



THE LUCKNOW CONCLAVE REVIEW

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PREFACE

You are not here merely to make a living. You are here in order to enable the world to live more amply, with greater vision, with a finer spirit of hope and achievement. You are here to enrich the world, and you impoverish yourself if you forget the errand. - Woodrow Wilson

Experiencing a dynamic transformation, India has become the nation with world's largest young population. Every third person in India is a youth and by 2020, India is all set to become the world's youngest country with 64 per cent of its population in the working age group of 15-34. Young people are innovators, creators and leaders of tomorrow as they have enormous capacity to transform the future only if they can understand the complex global issues more clearly.

With a vision of creating responsive, conscious, altruistic and efficacious global citizens empowered to make positive changes in our society, 'The Lucknow Conclave' was held at IIM Lucknow, India from 27th – 29th June, 2014 and it witnessed the presence of 150+ students and young professionals from different backgrounds discussing the complex issues of global relevance on a common platform.

This book is a compilation of the research papers presented by delegates during the conclave and it was their hard work and willingness to bring a change in society, which motivated us to compile those papers in this book. This book is divided into three sections: the first section discusses issues related to Law & Governance while second section is about Education & Healthcare, and third section focuses upon Entrepreneurship & Management.

We would like to invite comments, suggestions and guidance from various experts and readers about this book, for improvements in future. The comments/ suggestions can be mailed to us at adhrit.foundation@gmail.com.

- Editors

On the behalf of Adhrit Foundation

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We would take this opportunity to extend our prayers to the Almighty, our teachers and our parents without whose blessings and guidance any venture is a futile exercise. Lastly, we would like to acknowledge the support of all those whom we could not mention personally in the book but we remember that every bit of support was essential to take this small step.

- Editors

On the behalf of Adhrit Foundation

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LAW
&
GOVERNANCE

UNIFORMITY IN PERSONAL LAWS: TOWARDS GENDER EQUALITY

By Nikhil Issar¹

I. INTRODUCTION

Article 44 of the Indian Constitution mandates the Parliament to strive for the creation of a ‘uniform civil code’. Such a Uniform Civil Code would result in creating order out of the jungle, which our family law system is today. However, ‘uniformity’ is not ordained to mean the destruction of the diversity of our cultural practices and the richness, which is enshrined in the various personal laws, which govern their respective religious communities. ‘Uniformity’ as a concept emerges only when the diversity which results from these personal laws contravenes with the basic tenets upon which our very constitution is framed, i.e. Right to Equality, Right to Live with Dignity, Right to Freedom etc.

The legislative intent to preserve diversity when it poses no threat can be observed through the various bills, which govern the majority community of India, a community which used to be bifurcated into several factions wherein each faction was different from the other in one respect or the other. The Hindu Marriage Act 1956² provides that “*A Hindu marriage maybe solemnized in accordance with the customary rites and ceremonies of either party thereto*”, this provision protects the diversity of cultural ceremonies, which legitimize a Hindu Marriage, thereby protecting the diversity of Hindu culture where it does not pose a threat towards the basic tenets of the Constitution. Moreover, there exist several provisions within which it is custom, which prevails over statutory laws wherever such customs cause no harm to the aim of the statute.³

The Hindu Marriage Act 1956⁴ provides for obtaining a decree of divorce, a concept which altered the nature of a Hindu Marriage which used to be purely sacramental. The religious injunctions in Manu Smriti held that “*A Husband must be obeyed even if he is devoid of all*

¹ Student, B.A. LL.B (Hons.), Hidayatullah National Law University, Raipur.

² Section 7, Hindu Marriage Act, 1956.

³ Section 5 (iv) and (v) and Section 29(2), Hindu Marriage Act 1956.

⁴ Section 13, Hindu Marriage Act, 1956.

virtues”⁵ and it was the duty of the legislature to override such religious injunctions which prolonged the misery of the people subject to it. The Supreme Court of India recently held⁶ that by the Hindu Succession Amendment Act 2005⁷ a daughter is entitled to a share in the ancestral property and is to be a coparcener as if she had been a son. This legislation has uprooted patriarchy from the very root of Hindu Personal Laws and has granted the Hindu Female an equal status as had been guaranteed to them in Article 14 of the Indian Constitution. Thus, Hindu Personal Laws have been modified to an extent that they are now in consonance with our Constitution. However, the personal laws of the minorities have not kept pace with this transition.

The object of this paper is to find out the viability of ‘uniformity’ in our personal law system. ‘Uniformity’ is used in the sense of ensuring uniform rights to all the members of all religious communities. A uniform civil code seeks to divest religion from the secular spheres of civil laws regarding marriage, succession, adoption and divorce by preserving the prevalent custom only when the custom is in consonance with the legal philosophy of Part III of the Indian Constitution. The paper would first comment upon the constitutional debates on Article 44 and the judicial demand for such a uniform civil code, and then the paper would move to the status of women in the various personal laws and how the legislature should act to ensure gender equality.

II. CONSTITUTIONAL DEBATES ON ARTICLE 44

The Constituent Assembly Debates on 23 November 1948 regarding Article 44, which would mandate the central legislature to strive for a uniform civil code, elucidates the basis for the inclusion of this article. The following objections were raised against the inclusion of Article 44 of the Constitution within the debates:

Article 44 being contradictory to Article 25 of the Constitution

Article 25 of the Constitution⁸ provides the freedom to profess, practice and propagate religion subject to the limitations of public order, morality, health and other provisions of Part

⁵ Manu Smriti, v. 147-54.

⁶ Ganduri Koteswaramma v. Chakiri Yanadi AIR 2012 SC 169.

⁷ Section 6, Hindu Succession Act, 1956 & Hindu Succession (Amendment) Act, 2005.

⁸ Article 25(1), The Constitution of India.

three of the Constitution. However, the same is further restricted by clause (2) of the same article which provides that “*Nothing in this article shall affect the operation of any existing law or preclude the state from making any law regulating or restricting any economic, financial, political or secular activity which may be associated with religious practice*”.⁹

It was submitted¹⁰ that the objective of the Uniform Civil Code mandated under Article 44 of the Constitution does not come within the exception generated under Clause (2) of Article 25 and thereby Article 44 of the Constitution defeats the purpose of Article 25.

Personal Laws are “Secular Activities” pertaining to religion

Article 25 permits legislation over religious activities of a secular nature and the intention of Article 44 is to divorce religion from Personal Laws.¹¹ It was emphasized that while in the past religious activities might cover the whole field of life, the government must now demarcate as to what fields pertain to religion and what fields are of a purely secular nature.¹² This interpretation has been further strengthened by the Supreme Court wherein the Supreme Court¹³ defined “*religion*” as “*a matter of faith stemming from the heart and mind. A belief which binds the spiritual nature of man to a supernatural being*”. Thus, this definition of ‘religion’ excludes personal laws from within its ambit.

This was expressly stated by the Supreme Court wherein it stated that the conception of Article 44 is based on the premise that there is no necessary relation between religion and person laws in a civilized society.¹⁴ The Supreme Court categorically stated, “*We believe that marriage, succession and like matters of secular matters cannot be brought within the guarantee enshrined in Articles 25, 26 and 27*”.¹⁵

⁹ Article 25(2), Constitution of India.

¹⁰ Mr Naziruddin Ahmad, Constituent Assembly Debates on 23 November, 1948.

¹¹ KM Munshi, Constituent Assembly Debates on 23 November, 1948.

¹² *Ibid.*

¹³ Lily v. Thomas AIR 2000 SC 1661.

¹⁴ Sarla v. Mudgal AIR 1995 SC 1531.

¹⁵ *Ibid.*

The State can legislate if the legislation pertains to “Social Welfare”.

Furthermore, in the Constitutional Assembly Debates¹⁶ another point was put forth that even if Personal Laws were termed to be activities which did not fall under Clause (2) of Article 25 of the Constitution, the state would be empowered to legislate on the same if such a legislation pertains to “*Social Welfare*”.¹⁷

It is thus submitted that the correct position of law is that there exists no bar to enact a Uniform Civil Code because the same has been construed to be in consonance with Article 25 of the Constitution, by the Supreme Court in the decisions that have been cited above. Furthermore, the enactment of the Hindu Marriage Act, Hindu Succession Act and Hindu Adoption and Maintenance Act, that have been able to run against the earlier personal laws which governed the Hindu community without facing any challenge by way of Article 25 of the Constitution validate the fact that legislation altering personal laws are within the domain of the Parliament despite the existence of Article 25 of the Constitution.

Personal Laws are of an Immutable Nature

It was stated¹⁸ that personal laws, as they are now, have been observed for generations and any interference thereupon shall affect the way of life of people who have been subject to these laws since antiquity. It was argued that this would trample the religious rights and practices of multitudes of communities which have been following various customs since centuries.¹⁹

Personal laws have been changed by Legislations in the past

The basic assumption of this argument is that the personal laws followed by the people of various communities have never been subject to change.

This very assumption was defeated by BR Ambedkar²⁰ who cited several examples of the changing nature of Personal Laws by stating, “*Up to 1939 the North-West Frontier Province was not subject to the Shariat Law and followed It followed the Hindu Law in the matter of*

¹⁶ KM Munshi, Constituent Assembly Debates on 23 November, 1948.

¹⁷ Article 25(2)(b), Constitution of India.

¹⁸ Mohamad Ismail Sahib, Constituent Assembly Debates on 23 November, 1948.

¹⁹ B Pocker Sahib Bahadur, Constituent Assembly Debates on 23 November, 1948.

²⁰ BR Ambedkar, Constituent Assembly Debates on 23 November, 1948.

*succession and in other matters, so much so that it was in 1939 that the Central Legislature had to come into the field and to abrogate the application of the Hindu Law to the Muslims of the North-West Frontier Province and to apply the Shariat Law to them.*²¹ *In various parts, such as the United Provinces, the Central Provinces and Bombay, the Muslims largely were governed by the Hindu Law in the matter of succession. In order to bring them on the plane of uniformity with regard to the other Muslims who observed the Shariat Law, the Legislature had to intervene in 1937 and to pass an enactment applying the Shariat Law to the rest of India.*²² *In North Malabar the Marumakkathayam Law which is a Matriarchal form of applied to all-not only to Hindus but also to Muslims”.*²³

By stating the above examples, Dr. BR Ambedkar categorically proved that the law which was now uniformly applicable to Muslims had originated only through the Shariat Act and were not immutable in nature.

Tyranny of the Majority

It was opined²⁴ that there cannot be imposition of religious interpretations or religious tenets and practices upon communities who insist that their religious tenets should be observed. If the same is done the result would be nothing short of a tyranny of the majority.²⁵

Consolidation of a community does not amount to tyranny

However, KM Munshi²⁶ held the view that tyranny of the majority is not a question. He substantiates his argument by stating the following;

“Nowhere in advanced Muslim countries has the personal law of each minority been recognised as so sacrosanct as to prevent the enactment of a Civil Code. When the Shariat Act was passed or when certain laws were passed in the Central Legislature in the old regime, the Khojas and Cutchi Memons were highly dissatisfied they then followed certain Hindu customs; for generations since they became converts they had done so. They did not want to conform to the Shariat; and yet by a legislation of the Central Legislature certain

²¹ Section 2, The Muslim Personal Law (Shariat) Application Act, 1937.

²² *Ibid.*

²³ *Supra* note 20.

²⁴ Mahboob Ali Baig Sahib Bahadur, Constituent Assembly Debates on 23 November, 1948.

²⁵ *Ibid.*

²⁶ KM Munshi, Constituent Assembly Debates, Vol. VII p. 546,547.

*Muslim members who felt that Shariat law should be enforced upon the whole community carried their point.²⁷ The Khojas and Cutchi Memons most unwillingly had to submit to it. Everyone who travels or lives in European countries which have a civil code have to submit to the civil code of the country in question, tyranny to the minorities does not crop up as a question in these countries.*²⁸

Thus, he contended that to consolidate a community, you have to take into consideration the benefit which may accrue to the whole community and not to the customs of a part of it. An act done for the benefit of the community at large does not amount to tyranny.

The majority community is equally affected

Furthermore, the fact remains that the majority community in itself has had to relinquish a lot of its own personal laws to achieve uniformity²⁹; if a Uniform Civil Code is tyrannical to the minority it is equally tyrannical to the majority community. However, the laws enacted being for the benefit of India as a community at large does not amount to any tyranny. Even if these laws were to be termed “*tyrannical*” they would be tyrannical to the majority and the minority because of the diversity present in both the communities.

Thus, it can be concluded from the above discussion that the grounds upon which the inclusion and the implementation of Article 44 of the Constitution had been challenged were successfully refuted. Furthermore, the Supreme Court³⁰ has even directed the Parliament to perform the mandate given to it under the same Article displaying that even the Supreme Court feels that there exists no real legal obstacle to the implementation of Article 44. The only obstacles that exist are merely of a political nature.

III. THE GRADUAL CHANGE IN PERSONAL LAWS

Hindu Personal laws have gone through a sea of change after independence. From recognizing polygamous marriages as valid institutions, Hindu personal laws now permit a daughter to become a coparcener in a Hindu Joint Family.³¹ Thus, the erstwhile patriarchal

²⁷ Section 2, The Muslim Personal Law (Shariat) Application Act, 1937.

²⁸ *Supra* note 24.

²⁹ Hindu Marriage Act, 1956; Hindu Adoption and Maintenance Act, 1956; Hindu Succession Act, 1956.

³⁰ *Sarla v. Mudgal* AIR 1995 SC 1531.

³¹ Section 6, Hindu Succession Act, 1956 & Hindu Succession (Amendment) Act, 2005.

Hindu personal laws have been transformed into socially progressive laws which have attained gender equality in the legal sense.

Unlike Hindu Laws, the development of Muslim Personal Laws has been sluggish. Pre-independence era witnessed many Islamic reformers coming up with modern interpretations of Muslim laws. Sir Syed Ahmad Khan, Justice Ameer Ali, Nawab Muhsinul Mulk, Maulvi Khudabakhsh and many others laid foundations of modern interpretations. Unfortunately, such interpretations did not result in any fruits because of the erstwhile socio-political conditions. Thus, all the rigid, orthodox and archaic interpretations of Islamic law prevailed. However, there still has been progress made in the field of Islamic Personal Law, which has been dealt with hereunder;

Divorce

The legislature through its 'Dissolution of Muslim Marriage Act, 1939 provided to the Muslim wife thirteen grounds on which she could file a petition for divorce through court.³² This act was passed with a view to give the Muslim wife the right to obtain a divorce through a decree of court so as to balance the Muslim husband's unfettered right to pronounce 'Talaq'.

Maintenance

With the passage of time, Islamic law witnessed many changes. One such change was with regard to maintenance. Earlier law required Muslim men to maintain their ex-wives only for the period of *Iddat*, while also returning their dower. Maintenance was provided for longer period only in special circumstances.³³

Shah Bano's Case

The issue of whether a Muslim Woman is entitled to claim maintenance under s. 125 Criminal Procedure Code (Cr.P.C.) was decided in the case of Shah Bano³⁴ wherein it was held that Muslim women are entitled to claim to maintenance under s. 125 Cr.P.C. This is a secular provision and the benefit is available to every citizen irrespective of their caste or

³² Section 3, Dissolution of Muslim Marriage Act, 1939.

³³ Muhammaid Muin-ud din v. Jama Fatima.

³⁴ Mohd.Ahmed Khan V Shah Bano Begum (1985)2 SCC 556.

religion etc. It was further held that although the Muslim law limits the husband's liability to provide for maintenance of divorced wife to the period of *Iddat*, it does not contemplate or countenance the situation envisaged by S. 125 of the Code of Criminal Procedure. The court held that it would be incorrect and unjust to extend the above principle of Muslim law to case in which the divorced wife is unable to maintain herself.

Muslim women (Protection of Rights on Divorce) Act, 1986

After the judgment of Shah Bano case, there was some unrest in the Muslim community. In consequence of that the Muslim women (Protection of Rights on Divorce) Act, 1986 was passed which states that the husband is liable to pay a reasonable and fair provision and maintenance within the *Iddat* period.³⁵ It waived off the liability imposed upon the Muslim male to maintain his divorced wife under S. 125 of Cr.P.C. by stating that the application of this provision would be of a voluntary nature.

The Hon'ble Supreme Court in *Daniel Latifi v. Union Of India*³⁶ held that Clause (1-a) of S. 3 does not limit the duty of the husband to pay maintenance only for the period of *Iddat*, rather the duty is to make the necessary arrangements within the *Iddat* period but the arrangements had to be made for the entire life of the wife until she gets remarried. Clause (1-a) requires the husband to make necessary provisions for the wife which means provisions like her shelter and the similar means whereas it also requires the payment of maintenance which implies payment of money. Thus, the judiciary and the legislature ensured that the Muslim woman would not face destitution at the hands of the Muslim male and maintenance would be provided for the Muslim women.

Adoption

Prophet Mohammed was a vehement supporter of adoption of orphans and attached religious values to adoptions. He adopted a slave and looked after him as if he was his own child.³⁷ On the contrary, Qur'an specifically points that adoptive parents are different from biological parents.³⁸ The major difference that Islam lays down is that an adopted child retains the name of his biological family rather than the family in which he was adopted. Parents act merely as

³⁵ Section 3(1)(a), Muslim Women (Protection of Rights on Divorce) Act, 1986.

³⁶ *Daniel Latifi & Ors. v. Union of India* (2001) 7 S.C.C. 740.

³⁷ Huda, *Adopting a Child in Islam*, available at <http://islam.about.com/cs/parenting/a/adoption.htm>.

³⁸ Qur'an 33:4-5.

trustees of the child and hence the child does not have any share in the property of adoptive parents.³⁹ Moreover, adoptive parents do not even attain the title of ‘*Murhim*’ that provides them guardianship in the matters of marriage and other legal relationships.⁴⁰

Such personal laws acted as huge impediment for many Muslim couples who wanted to adopt children. However, in the case of *Shabnam Hashmi v. Union of India*⁴¹, the Apex Court has brought some relief for such couples by conferring right to adoption to Muslim couples. The Supreme Court adjudged that the Juvenile Justice Law was an enabling provision and was applicable to all the religions equally.⁴² Adoption is a fundamental right and cannot be shadowed down by personal laws of Muslims.

The legislature has taken cautious steps by striving to attain ‘uniformity’ by way of piecemeal legislations instead of codifying a comprehensive uniform civil code. ‘Uniformity’ as has been mentioned earlier in the paper is used in the sense of ‘Uniformity of rights’, that is to say members of each community should possess equal rights protecting their self-interests which have been guaranteed by the Part 3 of the Constitution of India.

IV. GENERAL PRINCIPLES FOR THE FORMULATION OF A UNIFORM CIVIL CODE

Since the inception of Uniform Civil Code in Article 44 of the Constitution, the Judiciary has discussed about its necessity time and again. This section would formulate general principles, which should be followed while formulating a Uniform Civil Code

Preserving Diversity wherever it does not conflict with the Core Constitutional Values

Diversity in religious ceremonies should not be affected by any legislation of the Parliament. Wherever customs and religious ceremonies appear to be in consonance with the basic constitutional values they should be preserved by the legislature and should not be repealed by statutory provisions. A custom which is proved legitimate in the eyes of the Constitution

³⁹ Sayyid Muhammad Rizvi, *Adoption in Islam*, available at <http://www.al-islam.org/adoption-Islam>

⁴⁰ Darul Ihsan, *Adoption of Child in Islam*, available at http://www.muftitaqiusmani.com/index.php?option=com_content&view=article&id=23:adoption-of-a-child-in-islam&catid=9:miscellaneous&Itemid=18.

⁴¹ *Shabnam Hashmi v. Union of India*, (2014) 4 SCC 1.

⁴² *Ibid.*

should have overridden the statutory provisions of the Uniform Civil Code, or they may be incorporated within the Uniform Civil Code by using residuary clauses. A custom that has been upheld by the courts for long should be duly recognized. The legislature must endeavor to preserve diversity as such diversity would protect the cultural identities of the people of different communities and help us achieve our objectives without alienating the various communities present in the India. For example, laws relating to the essentials of marriage in various communities would be preserved with respect to the various traditions that govern them insofar a tradition that appears to be against the social welfare of the nation as a whole is brought to light.

Adopting Laws which Promote Gender Equality and Social Welfare

The Uniform Civil Code like any other legislation would draw upon other legal systems and the prevalent personal laws of various communities while formulating its own laws. Such laws would be adjudged as to if they are able to provide the greatest level of gender equality. A law that is able to stand this test shall be deemed fit to be put in the proposed Uniform Civil Code along with the alterations that maybe desired to suit the social conditions of the country. A religion neutral approach should ensue. This religion neutral approach is not to be confused with an ‘anti-religion’ approach; it is an approach wherein the best practices that have led to the creation of much more harmony and social welfare would be included without minding the origin of such practices.

V. SPECIFIC REFORMS

This paper with its limited purview would like to seek some specific reforms, which should be included within the uniform civil code if such legislation is to ever materialise.

Extra-Judicial Divorces shall be valid only if they fall under a reason similar to those mentioned in S. 13 of the Hindu Marriage Act, 1956

Extra Judicial divorces are those divorces which are effectuated without the intervention of the court. The Muslim Personal Law recognizes two such forms of divorce which are ‘*Talaq-ul-sunnat*’ or ‘*Talaq-ul-biddat*’.

“*Talak-ul-sunnat*” or approved form of *Talaq* is of a revocable nature and is achieved by a single pronouncement of divorce made in a period of *tuhr* (purity, i.e., period between two

menstruation courses), followed by abstinence from sexual intercourse during the period of *Iddat*.⁴³

Talaq-ul-biddat is the irrevocable form of *Talaq* wherein three pronouncements made during a single *tuhr* or a single pronouncement made during a *tuhr* clearly indicating an irrevocable intention to dissolve the marriage constitutes as a *Talaq*.⁴⁴

Talaq-ul-biddat or the unapproved form of *Talaq* has been upheld as constitutionally valid in several cases before the Supreme Court of India. In *Shamim Ara v. State of U.P.*⁴⁵ the Supreme Court held that a *Talaq* must be for a reasonable cause and must be preceded by attempt at reconciliation between the husband and the wife by two arbiters one chosen by wife's family and the other from husband's family and it is only if their attempts fail, *Talaq* may be effectuated.

The cases, which have sought for a declaration that S. 2 of the Muslim Personal Law (Shariat) Application Act, 1937 as, void and unconstitutional which are mainly that it does not provide for reconsideration and is not preceded by attempts at reconciliation.⁴⁶ Nevertheless, the judgment of the Supreme Court in *Shamim Ara v. State of U.P.*⁴⁷ has invalidated such claims by holding that a *Talaq* must only be for a reasonable cause and preceded by an attempt at reconciliation.

The Uniform Civil Code shall then propose to codify what such a 'reasonable cause' should in fact be and provide for a mechanism in which a *Talaq* that without meeting the requirements of the Uniform Civil Code can be set aside by a decree of the court.

The code shall look to create a system wherein when an extra judicial divorce by the form of *Talaq* whether it is *Talaq-ul-sunnat* or *Talaq-ul-biddat* can be judicially challenged to ascertain whether the *Talaq* was pronounced in a reasonable way, to assure if it is a valid *Talaq* as per the tenets of Islam. A *Talaq* would be deemed to be pronounced in a reasonable way if it made within any of the recognized grounds arising out of fault theory of divorce, consent theory of divorce and irretrievable breakdown theory of divorce.

⁴³ AQIL AHMAD, *MOHAMMEDAN LAW* 170 (25th ed. Central Law Agency 2015).

⁴⁴ *Ibid* at p. 171.

⁴⁵ 2002 AIR SCW 4162.

⁴⁶ A.S. Parveen Akthar v. The Union of India (UOI) 2003-1-LW370.

⁴⁷ *Shamim Ara v. State of U.P* 2002 AIR SCW 4162.

Such grounds can be incorporated from the English Matrimonial Causes Act, 1937⁴⁸ which is also a source of ‘grounds’ in Hindu Marriage Act 1956⁴⁹.

However, it is to be noted that this prospect of creating grounds does not vitiate the concept of *Talaq* as a whole, a *Talaq* once pronounced would continue to be effective but this merely gives the wife a chance to challenge the validity of the *Talaq* so pronounced. The wife shall have a legal right to challenge the *Talaq* and if the court finds that, the *Talaq* so pronounced does not fall in consonance with the grounds that have been mentioned earlier, such a *Talaq* would be deemed unreasonable and would accordingly be set aside.

A petitioner would not file for divorce under the grounds which have been discussed earlier; it is the validity of the already achieved *Talaq* that would be put to test. Thus, it would be the onus of the respondent to prove to the court whether or not the *Talaq* so pronounced stands up to the test of reason.

The result of such a provision protects both age-old customs and the rights of women.

Bigamous Marriages to be Declared Void

The Quran ordains “*Marry such women as seem good to you, two, three or four, but if you fear that you cannot do justice then marry only one, this is better so that you may not deviate from the right path . And it is not in your power to do justice between wives; even though you may covet it; but keep yourself not aloof from one with total aversion nor leave her like one in suspense*”⁵⁰

As is clear from the above verses of Quran that in Islam monogamy is the general rule and polygamy is an exception. However, it is generally believed that Muslims are freely allowed by their religion to contract four marriages at a time.⁵¹

In *State of Bombay v. Narasu Appa Mali*⁵² the Bombay Preventive of Hindu Bigamous Marriages Act, 1946 was challenged and was held ultra vires the Constitution. In this case the validity of the abolition of polygamy in particular communities only was challenged. The

⁴⁸ Sections 2 and 3, English Matrimonial Causes Act, 1937.

⁴⁹ Section 13, Hindu Marriage Act 1956.

⁵⁰ Holy Quran IV:4.

⁵¹ Aqil Ahmad, Mohammedan Law 143 (25th ed. Central Law Agency 2015).

⁵² State of Bombay v. Narasu Appa Mali AIR 1952 Bom 84.

court observed that, the Constitution sets up a secular State to secure for the citizens a Uniform Civil Code throughout the territory of India, and still the State of Bombay by legislation has discriminated between Hindus and Muslims only on the ground of religion and has set up a separate code of social reform for Hindus different from that applicable to the Muslims.

The legislature should in accordance with the Article 14 of the Constitution and the Quran itself, term bigamous marriages as void, as it had done by way of the Hindu Marriage Act 1956.⁵³ The polygamous marriages, which have been commissioned before such an Act is passed, must become a ground for divorce in a manner similar to that of the Hindu Marriage Act 1956.⁵⁴

VI. CONCLUSION

A Uniform Civil Code is a necessity for India to advance as a society. It is imperative on the part of the legislature that the values, which are enshrined in Articles 14 and 21 of the Constitution, shall be guaranteed to each citizen of India and the archaic personal laws, which have retained their patriarchal roots, do not prove to be impediments to this very purpose.

This paper has conclusively proven the fact that Personal laws can be amended and should be amended for the greater good of society. The Constitution does not provide protection to religious customs, which are detrimental to the social welfare of the citizens of India, it is thus seen that Article 25 of the Constitution is not a defence to the existing system of personal laws. A progressive society sheds of its archaic laws or adopts modern interpretations of the same, as the majority community herein has itself adopted laws that go contrary its religious injunctions it cannot be deemed fit that there can be a tyranny of the majority.

Social reform can only ensue if all religious communities are brought into its fold. This paper has set out the general principles through which social reform can be attained. The duty of implementing the spirit of this paper lies with the legislature.

⁵³ Section 5(1), Hindu Marriage Act 1956.

⁵⁴ Section 13(2)(i), Hindu Marriage Act 1956.

RESTITUTION OF CONJUGAL RIGHTS: A DEBATE OVER ITS CONSTITUTIONALITY

By Priyanka Arora¹

A great marriage is not when the “perfect couple” comes together. It is when an imperfect couple learns to enjoy their differences.-Dave Meurer

Marriage is an integral aspect of the very dominant social organization termed society. Marriage has been regarded as a sacrament which is both eternal and indissoluble in nature as per the Hindu teachings. Matrimony binds two people who are consequently placed on equal footing in terms of rights and liabilities arising out of their marital ties. A renowned notion which established its roots in society is Manu’s idea, “neither by sale nor by desertion is wife released from the husband”². The controversial misinterpretation of Manu’s idea has caused a false belief amongst masses that this principle is merely applicable to women only. Evidently, in India a wife has been underplayed as a dispensable counterpart furthering unequal treatment of women in our society. Hindu Marriage Act, 1955 facilitates remedies to protect the sacramental aspect of marriage. Restitution of Conjugal Rights surfaced as a positive concept but has been misused thereby abusing the sanctity of a wife. In light of the disdainful reality the authors will examine the viability of this remedy by questioning its constitutionality. The inappropriate usage of this matrimonial remedy could possibly hinder the the right to life, liberty, privacy and equality. Thus one can render it unconstitutional as it attacks the crux of the constitution of India. The conclusive findings suggest that there are inherent disparities existing in law despite extensive judicial activism that has penetrated in the legal system. The flaws need to be sieved and eliminated to ensure Restitution of conjugal rights is embraced as a socially viable remedy.

I. INTRODUCTION

The two indispensable institutional pillars in our society are family and marriage. Urban and rural societies in India are connoted as chariots resting on these institutions that serve as a pair of wheels furthering their existence. Having a moral path often channelizes social machinery in the right direction and helps it attain the purpose of its existence. Societies must be governed by certain norms, which have developed into customs and usages with the

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² The Laws of Manu, c. 1500 BCE, Indian History Sourcebook (Chapter IX Rule 46), available at <http://hinduism.about.com/library/weekly/extra/bl-lawsofmanu8.htm>.

passage of time.³ This paper encompasses the concept of marriage and its implications in the form of restitution of conjugal rights. Undoubtedly, it is an institution governed and recognized by personal laws of every recognized religion in India. The institution of marriage is presently appearing as a peak of an assorted concept, which has extended over a long period.⁴ With the onset of urbanization, broadening of social ideologies and marital life complexities namely divorce; judicial separation and conjugal rights gained a significant footing in personal laws. This paper also highlights notable issues linked with codification of marriage laws in India.⁵ Consequently, this has caused a stir amongst dominant religions of the nation. They have ploughed considerable effort to codify their own personal laws, giving birth to anew era of personal law legislation that presently encompasses Hindu Marriage Act, 1955, Indian Divorce Act, Parsi Marriage and Divorce Act, 1936 etc.⁶

The authors after having assessed personal laws in their objective sense have deduced that these laws carry provisions to ensure parties in a marriage are vested with certain rights existing specifically out of the wedlock only. These rights are called Conjugal Rights.⁷ When spouses who have previously entered into marital ties, start living separately *i.e.* one spouse leaves the society (matrimonial home) of the other, then in order to have some remedial measures for the disadvantaged party, which acts as a kind of restoration, there comes the concept which in a way tries to fulfil one of the most important objectives of these personal laws *i.e.* to prevent the marriage ties from being getting broken and fulfilling one of the most fundamental purposes of marriage *i.e.* spouses must live together after the marriage and that one spouse is entitled to the society and comfort of the other spouse.⁸ This concept is known as “*restitution*”⁹ of conjugal rights.

³ B M GANDHI, HINDU LAW 277-278 (2nd ed. Eastern Book Company 2003).

⁴ S.J. Peasants, *Hindu Women and the Restitution of Conjugal Rights: Do we need a remedy*, available at <http://www.manupatra.com/Articles/Articles.asp>.

⁵ KUMUD DESAI, INDIAN LAW OF MARRIAGE AND DIVORCE 136-137 (7th ed., Wadhwa and Company Nagpur 2008) .

⁶ SIR DINSHAH FARDUNJI MULLA, MULLA PRINCIPLES OF HINDU LAW 895 (Satyajeet A. Desai eds., 21st ed. Lexis Nexis Butterworths Wadhwa 2010).

⁷ B M GANDHI, HINDU LAW 277-278 (2nd ed. Eastern Book Company 2003) defines Conjugal rights as ‘*it is the rights of the couples to have each other’s society and have marital intercourse*’.

⁸ *Ibid.*

⁹ *Ibid.* It defines Restitution as ‘*In its etymological sense it means restoring to a party on the modifications, variation or reversal of a decree what has been lost to it in execution of the decree or in direct consequence of the decree.*’

It is a much known reality that the law of the land has been held at the topmost pedestal and regarded as a supreme authority in governance. Every piece of legislation must be in accordance with the basic structure of the Constitution of India. In light of this grass root principle the authors have grasped the essence of personal laws and the esteemed importance of marriage as an integral component of society. Recently, numerous issues have been raised in court of laws particularly in the Apex court (guardian of fundamental rights) questioning whether the laws related to restitution of conjugal rights is against the principles of natural justice and part III of the Constitution of India or not? This debatable question has garnered attention of the legal fraternity and the nation. For any law to remain alive in the legal system of India it should comply with the basic structure of the Constitution and fundamental rights *i.e.* Part III is the basic structure of the constitution. Therefore, the main aim and object of this article is to adjudicate upon the issue of the validity of the provisions granting restitution of constitutional rights in various personal laws, on the touchstone of the constitutional law principles enshrined under Part III of the constitution.

With the above stated aim and object the methodology that the authors have adopted to write this paper, is an in depth analysis of authoritative books written by remarkable and credible scholars. Relevant case laws adjudicated by various High Courts and the Apex court have been appropriately utilized to support the authors' findings.

II. RESTITUTION OF CONJUGAL RIGHTS: CONCEPT, ORIGIN AND APPLICATION IN THE INDIAN SCENARIO (UNDER FOUR MAJOR PERSONAL LAWS IN INDIA)

In order to appreciate the debate over the constitutionality of the provisions of Restitution of Conjugal Rights it is necessary to explore the origin, concept and application of the law on restitution of conjugal rights. A peek into the history will help understand the course taken by the legislation with the transition of time.

Origin

Before embarking on the pathway to assess the future of Restitution of Conjugal Rights, understanding the historical development is essential. A window in the past serves as a prerequisite for gauging its origin in India. The principle of restitution of conjugal rights was never documented under the *Dharmashastra* nor did the Muslim law made any

provisions for it.¹⁰ Nevertheless, it entered India during the much detested British Invasion when it was introduced in the name of social reforms (as per the British Raj).¹¹ For the first time this concept was introduced in India in the case of *Moonshee Buzloor Ruheem v. Shumsoonissa Begum*¹² where such actions were regarded as considerations for specific performance.¹³

Furthermore, Restitution of conjugal rights has its roots in the period of feudal England, where marriage was merely considered as a property deal and a wife was considered only a part of man's possession like other chattels. In this regard there is an ever increasing need to highlight that this concept was never welcomed by the English Society and to support this line of thought, the authors would like to make a mention of the opinion given by *Sir J Hannen* in the famous English judgment of *Russell v. Russell*.¹⁴ This demonstrates that the concept of restitution of conjugal rights is very barbarous; moreover, it has been blatantly misused resulting in the ultimate abolishment of this reform in England by the Law Reforms (Miscellaneous Provisions) Act, 1947.¹⁵

Concept

Now after having a good overview over its origin, we must sweep over the conceptual background of this marital remedy to stimulate our thoughts regarding its nuances. It has been repeated since times immemorial that marriage is an institution under all prevailing matrimonial laws, it is a kind of pious union where spouses gets certain legal rights to rely upon in exchange of which they are additionally vested with certain duties to perform. Rights, duties, obligations and emotions play a pivotal role to run the cycle of marital life with all its implications. It is a union to enrich lives of those involved, however when the course of events turn otherwise matrimonial remedies serve as a legal aid to heal.

A marital bond is based on obvious concepts such as both the spouses are under a necessary obligation to to live together both physically and emotionally *i.e.* comfort

¹⁰ .PARAS DIWAN, LAW OF MARRIAGE AND DIVORCE 328 (5th ed., Universal Law Publishing Co. 2008).

¹¹ *Ibid.*

¹² *Moonshee Buzloor Ruheem v. Shumsoonissa Begum* (1877) ILR 1 Bom 164.

¹³ *Ibid.*

¹⁴ Saloni Tuteja, *Restitution of Conjugal Rights: Criticism Revisited*, available at <http://www.legalserviceindia.com/articles/abol.htm>.

¹⁵ S.P.GUPTA, HINDU LAW IN BRITISH INDIA 186 (2nd ed. Premier Publishers Delhi 1947).

consortium.¹⁶ This is categorically emphasized under all the personal laws *i.e.* Muslim, Hindu, Christian and Parsi religion. The concept of restitution of conjugal rights is present in all the following listed laws *i.e.*

- Hindu Law: Hindu law is mainly governed by the Hindu Marriage Act, 1955. This one piece of legislation covers almost all the nuances of Hindu religion. The concept of Restitution of Conjugal Rights is also present in Hindu Marriage Act¹⁷ and expressly given under S.9 of the Act.
- Muslim Law: Under Muslim religion, this concept of restitution of Conjugal Rights is given under the general law and they consider it as securing to the other spouse the enjoyment of his or her legal rights. Here earlier it was considered as the concept of specific performance but the case of *Abdul Quadir v. Salima*¹⁸ inculcated new understanding whereby restitution must be decided on the principles of Muslim Law and not on the basis of justice, equity and good conscience.¹⁹
- Christian law: Under Christian Law, the provision of restitution of Conjugal Rights is stated under Ss. 32 and 33 of the Indian Divorce Act, 1929.²⁰
- Parsi Law: Under Parsi law also there is a provision of restitution of conjugal rights and it is given under S.36 of the Parsi Marriage and Divorce Act, 1936.²¹
- Another category beyond all the religions where only special marriages are being recognized is under Special Marriage Act, 1954²² that also carries the remedy of restitution of conjugal rights under S. 22 of the Act.²³

Hence, it can be concluded that all personal laws in India imbibe full-fledged provisions of restitution of conjugal rights and all the above listed provisions are gender neutral, consequently give equal remedy to both the spouses. There are mainly four major

¹⁶ *Supra* note 6.

¹⁷ Section 9, Hindu Marriage Act, 1955.

¹⁸ *Abdul Quadir v. Salima* (1886) ILR 8 All 149.

¹⁹ *Ibid.*

²⁰ Sections 32 and 33, Indian Divorce Act, 1929.

²¹ Section 36, Parsi Marriage and Divorce Act, 1936.

²² Section 22, Special Marriage Act, 1954.

²³ *Mohan Lal v. Shanti Devi*, A.I.R.. 1964 All 21.

premises in all the personal laws based on which the court of law orders the decree of restitution of conjugal rights *i.e.*:²⁴

- Withdrawal by the respondent from the society of the petitioner.
- The withdrawal is without any reasonable cause or excuse or lawful ground.
- There should be no other legal ground for refusal of the relief.
- The court should be satisfied about the truth of the statement made in the petition.

On examining all the above listed requisites, it is clear that the court will only grant the decree of restitution of conjugal rights if it gets satisfied on these grounds. When the petitioner proves that the respondent has withdrawn from the society of petitioner without any reasonable excuse,²⁵ in addition to this, all the statements made by the aggrieved spouse should be true so that there should not be an establishment of any valid ground on which the petition of the aggrieved party should not be granted.²⁶

Application

The integral value of any law is not known by what the law is in its textual form but the manner in which the law has been adopted by the society, executed and applied on the subjects. On applying the provisions of restitution of conjugal rights, the background situation which should be considered is that suppose any problem stems between spouses due to which either of them withdraws from the other's society then the aggrieved party can file a legal petition in the court of law to attain a decree of restitution and thus reconstitute the marital or conjugal life which could be suffering from negative vibrations. Many a times a negative storm of grave magnitude can result into a breakdown of relationships.²⁷ This right of cohabitation with the other spouse, as per the text of law is gender neutral and here the rights are equally available to both the spouses. Consequently, it can lead up to two outcomes. Either both the spouses will find harmony in togetherness again thus rekindling their marital life or if the decree is not obliged by any of the spouse

²⁴ KUSUM, FAMILY LAW LECTURES 42-44 (3rd ed., Lexis Nexis Butterworths Wadhwa 2011).

²⁵ Aditya Swarup, *Constitutional Validity of Restitution of Conjugal Rights: Scope and Relevance*, available at <http://works.bepress.com/adityaswarup/8>.

²⁶ *Ibid.*

²⁷ *Supra* note 4.

then it can be enforced by the attachment of property²⁸. In the event that it is again not followed, the court will punish him or her for not following the decree and then it will amount to destruction from the side of erring spouse as it hampers the ultimate motive of the marital life, which endorses that both the spouses should enjoy the society of each other.²⁹ There is a very important requirement for the execution of the provision of restitution of conjugal rights in the correct sense *i.e.* there should be an absence of reasonable excuse based on which the erring spouse has withdrawn from the society of the aggrieved spouse and the burden of proof for this reasonable excuse is on the erring spouse.³⁰

III. IS RESTITUTION OF CONJUGAL RIGHTS CONSTITUTIONALLY PLAUSIBLE?

The discussion can be taken forward from the last stage since a very clear picture has been drawn about the concept and background of the principle of restitution of conjugal rights. The discussion is moving towards the debate over the constitutionality of restitution of conjugal rights. Before starting the debate, the authors would like to put forth their own opinion on the origin of the whole concept. The opinion is contradictory to what has been mentioned earlier in this paper *i.e.* it cannot be said that the concept of restitution of conjugal rights and that its embodiment in Indian legal jurisprudence is foreign to the Indian culture and society. Such right is innate in the very foundation of marriage in itself. The only thing, which can be said as new about this concept, is its formal incarnation under the various set of personal laws.³¹ Now with this understanding and opinion the authors are heading towards the debate in order to arrive over a definite and concrete conclusion over the question of constitutionality of restitution of conjugal rights. In order to appreciate this debate first, the authors have reviewed the past periodicals from where the question of constitutionality of restitution of conjugal rights appeared for the very first time. In order to consider this question, the authors would firstly like to crosscheck the assumption which, was made in the starting, the assumption was that personal laws come

²⁸ Rules 31 and 32, Order 21, CODE OF CIVIL PROCEDURE 1908.

²⁹ Vimal Balasubrahmanyam, *Conjugal Rights v Personal Liberty: Andhra High Court Judgment*, available at <http://www.jstor.org/stable/4372307>.

³⁰ Arlette Gautier, *Legal Regulation Of Marital Relations: An Historical And Comparative Approach*, available at <http://lawfam.oxfordjournals.org/content/19/1/47.abstract#target-1>.

³¹ *Supra* note 14.

within the ambit of “Article 13”³² of Constitution of India because the personal laws have the base of 'custom'. After taking into consideration the decision in the case of *State of Bombay v. Narasu Appa Mali* and *J. Chagla's* general opinion over Articles 13 and 17 of the Constitution, the authors want to put forth that the personal laws which are based upon the customs are not the same as what custom means in the context of Article 13 of Constitution of India. This is so because the customs that forms the base of the personal laws is not able to fulfil the scope of Article 13. Additionally if personal laws become a part of Article 13, then Article 17³³ would not have been added in the constitution thereby demonstrating that the constitution drafters did not consider embodying personal laws under the ambit of Article 13.

Nevertheless, any principle of personal law should not contradict the basic structure of the Constitution and in this regard Part III of the Constitution because it is also a kind of law and no law should go against the law of the land *i.e.* Constitution of India.³⁴

In one case, the erring spouse *i.e.* the wife challenged the constitutional validity of s.9 of Hindu Marriage Act, 1955 on this ground. Learned judge P. Chaudhary J. who held that, S.9 is a, “*savage and barbarous remedy violating the right to privacy and human dignity guaranteed under Article 21 of the Constitution, hence void*”, decided this case.³⁵ Just after a period of one year, when the same question surfaced again in the case of *Harvinder Kaur v. Harminder Singh*³⁶ then the dicta used by *Chaudhary, J.* did not find support and acceptance with the Delhi High Court. In that case, decided by single judge bench of Rohtagi J., it was held that, “*Justice Chaudhary in the case of T. Sareetha has over relied on sex is the basic fallacy in his opinion...J. Chaudhary only seems to suggest that restitution of conjugal rights order has only a maiden purpose, that is, to force the disinclined wife to enter into sexual intercourse with her husband*”.³⁷ Following such intensely heated debate, this matter finally came before the Apex court in the case of *Saroj Rani v. Sudarshan Kumar Chadha*³⁸ where the Supreme Court overrode the dicta of

³²Article 13, Constitution of India.

³³ Article 17, Constitution of India.

³⁴ H K SAHARAY, FAMILY LAW IN INDIA 41 (1ST ed., Eastern Law House 2011).

³⁵KUSUM, CASES AND MATERIALS ON FAMILY LAW 58 (2ND ed., Universal Law Publishing House 2010).

³⁶ *Harvinder Kaur v. Harminder Singh*, A.I.R. 1984 Del. 66.

³⁷ *Supra* note 29.

³⁸ *Saroj Rani v. Sudarshan Kumar Chadha*, A.I.R. 1984 S.C. 1652.

*T. Sareetha*³⁹ on the basis of the judgement given by Rohtagi J. in the case of *Harvinder Kaur*⁴⁰. This case was decided by J. Sabyasachi Mukarji who said that “*it cannot be viewed in the manner the learned single Judge bench of the Andhra Pradesh High Court has viewed it and we are unable to hold that s.9 is to be violation of Article 14 and Article 21 of the Constitution*”.⁴¹ Thus, ultimately as per the law declared by the Apex Court the issue was in favour of constitutionality of s.9 of Hindu Marriage Act, 1955. Thus, the principle of restitution of conjugal rights stands as constitutional in the Indian legal system of personal laws.⁴²

The principles on which the Constitution of India got developed was basically the principles of Equality, Human Dignity and Personal Liberty *i.e.* Articles 14, 19 and 21 of the Constitution of India and for any law if there is a need to check the constitutionality then, we should check the law on the basis of the above listed three basic principles of Constitution of India. Taking into account the aforementioned discussions, the authors would effectively begin the discussion, which has the possibility of getting complex with passing time. The discussion on the constitutionality of restitution of conjugal rights will be divided into two parts *i.e.* First part will deal with the arguments that it is perfectly constitutional; the second part will deal with the arguments, which try to prove s. 9 unconstitutional.⁴³

Part I

This part will be divided into two sub-parts; in these parts, the authors would test the principle of restitution of conjugal rights against the two main fundamental rights *i.e.* right to equality (Article 14) and right to life and privacy (Article 21). *Firstly*, with regard to the right enshrined to every Indian citizen by the virtue of Article 14 *i.e.* right to equality, the authors would state that our social approach has been termed as one with wide range of gender discrimination.⁴⁴ Most of the women have been subdued to this discrimination because of their gender. This is the pivotal reason that why restitution of conjugal rights was challenged on the ground that it violates the mandate of Article 14 but in addition to

³⁹ T. Sareetha v. T. Venkata Subbaiah, A.I.R. 1983 AP 356.

⁴⁰ Harvinder Kaur v. Harminder Singh, A.I.R. 1984 Del. 66.

⁴¹ KUSUM, CASES AND MATERIALS ON FAMILY LAW 55 (2nd ed., Universal Law Publishing House 2010).

⁴² H K SAHARAY, FAMILY LAW IN INDIA 41 (1ST ed., Eastern Law House 2011).

⁴³ *Supra* note 41.

⁴⁴ *Supra* note 25.

this it must also be noted that as per the statistics in our society, the suit for restitution filed by the men is much higher as compared to those filed by women. Furthermore, gender discrimination in our society is mostly done on economic and educational grounds. It is not done on the grounds of matrimony and marriages.⁴⁵ Moreover, all personal law provisions related to marriages are gender neutral and give equal rights to both the spouses. Article 14⁴⁶ has an underlying principle that persons who are similarly circumstanced should be treated alike both in terms of conferring of privileges and imposition of liabilities.⁴⁷ In this regard the authors would like to refer the sayings of famous scholar *Gupte* whose line of thought was affirmed by the court in the case of *T. Sareetha* but *Gupte's* sayings came before the drafting of many personal laws which are considered as modern legislation and which are made on the grounds of justice, equity and good conscience. No inequality existed in these set of laws at that point.⁴⁸ In addition to this specifically for Hindu Marriage Act, 1955, by the virtue of 44th amendment act of 1964 both the set of laws *i.e.* s.9 (RCR) and s. 13(1) (divorce) were made gender neutral. Ultimately, we can conclude that sex is not the distinguishing factor and all are treated equally. Specifically s.9 of the Hindu Marriage Act and generally the provision of restitution of conjugal rights cannot be struck down on the ground of violation of Article. 14 of the Constitution. The only thing, which must be corrected instantaneously, is the way of understanding the idea present behind the law.⁴⁹

Secondly, the restitution of conjugal rights came into question as it violates the right to life and privacy enshrined under Article 21 of the Constitution. The provision of restitution of conjugal rights given under various personal laws has been criticized and challenged as they are only used as a vital instrument to encapsulate the forced sexual relation. Hence, it is violating “*right to privacy*”⁵⁰ enshrined indirectly under Article 21 of the Constitution.⁵¹ However, if one goes into the purpose of restitution which aims at

⁴⁵ *Supra* note 30.

⁴⁶ Article 14, Constitution of India states that ‘*The state shall not deny to any person equality before the law or the equal protection of laws within the territory of India*’.

⁴⁷ *Ibid.*

⁴⁸ S.P.GUPTA, HINDU LAW IN BRITISH INDIA 186 (2nd ed., Premier Publishers Delhi 1947).

⁴⁹ *Godabai v. Narayan*, A.I.R. 1973 MP 4.

⁵⁰ *Govind v. State of M.P.*, A.I.R. 1975 S.C. 1378.

⁵¹ VIJENDRA KUMAR, MATERIALS AND CASES ON FAMILY LAW 42 (Ranbir Singh & Vijender Kumar eds., Lexis Nexis Butterworths 2006).

cohabitation and comfort consortium and not just sexual intercourse, the above claim stands baseless.⁵² The claim made was that the concept of restitution of conjugal rights is mainly an act of denial to the free choice of the spouse of when and how his/her body will become the vehicle or chattel for the other spouse. Our Constitution enshrines us with the right to privacy and human dignity under which the personal intimacy of human life and home and family which includes marriage also must be protected. Thirdly, taking authority from the Halsbury's Laws of England where it was said that "*cohabitation or access does not necessarily mean sexual intercourse, so that refusal of sexual intercourse by itself does not constitute refusal to cohabit.*"⁵³ So taking into account both the arguments we can say that the overreliance of *J. Chaudhary* on sex in the judgement of *T. Sareetha*⁵⁴ is nothing but a fundamental fallacy in the reasoning. And from this it can be very concretely put forth that RCR is only wilful in the nature and depends upon the will of the aggrieved spouse and under this unreasonable excuse for leaving your partner will never be justified as it against the principle of justice, equity and good conscience as laid down in the case of *Maneka Gandhi v. Union of India*.⁵⁵ Therefore, principles of RCR, is in accordance to three principles of justice, equity and good conscience and not against the mandate of Article 21 of the Constitution of India.

The authors have mainly argued on the basis of judgements given by the High Courts but now the same question was raised in the Apex court in the case of *Saroj Rani v. Sudarshan Kumar*.⁵⁶ It was argued and judged in the same manner as it was decided in the case of *Harvinder Kaur* and finally affirmed the provision on restitution of conjugal rights as perfectly constitutional and it is not in violation with Arts. 14 and 21 of the Constitution of India.⁵⁷

⁵² HALSBURY'S LAWS 284 (3rd ed., Lexis Nexis Butterworths 1968).

⁵³ *Ibid.*

⁵⁴ *T. Sareetha v. T. Venkata Subbaiah*, A.I.R. 1983 AP 356.

⁵⁵ *Maneka Gandhi v. Union of India*, A.I.R. 1978 S.C. 597.

⁵⁶ *Saroj Rani v. Sudarshan Kumar Chadha*, A.I.R. 1984 S.C. 1652.

⁵⁷ Ankit Mudgil, *Restitution of Conjugal Rights*, available at <http://www.scribd.com/doc/35180854/Restitution-of-Conjugal-Rights> - "*We are unable to accept the position that Section 9 of the Hindu Marriage Act is violative of Arts. 14 and 21 of the Indian Constitution. Hindu Marriage is a sacrament and the object of section 9 is to offer an inducement for the husband and wife to live together in harmony. If such differences may arise as in this case, it may be a valid ground for divorce after a period of one year. Hence Section 9's validity is upheld.*"

Part II

For every situation there always stand two possibilities, one in the favour of the situation and other one against the situation. The authors have already discussed the “for” situation which helped the authors to develop a very good understanding over the issue. Thus, it is time to contradict the arguments given in the favour of the situation in order to find out the answer for the first research question. In this regard, the first thing which comes in the mind of the authors is that the provision of RCR was declared as constitutional in the case of *Saroj Rani* but how far it put the reliance of judges while deciding this case on the judgement of *Harvinder Kaur* is reliable? If one thoroughly reads the judgement of *Harvinder Kaur* then there we will clearly see that J. Rohtagi was himself not in the favour of granting RCR as the remedial measure but forcefully laid his hands over it.⁵⁸ Additionally the doctrine of RCR is asserting as infringement of women’s self-respect, individual realization and solemnity.⁵⁹

Secondly, the doctrine of RCR also stands in contradiction with Article 21 in relation to right to privacy. This right is not directly mentioned in Article 21 but it comes under its ambit by only implications so as there is no concrete definition of it, the apex court has tried to define it in the case of *Kharak Singh v. State of U.P.* where the court said that it must include all the personal intimacies of home, family and marriage.⁶⁰ Therefore when any court of law enforces the decree of RCR then it acts as a compulsion over the spouse who has withdrawn from the society of the other and it is a kind of psychological restraint for him/her. This can be concretely supported by the analysis of the apex court in the case of *Kharak Singh* where the court said that every individual has a right to be either married or not, to be always free from unwanted state overreach in such personal matters.⁶¹ This is equivalent to force any individual and interfering into his/her privacy in an unwanted manner then nothing can be more deleterious as compared to this.⁶²

⁵⁸ *Harvinder Kaur v. Harvinder Singh*, A.I.R. 1984 Del. - “*even the most fervent and sincere hope of one spouse that there will be reconciliation cannot create a possibility of reconciliation where the other spouse is irreconcilable. Whatever maybe the cause of breakdown of marriage, if there is a withdrawal from matrimonial obligations with the intent of destroying the matrimonial consortium as well as physical separation, there is a clear sign that the marriage is at an end.*”

⁵⁹ Frances Raday, *Culture, religion and gender*, available at http://wunrn.com/news/2008/03_08/03_08/030308_culture_files/030308_culture.pdf.

⁶⁰ *Kharak Singh v. State of U.P.*, A.I.R. 1963 S.C. 1295.

⁶¹ *Supra* note 65.

⁶² *Supra* note 60.

Thirdly, Article 19 of the Constitution guarantees numerous rights like right to freedom of employment, freedom of expression and free movement but subject to certain restrictions given under Article 19(6), RCR does not come under the ambit of reasonable restriction also. Under RCR, by the decree the female spouse (mostly) who is engaged in some kind of employment is compelled to leave their jobs and forced to live with their husbands at their husband's place because in this issue the court of law most of the time gives the reasoning that if the wife refuses to give up her job and not live with her husband then this fulfils the criteria of withdrawal of one spouse from the society of the other spouse.⁶³ The rationale behind giving this kind of judgement is to preserve the holy union between the husband and the wife. However, if one critically analyses the whole picture then we can say that court has always failed in recognizing and appreciating the oppressed position of the women in the society. On concluding, we can clearly say that doctrine of RCR stands in clear contradiction of Article 19 of the Constitution. This can be very validly concluded by the authors after thoroughly reading the judgement of Harvinder Kaur in which J. Rohtagi clearly establishes the ineffectiveness of the remedy of RCR because there again raises the question that why should someone enter into the issue to resolve the marriage that has almost come on the verge of a coffin.⁶⁴

Taking a strong move from here the next issue is the misuse of RCR and intention of the legislature for passing this law, because RCR is been very blatantly misused and used as a spring board by the erring spouse for divorce by the virtue of s. 13(1-A)(ii). By this, the authors just wanted to raise another question *i.e.* what is the need of having this kind of remedy with the aim of reconstituting the marriage when it is been palpably misused as another tool for getting divorce under s. 13(1-A)(ii) of the Hindu Marriage Act, 1955.⁶⁵ By reading the judgement more thoroughly the authors conclude that the judgment given by J. Rohtagi in the case of Harvinder Kaur has not been rendered with full reasoning as he almost termed the provision of RCR as an anarchic remedy, but at the time of giving the final resort he has given that judgement which was not in consonance with the intention of

⁶³ *Gaya Prasad v. Bhagwati*, A.I.R. 1966 MP 212 - "According to ordinary customs of the Hindu Society, the wife is expected to perform a marital obligation at her husband's residence and she could not impose her unilateral decision on the husband by merely stating that she has no objection to allow the husband to live with her at the place where she has accepted her service".

⁶⁴ *Ibid.*

⁶⁵ *Supra* note 61, para 74 "so the legislation is creating a number of grounds for divorce, what is bad in it?".

the judge because apparently it seems like that his hands were tied by the limitations of the law.⁶⁶

To sum up, Authors state that the judgement given by J. Rohtagi is very ambiguous and is very hard to understand. If the apex court has decided the issue of constitutionality of RCR raised in the case of *Saroj Rani* by making the judgement of *Harvinder Kaur* as the base then here arises a time to think at least twice over the issue and look at the wider aspect of marriage and then decide the issue.⁶⁷ This argument has somehow prima facie answered the first question. We can say that the grounds on which the RCR was declared as constitutional were not acceptable as the judge has acted under a kind of guided discretion to answer this question of constitutionality of RCR and above it the Apex Court in deciding the same issue made this judgement as base.⁶⁸ In order to contradict the arguments stated under part 1 of this article in relation to the fundamental rights and RCR, *firstly* the authors want to say in relation to Article 14 of the Constitution that the RCR violates right to equality. Equality not just only connotes physical aspect but it also connotes equality presence in giving thought, action and self-realization.⁶⁹ In addition to this doctrine of RCR is turning obsolete in nature for the women of 21st century who are educated and self-reliant as it forces them to again live with the person from whose society they have withdrawn.

This marks up an uncertain end over the debate where the authors have shown how as per the law, the doctrine of restitution of conjugal rights is clearly constitutional and declared so by the apex court. Nevertheless, after seeing its application in the society and how it is being perceived, we can say that the doctrine of RCR still stands unconstitutional.

IV. CONCLUSION AND SUGGESTIONS

From the above stated long discussion, one thing is very clear that the answers to the question of constitutionality of restitution of conjugal rights has formed an ambiguity over its existence in the legal system as from legal point of view it is constitutional whereas from the practical approach and application it seems to be still unconstitutional. It is a

⁶⁶ *Supra* note 61, para 85, 87 & 91.

⁶⁷ *Supra* note 4.

⁶⁸ SIR DINSHAH FARDUNJI MULLA, *MULLA PRINCIPLES OF HINDU LAW* 895 (Satyajeet A. Desai eds., 21st ed., Lexis Nexis Butterworths Wadhwa 2010).

⁶⁹ *Supra* note 65.

clear result of the complex situation been created by the judiciary as they have generated different answers to the same question which has completely made the doctrine to stand in a position from where it looks like an unresolved misery which stands in clear clash and tussle with the fundamental rights like right to life, liberty, privacy and equality enshrined upon the citizen by the virtue of supreme law of the land. The conceptual standing of the remedy of restitution is still addressing many ambiguities which in turn affect its correct application drastically. Taking recourse to the findings of the debate, we can therefore say that after the milestone judgements of all the three major cases as discussed above, the concept of restitution has completely changed its recourse and taken new dimension, which has further complicated the underpinnings of the remedy. Therefore, from this juncture, a kind of realization has to be made and especially by the judiciary, that in this regard they should give more importance to the rights of the individuals rather than considering that, marriages are to be preserved at any cost. However, if this is not then this can lead to a worse position from which the road to recovery will become very hard to achieve as the tussle between the personal laws and the eternal fundamental rights is turning very capricious in nature.

The authors would like to suggest that the remedy of restitution that has been misunderstood and misused very blatantly has to be substituted by reconciliation. The harsh, offensive and compelling tone of restitution in which we ask the spouse to cohabit with the other spouse unwillingly might result in the breakage of the relation forever. Reconciliation sounds milder, acceptable and inoffensive in which both the spouse not only cohabit but it also clears all the misunderstandings.

INTERACTION BETWEEN ELECTED ADMINISTRATOR AND APPOINTED ADMINISTRATOR: POLITICAL MALIGNANCY IN BUREAUCRACY

By Sonakshi Singh¹

Civil Services are the cornerstones for a representative form of government for a nation. They play a vital role in the task of nation building. Kautilya's Arthashastra prescribed loyalty and earnestness as the two main qualifications for a civil servant.

India has, in accordance with the British tradition, adopted the system where an Executive is responsible to the Legislature. In India, the council of ministers with the Prime Minister at the head 'administers' the country. The bureaucracy of the civil service contributes the continuity and expertness in administration. In an ideal situation, the minister contributes policies while the civil service officers apply the policies in practical situations.

In this paper, it has been shown that the relationship between the minister and the bureaucracy is always in a state of unstable equilibrium and is a matter for constant adjustment; the latter are always in a precarious position since they can be arbitrarily transferred at any time.

This paper aims at finding out the reason behind the minister's desire for bureaucrats' loyalty to their parties. Also, whether there is political intervention in the work of a bureaucrat beyond what is desirable, what results in stupendous amount of transfers that take place, when the Chief Minister of the state changes. Interestingly, frequent transfers of bureaucrats have been a long-standing feature of the Indian bureaucracy and prove to be a malignancy in bureaucracy.

It was observed that there was a need to shield the bureaucracy from political interference and to put an end to recurring transfers of IAS officers by political heads. Thankfully the Supreme Court had taken a stand for the administration of transfers, postings, inquiries, process of promotion, reward, punishment and disciplinary matters which were concomitant to the PIL filed by former Union Cabinet Secretary T.S.R. Subramanian and many others.

"The Civil Service is a bit like a Rolls Royce - you know it's the best machine in the world, but you're not quite sure what to do with it."

-R.A. Buttler, Anthony Sampson *Anatomy of Britain* (1962)²

¹ Student, B.A. LL.B. (Hons.), Amity Law School, Guru Gobind Singh Indraprastha University, Delhi.

² OXFORD DICTIONARY OF QUOTATIONS AND PROVERBS II (Eighth ed. Oxford University Press, 2001).

I. PROLEGOMENON

Civil Services are the cornerstones for an amenable form of government for a nation. They play a vital role in the task of nation building; right from the time, we achieved independence, to the present day.

It was Sardar Patel's vision that the Civil Service should strengthen cohesion and national unity. He desired a strong and spirited federal administrative system in which the All India Services would play an important role. In accordance with his belief, the Civil Services have provided the substructure for the administration of the country. The values of righteousness, impartiality and merit remain the guiding principles of India's civil services.³

Kautilya's Arthashastra prescribed loyalty and earnestness as the two main qualifications for a civil servant. Kautilya also suggested some checks and balances on civil servants, a continuous watch on their performance, and feedback on their work to the king.⁴ Indian Bureaucracy is the inherited model of a bureaucracy from the British Raj. The constitution revamped the structure, which was left behind by the so-called "Raj."⁵

In almost all the countries of the world, there are politicians who are popularly elected by people's will and there are bureaucrats who are appointed for the part of the government which govern the people. Bureaucrats are poorly rewarded⁶ and politicians have limited power given to them under the constitution within which they have to operate to govern.

The Indian bureaucracy, once regarded as the "*steel frame*" that supported the British Empire in South Asia, seems to have become rusty.⁷ It is no surprise that the Hong Kong-based Political and Economic Risk Consultancy rated it as one of the "worst" bureaucracies in Asia for bottlenecking key policies, widespread red tapism in everyday affairs, massive corruption,

³ PM's speech at the Civil Services Day, April 21, 2006, available at <http://pmindia.gov.in/speech-details.php?nodeid=305>.

⁴ Mohan Murti, *Babus are like this only*, available at <http://www.thehindubusinessline.com/opinion/columns/mohan-murti/babus-are-like-thisonly/article4996208.ece>.

⁵ Sajjad Naseer, *Federalism and Constitutional Development in Pakistan*, available at <http://www.uni-bielefeld.de/midea/pdf/Sajjad.pdf>.

⁶ Ganesh Pandey, *See how poorly paid we are: IAS, IPS*, available at <http://archive.indianexpress.com/news/see-how-poorly-paid-we-are-ias-ips/30631/>.

⁷ Rahul Verma & Pradeep Chhibber, *A bureaucracy that governs, not reigns*, available at <http://archive.indianexpress.com/news/a-bureaucracy-that-governs-not-reigns/1183104/>.

being non-innovative and insensitive, and harboring generalist officers who lack expertise.⁸ This seems true looking at the current scenario with the rising corruption in the country.

The politicians have control over bureaucrats' actions; they also have the power to entrust specific charge to specific bureaucrat, but they lack power to recruit, dismiss, demote or change the salaries of designated bureaucrats.⁹ Bureaucrats in turn care about the prestige and the stature that they will get depending upon importance of the posts they are assigned to.

The political leader can assign civil servant across posts of diversified importance, as a mode to control them. Such civil servants being assigned to important posts can be the so-called "Weberian" bureaucrats with a reputation of giving expertise and independent judgment or just those that is loyal to his party¹⁰. In addition, the politicians can also decide upon the fate of junior civil servants with career concerns.

This framework examines these mechanisms, and highlights one of the major sources of inefficiency. It stems from the fact that not all-important posts are filled with the most skilled bureaucrats, due to the politician's preference for an officer who is loyal to their party, which provides an alternative path to career success for bureaucrats.¹¹

The politicians also affect the civil servants' postings in the assigned designations. It has been a trend that has been analyzed that with the change in the Chief Minister of the State, there is re-assignment of many civil servants for obvious reasons.¹² Officers who seem to be good with administrative works face less frequent political transfers¹³ and they are often offered with important and significant department with opportunities.

⁸ *Ibid.*

⁹ Lakshmi Iyer & Anandi Maniz, *Traveling Agents: Political Change and Bureaucratic Turnover in India*, available at http://www.isid.ac.in/~pu/conference/dec_08_conf/Papers/LakshmiIyer.pdf.

¹⁰ RICHARD SWEDBERG & OLA AGEVALL, *THE MAX WEBER DICTIONARY: KEY WORDS AND CENTRAL CONCEPTS* 18-21 (Stanford University Press 2005).

¹¹ Faisal Kidwai, *Transfer raj involving bureaucrats has proved costly for India*, available at <http://www.rediff.com/news/interview/transfer-raj-involving-bureaucrats-has-proved-costly-for-india-interview/20120807.htm>.

¹² *UP transfer 'serious matter': SC seeks explanation from Maya Agencies*, THE INDIAN EXPRESS, Jun 08, 2009, available at <http://archive.indianexpress.com/news/up-transfer--serious-matter--sc-seeks-explanation-from-maya/473125/>.

¹³ Atul Thakur, *68% of IAS officers have average tenures of 18 months or less*, THE TIMES OF INDIA, Jan. 01, 2014, available at <http://timesofindia.indiatimes.com/india/68-of-IAS-officers-have-average-tenures-of-18-months-or-less/articleshow/28203370.cms>.

Civil Servants whose work results in advancement through apt execution are not preferred over the loyal ones which second the standpoint that there are substitute routes to success and it is not expertise alone that politicians value.

II. PREMISE

By the time civil service has finished drafting a document to give effect to a principle, there may be little of the principle left!

-Lord Reith 1889-1971: Into the Wind

The Indian Administrative Service

The Indian Administrative Service is the administrative civil service of the Government of India. IAS officers hold key positions in the Union Government, State governments and public-sector undertakings.¹⁴ IAS officers cannot join any political party as there are chances of conflicting interests, also they cannot be a part of any political event.¹⁵ Also, for the best interest of the country, politicians are not involved in the recruitment process of IAS officers.

IAS officers are recruited by the Union government, on the recommendation of the Union Public Service Commission and are posted under various State governments. The officers carry high respect and stature in the society coupled with the significant task of administering public offices, making it one of the most desirable jobs in India.¹⁶

The Constitution of India provides IAS officers considerable immunity from state-level politicians by stipulating that an IAS officer “*holds office during the pleasure of the President,*” and cannot be “*dismissed or removed by an authority subordinate to that by which he was appointed.*”¹⁷ This means that IAS officers cannot be dismissed or demoted by state-level elected representatives.¹⁸

¹⁴ IAS-Indian Administrative Service, available at <http://www.itimes.com/citizen-journalism/ias-indian-administrative-service>.

¹⁵ Uttam Sengupta, *As Home Secretary, I Was Disillusioned*, available at <http://www.outlookindia.com/article.aspx?288914>.

¹⁶ <http://www.upsc.gov.in>.

¹⁷ Articles 311 and 312, Constitution of India.

¹⁸ Jaideep Mishra, *The story of nexus between politicians & bureaucrats retold*, available at http://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCkQFjAA&url=http%3A%2F%2Fwww2.warwick.ac.uk%2Ffac%2Fsoc%2Fconomics%2Fstaff%2Fademic%2Fmani%2Fet_sep15_2008.

The Secretariat

Most departments of the Secretariat have heads of departments and heads of offices under their administrative control, which function as the executive authorities of the Government. All the government orders are issued in the name of the Governor but are signed by the Secretary or officers under him down to the rank of Under Secretary.

The Principal Secretaries, Secretaries, Special Secretaries, Joint Secretaries, Deputy Secretaries and Under-Secretaries are appointed from either the Central or the State Administrative Services. Some Deputy Secretaries and Under Secretaries are also appointed from the permanent Secretariat Services. In fact, mostly permanent officers of the Secretariat are appointed to the post of Under Secretary.

District and Divisional Administration

After the Secretariat and Heads of Departments, the Divisional Commissioner occupies an important place. He is fully responsible for law and order, revenue, administration and other matters pertaining to his division.

He has to exercise supervision over the district officers, local bodies and planning and development works. Each division consists of certain districts. Each district is under the administrative charge of a district officer who is also called the District Magistrate or Deputy Commissioner.

The District Officer is fully responsible for the law and order in his district and has extensive administrative, police and revenue powers. Besides maintaining revenue records, he also has to look after works relating to planning, development and land reforms. The district is further divided into tehsils, blocks and villages for administrative convenience and for collection of revenue and development works.¹⁹

India's Political System

The political substructure of India and related traditions evolved during the British rule and they appreciably influenced the work of the Constituent Assembly in formulating the form of

doc&ei=gkxU6aHHMXmkgW6qoGACg&usg=AFQjCNE6UhKec5V1j7R8oj7ET415wFNJTA&sig2=5OVfeZiILI6GpNufJtbk7g.

¹⁹ *Supra* note 16, at 8.

Government in India. It is, therefore, not surprising that from the initial stages of the formulation of the principles of the new Constitution, opinion appeared to have been stirred in favor of adopting for India an executive responsible to the Legislature in accordance with the British tradition.²⁰

In Parliamentary democracies such as that of India the council of ministers with the Prime Minister as the head ‘administers’ the country.²¹ The ‘Council of Ministers’ for all its acts of commission, remain responsible to the Parliament.

The ministers thus constitute what is known as the political executive. The foremost obligation of the Council of Ministers is to devise the policies of the government.²² Every administrative department of government is placed under the charge of a minister responsible to the legislature.²³ A minister is thus, the political head of an administrative department.²⁴

The bureaucracy of the civil service contributes the continuity and expertness in administration. In an ideal situation, the minister contributes policy while the civil service officers apply the policies in practical situations. Thus the minister and the Civil Service officer together make up the total administrative set up.²⁵ Thus, since India is a federation, there is a provision for dual civil services, service under the Union and service under the State governments.²⁶

In the words of Dr. Ambedkar “*the dual polity is followed by a dual service*” in all federations. He emphasized that the Indian federation though a dual policy will have a dual service but with one exception, the constitution provides that without depriving the states of their right to form their own civil services, there shall be an All India Service, recruited on an

²⁰ SUBRATA K. MITRA, *POLITICS IN INDIA: STRUCTURE, PROCESS AND POLICY* (Oxford University Press 2011).

²¹ Amit Sen, *Role of Bureaucracy In India*, available at <http://www.importantindia.com/1767/role-of-bureaucracy-in-india/>.

²² Article 74, Constitution of India.

²³ *Executive— Its Accountability to Parliament*, available at http://rajyasabha.nic.in/rsnew/practice_procedure/naccount.asp.

²⁴ *Supra* note 17, at 5.

²⁵ Department of Administrative Reforms and Public Grievances, Government of India, The civil service system.

²⁶ Constituent Assembly of India Debates on 4th November 1948, Volume VII, available at <http://parliamentofindia.nic.in/ls/debates/vol7p1b.htm>.

All India basis with common qualifications, uniform scale of pay etc.²⁷ Thus the Civil service in India is divided into two categories: All India Services and the State Civil Service.

Besides, Article 312 creates a special category of service, which is common to both the Union and the State. Two services of this type are (1) The Indian Administrative service and (2) The Indian Police Service.

The All India Services are designed to give greater cohesion to the federal structure²⁸ and to conduce to greater efficiency in the administration of the Union and the States. Such an integrated Civil Service is an idiosyncratic attribute of the Indian political system. Given the multiplicity and divisiveness, which is deep-rooted, in the Indian political system, the integrated civil service was an inevitable requisite.²⁹

Role of a Politician

*The ability to foretell what is going to happen tomorrow, next week, next month, and next year and to have the ability after wards to explain why it didn't happen*³⁰.

-Describing the qualification desirable in a prospective politicians by Winston Churchill
1874-1965

The politician comes to power for the attainment of some goals for the state, and for that he needs to formulate policies, but his outcome depends upon the direct result of the work of the Civil Servant, because in the end he is the one to execute. His prospects for success will depend upon the size of the bureaucracy's total public good output that he can accumulate for his constituents.³¹

Given the preferences that the political leader has, he posts the Civil Servants across the diversified posts up to an optimum level. The only work that the politician has to do is to assign the right bureaucrat at the right place, and in doing so he has to consider the officers who are loyal to his party and the other officers who are neutral and only development

²⁷ Ruchi Kapahi, *India After Independence*, available at <http://coincept.blogspot.in/2014/02/india-after-independence.html>.

²⁸ *Supra* note 3, at 2.

²⁹ *Basic approach and perspective*, available at <http://lawmin.nic.in/ncrwc/finalreport/v1ch2.htm>.

³⁰ *Supra* note 2, at 2.

³¹ J.E Anderson, *Public policymaking: An introduction*, available at <http://kropfpolisci.com/public.policy.anderson.pdf>.

oriented. With respect to officers loyal to his own party, he has complete control over their output, but he has little control over the output of officer's loyalty to the other party.

As for the officers who are neutral in their approach the politician has very little say, as they cannot influence them in line with themselves, so they accordingly assign them.

III. RELATION BETWEEN THE BUREAUCRAT AND THE POLITICIAN

The relationship between the minister and the bureaucracy is always in a state of unstable equilibrium and is a matter for constant adjustment.³² The minister as representative of the people has an electoral mandate to fulfil.³³

On the other hand, the bureaucrat is appointed by the Governor or the President and has to operate and execute in a way which is not only limited to party considerations but also in a way that is impartial and for the best interest of the citizens and the State.

The Civil Servant takes orders and commands from the Minister and works within the sphere of the Constitution. Also, civil servants being administrative experts, remind the minister about the feasibility or otherwise of a particular course of action.³⁴ Thus the top civil servant has two important duties such as, he has to remind the minister whether or not a particular course of action is constitutionally permitted and whether or not a particular course of action is practically feasible. The advice of the top civil servant on both counts is of immense value to the minister.³⁵ This has again been adopted from the British practice.

A very positive aspect of our system is that since the IAS officers' salaries and perks do not depend upon the Politicians, in many instances they can take independent decisions in favor of public good, when contrary views arise, and when the view of the politician is prejudiced in favor of his party. In India, civil servants enjoy a measure of social respectability not

³² *Supra* note 21, at 7.

³³ Wilhelm Hofmiester & Karsten Grabow, *Political Parties, Functions and Organizations in Democratic Societies*, available at http://www.kas.de/wf/doc/kas_7671-1442-2-30.pdf?120920114650.

³⁴ *Supra* note 21, at 7.

³⁵ *The accountability of civil servants*, available at <http://www.publications.parliament.uk/pa/ld201213/ldselect/ldconst/61/6106.htm>.

easily attained by people in other professions.³⁶ Since the IAS officers are administrative experts the ministers have to depend on them.³⁷

The bureaucracy has experience and knows when a particular policy is not in the best interest of the country. Hence the minister listens to the advice of the top civil servant as to the desirability of a policy from administrative point of view. Thus in a healthy situation, the minister and the bureaucracy are mutually complementary³⁸ - the minister contributing the policy decisions and the bureaucracy executing the decisions.

The bureaucracy has always worked under the cloak of ministerial responsibility and they carry out the attainment of the government policies, which are originally formed by the ministers who are answerable to the Parliament. Civil servants are not the part of the political debates, which go on in between the parties, and so the minister on the floor of the House must defend the actions of the civil servants.

This system compels the minister to keep a close watch on the actions of the bureaucracy and the bureaucracy to behave in such a way that the minister is not put into difficulty.³⁹ 'Political interference', as bureaucrats name it, varies from state to state. In the Indian federal set-up, the state governments differ largely in terms of political and administrative culture.

Despite the nexus between politicians and bureaucrats, the latter are always in a precarious position since they can be arbitrarily transferred at any time. Quoting the example of the Gujarat anti-Muslim riots, 'Perversely, officers of integrity who, in applying the law diligently, acted against offenders aligned with the ruling party in the government; suffered the harassment of repeated transfer'.⁴⁰ Whenever there is a change of government in the states, the civil servants have to face large scale transfers.⁴¹ This chronic instability affects the

³⁶ Dalal Benbabaali, *Questioning the Role of the Indian Administrative Service in National Integration*, available at <http://samaj.revues.org/633>.

³⁷ *Ibid.*

³⁸ Nirvikar Singh, *The Economic Consequences of India's Institutions of Governance*, available at <http://people.ucsc.edu/~boxjenk/lawecon.pdf>.

³⁹ *Supra* 21, at 7.

⁴⁰ *Supra* note 35, at 10.

⁴¹ 53 IAS officers transferred in UP, Feb 05, 2014, available at <https://in.news.yahoo.com/53-ias-officers-transferred-051403093.html>.

performance of the administration, which needs continuity to achieve organizational objectives.⁴²

IV. MERITOCRACY VERSUS LOYALTY

*Where there is officialism every human relationship suffers.*⁴³

-E.M.Forster 1879-1970: A passage to India (1924)

Ministers desire and yearn for bureaucrats' loyalty to their parties, as their main motive is to stay in power and this becomes easy when administrative bodies are in their support. This view is based on a classical Weberian distinction between politicians as policy-makers on the one hand and bureaucrats as administrators and implementers on the other.

According to this distinction, politicians command and bureaucrats obey. In this context bureaucrats are mainly people with responsibility for executing of public, laws and rules and if they are loyal to the party of the minister boss, his work becomes easier in execution of a policy that his party would support. Since it is the duty of the IAS officer that he must guide the minister about whether he is making the right kind of policies due to his impeccable administrative expertise, his being inclined towards a particular party will not be in the best interest of the state.

A relaxation of political loyalty may generate a more politically active type of bureaucrat⁴⁴. At this occurrence both the minister and the IAS officer indulge in politics, but from different standpoint.

V. TRANSFERS OF BUREAUCRATS

The man who is denied the opportunity of taking decisions of importance begins to regard as important the decisions he is allowed to take.

⁴² *UP-wardly Mobile*, THE INDIAN EXPRESS, July 2, 1998: In Uttar Pradesh, Chief Minister Kalyan Singh transferred 293 IAS officers between July 1991 and December 1992. His successor, Mulayam Singh Yadav transferred 321 IAS between December 1992 and June 1995, and Mayawati 284 IAS between June and October 1995.

⁴³ *Supra* note 2, at 2.

⁴⁴ Tom Christensen, *Bureaucratic Roles: Political Loyalty and Professional Autonomy*, available at https://tidsskrift.dk/index.php/scandinavian_political_studies/article/view/13125/25011.

-C.Northcote Parkinson: Parkinson's Law(1958)⁴⁵

IAS officers cannot be hired or fired by state-level politicians. However, officers can be reassigned or transferred from one post to another. Such transfer orders are signed by the Chief Secretary (the top bureaucrat) who reports directly to the Chief Minister of the state. Bureaucrats can request for specific assignments, but they have very little control over outcome of such requests.

Within an hour of being named Chief Minister of Uttar Pradesh in March 2012, Akhilesh Yadav had reshuffled the bureaucrats who served in the Chief Minister's secretariat. In his first month as the Chief Minister, more than 1,000 officers of the state's administrative and police services had been moved to new positions.⁴⁶

The average tenure of IAS officers in a given post is 16 months and only 56% of District Officers spend more than one year in their jobs. This is in violation of the recommendations, put forward by the Ministry of Personnel and the Fifth Pay Commission, for three-to-five year tenure in each post. Interestingly, frequent transfers of bureaucrats have been a long-standing feature of the Indian bureaucracy.⁴⁷

VI. LEGAL SCENARIO

Public Services Bill existed in draft form initially, which imposes limits upon minister's power to transfer IAS officers before they complete two years of service. At that time politicians seemed to value the ability to reassign bureaucrats frequently. During inception and deliberation as regard to the Bill, only 11 states conceded to have minimum two-year tenure for District Officers, and 10 states refused outright.

To shield the bureaucracy from political interference and to put an end to recurring transfers of IAS officers by political leaders, the SC directed the Centre and the States to set up a Civil Services Board (CSB) for the administration of transfers, postings, inquiries, process of promotion, reward, punishment and disciplinary matters.

⁴⁵ OXFORD DICTIONARY OF QUOTATIONS AND PROVERBS II (2006).

⁴⁶ *Supra* 11, at 4.

⁴⁷ *Ibid.*

A Bench of Justices K.S. Radhakrishnan and Pinaki Chandra Ghose, has given a series of directions in this regard while disposing of a public interest writ petition, filed by former Union Cabinet Secretary T.S.R. Subramanian, former CECs T.S. Krishnamurthy and N. Gopalaswami, former Indian Ambassador to the U.S. Abid Hussain, former CBI Director Joginder Singh; former Manipur Governor Ved Prakash Marwah and 77 others; also expressed that bureaucrats should not act on verbal orders given by politicians and also suggested a fixed tenure for them.⁴⁸

The SC directed the Centre and State governments to set up independent Civil Servants Boards (CSBs) within the next three months to deal with the transfers and promotion of and enquiries or disciplinary actions against bureaucrats. Currently, the department of personnel and training decides this for central government employees and the general administration department for state government civil servants.⁴⁹

This will ensure security of term of office for the officers and cutback political interference. The Supreme Court's order also requires both the centre and states to come up with supporting legislations. It also requires records of oral orders received by civil officers to be maintained.

The judgment comes against the backdrop of the disputable move by the Uttar Pradesh government of suspending IAS officer Durga Shakti Nagpal, who was investigating the sand mafia in the state, and of the Haryana government of shunting out IAS officer Ashok Khemka, who was investigating land deals undertaken by Robert Vadra, son-in-law of Congress party president Sonia Gandhi. The Supreme Court had refused to intervene on PILs filed in both matters.

VII. CONCLUSION

The impetus of this paper has been twofold. First, it elucidates different ways of defining the political and the bureaucratic role. Then different notions of political loyalty and administrative expertise respectively have been seen to have effects over governance.

⁴⁸ J. Venkatesan, *In major reform, SC orders fixed tenure for bureaucrats*, available at <http://www.thehindu.com/news/national/in-major-reform-sc-orders-fixed-tenure-for-bureaucrats/article5299939.ece>.

⁴⁹ *Ibid.*

In particular, it was expected that there would be a rather reposeful coexistence between ministers and IAS officers.

Results obtained show a strong emphasis on the fact that there is surely political intervention in the work of a bureaucrat which is reflective of the stupendous amount of transfers that take place when the Chief Minister of the state changes.

The results also indicate that civil servants, in different ways, suffer and ultimately learn how to live with conflicting demands and have a certain level of conflict and ambiguity in their bureaucratic role.

It is also observed that bureaucrats are taught how to distinguish personal opinions from formal roles through their administrative career and the existing incentive arrangement. However, the ministers never consider their expertise as they have oriented their work to what befits their party at the cost of the state. The present study gives more of a general picture of the balancing of political and professional elements in the bureaucratic role in India.

It is observed that in the states, for every officer who refuses to sign a file due to political pressure, there are 10 others willing to do that job, the reason is clear, if they're loyal to the minister boss, it would be better for their bureaucratic career.

Foreign minister Salman Khurshid admitted to the concept of a "*committed bureaucracy*" in certain states.⁵⁰ The problem was pitiful in states like Uttar Pradesh and Tamil Nadu, where chief ministers have failed to draw a distinction between "*political direction and political interference*". It is suggested that there should be fixed tenure for civil servants at all levels. "*The Centre must ensure that all states make public the reasons if a bureaucrat is transferred within three months of a posting,*" says Naresh Chandra, former Cabinet Secretary and one of India's one of most prominent bureaucrats.⁵¹

The Supreme Court has taken a course of action in curbing the intervention of the Political system in the bureaucracy. This paper supports the SC judgment. It will help in good governance across the country at least as far as erratic transfers of IAS officers are concerned.

⁵⁰ Aman Sharma, *How to fix the 5 problems that ail Indian bureaucracy*, available at http://articles.economictimes.indiatimes.com/2013-05-02/news/38983461_1_cabinet-secretary-weightage-bureaucrats.

⁵¹ *Ibid.*

The association of Indian Forest Service officers (IFoS) also supported the order. “*It will check arbitrary transfers and suspensions,*” said IFoS association president A. R. Chadha.⁵²

But will the Supreme Court be able to stanchion the minister’s spine so that it stands straight instead of bending over backwards, forward and sideways?

⁵² *Ibid.*

GLOBAL GOVERNANCE

By Mehla Akshra¹, Godara Siddharth²

The term global governance is legally defined neither by any municipal, national or regional law nor by any rule or principle of international law. Literally speaking, it means and includes a set of rules, regulations, laws, bye-laws etc. by application of which social, political, economic and other walks of human life of the people of the globe are governed in accordance with accepted patterns of human behaviour so as to ensure social, political and economic justice to all the human inhabitants of our planet. Though there are numerous entities in existence in the forms of institutions, organizations, associations etc. throughout the globe which regulate social, political and economic affairs of the people of the world thereby directly or indirectly contributing to vital function of global governance, there is still no internationally officially recognized face in the form of a mechanism or an entity which is endowed with the task of global governance. In spite of it, the phenomenon of global governance is omnipresent and all-pervading through all aspects of human life but being in a latent and intangible state; it is not expressly or impliedly and readily recognized and accepted by people till today.

In view of what has been mentioned hereinabove, this paper is an attempt to showcase and highlight the significance of global governance and how it affects the lives of citizenry globally. In particular, it introduces the theory of global governance, lays down the basic principles underlying it, deals with its political, economic and social aspects coupled with their criticisms and suggestions, discusses five primary global governance gaps and lastly, concludes this subject matter by laying emphasis on lack of and need to have an effective global mechanism for global environmental governance for due environmental preservation of our beautiful planet.

I. INTRODUCTION

Governance talks about the different ways that organizations, institutions, businesses and governments bring about their affairs. It is the deed of governing and thus encompasses the solicitation of laws and regulations but also of customs, ethical standards and norms. Good governance means that affairs are coped well but not that the laws, regulations or norms are themselves essentially “good”.

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There is no government for the world. Yet, on any given day, mail is delivered across the borders; people travel from one country to another; goods and services are freighted across land, air, sea and cyberspace; and a whole range of other cross-border activities take place in reasonable expectation of safety and security for the people, groups, firms and governments involved. International transactions are typically characterized by order, stability and predictability. This immediately raises a question: How is the world governed even in the absence of a world government?³

The answer to these questions can be found in the concept of Global Governance. Global governance speaks of the way in which global dealings are accomplished or managed. Global governance is a distributive function of power at global level or result of good practices, norms, behavioural rules and decision procedures developed in time⁴. It grips the entirety of institutions, policies, rules, practices, norms, procedures and initiatives by which states and their citizens try to bring more predictability, stability and order to their reactions to transnational challenges, such as climate change, environmental degradation, nuclear proliferation and terrorism – which go beyond the ability of a single state to unravel.

As there is no global government, global governance characteristically involves an array of actors including states as well as regional and international organizations. However, a single organization may ostensibly be given the lead role on an issue, for example the World Trade Organization in world trade affairs. Thus, global governance is believed to be an international course of consensus-forming which creates guidelines and agreements that affect national governments and international corporations. Examples of such consensus would embrace WHO policies on health issues.

Critics in general argue that global governance mechanisms back the neo-liberal belief of globalization and diminish the role of the state (and thus its sovereignty) to that of an adjusting body for the application of international policies. Some argue that, as a result, the welfares of the poorest people and nations will be overlooked unless they have a direct bearing on the global economy.

³ UN Intellectual History Project, *Briefing Note Number 15*, August 2009, available at <http://undocs.org/E/2014/15>.

⁴ Afrasine, Laura, *The Financial Crisis - Global Governance Failure?*, available at <http://ssrn.com/abstract=1570503>

The concept of global governance and international organizations differ greatly. Firstly, global governance encompasses of a large variety of international institutions, not just visible aspect of world political and economic authority (United Nations Organisation, World Trade Organisation, International Monetary Fund, World Bank etc.), but also intergovernmental forums, even the quasi formal ones like G-8, World Economic Forum, state groups and organizations (UN Global Compact, International Labour Organization etc.), private organizations (International Chamber of Commerce etc.), private military forces (Sandline International etc.), non-governmental organizations, transnational religious groups, terrorist organizations, political movements, financial markets, global law firms, multinational companies etc. *Secondly*, it is important the way in which these international institutes associate to manage a wider and wider panel of political, economic or social issues. From this point of view, global governance can be considered a multitude of associative forms between global, regional, national or local partners. Therefore, global governance does not suffice multiplying institutes or power organizations but it is defined by the way all these interact.⁵

II. PRINCIPLES OF GLOBAL GOVERNANCE

Global Governance is a mechanism that covers various international functions. It is a governance to create a viable world order, to create coherent global system. Like good governance at national level, global governance is based on some principles (Coolsaet and Arnould, 2004) which are as follows:-

1. Global governance is not a world government. It is not about creating stronger institutions. It is about raising coherence, efficiency and legitimacy of the existing ones and about identifying and filling the gaps of institutions. In law, good governance creates institutions only where needed.
2. It must be based on rules and on institutionalized multilateralism. The states are the main institutes and they choose to share their sovereignty.
3. Multi-level approach – on all authority levels. Global institutes and mechanisms must not replace similar local, national or regional actions but complement them. Global integration should be encouraged as a starting point for global governance.

⁵ Laura Afrasine & Ana-Maria Petrache, *Corporate Social Responsibility and Reformed Global Governance - Solutions to the Financial Crisis?*, in the Proceedings of the 5th European Conference on Management, Leadership and Governance (2009).

Responsibility is not only for international organizations to bear and must not be used by States to shed responsibility.

4. In order to be legitimate, global governance has to be more participative by allowing international non-state institutes to play an important part along with the states. Specialised global governance networks, international organizations, transnational corporations and civil society are instruments for a larger participation and for creating linkages between all those involved.
5. Global governance must be democratic by providing an equitable representation to all states and non-state institutes together with transparency and accountability.⁶

III. POLITICAL ASPECT OF GLOBAL GOVERNANCE

Global governance is a political concept that captures a vision of how societies should address the most pressing global problems⁷. The United Nations has played a crucial role in preventing wars and resolving conflicts among its members by using the tools of mediation and diplomacy. This aspect of the UN came into real action after the end of the Cold War as it brokered many political negotiations that, in turn, proved effective in ending many longstanding-armed conflicts. In 1992, the then United Nations Secretary-General Boutros Boutros-Ghali presented a report 'An Agenda for Peace' which focused on the policies of preventive diplomacy, peace-making and peace-keeping outlining the proposed actions of the UN in the post-Cold War era:-

- *Preventive Diplomacy* aims at preventing conflicts from arising between the parties and to prevent the existing differences from becoming full-fledged conflicts.
- *Peace making* focuses on peaceful methods of mediation to prevent intimidating parties from entering into a conflict.
- *Peacekeeping* comes into action once peace is attained. It seeks to maintain the attained situation of peace and order.

The United Nations Organization has adopted the policy of “non-intervention” i.e. no Member State or group of member States has the right to intervene in the internal affairs of any other State, directly or indirectly. The fundamental principle here is the prohibition of the

⁶ *Ibid.*

⁷ K Dingwerth & P Pattberg , *Global governance as a perspective on world politics*, 12(2) GLOBAL GOVERNANCE: A REVIEW OF MULTILATERALISM AND INTERNATIONAL ORGANIZATIONS 185 - 203 (2006).

use of force. If such an act is performed which proves to be an intervention, then it would be deemed as a violation of the international law. Thus, the UN adopts the policy of peace making which involves the dispatching of ambassadors to those areas of the world which are vulnerable to conflicts to encourage dialogue between the leaders and to promote peaceful existence within the boundaries of democratic institutions.

While the Charter of the United Nations does not mention peacekeeping operations, specific measures to achieve the objectives of the Charter are set out in Chapters VI and VII. Chapter VI states that the member states have to settle their disputes by peaceful means without endangering international peace, security and justice. Under Chapter VII, the Security Council has to determine the existence of any threat to the peace, breach of peace or act of aggression and make recommendations or decide what measures to be taken to maintain international peace and security.⁸ The fundamental aim of the peacekeeping operations of the UN is to act as a broker to help maintain a ceasefire and not to use force except in cases of self-defense which is an exception to Article 2 (4) of the UN Charter.

In recent years, this diplomacy of mediation and peacekeeping has helped in preventing various conflicts across the world. If we talk about Africa, the UN has assisted the country of Burundi to end a 13-year old civil war. In Libya, the United Nations Support Mission in Libya (UNSMIL) supported the country's new transitional government which was established after half-a-year of armed conflict. Elections were organized in Sudan after almost four decades of dispute with the help of the Department of Political Affairs (DPA) of the UN. In Asia, it created the United Nations Mission in Nepal (UNMIL) to establish peace in the country and organizing a successful election for the Constituent Assembly in 2008. In Sri Lanka, the UN took major steps to establish peace when the civil war against the Liberation Tigers of Tamil Eelam (LTTE) was in its final stages in 2009 and in the post-conflict period, it assisted the authorities to protect human rights and collect funds. Also, the DPA provided support to Myanmar to steer through its transition period after decades of military rule.

Although the UN boasts of about its non-intervention policy, as a matter of fact, it has continuously been indulged in intervening activities in the name of 'humanitarian intervention' also known as "R2P" i.e. "Right to Protect". Protection of human rights has

⁸ CHARTER OF THE UNITED NATIONS, *Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression*, available at <http://www.un.org/en/documents/charter/chapter7.shtml>.

been the strongest shield for the UN in this matter. Its integrity has suffered a major blow in cases like Iraq (2003), Somalia (1993) and more recently Libya (2011) where it failed to rescue people from undesirable situations.

IV. ECONOMIC ASPECT OF GLOBAL GOVERNANCE

The continuous expansion, which is being witnessed in trade and capital, flows for the past few decades' points out the need of global economic governance, which will be crucial in strengthening the way for sustainable development. The liberalization of domestic markets in the post- Bretton Woods era and the advancement in the technological field has led to the increase in cross-border trade, which makes it necessary for the world to have certain international institutions which regulate the international financial mechanism like the World Trade Organisation, World Bank, the International Monetary Fund. In addition, consideration should be given to proposals that enhance coordination, cooperation, coherence and policy-making across the United Nations system⁹.

The mains objectives of the international trade regime are:-

- Promote better living standards
- Maximise trade

The Study Commission of the German Bundestag states:-

*“As the world becomes increasingly globalised and economic activities grow beyond national regulatory frameworks, it becomes more necessary to politically shape economic, social and environmental processes on a global scale. How the global challenges can be democratically managed has recently begun to be discussed under the heading of ‘Global Governance’.”*¹⁰

One of the main organs of the UN, Economic and Social Council i.e. E.C.O.S.O.C., serves as a central stage for discussions on international economic as well as social issues. However, during the recession of 2009, it was argued that there was an urgent need for an alternative forum which would serve as a pillar for the financial international structure by enabling effective economic coordination among states and, in fact, would fill the void created by the alleged inefficiency of E.C.O.S.O.C. Nevertheless, this idea was opposed on the basis that

⁹ Secretary General of the United Nations, *Global Economic Governance and Development*, New York, 2011.

¹⁰ German Bundestag, *Globalization of the World Economy: Challenges and Answers*, 2002.

formation of such a new forum would encourage lobbyism, which would, in turn, make its basic purpose vulnerable to failure.

On the international level, the World Trade Organisation which works on the principle of 'liberalisation of international trade', aims at reducing the trade barriers, resolving related disputes and increasing transparency of trade policies of the governments. The WTO also aims at conducting dialogue with NGOs and other international organizations on a regular basis to enhance cooperation. A study by the University of Michigan found that if all trade barriers in agriculture, services, and manufactures were reduced by 33% because of the Doha Development Agenda¹¹, there would be an increase in global welfare of \$574.0 billion¹². A 2008 study by World Bank Lead Economist Kym Anderson found that global income could increase by more than \$3000 billion per year, \$2500 billion of which would go to the developing world¹³. However, the 2008 talks in Geneva proved to be a major failure when the developed countries as well as the developing ones could not agree on the agricultural import guidelines that allowed countries to protect poor farmers by imposing a tariff on certain goods in the event of a drop in prices or a surge in imports¹⁴. As of now, the future of this agenda remains uncertain.

As the globalization spreads, the need for cooperation among different multilateral organizations increases in order to maintain the standard of trade and other financial activities throughout the world. The WTO, in close association with such institutions, especially the International Monetary Fund and the World Bank, works on the mechanisms which make it possible to enable greater coherence in the field of international economy.

In 1998, hundreds of people in Geneva attacked McDonalds' restaurants and other expensive hotels in the city as a protest against the policies of the WTO. In another similar instance, in Indonesia, the citizens resorted to violent means in order to show their hostility towards the subsidy cuts agreed upon by the government and the IMF. Here, the protests led to social unrest and caused the fall of the government. These instances imply that the hundreds of

¹¹ The 'Doha Development Round', also known as the 'Doha Development Agenda', was launched in 2001 with the objective of removing inequalities in the international trade so that the developing countries could prosper.

¹² K Drusilla et al., *Computational Analysis of Multilateral Trade Liberalization in the Uruguay Round and Doha Development Round*, (2002).

¹³ K Anderson & B Lomborg, *Free Trade, Free Labor, Free Growth*, available at <http://www.project-syndicate.org/commentary/free-trade--free-labor--free-growth>.

¹⁴ *World trade talks end in collapse*, BBC NEWS, July 29, 2008, available at <http://news.bbc.co.uk/2/hi/business/7531099.stm#blq-main>.

millions of people who are on the receiving end of the policies of these multilateral institutions get affected the most.

The terms of IMF adjustment programs influence the life chances of people in developing countries, a World Bank decision to prioritise girls' education can open the possibility for personal and community development; and the ability of the WTO to balance environmental concerns with trade liberalization may save or condemn an ecological system¹⁵.

V. SOCIAL ASPECT OF GLOBAL GOVERNANCE

The Universal Declaration of Human Rights, in its thirty articles, essentially provides a catalogue of human rights. In article 29 and elsewhere, it lays out the various duties, the respect and fulfilment of which shall bring justice to the peoples of the world.¹⁶ The World Summit for Social Development was held in 1995 in Copenhagen with the objective of coherent vision of social development by collective effort of the member States. Boutros Boutros-Ghali, the then United Nations Secretary-General, also believed that even the most influential economies of the time could not escape the troubles caused by social inequality. However, the commitments made in the Copenhagen Summit never came into force because of the weaknesses of its provisions. Presently, for the UN and other international organizations, poverty reduction has not been only the most efficient method to improve standards of lives of people but also the most supported strategy by the governments of the developing nations and their people as well.

The development of humanitarian law is a good sign for the global governance. However, the 'humanitarian intervention' by the UN needs to be regulated by a proper authority to prevent the misuse of the provision by its international agencies. Moreover, the concept of equal rights is gaining ground on the global stage. The High Commissioner for Human Rights (O.H.C.H.R.), as a subsidiary body of the UN, provides assistance to the governments to regulate the protection of equal human rights. The idea that all members of the human family have equal rights is constantly becoming acceptable. Presently, the UN is giving more

¹⁵ R BRIEN ET. AL., *CONTESTING GLOBAL GOVERNANCE: MULTILATERAL ECONOMIC INSTITUTIONS AND GLOBAL SOCIAL MOVEMENTS* (1st ed., Cambridge University Press 2000), available at http://books.google.co.in/books?id=2VD2PSvEdYsC&printsec=frontcover&dq=global+governance&hl=en&sa=X&ei=b_6RU7GrJ8zokAXIjoDYBA&ved=0CC0Q6AEwAQ#v=onepage&q=global%20governance&f=false

¹⁶ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at, <http://www.refworld.org/docid/3ae6b3712c.html>.

importance to the non-State actors for the encouragement of development programs. It encourages cooperation between international actors and the people to develop a certain pattern for social development.

VI. FIVE GLOBAL GOVERNANCE GAPS¹⁷

In the 21st century era, the world is confronted with threats of global scale that cannot be met without united action. Although global government as such does not exist, formal and informal institutions, practices, and initiatives—together forming "Global Governance"—bring a grander degree of predictability, stability and order to trans-border issues than might be anticipated. Yet, there are noteworthy gaps between many current global problems and available keys. When crises ensue and the want for global governance develops, five kinds of gaps in global governance present themselves. There are knowledge gaps (i.e. about the nature of the problem or the range and strength of a global challenge), normative gaps (the rules guiding apt reactions are contested), policy gaps (in terms of who should respond and how), institutional gaps (insufficient lucidity about lead actors or a gap between policy and the capacity to act), and compliance gaps (particularly relating to responses regarding non-compliance). The same are discussed hereunder:-

1. Knowledge Gaps

With or without institutions, resources and possessions, there often is petite or certainly no accord about the nature, causes, gravity and enormousness of a problem about either the empirical figures or the theoretical elucidation. Moreover, there is often divergence over the best remedies and solutions to these problems. Good examples are global warming and nuclear weapons.

At least partially filling the knowledge gap is essential for dealing with other gaps in global governance¹⁸. If we can diagnose that there is a problem and settle on its suitable extents, then we can take steps to solve it. While in a few cases, the UN has generated new knowledge, more often it has provided an arena where existing information can be collated and collected, a host of interpretations can be vetted and differing interpretations of

¹⁷ T WEISS & R THAKUR, GLOBAL GOVERNANCE AND THE UN (1st ed., Indiana University Press 2010).

¹⁸ UN Intellectual History Project, *Briefing Note Number 15*, August 2009.

competing data discussed.¹⁹ Civil society actors like universities, research institutes, scientific experts, think tanks and NGOs presently are playing a mounting role in filling knowledge gaps.

2. Normative Gaps

A norm can be defined statistically to mean the pattern of behaviour that is most common or usual or a widely prevalent pattern of behaviour. Alternatively, it can be defined ethically to mean a pattern of behaviour that should be followed in accordance with a given value system or the moral code of a society being a generally accepted standard of proper behaviour.²⁰ Norms matter because people – ordinary citizens as well as politicians and officials care about what others reflect of them. This is why approbation and its rational corollary shaming are often operative in regulating social behaviour.

The UN is a crucial arena in which states essentially codify norms in the form of resolutions and declarations (soft law) as well as conventions and treaties (hard law). As a universal organization, it is a remarkable medium to seek out consensus about normative methodologies to address global tasks. Problems fluctuating from reducing acid rain to obstructing money laundering and terrorism are clear instances for which universal norms and attitudes are emerging.

3. Policy Gaps

By “policy”, we mean the entwined set of governing principles and goals, and the settled programs of action to implement those principles and achieve those goals. “UN policy” documents consist of resolutions or international treaties and conventions.²¹

UN policy makers are essentially the world body’s principal political organs – Security Council and General Assembly. In these intergovernmental forums, the people creating the policy decisions do so as emissaries of national governments. In addition, they make these policy decisions contained by the governing framework of their national foreign policies on all important policy issues under directions from their home governments.

¹⁹ *Supra* note 17.

²⁰ *Supra* note 18.

²¹ *Supra* note 17.

A major disconnect in global governance is – while the source and scale of most of today’s persistent challenges are global and any operative solution to them must also be global, the policy authority for tackling them remains entrusted to states. The execution of most of the UN policies does not rest primarily with the United Nations Secretariat itself but with the member states.

4. Institutional Gaps

There are international institutions that deal practically well with a problematic area and others deal with precise issues and have well rooted norms and consensus among member states. Many institutions do make a transformation in global governance. Examples –The International Atomic Energy Agency (I.A.E.A.), the UN Children’s Fund (U.N.I.C.E.F.), the International Telecommunication Union, the World Health Organization (W.H.O.) and many others.

Institutional gaps occur even when knowledge, norms and policies are in evidence. An elucidation to these institutional gaps is because the resources apportioned are disproportionate with the magnitude of the problem. A second major disconnect in the global governance is that the intimidating capacity to organize the resources necessary to tackle the global problems remains vested in the States, thereby effectively draining many international institutions. The sources of thoughts about filling institutional gaps are likely to be governments and intergovernmental organizations than non-state institutes.

5. Compliance Gaps

The last gap is perhaps the most substantial and weighty for global governance, where incentives for compliance can be weak and reactions to non-compliance involve measures that are either ineffective (as sanctions can sometimes be) or costly and risky (especially military responses).

The snowballing challenge of filling the global governance gap is confirmed by extreme exertion in safeguarding actual compliance. This last gap seems as a comprehensive void because no ways exist to enforce decisions and certainly not to compel them. There has been a hesitant and inadequate growth toward safeguarding compliance with settled objectives.

VII. CRITICISM OF AND SUGGESTIONS FOR ECONOMIC AND SOCIAL ASPECTS OF GLOBAL GOVERNANCE

Presently, the two groups which feel that the trade rules are hostile towards them are- Developing Countries and NGOs. The former demands a symmetrical process in the international trade regime. On the other hand, the NGOs demand a greater transparency and accountability in the field of international trade. They also raise the issue of environmental sustainability. Moreover, the WTO's agenda of trade negotiations is a tug-of-war between the multinational corporations and the import-competing interests and in this process, the main beneficiaries-to-be, i.e. consumers, get lost in the middle.

The major flaw with the present trade strategies is that they emphasize more on trade and growth instead of poverty. The developing countries focus on short term problems (like rise of tariffs against exports, industrial protection in textiles, and so on) while they should press their charges for poverty alleviation as the top agenda for the institutions like WTO as poverty eradication policies are likely to result into growth strategies. As a solution, the developing nations should demand more autonomy in the terms of forming policies that would lead to more development-friendly economic atmosphere and they would be able to see trade liberalization as a factor resulting into development. Once both of the above mentioned groups focus on the developmental perspective, their differences are likely to vanish and when they share common goals, they are likely to strive towards economic development.

VIII. CRITICISM OF AND SUGGESTIONS FOR POLITICAL ASPECT OF GLOBAL GOVERNANCE

There have been criticisms about the structure of the Security Council which consists of five permanent and ten non-permanent members. It is argued that the Great Britain and France cannot even be considered as great powers and, therefore, be excluded from the list of permanent members. Instead, Japan and Germany are two of such countries which have gained much power in the recent decades. Moreover, these two countries are among the top four financial contributors to the UN. Among the proposals, one is that the number of members of the Security Council should be increased to ensure better representation.

The veto power among all the five permanent members of the Security Council i.e. USA, UK, France, Russia and China is considered being preventing UN to enact desirable policies. Although, the abolition of veto is unlikely, it is proposed that the area where veto can be imposed must be limited to the issues of supreme international interests.

After the Cold War, the demand for the UN's peacekeeping operations increased to a great extent which led to a financial crisis within the US. Although the UN Charter has a provision that all the member states must contribute financially to the organization but there are no compelling methods which can force them to pay. The then United Nations Secretary-General Kofi Annan reduced the 1998-1999 budgets to a great extent. He also started a 'two track programme', which focused on strengthening the financial structure of the organization. Today, there is a need for more such steps in order to prevent the organization from bankruptcy.

IX. CONCLUSION

The recent years have witnessed development in the fields of global social governance, global economic governance and global political governance as discussed hereinabove but the scope of global environmental governance has not been given the required value. The United Nations Environment Programme (U.N.E.P.), as one of the agencies of the UN, in collaboration with dozen other such UN bodies, assists developing countries in framing policies related to contemporary environmental issues. Nevertheless, for the matter of environmental governance, the world lacks an international institution like the W.T.O. that could have a worldwide influence on the related activities. However, the WTO has also played its part in environmental governance, e.g. it established the Committee on Trade and Development (C.T.D.) in 1994 for determining the correlation between environmental dealings and trade measures for promoting sustainable development. It needs to be understood that environment is also a field where the collaboration of all the other aspects including economic, social as well as political is necessary. There is thus, an immediate need to develop global environmental governance.

ROLE OF PANCHAYATI RAJ INSTITUTIONS IN GOOD GOVERNANCE

By Shalab Sharma¹ and Palak Pathak²

India is a poor country because the villages of India are poor. India will be rich if the villages of India are rich. Panchayats should be given greater powers; for we want the villagers to have a greater measure of real swaraj (self-government) in their own villages.

-Pt. Jawaharlal Nehru

I. INTRODUCTION

Self-governing rural local bodies are described, in the Indian context, as institutions of democratic decentralization or Panchayati Raj. Mahatma Gandhi first introduced the concept and coined the term ‘Gram Swaraj’, also referred to Panchayati Raj, with the idea of self-sufficient and self-reliant villages functioning as Republics. His vision was that all villages within the country should be characterized by direct and participatory democracy, endowed with all the powers that enable it to function as a government in the true sense of the term. The significance of decentralized governance was realized with this insistence of Gandhiji for the establishment of village Panchayats at the grass root levels, as units of local self-government. Democratic decentralization or Panchayati Raj, as it is popularly known in our country, aims at making democracy real by bringing the millions to the functioning of their government at the grass root level. Thus, the objective of the initiative for democratic decentralization of governance was to accelerate the socio-economic development of the rural areas through the participatory democracy model.

II. HISTORICAL BACKGROUND

In order to understand the efforts made by the Indian Government to ensure good governance at the rural level, one has to delve into the historical developments in this regard. Panchayati Raj institutions existed in rural India for a long time in one form or the other with a limited role. However, post-independence these institutions were visualized as one of the potential

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agencies for bringing about a socio-economic transformation by empowering rural masses for self-governance. With the twin objectives of democracy and development, and as a result of the general consensus during the constitutional debates in favour of decentralization of power, provision for village panchayats as units of local self-government was inserted into the Constitution of India under Article 40 of the Directive Principles of State Policy. It provides that the state shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

Prior to the establishment of Panchayati Raj Institutions, the government of India launched community development programmes and National Extension Service to bring about socio-economic development in rural India. But these could not achieve desired success due to lack of people's participation. Consequently, a study team under the chairmanship of Balwant Rai Mehta was appointed in 1957 to examine and prepare a report upon the mechanism through which active participation of the rural masses could be ensured. The study team recommended a three-tier system of Panchayati Raj i.e. Gram Panchayat at the village level, Panchayat Samiti at the block level and Zila Parishad at the district level, along with genuine transfer of powers with adequate resources at these bodies. It was also recommended that all the development schemes for rural areas should be routed through the PRI's.

After the acceptance of these recommendations, the Panchayati Raj system was introduced in several states of India, Rajasthan being the first one. After the Balwant Rai Mehta Committee recommended the term "Panchayati Raj", it gained prominence as a process of governance organically linking the will of the people from the Gram Sabha to that of the Lok Sabha. Unfortunately, the system could not make much headway even after a long trail for lack of its implementation. The system was not implemented in its true spirit and desired response from the political masters, bureaucrats and rural masses.

Therefore, another attempt to revamp the Panchayati Raj system was made by the Janata government in 1977 by appointing a committee headed by Ashok Mehta. It recommended a two-tier system of Panchayati Raj i.e. Mandal Panchayat (consisting of a number of villages having a population between 15 to 20 thousand) and Zila Parishad at the district level. It further recommended establishment of Nyaya Panchayats, Party based elections to PRI's, transferring of developmental functions and appointment of Minister for Panchayats in the State Council of Ministers. These recommendations results in one observing that it would not

have strengthened the process of decentralization for good governance. It may also not be wrong to describe the recommendation of the committee to shift from three to two-tier system as a regressive step as it widens the gap between the people and their representative bodies. Moreover, the system of elections on Party lines as suggested might not be healthy as per socio-economic setting of rural masses.

Despite the various attempts made by the government to bring about improvement in the health of PRIs the position by and large remained unchanged until the passage of the 73rd Constitutional amendment in 1993. Setting up of Working Group on District Planning 1984, Committee on Administrative Arrangements for Rural Development 1985, L.M. Singhvi Committee of the Department of Rural Development, Government of India 1986 and the introduction of 64th Constitutional Amendment 1989 Panchayati Raj system didn't show desired progress.

The 73rd Amendment Act has been hailed as historical landmark in the history of local self-government in India. As a result of the enactment of this amendment, about 234676 panchayats at the village level; 6097 panchayats at the intermediate level; and 537 panchayats at the district level were constituted in the country. These panchayats were manned by about 21.95 lakhs elected representatives at all levels. Thus, this is the broadest representative base that exists in any country of the world, developed or otherwise.

Some of the Salient features of the 73rd Constitutional amendment are:

1. Grant of Constitutional status to PRIs
2. Reservation to 1/3rd of seats for women in Panchayat bodies
3. Holding of elections to Panchayats under the direct supervision of the Chief Electoral Officer of the State.
4. Setting up of Finance Commission to review the financial Position of the Panchayats after every five years and
5. Inclusion of the XIth Schedule in the Constitution listing various socio-economic programmes to be undertaken by the PRIs.

This amendment was aimed at enhancing the capability of the rural people to involve themselves in the planning process with respect to their priorities. It also envisaged decentralization of the execution of all types of developmental activities with the active participation of rural masses. Briefly, the purpose of the amendment was to ensure good

governance even at the rural and local level. Though the amendment was regarded as a progressive step, yet an in-depth analysis reveals some inherent ambiguities. These are:

1. Lack of clear-cut demarcation of 29 functions included in the XIth schedule.
2. The power and functions of a Gram Sabha have not been specified in the true sense of the term. Again, under 73rd Amendment an effort was made to revamp the Gram Sabha by Constitutional status and it was hailed as the Lok Sabha of the village people. The experience of decades shows that it is still a non-functional body mainly because of the lack of faith of rural people in its effectiveness resulting in an indifferent attitude towards this body.
3. As regards the emerging leadership in PRIs, it doesn't seem to be qualitatively commendable. It may be attributed to the degenerating and petty party politics dominating the elections. It is alleged that Panchayat Elections have given birth to party politics and group-ism in the villages. During election time a cold war situation persists in villages leading to fear and anti-social activities.
4. Role of money and muscle power.
5. Consideration of caste, clan, religion and region.
6. As regards actual devolution of powers both- administrative and financial, no substantial change has been observed as they continue to be slave to the State Legislatures for monetary endowments, power and authority.
7. No doubt, 1/3rd reservation has been provided to women in PRIs but the experience so far shows that they have failed to play their expected role independently and still seem to be puppets in the hands of their men folk due to patriarchal set up of our society.
8. PRIs are dominated by economically or socially privileged sections of our society and have facilitated the emergence of oligarchic forces yielding no benefits to weaker sections.
9. Lack of political will to give attention to PRIs and their meagre resource base and finances.
10. Bureaucratic indifference.

Moreover, Panchayati Raj Institutions, largely, failed because of irregular elections and frequent supersession and suspension. Although this chronic problem has been resolved by the 73rd constitutional amendment; a closer look at the functioning of PRIs shows that they are marred by petty party politics and domination, political and bureaucratic, and caste and religious considerations, which are far from the ideal.

III. CONCEPT OF GOOD GOVERNANCE

Alexander Pope's famous dictum- "*For forms of Government, let fools contest; whatever is best administered, is best*" truly reflects the spirit of good governance which, in the recent past, has become a catchword amongst academics, politicians and bureaucrats. The concept of good governance is not static but a dynamic one as it keeps changing due to overall societal changes. In ancient times, under monarchical regimes, the king was expected to be the embodiment of good governance for promoting general human well-being. With the emergence of modern democratic system, this role automatically was transferred to the government as an instrument of the state.

What Is "Good" In "Good Governance"?

The word "Good" is derived from the word "God" which means an ability to distinguish between right and wrong, just and unjust, fair, right and moral. In the context of governance, a decision is good if it is taken in public interest and serves the public interest at large. Public interest, here, means the interest of a larger number of people, even if it is not all the people. Jeremy Bentham described it as "*Greatest Good of the Greatest Number*" while in India we believe in "*Sarvajana hitay ,sarvajana sukhay*" which implies welfare of all and happiness of all. Thus, Good in the concept of good governance means those decisions, policies and actions which are aimed at the welfare of all. This 'good' is a pre-requisite and sufficient condition of the legitimacy of governance in a democracy like India.

What Is "Governance" In "Good Governance"?

Governance has become a fashionable term nowadays and in broad context, it means administration. The concept of governance is not new; in fact it is as old as human civilization. In simple words governance means- "*the process of decision-making and the process by which decisions are implemented*". The Concise Oxford Dictionary defines it as "an act or manner of governing and the office or function of governing". Governance here is not only confined to Political governance but would include all types, such as International, National, State/Provincial and Local governance. It is recognized that Governance is about how an organization steers itself in the processes and structures that are used to achieve its goal. Governance, as such, is authoritative allocation of values by those in power through decision-making. Since Governance is the process of decision-making and the

implementation of those decisions, it focuses on the actors who take decisions and the structures that are involved in decision-making.³ These actors and structures could be both formal and informal e.g. NGOs, Religious leaders and financial institutions. These are part of what we may call the “Civil Society”. In some countries, however, the uncivil part of the society like Mafias, Crime Syndicates also influence decision-making.

IV. DEFINING GOOD GOVERNANCE

Good governance ordinarily means looking after the welfare of all in every respect. According to H.K. Asmerom and others- “*Good governance is associated with efficient and effective administration in a democratic framework*”. It may refer to high level of organizational efficiency and effectiveness for responding in a responsive and responsible way in order to attain the pre-determined desirable goals for the society. To have a comprehensive understanding of the concept of Good governance, it would be desirable to take into account its parameters given by various scholars and institutions from time to time. Kautilya, the great Indian philosopher in his famous treatise Arthashastra has dwelt upon some indicators of good governance by a king/ruler such as:

- 1) King must merge his individuality with duties
- 2) Properly guided administration
- 3) Avoiding extremes without missing the goal
- 4) Disciplined life with a code of conduct for king and ministers
- 5) Fixed salaries and allowances to the king and public servants
- 6) Law and order is the chief duty of the king
- 7) Carrying out preventive and punitive measures against corrupt officials and ministers
- 8) Emulation of administrative qualities
- 9) Pursuing good governance even amidst instability.

³Peter Butera Bazimya, *What is Good Governance*, THE NEW TIMES, Aug. 31, 2005, available at https://turnitin.com/viewGale.asp?r=51.4717952985947&svr=03&lang=en_us&oid=12382712&key=c8f91f65bcd8f73a50bb3f92ed96d68f.

The gist of these indicators drives one to conclude that the main objective of good governance is to maximize the well-being of the people. As regards their relevance in the present day world, they still hold good. However, the World Bank has presented the essence of such indicators of Good governance in modern context.

The World Bank for the first time in 1989 highlighted the concept of good governance. By good governance, it meant sound public management. In this context, it identified four dimensions-

1. Public sector Management
2. Accountability
3. Legal Framework for Development and
4. Information and transparency.

In 1992, the Bank's document 'Governance and Development' said, Good governance is central to creating and sustaining an environment which fosters strong and equitable development and it is an essential complement to sound economic policies. Further, it identified three aspects of governance-

1. The form of political regime
2. The process by which authority is exercised in the management of a country's economic and social resources
3. The capacity of governments to design, formulate and implement policies and (in general) to discharge governmental functions.

Thus, good governance in the opinion of the World Bank consists of:

- Political accountability, including the acceptability of the political system by the people and regular elections to legitimize the exercise of political power.
- An established legal framework based on the rule of law to protect human rights, secure social justice and guard against exploitation and abuse of power.
- Freedom of association and participation by various social, economic, cultural and professional groups in the process of governance.
- Bureaucratic accountability, i.e. ensuring a system to monitor and control the performance of government offices and officials in relation to quality of service,

inefficiency and abuse of discretionary power. The related determinants include openness and transparency in administration.

- Freedom of information and expression needed for formulation of public policies, decision-making, monitoring and evaluation of government performance. It also includes independent analysis of information by the professional bodies, including Universities and others needed for a civil society.
- A sound administrative system leading to efficiency and effectiveness. This, in turn, means value for money and cost-effectiveness and;
- Cooperation between government and civil society organizations.

CHARACTERISTIC FEATURES OF GOOD GOVERNANCE THROUGH PRIS

In order for any country to progress it is necessary that all her children find their place in governance. Panchayati Raj system provides administrative powers to villagers, strengthening their belief in the central government and in their importance in governance. It allows villagers to be heard and their grievances to be addressed. Unless the policies made at the topmost level of governance take into account the lower rung of the society, true progress can't be achieved. Panchayati Raj assures that progress can be achieved. Panchayati Raj ensures that corruption is minimized, the views of minorities are taken into account and the voices of the most vulnerable in the society are heard in the decision-making. Thus, Government of India comes closer to fulfilling all these characteristics by virtue of the Panchayati Raj Institutions (PRIs). These are:

1. Participation

Participation by both men and women is the cornerstone of good governance. All adult persons, male or female, of a village should have a say in the administration in order to make it participatory. Participation can be either direct or through legitimate intermediate institutions or representatives. It is important to point out that representative democracy does not necessarily mean that the concerns of the most vulnerable in the society will be taken into consideration in decision-making. Participation needs to be organized and informed. This means freedom of association and expression on one hand and an organized civil society on the other hand.

2. Rule of Law

Good governance requires a legal framework that is imposed impartially. It also requires full protection of human rights, particularly those of minorities. Impartial enforcement of laws requires an independent judiciary and an impartial, incorruptible police force.

3. Transparency

Transparency means that decisions taken and their enforcement are done in a manner that follows rules and regulations. It means that information is freely available and directly accessible (in easily understandable forms and mediums) to those who will be affected by such decisions and their enforcement.

4. Responsiveness

Good governance requires that institutions and processes try to serve all stake-holders within a reasonable time frame. By being responsive, governmental institutions gain legitimacy in the eyes of the people which automatically ensures their wider acceptance and effectiveness in governance. Apart from well-designed structural devices, the responsiveness of a public institution can be meaningfully ascertained if there is serious civil society engagement in public affairs.

5. Consensus-Oriented

There are several actors and as many viewpoints in a given society. Good governance requires mediation of the different interests in the society to reach a broad consensus. All decisions in the village panchayats shall be on the basis of consensus, which steer clear of divisive approaches arising from consideration of petty party politics, religion, caste, colour, creed, class or culture.

6. Equity and Inclusiveness

The well-being of a society depends on ensuring that all its member feel that they have a stake in it and do not feel excluded from mainstream society. This requires that all groups have opportunities to improve and maintain their well-being. “Antodaya” or “Unto the Last” should be the philosophy behind the distribution of resources so that an equitable distribution of scarce resources can be ensured. All village disputes have to be settled within the four

corners of the village and not to be taken outside so that the curse of the litigation may not shatter the rural economy.

7. Effectiveness and Efficiency

Good governance also means that governance processes and institutions produce results that meet the need of society while making the best use of resources at their disposal. It also covers the sustainable use of natural resources and protection of environment.

8. Accountability

Accountability is a key requirement for good governance. Not only governmental institutions but the private sector and civil society organizations must also be made accountable to the public and to their institutional stake-holders. Who is accountable to who varies, depending on whether decisions or actions taken are by an internal or an external organization and institution. Accountability can't be enforced without transparency and rule of law.

9. Citizen-Centric

The second Administrative Reforms Commission (ARC) 2007 headed by Veerappa Moily has recommended promotion of local democracy by making local bodies citizen-centric.

Evidently, good governance implies concern for peoples' welfare wherein the government and its bureaucracy follows policies and does its duties with a deep sense of commitment. This also includes respecting the rules of law in a manner which is transparent; ensuring human rights, dignity, probity and public accountability.⁴ The need for good governance has always been indispensable for delivering goods and services to the masses. However, its indispensability has assumed even more significance considering the present changed national and international scenario. From the point of view of levels of government-centre, state and local- its urgency and need is perhaps the utmost at the local level because of its close proximity with the people. Further, it is this local level which provides the foundation for our democratic setup.

There is no denying the fact that the indicators of Good governance are equally applicable at the Panchayati Raj level. Besides, certain other factors such as- a committed political will for decentralization, non-hegemonic rural oriented bureaucracy, constructive role of mass media

⁴ <http://www.puchd.ac.in/phd/vaishali.pdf>.

and NGOs, enlightened rural folk and their participation and cooperation need special attention. Thus, the indicators along with these factors would determine the state of affairs of good governance at the level of Panchayati Raj Institutions (PRIs). So the need of the hour is attitudinal and behavioural changes and change-oriented, result-oriented and people-oriented thinking in PRIs to flourish as self-governing units,

V. CONCLUSION

It is the need of the hour to look at the devolution of powers to the Panchayati Raj Institutions (PRIs) to achieve development right from the grass root level. For this, policies have to be redesigned and grass root level realities are to be recognized if we want to see good governance at local level. Stocktaking of experience of all states with PRI's will enable us to review and appraise the time-bound implementation of devolution of the 3Fs- Functions, Finances and Functionaries to the PRIs. Few suggested measures in this regard are:

1. To introduce the Indian Panchayati Raj Service (IPRS) at all India level so as to provide good governance at the cutting-edge level of administration and minimize the supremacy of the Collector in decision-making of local self-governing institutions.
2. To strengthen the decentralized planning and provide an opportunity for more and more people to be involved in formulation of their own developmental plans through gram sabhas and other statutory bodies. Keeping in view the famous dictum- "*people get the type of governance they deserve*" The rural masses must be awakened and made to understand their rights, duties and responsibilities under PRIs.
3. To re-define the role and responsibilities of MPs/MLAs in the Panchayati Raj Administration and a re-statement of the distribution of work between the three tiers of governance. The political masters ought to exhibit their will to transfer the powers and functions in the true spirit of the 73rd Constitutional Amendment to achieve the desired objective of democratic decentralization ultimately leading to good governance at the grass root level.
4. To identify the real beneficiaries and disadvantaged sections of the society through gram sabhas in a transparent way, while implementing various welfare and development schemes reflecting efficient and effective administration, an indicator of good governance.

5. To provide adequate training to the elected representatives of PRIs through governmental and non-governmental organizations (NGOs) for their capacity building in transforming the Panchayats into real institutions of local self-government. The office-bearers must have integrity and vision, must be educated and fairly committed to serve the rural masses.
6. To give incentives to the states which strengthen the PRIs in all respects, including the devolution of powers.

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FOOD SECURITY AND THE TARGETED PUBLIC DISTRIBUTION SYSTEM IN INDIA

- By Shreya Shrivastava¹, Anant Joshi² and Akshay Goel³

The basic purpose of this research paper is to critically analyse the functioning of the Public Distribution Scheme and make a judgment of its effectiveness with respect to the current scenario of food security in India. We would go on in a systematic way, introducing the readers to what basically food security, and the right to food are, progressing on to throwing some light on the four fundamental pillars of food security. Having done this we would shift focus towards the primary topic of concern of our research, the Public Distribution System (PDS), and in that we will specifically deal with the Targeted Public Distribution System (TPDS) – We will move on to the five stages of TPDS, its implementation in the country and the five major challenges in its implementation will be analysed in detail. After talking about which arise in the country of TPDS, We go on to talk about an important report on the public distribution scheme and on the basis of its challenges and problems, Finally, some suggestions and solutions to improve the efficiency of the Public distribution system to make the fulfil the aims it was set up with, possible.

I. INTRODUCTION: RIGHT TO FOOD

Right to Food finds importance at the international as well as the national level. If we talk about international recognition of ‘Right to Food’, The Universal Declaration of Human Rights, 1948 (U.D.H.R.) and the International Covenant on Economic, Cultural and Social Rights, 1996 (I.C.E.S.C.R.), to which India is also a signatory, recognise the right to adequate food. If we look upon its national recognition then even the Constitution of India recognises it under Article 47, which says that it is the duty of the state to raise the level of nutrition and standard of living of its people and improve the public health.

In India, right to food caught the major attention of the people in 1996 in *Chameli Singh v. State of Uttar Pradesh*⁴ where the Supreme Court declared “*the right to life guaranteed in any civilized society implies the right to food*”, among other rights. Right to food came in the limelight again in 2001 when the People’s Union for Civil Liberties (PUCL) filed a writ

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⁴ *Chameli Singh v. State of Uttar Pradesh*, A.I.R. 1996 SC 1051.

petition contending that the right to food forms a part of Article 21 of the Constitution which guarantees 'right to life'. The Court in the ongoing litigation issued an interim order for the implementation of eight centrally sponsored schemes. These include the Public Distribution System (PDS), Antyodaya Anna Yojana (AAY), the Mid-Day Meal Scheme, and Integrated Child Development Services (ICDS), among others. Further, in 2008 the Supreme Court ordered that Below Poverty Line (BPL) families be entitled to 35 kg of foodgrains per month at subsidised prices.

Subsequently, the National Advisory Council (NAC) drafted a National Food Security Bill in October 2010 and proposed legal entitlements for about 75 percent of the total population. In January 2011, the then Prime Minister set up an Expert Committee under the chairmanship of Dr. C. Rangarajan which examined the Bill and made several recommendations, including reducing the proportion of the population entitled to benefits and computerising PDS. The current Bill was introduced in Parliament in December 2011 which became an Act in August 2013.⁵

II. WHAT IS FOOD SECURITY?

Food security is defined as the availability of food and one's access to it. Stages of food insecurity range from food secure situations to full-scale famine. The World Food Summit of 1996 defined food security as existing "*when all people at all times have access to sufficient, safe, nutritious food to maintain a healthy and active life.*"⁶

Two common definitions of food security come from the United States Department of Agriculture (USDA), and the UN's Food and Agriculture Organization (FAO):

- FAO- Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.⁷
- USDA- Food security for a household means access by all members at all times to enough food for an active, healthy life. Food security includes at a minimum:

⁵ ECONOMIC ADVISORY COUNCIL, REPORT OF THE EXPERT COMMITTEE ON THE NATIONAL FOOD SECURITY BILL (2011), available at http://eac.gov.in/reports/rep_NFSB.pdf.

⁶ WORLD HEALTH ORGANISATION, *Food Security*, available at <http://www.who.int/trade/glossary/story028/en/>.

⁷ FOOD AND AGRICULTURE ORGANISATION OF THE UNITED NATIONS, *FAO Policy brief on Food Security*, available at <http://www.fao.org/forestry/13128-0e6f36f27e0091055bec28ebe830f46b3.pdf>.

- (1) The ready availability of nutritionally adequate and safe foods
- (2) An assured ability to acquire acceptable foods in socially acceptable ways (that is, without resorting to emergency food supplies, scavenging, stealing, or other coping strategies).⁸

In the World Summit of Food Security 2009, these definitions were reiterated and the four pillars of food security – availability, access, utilization, and stability – were introduced.

Pillars of Food Security –

1. Availability- Food availability relates to the supply of food through production, distribution, and exchange.
2. Access- The ability of a household to produce and/or purchase the food needed by all household members to meet their dietary requirements and food preferences as well as the assets and services necessary to achieve and maintain an optimal nutritional status.
3. Utilisation- The condition of intake of sufficient and safe food which is adequate according to the individual physiological requirements.
4. Stability- Food stability refers to the ability to obtain food over.⁹

III. PUBLIC DISTRIBUTION SYSTEM

India's Public Distribution System is the world's largest distribution network of its kind. It was introduced during World War II as a war-time rationing measure.¹⁰ Initially, the distribution through PDS was based upon imported food grains. In the late 1960s, Agriculture Prices Commission and Food Corporation of India were set up by the government to improve the delivery and storage of food grains. By the 1970s, PDS became a universal scheme.

In 1997, the government introduced the Targeted Public Distribution System (TPDS) to provide subsidised food grains to the poor through ration shops. In September 2013, the government took a major step and enacted the National Food Security Act 2013 which relies

⁸ United States Department of Agriculture Economic Research Service, *Definitions of Food Security*, available at <http://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/definitions-of-food-security.aspx>.

⁹ Olivier Ecker & Clemens Breisinger, *The Food Security System: A New Conceptual Framework*, available at <http://www.ifpri.org/sites/default/files/publications/ifpridp01166.pdf>.

¹⁰ Sakshi Balani, *Functioning of the Public Distribution System: An Analytical Report*, available at <http://www.prsindia.org/administrator/uploads/general/1388728622~~TPDS%20Thematic%20Note.pdf>.

largely on the existing TPDS to deliver food grains to poor households. NFSA seeks to ensure food security through PDS by making right to food a legal entitlement. It specifies that up to 75 percent of the rural population and up to 50 percent of the urban population shall be entitled to food grains under the TPDS. Of these, at least 46 percent of the rural and 28 percent of the urban population shall be categorised as priority, while the rest will be 'general'.¹¹

The basic model of the TPDS is very well planned. The outline appears as if it is the most suitable model to improve the present situation of food security in India because it provides an organised network for the delivery of food grains from farmers to the beneficiary. However, there are many challenges which are involved in the functioning and implementation of this system due to the loopholes prevalent in its implementation. Both the centre and the state share the responsibility of this process.

The centre procures food grains from farmers at a minimum support price and allocates these grains to each state. It is then the responsibility of the state governments to identify eligible households from the total number of poor present in their states. The centre transports the procured grains to the central depots (godowns) in each state, thereafter the allocated food grains from these depots are delivered to each ration shop by the state governments. The ration shop is the end point from where beneficiaries buy their food grain entitlements. Food grains are further subsidised by many states before selling it to the beneficiaries. The Food Corporation of India (FCI) is the nodal agency at the centre of it all and plays a major role in the Targeted public Distribution System. Specifically, FCI is responsible for: (i) procuring grains at the MSP from farmers, (ii) maintaining operational and buffer stocks of grains to ensure food security, (iii) allocating grains to states, (iv) distributing and transporting grains to the state depots, and (v) selling the grains to states at the central issue price to be eventually passed on to the beneficiaries.¹²

IV. STAGES OF TPDS

1. Procurement
2. Allocation

¹¹ Vivake Prasad & Sakshi Balani, *National Food Security Bill, 2011*, available at <http://mla.prsindia.org/policy-guide/national-food-security-bill-2011>.

¹² *Supra* note 10.

3. Identification
4. Transportation and Storage
5. Distribution

1. Procurement of food grains from farmers

Food grains are procured from farmers at the Minimum Support Price (the price at which the FCI purchases the crop directly from farmers) which is usually higher than the market price to provide benefits to farmers. Currently, two methods are followed to carry out procurement:

(i) centralised procurement

(ii) decentralised procurement

Centralised procurement is carried out under the supervision of the centre, where FCI buys crops directly from farmers. Under decentralised procurement, states/Union Territories procure food grains at MSP on behalf of FCI in order to encourage local procurement of food grains and reduce unnecessary expenditure of transportation of these grains to different states from the Centre. Here, food grains are directly stored and distributed to beneficiaries by the state.

2. Storage

The food grains are stored by the central government to maintain buffer reserves for emergencies apart from the immediate distribution under TPDS. These are stored and maintained as central pool. FCI is the main government agency, which is responsible for storage and maintenance of these food grains.

3. Identification and allocation

Identification and classification of beneficiaries play a major role in fulfilling the goals of the scheme as it targets poor households for food grains entitlements. Under TPDS, beneficiaries have been divided into two categories: APL and BPL i.e. households above poverty line (APL) and households below poverty line (BPL). Those who are the poorest among BPL Individuals come under the scheme of Antyodaya Anna Yojna and are entitled to an AAY card. Allocation for BPL and AAY families is done on the basis of the number of identified households. APL families, for example, are allocated food grains on the basis of: (i) the availability of food grain stocks in the central pool, and (ii) the past lifting of food grains by a

state from the central pool. Moreover, the centre has the discretion to allocate more grains to states in the situation of emergency floods, droughts, and festivals, etc.

4. Distribution

The centre and the states both share the responsibility for the distribution of food grains. The centre, specifically, FCI transports food grains to various states from the central pool. The states which have surplus of a particular variety food grain transport it to the states which are in deficit. After the transportation of grains to the state depots by the FCI, state governments are responsible for the distribution of food grains to the end consumers. They transport food grains from the state godowns to the doorstep of each Fair Price Shop (ration shops) in the state. Beneficiaries then buy their monthly food grain entitlement at subsidised prices from these ration shops.

5. Licensing of fair price shops

Fair price shops or ration shops form the end point of the TPDS network. Ration shops are owned privately by the government as well as the co-operative societies. Ration shop owners are issued licenses by state governments under the PDS (Control) Order, 2001 to sell essential commodities at central issue prices and have certain responsibilities under the scheme.

V. IMPLEMENTATION OF THE TPDS: AN ANALYSIS

The problems that arise in the proper implementation of TPDS have been discussed under five major categories:

1. identification of eligible households
2. procurement and production of food grains
3. storage space for food grains
4. food subsidy, and
5. leakage of food grains.

1. Identification of eligible households

This process suffers from a large number of inclusion and exclusion challenges i.e. the ineligible households receive entitlements and get undue benefits while the entitled

beneficiaries do not get food grains to which they are entitled. An expert group which was set up in 2009, to advise the Ministry of Rural Development on the methodology for conducting the BPL census estimated that about 61% of the eligible population was excluded from the BPL list while 25% of non-poor households were included in the BPL list. Further, another problem that arises is due to the existence of ghost cards i.e. the fake cards made in the name of the persons who do not exist in order to divert grains from deserving households into the open market.

2. Production and Procurement of food grains

For the proper implementation of the NFSA, the government would need to procure more than 2265 million tonnes of grain every year. The food security entitles 75% of the rural and 50% of the urban population to subsidised foodgrain. Procurement of such a large quantity of food grains is easier in years when production is high but in years of drought or other natural calamities, domestic shortfall occurs which forces India to import these large quantities of food grains, exerting significant upward pressure on prices. This raises questions regarding the government's ability to procure grains without affecting open market prices and adversely impacting the Food Subsidy Bill.

3. Storage and transportation of food grains

The centre as well as state governments are responsible for storage of procured and allocated food grains respectively. Nevertheless, with the increasing population the procurement under TPDS shows a significant increase without any increase in the storage capacity. In August 2010, the Supreme Court in the ongoing case of *PUCL v. Union of India*¹³, found that food grains were rotting due to improper storage. It directed the central government to take measures for proper storage and preservation of procured food grain, and prevent rotting.¹⁴ Transportation is generally arranged through private contractors and thus there are a large number of cases of corruption, which prevents the food grains from reaching the beneficiaries, and they are sold in the open market.

¹³ PUCL v. Union of India, Writ Petition No. 196 of 2001.

¹⁴ *Ibid.*

4. Rise in food subsidy

The difference between the Minimum Support Price (MSP) and the Centre Issue Price (CIP) increases the food subsidy. The food subsidy has increased over the years, having more than quadrupled from Rs 21,200 crore in 2002-03 to Rs 85,000 crore in 2012-13.¹⁵ The factors that contribute to the rising food subsidy are: (i) hike in procurements in recent years (ii) increasing costs of buying (at MSP) and handling food grains, and (iii) a stagnant CIP. There has been an increase in the procurement due to the increasing population to improve food security. In addition, there has been a huge rise in the cost of production due to increase in the cost of labour and other production factors which have subsequently resulted in rise of MSP. On the other hand, the CIP of food grains has remained constant. Thus, the widening difference between the MSP and CIP has increased the food subsidy.

5. Leakage of food grains

One of the major problems which TPDS suffers from is the enormous leakage/diversion of food grains into the open market during transportation. In an evaluation of TPDS, the Planning Commission found that 36% leakage of rice and wheat occurs at an all-India level.

VI. RECOMMENDATIONS OF THE JUSTICE WADHWA COMMITTEE

ON THE PUBLIC DISTRIBUTION SYSTEM

The committee under the chairmanship of former Supreme Court Judge Justice D.P.Wadhwa was formed to look at the working and implementation of Public Distribution System. The committee observed that the system has not yielded benefits that were intended. It stated that the corrupted mechanism of the system hinders its implementation. The report further states that the collusion between persons involved in the PDS vertical supply chain, from fair price shop dealers at the grassroot level, to transporters, bureaucrats and politicians, has resulted in leakage of food grains.¹⁶

¹⁵ S.P. Rajendran & Diwakar Reddy, *Role and Effectiveness of Public Distribution System in providing Food Security in India*, 1(8) IJBARR 1, 5 (2015).

¹⁶ Jitendra, *Use technology to make PDS transparent, efficient: Wadhwa Committee*, DOWN TO EARTH, available at <http://www.downtoearth.org.in/content/use-technology-make-pds-transparent-efficient-wadhwa-committee>.

The committee has given several recommendations to improve the working and implementation of PDS. These recommendations include the formation of a Civil Supply Corporation at the State Level to monitor the system. Further, the committee has suggested that the Centre should increase storage capacity, ensure timely supply of food grains, monitor fair price shops and set up complaint redressal system at the grassroot level for proper implementation of PDS. The committee has also suggested that the government launch a door-to-door survey to identify the genuine beneficiaries of ration cards and on finding any fake card, prosecute both the holder as well as the concerned officers under Section 7 and other Sections of the Essential Commodities Act, 1955 without exception. It has also suggested the computerisation of whole system so as to minimise human intervention and reduce the scope of corruption.

VII. SUGGESTIONS

The basic problem with identification of genuine beneficiaries of ration cards is that deserving people do not get to avail their entitlements due to lack of awareness on their part. In many cases it has been found that ration cards are being mortgaged to ration shops owners in exchange of food grains because the beneficiaries are not aware of their rights. Thus steps should be taken to spread awareness and those who are involved in such activities should be subjected to the rigour of law.

Another problem is that of corruption. The PDS chain begins from procurement of food grains from farmers, then its transportation to state godowns, then ration shops and then finally it reaches the beneficiaries. However, this seemingly organised network is present only in papers and it does not exist in reality. Corruption exists in various stages of this system which does not allow the beneficiaries to avail the benefits to which they are entitled and results in the diversion of food grains into open markets. Thus instead of this long procedure of food distribution, there should be a direct cash transfer scheme where money should directly be transferred to the account of the beneficiaries, from where they can utilise the money the way they want.

Another alternative to this can be food coupons or food cards system in which food grains will be available to the people through 'Food Access Centres'. Following the model of ATMs or milk distribution model by Mother Dairy, food access centres should be made especially in

rural areas so that people have access to food all the time by using their food card.¹⁷ This will ensure that the food is reaching in the hands of those who deserve it.

Computerisation of the whole system will reduce the scope for malpractices since intermediaries would be eliminated. Moreover, procurement at state level should be encouraged so that it will minimise the transportation expenditure and it will shorten this long chain of distribution from the centre which will reduce the chances of corruption.

The huge increase in the minimum support price given to the farmers against the procurement of food grains results in an increase in the market price of the products which affects the common people and eventually affects the poor who are targeted under the PDS. So in order to protect the real essence of the system, the MSP should be fixed upto a certain level without affecting the interests of the farmers and thus a balance should be maintained between the MSP and the CIP. Efforts should be made by the government to improve the storage facilities for buffer stock because the improper storage facilities result in the wastage of food grains procured at such a higher price. During rainy season, many cases are found where food grains rot due to inadequate storage. To improve the condition of Public Distribution System and for its proper implementation, these suggestions should be adopted.

VIII. CONCLUSION

The paper is fundamentally about various facets of public distribution scheme. It details what is right to food and food security, and talks about various aspects of food security, picking a method of the ensuring of one dimension of food security in the country. The paper discussed how the Public distribution scheme came into existence, what the targeted public distribution scheme is and then went on to the subjective analysis of the TPDS by analysing the fundamental stages and the challenges faced by it. Thereafter, the paper suggested measures which if implemented would surely lead to a better and more efficient Public distribution system.

This research paper offers multiple solutions to the problems of the TPDS, which we would like to emphasise on as the most vital part of our research. It discussed how raising

¹⁷ Government of India, Report of the High Level Committee on Reorienting the Role and Restructuring Food Corporation of India (January 2015), available at http://fciweb.nic.in/app/webroot/upload/News/Report%20of%20the%20High%20Level%20Committee%20on%20Reorienting%20the%20Role%20and%20Restructuring%20of%20FCI_English_1.pdf.

awareness, or by educating the people about various such governmental schemes, one could make a difference in the people's minds and help them know their rights. Corruption infests this system deeply and the check on it would definitely help in going a step forward in the realisation of the goals of this scheme. Finally, the paper discussed how a balance should be maintained between the MSP and the price which food grains are available to the beneficiaries, and how an increase in the storage space and facilities by the government would help a great deal for the achievement of the plans attached with the scheme at the time of its conception.

EDUCATION
&
HEALTHCARE

ROLE OF LOW COST PRIVATE SCHOOL IN PROVIDING EDUCATION TO THE MARGINALIZED

By Kritika Singh Chauhan¹

“Education is the most powerful weapon which you can use to change the world.”

-Nelson Mandela

The World Declaration on Education for All emphasized the importance of partnerships “between government and non-government organizations, the private sector, local communities, religious groups and families” in ensuring that all children have access to quality educational opportunities. The commitments to creative new partnerships to achieve Education for All (EFA) goals received even stronger emphasis in Dakar (2000).² This goal for education cannot alone be achieved by government actors there is a much needed participation on part of private actors, since it is a broad stage to incorporate all and so there is a need for distributed roles and delegation by state to non-state actors. There is a growing participation on part of non-state actors in providing education, to marginalized group the new crop ups are low cost private school or budget private school. This paper discusses the role and impact of low cost private schools in providing education and various challenges and approaches to overcome the objection that they are facing including the impact of recent legislation Right To Education Act, 2010. It also draws a comparative study of various nations to get a statistical and illustrated study into the issue.

I. INTRODUCTION

One of the most rapidly expanding and contentious sectors across developing countries is the private, for-profit school for poor children. Recognition that low-cost private education is serving large numbers of low-income families in developing countries is very recent. UNESCO regards as “private” any educational institute that is controlled and managed by a non-government organization (e.g. religious group, association, enterprise) or if its governing body consists mainly of members not selected by a public agency.³ Low or budget

¹ Student, B.A. LL.B. (Hons.), Amity Law School, Guru Gobind Singh Indraprastha University, Delhi.

² Aga Khan Foundation team 2007, *Non-State Providers and Public-Private-Community Partnerships in Education*, available at <http://unesdoc.unesco.org/images/0015/001555/155538e.pdf>.

³ UNESCO, *Data Collection on formal education: Manual on concepts, definitions and classifications*, 2014 available at <http://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0CDAQFjADahUKEwj79oXFL>.

private school is defined as the school that serves low-income areas. Fees range from low to high; they are individually, privately funded and might be registered or unregistered. There is a growing trend among the poor families to send their children to such private schools.

II. GROWTH OF LOW COST PRIVATE SCHOOLS

Low cost private school (LCPS) is creating its distinct position among the impoverished section of society since many developing countries have a corrupted and unsatisfactory state of education system. This is driving low income families to send their children to these schools where they get quality education at affordable rates. Past five years have seen a tremendous growth in the establishment of low cost private schools.⁴ A significant portion of them are likely to be ‘unrecognized’ and unregistered by government, and therefore (deliberately in some instances) operating under the radar.⁵ Data on LCPS largely takes the form of isolated, cross-sectional surveys that cannot by design provide a clear aggregate picture at national or regional levels, or track changes over time.⁶

Various researches give a demographic outlook of the situation. For instance, a comprehensive census and geographic information system (GIS) mapping exercise in Patna, Bihar, revealed 1,574 private schools operating in the area, as against official government estimates of 350.⁷ In South Asia, a major focus of research on LCPSs, recent Annual Status of Education Reports (ASERs) from Pakistan and India indicate that private school enrolments are growing in rural areas around 28.3% of children in rural areas were enrolled in private schools in India in 2012. Increases in private school enrolment were found in almost all Indian states, and in rural areas it has been rising by an annual rate of 10% since 2009. If this rate of growth continues, 50% of children in rural areas of India will be enrolled in private schools by 2018.⁸

⁴ P. Rose, *Achieving Education for All through Public-Private Partnerships?* 20 DEVELOPMENT IN PRACTICE, 473-483 (2010).

⁵ K. Lewin, *The Limits to Growth of Non-Government Private Schooling in Sub Saharan Africa*, available at <http://sro.sussex.ac.uk/1833/1/PTA5.pdf>; Tooley et. al., *School Choice and Academic Performance: Some Evidence from Developing Countries*, 5(1) JOURNAL OF SCHOOL CHOICE, 1-39 (2011).

⁶ P. Dixon, J. Tooley & I. Schagen, *The Relative Quality of Private and Public Schools for Low-income Families Living in Slums of Nairobi, Kenya*, in *LOW-FEE PRIVATE SCHOOLING: AGGRAVATING EQUITY OR MITIGATING DISADVANTAGE* (P. Srivastava ed., Oxford 2013).

⁷ B. Rangaraju, J. Tooley & P. Dixon, *The Private School Revolution in Bihar: Findings from a Survey in Urban Patna*, available at <http://www.periglobal.org/sites/periglobal.org/files/The%20Private%20School%20Revolution%20in%20Bihar.pdf>.

⁸ Annual Status of Education Report: Pakistan (National); Annual Status of Education Report: India (Rural).

Drivers for growth

The widespread growth in low cost private schools in recent years is an astonishing fact, though there are provision for free education by state but still the poor families choose these private schools over public schools. This factor has been correctly analysed by Heyneman and Stern in their cross country review who identifies two ubiquitous reasons accounting for their widespread growth firstly a failure of governments to provide a sufficient quantity of schooling to meet demand (more applicants than places) and secondly, the generally poor quality of public education available.⁹ These participation and quality inadequacies range from access issues such as the lack of supply of public spaces, other problems such as overcrowding, violence, insufficient attention paid to slow learners or students from other religions to perceived quality issues such as teacher absenteeism, teacher engagement and absence of English language or IT instruction.¹⁰

In a six-country comparative study on the costs of sending children to school, Boyle found that, *“Despite their poverty, the poorest households are acutely concerned about the quality and relevance of education services. Both the economic and the non-economic judgments they make about schooling their children are strongly affected by their perceptions of the quality of services offered. There is a notable willingness amongst the poorest to pay, or make sacrifices for, what they perceive to be good quality education”*¹¹ Many studies reveal that such outgrowth and shift are in locations where state schools are either underprovided or perceived to be of low quality. One widely cited example is the rigorous study by Kremer and Muralidharan, where they uses rural data from India, found that private schools cluster in locations where rates of government school teachers’ absence are highest.¹²

Lewin emphasizes on limits to the growth of private schooling in low-income developing countries. He advocates that demographic and cost factors – including high ratios of income-earning adults to dependent school-age children, income distribution heavily skewed towards the wealthy and a general scarcity of domestic capital – constrain the expansion of unsubsidized private schools that are otherwise reliant on fee collection from lower-income

⁹ S.P. Heyneman & J.M.B Stern, *Low Cost Private Schools for the Poor: What Public Policy Is Appropriate?* INTERNATIONAL JOURNAL OF EDUCATIONAL DEVELOPMENT (2013).

¹⁰ Gray Matters Capital Report, *Affordable Private Schools (APS) Sector Analysis 2012*, available at http://www.periglobal.org/sites/periglobal.org/files/APS%20Sector%20Analysis_2012_GrayMattersCapital.pdf.

¹¹ *Supra* note 2.

¹² M. Kremer & K. Muralidharan, *Public and Private Schools in Rural India*, in P. PETERSON & R. CHAKRABARTI, SCHOOL CHOICE INTERNATIONAL (Cambridge 2008).

households.¹³ In addition, this trend is relatively more in villages where there are government secondary schools and therefore a ready supply of female graduates to recruit as teachers.¹⁴ In addition, areas with high population density since private sector activities tend to occur where there is a sustainable market.¹⁵

Polarized Opinion and Private Education: EFA (Education for All) Goal

There are diverse opinions on the issue whether education shall be a function of private actors or not. There is a wide spread debate over the issue whether LCPSs are contributing to the objective of “Education for All” (EFA).¹⁶

There are polarized perspectives regarding contribution of LCPSs in providing education to the marginalized some are of the opinion that Private school curricula may be unregulated and governments may not provide for transfer into public secondary schools. Private school teachers may be inexperienced and unqualified and others believe that Students achieve better educational outcomes in private schools and LCPSs tend to have low PTRs.¹⁷

Some commentators are opposed in principle to the delivery of education – typically regarded as an ‘imperfect public good’ that produces both individual and collective benefits¹⁸ – through a private market.¹⁹ Others are of a view that education is a right for all and it should be free from any fees either by private or public actors. Another argument made to critically question the role of private schooling in EFA is that only states are obliged to extend the right to education to all populations, including marginalized and economically disadvantaged groups.²⁰ Although some experts are convinced LCPSs have expanded access and therefore

¹³ H. Levin, *Educational Vouchers: Effectiveness, Choice, and Costs*, 17 JOURNAL OF POLICY ANALYSIS AND MANAGEMENT 373–392 (1999).

¹⁴ T. Andrabi et. al., *Report Cards: The Impact of Providing School and Child Test-scores on Educational Markets*, available at www.hks.harvard.edu/fs/akhwaja/papers/RC_June2014.pdf.

¹⁵ T. Andrabi et al., *A Dime a Day: The Possibilities and Limits of Private Schooling in Pakistan*, 52 COMPARATIVE EDUCATION REVIEW 329-355 (2008).

¹⁶ See for example the debates presented at <http://www.periglobal.org/>.

¹⁷ Day-Ashley et. al., *The Role and Impact of Private Schools in Developing Countries: A Rigorous Review of the Evidence*, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307032/Private-schools-2014.pdf.

¹⁸ *Supra* note 13.

¹⁹ Oketch, et. al., *Free Primary Education Policy and Pupil School Mobility in Urban Kenya*, 49 INTERNATIONAL JOURNAL OF EDUCATIONAL RESEARCH 173-183 (2010).

²⁰ K. Lewin, *The Limits to Growth of Non-Government Private Schooling in Sub Saharan Africa*, available at <http://sro.sussex.ac.uk/1833/1/PTA5.pdf>.

choice for the poor,²¹ others maintain that, in practice, government schooling remains the only education option available to the vast majority of economically disadvantaged or vulnerable households in poor countries.²² The *Oxfam Education Report*, for instance, while agreeing that private schools for the poor are prevalent, says that, to achieve universal primary education, ‘there is no Alternative to comprehensive public provision of good-quality basic education’²³

III. ROLE AND IMPACT OF LOW COST PRIVATE SCHOOLS

Access to the Marginalized.

Reaching the poorest and most marginalized children – requires specific strategies and targeted actions whether this is done under government or non-government auspices. These budget private school that have mushroomed up in many localities of our country are more successful in reaching to the marginalized sector than the public school, because of their provisions such as ensuring that centers/classrooms are located closer to homes, offering flexibility in the timing of the school day and year (adjusting to agricultural seasons or to complement religious education offerings); setting up ‘bridge courses’ or ‘camps’ that allow for ‘catch-up’ for out-of-school children who have missed schooling (e.g. working children) and provide intensive learning in shorter time frames; creating pathways into (or back into) formal schooling through developing equivalency learning assessments, ensuring children can take official exams that will enable their being mainstreamed (back) into formal schooling; developing curriculum attuned to local realities and drawing upon local culture and resources (e.g. using ‘Mother Teachers’ in preschool classrooms so children see familiar faces and local culture and language is brought into the classroom); recruiting teachers locally (who speak the same language as the student, can serve as role models and are likely to stay for longer periods of time) as well as providing relevant information, training and support to teachers who will be working in communities which they might not be sensitive towards (because of language, religious or cultural differences); building trust and positive

²¹ Tooley et. al., *School Choice and Academic Performance: Some Evidence from Developing Countries*, 5(1) JOURNAL OF SCHOOL CHOICE 1-39 (2011).

²² UNESCO, *Overcoming inequality: Why governance matters, Education For All Global Monitoring Report*, Paris (2009).

²³ K. Watkins, *The Oxfam Education Report* (Oxford, Great Britain 2000).

relationships with and amongst local community members in order to create strong support and locally relevant strategies across families for education of all children.

Public schools lack such provisions since they are controlled by government so do not cater to the needs of poor families and providing facilities.

Quality

Studies show that learning outcome in private schools is better than public school. Tooley found lower absenteeism and more teachers actually teaching when the researchers called unannounced in “budget” private schools as compared to the government schools.²⁴ The budget schools also provides superior inputs in terms of basics like water, toilets, lighting, chairs, and libraries. Moreover, students in these schools outperformed their state-school counterparts in key curriculum subjects even after controlling for background variables.

Innovation and Testing Strategies

Public schools are really rigid and follow the same old pattern; there is lack of innovation because they are stringed to the control of government authorities. But this is not the case with private schools which frequently bring new methodologies of teaching.

Understanding of Local Contexts and Strengthening Civil Society

Through their projects and programs, Civil Society Organizations (CSOs) often have a grassroots reach that helps them to understand local contexts like, what people want for their children, what are the obstacles to education access, the decentralized institutions often are more accountable and to know the technical know-how of how to implement policies.

Engagement of Parents and Communities

This is an area in which NGOs have long been recognized as bringing clear “added value”. Researches from the Europe and the USA have consistently shown that when parents are involved in their children’s education, children do better and schools improve. Parents involvement have demonstrated positive effects on student attendance, learning, teacher

²⁴ James Tooley, *Private Schools for the Poor*, available at <http://www.cedol.org/wp-content/uploads/2012/02/137-140-2007.pdf>.

motivation etc, and active engagement results in families and communities holding schools accountable to a much greater degree.²⁵

Cost Efficiency

Most of the non –state institutes have limited resources but they are still efficient in managing. Studies show that many communities and NGOs providing education operate at lower costs than their government counterparts, while achieving the same or better results in terms of learning outcomes and completion rates.

IV. CHALLENGES

Objection to Private Schools for Poor

Low cost private schools are under the radar of various state and non- state actors who do not support the idea of paid education. It faces continuous criticism and is under constant debate. There are various grounds under which they criticize these private initiatives and make these grounds for objection as their reasons for not supporting these schools .The grounds are listed:

1. Firstly, private schools charge fees, thus making them out of reach of the poorest.²⁶ But there can be ways to overcome this - there can be targeted vouchers and subsidy provisions being provided to poor. Private school owners themselves are already exploring such a way in embryonic form – offering free or subsidized places to the poorest of the poor, including orphans or those with widowed mothers.
2. Secondly, there is a widespread assumption in some quarters that non-state schools provide a level of quality which is worse than state schools. This is particularly the case where teachers in non-state schools receive limited pre-service training, and are paid less than those teaching in government schools for the poor, but this can be overcome through participation and help of international organizations and also aid from the government in form subsidy and less stringent regulations.

²⁵ S. Shaeffer, *Collaborating for Education and Change: The Role of Teachers, Parents and the Community in School Improvement*, available at <http://unesdoc.unesco.org/images/0009/000923/092321eo.pdf>.

²⁶ K. Watkins, *The Oxfam Education Report*, (Oxford, Great Britain 2000).

3. Third, impact of private provision on state education if poor parents support private education, this ‘carries a real danger of undermining the government schooling system’.²⁷ But this objective is meaningless since the main objective is fulfilling the EFA goal and if private education is provided to all at affordable rates to all then goal is achieved.

4. Fourth, is a theoretical objection since it is a diversified opinion of two international communities’ views which became a stumbling block for countries to frame their laws accordingly. Education is ‘a fundamental human right’²⁸, and this rules out private education playing a significant role. Now, there are two versions of the rights-based commitment to ‘education for all’ adopted by the international community in 2000. One is the second MDG that commits governments to ‘Ensure that, by 2015, children everywhere will be able to complete a full course of primary schooling.’²⁹ There is also the second goal of The Dakar Framework for Action, which commits to ensure ‘that by 2015 all children have access to and complete, free and compulsory primary education of good quality.’³⁰

Regulatory Ineffectiveness

One of the major challenges that LCPSs is facing is the restrictions imposed by regulatory authority and various stringent laws and regulation, which affects the functioning of such schools, which already works at lower rate to provide education.

It has been explained by Heyneman and Stern that Regulation in principle aims to set and enforce standards that ensure education is provided in line with public policy goals and protects citizen welfare.³¹ However, evidence from a range of countries suggests regulatory structures for LCPSs have been difficult to enforce in practice.³² Incentives for LCPSs to pursue recognition may include enabling pupils to sit state exams, and the prospect of charging higher fees than unrecognized schools.³³ Nevertheless, typically only a small portion of private schools are recognized and regulated. For example, recent surveys in Lagos

²⁷ Probe Team, *Public Report on Basic Education in India* 105-6 (Oxford University Press 1999).

²⁸ United Nations Development Programme, *Human Development Report 2003* (New York); World Bank, *Making Services Work for Poor People: World Development Report 2004* (Washington DC).

²⁹ United Nations Development Programme, *Human Development Report 2003* (New York).

³⁰ The World Bank, *Education for All*, available at <http://www.worldbank.org/en/topic/education/brief/education-for-all>.

³¹ *Supra* note 9.

³² *Supra* note 17.

³³ P. Dixon, *The Parting of the Veil – Low-cost Private Schools – the Evidence*, in INTERNATIONAL AID AND PRIVATE SCHOOLS FOR THE POOR: SMILES, MIRACLES AND MARKETS (P. Dixon ed. 2013).

state indicate that only 26% of private schools are government-approved.³⁴ It is difficult to achieve the recognition status where the rules and requirements are unrealistically stringent and costly.³⁵ In India, for example, achieving the status of private-aided school requires LCPSs to bring teacher salaries in line with the salaries earned by government teachers (negotiated by unions), which could make them unaffordable for the poor.³⁶ Where the standards of teacher qualifications required in private unaided schools are higher than those in state schools, this can cause resentment between private and public providers.³⁷ Frequently cited reasons for regulatory ineffectiveness are lack of *capacity* to enforce the rules (in terms of resources, information and support in enforcement) and/or lack of incentives to enforce them on the part of government, front-line bureaucrats or private school owners.³⁸

Impact of RTE Act, 2010

Right to Education Act, 2010 is a significant legislation, which was enacted from April 1, 2010, requires that budget private schools will have to close down within a period of 3 yrs if they do not comply with the stringent eligibility conditions stipulated in the act.

Budget private schools, provide education to children from slums and rural parts of the country and these are generally unregistered and are not aided by state in any way. Now RTE Act lays down a provision under section 19 which makes it compulsory for all private schools to meet certain norms to ensure recognition. These norms include all weather building, one classroom for each teacher at the least, separate toilet for boys and girls ,clean drinking water, playground and library. It also specifies the dimension of class norms, norms for hiring and terminating and salaries for staff and teachers. The RTE act neglected this private unaided institution that may not have that many resources.

A major problem with the RTE act is the essentiality certificate (EC), which certifies the need for a school in particular area. Another drawback is the discretionary power with the department to decide which area requires school. This control exercised by the authorities in

³⁴ J. Härmä, *Lagos Private School Census 2011 Report*.

³⁵ P. Dixon, *The Anteroom of Eternity? Gaining Attention from Aid Agencies*, in INTERNATIONAL AID AND PRIVATE SCHOOLS FOR THE POOR: SMILES, MIRACLES AND MARKETS (P. Dixon ed. 2013).

³⁶ Claire Mcloughlin, *Low-cost Private Schools: Evidence, Approaches and Emerging Issues*, available at http://www.academia.edu/4495717/Low_Cost_Private_Schools_Evidence_Approaches_and_Emerging_Issues.

³⁷ P. Srivastava, *The Shadow Institutional Framework: Towards a New Institutional Understanding of an Emerging Private School Sector in India*, 23(4) RESEARCH PAPERS IN EDUCATION 451-475 (2008).

³⁸ *Supra* note 36.

the number of schools in an area, essentially by means of granting of the certificate develops a scarcity of schools in the area and which eventually leads to exploitation of customers.

Estimates put the number of low cost private schools in India in the range of 3,00,000 and if these numbers of private schools are forced to shut down, it will lead to a serious problem of mismatch between demand and supply in the education sector.

V. COUNTRY CASE EXAMPLES

Enrollment Rate in LCPSs

1. South Asia

In India alone, the official figures state that more than 23 million children attend non-state primary schools.³⁹ The true figures are likely much higher than these. One sample found that 41% of private schools in the country were unrecognized⁴⁰, and another sample found that there were considerably more unregistered than registered private schools.⁴¹ There is a “mushrooming” of unregistered private schools operating “practically in every locality.”

Almost 40% of Bangladesh's primary enrolment is in non-state schools. 96% of its secondary school enrolments are non-state. This means that a total of 18 million children in the country benefit from non-state education opportunities.⁴²

If we take the case of Pakistan, 5.8 million children are enrolled in non-state schools, accounting for 36% of the country's total primary enrolments.⁴³

2. Africa

Across Africa as a whole, approximately 10% of children are in non-state schools, and there is substantial variation between countries. In Zimbabwe, long prior to the current crisis, non-

³⁹ UNESCO Institute for Statistics, *Annual Report 2003-2004*, available at <http://unesdoc.unesco.org/images/0015/001501/150162e.pdf>.

⁴⁰ G. Kingdon & R. Banerji, *Addressing School Quality: Some Policy Pointers from Rural North India*, available at <http://nbn-resolving.de/urn:nbn:de:0168-ssoar-69191>.

⁴¹ J. Tooley & P. Dixon, *Private Schooling for Low-income Families: A Census and Comparative Survey in East Delhi, India*, 27(2) INTERNATIONAL JOURNAL OF EDUCATIONAL DEVELOPMENT 205-219 (2007).

⁴² *Supra* note 39.

⁴³ *Ibid.*

state provision accounted for 9 out of 10 school children. In eleven countries on the continent, private provision accounts for 20% or more of all primary enrolments.⁴⁴

In Nigeria's Ga District, 64% of school children attend private unaided schools, while in Lagos State, Tooley and Dixon (2005) estimate that 75% of school children are in private schools, with a larger proportion in unregistered private than in government schools (33% compared to 25%).⁴⁵

3. Central Asia

In China, where the government has historically been the sole education provider, the establishments of private schools are being encouraged in recent years as a way of stimulating the economy. According to official figures, in 2001, 3.1 million students – just under 1.5% of the country's total student population – were enrolled in non-state primary and secondary schools.⁴⁶

Inadequate Public Supply

There are many countries that have a increased low cost private enrolment because of inadequate public supply, these schools are out of the reach of low income families since they are located in remote areas. Some country case examples shed the light on the issue further.

Indonesia

In a country like Indonesia, although private schools can be found throughout the country, those that serve low-income populations are often established in remote areas in order to meet demand. An extreme example from our fieldwork was a Baduy school started in West Java that we reached only after a five-hour walk through the mountains—the nearest public school was more than 10 km away. Furthermore, at the junior-secondary level, low-cost private schools have been established in order to provide educational opportunities for those students

⁴⁴ *Supra* note 2.

⁴⁵ *Supra* note 41.

⁴⁶ *Supra* note 2.

with low primary exit examination scores, who are unable to secure spaces in public schools.⁴⁷

Africa

In Kenya insufficient supply is the overriding reason for the rise in low-cost private schools in the country. There is lack of infrastructure, public services and roads which comes as a stumbling block in rural areas whereas in urban areas the poor are bound to live on the outskirts of town in slums due to property right issues which makes it difficult for the low income families to reach public schools.⁴⁸

Uganda has seen significant increases in the private sector as a result of insufficient supply in the public sector.

In West Africa, Nigeria has experienced large increases in unrecognized private schools, for much the same reason as its East African counterparts.⁴⁹

South East Asia

Philippines has seen a similar trend—although recent increases in public school spaces have actually led to a reduction in the overall share of private school students in the country.⁵⁰ In Thailand, short public supply has also influenced growth in the low-cost private sector, especially at the secondary school level.⁵¹ Much the same can be said about the private education sector in rural China.⁵²

⁴⁷ *Supra* note 9.

⁴⁸ *Supra* note 19.

⁴⁹ P. Rose, *Private sector contributions to education for all in Nigeria, in schooling in less economically developed countries: Asian and African perspectives* (P. Srivastava ed., 2007).

⁵⁰ E. Jimenez & Y. Sawada, *Public for Private: The Relationship between Public and Private School Enrollment in the Philippines*, 20 (4) *ECONOMICS OF EDUCATION REVIEW* 389–399 (2001).

⁵¹ K. Pinyakong et. al., *Development of private secondary schools in Thailand*, available at <http://www.unesco.org/iiep/PDF/pubs/Thailand.pdf>.

⁵² J. Tooley, *The Beautiful Tree: A Personal Journey into How the World's Poorest People are Educating Themselves*, available at <http://www.cato.org/events/beautiful-tree-personal-journey-how-worlds-poorest-people-are-educating-themselves>.

Regulatory Concerns

The regulatory environment for non-government schools accommodating the poor can represent barriers to their operations. These include regulations which are (i) unnecessarily numerous: where the number and variety of regulations would prevent private schools operations were they to be followed (e.g. : Tanzania); (ii) unnecessarily restriction, where one single regulation can prevent operations (example: the requirement to own land in Kenya); (iii) Non enforcement, where the regulations are simply on paper and cannot be monitored (example: Ghana), or (iv) used as an opportunity for graft and corruption: where the regulations serve as a means for public officials to ‘collect rent,’ implying that when they are enforced it is for the private gain of the government inspector.⁵³

VI. CONCLUSION

While going through all the case studies and coming across the challenges that low cost private schools are facing some conclusions can be drawn. Despite these challenges, the number of LCPS is increasing and parents are choosing to educate their children there - often stretching their meagre household incomes to do so - and increasingly organizations like UNICEF and its development partners are interested in advancing the partnership agenda to help ensure the realization of the rights of all children, especially the poor, envisioning the state as an enabler as well as one of the providers of education (UNICEF, 2011). And it can also be drawn that these schools are on constant radar of some state and non-state actors who think it as a threat to public education. But it is been proven by statistical data that these schools have high enrolment rate and the reasons for that is the various role they are playing in reaching the poor, giving them quality education.

VII. RECOMMENDATIONS

We find that non-government schools serving the poor are a universal phenomenon but that they are not always recognized as such. Governments sometimes ignore them, deny their contributions, or characterize them as being of low quality and impediments to national educational objectives. Some steps that should be taken in order to protect their rights are:

⁵³ *Supra* note 47.

Registration of Schools

The first step should be to register non-government schools into the national database and that too without charge.

Regulations Governing Non-Government Schools

Regulations should be reduced or eliminated, hence enabling maximum flexibility. This should include regulations that control tuition, regulate teacher certification, and pedagogy. Innovation depends on freedom to experiment in these areas. For reasons of the public interest, and because non-profit non-government schools should be free of taxation, high tuition schools should reserve a portion of their places for scholarships to children with considerable ability from low-income families.

Aid by the Government

The low cost private schools should be provided with financial aid since they are operating on short funds and if these schools are provided with more subsidies and vouchers then it would encourage them to take up the initiative.

PLAGIARISM: AN EMERGING PARADOX IN ACADEMIA

By Nishat Ahtesham¹ & Pranav Kharbanda²

The research paper aims at bringing to light the meaning of plagiarism, the way it has been spreading in the world, and particularly in India. Plagiarism has been an issue of serious concern in not only academia but in all the spheres of writing. The paper aims to discuss the reasons as to why people get indulged into the practice of plagiarism, the repercussions of plagiarism, various tools and techniques to avoid it and the measures that can be adopted at both individual and organizational level to overcome and avoid the practice of plagiarism. Plagiarism is more often thought of as a plague to the academic world; where not only the students but the teachers tend to follow unfair writing practices with a view to increase their points, though unlawfully. The paper stresses upon the need for a stringent mechanism against plagiarism while the necessity of a system of mentoring and guidance at the educational level to make the students able to undertake academic writing on their own rather than following a mere copy-paste mechanism. There have also been suggestions to modify the practices of assigning projects to students and increase the time period for submission so that students may get sufficient time to submit an original piece of work. The paper intends to bring about the importance of changing and improving the level of education with a special focus on the Indian system of education.

I. INTRODUCTION

Plagiarism is an issue of great concern amongst the academicians. Plagiarism is a moral, ethical, and legal issue and has been discussed and debated over decades. However, with the tremendous increase in the number of internet users, the problem of plagiarism has taken a quick pace. Plagiarism is commonly understood as copying one's original work by other person without requisite permission or citation of a reference. This precisely means that it involves presenting someone else's work as our own without giving any credit to the actual author of the writing. Plagiarism is defined as presenting another person's work as one's own writing. Plagiarism may involve copying someone else's ideas, text, or a specific writing style as their own. Plagiarizing from a copyrighted material may lead to legal consequences depending upon its nature and extent. It is undoubtedly considered a fraud or a crime and affects all who consume content for any form. Therefore, it is seen as an issue which needs an

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urgent solution. There has been a widespread misuse of the internet which is seen as an easy source of getting the entire information one needs and copying the work as their own. Plagiarism has been a word of ignominy for authors but unfortunately nowadays a well systematized practice of almost all writers.

II. PLAGIARISM: WHAT DOES IT CONSTITUTE?

A person willfully uses someone's work without permission and makes others believe that he is the creator/owner of the work. Even a close resemblance to the language or thoughts of original work let alone copying as is may constitute plagiarism. Even incorporation of thoughts may in some cases constitute plagiarism though this may depend upon the facts and circumstances of the case. However, the connection that the person had access to the work has to be proved. Intention is very important in establishing plagiarism; the intention of depriving the rightful owner of his credit should be established.

A few examples of Plagiarism can be quoted as follows:

1. Downloading and copying text from an electronic or an online source and submitting the same as own work.
2. Buying, stealing or borrowing an assignment, experiments/results.
3. Copying, as it is, a section of a book or an article without necessary citation.
4. Making a direct mention from a source verbatim, without giving adequate references.
5. Using the work, analysis or results of someone else as own.
6. Adopting and mentioning significant ideas of someone else as own.
7. Putting someone else's ideas and paraphrasing into your own words and not acknowledging for the same.
8. Copy-pasting written expressions of someone else without proper acknowledgement.
9. Where the extent of quoted work exceeds the author's original work, such excess of direct quotations can also come under the purview of plagiarism even if the same has been cited or acknowledgement made by the author.

Plagiarism is sometimes classified as intentional (dishonest plagiarism) and non-intentional (negligent plagiarism). Intentional plagiarism, as the name suggests in the practice of a person deliberately stealing text or an idea of someone else and presenting it as his or her own. The person performing such practice may or may not carry out his original work but does intentionally copy someone else's work without giving any credit to the original writer. Unintentional plagiarism, on the other hand, is a result of lack of knowledge or awareness of

how someone else's work can be used or quoted using proper citations and acknowledgements. This is generally common in the academic writings of students. Different institutes and websites define plagiarism differently. But the one common notion is that plagiarism is an ethical offense in which one author closely imitates and uses ideas/thoughts of another author without giving appropriate reference. Plagiarism is considered to be an immoral act and a serious legal offense and its consequences have disturbed and damaged reputations of many authors since ancient times.

In India, plagiarism evolves mainly because of lack of awareness. People often plagiarize, sometimes deliberately and many times unknowingly. Many people don't know what plagiarism is and how bad the consequences may be. For example, using an image found on the internet and not citing it also amounts to plagiarism. This simple usage of images is often ignored while writing text. This unawareness regarding plagiarism leads to unfair practices. Students generally don't know how to use resources available and how to use them.

Plagiarism is quite common in schools but it is seldom identified and punished. Copying homework seems to be an easy way out for many students. This practice, when not caught and checked, seems to inculcate in them a habit to plagiarise. Continuing this habit, in colleges and other institutions, students copy idea from a research paper or a book, or copy assignments from other students. In college, assignment copying (from a friend or from internet) is one of the most common plagiarisms seen. This attitude of attaining easy solutions (although ethically very wrong) makes the student lazy and careless. This way, the student does the job without enhancing his/her knowledge. Plagiarism, when identified, can lead to suspension and even expulsion in many cases and thus should not be taken lightly by students.

III. CONSEQUENCES OF PLAGIARISM

Undoubtedly, plagiarism has been a practice often considered a punishable offence while it is being considered acceptable in various situations depending upon the kind and extent of text or ideas being used from different sources of study.

Plagiarizing leads to a complete loss of public image of the defaulter while it destroys personal, professional and academic reputation. It may sometimes damage the entire career of the defaulter.

With respect to the Indian context, there are laws related to plagiarism which levy upon the defaulter, a punishment varying from fine to imprisonment or both. Different institutions

adopt different policies for the practice of plagiarism while some also allow a margin of 5 to 10 % of the matter in an academic writing to be plagiarized.

As far as the legal repercussions of plagiarism are concerned, it often seems a concept interlinked and intertwined with copyright infringement. Copyright infringement, which means doing something that is sole and exclusive right of the owner of the copyright without his/her permission is considered both a civil and a criminal offence as per the Copyright Act.³ s. 63 of the copyright act states that the defaulters are liable to be prosecuted and punished with a fine ranging from Rs.50,000 to Rs.2,00,000 and an imprisonment from 6 months to 3 years or both S. 63A of the Act also deals with enhanced penalties in a few cases.

As far as plagiarism is involved in academic work of students, the punishment by the concerned institutions may vary from a simple warning to suspension or termination of the defaulter. While in case of plagiarism taking place at a higher edge, the repercussions may be very high and sometimes it leads to suspension, demotion or termination while legal consequences are definite to follow.

IV. MEASURES TO AVOID PLAGIARISM

There has to be a concerted effort by research scholars, students and institutions to plan strategy and measures to avoid plagiarism in the field of education.

The research paper reveals various reasons and conditions due to which people prefer to copy other's ideas or language rather than putting their own effort to generate their original work.

These factors include social, cultural, linguistic barriers as being a major reason for people undergoing the practice of plagiarism. The other factors include psychological traits like avoidance to work when material is freely available online, shortage of time for completion of the academic writing, and pre conceived notion of the existing work being better than their own work and so on.

We shall discuss the measures institutions take to avoid plagiarism followed by the possible measures that people should take into consideration so as to avoid getting indulged into the practice of plagiarism.

³ Section 4 and Section 33 Copyright Act 1957.

Measures to Avoid Plagiarism: Institutions' Point of View

Institutions have adopted several means to reduce the practice of plagiarism; few of them have been discussed below:

1. Anti-Plagiarism Softwares

Softwares to detect plagiarism have been created by institutes so as to bring down the level of copy- paste practice followed by students. One such example is that of “turnitin”, a software used by professors to check whether the writings or assignments of students are original work or have been plagiarized. It helps reveal the true picture while it acts as a control mechanism against the practice of plagiarism by the students.

However, it has been reported that this tool is only a partial measure to detect plagiarism as students may indulge in paraphrasing which involves slightly modifying the original content rather than mere copying and pasting.

1. Anti-Plagiarism

One of the softwares to detect plagiarism is Anti-Plagiarism. It is a useful measure to control and detect text or material that has been copied from any source on the internet. It is widely being accepted and used as a watchdog technique to avoid plagiarism among students and scholars and is widely being used by institutes these days. It detects documents with a format extension of *.rtf, *.doc, *.docx, *.pdf.

2. DupliChecker

For people who wish to ensure that the content they prepare is not liable to be rejected for plagiarism, Duplichecker provides a tool to check any text for plagiarism. All a person needs to do is to copy their text in this software and it reveals the percentage of plagiarism involved. This software acts as a precaution for writers to avoid the consequences of plagiarism.

3. PaperRater

PaperRater is yet another software which not only detects the rate of plagiarism but also provides grammatical corrections and writing suggestions for the users. It involves zero cost and is an efficient measure to avoid plagiarism.

4. PlagiarismChecker

PlagiarismChecker is an online facility where teachers can detect plagiarism in student assignments and projects. It acts as a useful measure of control against such practices by writers while it makes it easy for teachers to detect the defaulters.

5. **Plagium**

It is yet another tool for detection of plagiarised content in a particular piece of writing. It, however, can check only 250 characters of text at once.

6. **PlagTracker**

This tool is useful for detection of plagiarism from online sources of publishing. It not only reveals the rate of plagiarised content but generates a report at the end of the scanning of a document. It checks for plagiarism from over 50mn sources on the internet.

7. **Viper**

Viper is also another measure to avoid plagiarism but it requires the user to download this application before it can be used. It detects plagiarism from over 10bn sources on the internet and provides the complete details of the text along with the URLs from where the text in a particular document seems copied.

Advantages and Disadvantages of Using Anti-Plagiarism Tools:

Advantages:

1. Anti-plagiarism tools provide an efficient mechanism to avoid and control plagiarism for teachers. It also acts as a self-correction tool for students to check their own assignments of plagiarism before submitting them so as to avoid consequences of plagiarism.
2. They are a free, easy and user-friendly source to check the rate of plagiarism and take corrective measures.
3. Making use of such tools by institutes obligates students to perform original work rather than follow a copy-paste system.
4. It also encourages writers to generate their own ideas and builds among them a confidence to write and get their content published.
5. It helps in detecting the kind and rate of plagiarism in a write-up and protects the rights of the actual authors.
6. It makes it necessary for writers to mention the name and reference of the content from where matter has been used or copied, while giving due credit to the original authors.

Disadvantages:

1. Anti-plagiarism tools are not always a perfect detector of plagiarism where there has been paraphrasing done by the writers.
2. Not all the tools are reliable and accurate as they have limited access to sources on internet while they look for detecting similar data for plagiarism in writing.
3. These tools may make students feel helpless as they may not be able to construct a 100 percent original work due to certain barriers like lack of technical knowledge, linguistic barrier or shortage of time.
4. Not all institutes in India are techno viable to support such systems in their campuses as a control measure for academic writing.
5. The major emphasis of these tools is to check plagiarism rather than educate students. The fact however cannot be denied that even if students try to take support from existing work of other authors, there is some sort of learning that takes place. This factor is straightaway avoided in case of using anti-plagiarism tools.
6. The tools used may sometimes make errors while analyzing whether there has been straight plagiarism or rephrasing or mentioning similar ideas.

2. Professionally Qualified and Committed Mentors

Another measure of avoiding plagiarism among students is to provide them with resource persons who are essentially qualified, professional and committed, who can help and guide the students in their respective discipline of writing so that they can create their own original work. Institutions, these days, focus upon hiring such faculties who themselves are authors of original work and who have the knowledge and potential of caring out the work of academic writing.

3. Quality of Education

The Indian education system has undoubtedly shown a vast rate of improvement over the years. However, it has been observed that there is a greater focus on theoretical aspects of disciplines and a comparatively lesser emphasis on practical applicability of concepts. There are institutes which have realized this fact and hence they have reduced the length of the academic writings and increased the time for completion and submission of these assignments. This would enable students to spare adequate time to create original work rather than just copy-paste for the sake of the formality of completing and submitting the work so as

to fetch a few marks. This would also give the faculty more time to effectively and intricately evaluate the student assignments and make the work more productive and useful for them.

4. Quotation Marks, Block Quotations And References

It is sometimes inevitable for a person to take up a piece of academic writing without making use of an existing piece of writing related to a similar discipline, therefore it becomes essential to cite references from wherever the matter in a writing has been stated either exactly or in other words.

Quotation marks are a pair of opening and closing marks intended to lay emphasis on a word, sentence, phrase or paragraph. They may be single quoted or double quoted. These are to be used by writers when they make a direct mention of another author's content.

Block quotations are used while a writer intends to highlight a paragraph in a different form of indent as easily distinguishable. This is also used as a way to give due credit to the original author of the content in question.

References are to be cited at either the end of a piece of writing or to be mentioned as a footnote below every such content mentioned. References may have a specific format depending upon the style of writing of an author.

5. Academic Integrity Through Peer Programmes

Students can themselves motivate one another to study, review and create their original writings. Maintaining academic integrity must be considered a moral trait among students, teachers or any other scholars. Student engagement programmes are organized by various institutes with a view to involve students in a realistic framework so that they can develop confidence and enhance their writing skills.

Measures to Avoid Plagiarism: Writers' Point of View

Writers themselves should follow certain measures so as to avoid being accused of plagiarism. Some of the measures have been discussed below:

- No doubt a literature review is must before preparing an academic writing, but there should not be a copy-paste mechanism followed for the sake of avoiding hard work.
- Any data or text mentioned as it is must be properly quoted and references made.

- Before submitting an academic writing for publishing, writers must themselves ensure that their writing is free of plagiarism. For this, there are softwares that can be used or they can review it on their own.
- Not only copying from others articles is punishable, but self-plagiarism should also be avoided as it does not add anything new to the existing knowledge and is considered no way less than plagiarism.
- Persons facing linguistic barriers may take support from mentors or colleagues to get their work completed in its original form rather than copying existing publishing.
- An attempt to take up the task of writing is essential. Although there is material available of the internet, people must believe and take up to write on their own as it may prove to be better than a few others and would help the writer generate new and creative ideas.
- Plagiarism must be considered something as immoral activity by everybody who takes up writing. A set of points or data that is essentially required to be studied before writing must be noted down and worked upon, analyzed and interpreted in own terms.
- There shall be a realization that the objective of an academic writing is learning. Plagiarizing kills the purpose of writing and hence must be avoided.

V. CONCLUSION

Plagiarism has not been an issue confined to a specific sector, field or category of persons. It has been an issue of concern for people ranging from undergraduate students to even ministerial level persons. We have seen cases of plagiarism being practiced at varied levels and the consequences people face for such writings. The research paper discusses various means of avoiding plagiarism both at individual and institutional level. Apart from adopting stringent measures to stop plagiarism, there shall be an equivalent emphasis on learning aspect of students. Students and academic writers must be given freedom to study existing articles and work upon existing ideas to further them, while they should be guided to quote essential references while doing so. A combined positive effort by individual writers, institutions as well as the legal framework must be applied in order to reduce plagiarism while avoiding the negative impact of anti-plagiarism tools used. Writers must be encouraged to take creation of original work as a part of the basic value system in the field of education and plagiarism as a sort of immoral act. A balanced set of measures and a mental revolution

among people would certainly help the rate of plagiarism come down while allowing more of ideas and content to be added to the world of knowledge.

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EFFECT OF THE RECENT TECHNOLOGICAL ADVANCEMENTS IN EDUCATION ON TRADITIONAL CLASSROOM LEARNING

By Manish Singh¹

A survey questionnaire was designed to assess the current scenario in the educational field in India focusing on the effects of the latest technological advancements in the field of learning techniques and ways adopted by the students. Responses were recorded over a period of 15 days from a sample size of 300 undergraduate engineering students. 102 of them responded and the findings were analysed and deductions were made.

It was found that technology is affecting the learning patterns of the students in a major way and they are slowly but surely drifting away from the traditional learning model of classroom lectures to a more online and video based learning. Though some of the features of traditional classrooms still attract them to the classes like face to face interaction with teachers and students and effective doubt removal, they still find taking video lectures and studying from online resources better as it is more flexible and provides them with more freedom.

Therefore, the need is of a system which takes the positives from both E-learning (learning through latest technological tools) and C-learning (traditional classroom learning) and delivers maximum benefits to both students and teachers. This can be achieved by developing a model in which students take video lectures at their place of convenience and come to classroom to discuss their doubts and problems with the instructor and other classmates.

VII. INTRODUCTION

With the advent of technology, we have seen that people have access to a lot of online resources. From the research, it was found that more than a year after Harvard University and Massachusetts Institute of Technology launched edX, their massive online education initiative, India is the country with the second highest number of enrolments with more than 150,000 students from the country taking various courses on the online platform. There are 1.2 million students on edX platform from all countries. Amongst these, 13% are from India and 30% are from the United States.

The subjects offered by edX through Massive Online Open Courses (“MOOCs”) include interactive online classes such as law, history, science, engineering, business, social sciences, computer science, public health and artificial intelligence. At present, edX offers 70 courses.

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Anant Agarwal, president of edX observed that “*Engineering courses were in high demand initially and then subjects in public health became very popular with Indian students.*”

However, there is still a large section of the student-teacher community which prefers traditional classroom teaching model rather than the recent e-learning devices and tools. In almost all of the premier educational institutes in our country, the mode of teaching preferred is one-on-one student-teacher interaction in classrooms, apart from teaching from slides. However, video-lectures are not preferred even in top institutes in the country.

Internet resources like Coursera (<https://www.coursera.org/>) and National Programme on Technology Enhanced Learning (“NPTEL”) (<http://nptel.tvn.ernet.in/>) give us proof enough of the changing times and the growing demand for better educational resources. While Coursera is an educational technology company offering massive open online courses, the main objective of NPTEL program is to enhance the quality of engineering education in the country by developing curriculum based video and web courses. This is being carried out by seven IITs and IISc Bangalore as a collaborative project. There are a large number of takers for these programs in the student community, who found these to be convenient and of a better quality, especially those who complain about the mediocre quality of teachers and also for students who prefer late night study.

Further, even the teachers are taking the aid of technology to increase the interest of students in classrooms. All of the above-mentioned issues led to this research on the changes in the learning patterns of students today that have access to latest learning tools. The study also tries to find out the major differences between traditional and E-learning methods and the reasons why students favour E-learning over traditional learning or vice versa.

VIII. METHODOLOGY

Characteristics

Online (Internet) surveys are becoming an essential research tool for a variety of research fields, including marketing, social and official statistics research. A questionnaire survey was designed for the study to be carried out with a sample size of about 300 students, all of them in the 3rd year of their undergraduate engineering studies.

Initially, background research and literature study was done by studying the recent changes that technology has brought into the education sector. While going through the various resources available, it was found that in most of the developed countries, both students and teachers are quite receptive of the changes and the Indians are also quickly catching up.

Sample Instruments

A detailed questionnaire was prepared in the form of an online survey that would help collect necessary data efficiently and quickly to reach a conclusion. The questionnaire contained questions like percentage of classes attended by the participants, their favourite mode and hours of study as well as their choice of subject for taking a lecture and reasons for choosing the same. To collect responses from a large number of students, it was made sure that the questions were easy to understand and that the responses were kept open ended to stimulate free thought.

Participants

The participants of the questionnaire were chosen after ensuring that all of them have access to e-learning methods and material. Moreover, all the participants had the freedom of attending the classes or leaving them, so there was no case of compulsion.

Procedure

Keeping the above factors in mind, the questionnaire survey in a manner which ensured that the participants could comprehend the language and put it online easily. Surveys were sent through e-mails and on Facebook, since all of the participants were frequent users of Facebook. Sharing the questionnaire online had many advantages such as, quick distribution, easy access, quick reply, convenience in data storage and quick doubt addressing. Around 100 responses were recorded and analysed.

IX. RESULTS

The responses to the survey questionnaire have been provided in this section, followed by a detailed discussion of the same, in the next section.

1. **Percentage of classes attended by you?**

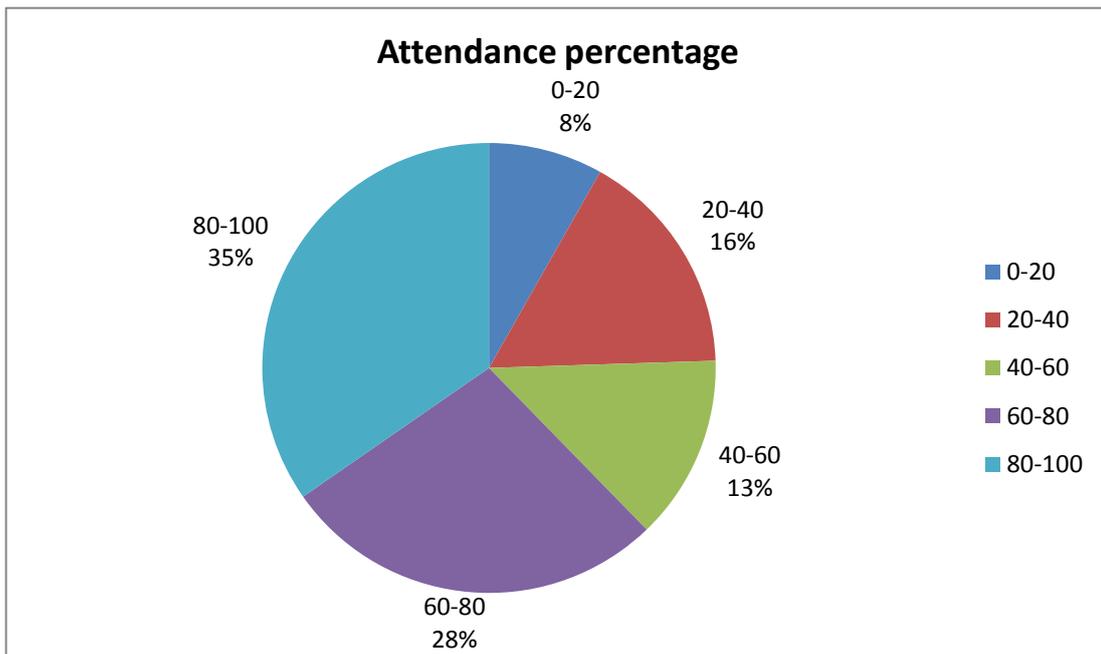


Figure 1

Most of the participants attended 60 to 100 percent of their classes, while only a few of them (8 percent) preferred not going to classes.

2. **Reasons for attending the given percentage of classes?**

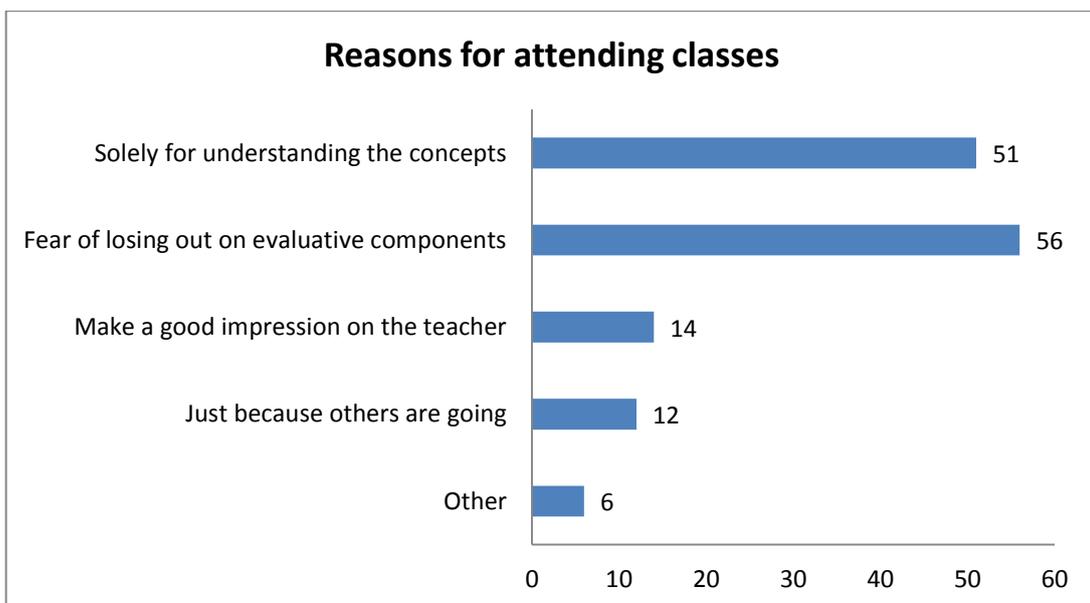


Figure 2

The major reason of their attending classes came out to be the fear of losing out on evaluative components and also understanding the concepts.

3. If provided with the notes and slides of the teacher, would you like to attend his/her classes after that?

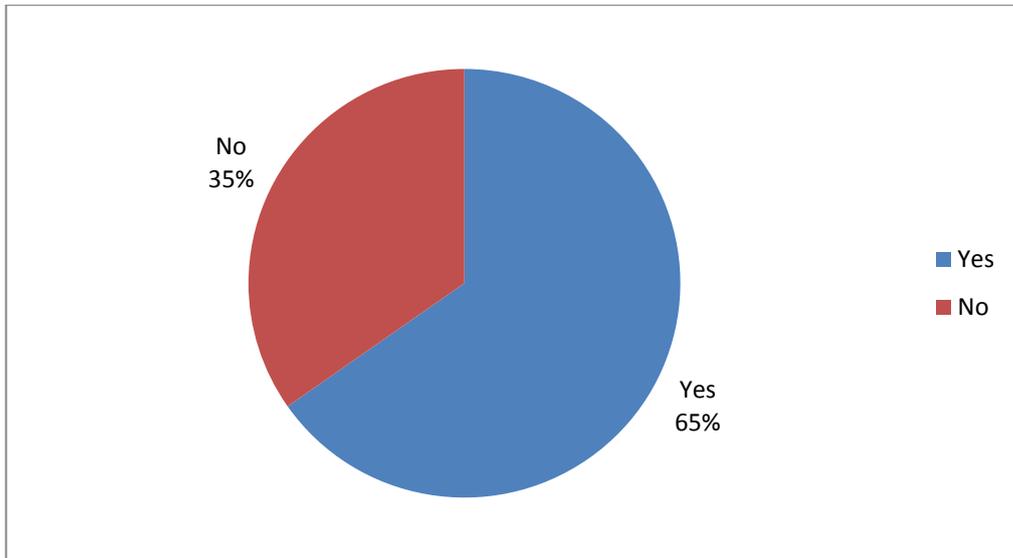


Figure 3

If provided with class notes and slides, majority of students will still prefer attending classes.

4. What is your preferred source of learning?

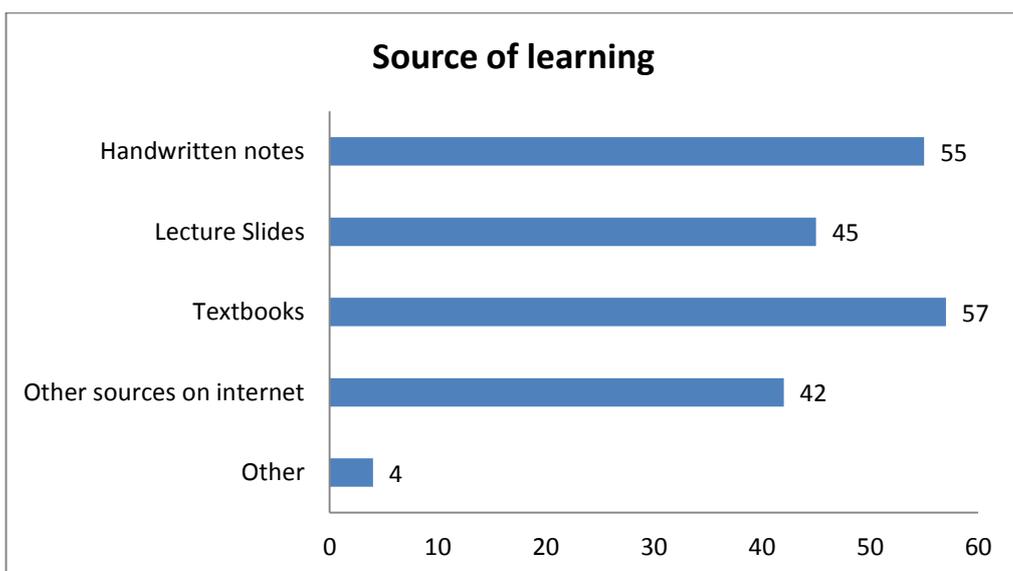


Figure 4

In comparison to sources on internet and slides, students prefer handwritten notes and textbooks to study.

5. Your favourite study hours?

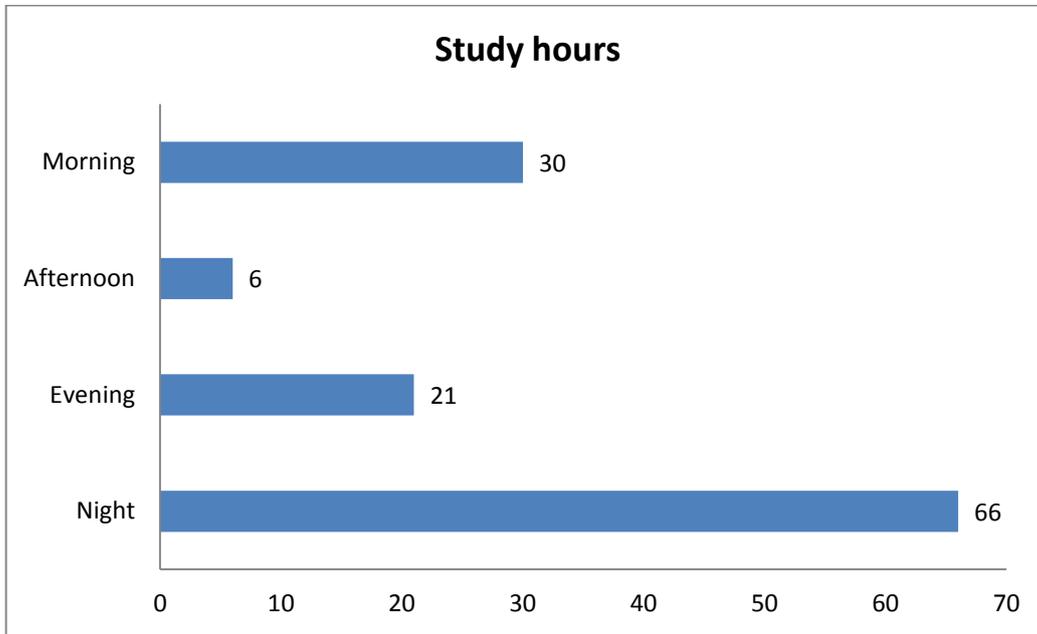


Figure 5

Most of the students preferred studying at night.

6. If given an option, which method of learning would you prefer?

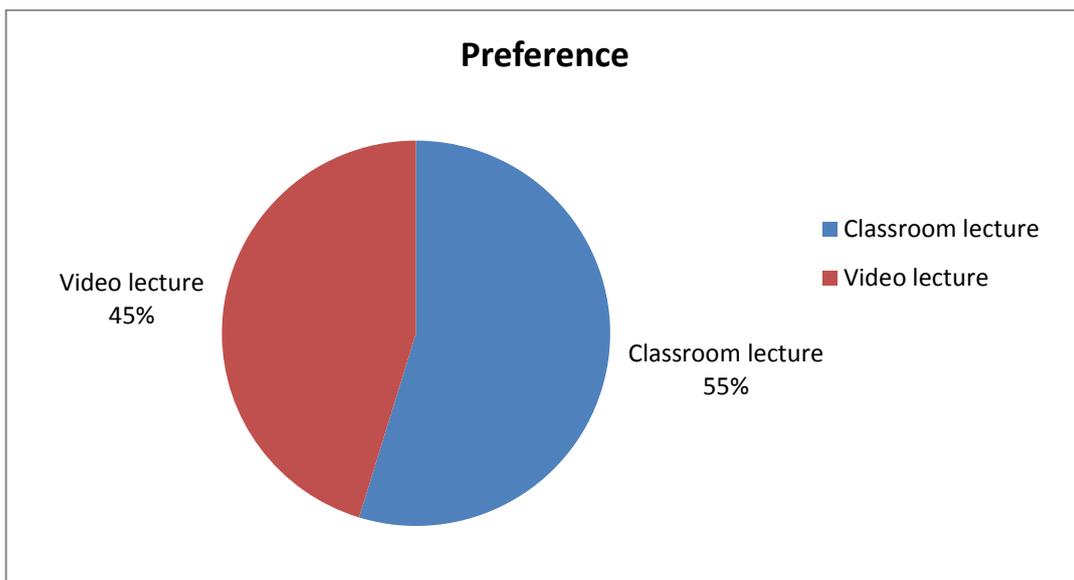


Figure 6

Students preferred both classroom and video lectures in almost equal proportion.

7. Rate the quality of classroom lectures attended by you

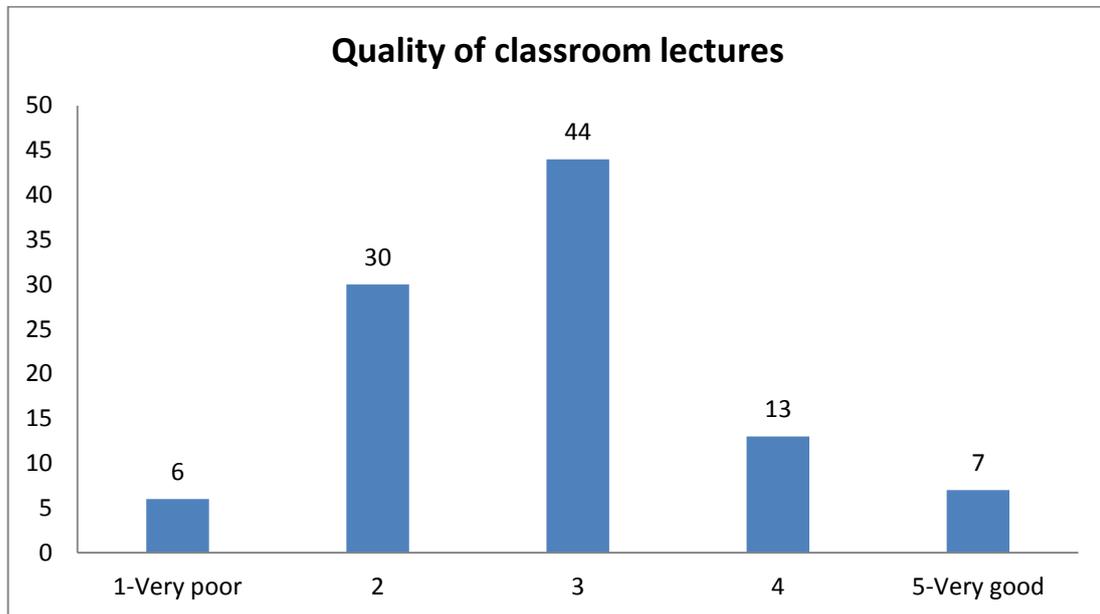


Figure 7

The quality of the classroom lectures was not upto the mark, as most of the participants rated them as average or below average.

8. Rate the quality of video lectures available

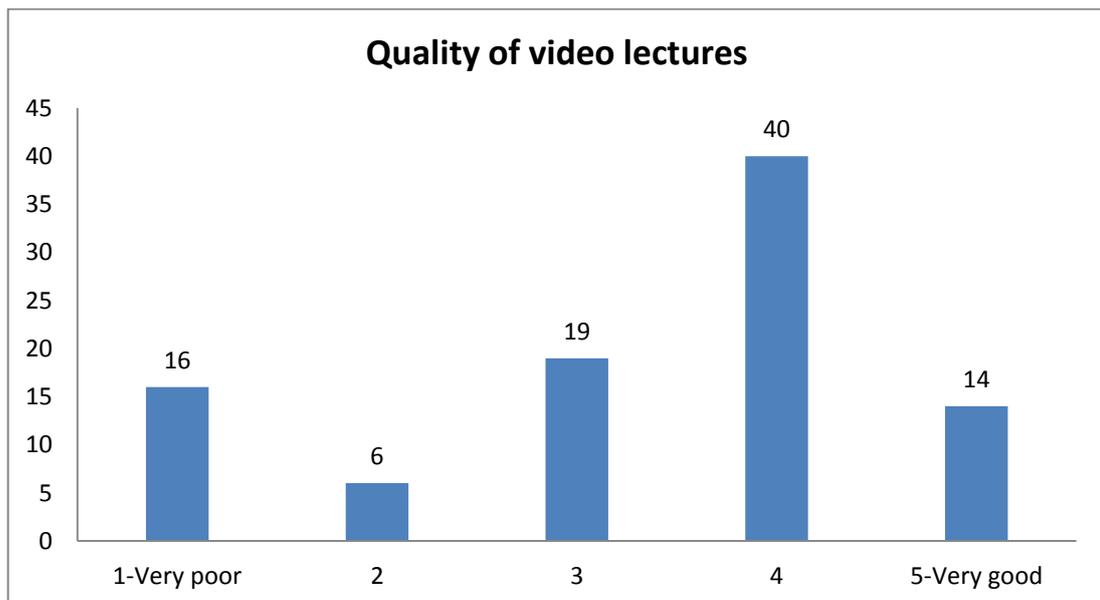


Figure 8

On the other hand, the students rated the video lectures to be of higher quality.

9. What aspects of video lectures did you like in comparison to classroom lectures?

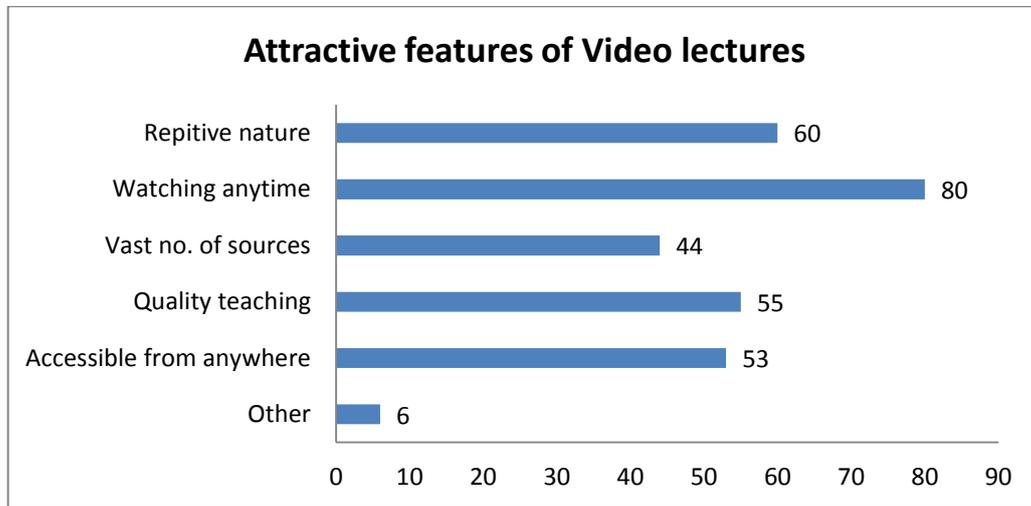


Figure 9

While time flexibility was the major factor for the students preferring video/online lectures over classroom lectures. Their repetitive nature along with quality teaching and easy accessibility were other aspects that made people take these lectures.

10. What aspects of classroom teaching you like in comparison to video lectures?

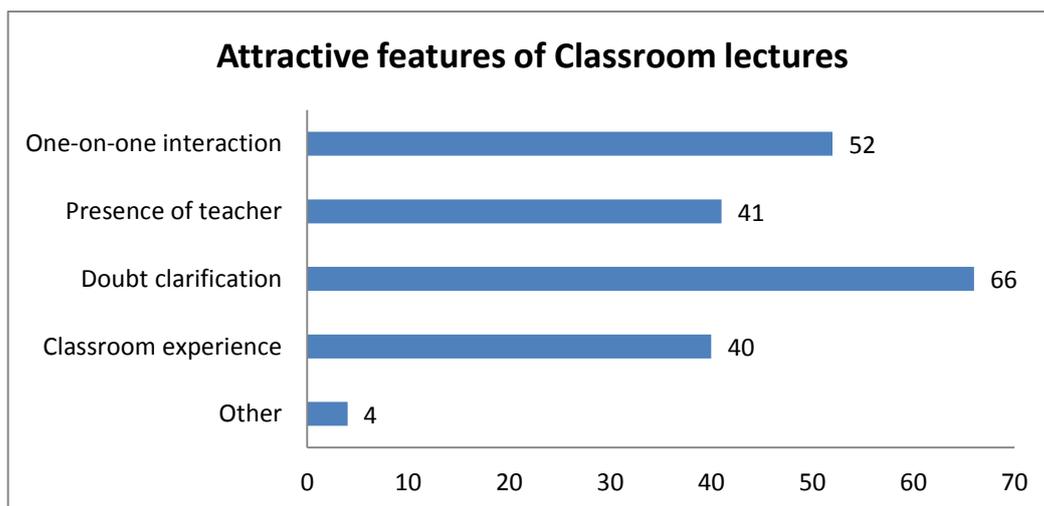


Figure 10

Clarification of doubts along with one on one interaction with the instructor, were the plus points for classroom lectures over video lectures.

11. Did your grades improve after taking video lectures for the same topic?

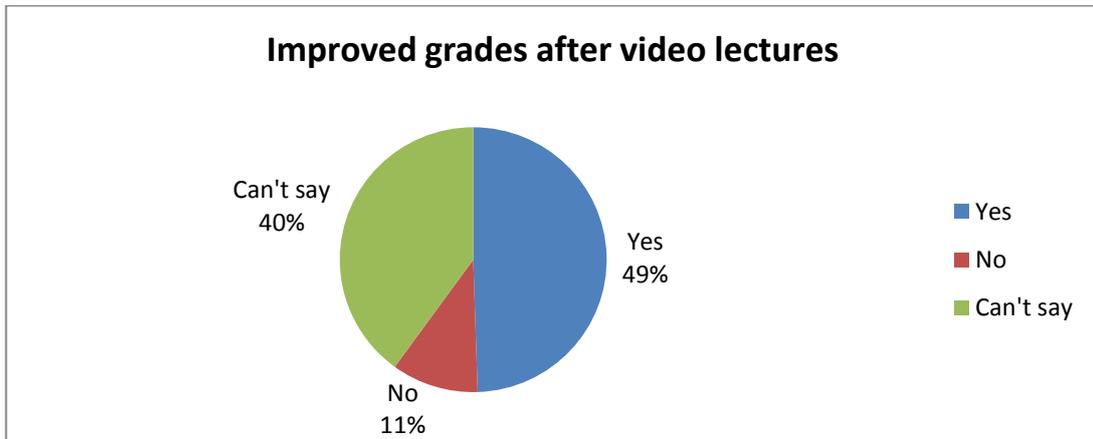


Figure 11

Grades of many students improved after taking video lectures and learning from online resources in a specific subject.

12. If given an option, which mode would you use to to discuss your doubts and queries?

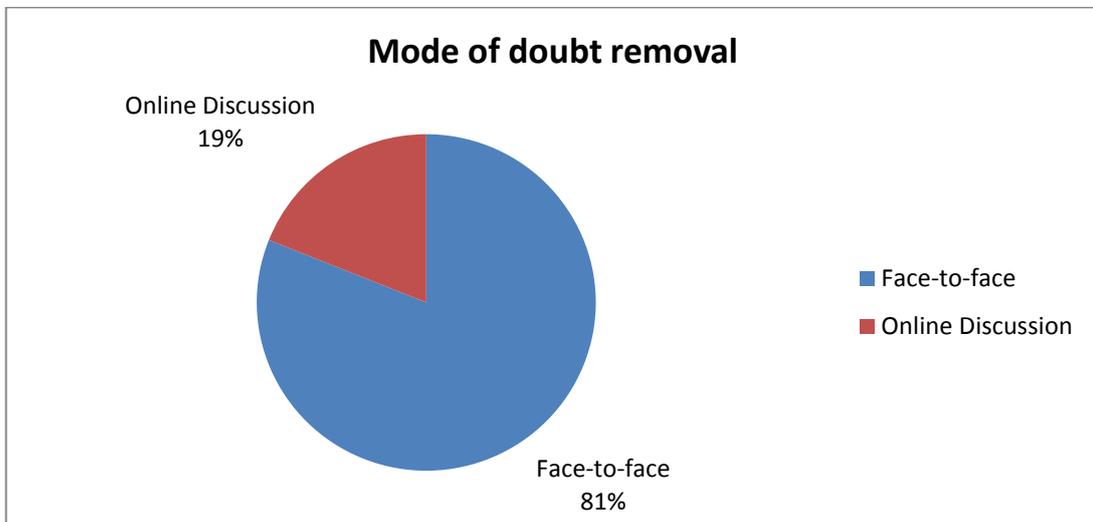


Figure 12

The responses of the students showed that they would like to have face to face interaction with the teacher, rather than having online discussions with friends and teacher to clear the doubts in a particular subject.

13. If provided with better quality teachers in the class, would you prefer going to classes rather than taking video lectures?

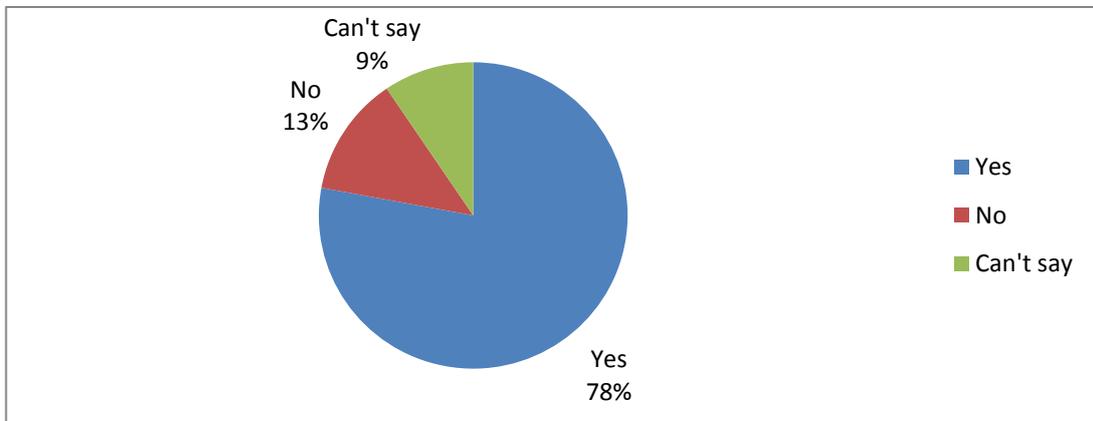


Figure 13

Students would prefer going to class over video lectures if provided with better quality teachers.

14. How do you rate the effectiveness of recent BITS Cross Campus Connect Initiative (“BITS Connect 2.0”)?²

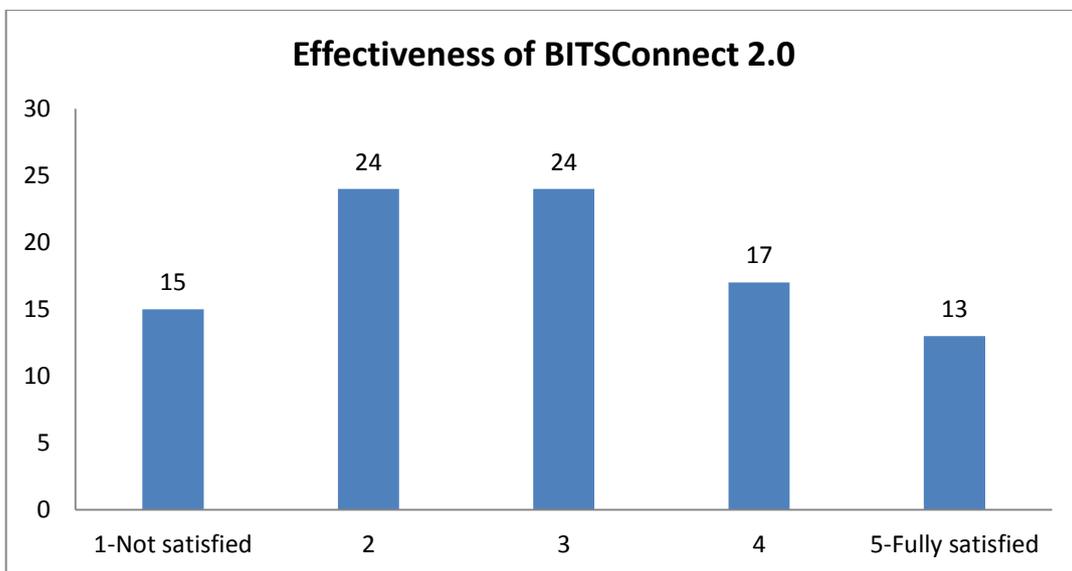


Figure 14

Majority of the students were not satisfied with BITS Connect 2.0.

² BITS Connect 2.0 connects all the campuses of BITS Pilani virtually. Classes and conferences can be held simultaneously in all the campuses and everyone will be able to interact with each other across campuses virtually.

15. Does taking video lectures/reading from online sources motivate you to read further and explore a particular topic further?

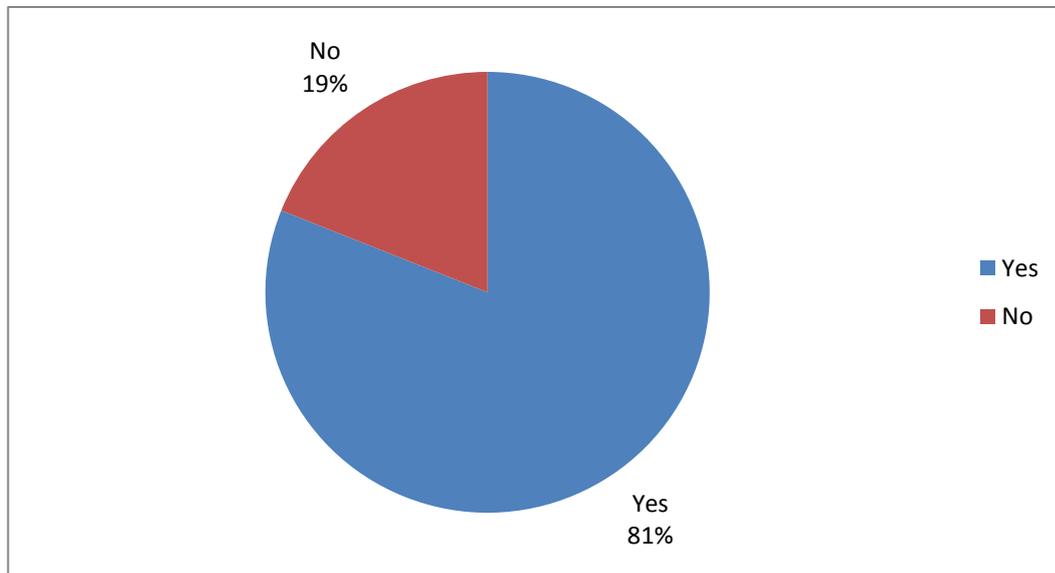


Figure 15

Majority of the participants agreed to the statement that taking video lectures and learning from online resources, motivated them to read and explore further in a particular topic.

X. DISCUSSION

The questionnaire was available online for around 15 days and the participants responded with enthusiasm. It was more so because the issue raised was very much in the back of the students' mind, but it never really came to the forefront. The survey got a really great response from the student community, with some of them even giving their own opinion in some of the questions.

About 2/3rd of the participants attended 60-100% of the lectures. The main reasons for this being; learning the concepts, as well as the fear of losing out on the evaluative components. Some of the participants even stated that going to classes provided them an opportunity to spend more time with their friends. When the participants were asked whether they would like to go to the lectures of a particular teacher if his/her slides were provided, then majority of them responded in the affirmative. The reason for this is that, the Indian students still prefer traditional modes of learning. This was visible from the responses to the question of their learning sources. Majority of them are interested in learning from handwritten notes and

textbooks as opposed to learning from the sources on the internet. When asked about their favourite study hours, the students preferred night time.

When enquired about the mode of learning, the students preferred both video lectures and classroom teaching almost equally. This shows that nowadays, the paradigm is shifting towards online mode of study. The quality of the classroom lectures was not up to the mark as most of the participants rated them as average or below average. On the contrary, those who responded in favour of the video lectures regarded the quality of video lectures to be above average.

Further, an attempt was made to analyse the aspects of both the modes of study that people like or dislike and it was found that the major reasons for preferring video lectures over classroom lectures was the ability to watch the video lectures any number of times, anytime, from anywhere and the participants had the option to choose from a vast number of sources. Whereas the features of classroom teaching that the participants found alluring were, the ability to interact with the teacher one on one, presence of the teacher in the classroom and clarification of the doubts at the same time. Majority of the participants responded that their grades in a particular topic/course improved on taking video lecture of the same topic/course.

However, 77 percent of the people prefer discussing doubts face-to-face with the teacher rather than searching for solutions online. It shows that majority of the people still find discussing the concepts and clarifying doubts face-to-face with the teacher to be more effective in comparison to getting their problems solved online. It was visible that people switched to video lectures and online sources because they think the quality of teachers is not up to the mark. When asked if they would prefer classroom lectures over online sources and whether the quality of teachers was better, then the majority of the participants answered in the affirmative. Most of the people rated the BITS Connect 2.0 to be good, but at the same time, they felt that it was not helping them since most of them had not availed any lectures of a course using BITS Connect 2.0. Also, majority of the participants agreed to the statement that taking video lectures and learning from online resources motivated them to read and research further in a particular topic.

The big picture that is revealed from the above results is that the students have not completely left the traditional ways of learning and studying, but are, at the same time, increasingly taking to alternate sources and ways of learning like video lectures and online lessons, which

not only broadens their perspectives of a particular topic but also in the search of better quality teachers.

XI. CONCLUSION

With the advent of technology and its ever expanding scope, the paradigm is now shifting to online sources of study. It is concluded that a number of people, though not the majority, prefer video lectures as well as other online sources over classroom learning because of certain features like repeatability, ease of accessibility from anywhere, anytime and the availability of a large number of sources for a particular topic of interest. However, classroom training remains the dominant form of instructional delivery. Face-to-face instruction has the greatest capacity for “information richness”³. E-learning may be fine for situations where the knowledge or skills to be taught are straightforward. However, when the skills to be taught are completely new, these more complex situations may not be well suited for technology-based learning.⁴

We see that in this globalised knowledge economy, information is increasing exponentially. The internet has become an essential component of everyone’s life. Thus, as the internet becomes flooded with more number of websites and other sources of information, there is going to be an increase in the number of people preferring the online mode of study as compared to the traditional methods of teaching. The lectures will be delivered online, slides distributed online and people will be learning online.

Children and adults are growing up in an every changing context with respect to internet. No aspect of their lives is untouched by the digital era which is transforming how they live, relate and learn.⁵ In the increasingly globalized world, students all over the world in every university will know what his/her peer is doing at some other university. The findings from this survey show that students attend the classes due to fear of losing out on evaluative components; whereas, some of them attend to have an informative discussion with their instructors and peers. But they are definitely looking for more and their thirst for deeper

³ J. N. Farrell, *Long live C-learning*, 54(9) TRAINING & DEVELOPMENT 43-45 (2000).

⁴ R. L. DESIMONE ET. AL., HUMAN RESOURCE DEVELOPMENT (3rd ed., Thomson 2002).

⁵ Dipna, *Technology in Education: A Review*, available at <http://www.ijcst.com/vol4/sp11/dipna.pdf>.

knowledge is being satisfied by online resources and quality video lectures from some of the best professors from all over the world.

XII. SUGGESTIONS

One of the major findings of this research was that participants prefer one on one discussion with the instructor and their peers in the classroom, whereas they like taking video lectures at their place of choice and at a convenient time, preferably night. The flipped classroom model does exactly the same thing. It encompasses any use of internet technology use to leverage the learning in the classroom, so that the instructor can spend more time interacting with students instead of lecturing. This is most commonly being done using teacher created videos (also known as *vodcasting*) that students view outside of class time.⁶

It is called the flipped class because the whole classroom/homework paradigm is "flipped". What used to be classwork, i.e., the "lecture", is now done at home via teacher-created videos and what used to be homework, i.e., assigned problems, is now done in class.

Flipped Learning occurs when direct instruction is moved from the group teaching space to the individual learning environment. Class time is then used for higher order, active problem solving by students and one-to-one or small group interactions with the teacher. Some links helpful in this context would be:

- <http://www.youtube.com/watch?v=2H4RkudFzlc#t=27>
- <http://flippedlearning.org/FLN>

The US Department of Education is supporting virtual and online learning that range from supplementing classroom instruction on an occasional basis to enrolling students in full-time programs. Full-time online schools enrol students on a full-time basis. Students enrolled in these schools are not attending a bricks and mortar school; instead they receive all of their instruction and earn all of their credits through the online school.

Blended learning, a concept introduced by the Americans, incorporates both face-to-face and online learning opportunities. The degree to which online learning takes place, and the way it is integrated into the curriculum, can vary across schools. The strategy of blending online learning with school-based instruction is often utilized to accommodate students' diverse

⁶Flipped Learning Network, available at <http://www.flippedclassroom.com/>.

learning styles and to enable them to work before or after school in ways that are not possible with full-time conventional classroom instruction. Online learning has the potential to improve educational productivity by accelerating the rate of learning, taking advantage of learning time outside of school hours, reducing the cost of instructional materials, and better utilizing teacher time. These strategies can be particularly useful in rural areas where blended or online learning can help teachers and students overcome distance in remote areas.⁷

With such a marvellous invention, why are we trying to recreate the boredom of classrooms as an online experience? We need to imagine and use the many possibilities of this new educational tool set. For example, the new fields of information visualization and auralization⁸ have not been explored in depth by e-learning providers. Yet, there is a growing literature in this area and further developments in the digitization of touch, taste and smell are on the horizon.⁹

The near future, i.e., within the next 5 years, will see educational experiences created by computers that are embedded in clothing, on flexible sheets that can be carried around like paper, found in mobile phones, seen on large scale wall displays, and activated in “smart objects”. E-learning companies who want to stay ahead of the development curve will start to investigate these technologies now.¹⁰

If the aim is to acquire knowledge and excel then the mode of learning is very important. The focus should be on delivering the knowledge in the best possible way that actually helps the students to learn and grow as well. Keeping this in mind, it is hoped that the modes of teaching and learning suggested above would help achieve it. The aim should be to preserve the better elements of traditional classroom teaching for the overall development of the students and at the same time using the technology at its best to make things easier and better for the students. This would help in real growth of the entire student community.

⁷ U.S. Department of Education, *Use of Technology in Teaching and Learning*, available at <http://www.ed.gov/oii-news/use-technology-teaching-and-learning>.

⁸ R. SPENCE, *INFORMATION VISUALIZATION* (Pearson 2000).

⁹ E. TUFT, *THE VISUAL DISPLAY OF QUANTITATIVE INFORMATION* (Graphics Press 2001).

¹⁰ G. Woodill, *Where is the learning in E-learning?: A critical analysis of the E-learning industry*, available at http://bonlinelearning.com.au/publications/wp_elearning_analysis.pdf.

ADOPTION OF IT SYSTEMS IN HEALTHCARE: A STUDY INTO THE ACCEPTANCE OF MOBILE HEALTH APPS IN INDIA

By – Harsh Agarwal¹

“Smartphones will surpass the PC as a cloud connected device in 2014”²

Statistics have it that more than half of the Indian households are falling into poverty owing to health expenditures. The impact is huge and it pushes close to 39 million Indians into poverty each year. Mobile phone applications in the field of healthcare have changed the way things are accessed. These smart phone applications are helping the doctors and patients both, and making healthcare easier than ever before. The paper discusses the use and acceptance of mobile phone applications in healthcare in India today. A report by Pyramid Research shows that health applications for mobile devices in excess of 200 million are being used by doctors & patients worldwide. In India alone, there are more than 20000+ mobile applications. However, the Indian healthcare system is not exploiting this technology to its optimal level. A lot of scope remains since India is aspiring to make huge inflows in the healthcare system.

There are applications today which help you maintain daily records of your health that provide diagnosis & also explain the course of treatment for certain diseases. Mobile phone applications can be used for elaborate services like setting up of an appointment, observing intake of medicines at a specified schedule, sending of alerts to the physician & the patient when certain observed parameters go outside the acceptable levels, info on hygiene & basic healthcare issues, & many other application scenarios. According to Gartner, healthcare providers in India will be spending US\$ 1.08 billion on IT products & services in 2014, which is a 4% increase over 2013. Mobile health system has the potential to change the healthcare landscape of India by providing access to the huge deprived rural market & improving healthcare for urban consumers. Rural and urban markets in India however, have different requirements. The recent use of mobile services for preventive health interventions has been facilitated by Information & communication technology.

¹ Student, MBA, Great Lakes Institute of Management, Chennai.

² Hunter Skipworth, *Qualcomm: 9 out of 10 smartphones will be connected to the cloud by 2013*, available at <http://www.pocket-lint.com/news/47451/qualcomm-cloud-smartphone-2013>.

EXECUTIVE SUMMARY

Impressive growth prospects	<ul style="list-style-type: none">Indian healthcare sector, one of the fastest growing industry, is expected to advance at a CAGR of 15.2 per cent during 2011–17 to reach USD160 billion. There is immense scope for enhancing healthcare services penetration in India, this presents ample opportunity for development of the healthcare industry
Strong fundamentals	<ul style="list-style-type: none">Rising income levels, ageing population, growing health awareness and changing attitude towards preventive healthcare is expected to boost healthcare services demand in future
Cost advantage	<ul style="list-style-type: none">The low cost of medical services has resulted in a rise in the country's medical tourism, attracting patients from across the world. Moreover, India has emerged as a hub for R&D activities for international players due to its relatively low cost of clinical research
Favourable investment environment	<ul style="list-style-type: none">Conducive policies for encouraging FDI, tax benefits, favourable government policies coupled with promising growth prospects have helped the industry attract private equity, venture capitals and foreign players

I. LITERATURE REVIEW

A study by Giménez-Pérez found that only 36.5% of patients in Spain were regular Internet users.³ However, 76% of the patients had a mobile phone, & 96% of those who had a mobile phone used it more than once a week.⁴ Marquez Contreras conducted a controlled group experiment study with hypertension patients.⁵ The members were sent reminder text messages to their mobile phones 2 days a week. Hypertension was pointedly lower, at 51.5% in the control group as compared to the intervention group where it was calculated at 64.7%. A report by Bielli in Italy analyzed the use of mobile phones for patients' health reporting. 58% of the patients used it.⁶ Those not using it were less educated & less aware about new communications technology such as calls, mobile phone SMS, email & Internet.

³ Gabriel Giménez-Pérez et. al., *Evaluation of Accessibility and Use of New Communication Technologies in Patients With Type 1 Diabetes Mellitus*, available at <http://www.jmir.org/2002/3/e16/>.

⁴ THE NETWORK SOCIETY: FROM KNOWLEDGE TO POLICY (Manuel Castells and Gustavo Cardoso eds., 1st edn., 2005).

⁵ Márquez Contreras, *Effectiveness of an intervention to provide information to patients with hypertension as short text messages and reminders sent to their mobile phone (HTA-Alert)*, available at <http://www.ncbi.nlm.nih.gov/pubmed/15546536>.

⁶ Emilia Bielli et. al., *A Wireless Health Outcomes Monitoring System (WHOMS): development and field testing with cancer patients using mobile phones*, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC441394/>.

A study by Kubota talks about a mobile phone application in which text messages were used to send info pertaining to body weight reduction to the participants under the study. It claims a effective weight loss in 31% cases.⁷ A study in Philippines by Tolentino explains a mobile phone based system for reporting of events in order to develop an anesthesia surveillance system.⁸

Mobiles healthcare databases are very useful in developing countries. In Rwanda, mobile phones are used to connect remote hospitals with laboratories & supply houses. Doing this saves a lot of time and greatly increases the efficiency. In India, a rural healthcare project using mobile phones won the World Summit Award for e-Health by UN in 2003. Mobile phones were used to interconnect patient data, computers used by doctors and a central database.

There are plenty of literature reports about experiments where SMS were used to remind people about their upcoming medical appointments⁹, facilitating vaccinations¹⁰ or about medications for self-management treatments.¹¹ Apparently, no publication reporting such initiatives covered one of the key aspects of the scenario: perceptions of user about this innovative use of mobile Information Communications Technology.

E-health resources have a wide appeal in the US. A report by Healthcare Information and Management Systems Society (HIMSS) shows that 72% of the physicians in the US use smartphones & almost half of these physicians use these phones to keep themselves updated with latest medical information. Whereas the involvement of Indians with healthcare has not been very efficient when compared to US, mobile phone applications help patients to get basic understanding of various diseases. An application called Web MD, for example gives patients the basic knowledge of malaria.

⁷ *Supra* note 4.

⁸ *Ibid.*

⁹ S. R. Downer et. al., *Use Of SMS Text Messaging To Improve Outpatient Attendance*, 183(7) MEDICAL JOURNAL OF AUSTRALIA 366-368 (2005).

¹⁰ V. Anna et. al., *The Role Of Mobile Phones In Improving Vaccination Rates In Travelers*, 38 PREVENTIVE MEDICINE 503-509 (2004).

¹¹ S. Bauer et. al., *Use Of Text Messaging In The Aftercare Of Patients With Bulimia Nervosa*, 11 EUROPEAN EATING DISORDERS REVIEW 279-290 (2003).

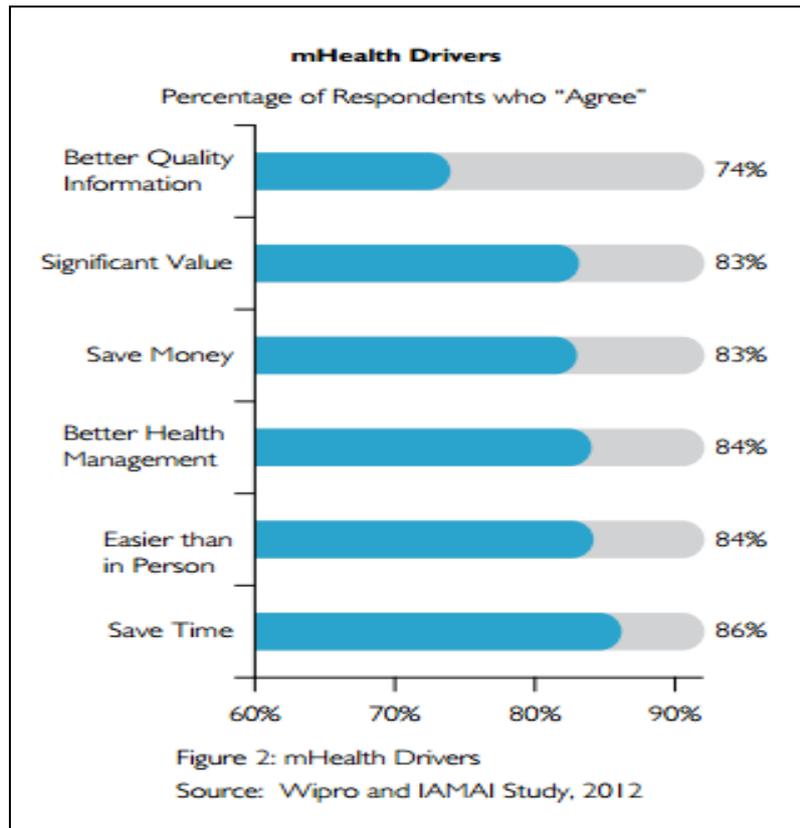
Indian healthcare via mobile technology is still at a nascent stage. Mobile technology has been used in telemedicine in a few successful cases but multiple areas in healthcare remain unexploited. Companies that will incorporate healthcare professionals in their core teams at design stage itself will make successful mobile phone solution providers. As such, there is a lot to look forward to.

II. THEORETICAL BACKGROUND

India has more than 247 million rural households that provide a massive market opportunity for rural health. The rural mobile health market will grow with the help of consumer demand, infrastructure improvement and also technology adoption. The mobile health industry in India is expected to reach USD 0.6 billion by the year 2017.

Enabling these mobile services such as telephone-based appointment & SMS prescription services, saves peoples' time. The perceived value is increased by showing a strong relationship between technology service providers and healthcare institutions. Today, more than 71% of Indian households have a mobile phone. Smartphone adoption has increased significantly in the last year with shipments growing by almost 167% in the year 2013.¹² Leading service operators are offering 3G and 4G services at reasonable prices. This will likely shoot data usage and also drive the adoption of mHealth services in India.

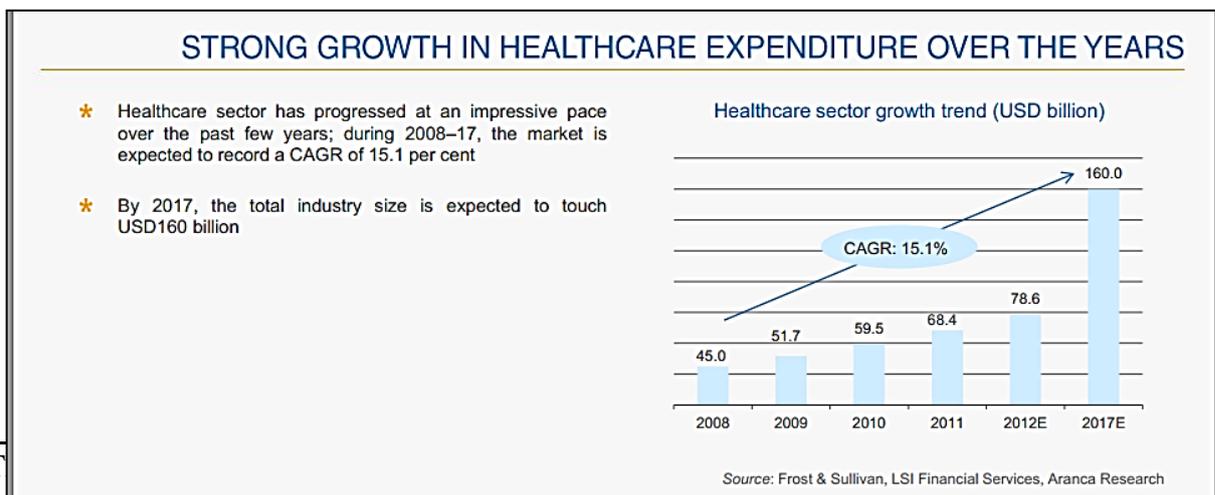
¹² Y. Balarajan, S. Selvaraj & Dr. SV Subramaniam, *Health care and Equity in India*, 377.9764 Lancet 505, 508 (2011), available at [http://dx.doi.org/10.1016/S0140-6736\(10\)61894-6](http://dx.doi.org/10.1016/S0140-6736(10)61894-6).



III. THE ROAD TO CONNECTED HEALTHCARE IN INDIA

There are two milestones that have to be taken care of for the same:

1. Healthcare IT adoption: This includes planning, creation and use of digital infrastructure.
2. Information exchange: The give-and-take of acquired health information between doctors, various administrative groups and also with patients.



A DSS Oriented Technology Approach

Mobile Health apps, besides providing health related information, can also be used to provide information about hospitals that can be used at critical moments. This requires technology integration and search queries and can for example include the following →

- Hospitals that are within 2 km radius
- Hospitals that have specialized services
- The best route that can be taken to reach those hospitals?

IV. STUDY OBJECTIVES

The purpose of this research has been to investigate user acceptance and use of mobile health for preventive intervention. The transformative potential of mHealth in our country is based upon on *acceptance and use*.

The research tried to decode the following research questions/objectives:

- Identifying Willingness
- Measuring Awareness
- Calculating current usage
- Checking for any disparities

V. RESEARCH METHODOLOGY

- Questionnaire was developed with the help of Apollo & Fortis Hospitals, Chennai
- Pilot testing and refinement based on dummy data analysis
- Stratified sampling was done across demographics and survey points
- Survey was conducted as a part of my 'Management Information Systems' project in MBA curriculum and later on conducted to increase the validity of the research by adding more respondents to the list.
- A total of 328 valid responses were captured in the process.

Survey questions used 5-point Likert-type scales and nominal scales as well and hints were from previously validated questionnaires in Information Systems¹³ and consumer behaviour¹⁴ research. In the following two sections, the theoretical background and research model and hypotheses are presented. After that, a report on the experimental methodology and the main results are given. The last section carries conclusions and ideas of future research on the topic and scope of mobile health in the time to come.

VI. HYPOTHESES

- H1** - Location of the respondent affects the opinion about health apps usage
- H2** -Urban people are more aware about the existence of health apps
- H3** - Awareness about text messages is same among both urban and rural population
- H4** - Health Cautious people are more inclined to use such apps
- H5**- The perceived risk (PRE) in using e-healthcare negatively affects likeliness to use

¹³ Featherman & Pavlou, *Predicting E-Services Adoption: A Perceived Risk Facets Perspective*, available at http://melody.syr.edu/hci/amcis02_minitrack/CR/Featherman.pdf.

¹⁴ Robert N. Stone & Kjell Grønhaug, *Perceived Risk: Further Considerations for the Marketing Discipline*, 27(3) EUROPEAN JOURNAL OF MARKETING 39 - 50 (1993).

Sample Characteristics¹⁵

Age		Education		Gender	
18-22	31%	Below secondary school	10%	Female	52%
23-30	30%	Secondary School (6-12 std)	28%	Male	48%
31-40	18%	College Graduate	31%		
41-50	11%	Master's degree and higher	31%		
51-60	6%				
over 61	4%				
Location		Income/month			
Urban	69%	≤ RS 5,000	20%		
Rural	31%	> RS 5,001 & ≤ RS 15,000	26%		
		> RS 15,001 & ≤ RS 30,000	17%		
		> RS 30,001	14%		

• Health Opinion

- Healthy: 62%
- Moderate/Unhealthy: 36%

63% overall population felt that they were healthy

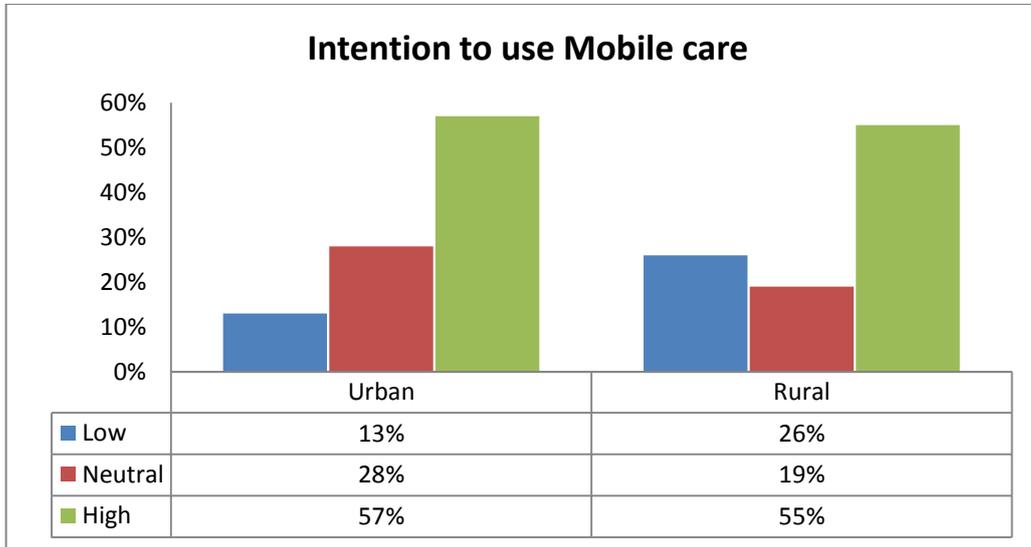
• Healthcare Checkup Done

- No health checkup in last year: 59%
- No health checkup in last 5 years: 38%

	Basic Phone	Smart Phone
Urban	54%	46%
Rural	78%	22%

¹⁵ The Nielsen Company, The Mobile Consumer: A Global Snapshot, available at <http://www.nielsen.com/content/dam/corporate/uk/en/documents/Mobile-Consumer-Report-2013.pdf>.

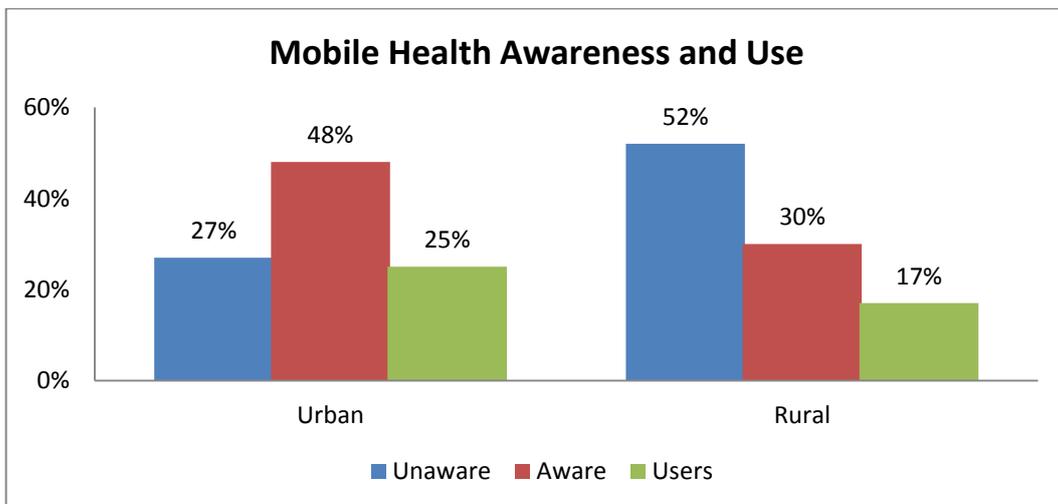
Only 22% of the rural population uses a smart phone. This poses a serious challenge to the usage of mobile health services, particularly health apps. So this is something that has to be looked into with immediate effect so that the limitation of rural medical care can be dealt with more effectively.



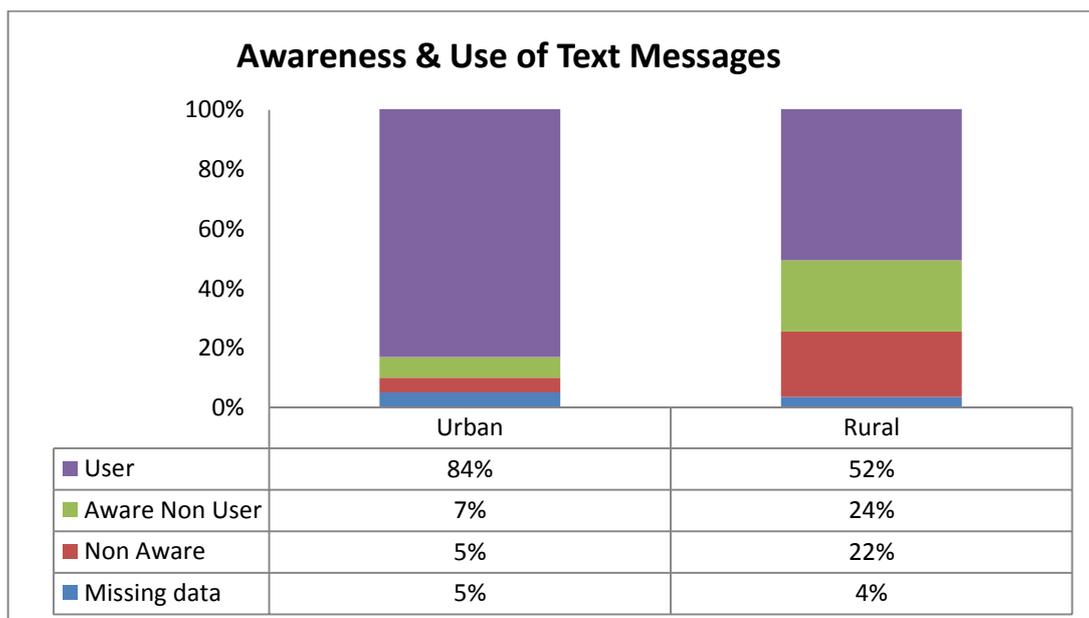
Behavioral Intention to Use Mobile Health Apps:

Urban and Rural population showed an equal enthusiasm when it came to acceptance and use of mHealth (almost 55%).

Thus, the hypothesis that location affects opinion is rejected and significance is > 0.05 . The respondents show an equal likeliness towards acceptance as is evident from the chart above.

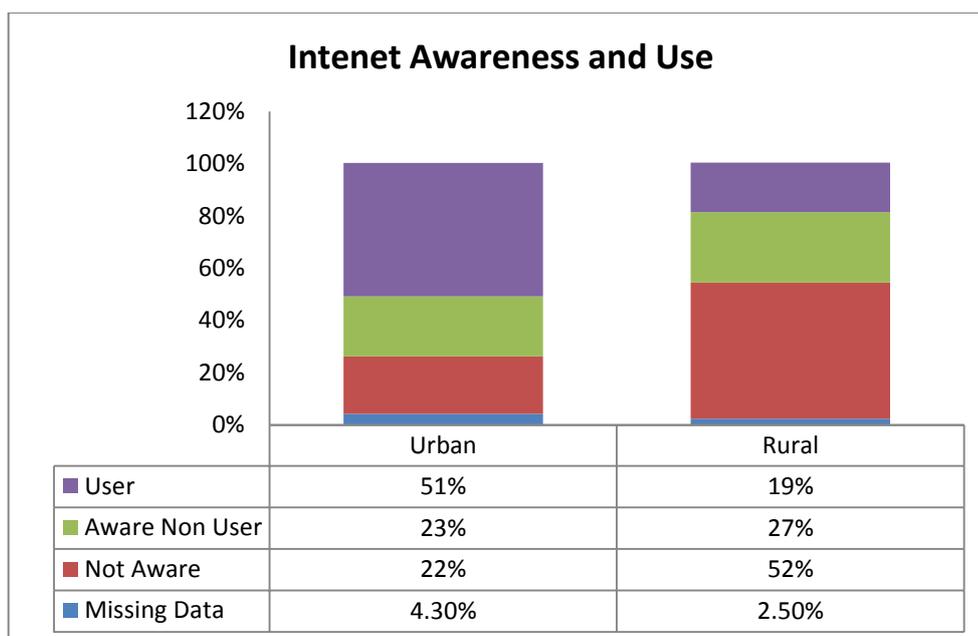


This essentially shows that awareness about mobile health in rural areas is comparatively low and thus, it has a direct impact on usage (17%). Also, an interesting observation here is that in urban areas, though 48% people are aware about mHealth, only 25% use it, despite a high smart phone usage (46%) there. Also, despite mobile health being more of an urban phenomenon, 27% people are still unaware about it.¹⁶ Thus, the hypothesis is correct and significance is concluded.



Clearly, text messages use is more among urban people. Here income has a role to play. Rural people have less disposable income so their use in terms of calls is more than texts. Thus, the third hypothesis is also true. The awareness among urban people is 95% as opposed to 78% among rural population.

¹⁶ *Supra* note 2.



Note – The bars in green signify “USE” and the ones in red signify “AWARENESS”

Disparities between URBAN relative to RURAL

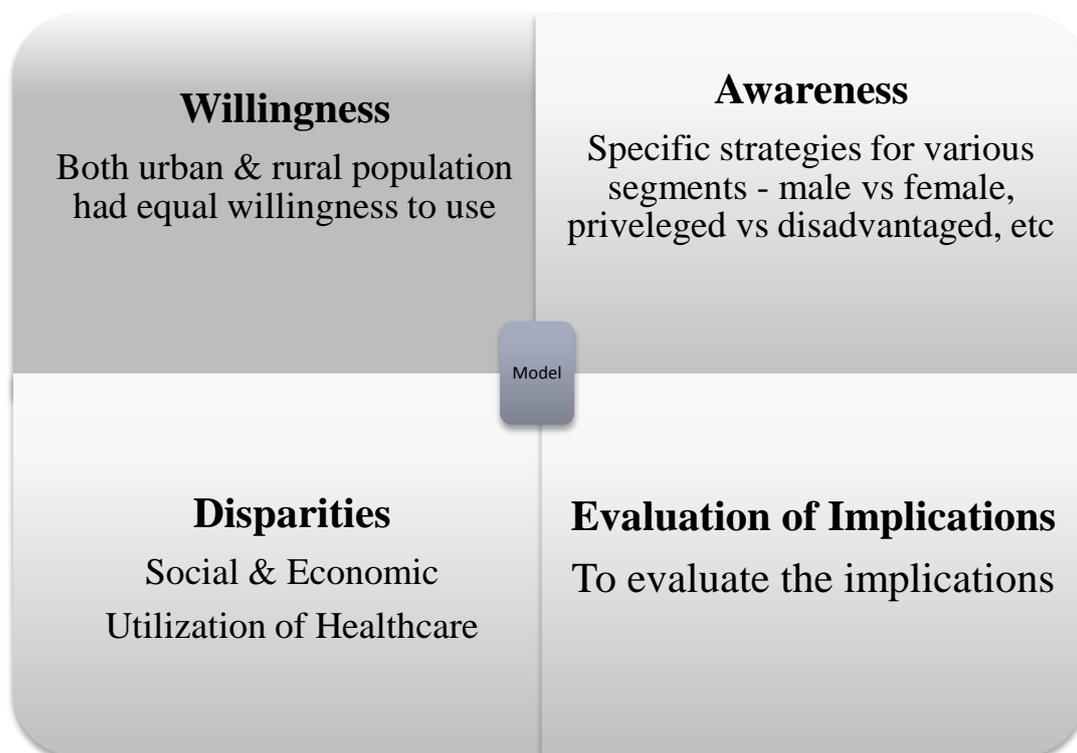
Education (\geq College)	2 : 1	Social+ Economic
Individual income ($>$ 15 K)	3 : 1	
SMS use	1.6 : 1	Mobile Utilization
Smart device ownership	2.1 : 1	
Mobile internet use	2.7 : 1	
Health checkup at least in last 5 years	1.07 : 1	Healthcare Utilization
Proximity to primary care ($<$ 3km)	1.02 : 1	
Proximity to specialized care ($<$ 10km)	1.13 : 1	

The above table measures certain parameters to show the disparity between urban and rural population. It represents a very peculiar setting in both these locations in terms of socio economic indicators, mobile access and utilization and Healthcare access. This difference accounts for difference in usage between rural and urban areas.

Measurement Model

The construct reliability was checked by calculating Cronbach's alpha in SPSS 20. The dummy data analysis helped to check that all variables were required and none of them negatively impacted the results. Cronbach's alpha and internal consistency values were above 0.7 and the average variance extracted was more than 0.5 for all except one construct. Thus, there was adequate reliability and validity in the responses generated. This conclusion was verified by the high t-values for the item loadings.

All the measures were in the expected/required range except one, perceived financial risk (PFR). This item, displayed a low factor loading and item-total correlation and was thus dropped from subsequent analyses. **328 responses were taken in all (148 rural and 180 urban)**. Some cases were discarded as there were discrepancies in their responses.



- Design solutions in mHealth
- Widespread awareness to be ensured
- Use has to be promoted by either incentivizing it or giving easy access, at least to the rural masses.

VII. DISCUSSION AND CONCLUSIONS

A theoretical model mixing factors determining usage (i.e. demographics, awareness, income, etc) and factors disfavoring it (i.e., perceived health issues) was proposed. The model was tested by surveying participants via a questionnaire having questions to understand their awareness and acceptance to mobile health apps.

Despite these issues, the model was considered appropriate due to its applicability and the possibility of generalizing it- some facets could be removed but the general layout would be mostly the same.

The limitation associated with the study is majorly the relatively small size of the sample (328). Participants self-selected (simple random sampling) for the study consisted mostly of people in the age bracket of less than 50 years whereas more health related issues need to be addressed for people older than 50. Time constraints attributed to the smaller size. This research investigated into the perceptions of tomorrow's potential users and assessed current use as well. Since the scope of the study was defined and was more centered on existing patterns, there were not many limitations as one might face in general Information Systems studies.

VIII. FUTURE RESEARCH

With the increasing use of smart phones and tablets, use of mobile applications has become a trend and is without doubt the future of India. Despite widespread poverty in rural areas, people showed a positive outlook to its acceptance and some were already using it. The challenge being, mobile phone solution providers have to segment the market properly and position themselves with solutions in that segment.

The research done showed that attitude towards adherence plays a significant role, i.e., the analysis showed that people who have a positive attitude toward technological support in health, also tend to appreciate the technology itself. Future studies obviously will have larger sample size and will encompass different user groups in order to assess the validity of the research model which has been proposed here. The paper is based on an unbiased exploratory investigation of the current status of mobile health applications in the minds of the people. It

then suggests ways in which mHealth can be developed in a big way. It is an excellent method to improve the existing state of health condition in India.

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EMPOWERING COMMON MAN THROUGH HEALTH LITERACY IN INDIA- A STUDY OF THE COMMUNICATION CHALLENGES

By Mou Mukherjee-Das¹

Health services in India are at a very critical stage. Increasing number of hospitals, both private and government, and manifold increasing number of patients, with no knowledge of basic hygiene sense, it has become imperative to think about the delivery of a such sensitive service along with a mission to achieve health literacy in India. In this context communication among those who deliver the service, starting from the doctors to the community health workers and the receivers', that is, the patients are the most important factor. Communication is at the heart of who we are as human beings. It is our way of exchanging information; it also signifies our symbolic capability. Patients' health literacy is increasingly recognized as a critical factor affecting patient-physician communication and health outcomes. Health literacy is not a characteristic of individuals alone but is, instead, an interaction between the communication skills that people have and the demands that the medical services make. This paper analyzes the different communication challenges that India faces in order to achieve hundred per cent health literacy, through case studies, news reports, and interviews of health workers. The researcher attempts to understand the dynamics of communication that works best in this socio-medico environment, where almost sixty per cent of the people are illiterate, unaware and uninformed; bonded by several inhibitions and age old traditions. For this purpose she has taken two major sub-divisions of West Bengal for her study and had undertaken an exploratory course through interviews, news reports and case studies.

I. INTRODUCTION

India is one of the largest democracies in the world albeit with the health care services at minimal. Improvement in health care and its delivery till date remains a matter of grave concern for the government of India. Time and again this concern has been reflected in India's five year plans – a long term vision consistent with the international aspirations. In keeping with these goals, National Health Policy was launched in 2002, with an objective of providing accessible, affordable and quality health care in rural India. But the stark reality that haunts the government is that rural India is plagued with several problems which needs to be addressed first, in order to achieve the goals. In this context the role of communication cannot be ignored. As Dr Wendy Sue Swanson, MD, MBE, FAAP says that- "I don't think that you can overstate the importance of communication in clinical care. Even with devices

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robotics, genomics and personalized care, it all rests and depends on clear communication”.² Health communication encompasses strategic planning campaigns, and communication strategies through effective use of communication tools, needed to inform, advocate, persuade and influence individual, family and community decisions that enhance appropriate steps towards a healthy living.

Health communication can contribute to all aspects of disease prevention and health promotion and is relevant in a number of contexts, including (1) health professional-patient relations, (2) individuals’ exposure to, search for, and use of health information, (3) individuals’ adherence to clinical recommendations and regimens, (4) the construction of public health messages and campaigns, (5) the dissemination of individual and population health risk information, that is, risk communication, (6) images of health in the mass media and the culture at large, (7) the education of consumers about how to gain access to the public health and health care systems, and (8) the development of digihealth applications. Health communication has been instrumental in promoting health and preventing several chronic diseases in several areas. Through interactive communication among the health care providers across all levels with the patients, an effective health plan can be achieved which is crucial for healthy India. Collaborative relationships are enhanced when all parties are capable of good communication.

Thus health literacy is concerned with the skills and abilities of individuals, and the demands placed on them by the health system. Modern day health care system has become very complex with new unknown diseases and their symptoms coming up every day and still lesser known medicines to prevent them. It has become almost impossible for a layman to understand the complexities of the medical world with technical jargons, super-speciality hospitals, pharmacists and the medicines. The patients finds themselves lost in this cobweb and tend to avoid such service. A sensitization has occurred whereby patients are reluctant to access this service and increasingly shows a negative demand. Health communication and literacy campaigns can break down this cold feeling between a health service provider and the receiver by strategically targeting and creating awareness among them.

² Dave Chase, *Communication is the Most Important Medical Instrument*, available at <http://techcrunch.com/2012/02/15/communication-is-the-most-important-medical-instrument/>.

II. LITERATURE REVIEW

Health literacy skills are mediated by the individuals' socio-cultural context, language and communication skills, cognitive and assessment skills, and the ability of the media, the service providers, and the government to provide health information in a manner accessible, affordable, logical and convincing for the audience. Thus health literacy presented by the National Library of Medicine and used in Healthy People 2010 (HHS, 2000) is: *The degree to which individuals have the capacity to obtain, process, and understand basic health information and services needed to make appropriate health decisions.*

This approach sees health literacy as critical to empowerment.³ Though the term literacy is not so new and has been applied several times in the context of media, computer, finance etc; but the concept of health literacy is fast catching up owing to the increasing difficulties of the common people in accessing such services and also with realization dawning on the part of the government of India about the challenges in achieving the government's mission "health for all". The use of the word 'literacy' refers to the acquisition and application of specialized skills and knowledge in a particular area, and understanding of a certain topic. In the health context this would mean that a layman should be in a position to –

- Understand the complex health related terminologies.
- Understand the various complex health related procedures.
- Have an access to the knowledge bank on health matters, medicines, their composition and their effects in a language that can be easily understood.
- Have an access to a medical hub, where he can interact on various health issues with doctors, health workers, pharmacists and all others related to this service at an affordable price.
- Have an access to an infrastructure, where a live demonstration of the complex health disorders along with their symptoms, and treatments, in the best possible way and in a language that is known to most, is possible.

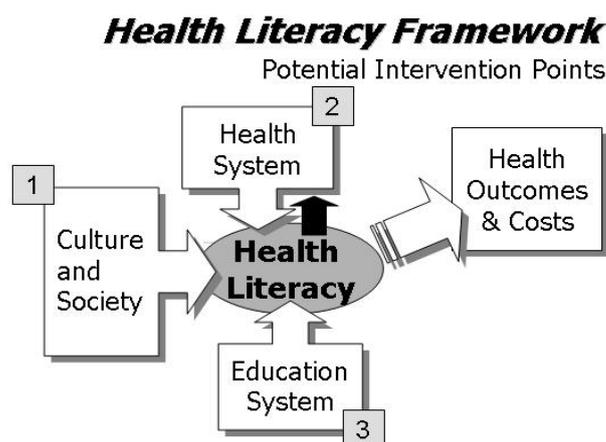
³ Don Nutbeam, *Health Literacy As A Public Health Goal: A Challenge For Contemporary Health Education And Communication Strategies Into The 21st Century*, available at <http://heapro.oxfordjournals.org/content/15/3/259.full>.

Drawing from the concept of adult literacy, Nutbeam proposed a model of health literacy comprising of three different types of literacy:

1. *Functional health literacy*: the ability to apply basic literacy and numeracy skills to access and act upon health materials, traditionally aimed at increasing patient knowledge and compliance.
2. *Interactive health literacy*: refers to the application of more elaborate literacy, cognitive and social skills to confidently engage in everyday health related activities such as interacting with health professionals and implementing self-care plans to manage chronic disease.
3. *Critical health literacy*: considers the role that literacy plays in the process of community action and social change. From this perspective, health literacy is focused on the acquisition of skills or competencies which allow individuals and communities to engage in public discourse on health issues, with a view to modifying health care policies and practices. This in turn may lead to a better public understanding of social, economic and environmental factors which impact on health.

Nutbeam's model provides a richer understanding of health literacy that goes far beyond having the basic skills to read labels on medicine bottles suggesting that advancement through the different 'layers' of health literacy empowers an individual which in turn, influences choice and control over health and lifestyle decisions. Similarly, Zarcadoolas, Pleasant and Greer proposed that health literacy relates to an individual's awareness of public health issues, scientific processes and cultural differences, which in turn influence how they interpret, question and respond to information.⁴

⁴ C. Zarcadoolas, A. Pleasant & D. S., *Understanding Health Literacy: An Expanded Model*, 20 HEALTH PROMOTION INTERNATIONAL 195-203 (2005).



Potential points for intervention in the health literacy frame-work, all of which can be integrated only through effective communication.

According to Nutbeam, the health literacy construct emerged from two distinct perspectives – health literacy as a public health challenge and crisis (a ‘clinical risk’); and the other as a public health goal or outcome (a ‘personal asset’).⁵ In India both have been stressed in the five year plans. Kickbusch and Maag further contributed to the health literacy construct by proposing that health literacy should be application based whereby varied areas of life, should be included like in the education system, home, community, work, politics and the market which can help in embedding greater civic responsibility.⁶ For example, citizens working collectively to address health inequalities within their communities (e.g. people actively campaigning to ban food advertising targeting children, parents banning canned foods , junk food, chocolates from their children, and schools and employers readily supporting the option of ‘healthy choices’ on a daily basis) and so on. Health literacy programmes can be best executed when there is effective communication among the participants, with minimum amount of noise or barriers.

Communication is a core skill for physicians, yet many patients have difficulty understanding what physicians tell them, most often than not they tend to forget immediately they leave the room. Most of the patients in India are not even bothered to check the composition and expiry date of the medicines prescribed by the doctors and given by the chemists. Patients with inadequate literacy skills, particularly those with a poor understanding of common medical

⁵ *Supra* note 3.

⁶ I. Kickbusch & D. Maag, *Health Literacy*, in 3 INTERNATIONAL ENCYCLOPEDIA OF PUBLIC HEALTH 204–211 (K. Heggenhougen & S. Quah eds., Academic Press).

terms and written health materials, suffer the most on this account. Confusing communication can arise from a combination of the terminology often used by health-care providers, insufficient comprehension of health vocabulary among people with low health literacy, their limited health knowledge, and an impaired ability to integrate new information.

In the 25 Universal Declaration of Human Rights, 1948, adopted and proclaimed by the UN General Assembly in Article wherein it was clearly stated thus:

(1) Health is both a public and merit good. Public health, sanitation, and the eradication of communicable diseases have to be provided by a collective basis that is as items of collective consumption, since they cannot be feasibly supplied or consumed, or paid for at an individual level. They will not be provided at all if left to the market mechanism;

(2) Secondly, health care being so basic to the well-being and productivity of society, access to it needs to be universal. It cannot be constrained by affordability, and cannot, therefore, be left to the market. This is the sense in which primary health care, like primary education, qualifies as merit good for the provision of which the state has to bear a special responsibility.

The Centres for Disease Control and Prevention (CDC) define health communication as “the study and use of communication strategies to inform and influence individual and community decisions that enhance health” (U.S. Department of Health and Human Services, 2005). The word influence is also included in the Healthy People 2010 definition of health communication as “the art and technique of informing, influencing, and motivating individual, institutional, and public audiences about important health issues”. An important role of communication is to create a receptive and favourable environment where information can be shared, understood, absorbed, and discussed by the program’s intended audiences. Such an environment entails an in-depth understanding of the needs, beliefs, taboos, attitudes, lifestyle, and social norms of all key communication audiences, based on messages that are easily understood. Even definitions of communication by Pearson and Nelson stressed it as “the process of understanding and sharing meanings”. Another important attribute of health communication should be “to support and sustain change.” In fact, key elements of successful health communication programs or campaigns always include long-term program sustainability, as well as the development of communication tools and steps that make it easy for individuals, communities, and other audiences to adopt or sustain a recommended behaviour, practice, or policy change and thus develop the environment of health literacy.

III. OBJECTIVE

The researcher has tried to analyse two objectives-

1. The different communication challenges that India faces in order to achieve 100% health literacy.
2. The researcher attempts to understand the dynamics of communication that works best in this socio-medico environment, where almost 60% of the people are illiterate, unaware and unformed; bonded by several inhibitions and age old traditions

IV. RESEARCH METHODOLOGY

The researcher aims to study this through case studies, news reports, and interviews of health service providers and health service receivers in the areas of West Bengal with special focus in rural belt. The researcher has not resorted to any statistical analysis rather the researcher through various interactions has tried to analyse the findings and has gone for an exploratory cause and effect method. The researcher has covered two major sub-divisions of the Bardhaman district of West Bengal- the Assansol sub-division and the Durgapur sub-division, both renowned for their industry associations. Durgapur famous for the SAIL plants –Alloy steel plant and the Durgapur steel plant. And Assansol for the Eastern coalfields. Besides there are numerous other small and medium scale industries.

V. THE OVERVIEW

The Assansol sub-division consists of Assansol municipal corporation, three municipalities: Raniganj, Jamuria and Kulti and four community development blocs: Barabani, Jamuria, Raniganj and Salanpur. The four blocks contains 35 Gram Panchayats and 18 Census Towns. The subdivision has its headquarters at Assansol. According to a 2010 report released by the International Institute for Environment and Development, a UK-based policy research non-governmental body, Assansol is ranked 11th among Indian cities and 42nd in the world in its list of 100 fastest-growing cities. As per provisional reports of Census India, population of Assansol in 2011 is 564,491; of which male and female are 293,748 and 270,743 respectively. Although Assansol city has population of 564,491; its urban / metropolitan population is 1,243,008 of which 647,831 are males and 595,177 are females. In education section, total literates in Assansol city are 431,300 of which 236,683 are males while 194,617

are females. Average literacy rate of Assansol city is 84.82 percent of which male and female literacy was 89.52 and 79.73 percent. The sex ratio of Assansol city is 922 per 1000 males. Child sex ratio of girls is 908 per 1000 boys.

Durgapur subdivision is a subdivision of the Bardhaman district in the state of West Bengal, India. It consists of Durgapur Municipal Corporation and five community development blocs: Durgapur–Faridpur, Galsi–I, Kanksa, Andal and Pandabeswar. The five blocks contain 36 Gram Panchayats and 30 Census towns. The subdivision has its headquarters at Durgapur. As per provisional reports of Census India, population of Durgapur in 2011 is 566,937; of which male and female are 294,349 and 272,588 respectively. Although Durgapur city has population of 566,937; its urban / metropolitan population is 581,409 of which 301,700 are males and 279,709 are females. In education section, total literates in Durgapur city are 453,604 of which 247,176 are males while 206,428 are females. Average literacy rate of Durgapur city is 87.84 percent of which male and female literacy was 92.10 and 83.23 percent. The sex ratio of Durgapur city is 926 per 1000 males. Child sex ratio of girls is 946 per 1000 boys.

The researcher provides this data with a motive to make people feel the importance of health literacy and the uphill task facing the West Bengal government. She wants to project that despite having such a huge population, impressive literacy rates and the sex ratio, the state suffers hugely from the perspective of health scenario which will become evident on showing the no of hospitals and doctors the state provides for such a huge population. See fig1 and fig 2.

Figure 1: Asanol

Sub-division	Blocks/ Municipality/ Municipal Corporation	Hospitals	Health Centres	Clinics*	Dispensaries	Total	Total beds	Doctors**
Asansol	Salanpur	1	3	13	1	18	173	28
	Barabani	1	5	17	1	24	83	16
	Raniganj	3	2	21	3	29	137	15
	Raniganj(M)	4	-	-	-	4	235	40

	Jamuraia	2	3	14	2	21	103	13
	Jamuraia(M)	-	3	22	1	26	22	5
	Asansol(MC)	7	6	10	1	24	1722	205
	Kulti(M)	3	3	-	2	8	374	63
Total of Sub-Division		21	25	97	11	154	2849	385

Figure 2: Durgapur

Sub-division	Blocks/Municipality/ Municipal Corporation	Hospitals	Health Centres	Clinics	Dispensaries	Total	Total beds	Doctors
Durgapur	Galsi-I	1	3	27	2	33	53	10
	Andal	3	2	34	-	39	171	25
	Faridpur Durgapur	-	4	15	1	20	33	4
	Pandabeswar	-	2	14	-	16	12	3
	Kanksa	-	5	26	3	34	39	7
	Durgapur(MC)	6	1	-	-	7	1104	196
Total of Subdivision		10	17	116	6	149	1412	245

VI. FINDINGS

The researcher while conversing with common people in these belts found that -

1. Most people abhor going to government hospitals because the service is delayed, doctors do not come, and even if the doctors come they are busy in other affairs rather than treating patients. The attitudes of the doctors are like that they are doing mercy. The doctors are busy in treating patients in their own homes. One famous

paediatrician of the Durgapur sub-divisional hospital practices till 1.00 pm at home after which he goes to the hospital, whereas the working hours happen to be from morning 8.00 am. The researcher herself when visited the hospital saw a line of patients waiting eagerly for his arrival. Some of them even complained that the doctor often remains absent for days from the government hospital owing to other patients of private hospitals. Several complaints to the chief medical officer have failed to provide any solution.

2. Most people don't understand what the doctors say, as they speak in a language which seems alien to them. The handwriting is also not legible. One of the best eye hospitals, which provide international facilities at a cheap rate in India, is located at Chennai. People who visit from rural areas of West Bengal are unable to understand the language of the doctors, nurses and the chemists as they all speak Tamil, Telegu or English. None speak the common lingua franca of the country i.e. Hindi, which complicates the matter even more.
3. Most people do not have money to go to private hospitals and even if they are able to make it through, they don't have the money to go through the expensive tests and medicines.
4. Most people feel that doctors charge unnecessary amount of fees from them, have an unholy nexus with chemists and pharmacy companies. More often than not the doctors become unofficial ambassadors of certain pharmacy companies and prescribe medicines which do not fit the purse of common men.
5. Most people are scared to visit private hospitals as they feel that they are more of five star hotels charging exorbitant prices even if that means holding back the body of a patient after his death, to extract money from the patient party.
6. Most people don't even have the facility of transportation from their place to the hospital. Many lamented that they need transportation facility first to save lives. The first hospital that the people of kanksa and jamuria area of Durgapur and Assansol town have is the sub-divisional hospital which is 100 kms away from their place, with no proper transportation facility.
7. The government hospitals are unhygienic and the nurses are apathetic. Recent issues in government hospital of Malda town, where on regular basis new born babies were dying due to infection in the children ward, was brought to the notice of the government. Dogs and rats eating up bodies of patients are rampant. Even the people who help in the cremation of the patient charge high price.

8. The patient parties often are victimized in critical situations as they have no option other than to surrender. Even the educated people are not spared. A respondent recounted his ordeal in this scenario. He admitted his father with cardiac pain in the company hospital in Durgapur where his father was an employee. The hospital was renowned for the facilities and the doctors it had in town. But after keeping his father for ten days under inspection, the doctors could not detect the problem and referred him to a big hospital in Kolkata, where the doctors were astonished at the treatment meted out to him in the previous hospital and recommended immediate surgery. The doctors operated on him and handed over the family a CD which contained the live picture of the heart prior to the operation and after the operation. When the family attempted to consult other doctors by showing the CD, the CD did not work. On enquiry it was known that the CD will work only when particular software is installed in the computer. And the software is available only with the practitioners. So what was the purpose of giving the CD to the common man when they cannot avail such facility? Though the patient was computer literate yet he could not use his skills. Communication would have been effective if the format of the CD would have been such that it is easily accessed by everybody.
9. The government has not taken adequate steps to curb the quacks, who provide the immediate help to the villagers and are mostly uneducated. They have to face numerous cultural and religious barriers at their home to go to hospitals. This is especially true in remote areas of West Bengal. For example in a remote area of Andal, Mankar, the people said they are habituated to have their babies delivered in homes, in the hands of midwives. And regarding post-natal care they have their peculiar traditions and systems which were mostly unscientific and very dangerous too. Some of the educated youth are now trying to change the system. Another example came to the forefront regarding polio dosage to the children. Muslims in certain areas of West Bengal were not so willing to give their wards polio and this was hindering government's decision of a polio-free state. Now after a decade of unawareness and unwillingness, they have come forward to change this scenario, courtesy the maulvis i.e. the religious gurus and the educated youths of that place. The practices of witch hunt in remote villages have also caused serious hindrances in the health care communication. Villages often burn or lynch fellow poor villagers in case if there is any widespread epidemic in the village. One such incident had caused furore in the rural areas of Ilambazaar when an old widowed and childless woman

were tied to poles and beaten naked because some influential villagers held her responsible for the recurring deaths of small children in the village. Without knowing the actual reason the poor woman had to bear the brunt of the villagers. In another such incident in a nearby village of Durgapur-Faridpur belt, a small boy was sacrificed at the altar of the god because he was suffering from severe convulsion and his parents were advised by the tantric or religious fanatics to do so. They were told that he is suffering from some evil dominance and he will be cured only if he is sacrificed before the god. Or else the whole family will perish. This prompted the family to do such a ghastly act. In many societies the girl child is looked down upon and in many places despite the warnings of the government sex determination centers are at full bloom. This has resulted in skewed sex ratio in the country and this despite the fact that Durgapur and Assansol has a very good sex ratio and literacy rate.

10. The health workers are unsympathetic and more often than not mislead and mistreat people. A respondent said that a health worker had advised her pills of indigestion for two months when actually she was pregnant. It had a very negative effect on the baby as the pill she was suggested was not only wrong but is given to patients who have high sugar. How this was possible could not be later explained by the health worker when she was contacted by the researcher.
11. The chemists in the shop are not educated enough to give medicines. One respondent who was a heart patient and also had type 2 diabetes and had undergone heart surgery few years back, said that his diabetologist prescribed him Glyconet SR 1, which was of comparatively lower dose but the chemists gave him Glyconet GP-1 of higher dose and which could have been dangerous for him had he not consulted the doctor. The compositions of the two medicines were different and are given to different patients.
12. Even doctors differ in their opinions, which make matters even more confusing for the patients. One respondent said that her daughter was suffering from convulsion. One doctor prescribed valparin 200, 5 ml, three times a day. Another doctor prescribed the same medicine but changed the dosage and the number of times. Confused mother consulted a third doctor who endorsed the medicine prescribed by the first doctor. Another respondent said that during her pregnancy the female doctor was herself so confused that she prescribed medicines which resulted in complicated child birth. Later on to cover up her faults she blamed the patient's family. In this regard one respondent said he always consults the internet immediately after doctor's

visit and through skype consults with doctor also. Herein come the literacy skills but again there are severe limitations in its widespread use.

13. Dismal infrastructure in the hospitals also keeps patients at bay. There are more patients in the government hospitals than beds and doctors. There is a serious paucity of skilled service providers at all levels in the health sector. At some places the patients are made to share a single bed with one more patient under the bed. Such is the condition of the hospitals. Most hospitals in West Bengal don't have the basic facilities. On researching the facts, the researcher found that most of the government hospitals located in districts doesn't have NICU-Neo Natal Intensive Care Unit. Or a CCU- Cardiac Care Unit. Serious patients are often referred to other big hospitals which are often located far away from the places. Patients often breathe their last enroute.
14. Most doctors don't write the compositions of the medicines, which should be made mandatory.
15. Most doctors are not willing to go to the villages /rural hospitals to serve the rural people. As rural hospitals lack the infrastructure, they see it as hindrances in their career growth. As such the services in the rural sector are appalling.
16. The concept of generic medicines is gaining grounds, which are cheap but people are unaware of this. Also a certain section of the service providers don't see eye to eye with this new concept as it prevents their malpractices. This further prevents efforts by Government of India to implement the concept of generic medicine shops. Though the West Bengal government has taken initiatives in this regard yet it is too early to comment on this.
17. Although government has formulated several regulations for health and devised health schemes for all, but there is serious lacunae in the monitoring system. For example, the government of West Bengal has the scheme of free health check up for senior citizens once a month but the treatment that is meted out to the senior citizens if they visit the government hospitals speaks of the sincerity of the purpose. Eye operation camps for elderly citizens by the government leads to faulty operations resulting in blindness and eventually infection and death. Similar examples are cited regarding polio campaigns also. Inappropriate storage of polio medicines renders the medicine ineffective thus when it is administered to small children adverse effects occur. The doctors and nurses blame the community health workers and the community health

workers blame it on the administration. A relay race continues and the poor patient becomes the victim of such circumstances.

18. In certain cases the community health workers are themselves stigmatized which finally leads to sensitization among common masses also. For example in cases of AIDS or leprosy.
19. The special cases like burn patients, rape patients, psychiatric patients and trauma patients are a completely neglected lot as the doctors in the government hospitals themselves are unaware of the treatment procedures.
20. Though there are health centers, dispensaries and clinics in every block yet they are rendered useless as no doctors are available, with these places turning into nightmares for the patients.

From the above discussion it was clear that the health communication in India faces several challenges.

Whenever a patient visits a clinic, it is the general procedure that a member of a treatment team collects data about the patient through conversations with the patient and the patient's family, observation of the patient, a physical and mental examination, laboratory testing, and so on. The team then collates these patient-specific data with the evidence-based information to create new information: the patient's diagnosis and prognosis and, in conversation with the patient, a treatment plan which is then finally, disseminated to the patient and the patient's family. Dissemination occurs through oral communication (e.g., in conversations with the patient, patient's family, and health care professionals), through writing (e.g., in consent forms, instructions) and through electronic transmission (e.g., in pharmacy orders, insurance claims, and computerized, patient-accessible personal health records). Collection of data, transformation of data into information, storage of data and information, and dissemination of information comprises the process of information management. Communication that is comprehended by both participants; is usually bidirectional between participants, and enables both participants to clarify the intended message is effective communication. In the absence of comprehension, effective communication does not occur; when effective communication is absent, the provision of health care ends—or proceeds only with errors, poor quality, and risks to patient safety.

VII. BARRIERS TO HEALTH COMMUNICATION

Thus, the barriers to health communication are as follows:

- i. *Language barrier*- often the patients and the doctors are not conversant with the language. India being a multi-lingual country, with pan India presence of different states along with their culture and sub-culture; has numerous languages and dialects. It becomes nearly impossible to learn or even understand all languages leave alone conversing and treating patients. The country's only lingua franca Hindi is also not spoken by many especially in southern part of India where English is more in practice as a language. But the rural parts of the other states are hardly aware of English language. This results in confusion among the patients and the doctors. (Example stated in point 2 above).
- ii. *Cultural barrier*- barriers in culture pose threat for the health communication. Various religions, castes and tribes have their age old traditions and customs most of which are outdated, illogical and unscientific. Most of the health communication campaigns have not been able to penetrate the rural areas and the people of West Bengal are still in dark about the various negative effects of their blind folded superstitions which takes toll on their lives. Though there are campaigns in this regard but their success rate is very dismal. This result in serious threat for those who practice these traditions. (Example stated in point 9 above).
- iii. *Financial barrier*- India is a country which is categorized in the lower income group according to United Nations development report. Where there are financial constraints how can the government think of achieving a mission of health for all. Communication cannot happen in a state where the patients cannot access the minimum basic health care. (Example stated in points 3,4,5 and 17 above).
- iv. *Psychological barrier*- If there is a fixed mindset about any profession then it can create problem in communication. There is a sensitization and a negative demand against the doctors and the hospitals in India. People are afraid to visit hospitals and detest the white apron. Also the community health workers are not trained enough to

handle sensitive cases like AIDS or leprosy. (Example stated in points 1 and 18 above).

- v. *Attitudinal barrier*- Apathetic attitudes and high handedness of doctors and nurses sometimes create barriers in communication among the target markets. This is especially in the government hospitals and with the community health workers, who most often than not chose to ignore the plight of the poor people. (Example stated in points 7,10 and 15 above).
- vi. *Literacy barrier*- According to the Census 2001, as many as 560,687,797 persons in the country are literate. Of these 336,533,716 are males and 224, 154,081 are females. While the overall literacy rate works out to be 64.8 %, the male literacy rate is 75.3% and that for females is 53.7%, showing a gap of 21.6 percentage points between the sexes at the national level. The gap is more in the rural areas. In the urban areas, higher literacy rate has been recorded both for males and females and the difference among the sexes is lower (13 percentage points). Kerala, Mizoram, Lakshadweep, Goa and Chandigarh occupy the top five positions in literacy while Dadra & Nagar Haveli, Uttar Pradesh, Jammu & Kashmir, Arunachal Pradesh, Jharkhand, and Bihar, are at bottom. In such a scenario, governments' mission will definitely see a setback. Low health literacy often renders people helpless, thus resulting in misleading information and treatment. (Example stated in points 8, 11, 12 and 14 above).
- vii. *Connectivity barrier*- Lack of transportation can also be a barrier in health communication. Rural parts of India lack this facility and thus poor people often can't even access the minimum facilities offered by the government. (Example stated in point 6 above).
- viii. *Infrastructural barrier*- Government hospitals lack the basic infrastructural facilities which again create a barrier in health communication. (Example stated in point 13 above).

If such is the situation then Nutbeam's health literacy layers will be a dream. Health literacy being only a part of health communication, to achieve a mission of such a huge magnitude the government has to work hand in hand to provide an integrated solution.

TABLET PC EDUCATION: AN INTELLIGENT DIGITAL AGE - TRANSFORMATION IN EDUCATIONAL MANAGEMENT IN INDIA

By Nidhi Prajapati¹

A large number of student's population in India are demanding different types of educational tools across various streams of epistemology and a tablet PC is an internet enabled device-that provides a powerful platform and an environment to deliver quality education to the student community. This study was conducted to explore students' attitude and perception towards hi-tech tablet education in schools in Kota and to find out the causes of not introducing this new educational teaching learning tool in practice. The investigator has adopted mixed research design. 500 secondary grade students were sampled through simple random sampling method. A questionnaire was properly filled and returned to researcher by respondents. The study findings presents that there is an ample awareness for hi-tech tablet education amongst girls and boys. At the end of this research investigator has found that 70% students want hi-tech education, 86% students are thinking that India is backward in tablet education, 84% students want education especially by tablet and 71% are accepting that schools in Indian education system are not appropriate according to the 21st century where we are planning to become a developed country because schools are meant for preparation of colleges and now days colleges are extremely techno friendly. On basis of the in-depth interviews with 5-CBSE, 5-RBSE administrators and 5-ICT experts, 22 benefits of tablet PC education and 31 causes for not introducing it in Indian circumstances have been explored. This research will develop a sense and present a model for understanding school students' awareness of tablet PC (TPC) as a means to study, teach, learn, forecast, explain, and improve their usage pattern in education. It will be helpful to understand the duties of stakeholders and requirements of students from tablet PC education.

I. INTRODUCTION

Modern age is the age of information and communication technology (ICT). ICT is playing a vital role in education. Whenever teachers implement new aspects of teaching, children are always benefited. In this hi-tech 21st century anything can be learnt at anytime, anywhere with the support of technology by learners. In the field of education many technologies have done tremendous miracles like introduction of e-learning, m-learning, laptops, I-Pads, tablet education, digital classes, smart classes, CDs, DVDs, online education etc. Effective teaching in the 21st century must be student centred and must infuse technology into the learning

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experience for both rigour and relevance in order to emphasise higher order thinking skills. A large chunk of the student population of India is demanding different types of educational tools across various streams of epistemology because after completion of school, they have to go for higher education in prestigious colleges/institutions where education is being provided by latest technology. The tablet PC as an internet enabled device provides a powerful platform and an environment to deliver quality education to the student fraternity. This device consists of a standard notebook PC containing a screen that acts both as a display device as well as an input device. It can be defined as “a type of notebook computer that has an LCD screen onto which the user can write using a special-purpose pen, or stylus. The handwriting is digitized and can be converted to standard text through handwriting reorganization, or it can remain as a handwritten text.”²

The Tablet PC has the potential to fulfil all the learning objectives of the education. For promoting learning-centred education, it is required to launch tablet education in schools. The tablet PC (TPC) is increasing in popularity and becoming more common for instructors to utilize.³ The tablet PC (TPC) device can promote teaching and learning in students through interaction, collaboration, active learning, class engagement, and high-quality feedback.⁴ The tablet device can create numerous opportunities for promoting teaching and learning through class engagement, active learning, high quality feedback, collaboration and interaction. It is the advanced stage of laptops with inking capabilities using a stylus as an input device that allows writing on the screen. It enhances the mobility provided by the laptops by providing the ability to capture hand writing using a magnetic pen.

Tablet PCs also enhance classroom interaction by a providing a greater range of tools for extending a static curricular structure by providing real time opportunities for formative assessment and digital forms of summative assessment. It also enhances the collaboration and communication in small group exercises.

World’s tablet selling report shows that tablet shipments surpassed shipments of notebooks in 2013. The tablet market in US Education grew by an explosive 103% year-over-year in 2012 and continues the same through 2013. Shipments of end-user devices (including tablets, notebooks and desktop PCs) in the US education sector are up 15.3% to 8.5 million units,

² Tablet PC, Webopedia (2004), available at http://www.webopedia.com/TERM/T/tablet_PC.html.

³ Chia-Tsung Lee et. al, *Tablet PC Language Learning Game in Taiwan Higher Education*, 1(4) IJEEEE 287, 287 (2011).

⁴ *Ibid.*

despite weaker PC sales.⁵ Tablets accounted for 35.4% (3ML) of the market in 2012, up from 19.4% in 2011, with significant room for future growth. As the movement toward a fully digital classroom continues, the growth of tablets as the end user device of choice will continue to grow exponentially. 46% of technology directors rate tablets as a high priority over the next three years. In large districts the number increases to 51%. None of the respondents consider tablets a low priority.⁶

At present, Kota has become an education hub for students all across India and also neighbouring countries as well. Many school administrators are introducing the latest ICT in their schools. Recently a school group, St. Joseph's group of schools has launched its and north India's first hi-tech tablet based school. So to assess the knowledge regarding tablets and hi-tech education in both CBSE and RBSE schools' administrators and students this study has been conducted.

II. SIGNIFICANCE OF THE STUDY

In recent years, with increasing use of ICT in the education sector, the administrators are demanding a proper guidance and way to choose right technology because market is filled with the spark of glamour and students are demanding hi-tech technology to meet out their desires and compete. The outcomes of the current study will draw an attention of administrators regarding students' perceptions and views of schools' founders and ICT experts for tablet education's positive and negative aspects. Before introducing tablet education in their schools, initially the administrators should know the types of problems they can encounter during implementation and should find the solutions before-hand only. For this, the Investigator believes that the researchers, educationists, teachers, lectures, professionals, administrators will find this study a valuable research/resource document.

III. OBJECTIVES:

1. To explore the students awareness and perception of tablet education.
2. To know the benefits of the tablet education from students, teachers and administrators perspective.

⁵ Glenn Collins, *Tablets in Education*, available at <http://www.slideshare.net/CDIComputers/tablets-in-education-33035483>.

⁶ *Ibid.*

3. To find out the obstacles in launching of tablet education from administrators point of view.
4. To suggest an appropriate model for schools planning to implement tablet PC education.

IV. RESEARCH METHODOLOGY

Present Study is an exploratory research. Combination of mixed methods and exploration was found appropriate and therefore present research selected a sequential exploratory design among various mixed method research design. Sequential Exploratory Design possesses the ingredients of mixed methods as well as exploratory research design. As explained by Creswell, Clark, Gutman and Hanson in the hand book Mixed Method in Social and Behaviour Research, Sequential Exploratory Design is characterized by an initial phase of qualitative data collection and analysis followed by a phase of quantitative data collection and analysis.⁷ Therefore the priority is given to the qualitative aspect of the study.

Sample Size

To achieve the decided objectives of the study a sample of 500 secondary grade students has been selected from both Hindi and English medium schools. Out of those, 500 students 300 were boys and 200 were girls. Amongst them, 200 boys were from English medium and 100 boys from Hindi medium schools while 100 girls were from English medium and 100 girls from Hindi medium schools. Sample has been selected through random sample technique. For in depth inquiry about tablet education's merit and demerits, 5 founder members each for English and Hindi Medium Schools and 5 ICT experts were randomly selected.

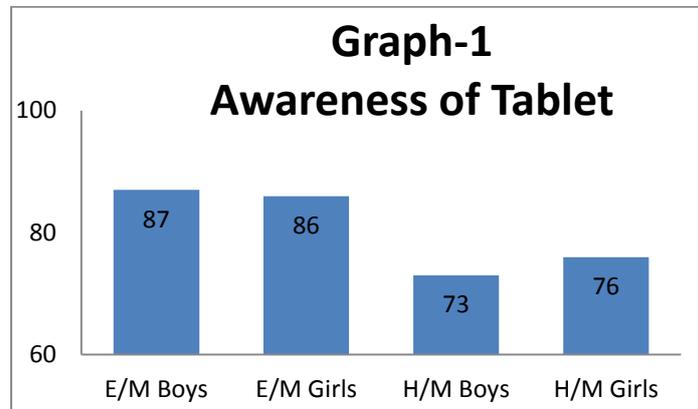
Tools and Technique

To know about tablet education's merit and, demerits, interviews with open ended questions had been taken of 5 CBSE and 5 RBSE school's founder members and their responses were analyzed through content analysis. For Quantitative research descriptive survey method was selected in which a self-made questionnaire was used by the investigator in which 10 questions were there regarding tablet education awareness. 5 interviews had been taken with ICT experts to know about the technical aspects of tablet PCs.

⁷ ABBAS TASHAKKORI & CHARLES TEDDLIE, HANDBOOK OF MIXED METHODS IN SOCIAL AND BEHAVIOURAL RESEARCH 178 (2nd. ed, 2010).

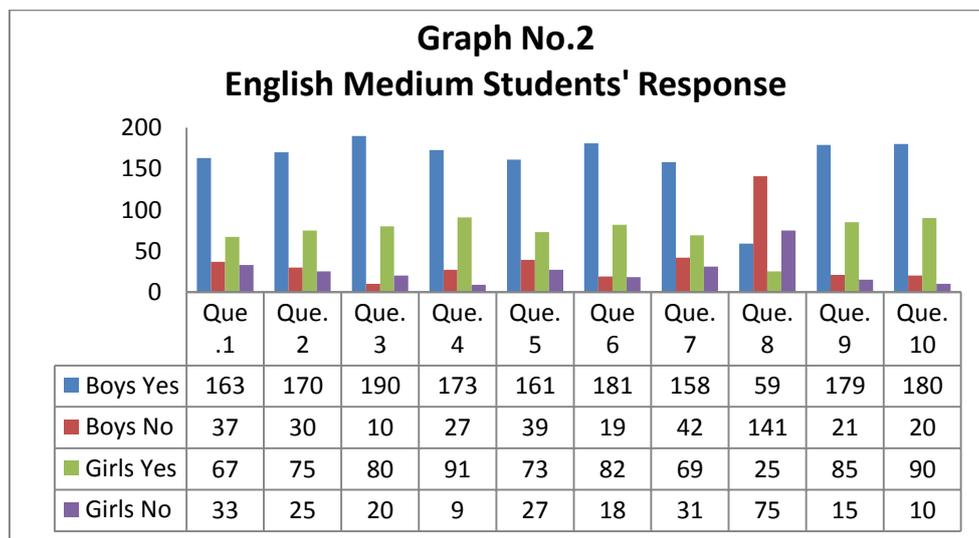
V. RESULTS AND DISCUSSION:

1. Graph no. 1 shows that there is huge awareness for tablets amongst the students.



When a question was asked related to tablet awareness and use of tablet for education students' reply was positive. 82.33% boys (87% of English medium and 73% of Hindi Medium) and 81% girls (86% of English medium and 76% of Hindi Medium) are aware about this new technology of education as they are watching news and advertisements. In Hindi medium schools girls are more aware than the boys and in English medium both are aware. But there is a difference of more than 10% between CBSE and RBSE students' awareness.

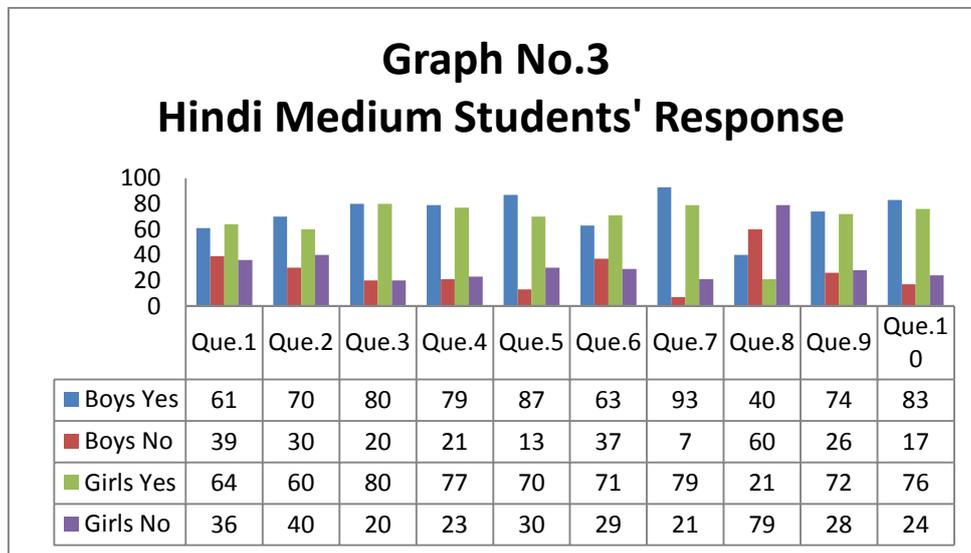
2. Graph no. 2 presents the opinion of CBSE schools' students.



Results show that both boys and girls are interested in getting e-education. 76.67% (81.50% & 67%) students showed affirmation in this regard. 81.67% (85% & 75%) students feel that India should start tablet education at large scale because it is one of the requirements of their future colleges. 90% (95% & 80%) students believe that India is backward in hi tech

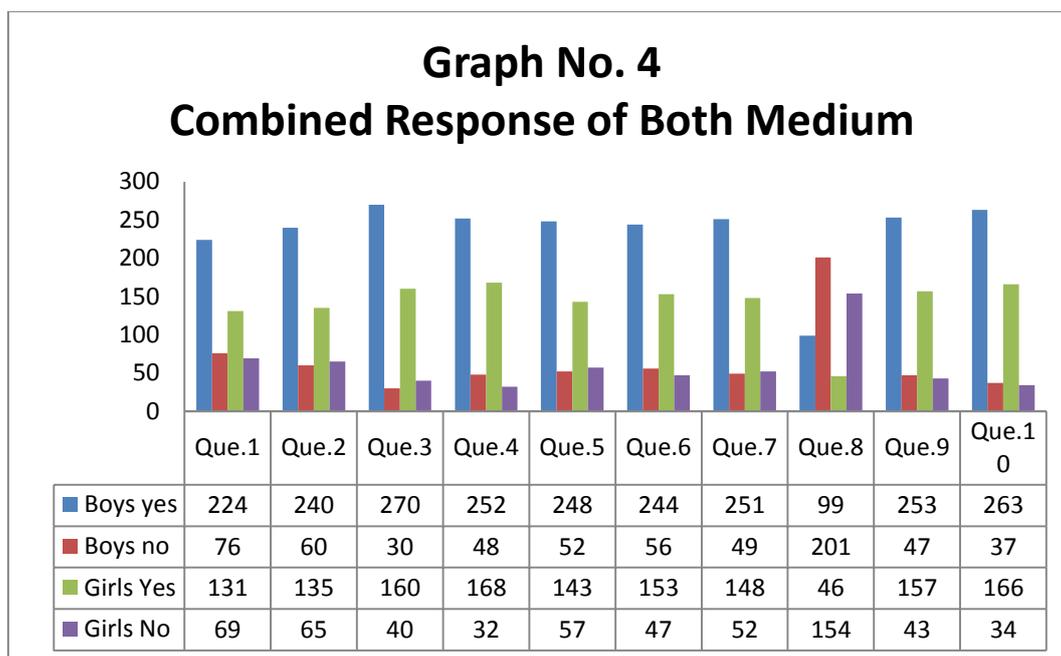
education. 88% (86.50% & 91%) students want to get education in those schools where education will be provided on tablets by teachers. 78% (80.60% & 73%) students want that India should start online education in schools. 87.67% (90.50% & 82%) students think that by removing books from the school, students can save time, money, energy and reduce the bag load. 75.66% (79% & 69%) students think that hi-tech school would help student develop their personality and increase their learning capacity. 72% (70.50% & 75%) students think that Indian schools are not up to date. 88% (89.50% & 85%) students think that e-Learning and tablet will reduce work in class. 90% (90% each) students think that learning and studying on tablet is interesting.

3. Graph no. 3 presents the opinion of RBSE schools' students.



It shows that even boys and girls of RBSE are interested in getting e-education with 62.50% (61% & 64%) students affirming it. 65% (70% & 60%) students feel that India should start tablet education at large scale. 80% (80% each) students think that India is backward in hi-tech education. 78% (79% & 77%) students want to get education in those schools where education will be provided on tablets by teachers. 78.50% (87% & 70%) students want that India should start online education in schools. 67% (63% & 71%) students think that by removing books from the school students can save time, money, energy and reduce the bag load. 86% (93% & 79%) students think that hi-tech school would help students develop their personality and increase the learning capacity. 69.50% (60% & 79%) students believe that Indian schools are not up to date. 73% (74% & 72%) students think that e-Learning and tablet will reduce work in class. 79.50% (83% & 76%) students think that learning and studying on tablet is interesting.

4. Graph no. 4 presents the common responses of both CBSE and RBSE schools' students.



It shows that both boys and girls of both medium i.e. - 71% (74.67% & 65.50%) students are interested in getting e-education and only 25.33% boys and 34.50% don't want e-education. 75% (80% & 67.50%) students feel that India should start tablet education at large scale. 86% (90% & 80%) students think that India is backward in hi tech education. 84% (84% each) students want to get education in those schools where education will be provided on tablets by teachers. 78.20% (82.67% & 71.50%) students want that India should start online education in schools. 79.40 % (81.33 % & 76.50%) students think that by removing books from the school students can save time, money, energy and reduce the bag load. 79.80% (83.66% & 74%) students think that hi -tech school would help students develop their personality and increase the learning capacity. Only 29% (33% & 23%) students believe that Indian schools are up to date, which is very less. 82% (84.33% & 78.50%) students think that e-Learning and tablet will reduce work in class. 85.80% (87.67% & 83%) students think that learning and studying on tablet is interesting.

If we throw light on the complete result then we find that girls' responses are less than boys because boys were more exposed to ICT tools at home and cyber cafes. Even Hindi medium responses are less than English medium because of economic circumstances of their families and less experience with ICT tools.

5. Tablet PCs provide a great mechanism for allowing instructors, teachers and students to incorporate active and innovative learning into their teaching and learning practice. Tablet PCs can enhance learning stamina, capacity and experiences to meet with the requirement of 21st century. In order to find the merits of tablet PCs when open ended questionnaire interviews were conducted with the CBSE, RBSE schools' founder members and ICT experts, many positive aspects related to tablets and tablet education were highlighted by them. Some of the many pioneer advantages and merits of using tablet education in the education sector are stated here:

- i. Provides freedom of study
- ii. Substitute of traditional method of teaching and learning
- iii. Substitute of teaching and learning text
- iv. Easy accessibility
- v. Improves handwriting skills
- vi. Grows organizational skills
- vii. Improves communication skills
- viii. Digital citizenship
- ix. Research and information fluency
- x. Enhances creativity and innovation capacity of students
- xi. Improves problem solving, critical thinking and decision making qualities.
- xii. Instant feedback
- xiii. Decreases absentees
- xiv. Enhances students' engagement
- xv. Learning centred education
- xvi. Digital text books
- xvii. Availability of free educational software and move to cloud based curriculum
- xviii. Compact, lightweight
- xix. Easy to carry
- xx. Decrease costs of books
- xxi. Having interactive applications
- xxii. Lessons can be planned to meet out the needs of individuals

6. In the interview section of the investigation researcher has found that students also have many expectations with tablet PC education. Students are demanding the following attributes in tablet PC's:

- i. Design of instruction and education should be simple: Learners say that the most important factor in a course's design is "it makes it easy for me to find what I want".
 - ii. Tablet PC's screen must be clear and brief: Students want to pay less attention on content that's why they want the courses to be brief, easy and understandable so that they can grasp the whole concept in a short time.
 - iii. Valuable, immediately usable and practical information: Students want that kind of material which they can use in their exam and in future etc. rather than insignificant and, plenty of content.
 - iv. Shouldn't sound like a robot but more like a real person: Conversational writing kicks formal writing! Conversational writing causes students brain to wake up and pay attention. So learning must be interactive.
 - v. Unlock the navigation: Students want to move free in their educational environment. So if the course will be more restricted then the learners will be more disengaged and frustrated.
 - vi. Instead of static presentation, create challenges: Without any challenges, they may be able to complete their assignments imposed on them, but they won't likely be stimulated by the course. So the content under tablet PC's concept should be creative, effective, up to mark, empirical, authentic and logical to create challenges to learners.
7. After an in-depth interview with the CBSE, RBSE schools founder members and ICT experts, many negative aspects related to tablets and tablet education came into light. The most important limitations and demerits of tablets are as follows:
- i. Lack of systemic approach to hi-tech education implementation
 - ii. Lack of positive attitude towards hi-tech education
 - iii. No administrative support
 - iv. Requires hi-technical support
 - v. Regular transformation in hi-tech education
 - vi. Staff development problem
 - vii. Lack of ownership
 - viii. Inadequate funds
 - ix. Lack of awareness
 - x. Fear of unsuccessful implementation
 - xi. Parents' traditional tendency
 - xii. Parents' fear for eyesight getting weak
 - xiii. Fear of using social networking sites on tablets by students

- xiv. Administrators and staff are unable to understand the concept of hi-tech education
- xv. Lack of techno friendly teachers
- xvi. Expensive education
- xvii. Unmanaged multimedia components and contents
- xviii. Hi speed internet requirement
- xix. Poor service of server
- xx. Software related problem
- xxi. Lack of tendency to take initiatives in India and to follow the ideas of European and western countries.
- xxii. Lack of latest ICT
- xxiii. Server error and server down problem
- xxiv. Lack of effective teaching strategy
- xxv. Problem with wireless connectivity
- xxvi. Problem with USB port
- xxvii. Tablets having less battery life
- xxviii. Oversensitive mouse or touch problem
- xxix. System hang
- xxx. Screen orientation
- xxxi. Tablets having insufficient internal memory

8. The stakeholders of Tablet PC education are those that are affected by it.⁸ After considering all the important aspects of tablet education with interviewees, a list of the main stakeholders in context of Tablet PC education system is as follows:

i. Students

School Students are the consumers of Tablet PC education. Students want to solve all their problems through Tablet PC education with the use of high ICT tools.

ii. Instructors

In Tablet PC education, as in traditional classroom learning, instructors guide the educational experiences of students. Depending on the mode of Tablet PC education delivery, instructors may or may not have face-to-face interaction with their students.

iii. Educational Institutions

⁸ UK Essays, *Information Assets*, available at <http://www.ukessays.co.uk/essays/information-system/information-asset.php>.

Those institutions which will provide tablet PC education system in their organization will come in this context. The popularity of Tablet PC education has led to the creation of new online educational institutions.

iv. Content Providers

Course content may be created by instructors or acquired from external sources. The growth in Tablet PC education has created a market for commercialized educational content creators, particularly for more introductory courses that are offered consistently at multiple institutions.⁹

v. Technology Providers

Technology providers develop the technology that enables Tablet PC education delivery. They must have competency with latest technology of education.

vi. Accreditation Bodies

Accreditation bodies are organizations that assess the quality of educational institutions offerings. These bodies should establish and consider the minimum requirements to be accredited, their accreditation will provide a level of prestige that non-accredited institutions can't possess.

vii. Employers

Employers are those organizations that will potentially hire ICT friendly staff. Often, there is a tendency for employers to view online education from reputable traditional institutions in a more positive light; however the acceptance of online degrees in general is increasing (Chaney, 2002).

VI. CONCLUSION

Tablet PCs are one of the newest innovations in computing and communications tools, offering an opportunity to positively impact the way in which students and faculty use technology to support teaching and learning. The market of tablet PC is growing speedily. This study specifically examines the perception of students towards India's hi-tech education and tablet personal computers (TPC). After getting knowledge from tablets, students will find themselves confident for social performance, technologically sound, effective in communicative skills and in developing new ideas and products, collaborative work etc.. Students will use their critical, logical thinking in creative activities and solve their problems

⁹ *Ibid.*

more efficiently. They will demonstrate a sound understanding of concepts, theory, systems and operation. They will leave the era of traditional paper and pencil and its face to face communication method. Students can prepare themselves for next college generation in which modern schools have failed.

The various stakeholders of Tablet PC education play an important role in school and higher education. The success of Tablet PC education is thus dependant on the cooperation of all of those stakeholder groups. Consequently, each stakeholder group has responsibilities towards the other stakeholders to help fulfil their motivations and address their concerns.¹⁰

Negative thoughts are strongly associated with technical and ICT literacy. Staff members and traditional teachers are not comfortable with new hi tech technology. They don't want to use new tools of ICT. 86% students believe that India is backward in hi-tech education. There is a strong requirement of having positive thinking for new educational technologies. We must not be afraid to introduce new teaching learning practices. Schools should pay attention on new ICT tools and paradigms of teaching pedagogy. Before establishing any tablet based school, a detailed study is required to know all the dimensions of ICT and tablet PCs' concepts so that school wouldn't suffer from any problems related with tablet based education system. For successful implementation of tablet PC based education faculty should work on integrating ICT into their teaching environment.

VII. FUTURE SCOPE

1. A significant number of students have been involved in the research. In future a larger study can be conducted on the implementation of tablet education in Kota.
2. Students' experiences can be measured with their tablet handling.
3. In future inferential statistics can be used to measure the significant differences between groups' demographic variables.
4. The study was limited to Kota city only. A more detailed comparative study can be conducted on students of rural and urban areas and those from different cities.
5. Effects of tablet education on students can be measured by experimental research methodology.

¹⁰ Nicole Wagner, Khaled Hassanein & Milena Head, *Who is Responsible for E-learning Success in Higher Education? A Stakeholder's Analysis*, 11(3) EDUCATIONAL TECHNOLOGY AND SOCIETY 26 - 28 (2008).

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ENTREPRENEURSHIP & MANAGEMENT

THE STATUS OF WOMEN IN THE FORMAL WORKPLACE

By Rupali Sarda¹, Prashansa Gokhale², Shishira Johny³ & Sanjit Ganguli⁴

In today's world, the economic growth and development has been substantial but the one problem that still persists is that of gender inequality in work places. Women still face the issue of gender gap at their respective workplaces. They are still not considered capable of doing what a man can do. Women join organisations in good numbers, but very few make it to the senior positions. At every step, women either abscond or get pushed out.

Through this research paper, we investigate the problems faced by the women in their respective workplaces. We also investigate the status quo regarding the treatment of women in their workplaces. Furthermore, we find out if the the perceptive reality of women in Indian workplaces is synonymous to the actual reality and also investigate as to whether men and women in India have equal opportunities and whether women in India are aware of the legal provisions and the guidelines for the protection of their rights and safety.

Both primary and secondary data have been used as a part of this research. Through the primary data, a survey conducted between fifty working women from the age of eighteen to sixty, we arrived at important core conclusions. As part of our secondary data, research was made into various books like 'Lean In' by Sheryl Sandberg among others, journals, magazines like Forbes, Business Week, etc. and various articles also.

There still exists a wide gender gap, even today, in the Indian workplace despite all the growth and development. It was also discovered that, at present, it is easier for a man to rise up the corporate ladder as compared to a woman, for whom it is akin to a jungle gym.

I. INTRODUCTION

The journey to the top leader positions is difficult for anyone, men and women alike. Arguably, women need more support since they face additional hurdles compared to their male counterparts. It is a fact that equal number of men and women join but very small number reach the top positions of a company.

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Women in India make up for 24% of the workforce; which is ironical since India boasts of having one of the largest working populations in the world. Only 5% of that reaches senior positions as compared to the 20% around the world.⁵ A recent study by Booz and Company shows that if men and women in India were to be equally employed, then India's GDP could go up by 27%.

As per Sylvia Ann Hewlett, who is a renowned advocate of diversity and one of the world's top 50 thinkers the world over, women, unlike men, do not follow a linear career progression. A woman's career has a far more scenic route, which includes taking time out, working part-time, reduced hours or flex-time for a number of years.

Before Independence, Indian women suffered from gross inequality. They did not possess the same rights as men in economic, political and social spheres of the society. However, after Independence, the Central Government formally recognized the various social constraints imposed on women and hence, took various measures to improve the quality of life for women. Article 15 of Constitution of India prohibits discrimination based on race, colour, religion, sex or national origin in employment and termination of employment. Further, policy initiatives such as Minimum Wages Act, 1948, The Maternity Benefits Act, 1961, The Equal Remuneration Act, 1976, etc have also been enacted for the protection of the interests of women.

II. REVIEW OF LITERATURE

1. **Savita Kumra & Simonetta Manfredi** in their book "**Managing Equality and Diversity**" have dealt with the issue of diversity that is found these days, in various formal sector firms and enterprises. The diversity in workforce is inevitable and is in fact beneficial for a company, provided they are managed to their best potential and also provided space to bring out their true colours. It enlightens the readers about the problems and kinds of discrimination faced by employees from gender discrimination to discrimination of disabled people at workplace. This book also empowers the reader with knowledge on how to balance work-life and personal-life such that one can enjoy doing both. This book also raises awareness about the existence of such

⁵ Mitu Jayashankar, *Why Indian Women Leave the Workforce*, available at <http://forbesindia.com/blog/business-strategy/why-indian-women-leave-the-workforce/>.

type of discrimination in a developed world like ours and moreover improves business worldwide.

2. **Ines Wichert** emphasises on the scarcity of women in senior management positions in her book “**Where have all the Senior Woman Gone?**” She speaks about the problems and road blocks faced by women to acquire top management positions. She defines various facets of a job and the challenges that women may face in these areas. They are also portrayed as change agents of an enterprise. The manner in which women could make their way to the top management positions have also been encapsulated in this book by Wichert.
3. **Elisabeth Kelan** talks about how the women of Generation Y should be a part of top management and how companies today cannot exist without doing so, in her bestseller “**Rising Stars**”. The book also mentions how employers have failed to understand the value of women in a company. It also describes how 21st century women could become great leaders and the author has portrayed the female generation to be authentic leaders. Elisabeth has taken her valuable recommendations from extensive research of five years and hence adds credibility to her sources.
4. **Sheryl Sandberg** in her book “**Lean In**” examines why women’s position in the formal sector, in achieving leadership roles has stalled, and also explains the root causes for the same. The author, further offers compelling and common sense solutions that can empower women to achieve their full potential. This book digs deeper into these issues, combining personal anecdotes, hard data, and compelling research to cut through the layers of ambiguity

III. OBJECTIVES

The objectives of this study are as follows:

- Investigating the status quo regarding treatment of women in a formal sector.
- Investigating the problems faced by women in their respective workplaces.
- To understand whether the perceptive reality of women in Indian workplaces is synonymous to the actual reality.
- To understand whether men and women enjoy equality of opportunities in Indian workplaces

- To investigate the awareness of women regarding the relevant legal provisions which have been enacted for the protection of their own rights

IV. RESEARCH METHOD

The research based on **primary data** is a survey collected from a sample of fifty working women, from various cities in India. Data was collected through a questionnaire and in depth interviews of the sample belonging to age group of eighteen to sixty were conducted and statistical tools were applied to the sample questionnaire.

Secondary data in the form of articles published in books, journals, magazines, research papers, newspapers and reports is also referred.

V. HISTORY

Since the ancient times, women have been considered only as a creative source; of whom the men expect very little. Women were always prejudiced against. The Greek and the Roman mythology enlighten us of the fact that discrimination against women occurred in all spheres of life and that it is an age old concept. Women were considered inferior to men and compared to children in Roman mythology. In the Greek mythology, it was a woman named Pandora who brought about plague and unhappiness to fellow human beings by opening the forbidden box. How so can we put to blame the men of this era? All we can do is educate them and rewrite the past. However, the same cannot be said about the eastern hemisphere, where women did not face such discrimination. In fact, women in ancient India were not deprived of rights to property and were given freedom in their marriages. It has been said that discrimination against women arose with the dawn of Hinduism in 500 BC.

In the middle ages, women played a crucial role as they contributed to women suffrage and political rights. They also served in the army as medical officials and in the late 20th century as combat officers. In the United States during World War II, almost 300,000 women served in the army and navy, performing non-combatant jobs such as secretaries, typists, and nurses⁶. However, not all women were able to perform such duties and many of them still

⁶ Patricia Fernandez Kelly, *The Future of Gender in Mexico and the United States*, in *THE SHAPE OF SOCIAL INEQUALITY: STRATIFICATION AND ETHNICITY IN COMPARATIVE PERSPECTIVE* (David Bills ed. Elsevier 2005).

cannot. A women's place has always been considered as her abode. This sort of stereotyping is not logical, but has yet been passed on to generations and thus; people have the preconception that women are weak, frail and too elegant to carry out certain kind of jobs. This restricts the areas to which women have access.

VI. WOMEN IN WORKPLACE AND LAW

The law in India regarding women at their workplace is not as developed as one might think. Women in higher positions or rather on corporate boards are essential for the sake of not just creating gender equality but also ensuring and improving the corporate governance. In India, none of the corporate laws for example, SEBI Act 1992, SCRA Act 1956, Companies Act 1956, etc. have any provisions regarding 'gender diversity'.

Recently, a provision has been passed regarding this. The 2nd proviso to Section 149(1) of the Companies Act, 2013 states that "such class or classes of company as may be prescribed shall have at least one woman director"⁷, meaning that a company must have at least one woman on the Board of Directors within one year of the commencement of Companies Act, 2013.

The former minister of Corporate Affairs, Mr. Sachin Pilot, whilst endorsing the Companies Bill, said that "at present, there is preponderance of males on the Boards of the companies. The provision regarding women directors in Companies Bill, 2012 is meant to bring in diversity and introduce a degree of gender sensitivity. We do hope that with the passage of time, the trend will gather momentum and the Boards will be truly 'balanced'."⁸

Further, Section 149(4) of Companies Act, 2013 states that "every listed company shall have one third of its total strength as independent directors and that certain other class or classes of companies as may be specified shall have independent directors as may be specified by the central government."⁹ This provision does not specify anything regarding women being independent directors. The provision of independent director is an important provision as it is being introduced in India's corporate history for the first time and hence making a woman

⁷ Section 149(1), Companies Act, 2013.

⁸ Ankita Shreeram, *One-on-one with the leader*, available at <http://www.itsmyascent.com/hr-zone/One-on-one-with-the-leader/136447/>.

⁹ Section 149(4), Companies Act, 2013.

independent director, will probably just be helpful in improving women representation on Board of Directors.

In Malaysia, their Prime Minister in 2011 sanctioned that in corporate companies 30% decision making position must be accorded to women in private sector and public sector. Further, limited liability companies need to have at least 30% of women on Board of Directors and in senior management position¹⁰. In Canada, it is requirement of the public sector companies to have 50% quota for women board directors¹¹. Further, United Kingdom in 2012 adopted the recommendations of Lord Davies' Report¹² of having 25% of Board of Directors of corporate companies comprising of women whereas in China, Australia, Singapore and Hong Kong¹³ there are no specific quotas for gender diversity on Boards or senior management positions. Basically, most of the Asian Pacific countries do not have any provisions as compared to majority of the European and American Countries.

Thus, not all countries have laws for diversity and equality in Board even in 21st century and hence for a woman it is a jungle gym and for men a corporate ladder.

DIFFICULTIES WOMEN FACE IN CLIMBING THE CORPORATE LADDER

Lack of family support

Women do not get the support of their family, even if they are working just to strengthen the financial position of the family. This is not new and this is something that a woman faces whenever she steps out of her typical role which society deems fit for them. Before 19th century, women were expected to behave in a certain way and which included taking care of home and children. But then came the time when women started working, but they had to face a lot of criticism, as the practice of going out and working was minted only for men and women were not exactly considered as a financial pillar of the household. Although, now, the times have changed, but the mind-set has not. A large number of women working these days,

¹⁰ Loh Foon Fong, *More Women Now on Board*, available at <http://www.thestar.com.my/story.aspx?file=%2f2011%2f7%2f26%2fnation%2f9173750>.

¹¹ Credit Suisse, *Gender Diversity and Corporate Performance*, available at https://www.credit-suisse.com/newsletter/doc/gender_diversity.pdf

¹² *Women on boards (2011)*, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31480/11-745-women-on-boards.pdf.

¹³ Deloitte, *Women in the Boardroom: A Global Perspective*, available at http://deloitte.wsj.com/riskandcompliance/files/2013/05/Women_boardroom.pdf.

do not work to fulfil their financial needs, but with an ambition to get to the higher position. But only a few among these get to that high position. Women who are married, especially those who have children, get more involved in their families as they have to fulfil the family responsibilities. Due to such a situation, when they have to choose between ambition and family, women usually choose to leave the job and get more involved with family. Not all women follow suit, but some who choose to do both, find it difficult to strike a perfect balance between personal and professional life and the employer finds it difficult to promote them to a high position when they cannot give their 100 percent to the job due to such household responsibilities.

Poor Security

What does a person usually look for when he/she goes out of his/her comfort zone and starts working in some other city or town - security at work place. Especially women seek these because if they feel comfortable within their work environment, then they work better. But, poor security provided by the company may be one of the reasons as to why women leave their jobs. When any female employee is working late at night, it should be the responsibility of the company to drop back their employee safely to their home. Although, some companies do that, but most of the companies don't, because they don't consider it to be important or their responsibility. Cases of poor security usually come up mostly in BPO sector where women become victims of sexual abuse and rapes while going back home.

Unequal Pay

Equal work equal pay is the motto every company should follow. However, it is not followed as religiously as it should be. The problem of unequal pay to women, exists more in the informal sector, but existence of unequal pay in formal sector also cannot be totally denied.

According to the Equal Remuneration Convention, equal pay is "Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value"

Different countries deal with the problems in different ways. But most of them have checks and balances to ensure people comply with laws of that country. It is said that do every one

dollar that a male employee earns, female employee gets only 80 cents. Earlier it was believed to be a myth by the developed countries, but soon it was realized that it's not something that exists only in the developing countries. According to the Wall Street Journal, 'The highest-paid female CEO still made less than half of what was given to the highest-paid male CEOs. Some top CEOs like Yahoo's CEO Marissa Mayer made less than a man working under her who ended up being fired. General Motors CEO Mary Barra makes less than half of what her outgoing male predecessor made this year and less than what he will get as a senior advisor after his departure. The situation of women employees cannot be good if female CEOs are not being paid equally. In addition, because of such discrimination women usually do not perform well or give their 100 percent to their job as they constantly live with the fact that even if they give their 100 percent they will not be able to get in return what their male counterparts are getting.'

VII. FINDINGS AND DISCUSSION

Status Quo

A preconceived notion exists among people today, that feminization of labour is at its zenith and women are being considered as a part of the top management. We hear women taking the reins of a country and being leaders of democratic states, women creating new business and trends and becoming CEO's of great companies. The status of woman in the society has definitely improved from the ancient and medieval periods, but these are just a small group of women from the entire working community. Women who work and still face gender discrimination are innumerable as compared to successful women, who are few in number. This initiates a false sense of feeling that women earn the true recognition they deserve. It is further noted that once woman enter a firm, they are not promoted or given more challenging jobs in accordance with the qualifications they have and the work they perform.

One of the parameters used to measure the development of a country is the way women are treated in a country and hence gender discrimination is a problem not only for companies and the business world but also for the countries in general. This is a problem that requires to be solved immediately as true democracies can exist only when equality is practised throughout. If such discriminations are practised in countries throughout the world, then what will be the situation of our states?

Discrimination of women is shown explicitly through pay gaps and lack of promotions for women. In many firms, men are paid more than women although the work carried out and qualifications by both are the same. Such discriminations can never be justified and hence proves to be detrimental to our society. Moreover, women need to work harder to reach the top management posts and have to prove their power and capabilities to all unlike the men. The work undertaken by a woman is undervalued through preconceived notions that have been passed on from generations.

Firms consider it creation of liability to employ women in their firm as they would have to give them extra benefits like maternity leave, and paid leave when they have to take of their family. This brings us to our next point, where women at times have to juggle both their family life and work life. This might take a bit of their energy in serving their family and they might find it difficult to give their 100% towards work. This brings down their need in a company even lower and discourages employers from employing women in their workforce. Women also find it difficult to get jobs in all sectors due to the notions of masculinity and femininity. People have preconceptions that certain jobs that involve muscle power could only be undertaken by men and certain jobs could be a threat to the security of women. Companies find it a burden to undertake extra security due to the presence of female workforce. This reduces the number of job opportunities that exist among the women of this generation. A few theories that have helped people explain these problems to an extent have been explained hereafter.

Glass Ceiling

One of the most dominant metaphors used to explain women's absence in senior organizational positions has been that of the 'glass ceiling'. It has been defined as a barrier so subtle that it is transparent yet so strong that it prevents women and minorities from moving up in the management hierarchy. Having to take maternity leave and paid leave for family affairs more often than men, etc. proves to be a barrier for women to reach top position in a company. In 2008, the Organisation for Economic Co-operation and Development ("OECD") found that the median earnings of the full time female workers was 17% lower than the earnings of their male counterparts and that 30% of the variation of gender wage gaps across OECD countries can be explained by discriminatory practises in the labour

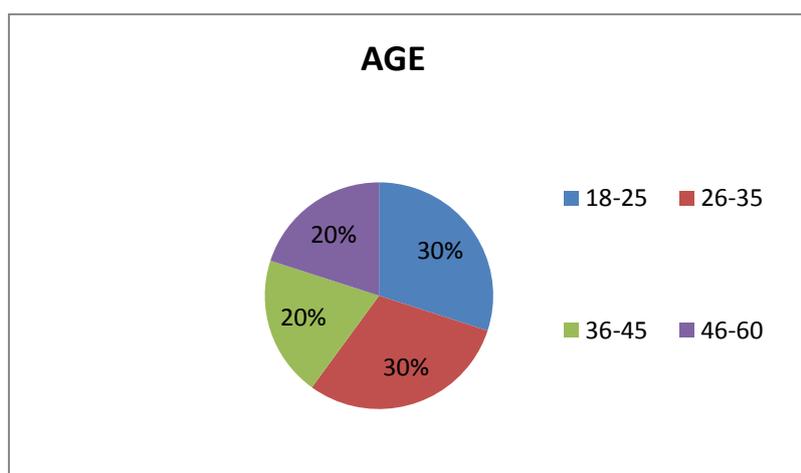
market¹⁴. Glass Ceiling is therefore a major drawback for women who seek to attain posts in the top management.

VIII. DATA ANALYSIS

Given the nature of the topic at hand there is only so much that we can gather from secondary sources. Secondary sources are based on theories and often give us more of perceptive reality than the actual scenario. That is why the importance of primary data is championed here. We circulated a questionnaire among 50 working women and based on their responses we were able to ascertain the actual situation on the ground. Based on their responses we arrived at a few shocking and a few re-assuring findings. The analyses of our findings are as follows:

Age

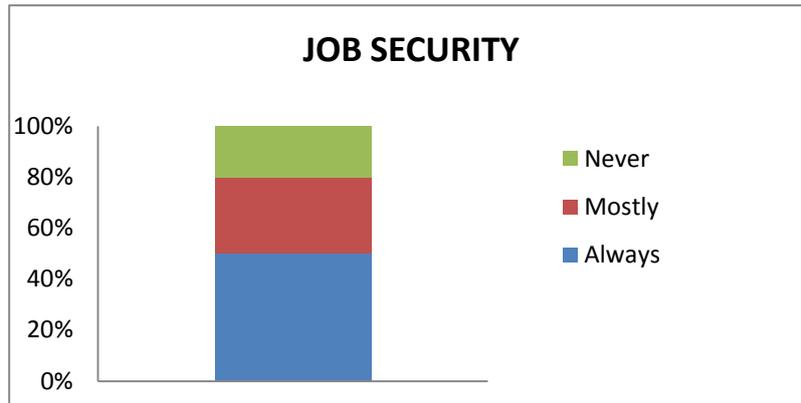
We started off with the basic question, generic to most questionnaires but the importance of these questions must be stressed here. As can be seen from the graph below 30% of our respondents were of the age group 18-25, the next 30% from age 26-35 and 20% were of the ages 36-45 while the final 20% comprised of women of the ages 46-60. Why is age important to the problem at hand? Through the survey, we found that companies generally prefer to push younger women up the ladder but as they age, companies generally start reducing allocation of responsibility on women. This is because they believe that as women age they start taking up more responsibilities at home and cannot handle the dual responsibility.



Job Security at Place Of Work

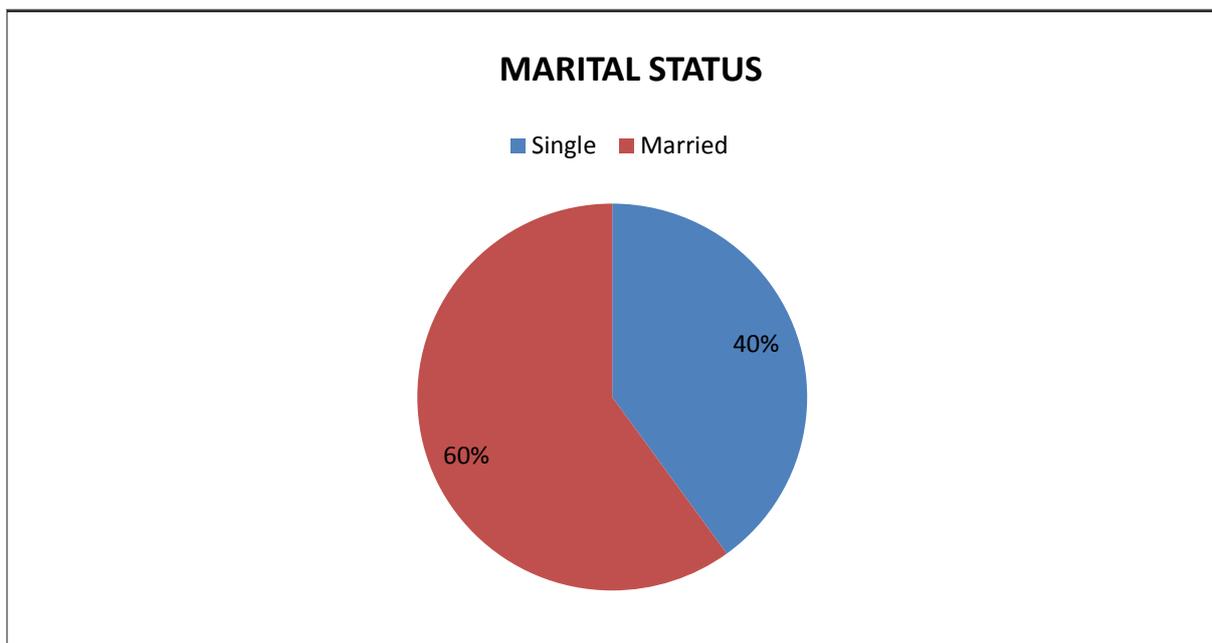
¹⁴ Organization for Economic Cooperation and Development, Employment Outlook 3-4, (Edition Summary, Paris 2008).

Here we see that most women are often quite secure at their place of work. They enjoy high levels of Job security.



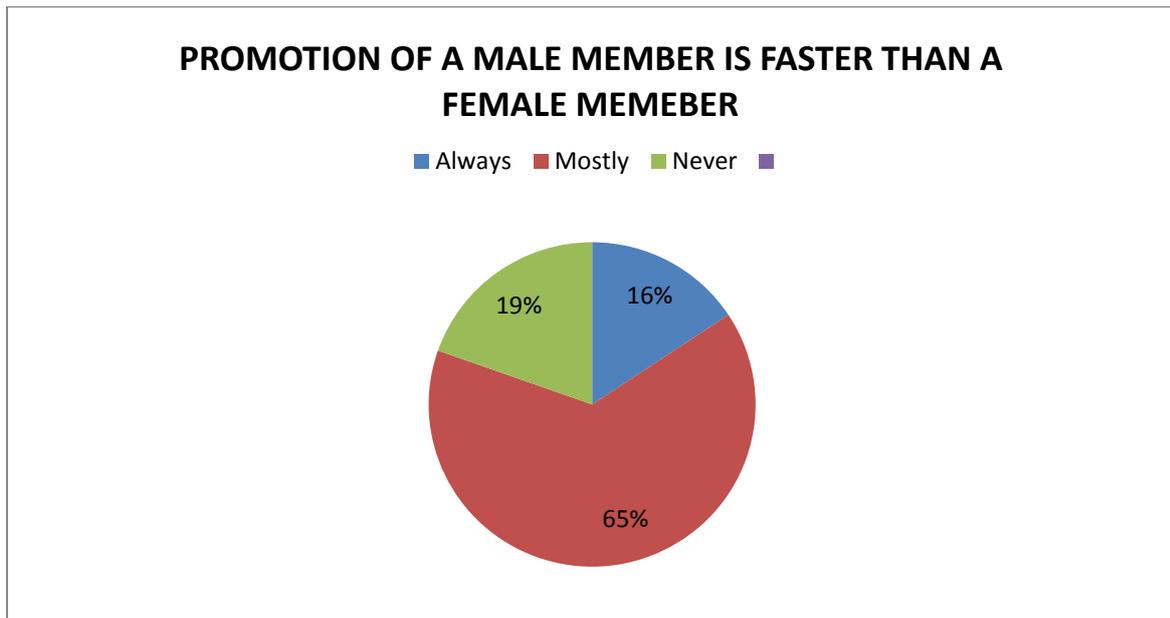
Marital Status

This parameter also plays a very important role in the topic at hand. We find that society and workplace environments are still quite chauvinistic. Single women find it much easier to rise up the corporate ladder and are often rewarded for still being single, while most bosses consider that married women cannot manage their dual roles at home and in the office. Trends show that women who showed a lot of promise before they get married. After they get married, they stopped receiving the same recognition they enjoyed before marriage.



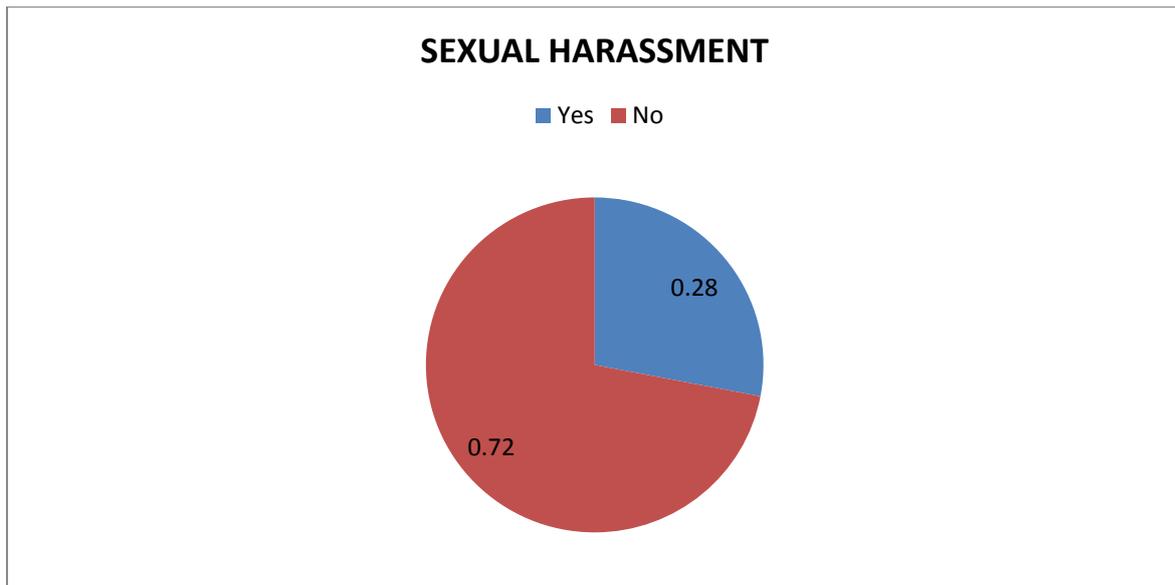
Male Members Getting Promoted Faster Than Their Women Counterparts

This was one of the most alarming findings of our study. While corporate frameworks today boast of equality of opportunity they provide to both men and women, the stark reality is quite different. Most women told us between men and women with the same educational qualifications and having spent the same amount of time at the organisation, men often enjoyed the upper hand and always got promoted a lot quicker. Corporate houses get away with this, hiding behind corporate veil citing internal governance as their excuse.



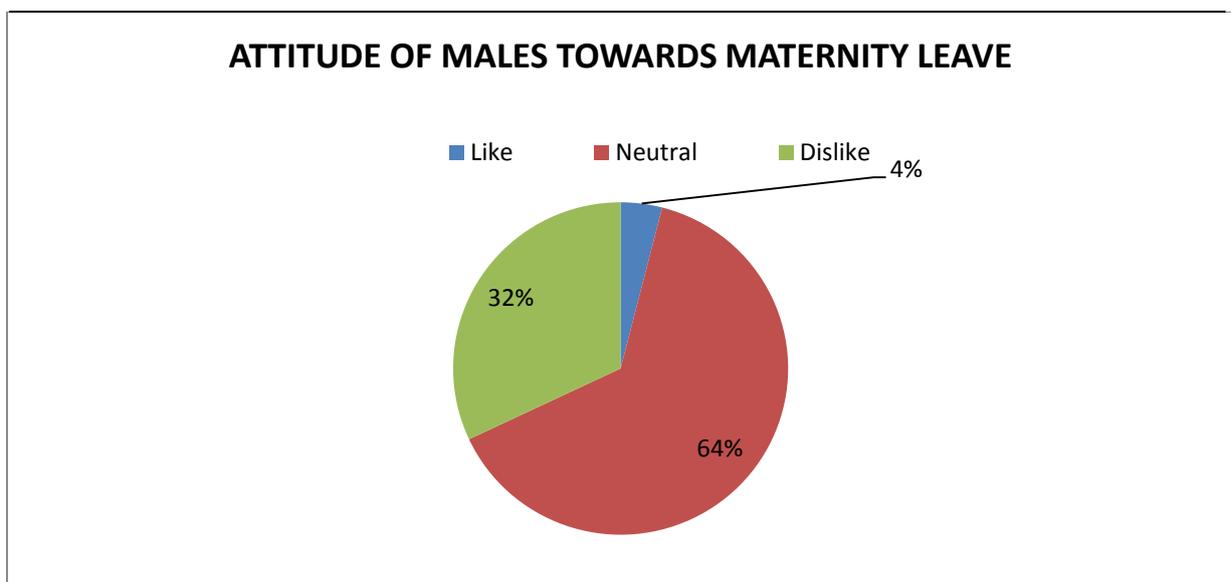
Sexual Advances in the Workplace

Given the personal nature of this question, we cannot ascertain how truthfully our respondents replied to this question. However, based on the responses we received, we found that instances of sexual advances in the workplaces were few and far between. When asked if the management had taken cognizance of such actions, we were met with reluctance to answer as well. Most firms have HR policies in place which don't allow their staff to talk about such instances as they amount to bad publicity for the firm itself.



Attitude of Males towards Maternity Leave

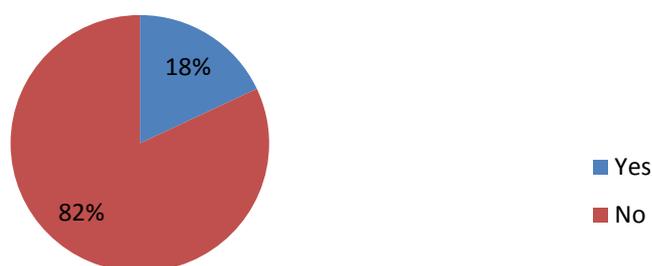
Even though there is a legal framework in the form of the Maternity Benefits Act and we claim to be an evolved society with mutual respect for the needs of both sexes, there is still a section of male society which does not believe that women deserve the leave they get during their maternity period. If men do not respect their female co-workers, status quo will not change and women will continue to find it difficult to receive the equal footing they so rightly deserve.



Awareness Regarding the Vishaka Guidelines and The Maternity Benefits Act, 1961

Given the fact that the women who were a part of the survey were all well-educated working professionals, our findings were extremely surprising. When asked about the two major legal safeguards which have been enacted for the protection of the rights of women in formal work environments, close to 70% of our respondents did not know of their existence. If the women themselves do not know of the frameworks enacted for their own benefits, it is of little wonder that most formal work environments are still so male dominated.

**AWARENESS REGARDING THE VISHAKA GUIDELINES AND
MATERNITY BENEFITS ACT 1961**



IX. CONCLUSION

The perceptive reality of women in workplaces is very different from the actual reality. Much has been said about what is to be done to make the situation of working women at least at their work place, but nothing constructive has been done and till now the situation remains the same. What we thought would be the case and what we got after the analysis of the data are two entirely different things. While there are enough safeguards for women in formal work environments, the scenario is quite misleading; it is still in many ways a male-dominated world.

Women are doing well in almost all the areas and they are no different than men when it comes to efficiency or possessing appropriate qualifications. But the sad part is that even though women are no less than men, the organizations remains male dominant. Most of the multinationals have only male heads or male members taking up senior positions. It is shocking to see that in most cases, men still go up the corporate ladder faster than women do.

It is also quite shocking to discover that despite the women involved in the survey were all educated they weren't aware of the safeguards enacted for their own protection. It was

concluded that most of the women though highly educated, were unaware of their rights or what they can actually do if they are being subjected to any kind of exploitation. They were not aware of the Vishaka Guidelines which lays emphasis on the protection of rights if women.

It was rather discomfoting to know that women were reluctant to answer the question regarding sexual harassment at workplace and moreover the regulations placed on workers upon disclosure of information regarding such sensitive issues are quite restrictive and reduce means by which such issues could come to light.

X. RECOMMENDATIONS

- Women should be made aware about the existence of laws that are there to help them. Most of the time no matter how educated women are, they are usually unaware of the existent laws and they think that these laws are not important for them to know because they have this common notion that they will not need it.
- The organizations should be more sensitive towards women. The organizations are sensitive toward women only on paper and not in reality. They should consider regular sessions with women so as do make them feel comfortable and this will provide them a platform where they can come and talk about their problems.
- Though there is always a different unit setup by the big organizations to help women, the working of the same is not checked from time to time. Organizations should have a different cell completely devoted to help not only their female employees but also their male employees for smooth functioning. But the organizations that have the cell do not give them any importance as they do not consider them productive. However, studies have shown that if an employee is in a good mental state then he can be 10 times more productive.
- Women should be encouraged to come forward even if they have been exploited by a senior member. Many times women employees are exploited by senior male members of their organization and they avoid complaining of the same thinking it may harm their career ambitions or people would be judgmental about it. They should be provided with a platform where they can come forward and express their concern if they face any such issue without any worry of future consequences they might have to face.

- Strengthening of the existing law and proper implementation of the same. Conversion of India from a soft state. We have to have a proper and uniform system to stop such occurrences. We cannot entirely blame any one section of the society of this situation for women in formal sector because the existent laws are not protecting or safeguarding interest of women and even if some of the laws are doing so proper there is lack of proper implementation.
- Latest trend of work from home is catching up quickly in India. Woman can now take up jobs while sitting in the comfort of their homes. Various IT industries offer the opportunity to work from your homes provided you bill in the required number of work hours per day. This brings in versatility in the work of a woman and enables her to provide 100% to every sphere of life.

XI. LIMITATIONS

1. It was difficult to collect data as our research was based on women working in formal sector and they were not answering our question accurately, especially the question based on sexual harassment. Only about a quarter of the women that we surveyed gave us proper answers on sensitive questions.
2. To collect data from big organisation was a difficult task because they do not share such confidential information with anyone.

XII. FUTURE SCOPE

1. Look into informal sector as well

While we were conducting our research, we concentrated only on formal sector but to see if it's only the formal sector where such incidences of exploitation happen, analysis of informal sector should also be done.

2. Comparison between formal and informal sector.

To find how different or similar the situation of women is in formal and informal sector and comparison of the same can be done.

3. Detailed study about how educated women are being exploited

Why these educated women who are well aware of their rights do not do anything when they are subjected to any kind of exploitation.

4. The analysis can also be done from the point of view of the organisation

When we talk about a problem and if two people are involved it we cannot judge the situation based of the arguments put forward by one we have to analysis the situation from both the sides.

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SKILL DEVELOPMENT IN INDIAN CIVIL AVIATION SECTOR: CHALLENGES AND OPPORTUNITIES

By Amrit Raj¹

Indian civil aviation sector envisions itself towards a better future. The Indian aviation report by FICCI-KPMG predicts that the aviation sector will be the largest in the world by the year 2030. The growth will also create direct and indirect employment opportunities in the aviation sector as well as other corresponding sectors. These jobs require a specialised set of skills and training. The role of government and private agencies are critical in bridging the gaps in aviation infrastructure and skill, through training and development of human resources required to support the envisioned growth in the industry. This study attempts to critically assess the current aviation policies in India, availability of skill development infrastructure, the gaps therein and how to bridge them. The study also looks into the various challenges and bottlenecks faced by both public and private sector agencies, and evaluate future opportunities for market players in the industry based on the information available in public domain.

I. INTRODUCTION

The Indian civil aviation sector is poised for growth. A series of positive reforms have spurred the Indian civil aviation sector, the biggest of them being the easing of Foreign Direct Investment (“**FDI**”) in the airline business. There have been some other reforms like direct import of Aviation Turbine Fuel (“**ATF**”), External Commercial Borrowings (“**ECB**”) for airline and Maintenance Repair and Overhaul (“**MRO**”). Other reforms such as removal of the 5/20 Rule² and excessive tax on ATF are in the pipeline. These reforms have led to the entry of new players in the market which will increase the competition in the market, thereby indirectly benefitting the consumer. This competition will require market players to constantly enhance their efficiency by improving technology, services and fleet. However, this process will be fruitful only if there is enough skilled labour available in the market. The Centre for Asia Pacific Aviation (“**CAPA**”) foresees that the demand for pilots, engineers and cabin crew (operational staff) is likely to grow from, at present, nearly 32,000 to 90,000 by

¹ Student, PGDM (Finance), Chandragupt Institute of Management.

²The 5/20 Rule declared that the Indian carriers need to have a fleet of at least 20 aircraft and must have operated for at least 5 years in the domestic sector if they want to start international operations.

2020³. The strategic plan for 2010-2015, as laid down by the Ministry of Civil Aviation, reports that the direct and indirect impact of the aviation sector in India could generate employment for over 2.6 million people by 2020. The Indian Civil Industry has not only been plagued by rise in ATF prices, policy paralysis and economic downturn, but also by skill shortage. The condition of training schools in India for pilots, cabin crew members and the MRO facilities are inadequate. There is a high job attrition rate in the civil aviation sector. Further, the skill shortage has led to poaching and head hunting of employees among existing stakeholders in the Indian civil aviation sector, as a result of which, wages have not increased sustainably leading to high input costs of operation. Many in the industry resort to ad-hoc recruiting practices, which will neither create a professional, sustainable and safe industry nor allow India to take advantage of the opportunity to capitalise on its low cost labour to make aviation skills an export industry⁴. There is an immediate need to train and prepare people for the future demand in the Indian civil aviation sector so that the envisioned growth does not get hampered for want of skilled labour. Section II discusses the Indian Civil Aviation Sector briefly and Section III assesses existing training and capacity building infrastructure related to civil aviation. Section IV assesses challenges. Section V explores skill development initiatives in India and section VI assesses opportunities with regard to civil aviation sector. Section VII concludes the study with recommendations.

II. INDIAN CIVIL AVIATION SECTOR

Transport in the form of civil aviation is one of the major drivers of the economy. The contribution of the civil aviation towards the economy of any country has been ascertained by International Civil Aviation Organisation (“ICAO”) to estimate that \$100 spent on air transport produces benefits worth \$325 for the economy and 100 additional jobs in air transport results in 610 new economy-wide jobs⁵. The study also attributes over 4.5% of global Gross Domestic Product (“GDP”) to the air transport component of civil aviation. The contribution of the Indian civil aviation industry to the country’s economy is no different. Recent research by Oxford Economics reveals that the direct contribution of aviation sector

³Ministry of Civil Aviation, *Strategic Plan 2010-2015*, available at http://civilaviation.gov.in/cs/groups/public/documents/newsandupdates/moca_000783.pdf.

⁴ Centre for Aviation, *Overcoming the Skills Crisis in Indian Aviation*, available at <http://centreforaviation.com/analysis/overcoming-the-skills-crisis-in-indian-aviation-25626>.

⁵ *Panel to help combat aviation fuel price rise*, BUSINESS LINE, June 12, 2008, available at <http://www.thehindubusinessline.com/todays-paper/panel-to-help-combat-aviation-fuel-price-rise/article1626588.ece>.

in India to its GDP was 0.5% for the year 2009.⁶ If the catalytic impact of Civil Aviation is included, the contribution to GDP is 1.5%. One of the ways by which Indian civil aviation has contributed to the growth of the Indian economy is by providing immense opportunity for employment, directly and indirectly. This sector provides opportunities in an array of sub-sectors in the industry such as airports, airlines, cargo, MRO, ground handling, air navigation services, retail business, real estate, etc. Total number of persons employed in the sector is estimated to be 1.5 million and if we include the catalytic impact then it is 10 million persons. Air transport in India presently supports 56.6 million jobs and generates over US \$ 2.2 trillion of the global GDP. There is a close relation between the tourism sector and civil aviation in India. Out of 6.31 million foreign tourists, 92% arrived by air⁷. The growth, therefore, in the past decade, has been phenomenal and has made the Indian civil aviation sector, the 9th largest market in the world.⁸ This growth could not have happened without the support of the Indian Government. The recent growth can be attributed to the 11th five year plan; the period that saw the completion of four international airport projects through the public-private partnership (“PPP”) mode, and also witnessed five Indian carriers functioning on international routes.

Changes in the Policy Paradigm

The high growth rate has been a result of periodic reforms in the civil aviation policy, largely post liberalisation with the “Open Skies Policy”. The Open Sky Policy is a concept that promotes liberalisation of the rules and regulations in the international aviation industry (especially commercial aviation) so as to foster a free-market environment for the airline industry. The liberalisation of aviation sector allowed private players, like Jet, Sahara, Air Deccan, etc to enter the Indian civil aviation market, thus ending the monopoly of Indian Airlines. It was a result of this policy that low cost carriers could emerge, realising the dream of the common man to fly.

The government introduced a series of FDI reforms in 2008 in the civil aviation sector, one of the major reforms being 100% FDI in Greenfield projects in airports under the automatic

⁶ Oxford Economics, *Economic Benefits from Air Transport in India*, available at <https://www.iata.org/policy/Documents/Benefits-of-Aviation-India-2011.pdf>

⁷ Ministry of Tourism, *India Tourism Statistics at a Glance (2011)*, available at, [http://tourism.gov.in/writereaddata/CMSPagePicture/file/marketresearch/INDIATOURISMSTATISTICS\(ENGLISH\).pdf](http://tourism.gov.in/writereaddata/CMSPagePicture/file/marketresearch/INDIATOURISMSTATISTICS(ENGLISH).pdf).

⁸ *Supra* note 6.

route subject to sectoral regulations notified by Ministry of Civil Aviation. The government recently opened the Indian civil aviation sector to FDI. The government allowed acquisition of 49% foreign equity by international airlines in the domestic carriers. The easing of FDI norms, regarded as a game changer, has resulted in some major consolidations in the market, like the Jet-Etihad, Tata-SIA, Tata-AirAsia-Telstra and Spicejet-Tigerlink deal. These deals warrant more growth and will create more employment opportunities in the sector. The entry of new players in the market means more number of aircraft and based on industry norms, each aircraft spawns about 100 to 110 direct jobs. The PPP model in airport infrastructure has also worked well. The Delhi, Mumbai, Hyderabad and Bangalore airports are all considered as world class airports and have won many awards.

Kapil Kaul, CEO of CAPA argues that AirAsia and SIA will bring 10 and 15 aircrafts respectively with them when they start operating.⁹ With a total of 23 to 28 aircrafts coming, it will bring in an additional 2700-3000 jobs.¹⁰ The envisioned growth in civil aviation sector is certainly good news for the Indian economy, which is currently struggling to generate new employment opportunities. There is a huge potential in this market which needs to be developed with timely investment for establishing state of the art training and finishing schools for pilots, cabin crew, ground staff, etc. Thus, the onus for creating a productive and efficient workforce now depends upon various public and private sector agencies imparting skill development that are associated with civil aviation sector.

III. SKILL DEVELOPMENT: A PRESSING NEED

As discussed earlier, the rapid growth in the civil aviation sector needs more and more skilled manpower for their operation, and a shortage of the same is one of the bottlenecks that has to be overcome. This shortage of trained and skilled manpower in the aviation sector has resulted in cut-throat competition among employees which, in turn, has driven wages to unsustainable levels. Moreover, the industry is unable to retain talented employees. The unsustainable wages also add to the financial burden of the already debt ridden civil aviation sector. The projections of CAPA for labour requirement in India show that that the

⁹ Anesh Phadnis & Surajeet Dasgupta, *Aviation job market should swell in 2014-15*, BUSINESS STANDARD, May 02, 2014, available at http://www.business-standard.com/article/companies/aviation-job-market-should-swell-in-2014-15-114050100544_1.html.

¹⁰ *Ibid.*

requirement for skill workers will double by 2020.¹¹ Therefore, India's training capacity will need to be more than triple in the next decade to keep pace with this level of growth because the infrastructure available today is not even sufficient to meet current requirements. Moreover, if a cost effective solution is to be developed, the training must be delivered in India and not offshore. If the required scale, and more importantly, the quality of training cannot be implemented, then either the growth of the industry will be stunted and operating costs will increase, or we would have unsafe skies, which is of an even greater concern. The present situation of the available human resources is as follows:

- (A) Pilots: There are around 40 approved flying training institutes in the country, out of which only 17 are functional¹². At present, only 100 pilots graduate from these flying schools every year. On the short term demand basis, there would be a requirement of at least 150 pilots per year as replacements for retirements and normal attrition. Foreign pilots were permitted by the Director General of Civil Aviation (“DGCA”) to fly planes on the domestic circuit but this provides for a very short term solution.
- (B) Aviation Engineers: There is also a shortage of flight engineers and technicians in the aviation sector in India. At present 45 DGCA approved Aircraft Maintenance Engineering institute produce 5000 Aircraft Maintenance Engineers (“AME”) but they only provide basic training for issuance of the basic licence. These candidates are absorbed as technicians as they do not have the required experience for heavy aircraft and do not have a type rated license. To get a type rated license, they need to pass a test conducted by the DGCA. However, due to shortage of type rated licence holders, the aviation industry faces scarcity of engineers. Currently, foreign engineers are being inducted in Indian civil aviation to bridge this gap.
- (C) Air Traffic Controllers: For Air Traffic Controller, the Roy Paul Committee, which looked into air traffic management in 2005, reported over 200 ATC vacancies. The gap is said to have widened by three times. Civil Aviation Training College (“CATC”) at Allahabad is the only such institute which imparts ATC training. The training at the CATC, Allahabad, lasts six months. It has 12 simulators, each of which can train only 10 people at a time. So in a year, only around 300 can be trained, however the estimated shortfall is 600. The other constraint is the shortage of instructors at the training institute.

¹¹ *Supra* note 4.

¹² Indian Aviation Guide, available at http://www.aviation-training-guide.com/news_sponsors/aviation-training-guide_1/indian-aviation-overview_7.

The basic qualification for an ATC is B.Tech (telecom/electronics/radio engineering) or M.Sc. in electronics. High attrition rate adds up to the misery of the general shortfall of the candidates. Initial attrition rate in the industry is as high as 10-15%.

(D) *Management*: Indian aviation currently has limited depth in its management structures simply because most of the positions did not even exist just seven years ago when the industry was one-third its current size. And this is an industry, which given its complexity and volatility, is one where management capability is critical. There are literally just a handful of degree programs currently offered in aviation management, and teaching is often only theoretical in nature. The diverse nature of managerial jobs like fleet planning or yield management in airlines, or retail operations at an airport, all require training. Given the shortage of qualified people, positions are often held by executives who through no fault of their own simply do not have the skills to maximise their performance. Expatriates have been recruited for several senior management positions, although this has not been an entirely successful exercise, with cultural and environmental issues resulting in several early departures. There is a case for bringing in international expertise in certain cases, but in the long term India cannot rely on expat management, it must develop local talent.

(E) *Aircraft Manufacturing*¹³: As the Indian aviation sector is poised to grow substantially, the policy should address the need to establish an Aircraft Designing and Manufacturing Centre, with the support of Indian Space Research Organisation (“ISRO”), Defence Research and Development Organisation (“DRDO”), Airlines, Airports, MROs and Aerospace Industries in the national level through the PPP model.

(F) *Cabin Crew*: Regarding the cabin crew, academies have mushroomed across the country in recent years, but airlines state, in an interview given to CAPA that, whilst they teach some basic grooming and communication skills, most of them do not have equipment such as fire simulators, door trainers for multiple aircraft types, slides and ditching pools to be able to deliver regulated safety and emergency procedures training. This ultimately places the responsibility and the costs back on the airline.

(G) *Maintenance Repair and Overhaul*: The MRO spend by airlines in India currently is \$500 million and is likely to grow to \$1.5 billion in 2020¹⁴. The government policy related to civil aviation puts great emphasis on creating India as an MRO hub in the Asia Pacific

¹³ *Supra* note 3.

¹⁴ Ravi Menon, *MRO: Creating Self Sufficiency*, THE HINDU, April 18, 2010, available at <http://www.thehindu.com/business/mro-creating-selfsufficiency/article402774.ece>.

region. To realize this dream, we need to train certified and technically skilled aviation personnel.

IV. CHALLENGES FOR THE FUTURE

The growth in the Indian civil aviation market will create new avenues for employment in India. The growth itself cannot happen without the availability of qualified personnel across every discipline, including pilots, cabin crew, engineers, air traffic controllers, ground staff and handlers, administration and management. An airline workforce comprises ground staff (around 45 per cent), cabin crew (20 per cent), pilots (15 per cent), engineers and technicians (10 per cent) and the rest (10 per cent) in administration, sales, marketing, revenue management and other functions.¹⁵ These jobs are highly specialised and require training which must include safety and operational security training. Training is also needed to impart soft skills which will enhance customer services and bring in more business. The training is not only needed for the new employees but is also important for the incumbent employees to keep them updated with the new technology, commercial advancement and regulatory changes. Skill development will also address the problem of loss of employees through attrition. The government can play a key role in providing this cost effective solution. The government has taken some important measures and is in process of taking some more in the area of skill development for the sector. But it is not only the responsibility of the government; various private players must also contribute to the need for skill development in this sector to fulfil the critical gap. There is a huge potential market in the aviation sector and can help with India's growth story, provided for the training and development requirements are fulfilled.

The challenges that present itself before the civil aviation sector are discussed below:

(A) *Training Infrastructure:* The current infrastructure is not adequate to meet the demand for skilled labour in the Indian Civil Aviation Sector. The CAPA Report suggests that quality available infrastructure in terms of training and equipment is not up to the mark for pilot training. Similar situation persists for other roles as well in the Indian civil aviation sector.¹⁶ One large Indian carrier indicated that during type rating, holders of

¹⁵ *Supra* note 9.

¹⁶ Centre for Asia Pacific Aviation, *Addressing the Skills Shortage in Indian Aviation*, available at <http://capaindia.com/PDFs/CAPA%20Training%20Report.pdf>.

Commercial Pilot License (“CPL”) from local academies required up to twice the international average for the number of simulator sessions to qualify. Estimates suggest that up to 4,000 Indian CPL holders are currently unemployed, and possibly unemployable.

- (B) Manufacturing: India imports a large number of aircrafts every year. The number of aircraft imports peaked in 2008-2009 when about 900 import permissions were given each year¹⁷. Currently, offset commitments amounting to US \$2.6 billion were created by Air India and Indian Airlines aircraft and engine purchases from Airbus, Boeing, CFM and GE, and over the next 5 years the offset obligations associated with both defence and civil contracts are expected to reach US \$10-15 billion. There is an immense scope in manufacturing and Indian companies have acknowledged this fact and are gearing up for the future challenge. The government also recently gave a go-ahead to build an indigenous 70-100 seater aircraft. However, the biggest dampener to these ambitious plans is the shortage of skilled labour. Aircraft and original equipment manufacturers have stated that the shortage of skills is restricting their ability to invest, which in turn is preventing large segments of the population from being part of India's growth story.
- (C) Ancillary Industries: The aviation policy should encourage setting up of airport related ancillary industries such as manufacturing of aircraft sheets, baggage trolleys, x-ray scanning machines etc., which will help indigenous production of such critical items and this will also avoid draining foreign exchange, besides generating large scale employment.
- (D) Competition from Other Markets: There is a huge demand for skilled labour in the aviation sector in the gulf countries. Aviation sector is the key to their needs of sector expansion. Gulf countries are aggressively recruiting Indian talent. Ravi Menon, the executive director of Air Works, a Mumbai-based aircraft maintenance company quoted in an interview given to The National in February, 2014, that their organisation saw 12 key personnel resign to move to Qatar¹⁸. A large number of Indians are working in the aviation industry, particularly in airport services in administrative functions, engineering and cabin crew.

¹⁷ V. Manju, *Aircraft Imports Grounded after Govt Scraps Panel*, THE TIMES OF INDIA, May. 14, 2013, available at, <http://timesofindia.indiatimes.com/business/india-business/Aircraft-imports-grounded-after-govt-scraps-panel/articleshow/20039489.cms>.

¹⁸ Rebecca Bundhun, *Airlines in Middle East are sucking out talent*, THE NATIONAL, Feb. 15, 2014, available at <http://www.thenational.ae/business/aviation/airlines-in-middle-east-are-sucking-out-talent>.

V. SKILL DEVELOPMENT INITIATIVES

The future for civil aviation appears bright but a shady present is a cause for concern. Some initiatives have been taken, but considering the amount of growth and the market India is targeting, these initiatives may not be enough. There is an urgent need to come up with forward looking solutions as soon as possible. Some of the steps taken by certain private and public players for the skill development have been discussed below:

National Skill Development Corporation

The government in the year 2008-09 came up with an innovative idea to provide skill development through the PPP mode by establishing National Skill Development Corporation (“NSDC”). NSDC aims to promote skill development by catalysing the creation of large, quality, for-profit vocational institutions. It provides funding to build scalable, for-profit vocational training initiatives.¹⁹

The NSDC website states that²⁰: “Its [NSDC] mandate is also to enable support systems such as quality assurance, information systems and train the trainer academies either directly or through partnerships.”

Since it is a demand driven approach, it would be perfectly suited for aviation sector as the demand for skilled labour is high in the civil aviation sector. It can work in tandem with private players like Frankfinn to begin operation of these skill development initiatives. NSDC through one of its Sector Skill Council (“SSC”), Aerospace and Aviation SSC is providing for skill development in the aviation sector. It has till date, from its inception in June 25, 2013 trained 4186 trainers and provided 404841 certifications²¹. It is working with 176 affiliated training institutes. At the stakeholder’s conference in Bangalore in July 2012, Vijay Bhalaki, Director, Athena Infonomics, stated that “the main aim of the SSC would be to bridge the quantitative and qualitative skill gap. There are 1.75 lakh employees now, but 8.7 lakh are required in aviation and MRO. With the SSC, it has been expected that at least 60 per cent of the workforce would be certified. It would cater to research and design, and maintenance,

¹⁹MINISTRY OF CIVIL AVIATION, STRATEGIC PLAN 2010-2015, available at http://civilaviation.gov.in/cs/groups/public/documents/newsandupdates/moca_000783.pdf. - “National Institute of Aviation Management and Research (NIAMAR) at Delhi would be developed as a major resource for training of aviation related Managers and Personnel.”

²⁰ National Skill Development Council, *Our Role*, available at <http://www.nsdcindia.org/our-role>.

²¹ *Ibid.*

repair and operation (MRO) of flight and related systems.”²² The Bangalore Chamber of Industry and Commerce (“**BCIC**”) and the Society of Indian Aerospace Technologies and Industries are the two promoters of the Aerospace and Aviation SSC. As per this partnership, the training will be provided by technical and polytechnic institutes and industrial training institutes, while BCIC will issue certifications.

Government Regulators

The Ministry of Civil Aviation has in its recent strategic plan, developed a roadmap for effective training of human resources. These include developing better tools to assess market demand and calibrate supplies accordingly, laying strict norms for establishing flying and engineering schools and setting up institutions for training of aviation related managers and personnel. The government took a positive step in January 2008 when the FDI cap in flying schools and training institutes was increased to 100%.²³ However, there is an urgent need to set up a world class National Aviation University in India. The Government is in the process of setting up such a National Aviation University in India soon. Both public sector and private sector will be investing huge amounts in setting up of training centres and necessary infrastructures. In a FICCI – EY Survey on Civil Aviation Sector, 77% of the respondents agreed that establishing a National Aviation University would help meet the requirements of skilled workforce. The Ministry of Civil Aviation (Strategy Plan 2010-15) envisions to set-up a National Institute of Aviation Management and Research (“**NIAMAR**”) in Delhi which would be developed as a major institution for training of aviation related managers and personnel. Government agencies can reach out to these strata of society and terrains where private sector has not been able to make inroads, such as the tribal areas of India. The Airports Authority of India (“**AAI**”) has taken an initiative to build and fund skill development centres in Ranchi and Deoghar as part of its corporate social responsibility for the tribal boys of the state. The government has recently planned to open a civil aviation university in Uttar Pradesh.

²² *Sector Skill Council for Aerospace Aviation in Bangalore*, THE HINDU, July 25, 2012, available at http://www.athenainfonomics.in/assets/The%20Hindu%20_%20NATIONAL%20_%20KARNATAKA%20_%20Sector%20Skill%20Council%20for%20aerospace%20aviation%20in%20Bangalore.pdf.

²³ Ministry of Civil Aviation, *CAPA Comments on Proposed New Civil Aviation Policy*, available at http://civilaviation.gov.in/cs/groups/public/documents/newsandupdates/moca_001398.pdf.

Private Sector

Frankfinn Institute has been providing high quality air hostess training since 1993. The institute decided to invest Rs. 400 crores in 2009 to increase its number of centres to 200 across the country and abroad. Indian Institute of Management, Bangalore and French business school, Toulouse Business School today signed an agreement to set up an executive general management programme in aerospace and aviation management with the course to be sponsored by Airbus. The course aims to nurture and develop local talent in aerospace sector. InterGlobe, the parent company of low cost carrier IndiGo, in a joint venture with Canadian firm CAE set up a pilot training institute in 2013. The new facility was set up in Greater Noida with an investment of \$25 million.

VI. OPPORTUNITIES

The skilled labour shortage is a crisis of considerable proportions in the Indian civil aviation sector. The crisis is threatening to once again hamper the much needed growth. Although, both the private and public sectors have taken some initiatives, it does not seem enough at the moment to cater to the needs of the sector. The aviation training infrastructure needs a major overhaul. It must be improved and upgraded so that it can meet the future demands of the sector. Given the availability of human resource in India, it can be a large market for high quality skilled labour for the world. An improved training infrastructure would also help the companies save additional cost that is incurred in the training of already recruited human resource. The civil aviation industry would require huge amount of investment for the sector to sustain the kind of growth envisioned. This would happen only if the investors feel that their money is being put in the right place. Technology would play an important role in developing skilled labour in the Indian civil aviation sector. The stakeholders need to find innovative ways to provide skill development in India.

India orders a large number of aircrafts every year and is among the 20 largest markets in the world; India has the highest ratio for confirmed business jet orders as a proportion of its current fleet, followed by the UAE²⁴. With this kind of demand, an aircraft manufacturing industry can be established but this will also be dependent on the availability of skilled labour. If we can train and develop skilled workforce, then the dream of making India as a

²⁴ *Supra* note 16.

regional hub for MRO can be made feasible. The availability of skilled labour is also required for various ancillary industries like manufacturing of aircraft sheets, trolleys and baggage.

VII. CONCLUSION

The growth prediction of the Indian civil aviation sector has come at a very opportune moment to provide the much needed impetus to a debt-ridden and laggard aviation sector. It can be seen that the growth in civil aviation is important for the economic growth of a country. If India is to establish its stronghold in international trade, then it must have a robust and strong aviation sector. But the effectiveness of the civil aviation sector would largely depend on the efficiency of the people working in the sector. Thus, for creating and maintaining an efficient workforce, skill development is of the utmost importance. Thus, Government and the private sector must work together to come up with suitable plans for skill development in the civil aviation sector and implement them as soon as possible.

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