had again to show on paper the refund of money to the same fake investors. Thus the money laundered again converted to black money.

As the Supreme Court did not accept the plea that money has been refunded back to investors and it insisted that Sahara must deposit Rs 24000 crores with interest to SEBI. Since then Sahara is in more trouble. Sahara has to refund that money which it has not received. Task had become more difficult for Sahara due to Orders of Supreme Court 21\textsuperscript{st} November 2013 banning sale of any assets by Sahara.

There was a little solace to Subrata Roy when Supreme Court on 26\textsuperscript{th} March 2014 announced its willingness to grant interim bail to him and other 2 directors on the condition that the group deposited Rs 5000 crores cash and further provide bank guarantee of Rs 5000 crores from public sector bank in favour of SEBI. Though this condition is much milder than depositing entire 20000 crores in cash. Siphoning from the existing business would mean killing the business.

Supreme Court itself finally showed the way out. It reverted its order of 21\textsuperscript{st} November 2013 on 4\textsuperscript{th} June 2014 and allowed Sahara to sale its properties only for the purpose of depositing the sale proceeds with SEBI. So far, Sahara either was (rightly) avoiding making payment to SEBI or was unable to make payment to SEBI for want of liquidity. However, now Sahara has to be non-insistent of the argument of double payment, due to imprisonment of Subrata Roy for such a long time i.e. since 4\textsuperscript{th} May. On30th June 2014, Sahara deposited Rs 3117 crores with SEBI as a part compliance of Supreme Court order dated 26\textsuperscript{th} March 2014. Subrata Roy urged “rehem’ to Supreme Court on 3\textsuperscript{rd} July and requested for parole of 45 days to arrange for balance cash amount of Rs 1883 crores and bank guarantee of Rs 5000 crores. The Court will decide on this request on 11\textsuperscript{th} July 2014.

Will the matter end here. Certainly not. The Court may grant parole or bail on 11\textsuperscript{th} July and Sahara chief may be able to arrange within 45 days balanced amount and bank guarantee. But Sahara chief has to finally deposit Rs. 20000 crore (which has now become Rs 38000 crore, after adding interest, as stated by SEBI on 4\textsuperscript{th} July before Apex Court) by whatever means (sale of assets or otherwise). This is possible only if Sahara is closed down. Sahara is already in arrears of staff salary payment since 3 months which amounts to Rs 12000 crores. In November 2013 Sahara’s total assets were worth Rs 55096 crores and total liabilities were Rs 54364 crores (N. Sundaresha Subramanian, 2013)
The regulators must distinguish between organization and its head. For the sin committed by the head, the company must not suffer. The example of Satyam is before us. In case of Sahara 10 lakh people are in employment, and thus 10 lakh families are getting their daily bread. Subrata Roy, with fear of imprisonment, may not bother for the organization. Why Sahara group should pay to SEBI Rs 20000 crores plus interest when it has not received any amount from investors. Why should Subrata Roy be set free after depositing requisite amount to SEBI from Sahara’s properties when he has actually received back Rs 20000 crores of black money which he had earlier laundered. These are some of the facts the regulators must realize.

The recent incidence further strengthens the view of the author that in SEBI V/S Sahara litigation, there are no genuine investors and it is the matter of money laundering. The income tax department has filed an application before Supreme Court wanting to be impleaded as a party in ongoing SEBI Sahara dispute on the plea that as per information of the department the investors are not genuine and thus OFCD amount has come from some other source and therefore that amount must be taxed.

Lately i.e. on 4th July, Supreme Court has also ordered SEBI to start process of refund to investors the amount already deposited by Sahara. It raises curiosity why the Court did not issue such orders much earlier.

Conclusion
SEBI v/S Sahara litigation appears to be for protecting the interests of the investors. But as the SEBI as well as Income tax department are not able to locate the majority of the investors, it is the money laundering affair by Sahara chief. Whenever (the day shall not be far from today) Sahara chief will, under duress, actually be paying Rs.20000 crore plus interest to SEBI (for the SEBI’s stated purpose of refund to investors), the amount is going to lie with SEBI for the long time and shall not be used for any productive purpose (in any case not for refund to investors as no investors are traceable), and it is going to have big adverse impact on the working of the Sahara group. Whereas Sahara chief will remain unaffected as he has already received back the black money he has earlier laundered. The example of Satyam be followed as Ramalingam Raju is punished but Satyam is saved.

References
Decentralization in India: Reflections from Bihar

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Abstract
Democracy provides space for participation of people in political process. It allows people to govern themselves. It is self-governance of the people. The institutional mechanism of self-governance at the primary level is Local Self Government (LSG). It brings government closer to the people and promotes interactive governance. The objective of the democratic state is welfare of the people. The institutional mechanism of development at primary level is community. The community is aware of local resources and the taken decisions are sustainable. Social audit is a major step to bring transparency and accountability in governance. The 73rd constitutional amendment provides reservation to Scheduled Castes (SCs), Scheduled Tribes (STs) and women. In some of the states there is provision of reservation for other backward classes (OBCs) also. The provision of quotas to women and marginalized groups is an attempt to bridge gender and caste inequality. The inclusion of women and disadvantaged groups in the process of participation and decision-making is a significant step towards social transformation. Decentralization is devolution of authority and financial resources. Democratic polity adopts decentralization for development. In the Indian context the primary unit of self-governance, development and inclusion of women and disadvantaged group at rural level is “Panchayat”. Panchayati Raj Institutions (PRIs) is increasingly considered as an agency of good governance, sustainable development and social change and empowerment. The sustenance and growth of PRIs in Bihar is dependent on certain socio-economic and political variables, which are not necessarily independent of one another. The paper attempts to analyse the role of regimes, social and political base of the regimes, and their impact on the functioning of PRIs as an agency of empowerment. The paper is based on qualitative research method and applies content analysis of secondary sources to draw conclusion.

Keywords: Decentralization, Panchayati Raj Institutions, Development, Bihar, India

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Decentralization in India: A Historical Sketch
History tells that village panchayat or Local Self-government as a system existed in India since long. The form may vary but its spirit has always remained the essence of the Indian socio-cultural ethos. In the Rig Vedic (1200BC) period the self-governing bodies existed in the form of ‘Sabhas’ and with the passage of time these bodies became Panchayats (council of five persons). The village Panchayat or elected council had large executive and judicial powers. The panchayats completely lost their luster during the ‘alien’ regime as it was based on centralized system of governance. The
financial crisis due to the revolt of 1857 and point raised by the finance commission in 1880 paved the way for structural evolution of local self-government in India.¹

Self-governance became the political goal of the leaders of nationalist movement. Village was in the centrality of their thought as a unit of nation formation, democratization and decentralization. It is the site for ‘inclusion’, hence restructuring of its norms and ethos. There is no uniformity of approach in treating village as a homogenous, inclusive, and undifferentiated category.

Gandhi had a reformist vision and was in favour of reconstruction of villages. Nehru had a modernist outlook and wanted to develop villages through new technology. Ambedkar had subaltern perspective and he did not find any virtue in the revival and development of villages.⁴ Lohia had socialist perspective and considered that decentralization would break down the barriers of class and caste.⁵

Article 40 of the Constitution which enshrines one of the Directive Principles of State Policy lays down that the State shall take steps to organize village Panchayats and endow them such powers and authority so that they can function as units of self-governance. The first census of independent India stated that 82.7% population live in rural areas.⁶ In order to uplift the rural poor Community Development Programme (CDP) and National Extension Service (NES) were launched in 1952. The CDP and NES did not produce desired results so Balvantray G. Mehta committee (1957) was set up. The committee highlighted the lack of popular participation in CDP and made a strong plea for devolution of power to lower levels through PRIs. It recommended three-tier system of PRIs which would work at District level (Zilla Parishad), the intermediate level (Block Samiti) and the lower level (village panchayat).⁷

Inadequate community participation and dismal poverty reduction led to the appointment Asoka Mehta committee in 1977, which can be marked as the ‘Magna Carta’ in the concept and practice of PRIs. It recommended two-tier PRIs. The Zilla Parishad at the district level would be established as the first point of decentralization. The formation of Mandal Panchayat and the Mandal was conceived as a group village, which would make the necessary links with the system in developing focal points. It would develop link between rural and urban areas. It ignored the importance of the Gram Sabha.⁸ The failure of the earlier development strategy on poverty, unemployment and growing unrest of the masses in the 1970s and 1980s paved the way for G.V.K. Rao Committee and L.M. Singhvi Committee respectively in 1985 and 1986. The G. V. K. Rao Committee (1985) recommended that Zilla Prishads (at district level) should be strengthened.

There should be sub-committees at the district level with proportional representation. Some planning functions may be transferred to the district level. Elections of the local bodies should be held regularly. The committee believed that the development was possible, only if a large number of people participated in development activities. In order to achieve this, adequate powers and financial resources at the local level were considered essential.⁹ The L. M. Singhvi Committee (1986) gave importance to Gram Sabha. The Gram Sabha was viewed as the seedbed of democracy. Local self-government should be constitutionally recognized. Elections at the panchayat level should be held regularly and without delay.¹⁰
During the period of 1959 to the L. M. Singhvi Committee (1986), PRIs were considered as the agency of democracy and development. The period mainly focused on improving the efficacy and strengthening of PRIs so that it may deliver the expected results. The vision in that period did not consider PRIs as an agency of social change and empowerment. Now it is necessary to have a look at the political and economic situation of late 1980s and early 1990s.

During the late 1980s the Congress played the PRIs card, the BJP came up with Mandir issue and the Janta Dal played Mandal card to counter one another and consolidate their respective positions. On the economic front India was deep into the economic crisis in 1990. The continued saving-investment gap in the domestic economy forced a heavy reliance on imports. This created a large balance of payment deficit. The increasing saving-investment gap can be attributed to “man-made” and “policy-induced” irresponsible fiscal and other economic actions.

**Constitutional Context of 73rd Amendment**

Finally in April 1993 the 73rd constitutional amendment act was passed, which provided constitutional status to PRIs. PRIs have been in existence for a long time, it has been observed that it could not evolve as responsive institution due to absence of regular elections, prolonged suppression, insufficient representation of weaker sections and inadequate devolution of power and financial resources. Accordingly steps were taken to enable panchayats to function as the units of self-government. The pre 73rd amendment considered PRIs as the agency of democracy and development. The post 73rd constitutional amendment considers PRIs as the agency of good governance, sustainable development and social change and empowerment. The provision of quotas for SCs, STs and women in PRIs made it the agency of social change and empowerment.

**The Case of Bihar**

The sustenance and growth of PRIs in Bihar is dependent on certain socio-economic and political variables, which are not necessarily independent of one another. In the paper a modest attempt is made to identify the political variables from Bihar’s political history, even though the socio-economic realities of the state had to be kept in mind in order to appreciate the political facts in this perspective. In doing so attempt is made to analyse the role of regimes, social and political base of the ruling party, strategy of these parties in mobilizing support and crisis of governability.

On the one hand, ruling parties in the state governments, particularly the Congress, have allowed district and local institutions of self-government to decline or have limited their powers or have even frequently superseded them altogether in order to maintain tighter control over local systems of patronage and to establish stable bases of local support. The counter-tendency has been the persistence, even the reassertion, of structures of local power which exist independently of government and party organizations and the revival of interest, especially among the non-Congress parties, in the restoration of local institutions of self-government.
The rule of Karpoori Thakur from the 22\textsuperscript{nd} December 1970 to 1\textsuperscript{st} June 1971 and then in 1977 to 1979 provide a remarkable departure in so far as panchayat democracy is concerned. He conducted panchayat elections twice. During his second tenure he conducted panchayat elections, despite objections from all quarters, including his own party. In his first tenure he initiated the process of implementing the 1961 Act in totality in all districts. It is because of his actions that Bihar acquired a full-fledged three-tier panchayat system in all its districts by the year 1980.\textsuperscript{15}

In order to consolidate power base among the backward castes Karpoori Thakur promised quotas in government jobs and education institutions but outburst of opposition from forward castes forced him to resign and policy could not be implemented.\textsuperscript{16} Pradhan H. Prasad tended to describe a growing struggle between the ‘new capitalist kulaks’ of the backward castes and the old ‘feudal order’, dominated by the twice-borns.\textsuperscript{17} Francine Frankel observed the backward class movement led by Karpoori Thakur as the ‘organization of the poor’ in a double assault on the caste system and class structure.\textsuperscript{18} Frankel noted that some of the twice-born castes, the Bhumihars and the Rajputs, tended to support not the Congress but rather the Janata Party in the post-1977 period.\textsuperscript{19} Going into 1977 elections, Ramashray Roy described the Bihar Congress as being in ‘organizational shambles’, and the Janata Party as incapable of working ‘as one cohesive unit’.\textsuperscript{20}

The return of Indira Gandhi to power in 1980 brought Jagannath Mishra to power. The three years of Mishra rule and three years of Bindeswari Dube rule were the period of governmental ineffectiveness and agrarian violence. The period also witnessed no policy initiative.\textsuperscript{21} There are three factors that led to conflict in Bihar. First is underdevelopment of Bihar, second is the deleitimizat}ion of established pattern of domination in the rural areas and the third is the slow and steady disintegration of the state.\textsuperscript{22}

The Indian Institute of Public Administration reported on the basis of study visit of Bihar in 1989-90 that the loss of effectiveness and legitimacy of PRIs as a result of “inordinate delays in holding elections” and the “suppression of Zilla Parishad”. Gram Sabhas designed to be an instrument of accountability of the panchayat to the village community as a whole, where reported to be largely a “defunct body”.\textsuperscript{23}

The ideology of panchayati raj received shabby treatment at the hands of Laloo Prasad Yadav. It was during his term as Chief Minister that the 73\textsuperscript{rd} Amendment of the Constitution was passed. This amendment made it mandatory for all state governments to bring state legislation on panchayats at par with the constitutional requirement by 24 April 1994, and to hold panchayat elections immediately thereafter. All that the Yadav regime did was to amend the law within the stipulated date. But in doing so, it had ensured two things. First, the Act provided precious little in terms devolution of administrative and financial powers to the panchayats, but contained many provisions to strengthen state government control over these bodies. In this respect, the Janta Dal led by Yadav seemed to be in complete agreement with Jagannath Mishra of the Congress. Both were seen to be equally disinterested in granting any real administrative or financial power to the panchayats. Secondly, Yadav made elaborate provisions for reservation of seats for backward castes. In this, he made no distinction between the upper and lower sections, obviously to allow the upper crust of backward groups (mostly Yadavs) to reap the benefits of reservation. He
made a quick census for this and fixed the quotas for backward, SC and ST sections. As a result, much more than 50 per cent of seats on an average went in favour of backward sections. Even after all this, Yadav was reluctant to hold panchayat elections. But he needed alibi to hide his real intention. He found one soon. For the purpose of fixing quotas of backward castes, a census was necessary, as reliable data on OBC population are not available. The government asked the District Magistrates to conduct the census in one week. Everybody knew that such a casual approach to caste census would invite litigation. This is what happened. Aggrieved persons went to the High Court.\textsuperscript{24}

The survey data of 1996 for trust of Bihar in local government is 29.9 per cent which is much less than the trust of Maharashtra (40.7 per cent), West Bengal (50.6 per cent) and all India (39.9 per cent) respectively.\textsuperscript{25} The upward moving backward castes especially the Kurmis became disillusioned from the Laloo led RJD because the ‘Yadavisation’ phenomenon whereby undue favour had been given to a particular caste, systematic deterioration of law and order and utter neglect of development work. The most backward castes and Dalits became disillusioned from the RJD as the government did little for their basic social and economic problems.\textsuperscript{26}

In the Assembly elections of 2005 Nitish Kumar led the Janta Dal United and the Bhartiya Janta Party to power. An Act was passed in 2006 to replace the Bihar Panchayat Raj Act, 1993 as amended up to date. This Act is called the Bihar Panchayat Raj Act, 2006. The Bihar Panchayat Raj Act, 2006 provides under 50 percent reservation in all categories. In all categories upto 50 percent reservation would be provided for women. The SCs and STs reservation would be in proportion to their population. In all maximum 20 per cent seats would be reserved for backward class. It has unique feature of establishing Nyaya Panchayat known as Gram Katchaharies, which are meant to secure accessible justice delivery at affordable costs to the rural population.

A study of the Bihar Panchayat Raj Act 2006, suggests that of the 29 subjects listed in Eleventh Schedule, 25 are shown for Gram Panchayats, 27 are shown for Panchayat Samiti, and 26 are shown for Zilla Parishad. These together concern about 20 departments. In the fresh round of activity mapping out of 20 concerned departments only 13 had responded; among these 13 departments, 4 are said to have responded incorrectly. The State is one of the seven (7) that has received support jointly from UNDP and Ministry of Panchayati Raj (MoPR) in their Capacity Building for local governance. There are federations of Mukhiyas and Pramukhs in each district, but none particularly for women representatives.

The Gram Sabha meets four times a year. It may meet more frequently in special circumstances. The meeting of Gram Sabha is usually held on 26\textsuperscript{th} January, 1\textsuperscript{st} May, 15\textsuperscript{th} August and 2\textsuperscript{nd} October. The Quorum for a meeting is one-twentieth of total members of the Gram Sabha. There is no special provision regarding quorum in respect of women, SC/ST, landless labourers. Under the Act there is no provision for Mahila Sabha meetings. Reservation is rotated at the time of Panchayat elections, i.e., every five years. The two-child norm is not applicable. No special safeguards are available against the removal of women Presidents. It has provision of constitution of standing committees in all tiers of Panchayats. A Gram Panchayat constitutes six (6) standing committees. The Social Justice Committee performs the function related to promotion, protection and welfare of SCs, STs, other
weaker sections and women and children. It is further provided that every committee must have at least one woman member and the Social Justice Committee must have a member belonging to the SC or ST communities, subject to their presence in panchayat. There is no provision of reservation of SC/ST/Women in the standing committees.27

Conclusion
History tells that village Panchayat or local self-government as a system existed in ancient, medieval and British period. Leaders of the nationalist movement despite disagreement and differences in their political agenda, the village remained a core category. There is no uniformity of approach in treating village as a homogenous, inclusive, and undifferentiated category. The pre 73rd amendment considered PRIs as the agency of democracy and development. The post 73rd constitutional amendment considers PRIs as the agency of good governance, sustainable development and social change and empowerment of weaker sections. The provision of quotas for SCs, STs and women in PRIs made it the agency of social change and empowerment. The Congress and the non-congress party treated panchayats differently which is quite visible in the case of Bihar. The Congress suppressed the PRIs while the Karpoori Thakur regime and the Janta Dal United and the Bhartiya Janta Party attempted to revive the institution.

End-notes
13. See www.panchayat.gov.in.
19. Ibid.
22. Ibid.
Political Communication and the Electoral Campaign: 
A Case Study of the 2014 National Election

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Abstract
Elections in India can be characterised as a near copy book case of democratic functioning. Conducted with regularity, characterised by national and sub-national multi-party competition, citizens’ right to vote or express their rejection of candidate/party option through the recently introduced ‘none of the above option’, the entire electoral process claims to reflect the voter choices and preferences as accurately as possible. While the process of conducting elections in India has gained maturity since independence, the nature of electoral outcomes has also become predictable. The rise of regional parties and burgeoning coalition governments at the national level, declining currency of identity politics whether based on caste, ethnicity or religion and the rise of the politics of development often cited to explain bucking of the anti-incumbency trend may all seen as signposts of a ‘modernising’ democratic system. However the verdict of the 2014 Lok Sabha election which returned a national party to power with an absolute majority of its own, historically associated with a right wing majoritarian religious sensibility challenges all available understanding of the Indian electoral process. The question that one is exploring in this paper is why has a national party returned to power after two decades of coalition governments. The hypothesis is that the nature of political communication and the electoral campaign conducted by the Bharatiya Janata Party (BJP) was a deterministic variable responsible for the 2014 Lok Sabha verdict

Keywords: Elections, Campaigning, Political Parties

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stable non-Congress opposition coalition government led by the National Democratic Alliance (NDA) to come to power in 1999. The return to power of the NDA in 2014 following a decade of rule by the UPA points to the decreasing intervals with which we see alternating of party coalitions at the national level. Identifying some features typical to coalition politics in India, E. Sridharan (2004: 5418-5425) argues that coalition politics in India is of the opportunistic kind, also called ‘office seeking’ in so far as association with a particular ideology or agenda is weak amongst parties and politicians. This feature is exacerbated on account of the ‘single-member district, simple plurality (SMSP) electoral system wherein parties attempt to “pool votes” by forging coalitions or through ‘seat arrangements’ to prevent ‘splitting of votes’.

This logic is carried forth even in government formation. The party with the majority of votes which leads the coalition and government prefers to keep all its allies even though they may be a “surplus” as they act as a check on demands of other allies within the coalition and also alliances for the sake of votes at the national level or the sub-national level is a continuing feature of electoral politics (ibid: 5418). Also the federal arrangement makes national parties dependent on regional/state parties to be able to build together a credible coalition at the national level. Hence there is a tendency to forge alliances with smaller third or fourth parties which may have concentrated electoral support in certain areas to be able to succeed at the sub-national level which in turn would add to its chances of victory at the national level. For the coalition to be a plausible proposition it is essential that the concerned party not be the principal or one of the two main parties in the state but rather be at the third or fourth position and only then can it forge alliances. This has been one of the reasons why the Congress resisted electoral alliances till the late 1990s and seriously pursued pre-election alliances only in the 2004 Lok Sabha election. Also given the opportunistic nature of party politics in India, the ideological constraints of being in opposition at the state level are usually overseen at the national level (ibid: 5419).

The Bharatiya Janata Party emerged as a formidable force on the national scene following the 1989 Lok Sabha election in which having won 80 seats it propped up the National Front government of V.P. Singh which was the first minority coalition government to be formed after independence. The first chance that the BJP had of forming a government on its own came in 1996 when Atal Bihari Vajpayee was sworn in as prime minister for 13 days. The government fell as a coalition of thirteen parties both regional and state-wide formed a United Front to block the BJP from coming to power. In elections held in 1998 the BJP once again formed the government heading a 17 party coalition which included regional parties too. However the coalition lasted only 13 months as the All India Anna Dravida Munnetra Khazagham (AIADMK) withdrew support following disagreement on reservation policy. The

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1 The Janata Party which was formed following the merger of the Congress (O), Jan Sangh, Bharatiya Lok Dal (BLD) and the Socialist Party won 295 seats and 41% vote share in the 1977 Lok Sabha elections. It was supported by the CPM, DMK and the Akali Dal while the Congress was supported by the AIADMK and the CPI. In 1989 the National front government collapsed after 11 months following differences with the BJP over the ‘Mandir’ and ‘Mandal’ issues and came to be replaced by another National Front government which was headed by Chandra Shekhar and supported by the Congress from outside. This government lasted 5 months

2 The four regional parties included the Asom Gana Parishad (AGP), the Dravida Munnetra Khazagam (DMK), The Tamil Maanila Congress (TMC) and the Telugu Desam Party (TDP). The Government was headed by H.D. Dewe Gowda but lasted only 7 months. This was because the Congress withdrew support as the front refused to oust the DMK from the government which the Congress insisted on.
NDA returned to power in 1999 with an even bigger pre-election coalition\(^3\) and stayed in power for a full five year term.

**Changing Nature of Electoral Campaigning**

The election campaign that the NDA launched prior to the 2004 Lok Sabha elections took on the caption of ‘India Shining’\(^4\) creating the impression of a resurgent India riding high on the urban youth and middle classes. The issue of ‘development’ that the party sought to foreground was to be conveyed by extensive use of the media and information technology including sms, e-mail and customised telephonic speeches of the prime minister which could be heard by dialling a particular number. Also the Vision 2020 document that the party unveiled prior to the election diluted the three issues that had led to the BJP being identified as the “mandir-wali” party (Deshpande and Iyer, 2004) namely abrogation of article 370, building of the Ram Mandir in Ayodhya and enforcing a Uniform Civil Code (UCC). The ‘Vajpayee factor’ was also seen as critical to the election campaign and Vajpayee’s foreign overtures with Pakistan as well as successes including in Jammu and Kashmir and the North-east were also highlighted in the campaign. The euphoria of the ‘India Shining’ campaign spilled over on the media too and almost all poll predictions were buoyant about the success of the NDA in the elections. However towards the closing of the campaign, predictions of the NDA losing ground across constituencies also starting circulating\(^5\). While poll-predictions by themselves can be very unreliable which became evident in the 2004 election itself, they do indicate the link between the nature and progress of the campaign and its reception by the electorate thereby highlighting the correlation between the nature of the campaign and electoral success.

Following the defeat of the party in the 2004 Lok Sabha election, the pledge to return to ‘ideology and idealism’ by the BJP marked a clear choice in favour of Narendra Modi and an eclipsing of the liberal voice of Atal Bihari Vajpayee within the party. While the BJP is known to shun individualism the only exception was in terms of these two leaders. The Congress campaign in 2004 also saw a shift in so far as instead of running a broad based campaign there was greater attention to detail. Mapping of constituency character and articulating appeals in accordance with local concerns became a marked feature of the campaign\(^6\). Also instead of a focus on rallies, the party promoted mass contact campaigning. Sonia Gandhi’s ‘road show’ in Uttar Pradesh was seen as a popular move which inspired the BJP leader Kalyan Singh to also embark on a similar road show. The Congress campaign included

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\(^3\) The coalition of the NDA in 1999 included 24 parties.

\(^4\) The India Shining campaign was conceived by Nirvik Singh of Grey Worldwide. Pramod Mahajan who was appointed the chairman of the BJP’s Central Election Committee in 2003 is said to have spent nearly 100 crores on the election campaign. The 2004 election was the first in which electronic voting machines were used.

\(^5\) Over a period of three months the NDA’s electoral fortunes were predicted to have fallen from 320 seats to winning a majority by a miniscule 10 seats according to an ORG-MARG poll. Chawla (2004) writes that while the popularity of Vajpayee as a leader remained undiminished when compared with Sonia Gandhi, the NDA had lost its ‘shine’ on account of what he calls a failure “…to market the ‘Shinning India’ slogan with a sense of responsibility.”(Ibid.) Reasons for decreasing popularity of the Congress was on account of compromises with regional parties which gained on account of the alliance but could not contribute towards expanding the Congress base. On the other hand Chawla argues that the BJP adopted a policy similar to ‘corporate technique of acquisitions and mergers’ when dealing with alliances. Abandoning the focus on ‘Hindutva’, the party laid emphasis on development and “inclusiveness” (Ibid)

\(^6\) It is said that the Congress had underestimated the impact that Hema Malini’s campaigning had on influencing the Jat vote in Rajasthan in the assembly election held prior to the Lok Sabha election. Learning from the experience the Congress too started using celebrities as star campaigners.
forging of many pre-poll alliances which was also a marked departure from the earlier party resolutions that stressed on ‘going alone’ in the election. The importance of forging alliances is evident from the fact that the difference between the seats won by the Congress and the BJP was just 7 in the 2004 Lok Sabha election. However while Congress allies added 46 seats propping up the UPA, the NDA lost 27 seats on account of loss of political allies (Sridharan, 2004:5419)

The 2009 electoral campaign saw many allies deserting both the UPA and the NDA. The Congress campaign also called the ‘Jai Ho’ campaign focused on the ‘aam admi’ (common man). The BJP too retaliated with its own song ‘Bhay Ho’. However the Congress performed spectacularly with the seat gap between the Congress and the BJP increasing to 90 seats and the difference in vote percentage approximating 10 percentage points. The Congress victory was also unexpected with most opinion polls predicting a Congress defeat.

The 2014 Lok Sabha campaign saw a clear shift in leadership patterns with the older leaders giving way to the elevation of Narendra Modi as the prime-ministerial candidate. The shift was also evident in renewed emphasis on governance as opposed to development which also highlights the difference between the 2004 and 2014 election campaign of the BJP. Modi was able to showcase the Gujarat model of development as an instance of successful governance initiatives while Vajpayee had no such narrative to make use of. The hint of authoritarianism acted as the perfect foil to the continuing vacillation of the Congress leadership in the UPA government. Role of the corporate sector in funding and backing the BJP and in particular Narendra Modi’s election campaign cannot be under-estimated. The organisational acumen is also undeniable given the RSS link of Narendra Modi and his compatriots such as Amit Shah. In the 1980s too while L.K. Advani was trying to expand the base of the party the RSS had forwarded Pracharaks (bachelor-activists) such as Narendra Modi, K.N. Govindacharya and Sanjay Joshi to consolidate the grass-roots organisation. In the 2014 campaign too RSS spokesperson Ram Madhav as well as Shiv Prakash who comes from western Uttar Pradesh played a key role in the success of the campaign particularly in Uttar Pradesh. (Ramakrishnan 2014)

However the use of social-media and real time responses were a first in campaign strategies. The campaign included a multi-pronged approach including the social media, mass media, robo-calls to voters and marking of potential volunteers who were co-opted once they dialled a number to hear Narendra Modi’s recorded speeches. Apart from the innumerable rallies and road shows that Modi conducted, there was also a provision for holographic presence of the leader in constituencies which he could not personally visit. The Congress party in turn was unable to project either a leader or a vision. There remained

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7 The Congress approach of not forging alliances was based on the resolution adopted at the Pachmarhi session of 1998 which was subsequently revised at the Shimala Conclave in 2003 following defeat of the party in the three state assembly elections. The Congress allies numbered 18 in the 2004 Lok Sabha election. The Congress allies that were dropped since 1999 included Rashtriya Lok Dal (RLD) and the AIADMK party. The allies of the NDA were 12 in number, with many opting out of the coalition prior to the election and another 5 joining the coalition. For details of changes in allies see Sridharan (2004)

8 In 2009, the Congress lost the RJD (Rashtriya Janata Dal) and the Ram Vilas Paswan led Lok Janshakti Party (LJP) while the BJD (Biju Janata Dal) left the NDA alliance apart from other

9 Having secured the rights for this Oscar winning song, the Congress used it for purposes of campaign advertising.
uncertainty on whether to mold the campaign around the government’s achievements spread over a decade or to target Modi over his secular or caste or occupational credentials.

Conclusion
Coalitions and campaigns represent the immediacy of the electoral exercise. Given the nature of coalitions in India which are ‘opportunistic’ and therefore transient, post-poll link-ups are as common as pre-poll alliances. The fluidity of coalition politics may actually account for the return to power of a one party majority government namely of the BJP which has however retained the NDA, given the continuing need to forge alliances at the sub-national level. This in turn validates the continuing importance of regional and state parties which won 145 seats nationally in the 2014 election even when not in alliance with either one of the two major national coalitions, namely the UPA and the NDA, pointing to an erosion of the two party system on account of the decimation of the Congress party.

While alliances definitely revived the fortunes of the Congress party in the 2004 Lok Sabha election, the defeat in 2014 was also on account of a weak campaign strategy that was unable to effectively communicate the development achievements of the party, in particular spear-heading of various capability enhancing rights and welfare linked entitlements. Apart from ‘anti-incumbency’ the BJP led campaign effectively marketed the Gujarat model of ‘governance’. In doing so the BJP also tapped into the constituency that the Aam Aadmi Party (AAP) was hoping to gain but was unable to do so as organisationally it was in its infancy. In a polity where ideological differences have blurred marked by overlapping developmental visions, the content and effectiveness of political and electoral communication as part of the election campaign became a salient variable.

References


10 For instance the Biju Janata Dal (BJD) won 20 out of 21 seats contested in Orissa, the AIADMK won 37 out of the 40 seats that it contested in Tamil Nadu and the Trinamool Congress (TMC) won 34 seats.

161
Table 1.1: Shifts in seats won by the BJP and Congress Party (1999-2014) Lok Sabha Elections

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<th>Year</th>
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<th>Congress Seats</th>
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<td>1999</td>
<td>182</td>
<td>114</td>
</tr>
<tr>
<td>2004</td>
<td>138</td>
<td>145</td>
</tr>
<tr>
<td>2009</td>
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<td>206</td>
</tr>
<tr>
<td>2014</td>
<td>282</td>
<td>44</td>
</tr>
</tbody>
</table>


Table 1.2: Shifts in vote percentage of the BJP and Congress Party (1999-2014) Lok Sabha Elections

<table>
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<tr>
<th>Year</th>
<th>BJP Vote Percentage</th>
<th>Congress Vote Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>39.53</td>
<td>28.30</td>
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<tr>
<td>2004</td>
<td>22.16</td>
<td>26.53</td>
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<td>2009</td>
<td>18.80</td>
<td>28.55</td>
</tr>
<tr>
<td>2014</td>
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New Governance, Public Policy, and Social Movements in India: Rethinking MKSS Movement and RTI Act

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Abstract
Good governance was one of the slogans that were raised under the new governance banner in the late 20th century. Has it lived its zenith? Is it fading away from governance scholarship when India continues to chant the mantra of development, good governance, and stability? New governance and related practices have been a matter of debate since 1970s. Nonetheless, when new governance was emerging in 1970s, a social movement was also in the making in the state of Rajasthan—namely, MKSS movement, which would later contribute for a major change in public policy making in India. MKSS movement’s contribution in the form of RTI Act, a milestone in local to national governing practices, is a part of popular knowledge now; adding something more would be useful. This paper tries to do the same by relocating MKSS movement in the governance scholarship. It addresses the following two questions: How do we interpret and explain a social movement that has added something new to governance and public policy making in India? How and where do we locate such a movement in the new governance scholarship? The paper is based mainly on archival sources.

Keywords: New Governance, Public Policy, Social Movements

[This paper was presented at the 2nd National Conference on Politics & Governance, NCPG 2014 held at India International Centre Annexe, New Delhi on 3 August 2014]

Introduction
In his first ever message to India just after taking oath as the country’s 15th Prime Minister, Narendra Modi declared people’s mandate to his party as a mandate for development, good governance and stability, and urged the people to participate actively in taking India’s development journey to new heights. This was a message of the Prime Minister of the largest democracy on this planet in the 21st century. What would be these new heights in the field of development and good governance? Only time will tell. In this paper, however, we are interested more in looking at what heights have people’s contribution taken in India’s development and governance journey so far. For this purpose, we focus on the issue of transparency and accountability in governance and public policy with specific reference to participation of civil society actors. In this vein, an attempt has been made to interpret and explain the contribution of MKSS Movement and Right to Information Act (hereafter, RTI Act) to new governance scholarship.

The main concern of this paper is to understand changing patterns of governance and the role of civil society movements in making and implementation of public policy in India. Civil
society movements are treated here as actors in governing practices along with bureaucracy. The paper consists of three sections. It begins with a clarificatory discussion on key concepts used in this paper. Next is a discussion on general features of MKSS movement and RTI Act. The final section is an attempt to ground this movement and the act within the new governance scholarship. The paper ends with a concluding remark on the relationship between new governance, public policy, and civil society movements.

**New Governance and Social Movements—Conceptual Aspects**

**New Governance:** At abstract level, governance as a pattern of rule is not a new phenomenon (Mark Bevir: 2007). However, as a signifier of change in the meaning of government, that is, as a new process or method of governing society or changed conditions of ordered rule (Finer:1970, cited by Rhodes: 2012), governance refers to changes in the nature of the state that became evident after the public sector reforms of the 1980s and 1990s —which apparently led to a "shift from a hierarchic bureaucracy to a greater use of market and networks"; as such, governance raises issues about public policy and democracy (Mark Bevir: ibid). Clearly, in its new sense, governance refers to something broader than government thereby transcending the boundaries of a monolithic state centric perspective on patterns of rule.

One of the modes of governance that entered into India from American and European democracies through the neo-liberal reforms of the 1990s in terms of liberalization, globalization, and privatization was subsequently understood and explained as good governance. This mode of governance is in many ways still popular in the literature on development and governance in India; however, it is not a matter of investigation in this paper. We shall focus here rather on the mode of governance that calls for decentralized decision-making and bottom up approach to policy making involving civil society actors in the form of mass movements. Given, we shall build upon the mode of governance that involves governing through resistance offered by actors of bureaucracy as well as from civil society actors. Governance through resistance involves contingent and contested nature of governing and thereby points to actors’ beliefs that are inherited and modified in different contexts in the form of different traditions (Mark Bevir: 2009). Viewed from this perspective the nature of governance is closely related to the nature of social movements in a particular context.

**Social Movements:** The context and the nature of social movements are the two major oft-discussed trends in the studies on social movements in India. One can find the former in the studies of scholars such as Ghanshyam Shah (1990) and M.S.A Rao (1979) and, the latter in the studies of Rajani Kothari (1984) and D.L. Seth (2004). These and other scholars have also highlighted social movements at grassroots level by treating them as actors of non-party political process. Shah and Rao’s studies show evidences of strong relationship between collective mobilization, leadership and organization and, an interdependent linkage between ideology and leadership of a social movement. Rajani Kothari locates the rise and growth of non-party political process in the context of declining party system, weakening welfare power of the state, and growing corruption in the public sector. D.L. Seth situates these grassroots movements or micro-movements in the process of globalization; the author (2013) has discussed Seth’s view in this regard. Nonetheless, when it comes to the ways of interaction with the state and market, one finds non-violence as the more preferred
MKSS Movement and RTI Act
MKSS movement is a people’s movement against elites’ claim to exclusive rule and rationalize processes and practices of governance through resistance. The prime cause responsible for the emergence of this movement was workers’ (poor peasants and laborers) demand for the money from elites who were acting as rulers, which they earned through their labour. Doubtless, MKSS is deeply committed to the cause of poor peasants and laborers. In the next few paragraphs, we shall discuss ideological underpinnings and leadership of MKSS that contributed for mass mobilization thereby transforming masses into policy makers, and RTI Act as a policy by the public—for the public. In so doing, we shall adhere to bottom-up approach to understand the making of a public policy such as RTI Act.

MKSS Movement—Ideology, Leadership, and Mobilization: MKSS considers itself as a peoples’ organization and a part of non-party political process in India. While working in the mainstream and not in a tribal area, it is interested in reforming electoral process in favor of participatory democracy. Unlike a trade union, it believes in working in all areas of peasants and workers’ life ranging from land issues to governance. As an organization, MKSS does not follow any pre-defined set of ideology. Because it believes that, the people who are seeking to bring about change should define an ideology through their own words. MKSS believes that “It has been both a strength and a weakness, not to define a pre-set ideology. For the people it has been easier to understand and adjust to a theory that has evolved through their immediate needs, never seen in isolation and always related to larger political, social and other values in society” (Story of MKSS: http://www.mkssindia.org).

Clearly, MKSS believes in the contingent and contested nature of ideology, which can be identified here as a belief in the tradition of participatory governance. Adherence to such an ideology is because of its belief in collective leadership and collective decision-making. It does not recognize the state that stands external to citizens, hence does not draw a line between political and civil society. Its slogans indicate this position: “HAMARA PAISA—HAMARA HISAB!” (Our Money and our Accounts’); ‘SARKAR HAMARE AAP KI... NAHIN KISI KE BAAP KI! (The State is ours not the inheritance of a feudal few)” (ibid).

MKSS leaders such as Aruna Roy and Nikhil Dey treat the contemporary state as a mechanism used by “vested interests” in minimizing the impact of people’s mobilization by ignoring, promising but not delivering, delaying, and finally wearing out and deflating people’s demands for change by using all means. Roy labels it as a “peaceful” yet diabolical method of maintaining the status quo (Chasing a Right: http://www.mkssindia.org). Roy believes it essential for the citizens to “ask questions, demand answers, suggest changes, oppose where necessary, build where possible, and at the very least become informed participants in the decisions that are going to affect their lives” (2000).

According to Roy, the state owes much to its citizens in making it an informed and independent entity: “The demand for debate and discussion of policies in the public domain, the right to make informed choices, the demand for transparency and accountability are the poor persons’ and the ordinary citizens’ gift to making India really independent. The astute
commonsense of the ordinary citizen has raised the most scientific, intelligent arguments without jargon or rationalization” (2007). Such an argument of MKSS movement regarding public policy making in India has already culminated into what is now called as RTI Act.

**RTI Act—A Public Policy by the Public, for the Public:** Apparently, RTI Act, a milestone in local to national governing practices, is not a result of welfare governance nor it is a consequence of bureaucratic state’s application of new tools of governance such as New Public Management etc. On the contrary, this act appears as an outcome of civil society actors such as MKSS leaders and supporters’ consistent and restless campaigns, agitations, and negotiations with civil servants and politicians at various levels of public governance. This is evident from the very provisions of the Act. For example, chapter two of the Act includes those obligations of public authorities that the bureaucratic state has always refused to acknowledge let alone the question of following such obligations. These obligations are a demand from the people for accountability. It is the people’s demand that every public authority shall maintain its record and publish relevant information about their official decisions that involve issues of public interest (See RTI Act 2005, Chapter II: 2-4). It is the people’s demand that the state shall do this in a systematic manner by way of designating Public Information Officers at various levels of organization.

RTI Act is a public policy that has laid down new foundations of governance thereby opening up new horizons of participatory governance in the 21st century India. This newness in governing in the form of participatory public policymaking has stemmed from the people’s belief in responsible collective decision making through the ways of large-scale mass mobilization aimed at raising public awareness on issues of public interest. Such an interplay of mass-mobilization and public policymaking has raised fresh questions about our existing understanding of governance and social movements, which are compelling to rethink governance and social movements in the light of contribution made by civil society actors towards public policymaking.

**Rethinking Governance and Social Movements**
The above discussion on MKSS movement and RTI Act suggests that the act is an outcome of resistance offered by the MKSS leadership to elites’ ways of ruling and rationalizing public policy. Since governance is understood in this paper as contingent and contested practices and processes of human beings concerning their aims and objectives of social organization, we can think of governance in terms of a multidimensional affair where rulers and the ruled adhere to one or other types of resistance. By terming resistance as a mode of governance, we are moving away from the rational choice perspective that emphasizes coercion as a mode of governance.

**Resistance as a Mode of Governance:** Drawing upon Bevir and Rhodes’(2010) views about the ‘3Rs’ of rules, rationalities, and resistance, we can refer to resistance as contingent and contested processes and practices surrounding traditions of beliefs about collective co-existence in various forms of social organization that are inherited and modified by human beings in different historical contexts. Here, we can make a distinction between resistance and coercion. Unlike resistance, coercion is biased in favour of the rulers and therefore it tends to mask or push away the rulers’ contextual or historically grounded beliefs about issues of collective co-existence from public observation thereby allowing them to escape
public scrutiny. Hence, resistance is relatively an appropriate term for locating the core of governing processes and practices. It follows then that change is initiated and brought about mainly through resistance and not through coercion driven consent, coercion and consent become secondary instruments in the process of change. So far, we have argued that resistance can be termed as a mode of governance. However, can we think of governance without power? Certainly not. If so, then where do we locate power? How do we relate power to resistance?

Decentred Power as the Core of Resistance: When we assume resistance as a mode of governance, we are in fact reconfiguring power by decentering it and thereby displacing it from its exclusive belongingness to rulers or the ruled. For the purpose of this paper, we adhere to a decentred view of power. This view is inspired by the above-discussed decentered theory of governance. Bevir argues postfoundationalism encourages social scientists to rethink power as a force lacking any center: “If power refers to the ways in which the actions of others define what any individual can and cannot do, then power appears throughout governance. Power appears wherever people interpret and respond to one another.” (2009: 259). Accordingly, power is unequally located in rulers and the ruled. This inequality, however, is constantly in the process of change; hence, power remains a dynamic element of human capability that continuously rises and falls in rulers and the ruled without ever leaving either of them completely hollow. This substantiates the view that the hollowing out of the state actors such as civil servants is a misinterpretation of location of power in various forms of social organization including markets, civil society, and networks.

Taking the decentered view of power as a reference point, resistance may be further divided into status quoist resistance and transformative resistance. Status quoist resistance refers mainly to practices of the rulers that are realized in the form of resistance to participatory governing processes and practices. As such, it involves resistance in favour of existing traditions of governance against change, which is exercised by rulers through incremental processes and practices of public policymaking and implementation at various levels of social organization. Transformative resistance refers mainly to practices of the ruled that are actualized in the form of mass movements involving chiefly agitations, protests, and collective disobedience, which are nothing else but some elements of social movements. In other words, we can think of a social movement as an expression of transformative resistance. In the case of MKSS movement too, one can say that this movement is an expression of transformative resistance.

Public Policy as an Outcome of Resistance: The RTI Act 2005 is a good example of the constructive role played by resistance in the making of a public policy in a developing country like India. If one navigates through the chronology of events that unfolded prior to 2005, one can find that status quoist resistance can be masked with incremental policy rules. Often it is status quoist resistance that is given the ultimate voice in a public policy. One can say that power is exercised by rulers over the ruled when status quoist resistance is transformed into a non-threatening public policy practice of governing. The state actors do this, to repeat Aruna Roy, by minimizing the impact of people’s mobilisation by ignoring, promising but not delivering, delaying, and finally wearing out and deflating people’s demands for change by using all means. On the other hand, power is exercised by the people when they launch the process of policy making in the form of public debate at
various platforms using mass mobilization as a way of arriving at broad agreements on core features of that policy. Consistent mass mobilization with the objective to transform people’s demand concerning public interest into policy is a form of people’s exercise of power in governing. All this substantiates the argument that public policymaking is not a one-way process and that a public policy is an outcome of the interplay of status quoist resistance and transformative resistance.

Conclusion
It becomes clear from our discussion on governance and social movements with reference to public policy making through the example of MKSS Movement and RTI Act that governance can also be viewed in terms of resistance (which include status quoist resistance and transformative resistance), and that social movements can be interpreted as an expression of resistance as a mode of governance. MKSS led citizens’ initiative towards public policymaking is an example of decentred governance where power is unequally located in the rulers and the ruled. The core of such a decentered power is constituted by resistance and not by coercive consent.

Resistance becomes constructive when it is redirected towards collective interest with the aim to unpack and unloa...

Debunking the Myths & Debilities: High Aspirations from the Newly Elected Government in India

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Abstract
The hopes and dreams of an aspiring new middle class have been affirmed for the first time in Indian history after the formation of the newly elected government in our country. Following the pre-election agenda – “change you can believe in, future of the youth is open, not pre-determined, and can be altered by their own actions”- we now need a new vision for the Indian economy, and it is going to take all the political and economic skills of the new Prime Minister and his economic team to formalize, articulate, and realize that vision. We should be able to pave the way for robust growth in our economy, based on solid foundations, not the ephemeral debt-based growth. For this, I intend to recount some of the myths that have been so powerful in shaping, or misshaping, our economic policies that it is worth summarizing in this essay.

Keywords: Invisible hand, Deficit reduction, Global capitalism

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Introduction
In terms of policy approach, the newly elected government repeatedly emphasizes on “development with good governance”. In text book economics, “development” is a code word for opportunity in the competitive market place that Adam Smith called a “natural system of liberty”. The government in this system helps create an enabling environment that allows free individuals to pursue their interests peacefully in an open, transparent market. After that, an “invisible hand” helps gradually to lift people into a dignified, middle class life, raising living standards all around. The theoretical formalization of this idea is called the “first welfare theorem of economics”- when markets work perfectly, no one can be made better off without making someone else worse off. Modern economics with its faith in free markets, had promised prosperity for all. The much-touted New Economy- the amazing innovations and financial engineering, was supposed to enable better risk management and enhance welfare. But reality is far from there- there are handsome instances in which markets work imperfectly. The world wise great recession that has been started since 2008, has shattered these illusions. In the aftermath of the recent financial crisis, no one today would believe that the bankers’ pursuit of their self-interest has led to the wellbeing of the globe. It forces theorists to rethink long-cherished views of the free market. In this perspective, we need a politically expedient strategy from the newly elected government in India. I take this opportunity to illustrate some of the myths in the following section, which
have been so powerful in shaping, or misshaping, our own economic policies that it is worth summarizing them.

The myth of invisible hand

Unfettered markets lead, as if by an invisible hand, to efficient outcomes— that each individual, in pursuing his own interest, advances the general interest of the economy. Advocates of American-style capitalism are greatly influenced by this idea and this system, according to them, is the best. Now the research question is: is it certain that if our government attempts to reinforce this idea, it will have the resilience to meet the vision that they propagated in their pre-election campaign?

The answer is: at most, it leads to the well-being of top one percent with the rest of the society bearing the cost (Basu, 2011). While there may be underlying economic forces at play, politics have shaped the market, and then shaped it in ways that advantage the top at the expense of the rest. I try to explain here how our inequality gets reflected in every important decision that we make as a nation—from our budget to monetary policy and even to our system of justice, for the inability of our policy makers and intellectual thinkers to identify this myth. In India, we have a political system so far that has been working day in and day out to move money from the bottom and middle to the top—the system is so inefficient that the gains to the top are far less than loses to the middle and bottom. We are, in fact, continuously paying a high price for our growing and outsize inequality.

Markets work perfectly, when private rewards and social benefits are well aligned (as per the Marginal-Product theory of economics). But the present world of lying and cheating (created by imperfect information) continuously identify individuals (say, foreign institutional investors, corporate executives in our country) with the opportunity to act in ways that allow them to benefit at the expense of others (say, small and marginal farmers, shareholders, consumers), whom they are supposed to serve (this is called “Principal-Agent problem” in the theory of information economics). Perverse incentives may have encouraged shortsighted and risky behaviour among corporate executives, bankers etc., so that corporate incentives are not well aligned with social returns, and pursuit of their self-interest had not led to the well-being of all (as it was originally portrayed in the doctrine of “invisible hand”).

Herein lies the predominant role of the newly elected government in our country to design policies (taxes and regulations) that bring private incentives and social return into proper alignment. Broadly speaking, in our country, (i) markets were neither efficient nor stable, (ii) the political system had no tendency to rectify market failures, and (iii) economic and political systems are fundamentally unfair. So, our aspirations from the newly formed government is to debunk the myth of invisible hand and unfettered market (where everything was acceptable and no one was accountable so far in our country), so that national citizens have the faith in democracy and young people who have studied hard and done everything, get fair job as per their requisite qualifications.

The myth of deficit reduction

The myth suggests that, if, say, India is in a recession and has large fiscal deficits, cutting those deficits will bring back prosperity. This myth reinforces the ideology of fiscal...
conservatism - making economic downturn even worse. The fiscal deficit in India in 2013-14 stood at 4.5% of GDP, lower than 4.6% projected in the revised estimate, mainly on account of curbs on government expenditure (Source: CSO). However, data revealed by the Central Statistical Organization (CSO) showed that the economy expanded at the rate of 4.6% in the fourth quarter of 2013-14 compared with a similar growth in the previous quarter. Indian economy posting two consecutive years of below 5% growth is the worst performance of Asia’s third largest economy in over two decades, despite containing fiscal deficit. It is being hurt by the myth of deficit reduction. The reason is the following.

Macroeconomic theory tells us that the deficit reduction would lead to lower long term interest rate, thereby increasing investment, and increased investment would reignite the economy. Indian policy makers believe this theory to contain fiscal deficit. They hoped that increased investment from lower long term interest rate would more than offset the direct effect of higher taxes and lower government expenditure. But there are problems in this theory, which our policymakers unfortunately failed to understand or simply ignored.

If the bond market believe that depicts would decline in the future, interest rates would come down. Then bond price may go up and bond traders may sell their bonds in the hope of profit. So, the success of the policy of deficit reduction (through generating investment) would largely be determined by the judgments of the bond traders - to what extent bond traders would be willing to invest in bonds in the face of higher bond price. Secondly, Keynes had once explained the importance of monetary policy in a recession by comparing it to pushing on a string. In India, when sales are plummeting, lowering the interest rate from, say 4% to 3%, will not induce firms to build a new factory or buy new machines. Excess capacity typically increases markedly as the recession gains momentum. Given these uncertainties, even a zero interest rate might not be able to resuscitate the Indian economy. If the investment does not respond much to interest rates, in spite of the repeatedly lowering interest rate, then the policy of deficit reduction becomes backfiring and it is exactly being happened in our economy.

So, national citizens of our country aspire that the newly elected government would realize that the attempt at deficit reduction is quixotic. Instead it would recommend an expansionary fiscal policy, fueled, if necessary, by larger deficits. In the short run, deficits are absolutely essential to reignite the economy - since economic and social costs of prolonging a recession are enormous, far greater than the costs associated with the increase in deficit.

The myth of global capitalism
With the International Monetary Fund at the centre of international economic policy, it was no wonder that the free flow of capital became the centre piece. It provided the new opportunities for profits for Wall Street of America, but it exposed the developing countries, like India, to enormous risks without reward. Growth was slightly enhanced as capital flowed in, yet the devastation that was brought about as capital flowed out, or as the interest rates that they had to pay to keep in, far exceeded those temporary benefits. I explain it with the following example.

Suppose a firm in India borrows short term US$ 100 million from an American bank. India knows that the American bank may at any time demand to have its dollar back, refusing to
roll over its loans. American financial markets look at whether India has set aside enough dollar reserves to meet the short term dollar obligations, not just of the government but of the firms within the country. When there is shortfall of reserves, there is a good chance that US financial markets will panic. Government, knowing this, has adopted prudential standards of putting aside more reserves even when private firms borrow more in dollars. This means that the government will have to set aside US$ 100 million at least in reserves. Net, India as a whole receives nothing. But it pays the US, say, $ 18 million in interest, and receives back, on its reserves, less than $ 2 million (from low-interest-paying US government bonds). This may be good for growth in the US economy, good for America’s fiscal position, but it has to be bad for our own country.

In the name of global capitalism, United States pride itself of its ability to shift risks from those more able to bear (developed countries), to those less able to bear it (poor developing countries). Money should flow from rich countries to the poor by principles (which were the agenda of global capitalism). Yet, year after year, exactly the opposite occurs. We hope that the new government puts its true endeavour to debunk the myth by downsizing global capitalism. Common tax payers of our country now aspire that the financial sector is supposed to ensure that funds go to where the returns to society is the highest with the onset of the newly elected government. It had clearly failed so far. So far, financial firms have come to see their business as an end in itself and prided themselves on its size and profitability. But an ideal financial system should be a means to an end, not an end in itself, to reignite our economy.

Concluding thoughts

It is not so early to be clear whether the gambles the new Prime Minister and his economic advisory team take, would pay off. Indian economy may have been off life support and pulled back from the brink of disaster- this is the general expectation of common citizens and tax payers in our country. The best that could be said for Indian economy is that it is expected to be at the end of a “freefall”- a decline without an end insight. But it should be kept in mind that the end of “freefall” is not the same as a return to normalcy.

The resumption of growth means that in a technical sense, the recession is over. Economists define a recession as two or more quarters of negative growth. When growth turns positive, no matter how anemic, policy makers declare the end of the recession. In that sense, Indian economy is free of any recession though the growth rate is still too poor. But what is important is that to workers, the economy is still in recession when unemployment is high, and especially when it is growing since the global recession of 2009. To business, the economy is in recession so long as they see excess capacity, which means the economy is operating below its potential. As long as there is excess capacity, they won’t invest whatever lower be the interest rate.

The recovery of stock prices or sensex from their lows is often taken as a barometer of the restoration of the economic health. Unfortunately, an increase in stock market prices may not necessarily indicate that our economy is performing well. Stock market prices may rise because the Central Bank is flooding the economy with liquidity, and rate of interest is low, so stocks look much better than bond. The flood of liquidity coming from the Central Bank or the short-sighted foreign institutional investors, will find some outlet, hopefully leading
to more lending to business, but it could also result in a *mini-asset price or stock market bubble*. Or rising stock market prices may reflect the success of firms in cutting costs—firing workers and lowering wages. It propagates the problem further.

A robust recovery for the other elements of aggregate demand also appears problematic to the Indian economy. Certainly, in the face of global recession, the entire world cannot export its way to growth. In the great depression, countries try to protect themselves at the expense of their neighbours. These are called ‘beggar-thy-neighbour’ policies—adoption of protection (imposing tariffs and other trade barriers) and competitive devaluation (making one’s currency cheaper, which makes one’s export cheaper and imports less attractive). These are likely to backfire in India.

Without a strong recovery of consumption or exports, it is hard for the new government to see how investment can recover, at least until the excess capacity in our economy expires or fades into obsolescence. Government needs to stimulate the economy and resurrect the financial system and re-regulate it by debunking those mentioned myths. Otherwise, the withdrawal of stimulus spending and cutbacks in state and local spending as a result of shortfalls in tax revenues, following the “American-style capitalism”, are likely to exert further downward pressure on the Indian economy and the newly elected Prime Minister would fail to realize his pre-poll vision—“development and good governance”.

**End-notes**

1 There is a long list of flaws in the incentive structures of agents, discussed and documented in Stiglitz (2003, 2010).

**References**

Imperatives for Reforms in Indian Political System

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Abstract
After 63 years of independence, India has emerged as the most progressive democracy yet the regressive one in subsiding the basic but intense problem of our political system i.e. inequality. Through this paper we intend to go back in time of our native politics to observe the reasons of its existence and also find out its solutions through the model of world politics. This paper also throws some light on “Social Justice” through ancient and renaissance philosophy. This paper also talks about the experiment made by nation on social representation and policies which has put “Social Justice” on its dead-mark. Another plaguing problem that is dealt in the paper is “gender justice”. This research paper along with data explain the low presence of woman in the politics and points out the reasons for their pathetic existence. This paper also highlights the balms for their eradication. The above mentioned problems will be dealt with in the paper not only from a social but also a legal perspective. The paper also attempts to ameliorate the problems by suggesting reasonable reforms in the system by conjoining the ideologies of all political parties and including the concept of world politics.

Keywords: Political Parties, Reforms, India

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Introduction
India, the largest democracy of the world, has emerged as the one of the progressive nations in terms of upgrading its infrastructure, stabilising its unstable economy and even in making its presence felt in world political arena. The Indian political system after independence has done many commendable jobs like controlling corruption, abolishing nepotism to a very large extent, bringing communal harmony in the country and the most important one is, working towards the empowerment of women who had always been living under the oppression inflicted by men. But at the same time the flip side of our “Undeveloped Political System” has astonished all by showing flippant attitude towards many serious issues which are in need of acute reforms.

India, after independence has displayed a great pace in all departments of the work but failed to eradicate the basic yet the regressive problem of our country i.e. “inequality”. Inequality in layman terms can be defined as “the condition of being unequal”, which clearly demonstrates the fact of treating some-one not equally. And in country like India which has promised to give equality in all sectors of life through social justice but despite of that it has undertaken many forms such as educational inequality, Political inequality, Economical inequality and the intense one is the Gender inequality. The presence of all forms of
inequalities in the country hampers its growth immensely and affects the human development just by dividing the society into many.

Social Inequality
Social equality is a state of civilisation where people are recognised under one and unique banner of BEING HUMAN BEINGS. It’s a state where there is no two eye for rich and poor; where male and female share the same platform of equality; where people are not abused on being white and black. There is no division of society on the basis of cast, creed and colour. Social inequality is what which creates the need of social justice and it starts when people or a social group from the society is put at disadvantageous position as compared to other group of society and this basically happens when in opportunities, policies, politics and education people are treated unequally. In ancient India this kind of discrimination had categorised people on the basis of their caste, gender, region and religion. One brutest type of consequence was the feudal zamindari system which divided India into three broad classes i.e. landlords, tenants and the landless labour.

The landlords were the head, who used to take decision for the society whereas tenants and landless labours were excluded along with women and tribal people from decision making process and this was the start of social inequality in India and unfortunately it hasn’t been eradicated even after 66 years of freedom. The caste system in India has also given birth to the evil of social inequality. At the time of independence, the condition of lower caste people was pathetic. They were said be “Untouchables”. These people were subjected to many limitations as they were not allowed to go to temples, cremation ground and wells. They were also treated as pollutants and were allowed to come out of their houses except night. Women of lower caste were not allowed to wear ornaments and men were prohibited from wearing coats. The social inequality in the country gives birth to poverty, social dysfunction, as well as illiteracy. To take them out of this quagmire the government has also taken several steps like constitutional provisions and safeguards for them, representation in legislation and panchayats, reservation in service, giving education facilities, making advisory council for them, making welfare departments in the state, giving them scholarships and by also providing economic opportunities but still all the facilities are not reaching the right people properly and the their adverse situation remains miserable.

Political Inequality
Politics is said to be a patient man’s game. Years back it was believed to be men’s arena but slowly and slowly women participation has taken this miles ahead. The Indian political system is said to be the backbone of Indian democracy. Political parties play a very vital role in encouraging and enabling democratic participation as it allows people from all the sectors of the society to contribute in the governance of the country. But the root of inequality in the politics has made the governance of the country quite biased. Political inequality signifies that citizens in the country don’t have a say in the decision making process of the country which is clearly a dead mark for the democracy. One of the basic principles of democracy is the equal consideration of the preferences and interest of all citizens. Government guarantees this by providing their citizens the right of exercising the franchise i.e. one person/one vote. It signifies that equal consideration of the preferences and needs of the democracy should be fostered by all political activities. As it’s been mentioned in the paper that democracy allows people from all the sectors to take part in the governance
process of the country irrespective of caste, creed and sex. But the unfortunate part of it is that women are not allowed in majority for their active participation and this also signifies political inequality in the country.

Women who have now become unabashed voter, are coming out of their boundaries to write the future of the country wearing saris, burkha and even jeans as well. But when it comes to their active participation in parliament, their presence gets negligible. According to the parliament of India, females’ voter turnout has increased from 55.82% in 2009 to 65.5% in 2014 while the increase in the male turnout for the same period is 6.5%. The above data shows the seriousness of women about the governance and development of the country but still their presence in the parliament of our country is deplorable. In terms of their voice in lower house of the country (loksabha) it is just 11% of the total strength whereas in countries like Rwanda and Cuba, the women population in their lower houses are 56.3% and 49% respectively. Even the countries like USA and UK they have maintained women strength more than 20%. The bill introduced by H D Dev Gowda in 1996 for women’s reservation in parliament of the country has not been enacted till today. If this could have been passed then like panchayats women would have enjoyed their political participation by increasing their strength to 33.3%. Margaret Thatcher had once said “if in politics if you want something said contact a man but if you want something done contact a woman”. Many think tanks are even of belief that the country which will have maximum women participation in politics will be the one which will be tomorrow’s leader.

**Economic Inequality**

History stands as testimony, money in this civilisation has stood as synonym for boon, bait, bless, doom and what not. All wars fought, crimes undone, and numerous relations ruined have had economic intimacy somewhere and in some way. People with less of it desire for some. Few with some want some more and who have more of it want even more but wealth has sheltered itself in very few pockets and thus divided united India into “haves” and “have not”. HAVES have too much of it whereas HAVE- NOT have to struggle to make their both ends meet. The accumulation of wealth at one hand makes the other one inferior. People with wealth get high degree of convenience, send their children to elite schools, provide them better health facilities whereas people without it live miserably and this gives birth to many social dis-orders like poverty, illiteracy and bad health quality among people which consequently hampers the progress of the nation. This problem can’t be solved by taking the wealth from haves and distributing to have not. To improve this disparity has not must become capable of doing something. To reduce this widened gap between the rich and the poor, the Indian government has taken many steps like national minimum wage system, direct and indirect taxes but still the gap has not been reduced. This paper further has given some reforms to overcome this problem.

**Gender Inequality (Gender Justice)**

Gender inequality, treating people unequally on the basis of gender is wider form of discrimination. In India the concept of gender inequality has come up with many discriminatory practices which have pulled down the identity of women in the country. Women in India have a lower identity as compared to men. They are cursed as a burden at the time of their birth. They have never been subjected to “privileges” which men have enjoyed since time immemorial. Gender inequality is a broad concept which mainly says
three things. First, men enjoy and experience better opportunities. Second, men have predominant power over social positions in the country like politics, economy and law. Third, men generally hold sway in marriages or in direct social relationship in contrast to women who also possess the same characteristics. Girls are kept out of the school as their orthodox parents think that girls should learn household things as it would help them after their marriages. Many girls remain illiterate which reduces their power to fight with the world against discrimination they face.

The government after independence is working a lot against gender inequality by providing girls with free education, books and even food. It has been now realised by all governing institutions that education and only education can solve many of their problems. As it has been noticed that girls who are educated understand the importance of education and go for small family and also exhibit better health outcomes in relation to their maternal life. Apart from that, education also helps them in realising their self-respect. They know about their rights which they can use as a weapon in adverse situation. Reservation given by central as well as state government in government jobs has overcome the gap of gender inequalities from the country. But still, a large part of rural India still thinks girls as the weaker section of the society. Girls are still considered as “paraya dhan” and parents start accumulating wealth for their marriage right after their birth. As per the information given by UNDP and Government of India, our country stands at 136th out of 186 countries in Gender Inequality Index. Apart from that India also stands at 98th position out of 128 countries in world’s economic opportunity index. It clearly shows that the government is unable to circulate all its facilities to all the corners of the country or the orthodox parents of Indian girls are not utilising this facilities properly. There are still some parts in the country where the custom of child marriage, sati are still prevalent but the legal system still shows its incompetence in solving the cases. Lower number of women in top positions of our country does not show their incapability of doing the work but it shows there are structural impediments preventing women from reaching the top.

Existence of all types of inequality has hampered the overall growth of the country and it grows up when limited people have taken all the things like money, power and prestige and they start thinking themselves as the upper one and see other with disdain. One form of inequality in the country reinforces other inequality as they are interlinked as they bring poverty and social dysfunction in the country. This paper would like to give some reforms to eradicate all forms of inequality from the nation to bring development back on the track. As it’s been mentioned that the presence of inequalities in the society goes against tenants of social justice, which promises that the opportunities and privileges will be distributed among all with parity.

This paper recommends some reforms to whittle down the intensity of inequality which covers Social, economic, political and gender inequality. As education at primary, secondary and tertiary level is the most significant mean to improve the disadvantageous condition of unfortunate population. It is a cornerstone for improving social justice and economical productivity. The outcomes of being educated are also linked with health and economic status of an individual and the society. But the fact which needs attention is, providing education is not only responsibility of the government but community, society and family as well. Parents should take initiative to provide at least elementary education to all. Girl’s
education should be made compulsory by the government so that parents will send their girls to school for studies. With this, the social disparity in the society can be reduced.

Reservation in government jobs and government institutions should not only be given on the basis of being “backward by caste” but on the basis of economic status. People who do not have economical capacity should be encouraged by incentives in form reservation. With this the gap present in the social, political and economic institutions can be reduced. Redistribution of static resources accomplishes nothing and makes no one richer but will ensure equal economic level to all and through this economic inequality in India can be whittle down too. Quality education in the country needs upgradation at higher level. In the global scenario, universities play a very vital role in molding the nation in the right manner. Through education the economic productivity and social quality can be improved as universities provide intense level of knowledge which helps students to make “international relations and partnerships”. So, eliminating the educational gap from the country will help the economy to go up. Corruption in government organization is common thing which takes place in our day to-days life which if observed properly will show that it hampers the progress of the country and also gives bad message to the world. Government needs to make some deterrent laws regarding corruption so that officials would do their work properly and the development can be ensured in the country. There should be some minimum level of education qualification for contesting the election for state and national legislatures so that educated people from the all the sectors can be shifted to the governance process of the country and people who don’t know the ABCD of politics and good governance can be avoided. Social justice which has now reached at its dead mark by unscrupulous approach of government can also be revived by apprehending the reforms in the proper manner.

Considerable growth has been seen in the country in the recent years towards reducing the gap of inequalities. I hope this paper will guide all to eliminate all the disparity present in the country and promote and bring development, economic and political stability in the country through mentioned reforms. The “undeveloped Indian Politics” should also learn to provide better governance with this the dream of seeing a “better India” can also be accomplished and like before India can also emerge as a golden bird of the world.
Judicial Appointments in India: Imperatives for Reforms

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Abstract

Indian Democracy setup consists of three structures i.e. Legislature, Executive and Judiciary and each structure has its set of powers, the doctrine of Basic structure gave separation of power in Supreme Court’s judgment i.e. Kesavananda Bharti vs. State of Kerala, where the court held that no amendment can change the basic structure of Indian constitution, here the court also describe the basic structure. Here the central theme of the paper is Judiciary appointment and how it is related to one of the basic structure of Indian constitution, i.e. separation of power and independence of judiciary. Presently judges in supreme court are appointed by the way of collegiums system in which collegiums, which developed by three judges’ decision which would be discussed in paper, consist of Chief justice and four other judges of supreme court, here the controversy first arose during Indira Gandhi’s reign where Justice H.R Khanna was superseded by his junior for the post of Chief Justice, lack of transparency and say of executive in the appointment procedure is the major issue. The paper also deals with the J.A.C bill pending in parliament, which provides an alternative to this process and how this would lead to democratic reforms.

Keywords: Judicial Appointments, Reforms, India

Introduction

The implementation of judicial appointment can be traced in the basic structure of Indian constitution; the term basic structure is nowhere present in the constitution and was first used by M.K. Nambar and other counsels while arguing for the petitioners in the Golaknath case\(^1\). But it came to limelight only in 1973, while deciding the landmark judgement of Kesavananda Bharati vs. State of Kerala\(^2\). Where the supreme court held that that Article 368\(^3\) did not enable Parliament to alter the basic structure or framework of the Constitution and parliament could not use its amending powers under Article 368 to 'damage', 'emasculate ', 'destroy', 'abrogate', 'change' or 'alter' the 'basic structure' or framework of the constitution. This decision is not just a landmark in the evolution of constitutional law, but a turning point in constitutional history\(^4\), another landmark judgement was Minerva Mills’ case\(^5\). Where the court held that clause (4) and (5) of Article 368 of constitution are unlawful, these clauses were inducted by Indira Gandhi’s government as response to Keshwananda Bharti case.

However the court remained silent on what constitute the basic structure, but different Judges on various occasions described what constitutes the basic structure.

Sikri, Cj. Mentioned the following as the “basic foundation and structure” of the Constitution:

1. Supremacy of the Constitution
2. Separation of Powers between the legislature, the executive and the judiciary
3. Republican and the democratic form of Government;
4. Secular character of the Constitution
5. Federal character of the constitution

The other Judges mentioned in addition to this 3 more basic features:
6. The dignity of the individual secured by the various Fundamental Rights and the Mandate to build a welfare state contained in the directive principles
7. The unity and integrity of the nation
8. Parliamentary system.

The two basic structures i.e. Independence of judiciary and separation of power is the central theme of this paper and would be discussed in detail in further chapters. The controversy first arose during Indira Gandhi’s regime when Mrs. Gandhi superseded in 1973 four Supreme Court judges - Jayanti Manilal Shelat, Kawdoor Sadananda Hegde, Amar Nath Grover and H.R Khanna - to appoint a junior judge, Justice Ajit Nath Ray as the Chief Justice of India, she punished them because of their independent outlook, not tagged to what she considered "progressive". Indira Gandhi’s government had suspended a Constitutional provision that guaranteed the “right to life and personal liberty” which is commonly known as A.D.M Jabalpur case.

With this provision abrogated, the four judges found themselves helpless. Justice Hans Raj Khanna alone disagreed. He believed that the suspended provision was not the only repository of the guarantee against unlawful imprisonment. Khanna’s courageous decision and its aftermath are widely known. Next in line to become the Chief Justice, he was superseded, and resigned. The government appointed a Chief Justice who had passed judgments in favour of the government in the guise of appointing "forward looking" judges. The judges were often compliant to the wishes of the executive. During the emergency, 16 High Court judges were transferred by the executive without following the due procedure which ranks as the most prominent attack on the judicial independence in India’s history.

It came to limelight because appointment of the Chief Justice of India, unlike the appointment of judges to the Supreme Court of India, is a very transparent process. The senior-most judge on the Bench is, by convention, appointed the Chief Justice of India. Now the question arises is Judiciary Independent in their decision making and is their demarcation of power between the three organs or legislation and executive interfering in judicial decision making.

Independence of Judiciary and separation of power
The independence of judiciary is not a new concept but its meaning is still imprecise. The starting and the central point of this concept is apparently the doctrine of separation of powers. The underlying purpose of independence of judiciary is that judges must be able to decide disputes before them, according to the law, uninfluenced by any other factor. Shetreet takes into account all these considerations. Explaining the tern-is 'independence' and 'judiciary' separately, he says that the judiciary is the organ of the government not forming a part of the executive or the legislative, which is not subject to personal, substantive or collective control and which perform the primary function of adjudication.
Indian constitution is a very well built document. It assigns different roles to all the three wings of government the Legislature, Executive and the Judiciary. There is no ambiguity about each wings power, privilege and duties. Parliament has to enact law, Executive has to enforce them and the judiciary has to interpret them. Justice Mukherjee observed, “it does not admit of any serious dispute that the doctrine of separation of powers has, strictly speaking no place in the system of Government that Indian has at the present day”. The theory of checks and balance has been observed in the Indian constitutions. There is no rigorous separation of powers. For instance, parliament has the judicial power of impeachment and also appointment of judges is made under executive wing.

Appointment of Judges is directly linked with independence of judiciary which can be traced in Article 124 of Indian constitution; here the role of executive is direct and active in judicial appointment, which possess a direct or indirect threat to Independence of Judiciary, this also lead to overlapping of power as involvement of executive in judiciary leads to violation of separation of power. Also Article 50 of Indian constitution states separation of judiciary from executive which is also a question whether the separation is whole or partial. We would further see how judicial appointment procedure evolved from independence to what it is today.

Evolution of judicial appointment procedure
The judicial appointment in Indian constitution can be traced in article 124(2). Clause (2) mentions “consultation” which is further discussed in the paper, after independence the practice had developed over the last several decades according to which the Chief Justice of India initiated the proposal, very often in consultation with his senior colleagues and his recommendation was considered by the President and, if agreed to, the appointment was made. In 1974 in Shamsher Singh vs. State of Punjab the Supreme Court stated that in appointment of High court and Supreme Court judges the approval of chief Justice of India is must. By and large, this was the position till 1981.

Then came the landmark judgment of S. P. Gupta vs. President of India and others, 1981 which was also known as “First judge case”, the case came to Supreme Court under article 139, under various writ petitions filled in different High court’s the core issue was regarding the scope and ambit of the power of the Central Government in regard to appointment or non-appointment of additional Judges and transfer of judges from one High court to another under clause (1) of article 222 and constitutional validity of the order of transfer.

This case brought a tremendous shift in appointment procedure, here executive got an upper edge over judiciary in the appointment procedure and “primacy” of the CJI’s recommendation to the President can be refused for “cogent reasons, here the court observed that ‘consultation’ does not mean ‘concurrence’ and ruled further that the concept of primacy of the Chief Justice of India is not really to be found in the Constitution.

For the next twelve years the appointment was made with executive having an upper edge, but the position again changes in 1993 in Supreme Court Advocates-on-Record Association vs. Union of India. The nine-Judge Bench (with majority of seven) not only overruled S.P. Gupta’s case but also devised a specific procedure for appointment of Judges of the Supreme Court in the interest of “protecting the integrity and guarding the independence of
the judiciary.” For the same reason, the primacy of the Chief Justice of India was held to be essential. It held that the recommendation in that behalf should be made by the Chief Justice of India in consultation with his two senior-most colleagues and that such recommendation should normally be given effect to by the executive. In short, the power of appointment passed into the hands of judiciary and the role of the executive became merely formal. Here the word consultation shrinks in mini form. This laid to the foundation of present collegiums system of appointment. For the next five years, there was confusion on the roles of the CJI and the two judges in judicial appointments and transfers. In many cases, CJIs took unilateral decisions without consulting two colleagues. Besides, the President became only an approver. This decision was upheld in 1998 in third Judges Case, in 1998 President K. R Narayanan issued presidential reference regarding clarity on second judges case and the word “consultation” in article 124, 217 and 222 to which a nine bench Judges headed by Justice S.P Bharucha issued nine guidelines regarding the appointment which today known as collegiums system.

It is said by the critics of the 1993 decision that in a democracy, accountability is an important consideration and the authority or authorities making such appointments should be accountable to the people. A distinction is made between appointments and functioning. While in the matter of functioning, the executive can have no say, it is said, the executive must be necessarily involved in the process of appointment. The argument is that someone must be responsible for the appointment made and since Chief Justice of India or his colleagues are not accountable to the people, the concentration of power of appointment in them is undemocratic.

Apart from accountability, the present collegiums system also failed to keep pace with vacancies stalled due to various caste, political, and communal reasons, according to Ministry of law and Justice in 2004 there were 143 vacancies in 21 High Courts against sanctioned strength of 714 leaving almost 20 percent vacant. Merit of Judges is again a question in this system, here Judges are mostly appointed on the basis of seniority, but again seniority does not guarantee merit, as the system is closed to public merit cannot be easily determined. It is often lamented that India is the only democratic country where only Judges appoint Judges.

It is often lamented that India is the only democratic country where only Judges appoint Judges. Late Justice J.S Verma, former CJI and author of majority judgment in Second Judges case (1993) describes “My 1993 judgment, which holds the field, was very much misunderstood and misused. It was in that context I said the working of the judgment now for some time is raising serious questions, which cannot be called unreasonable. Therefore, some kind of rethink is required. My judgment says the appointment process of High Court and Supreme Court Judges is basically a joint or participatory exercise between the executive and the judiciary, both taking part in it.”

**Analysis of three cases**
The law commission in its 214th report analysed the three judge's case with respect to constitutional aspect. The word “collegium” was nowhere present in constitution, and was first used in S.P Gupta case in Para 29 “There must be a collegium to make recommendations etc.” It is submitted that any addition of words in the constitution would
not be permissible under the interpretive jurisdiction of the Supreme Court. The Supreme Court has to interpret the constitution as it is.  

The President should always act on the aid and advice of the Council of Ministers (article 74). However, contrary to what was said in the Constitution, both the Judges II and Judges III cases have laid down that consultation with the Chief Justice of India means a collegium consisting of the Chief Justice of India and two or four judges as the case may be. Further, in both the cases it was stated that it is the Chief Justice of India who should consult with collegium of judges, whereas Constitution says that the President should consult the Chief Justice of India and such judges as he deems necessary.

**Judicial Appointment Commission Bill, 2013**

The last effort to replace the collegiums system in 2003 was made by then NDA government but was unsuccessful. The then NDA government had introduced a Constitution Amendment Bill but the Lok Sabha was dissolved when the bill was before a Standing Committee. The Constitution (One Hundred and Twentieth Amendment) Bill, 2013 (herein after referred to as Constitution Amendment Bill) and the Judicial Appointments Commission Bill, 2013 (hereinafter referred to as JAC Bill) were introduced in the monsoon session of Parliament in 2013. The Bill establishes a Judicial Appointments Commission which shall be responsible for selecting judges of the higher judiciary.

The Amendment proposes a new Article 124A to create a Judicial Appointments Commission and provides that the structure, composition and functioning of the JAC will be enacted in a separate law by the Parliament. The Amendment provides for the President to make appointments on the recommendation of the JAC. This law – Judicial Appointments Commission Bill, 2013 suggests the JAC will consist of 3 Supreme Court Judges, the Union Law Minister, the Law Secretary as its convenor and two eminent persons appointed by a body comprising the Prime Minister, Leader of Opposition and the Chief Justice of India. The major advantage of JAC is that it creates a balance of power between executive and judiciary in the appointment procedure in accordance to the separation of power.

The bill passed in upper house of the parliament but attracted a heated debate in Rajya Sabha, where Ram Jethmalani seemed to be the lone voice in the Rajya Sabha against the Constitution Amendment Bill. Jethmalani said that it was “wholly unconstitutional”. In particular, he said that the composition of the JAC should be reflected in the constitution itself, and not in ordinary legislation. A major criticism of the bill is regarding section 3 (1) which could be easily amended by the simple majority or ordinance. Otherwise, Jethmalani argued, Parliament would be able to “demolish the whole thing and substitute it with a Judicial Commission which will consist of only the Law Minister.” After which the bill went to standing committee for recommendations.

The bill needs to be protected under article 368 to safeguard the Independence of Judiciary which is basic structure of Indian constitution. The Constitution Amendment Bill at present permits Parliament to modify the composition of the JAC without going through the rigors of a constitutional amendment. In future, Parliament can, for example, take even the Chief Justice of India off the JAC without a constitutional amendment. Hence the bill at present
also needs certain amendment so as to avoid the commission to pass wholly into the hands of legislature or executive.

Another shortcoming of the bill can be observed in section 9 (1) and (2) It merely states that the JAC has the power to specify, by regulations, the procedure for discharge of its functions. This is highly inadequate. The bill has to clarify the powers of the JAC in discharging its functions but as it currently stands, the bill has entirely delegated this authority to the realm of rules.  

The Bill in section 4(c) states that “the person recommended is of ability, integrity and standing in the legal profession.” Currently in practice is a long established convention of ‘seniority’ in appointment of the Chief Justice. It may be suggested that there can be a standardized criteria for evaluating merit. The recommended performance evaluation criteria include:- legal ability, integrity and impartiality, communication skills, professionalism and temperament, administrative capacity, necessary skills for jurisdiction of court. Under the proposed Bill, there is no mention of a mandate to ensure a diverse judiciary. A diverse judiciary can have a powerful symbolic value in promoting public confidence in the fairness of courts, thus important in terms of access to justice. We recommend that the Bill should encourage diversity in appointment, in terms of gender, religion, caste and ethnicity.

The 120th Amendment Bill, 2013 in Section 2 states “on the recommendation of the Judicial Appointments Commission as referred to in article 124A” The use of the word “recommendation” is bound to cause multiple interpretations similar to the words “after consultation” in the current Article 124 of the Constitution. The proposed Article 124 of the Constitutional Amendment has to clarify the nature of the ‘recommendation’ made by the JAC and the discretion and powers of the President in the appointment of judges based on the recommendations made by the JAC. The Amendment has to clarify whether the President has the power to reject the recommendation or resend it to the JAC for reconsideration. Hence concluding, these major changes are required in the bill making it a balance and appropriate towards appointment procedure.

End-notes
5 Minerva Mills Ltd. vs. Union of India (1980) 3 SCC 625.1


Article 124 in Indian constitution of 1949

Article 50 in Indian constitution of 1949

Article 124(2) of Indian constitution: “every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years: Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted.”


Justice Shri H.R. Khanna, National commission to review the working of constitution: a consultation on superior judiciary. <https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CBsQFjAA&url=http%3A%2F%2Flawmin.nic.in%2Fncrwc%2Ffinalreport%2Fv2b1-14.htm&ei=UayyU4uuGouwuuSc34CIBw&usg=AFQjCNGJ2OC0--iUXWfo7bT_uUNWd2xnFw>; last accessed at 01/07/2014 18:11


Ibid 17


Supra note 17


Ibid 23

Supra note 18.

Supra note 17.


29 Ibid 28


32 Ibid 30


34 Ibid 32

35 Supra note 31

36 Supra note 31

37 Supra note 31