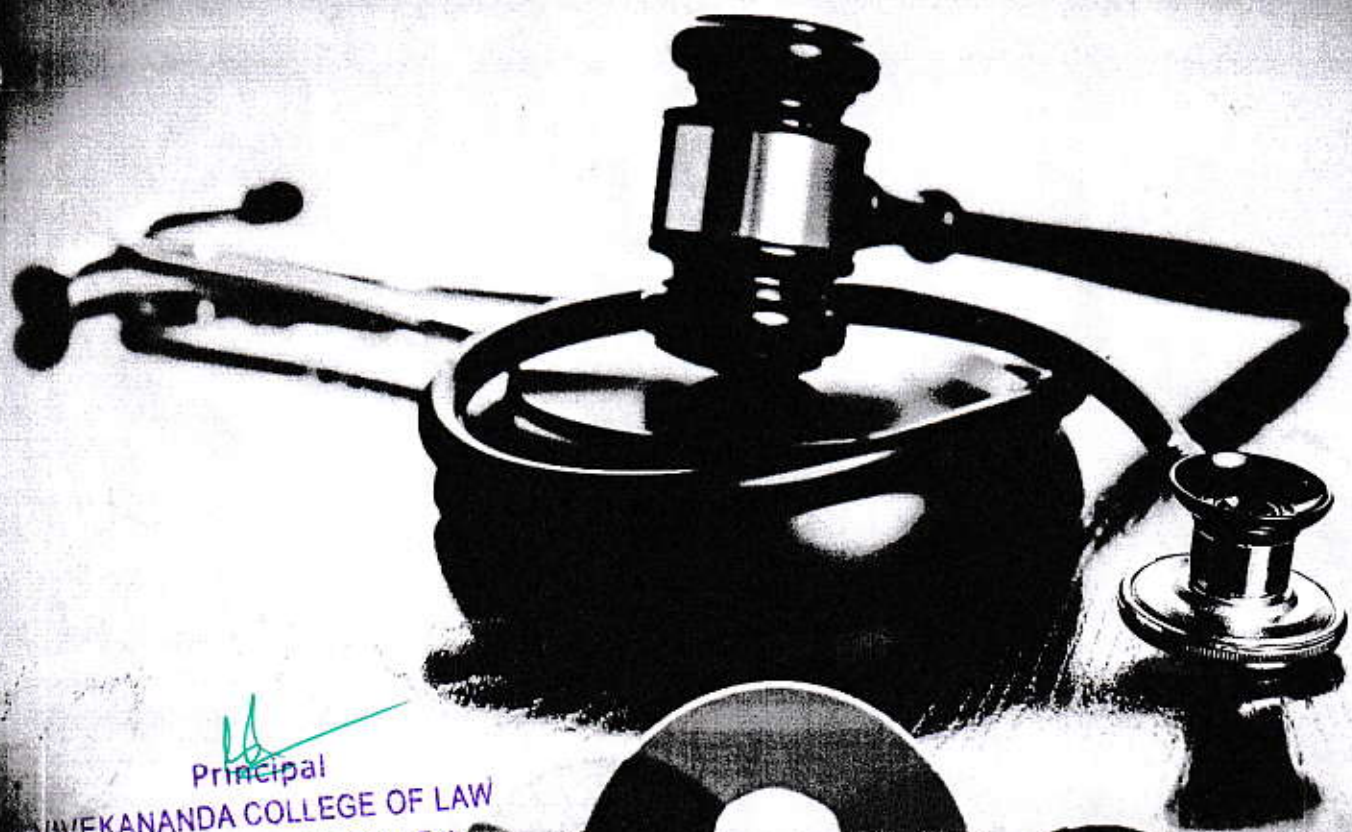



# HEALTH LAW JURISPRUDENCE : A 360 DEGREE PERSPECTIVE

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## AN OVERVIEW OF THE RIGHT TO HEALTH

- KALPANA L<sup>1</sup>

*"Healthy citizens are the greatest assets any country can have"*

*"Without health life is not life, it is only a state of languor and suffering."*

- Winston Churchill

- Buddha

It is indisputable that good health is a condition precedent for a full and productive life; it promotes prosperity, whereas ill-health leads to frustration and poverty. Hence good health is crucial to social, political, psychological, cultural and economic development. The enjoyment of the highest attainable standard of health is one of the fundamental right of every human being without distinction of race, religion, political belief, or economic or social condition. The health of all people is fundamental to the attainment of peace and security, and is dependent on the fullest cooperation of individuals and states. The achievement of any state in the promotion and protection of health is value to all.<sup>2</sup>

World Health Organisation, hereinafter referred to as (WHO) is an international organisation which is concerned with world health and welfare. India became a party to the WHO Constitution on 12<sup>th</sup> January 1948; being a welfare state, India has an obligation to give impetus to the right of health of its people.

The purpose of this article is to explore the nature of the right to health, its national perspectives and international dimensions. It also explores the interaction of international and domestic jurisprudence in this regard. The paper delves into the implementation of this right, also outing forth constructive suggestions in this regard.

The WHO defines health as a "State of complete physical, mental, and social wellbeing, and not merely the absence of disease or infirmity." Health is a dynamic condition resulting from a body's constant adjustment and adaptation in response to stresses and changes in the environment for maintaining an inner equilibrium called homeostasis.

It is not easy to find the universal definition of the term "health" since the word carries different meanings. In the Oxford dictionary, "health" is defined as "the state of being well and a state free from illness in body or mind. It is the extent of continuing physical, emotional, mental and social ability to cope with one's environment."<sup>3</sup>

### I THE NATURE OF THE RIGHT TO HEALTH.

#### i. Health as a Human Right.

Human rights are universally inherent, inalienable and inviolable rights of all mankind. States and their public authorities must ensure human rights for all the people. Human rights are concerned with dignity and worth of the individuals and "represent minimal moral standards for human society."<sup>4</sup>

Health is inevitable to enjoy other human rights. But unfortunately, right to health is normally only a part of right to life under domestic laws, and specifically so under the Indian constitution.

#### ii. What is the Human Right to Health?

Everyone has the human right to achieve the highest attainable standard of physical and mental health, without discrimination of any kind. Enjoyment of the right to health is vital to all aspects of a person's life and well-being, and is crucial to the realization of many other fundamental human rights and freedoms.

### II INTERNATIONAL DIMENSIONS:

#### i. Health under International Law:

The Dumbarton Oaks Conference, where the preliminary working draft of the Charter was prepared, little attention was given to the question of human rights and fundamental freedoms. The emphasis was on determining the relations between large and small states and the rules to govern their representation and voting in the

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<sup>2</sup> World Health Organisation, *Definition of World Health*, THE FREE DICTIONARY, (Jan. 10, 2017, 5:56 PM), <http://www.thefreedictionary.com/>.

<sup>3</sup> BRITANNICA READY REFERENCE ENCYCLOPEDIA (Preece, Warren E, 2005)

<sup>4</sup> Md. Ershadul Karim, *Health as Human Rights under National and International Legal Framework: Bangladesh Perspective*, SSRN, (Jan. 16, 2017, 3:31 PM).



various governing bodies<sup>5</sup>. But upon persistence, a brief reference in the Charter to the responsibility of the United Nations to promote respect for human rights and fundamental freedoms was incorporated. Deeper insistence resulted in the establishment of a Commission on Human Rights and Fundamental Freedoms whose first task would be to prepare an international definition and declaration of human rights.<sup>6</sup> The setting up of a Commission on Human Rights and Fundamental Freedoms was a necessary part of permanent peace, for there can be no such thing as lasting peace that is not founded on the decent treatment of human beings.<sup>7</sup> It took the Human Rights Commission over two years to elaborate a Declaration of Human Rights by the General Assembly, which proclaimed it to be a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, may strive by teaching and education to promote respect for these rights and freedoms, and by progressive measures, national and international, to secure their universal and effective recognition and observance both among the peoples of member states themselves and among the peoples of territories under their jurisdiction.<sup>8</sup>

### III. NATIONAL PERSPECTIVES:

#### i. RIGHT TO HEALTH UNDER THE CONSTITUTION OF INDIA:

The Preamble to the Constitution highlights some of the core values and principles that guide the Constitution of India. The Preamble directs the states to initiate measures to establish justice, equality, ensure dignity, etc. which have a direct bearing on people's health.

When right to health is seen within the Constitutional framework it is clear that, the Constitution of India does not provide for specific right to health in any way. Right to health has been evident in India through a catena of judgements decided by the Indian Judiciary from time to time.<sup>9</sup>

Part III of the Constitution of India pertaining to 'Fundamental Rights' includes the right to freedom of movement, the right to freedom of religion, which in conventional human rights theory may be termed as civil and political rights. Part IV of the Constitution contains the Directive Principles of State Policy which include all the social, economic and cultural rights, such as the right to education, the right to livelihood, the right to health and housing; these constitute economic, social and cultural rights. At the time of formation of the Indian Constitution the right to health was placed under Directive Principles of State Policy, hereinafter referred as (DPSP) since direct enforcement of the right to health was found difficult by the makers of the Constitution.<sup>10</sup>

Initially the Supreme Court of India enforced right to health among the people through various public interest litigations which came before the Indian judiciary. With the passage of time the judiciary found that right to life under Article 21 is incomplete without right to live with human dignity which includes various other rights like the right to education, the right to livelihood, the right to health, and housing etc., thus right to health became a part of fundamental rights and was incorporated under Article 21 of the Indian Constitution. Article 21 deals with Protection of Life and Personal Liberty. Right to life includes within its ambit, the right to lead a meaningful, complete and dignified life. It has a much wider meaning and includes right to live with human dignity. This right to live with human dignity derives its life breath from DPSP and particularly clauses (e) and (f) of Article 39 and Arts. 41 and 42 and at the least, therefore, it must include protection of the health and, opportunities and facilities for children to develop in a healthy manner, just and humane conditions of work etc. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government has the right to take any action which will deprive a person of the enjoyment of these basic essentials. This was well established by the Supreme Court in the famous case of *Francis Coralie Mullin v. The Administrator, UT of Delhi and others*.<sup>11</sup> Since then Courts have expanded the right to health through various case laws.<sup>12</sup>

India became a party to the WHO constitution on 12<sup>th</sup> January 1948. The WHO country office for India is headquartered in Delhi with countrywide presence. The WHO Country Cooperation Strategy-India (2012-2017) has been jointly developed by the Ministry of Health and Family Welfare of the Government of India and the WHO Country Office for India (WCO). Its key aim is to contribute to improving health and equity in India. It

<sup>5</sup>Benjamin v. Cohen, *Human Rights under the UN Charter*, 64 DUKE LAW JOURNAL, (2014).

<sup>6</sup>*Id*

<sup>7</sup>*Id*

<sup>8</sup>*Id*

<sup>9</sup>Right to health in the Constitution of India and the role of judiciary. Shodhganga.inflibnet.ac.in:8080/jspui/bitstream/10003/ accessed on 17.1.2017 at 18:42

<sup>10</sup>*Id*

<sup>11</sup>*Id*

<sup>12</sup>*Vincent Panikurlangara v. UOI & Ors*. 1987 S.C.R. (2) 468 (India); *CEC Ltd v. Subash Chandra Bose* 1992 A.I.R. (India); *Consumer Education & Research Centre v. UOI* 1995 (3) S.C.C. 42 (India); *Paschim Banga Khet Mazdoor Samity & Ors v. State of W.B. & Anor*. 1996 (4) S.C.C. 37 (India); *Murli Deora v. UOI & Ors* (2001) 8 S.C.C. 765 (India); *Parmanand Katarav. UOI* 1989 A.I.R. 2039 (India); *Municipal Council Ratlam v. Vardichand & Ors* 1980 A.I.R. 1622 (India); *M.C. Mehta v. UOI* A.I.R. 2004 SC 4016 (India).



distinguishes and addresses both the challenges to unleashing India's potential globally and the challenges to solving long-standing health and health service delivery problems internally. The critical challenge for the WCO will be to adjust and scale up its capacity to provide support for the required technical excellence that would enable meaningful contributions to national health policy processes and the government's health agenda.<sup>13</sup>

The mechanism for reporting on and monitoring implementation of treaties is critical in helping governments to comply with their human rights obligations, including those specifically related to health. Reporting can thus contribute to the achievement of national objectives for health. By helping governments to provide relevant information to treaty bodies, WHO can draw attention to challenges and successes in health programmes. By engaging with treaty bodies, WHO can help them understand the significance of the information provided by governments and in drafting appropriate conclusions. At many levels and stages, WHO can work directly with governments in preparing reports, provide country-specific information and data for health policy and help them to act on the comments and observations of the treaty bodies to improve health policies and programming at national level.<sup>14</sup>

#### **IV. INTERACTION OF INTERNATIONAL & DOMESTIC JURISPRUDENCE:**

Municipal law courts seem to be gradually emerging as real or potential partners with international judicial and quasi-judicial bodies in a dynamic jurisprudential process of human rights law- interpretation and application.

A genuine 'democratic and pluralistic society' demands that rights and interests be adequately protected not only at the local, regional and national levels but also at the international level.

More specifically, the above analysis suggests that international jurisprudence understands the relationship between domestic rights and general human rights in a holistic manner. This hybridization between international human rights treaties and municipal laws is shaping up the content and meaning of human rights. This proves that law is a living and growing organism by locating itself within a wider context.

International human rights jurisprudence accommodates domestic laws and helps in laying down standards of achievements for all. National institutions have also shown grit and determination in interpreting municipal law harmoniously with international law. Credit goes to the maturity of the legal systems, both national and international in effectively bringing about meaningful interaction between them, thereby leading to the establishment of a global village.

Further municipal laws are catering increasingly to their commitment towards international instruments, thereby aligning municipal law in accordance with international law. This expansion of municipal law to bridge the gap with international law is a heartening and welcoming development, offering a ray of hope for better protection of right to health.

#### **V. IMPLEMENTATION:**

Implementation of the right to health can be discussed at two levels. Firstly as a medical right, more commonly understood as a right to health care. And secondly as a legal right.

The right to health care is in a dire state and has been grossly commercialised. From a healing occupation dominated by professionals, it has been converted into a business venture by technicians. The consequence is human values have been deeply eroded and commercialised, like any other business. The goal of health insurance is also to make money unlike social insurance models which shared the risk of sickness by spreading the cost to all of society. Thus, the poor, the aged and the disabled have been marginalized by denying coverage on technical grounds. Corporatisation of the field of medicine has become an unfortunate development.

The consequence is –the presumption of medicine as merely a science, reducing human beings into biomedical models with physicians serving as super specialized technologists, second in the short shifting of social and psychological factors as playing a role in disease; and third is the distancing of doctor from patient and patient from doctor.<sup>15</sup>

#### **VI. SCIENCE CONTRIBUTES TO ABANDONING HEALING:**

The practice of medicine has increasingly shifted to a scientific paradigm which approaches the patient as biomedical being. Medical students are selected based on their achievements in pre-medical science course, not their affinity for the humanities nor their readiness to serve people. The medical school curriculum responds to the promises of science by progressively diminishing training in interpersonal relations. Little time is devoted to mastering history-taking or acquiring skill in the physical examination. Training is focused on proficiency in science and gaining competence in a host of technologies and procedures. Students are inculcated with a

<sup>13</sup>South East Asia Regional Office, *About WHO India*, SEARO, (Jan. 10, 2017 5:33 PM) [www.searo.who.int/india/about/en/](http://www.searo.who.int/india/about/en/)

<sup>14</sup>*Women's health and human rights: monitoring the implementation of CEDAW-WHO* (Jan. 16, 2017, 6:20 PM) [Whqlibdoc.who.int/publications/2007/97892415100\\_eng.pdf](http://whqlibdoc.who.int/publications/2007/97892415100_eng.pdf)

<sup>15</sup>Dr. Bernard Lown M.D. *The Commodification of Health Care*, SCRIBD, (Jan. 13, 2017, 12:55 AM) <https://www.scribd.com/document/328700055/>



reductionist medical model in which human beings are presented as complex bio-chemical factories. A sick person is merely a repository of malfunctioning organs or deranged regulatory systems that respond to some technical fix. Within this construct, the doctor, as exacting scientist, uses sophisticated instruments and advanced methods to engage in an exciting act of discovery.<sup>16</sup>

The fact that doctors are trained largely in tertiary care hospitals, veritable emporia of cutting edge technologies, further conditions the young with a mind-set favouring the technical. Beside teaching rounds are largely replaced with chart rounds and examining computer print-outs of the latest laboratory data. On rounds, attending physicians display scant interest in the sick patient and instead fixate on the biochemical, molecular or genetic derangements. The focus of teaching necessarily shifts from a holistic approach dealing with an ailing person to the dysfunctional organ. Human interactive skills are deemed outmoded and are minimally cultivated. The patient is increasingly referred to not by name but by the deranged organ as the liver, kidney, heart patient or whatever ails.<sup>17</sup>

What in olden times could only be exposed by pathologists during a post-mortem examination can now be imaged speedily, accurately and safely. No structure is hidden from view. Young doctors glory in being scientists with a commitment to master these sophisticated instruments and complex methodologies. The trainee physician quickly learns that compared with the sharp images provided by ultra-sonography, MRI, CT, endoscopy and angiography, a patient's history is flabby, confused and subjective. Being deskilled in bedside medicine, young doctors have but little choice in dealing with patients except to rely on sophisticated medical gadgetry. There is no consideration of the prohibitive economic costs of immediately resorting to expensive technologies and by passing the patient who is the ultimate repository of relevant information.<sup>18</sup>

Contributing to the popularity of specialization is that early in their careers doctors learn that ascent on the academic ladder is for those who master these elegant technologies, not for those who evince interest in afflicted human beings.<sup>19</sup>

This trend is reinforced and accelerated by the billions of dollars poured by the government into medical research. The physician most gifted in obtaining grant funding is promoted in academic. Advance is unthinkable without a thick bibliography and success in obtaining grant support. Prestige no longer belongs to a beloved family physician nor to an astute bedside clinician, but is the prize for those who breach the scientific frontier.<sup>20</sup>

Not only contemporary philosophic notions of illness, but powerful economic incentives reinforce these views. The shift from a patient-focussed health care system to one based on disease, relates to lucrative fiscal rewards for the practitioners of scientific based medicine. Reimbursement is greatest for the specialists who are captains of complex and invasive technologies; cardiologists foremost among these. Society places a far higher premium on using technology than on listening or counselling. A doctor earns more from performing a procedure requiring a single hour than from an entire day spent communicating with patients.<sup>21</sup>

The enormous appeal for specialization shows the distribution of doctors. Another lesson of the American experience is that a medical care system skewed towards science-based, curative medicine entrusted to highly trained specialists, costs grows astronomically and healthcare is increasingly rationed along class lines.<sup>22</sup>

For physicians and patients, the building blocks of communication are metaphors and narratives, the ancient tools for comprehending the world. They enable coping with the subjective and the immeasurable; the prevalent depression among the elderly; the grief of the bereaved; the suffering of those with terminal illness; or the despair of a mother with a dying child- all of which the physician is committed to assuage. Listening with care to a human narrative provides insight to emotional complexity and permits a glimpse into the mind of another, indispensable to the act of healing. When these are ignored, as they are in scientific-based medicine, patients feel abandoned with dire consequences for patients as well as profession.<sup>23</sup>

#### **i. Consequences of abandonment:**

At a time when doctors are performing the near miraculous, the profession's reputation is increasingly discredited. More and more patients complain about not being listened to and being abandoned. As medicine has conquered acute illness, it increasingly fails in coping with the growing toll of chronic disease- arthritis, cardiovascular ailments, cancer, diabetes, pulmonary impairments, and neurological derangements. Lacking a cure, these illnesses require the art of healing for which the contemporary physician is poorly trained. And

<sup>16</sup>*Id.*

<sup>17</sup>*Id.*

<sup>18</sup>*Id.*

<sup>19</sup>*Id.*

<sup>20</sup>*Id.*

<sup>21</sup>*Id.*

<sup>22</sup>*Id.*

<sup>23</sup>*Id.*

  
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public is lead to expect miracles which are not forthcoming, grows disillusioned and angry.<sup>24</sup>

#### VII. THE CHALLENGE:

The most fundamental of questions can no longer be ignored; in a democratic society is health a Fundamental Right of the many or a privilege for the few?<sup>25</sup>

Secondly, considering right to health as a legal right, we should not only focus on rules and regulations or as a mere scientific study but should focus on it as an inter-disciplinary humanistic approach for better understanding and better enforcement of it through the local laws, guidelines, regulations and recommendations.

#### VIII. SUGGESTIONS AND CONCLUSION:

Only a wide mobilization of health professionals and patients can reclaim the soul of medicine. The health of a civil society is ultimately secured by interacting dependencies of people exposed to communal life. We are bound together by a moral set of values that seeks the welfare of other human beings as a benefit to the self. Citizenship must afford not only equal rights but equitable opportunities for all. The medical plans offer a unique challenge waiting to be suitably addressed by all concerned. Violations or lack of attention to human rights can have various health consequences. Overt or implicit discrimination in the delivery of health services violates fundamental human rights.

In recent years the right to health has come into its own terms of recognition by states, active promotion by key international organizations, grassroots level campaigns, and general scholarly engagement.

No doubt, the right to health is playing a prominent role in shaping the development of health policy and delivery of health services in municipal law as per international directives, but a lot more remains to be done. To suggest a few;

- Human rights agenda has remained marginal and under-resourced which must be inclusive and augmented;
- The right to health largely remains neglected even today which should be given due impetus;
- Welfare state measures enshrined in DPSP must be better incorporated as fundamental rights with effective implementation;
- Affordable health insurance policies with low premium, especially to the marginally poor, chronically ill, vulnerable sections and senior citizens need to be promoted;
- Greater research must be undertaken on a priority basis on traditional health practices which must be given effective propaganda in social media through advertisement, awareness and education.

Right to health is a basic human right that needs to be guaranteed to the people for their overall development and enjoyment of quality of life with dignity. It is therefore very clear that neglect of health rights will result in gross violation of human rights leading to serious detrimental effect upon the health of an individual and thereby of the society. While most human rights are theoretically negative rights, meaning that they are areas upon which society cannot interfere or restrict by political action, it should be converted as a positive right wherein the state has an obligation to allot appropriate resources to promote and protect this invaluable human right of the people.

Having considered the international framework, municipal laws, and judicial pronouncements in favour of protecting this invaluable right, community participation is equally important to effectively enjoy the right to health. No amount of rulemaking is going to help if the change does not come deeply from within us. More than anything, the cultivation of an inner feeling of discipline and cleanliness is very important for better implementation of this right.

  
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<sup>24</sup>Id.

<sup>25</sup>Id.





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## **ROLE OF FORENSIC INVESTIGATION IN CRIMES AGAINST WOMEN IN INDIA: AN ASSESSMENT**

**Dr. Jyothi Vishwanath \***  
**Ms. Bhuvaneshwari S. Kolaki \*\***

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### **Abstract**

Most of the crimes against women go unreported because of the family reputation. Women sometimes hesitate to go against her in-laws, husband or other relatives. Sometimes her report is not dealt seriously by the police. Heinous crimes like rape, dowry deaths, forced abortions etc., go undetected and unpunished because of lack of evidence.

The reason for increasing crimes against woman is low rate of conviction, prolongation of investigation, laxity on the part of the investigating officers, non-availability of witnesses have been identified as major contributing factors for the same. Hence, there is a need for the scientific method of investigation to prove guilt beyond all reasonable doubt.

**Keywords:** crimes against women, forced abortions, rape, dowry deaths, forensics investigator

### **Introduction**

Centuries have come and centuries have gone but the plight of women is not likely to change. Time has helplessly watched women suffering in the form of discrimination, oppression, exploitation, degradation, aggression and humiliation.<sup>1</sup>

There are a variety of psychological, economical, sociological forms of victimization of women. In our society we have seen that women are economically discriminated at working places. At the same time women are also exploited physically, emotionally and sexually by their husbands. It is shocking to hear that women had

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<sup>1</sup> Ajay Kumar Ranjan, *Crime Against Women In India*. Available at Countercurrents.org <http://www.countercurrents.org/ranjan300113.htm>, last accessed on 12/2/2016, 6.30pm.

  
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no right to decide whether they could continue their pregnancy or terminated it.<sup>2</sup>

Crimes against women are as old as civilization and equally ancient are the efforts to combat and arrest them. Crimes like eve-teasing, molestation, kidnapping, forced sexual intercourse, marital rape, domestic abuse, sexual harassment at the workplace and immoral trafficking are worldwide problem occurring to a greater or lesser degree in all the countries, regions and culture. It affects women irrespective of their income, class, race or colour.

The criminal justice system in this country is at crossroads. Many a times, reliable, trustworthy, credible witnesses to the crime seldom come forward to depose before the court and even the hardened criminals get away from the clutches of law. Even the reliable witnesses for the prosecution turn hostile due to intimidation, fear and host of other reasons.<sup>3</sup>

Criminal justice for its success mainly depends on the ability of the investigating agency which collects evidence of a case and the prosecuting agency which places these evidences before the judge. The investigating agency thus stands as a doorway of the criminal justice and strengthens the foundation of the case.

The failure of the prosecution in serious crimes generates a feeling of confidence among the habitual criminals, economic offenders and wealthy criminals to repeat the crime.<sup>4</sup> Undoubtedly, scientific investigation generates evidence in favour of the victims and against the accused.

Home Minister Rajanath Singh said there is a need to strengthen various elements of Criminal Justice System, namely, investigation, prosecution and trails by Courts to deal with the issue of rise of crimes against women.<sup>5</sup>

<sup>2</sup> Sumit Kumar Suman, *Offences Against Women Under the IPC*, Available at <http://www.lawtopus.com/academike/offences-women-ipc/>, Last accessed on 7/8/2015 at 11.55pm.

<sup>3</sup> Quality of Criminal Justice System in U.P India: Role of Forensic Services/ Scientific Investigation. Available at [medind.inc.in/jailt15i2p114.pdf](http://medind.inc.in/jailt15i2p114.pdf), Last accessed on 24/9/2015 at 10.52pm.

<sup>4</sup> P.Ch. Tripathy, *Prosecution System in Criminal Justice In India-An Appraisal of the Drawbacks and Failures*, Indian Journal of Criminology, vol-22(2), July, 1994, p.70.

<sup>5</sup> Legal News and Views, vol-29, No-2, Feb-2015, p.35.

  
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### Need for scientific method of investigation

The application of science always makes things easier. In the field of criminal investigation, science has contributed a lot and made the process more effective. By applying science in investigations, many crimes got proved.<sup>6</sup> The operation of Forensic Science is nothing but application of techniques and methods of basic science techniques for various analyses of the evidence associated with crimes. The scientific examination by Forensic Scientists adjoins a missing link or strengthens a weak chain of investigation.<sup>7</sup>

Forensics is the term given to an investigation of a crime using scientific means. It is also used as the name of the application of scientific knowledge to legal matters.<sup>8</sup> Forensic Science can also be described as the branch, which is used mainly in criminal investigation and findings of which can lead to arrest and convictions. Forensic Science is the application to those civil and criminal laws that are enforced by police agencies in criminal system.<sup>9</sup>

The Supreme Court of India has explained the importance of scientific evidence, particularly in more brutal and well organized crimes.

In *Dharam Deo Yadav v. State of U.P.*<sup>10</sup> the Supreme Court said, "Crime scene has to be scientifically dealt with without any error. In criminal cases specifically based on circumstantial evidence, forensic science plays a pivotal role, which may assist in establishing the evidence of crime, identifying the suspect, ascertaining the guilt or innocence of the accused. One of the major activities of the investigating officer at the crime scene is to make thorough search for potential evidence that have probative value in the crime. Investigating Officer may be guarded against potential contamination of physical evidence which can grow at the crime scene during collection, packing and forwarding. Proper precaution has to be taken to preserve evidence and also against

<sup>6</sup> P.C. Harigovind, *Scientific Interrogation in Criminal Investigation vis-a-vis Rights of the Accused: Ethical Imbalance*, *CULR*, 2010, p.64.

<sup>7</sup> Jithendra N. Bhatt, *A Profile of Forensic Science In Juristic Journey*, (2003)8 SCC (J), p. 25.

<sup>8</sup> Available at [www.clt.uwa.edu.au/-data/assets/pdf-file/0018/2301552/FSP-03-Teacher-Info.pdf](http://www.clt.uwa.edu.au/-data/assets/pdf-file/0018/2301552/FSP-03-Teacher-Info.pdf). Last accessed on 13/3/2015, 12.12am.

<sup>9</sup> *Supra* Note 6, P.C. Harigovind.

<sup>10</sup> (2014) 5 SCC 509.

  
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any attempt to tamper with the material or causing any contamination or damage.”

Hence, this paper examines the concept of Forensic Science, its nature and importance and concepts like abortion (forced), Rape and Dowry Death. This paper will also analyze the role forensic investigators in crime against women particularly abortion (forced), rape and dowry deaths in India.

### **Abortion**

Abortion is the securing of premature birth or miscarriage. That is to say the pre mature termination of pregnancy at any time during gestation.<sup>11</sup> Out of almost 35 million abortions which take place annually in the world, more than half of them are illegal and performed by untrained, unskilled persons and done under highly unhygienic conditions.<sup>12</sup>

Every Indian woman has the right to make her reproductive choice as a dimension of her ‘personal liberty’ under Article.21 of the Indian Constitution. The right applies to procreation as well as to abstain from it and further includes a woman’s privilege to carry pregnancy for its full term, to give birth and to raise the children.<sup>13</sup>

### **Medical termination of pregnancy**

To avoid the misuse of induced abortions, most countries have enacted laws whereby only qualified Gynecologists under conditions laid down and done in clinics/hospitals that have been approved can do abortions. The Medical Termination of Pregnancy Act (Herein after referred as MTP) was enacted by the Indian Parliament in 1971 and came into force from 01 April, 1972. The MTP Act was again revised in 1975.

The MTP Act lays down the condition under which a pregnancy can be terminated, the persons and the place to perform it.

Following are the reasons under the MTP Act for the termination of pregnancy:

<sup>11</sup> Sadhu Singh Mangat, “Policeman’s Guide to Crime and Criminal Investigation”, Eastern Book Company, Lucknow, Part-II, p.172.

<sup>12</sup> Available at <http://www.1to9months.com/abortion.html>, last accessed on 9/3/2016 7.45pm.

<sup>13</sup> The Medical Termination of Pregnancy Act, 1971: An Appraisal by Indian Judiciary. The IUP Journal of Environmental & Healthcare Law, vol-IX, Nos. 1&2, Jan & April 2010, p.6.

  
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(i) Where a pregnant woman has a serious medical disease and continuation of pregnancy could endanger her life like; Heart diseases, Severe rise in blood pressure, uncontrolled vomiting during pregnancy, Cervical/breast cancer, diabetes meelitus with eye complication (retinopathy), epilepsy, Psychiatric illness.

(ii) Where the continuation of pregnancy could lead to substantial risk to the newborn to serious physical/mental handicaps examples like, chromosomal abnormalities, rubella (German measles) viral to mother in first three months, if previous children have congenital abnormalities, rhiso - immunisation link exposure of the foetus to irradiation.

(iii) Pregnancy resulting of rape.

(iv) Conditions where the socio-economic status of the mother (family) hampers the progress of a healthy pregnancy and the birth of a healthy child. Failure of Contraceptive Device irrespective of the method used (natural methods/barrier methods/hormonal methods).

This condition is a unique feature of the Indian Law. All the pregnancies can be terminated using this criterion.

Unsafe abortions are killing woman every two hours in India (which is approximately 4000 deaths a year), according to estimates and calculations correlating data on maternal mortality ratio (MMR) and Sample Registration System (SRS) data by Ipas, India, an international NGO working on increasing access to safe abortion services. A Lancet paper in 2007 said there were 6.4 million abortions, of which 3.6 million or 56per cent were unsafe. Ipas has calculated this based on the latest population and crude birth rates (CBR) which peg the number of induced abortion at 5,007,932.<sup>14</sup>

#### **Types of abortion**

There are three types of abortions:

1. Spontaneous or natural, generally termed 'Miscarriage' due to a condition of disease either in the mother or in-the foetus or as a result of accident. This is a medical problem only.

<sup>14</sup> Meena Menon, 'Unsafe abortions killing a woman every two hours', Available at <http://www.thehindu.com/profile/author/mecna-memon/> Last accessed on 11/12/2015 9.pm.

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2. Therapeutic abortion. Brought about by qualified surgeons, which is no offence.
3. That with which police are generally concerned is criminal abortion, which is the unlawful expulsion of the product of conception from the uterus during any part of the period of gestation.

Generally, the following drugs are used to procure abortions in one way or the other:

Ergot, quinine, Oil of pennyroyal, Oil of rue, Lead pills, Oil of saffron, lead plaster, tablet of stilbostol, tablets of potassium permanganate etc.

The above abortifecient effect and operate in the following ways:

1. By acting on the body generally as poison,
2. By acting locally and indirectly upon the uterus through the gastro-intestinal or genito-urinary tract.
3. By acting locally and directly upon the muscular structure of the uterus. Common Instruments used to bring about abortion are;

Catheters, pencils, wax tapes, Higginson, syringe, knitting needles, meat skewers, the stiff end of an enema syringe, slippery elm bark, any probing instrument known as sounds.

Abortions frequently lead to death or serious illness and common causes of death are:

1. Instrumental interference.
2. Shock Air embolism

Many case of abortions end in death of women. In that case the pathologist are the best persons who can tell the approximate time of death by performing the post-mortem and the time of illegal time of the abortion, types of instrument used or method employed and whether or not the injuries were self-inflicted.<sup>15</sup>

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<sup>15</sup> *Supra* note 11, Sadhu Singh Mangat.



In *Surendra Chauhan v. State of M.P.*<sup>16</sup> abortion was done on a girl named Alphana who died due to the shock. Lower Court has convicted the person who is responsible for the said abortion. The High Court has relied on the report submitted by Dr. D.C. Jain Professor of Forensic Medicines in Medical College, Raipur. In his deposition he said that in his opinion "Deceased was pregnant foetus should be in uterus. Foetus age is three months. No injury to uterus or vagina detected. It is possible that the deceased died of vigil inhibition due to the effect of abortion without anaesthesia or due to fear."

He also opined that he did not find any injury in uterus or vagina. He said it was possible that the abortion was caused without applying the anaesthesia to the deceased causing her death or her death could be due to fear. He found that the uterus was enlarged containing blood clots.

Even Supreme Court upheld decision of High Court and said that Alpana met her death in the clinic of Sharma either due to shock or without applying anaesthesia while she was being aborted.

Therefore, the investigation in the forced abortions has to be conducted very seriously because sometimes the victim die not because of the mere abortion but because of other reasons connected to it.

#### **Rape and sexual assault**


Rape has been since time immemorial been considered one of the worst crimes committed, which causes irreparable hurt to the victim who bears a scar and downtrodden position in the society.<sup>17</sup> The very offence of rape seems to be a common one in India. Rape is a social disease. Hardly a day passes without a case of rape being reported in Indian newspapers and media.<sup>18</sup> Any women can be a victim of rape whether she is young or old, beautiful or plain, conservative or modern. Rape is a result of the way society view women as sex objects.<sup>19</sup>

<sup>16</sup> Date of Judgment: 27/03/2000. [Online] [2015 March 10]. Available at: URL: <http://judis.nic.in/supremecourt/imgs1.aspx?filename=16467>.

<sup>17</sup> Ishita Battacharya, "Misuse of Rape Law", *Cri.L.J.*, 2006, p.331.

<sup>18</sup> *Crime Against Women Types and Causes* Available [http://shodhganga.inflibnet.ac.in/bitstream/10603/37022/10/10\\_chapter%203.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/37022/10/10_chapter%203.pdf) last accessed on 15/2/2016 05.20 pm.

<sup>19</sup> N. Sreerama Murty, *Violence against Women: Exploring the Emerging Trends, Violence Impact and Intervention*, Edt. Manjit Singh and D.P. Singh, Atlantic Publishers & Distributers (P) Ltd, 2008, p.178.

  
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Statistics of National Crime Records Bureau (Herein after referred as NCRB) for the year 2013 shows, 93 women are being raped in India every day. According to NCRB data, there is a gradual increase in the number of rapes reported in India - from 24,923 in 2012 to 33,707 in 2013.<sup>20</sup> Ten cases of cruelty by husband and relatives are reported every hour across the country followed by cases of assault on women with intent to outrage her modesty, kidnapping and abduction and rape, reported in 2014. These include attempt to commit rape (4,234), abetment of suicide of women. NCRB added three more heads under which cases of crime against women have been (3,734) under section 306 IPC and protection of women from domestic violence (426).<sup>21</sup>

Women's groups attest that the strict and conservative attitudes about sex and family privacy contribute to ineffectiveness of India's rape laws. Victims are often reluctant to report rape. In an open court victims must prove that the rapist sexually penetrated them in order to get a conviction. This can be especially damaging. After proving that she has been raped, a victim is often ostracized from her family and community. This problem is exacerbated by the fact that rape laws are inadequate and definitions so narrow that prosecution is made difficult.<sup>22</sup>

### **Rape: Meaning and types**

Rape is a type of sexual assault usually involving sexual intercourse, which is initiated by one or more persons against another person without that person's consent.

Rape is defined under section 375<sup>23</sup> of Indian Penal Code, 1860.

**375.** A man is said to commit "rape" if he—

- a. penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

<sup>20</sup> National Crimes Records Bureau. Available at <https://data.gov.in/.../national-crime-records-bureau-ncrb>.

<sup>21</sup> Chaitanya Mallapur, "Crimes against women reported every two minutes in India", Available at <http://scroll.in/article/753496/crimes-against-women-reported-every-two-minutes-in-india#> last accessed on 15/3/2016, 11.30pm.

<sup>22</sup> *Supra* note 2 Sumit Kumar Suman, *Offences against Women under the IPC*, Available at <http://www.lawctopus.com/academike/offences-women-ipc/>, Last accessed on 7/8/2015 at 11.55p.

<sup>23</sup> Indian Penal Code (Amendment) Act, 1983.

*Prithvi*



b. inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

c. manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of the body of such woman or makes her to do so with him or any other person; or

d. applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—

First.—Against her will.

Secondly.—Without her consent

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

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

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

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

Seventhly.—When she is unable to communicate consent.

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

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

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

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

*Exception 2.*—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.<sup>24</sup>

"Rape is a crime not only against the person of a woman it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. Rape is therefore the most hated crime. It is a crime against basic human rights and is violative of the victim's most cherished right, namely, right to life which includes right to live with human dignity contained in Article 21."<sup>25</sup>

The main cause for increasing crime against women is less conviction rate. This is result of apathy towards these crimes tendency of our phallogentric society to condone this type of crime or to take them lightly and for granted. Recent police data has confirmed the above view held by our patriarchal society as it shown that there is only 19% conviction in rape cases<sup>26</sup>

According to National Crime Records Bureau 2013 report overall 96% of the rape cases led to charges and the offender being prosecuted. In 2012, out of 1,01,041 cases before courts, 3563 convictions took place in comparison to 11,154 acquittals and 292 cases withdrawn. Indian courts completed trial process of estimated of 14,717 rape cases in 2012, while many cases remained pending in its trial process. The absence of uniform guidelines in gathering medical evidence for rape cases is one of the main reasons why conviction rate is low<sup>27</sup>It is no secret that survivors of rape in India are humiliated and discriminated. They could face it in their own homes, police stations and then in the hospital where they undergo invasive medical tests that often end up doing little beyond harming their case later in the legal process.<sup>28</sup>

<sup>24</sup> *Supra* note 23 Indian Penal Code (Amendment) Act, 1983.

<sup>25</sup> <http://en.wikipedia.org/wiki/Rape>, last accessed on 4/1/2016 12.30am.

<sup>26</sup> *Supra* note 22 Sumit Kumar Suman.

<sup>27</sup> Government of India, National Crimes Records Bureau. Available at <https://data.gov.in/.../national-crime-records-bureau-ncrb>.

<sup>28</sup> Yuvaraj Dilip Patil, "Medico-Legal System in Sexual Assault Cases in India", *JKIMSU*, vol-2 no.2 Jul-Dec.2013, last accessed on 24/9/2015,11.06pm.

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Lack of training for doctors is not just affecting probes into cases of sexual assault on women and minors but also traumatizing survivors and their families. In spite of Guidelines issued in 2015 (Emphasis supplied) by the Ministry of Health and Family Welfare prescribe structured training for doctors in dealing with the cases registered under Protection of Children from Sexual Offences (POSCO) Act 2012 and crimes against women. But according to the Indian Medical Association (IMA), no such training has been provided.<sup>29</sup>

The pathetic conditions of POSCO cases and crimes against women is that, the doctors at primary Health Center go on leave when they get a message that, the police is bringing the survivor for medical examination. This is because they do not know what to do, how to collect evidences in such cases, how to answer queries from the judiciary etc. The doctors who undertake the examination are so careless that, they even do not give any treatment to avoid unwanted pregnancy nor they give any treatment for HIV or any other sexually Transmitted Diseases. Sometimes they give report that; 9 year old girl “seemed used to an act like sexual assault.”<sup>30</sup>

Hence, from the above discussion we can draw a conclusion that rape cases are very sensitive and needs to be investigated very carefully and wisely. The role of the investigator will initially start with the victim and ended in the statement of the culprit.

### **Dowry death and bride burning**

In India, ancient texts describe women as ‘Power’ which rules over God’s creation. But current scenario shows a contrast picture. Women have never been fortunate enough to hold that position. Marriage plays a significant role in making or marring a woman’s fortune. Not all many but many Indian women fall prey to the monster of dowry. Earlier the dowry system was prevalent only in the upper classes who considered it an ill-omen to send their daughter said to be the Goddess of Wealth according to Indian mythology, empty-handed to her in-laws house. Therefore, they gave her the articles required for daily household. Daughter’s share of her father’s property was also sent as ‘gift’. With the passage of time, the significance and purpose of dowry changed and it has become a social menace that ails the society now.

<sup>29</sup> Arun George, “Doctors to cops: The Horror of Rape Examination in India”, Available at [www.firstpost.com](http://www.firstpost.com). Last accessed on 12/3/2016, 8.30pm.

<sup>30</sup> Merlin Francis, “Docs Uneasy about Rape, POSCO Cases,” TOI (Times of India), Bengaluru, Thursday, 17/3/2013, p.3.

Today a cultural idea has become a corrupted one and a blessing has changed into a curse. One of the main reasons is the growing greed of money, power and status.<sup>31</sup>

Dowry Death and bride burning has become a serious menace in Indian society. A greedy husband desirous of getting more money in the form of dowry has no qualm to kill his poor wife even after exploiting herself and her parents to the maximum. The mother-in-law and women who should be the friend of another woman viz., daughter-in-law turns to be the latter's foe in the marital home. Greedy in-laws abet the crime of bride burning so that their sons are free again to earn more in the marriage market. Significant amendments have been made in the Indian Penal Code, and the Indian Evidence Act, to prevent bride burning and dowry death.<sup>32</sup>

In spite of the amendments made to various laws to prevent the dowry death still the evil of bride burning has not been fully irradiated. A total number of 24,771 dowry deaths have been reported in the country in the past three years. Maneka Gandhi Minister Women and Child Development said that 8233, 8083 and 8455 cases were registered under section 304 B of Indian Penal Code in the country in 2012, 2013 and 2014 respectively.<sup>33</sup>

However, cases involving violence against women have a traditionally—and appallingly—low rate of conviction in India. Regardless of class, women routinely face difficulties filing complaints with the police. Poorer women are frequently harassed further at police stations, and most complaints of verbal or physical abuse are treated as an “internal family matter” or dismissed as frivolous. Even in the event that a case on grounds of “cruelty” is registered with the police, these cases are extremely difficult to prove in courts without visible signs of torture. Making matters worse, women often have to continue living with their in-laws even after filing cases against them, coming under tremendous pressure to withdraw the complaint.<sup>34</sup>

<sup>31</sup> “Dowry Deaths In India: The Story of the Powerless”, <http://www.youthkiawaaz.com/2011/03/dowry-deaths-in-India-the-story-of-the-powerless/> last accessed on 2/1/2016 12.30am.

<sup>32</sup> G. Rajashekharan, *Gender Justice under Indian Criminal Justice System*, Eastern Law House, New Delhi, 2011, p.299.

<sup>33</sup> Nishita Jha, “*The Despicable Persistence of the Dowry*”, Available at <http://www.thedailybeast.com/articles/2014/08/04/the-despicable-persistence-of-the-dowry-in-india.html> last accessed on 18/1/2016 11.30 pm.

<sup>34</sup> Pragnesh Parmar, *Dowry Death and Law Scenario*, *IJLM*, 2014; 1(2): 44-49 at [www.iaimjournal.com](http://www.iaimjournal.com). Last accessed on 24/1/2016 at 11.45 pm.

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**Role of investigator in cases of abortion, rape and dowry death****Abortion**

If the death due to forced abortion occurs at home the investigator examine the finger prints taking care to note finger impressions of the deceased for elimination purposes. If the body is in evidential value, they take the photographs. In spite of this investigation officer in these types of cases search the dress of the victim thoroughly particularly the bedroom of the deceased. They also search for the presence of the above listed drugs which may be used in effecting the abortion or search for any syringe such as Higginson or enema syringe is found, tie tightly at each end of the bulb and protect the ends for laboratory examination. They also search for enemas pails enamel bowls etc., if found they preserve them for laboratory tests.

If the death due to abortion occurs in hospital the investigator first try to find out the identity of the deceased, date and timing of admission to hospital, how admitted, if any one accompanied the deceased if so the conversation between the deceased, nursing staff, or medical staff, together with names and details of conversations held with any visitor.<sup>35</sup>


By the introduction of scientific method violence against women will not go unnoticed. In turn these evidences collected by the investigators can be used as the corroborative evidences in proving the crime and may help in conviction of the culprit. Crimes against women are committed time and then but the punishment rarely given because of lack of evidence or defective investigation. To overcome the lacuna it is necessary to rely on forensic evidence.

**Rape**

The charge of rape is easy to level against person but difficult to prove. The investigator has to be more vigilant in rape cases. The investigator has to proceed systematically to collect proper evidence and to provide proper proof as in cases of rape; there is usually no eye witness.

The investigator has to keep in mind that-the culprit often claims that consent of the victim. There are sometimes false allegations the investigator has to collect the evidence in three forms.

<sup>35</sup> *Supra* note 15, Sadhu Singh Mangat.

  
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1. Knowledge of Occurrence.
2. Medical Evidence.
3. Evidentiary Clues.

**Knowledge of occurrence**

Through the systematic and careful investigation the knowledge of occurrence can be traced out. And the best persons to be interrogated are either the victim or the culprit. The following points must be kept in view are;

1. Interrogation of female must be done in the presence of another female.
2. Ascertain the movements of the victim before and after the occurrence.
3. Ascertain the familiarity of the accused with the victim.
4. Investigator has to collect the even minute details of the occurrence viz., place of occurrence, route and mode of transport, time of occurrence, how enticed, how attacked, the weapon, if any, resistance offered if any, how was it overcome etc.,
5. The time of complaint after the occurrence? And to whom?
6. Who persuaded the victim to go to the police?
7. The investigator also has to investigate about the character of the victim. Previous sexual contacts with the accused may indicate motive.<sup>36</sup>

**Medical evidence**

The medical evidence will help to prove the crime and also to find out the culprit. After the report of rape the medico-legal examination of culprit and victim should be carried out at the earliest. The consent of the adult victim for medical examination is legally required. If she is minor parents or guardians are approached for the consent. The medico-legal examination must be carried out by a qualified and experienced female doctor

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<sup>36</sup> B.R. Sharma, *Forensic Science in Criminal Investigation and Trails*, 5<sup>th</sup> Edn., Universal Law Publishing Co. Ltd, New Delhi, p.1383.

  
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whenever possible. Otherwise, a female should be present.<sup>37</sup> The examination should ascertain:

1. Injuries consistent with violent and forced rape?
  - a. Evidence of forced sex act?
  - b. Previous sex experience.
  - c. Torn Hymen.
  - d. Injured vulva.
  - e. Bleeding.
2. Resistance injuries like bite marks, scratches, sings of beating, their location, number and their extent can also be given. One such example which we can recall here is "The Delhi Gang Rape (Nirbhaya) case" where the bite marks found on the victim's body has sent to Shri Dharmastal Manjunath Dental and Research Center Hubli for report whether the bite marks found on victim's body were of culprits or not. The expert doctors examined and sent five pages report stating that two bite marks match with two culprits. And the evidence recorded by the doctor and accepted in Toto by Saket Sessions Court Delhi.
3. The investigator should take the torn cloths into possession
4. Trace for the stains on cloths, body, especially on thighs and private parts.
5. Disorder of hairs and cloths etc.
6. The Disease? Is the victim suffering from any venereal disease?
7. Smegma? Presence of Smegma is useful clue. It can refuse the charge of false rape. Absence of Smegma does not prove rape.
8. Capability? Is the culprit capable of performing sexual act?

#### **Evidentiary clues**

The investigator must collect all the evidentiary clues with the help of the doctor including the following:

1. Vaginal secretion and swabs for semen.

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<sup>37</sup> *Ibid*, B.R. Sharma, *Forensic Science in Criminal Investigation and Trails*.

2. Foreign hairs and fibers on the person of the victim.
3. Specimen pubic hairs from the victim.
4. Semen stains from the body.<sup>38</sup>
5. The investigator also tries to collect fingernail scraping which may carry fibers, skin and blood from the culprit.
6. The age of the victim is also very important to ascertain her consent. So investigator can rely upon the birth certificate or the school certificate.
7. All the clothes worn by the victim has to be collected by the investigator as they carry much proof like hair, saliva, blood stain etc. Sometimes they also carry the dirt, dust and plant materials which may help to corroborate victim's statement.

#### **The culprit**

The investigator in rape cases not only collects the evidence from the victim but also from the culprit. If the culprit was caught by the investigation team all the above discussed procedures has to be followed. The oral evidence by the culprit may help to corroborate the statement with the victim. The following are important points to ascertain from the culprit.

1. Finding out his *alibi*.
2. The investigator has to fix the culprits movements around the time of occurrence.
3. The investigator has to ascertain the association of the accused with the victim.
4. Find out the reputation of the culprit, his social and marital status etc.,
5. Ascertaining the associates of the culprit which may help in finding out the background of the wrong doer.

#### **The scene**

The crime scene plays a very important source of evidence, physical clues and *modus operandi*. The scene of crime has to be investigated at the earliest to trace out the important clues.

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<sup>38</sup> *Supra* note 37, p.1384, B.R. Sharma.



1. The investigator should take the photograph of the scene or he can prepare a sketch of the scene.
2. Collect the evidences like, hairs, fibers, fingerprints, clothes, dust, dirt, stains, broken bangles, jewelries, foot marks etc.
3. The investigator should also enquire the public as to anybody has observed the scene, did they hear any screams, voices?
4. To find out is there any chance of the witness to the occurrence?

Hence, from the above all investigations it will be easy to trace out the culprit in various serious crimes where the investigator has to be carefully collect the evidences and produce before the court. The evidences collected from the investigator have to be kept intact and thorough investigation has to be done.<sup>39</sup>

#### **Dowry death**

Most of the victims in dowry deaths (Emphasis added) are young married women who are usually labeled as accidental deaths, but actually these are not accidental cases but are of homicidal in nature. Increasing number of dowry killings and the poor conviction rate of cases continue to shame India. According to the latest statistics of union home ministry, 8083 dowry deaths took place in the country in 2013.<sup>40</sup>

Most of the lawyers blame weak criminal justice system, lack of scientific apparatus and temperament and excessive burden of cases on courts for the poor conviction rate. "Much evidence is lost because our police agencies do not have proper apparatus to collect forensic proofs right from the spot without wasting time which is precious to nail the culprits. There is also excessive dependence on the oral evidence by the police that often the culprits go scot-free".<sup>41</sup> The principal duty of forensic experts to look for the exact cause of death on the basis of relevant data and diagnostic criteria in scientific manner and approach.

<sup>39</sup> *Supra* note 39.

<sup>40</sup> *Supra* note 35. Pragnesh Parmar, *Dowry Death and Law Scenario*. IAIM, 2014; 1(2): 44-49. Available at [www.iaimjournal.com](http://www.iaimjournal.com). Last accessed on 24/1/2016 at 11.45 pm.

<sup>41</sup> Manan Kumar, "Dowry killings: Gujarat, Maharashtra lead from the bottom in conviction; Poor forensic infrastructure responsible for the abysmal conviction rate", <http://www.dnaindia.com/india/report-dowry-killing-gujarat-maharashtra-lead-from-the-bottom-in-conviction-poor-forensic-infrastructure-responsible-for-abysmal-conviction-rate-2013390>, last accessed on 4/5/2016, 11.25 pm.

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In dowry deaths, investigating officer plays a very important role to bring out justice as well as on other hand to save the husband or in laws if at all they are not guilty for the offence and are falsely being caught up in trap. He has to investigate every dowry death case with consideration of both mental and physical torture which has been imparted on the victim by the husband and/or in laws over a long period which has ended in suicide by the lady.<sup>42</sup>

In this type of suspicious cases, the forensic team always demands for visiting the scene of crime. After visiting the scene of crime, the team tries to know that someone created a scene like suicide to hide homicide attempt. Scientific officer of the Forensic Science Laboratory will observe unusual things which were not favoring to suicide or accident. There was no preparation of breakfast or lunch in the kitchen so there is no question of stove burst or kitchen accident. Then the question of suicide was ruled out by absence of any ligature mark beneath the neck skin, no ligature material or any suspension point was found from the scene of crime. Extra vasation of blood around trachea, post-mortem burn, and absence of carboxy hemoglobin (CoHb) from victim's blood and unusual scene of crime will favour to put this kind of case in homicidal category. Car boxy hemoglobin detection from the victim's blood will be the most important laboratory finding to differentiate ante mortem and post mortem incidence of bride burning. More than 10% blood hemoglobin saturation with carbon monoxide in bodies recovered from fire usually indicates that the victim inhaled smoke and hence was alive at the time of fire. If the, carboxy hemoglobin was not found from victim's blood and burns injuries were postmortem in nature, then findings reflects that the victim was already dead at the time of fire.

In dowry death cases usually victim suffers from her own relatives and always dowry death cases will be highlighted either as suicide or as an accidental death. But the investigator has to collect the evidences which prove that the death is a murder or homicide.

#### **Conclusion and suggestions**

The woman in India always be considered as 'Goddess' and like goddesses the women always has to give some *Agnipariksha*. Women will always suffer in her own home, by her own relatives, by her husband and also by the outsiders. Crimes like rape,

<sup>42</sup> Arun Agnihotri, "The Epidemiological Study of Dowry Death Cases with Special Reference to Burnt Cases in Allahabad Zone", Available at [http://www.anilagrawal.com/ij/vol\\_002\\_no\\_001/theses/001/thesis001\\_001\\_introduction.html](http://www.anilagrawal.com/ij/vol_002_no_001/theses/001/thesis001_001_introduction.html), last accessed on 15/9/2015, 12.15 am.

  
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molestation, sexual harassment, marital rape, kidnapping, dowry death, forced abortions, female infanticide, and female foeticide, go unreported and undetected and always end in acquittal. Hence, there is need for investigation which may lead to conviction. The only hope is forensic investigation which will set the criminal process in motion. The scientific investigation always proved better than all traditional investigation. In traditional investigation the evidence of eye witness will be taken into consideration where as it is very difficult to have eye witness in cases of rape, forced abortions and even in dowry death cases where it is difficult have eye witness because all these crimes will be committed within four walls of the house or room. The minute evidences collected by the scientific investigator will prove the guilt beyond all reasonable doubt. Our criminal justice system has adopting the scientific methods of investigation in severe crimes against women and many cases landed in punishment. Though the forensic investigation proved to be better there some more suggestions to make it better.

The suggestions are:

1. Proper and adequate training has to be given to the doctors conducting examination of victims particularly in violent crimes committed against women.
2. The women must be provided immediate medical care and try to collect the crucial evidences from her.
3. The mobile forensic team should be there to reach to the crime scene without any delay.
4. The Forensic investigator has to collect the material evidences may it be a physical, biological or chemical?
5. Evidences must be kept in separate covers so that it will become easy to examine thoroughly.
6. The forensic investigator has to prepare an elaborate report about the crime and submit before the court which will further help in conviction of the culprit.

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# CPJ LAW JOURNAL

Peer Reviewed/Refereed Journal

Volume - X 2020



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## Right to Safe Food in India: An Unending Litany

Dr. Sumithra, R\*

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### I. INTRODUCTION

'Food is the most primitive form of comfort'. Food<sup>2</sup> is the fundamental need of all living creatures. It is inevitable for the existence of life on earth, whose fulfillment could alone sustain life. As has been propounded globally, Right to Food is a basic Human Right which is not territorial in nature. However, the obligations to protect and employ the same in the municipal sphere are primarily domestic, in the relationships between respective states and their own people where the major obligations of national governments are towards the people living under their jurisdiction. But, the author is dismayed at the stark contrast between the prevailing harsh reality where people are still struggling for two square meals a day which is safe for consumption and which meets the requirements of law and an ideal situation where people would enjoy the basic necessities of life including food, as contemplated by different International instruments. Unfortunately, Food Security and Food Safety have remained two different aspects and not part of each other. When food itself has become scarce, safe and standard food is a distant mirage for the people. Despite, there being legislation for food safety and standards, injury to the people due to unsafe food are on the rise. Though food safety has become a global concern yet no major breakthrough in India.

In 1985, The United Nations General Assembly Guidelines for Consumer Protection<sup>3</sup> stated that 'When formulating national policies and plans with regard to food,

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1. Sheila Graham was a British-born, nationally syndicated American columnist during Hollywood's "Golden Age".
2. Sec 3 (j) Food Safety and Standards Act 2006, Any substance, whether processed, partially processed or -unprocessed, which is intended for human consumption and includes primary food, genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum and any substance including water used in food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substance.
3. A/RES/39/248, 16 April 1985.

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governments should take into account the need of all consumers for food security and as far as possible adopt standards from the Food and Agriculture Organisation's and the World Health Organisation's Codex Alimentarius Commission<sup>4</sup>. Right to safe food has become a global concern because of which United Nations Organisation is constantly endeavouring to secure this Right globally through various Conventions and entered into Treaties and Agreements with all its member nations. India being a member nation of the United Nations Organisation is obligated to adopt the recommendations of the conventions and to implement the obligations under the treaties and other international agreements. Article 253<sup>5</sup> of Indian Constitution empowers the state to make legislation for giving effect to international agreements and treaties and for adopting the spirit of the International conventions.

## II. INDIA AND CODEX STANDARDS

India became a member of the Codex Alimentarius Commission (CAC) in the year 1964 when the Prevention of Food Adulteration Act, 1955 (PFAA) was the legislation in India to deal with the menace of adulterated food. The object and purpose of the PFAA were to eliminate the dangers to human life from sale of unwholesome articles of Food. It was enacted to curb the extensive menace of food adulteration and is a legislative measure for social defence<sup>6</sup>. The Act suffered from many shortfalls. Erstwhile, the Indian food regulations comprised of various food laws that were enacted at different points of time under the ambit of various ministries of Government of India. Historically they were introduced to complement and supplement each other for achieving total food safety and quality. The result was that the food sector in India was governed by a number of different statutes rather than a single comprehensive enactment. The Food Safety and Standards Act, 2006 (FSSA) came into effect, subsuming various central Acts<sup>7</sup>. FSSA has laid lot of emphasis on the responsibilities of the food business operators<sup>8</sup> which is in the interest of the general public as it affects the public health and has laid restrictions on the advertisement and prohibition as to unfair trade practices<sup>9</sup>. The Act has set up a statutory Food Safety and Standards Authority of India (FSSAI) for laying down science based

4. A body that was established in early November 1961 by the Food and Agriculture Organization of the United Nations (FAO), was joined by the World Health Organization (WHO) in June 1962. Sumeet Malik's 'Handbook of Food Adulteration & safety Laws' 1st Edn 2011, Eastern Book Company, Lucknow
5. 'Legislation for giving effect to international agreements'
6. Prakash C Juneja, 'Prevention of Food Adulteration Act and Consumer Protection', 8, Central Law Quarterly, 371 (1988)
7. Prevention of Food Adulteration Act of 1954, Fruit Products Order of 1955, Meat Food Products Order of 1973, Vegetable Oil Products (Control) Order of 1947, Edible Oils Packaging (Regulation) Order of 1988, Solvent Extracted Oil, De-Oiled Meal and Edible Flour (Control) Order of 1967, Milk and Milk Products Order of 1992 and also any order issued under the Essential Commodities Act, 1955 relating to food. Yetukuri Venkateswara Rao's, 'Commentary on Food safety and Standards Act 2006', Asia Law House, Hyderabad. (2011)
8. FSSA Sec 26
9. *Ibid* Sec 24

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10. *Ibid*  
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standards for articles of food and to regulate their manufacture, storage, distribution, sale, import to ensure availability of wholesome food for human consumption. The Act has established a single reference point, FSSAI for all matters relating to food safety and standards by moving from multi level, multi department control to a single line of command. Ministry of Health and Family Welfare is the administrative machinery for the implementation of the Act.

Thus setting of science based standards is the most important objective of the Act. The Act adopts the 'Food Safety Management System' which includes the adoption of Good manufacturing practices, Good hygienic practices, Hazard Analysis and Critical Control Point and such other practices as may be specified by the regulation for the food business<sup>10</sup>. It is the responsibility of the food business operator to ensure that articles of food comply with the requirements of the Act at all stages of production<sup>11</sup>. The manufacturers, packers, wholesalers, distributors and sellers shall be liable for such article if they do not meet the standards set by the Act<sup>12</sup>. The Act imposes the responsibility on the food business operator to recall the articles of food if they do not satisfy the required standards of the Act<sup>13</sup>. If the Designated officer has reasonable ground for believing that a food business operator has failed to comply with any regulations under this Act, he may serve an improvement notice on the food business operator requiring him to<sup>14</sup> take certain measures necessary within the period mentioned in the notice. If a food business operator has been convicted of an offence under this Act and if the court feels that there is a health risk with respect to the food business, Prohibition order may be imposed on him<sup>15</sup>. The Food Safety Officer has been conferred with several powers and on any misuse of the same by him makes him liable too, to a penalty of Rs 1 lakh<sup>16</sup>.

Thus, India has an obligation to provide its people with articles of food which are devoid of anything that is detrimental to their health. The Act has set standards for food which make them fit for human consumption. The Act clearly demonstrates that no article of food can contain any food additive or processing aid unless it is in accordance with the provisions of the Act. Further, no article of food should contain any contaminant, naturally occurring toxic substances or toxins or hormone or heavy metals in excess of such quantities as specified by regulation. The food should also not contain residues of insecticides or pesticides or veterinary drugs or antibiotics, solvent residues, pharmacological active substance and micro-biological counts in excess of tolerance limits prescribed by the Act.

For carrying out the various responsibilities under the Act, a huge infrastructure with large paraphernalia has been elaborated under the Act. The Food Authority

10. *Ibid* Sec 3(10) (s)

11. *Ibid* Sec 26

12. *Ibid*. Sec 27

13. *Ibid* Sec 28

14. *Ibid* Sec 32

15. *Ibid* Sec 33

16. *Ibid* Sec 39

  
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must establish Scientific panels on food additives, pesticides and antibiotic residues, genetically modified organisms and food, contaminants in the food chain, biological hazards, labelling and method of sampling and analysis. Food laboratories established by the Central or State Government are accredited by the National Accreditation Board for testing and calibration laboratories and these must be recognised by the Food Authority. The Act also mandates for a food safety audit which involves a systematic and functionally independent examination of food safety measures adopted by manufacturing units is made to determine whether such measures and related results meet the objective of food safety. The Act has also constituted Scientific committees, Central Advisory Committee, appointed Food Safety Officers, Food Analysts. Chapter IX of the Act deals with various offences and the penalties elaborately.

FSSAI under the Ministry of Health and Family Welfare has been designated as the nodal point for liaison with the CAC. One of the commonly known parameters of Codex standards is residues of unwanted or harmful agrochemicals used in various stages of production such as Maximum Residue Levels of Pesticides. The other one is the presence of unwanted microbes as was the case with Indian mangoes. The 28 member European Union temporarily banned the import of Alphonso mangoes and four other vegetables from India on May 1<sup>st</sup> 2014 owing to the contamination by pests such as fruit flies and other quarantine pests. The National Codex Contact Point<sup>17</sup> has been constituted by the FSSAI for liaisoning with the CAC and to coordinate Codex activities in India and its most important function is to act as a link between the Codex Secretariat, National Codex Committee<sup>18</sup> and Shadow Committee<sup>19</sup>; coordinate all relevant Codex activities within India, receive all Codex final texts regarding standards, codes of practice, guidelines and other advisory texts and working documents of Codex sessions and ensure that these are circulated to those concerned. The NCC has to advise the government on the implications of various food standardisations, food quality, food issues which have arisen and related to the work undertaken by the CAC so that national economic interest is considered when international standards are discussed.

### III. IMPLEMENTATION FALL OUT OF THE FSSA

Food regulation anywhere in the world is a difficult and challenging task. Food regulation is expected to be a facilitator for the industry, but very often they both are at loggerheads. The FSSA is very impressive and ambitious in its object but the effective implementation though may not be impossible yet is a colossal task and fraught with many challenges. The following quoted incidents demonstrate the failure of the Act.

17. NCCP

18. NCC

19. Shadow Committees will work under the NCC. The Food Authority has appointed the Shadow Committees of the NCC on subject matters corresponding to the Codex Committees to assist the NCC in the study or consideration of technical matters.

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- Few countries rejected milk produced from Kolar district from Karnataka due to fluoride content above the permissible limit<sup>20</sup> but we were oblivious of this contamination and consumed it.
- Karnataka State Human Rights Commission issued a notice on January 30<sup>th</sup> to Labour Commissioner seeking his response to the complaint that 60 employees in one of the garment factories in Bangalore fell ill after consuming contaminated water<sup>21</sup>. The Commission took notice of the media reports and issued a notice suo-moto.
- In a crackdown on the food adulteration, the south zone police at Charminar at Hyderabad raided two milk adulteration units and apprehended two persons. They mixed skimmed milk powder with milk powder of inferior quality<sup>22</sup>.
- On March 8<sup>th</sup> 2017, three children aged between 14&15yrs died hours after consuming the food for dinner at a hostel run by a residential school<sup>23</sup>. The students died, hours after they complained that the sambar served during dinner was bitter.
- As many as 14 students took ill after consuming lunch at the SC/ST student's hostel at Yadgiri, a place at Karnataka on 10<sup>th</sup> March 2017<sup>24</sup>. These students complained that the contaminated water used to cook the food had resulted in the incident.
- Stale food was served in Rajdhani Express, one of the most prestigious trains run by our railways<sup>25</sup>. The passengers complained that the food served for dinner was stale and that bad smell emanated from food packets. If this is the scenario in state owned enterprise, one can imagine the scenario at hotels and other motels.
- A total of 60 students took ill after having the mid-day meals provided to them at government higher primary school at Benakatti in Bagalkot District<sup>26</sup>. One of the students complained that she found a lizard in the sambar, after rice and sambar were served to them and soon the students started vomiting.
- The National Human Rights Commission suo-moto issued a notice to food regulator FSSAI over reports of pesticides being found in food items more than the prescribed limit<sup>27</sup>. In its notice, NHRC directed FSSAI to submit its reply within eight weeks from the date of receipt of notice. Maximum Residual

20. Deccan Herald, Bangalore Edition dated July 18, 2017, 'High fluoride content: Milk exported from Kolar rejected'.

21. *Ibid* dated January 1, 2014, 'KSHRC issues notice'

22. [m.timesofindia.com/city/Hyderabad](http://m.timesofindia.com/city/Hyderabad) (accessed on January 4th at around 10.00pm)

23. Deccan Herald, Bangalore Edition dated March 11, 2017

24. *Ibid*

25. *Ibid* dated 29th March 2017

26. *Ibid* dated 15th March 2017

27. <http://economictimes.indiatimes.com/industry/cons-products/food/nhrc-notice-to-fssai-over-reports-on-pesticides-in-food-items> (accessed on 3rd April 2017 at around 8.20pm)

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- Levels of pesticides in fruits and vegetables and other food products have been fixed under the Food Safety and Standards (Contamination, Toxins and Residues) Regulation, 2011. Presence of pesticides residues beyond these levels in food products including food, vegetables and meat is treated as a violation of the said regulations, which attracts penal action under the Act.
- A pregnant woman discovered a dead lizard in her French fries at a fast food outlet in Kolkata<sup>28</sup>. These instances are not lone instances but only a few which saw the light of the day, many such instances go unreported owing to so many reasons.
  - Ninety five students fell ill after consuming midday meal, in which a lizard was found, at Gaddikeri Government High School on December 12<sup>th</sup> 2018<sup>29</sup>.
  - On 14<sup>th</sup> December 2018, 12 devotees were killed and another 70 devotees fell ill and were admitted to hospitals after consuming prasada at the temple in Chamarajanagar<sup>30</sup>. The death toll rose to 15.
  - On 20/12/2018, over 100 children fell ill after consuming their midday meal in separate incidents in Ballari and Bagalkot districts<sup>31</sup>.
  - On 31/12/2018, over 100 kids became ill after consuming food in which they had spotted a lizard<sup>32</sup>.
  - This is in continuation of the above mentioned incident, where the children living at the government run Balamandira, Siddapura complained that they are used to seeing the worse stuff in their food. Stones and worms are routinely served along with rice and sambar<sup>33</sup>.
  - On January 26<sup>th</sup> 2019, two women died after consuming temple prasada in Chintamani in Chikkaballapur district<sup>34</sup>.

These instances are not the only incidents of fall out of FSSA, but only a few which saw the light of the day; many such instances go unreported owing to so many reasons. All these instances go unheeded and also raise a question if state owned enterprises are exempt from the purview of the Act. In spite of the Act being in place for more than a decade, we are not able to prevent deaths and injuries caused due to unsafe food. At this juncture the author is sceptical about the effective implementation of the Act and has thus undertaken to study the difficulties involved in the implementation of the Act.

28. Deccan Herald, Bangalore Edition 'When health is at stake' dated 5th April 2017.  
 29. Ibid 'Lizard in midday meal, 95 students fall ill', dated 13th December 2018  
 30. Ibid 'Poison-laced 'prasada' kills 12 at temple', dated 15th December 2018  
 31. Ibid 'Over 100 kids ill after eating midday meal', dated 21st December 2018  
 32. Ibid 'Lizard in dinner:Over 100 kids ill', dated 1st January 2019  
 33. Ibid 'What is on the menu? Anna sambar, worms and stones', dated 2nd January 2019.  
 34. Ibid '2 women die after eating prasada, 10 in hospital' dated 27th January 2019.

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#### IV. CHALLENGES FACED IN THE IMPLEMENTATION OF FSSA

- In India, food industry is of different sizes such as the organised sector, small scale and unorganised sector, though the small scale sector and domestic market in itself is quite large. The requisites of standards in each sector are different. The food chain is infested with various stake holders ranging from a small farmer to street vendors to retailers to the big industrialists. The protocol for standardisation of food articles should keep in mind the actual users of these standards, environment, the culture and the present infrastructure of the country which seems to have been overlooked by the legislators.
- The major stumbling block for the implementation of the Act is the population of India which is 127,42,39,769, and is 17.25 per cent of the global population<sup>35</sup> and accounts for a third of the world's poor as remarked by the World Bank<sup>36</sup> earlier this year. When one third of the people are living below poverty line, access to food in itself is a major challenge and the concept of 'food safety' is a far cry. The cascading effect of poverty is illiteracy because of which not many people are not aware of FSSA. Though, this Act was enacted in 2006 - a decade ago, till today consumer awareness about this legislation in urban areas is very poor and nil among ruralites. People came to know about the existence of this Act only after the Maggi noodles incident which took place in June 2015.
- The FSSA has used certain expressions without defining them because of which confusions galore. Expressions like 'Good Manufacturing Practices', 'Good Hygienic Practices' and 'Hazard Analysis and Critical Control Point' have not been defined at all.
- Another glaring loophole is that the Act expressly exempts the animal feed and standing crops or plants prior to harvesting<sup>37</sup> from its purview. It is common knowledge that pesticides, insecticides find their way into the animal feed and also into the end agricultural produce. An effort to achieve food safety must be a comprehensive endeavour. Food safety can be achieved only by initiating reforms in agricultural practice, dairy sector and poultry farming. The expression 'sub-standard'<sup>38</sup> is not well articulated and states that even if the food article does not meet the standards set by this Act, the food is still not considered unsafe. If this is the case, then there is no point in subjecting the food to test to see if they will meet the requirement under the law.

35. Jansankhya Sthirata Kosh or National Population Stabilisation Fund (NPSF) 2017

36. [planningcommission.nic.in/reports/genrep/rep\\_hasim1701.pdf](http://planningcommission.nic.in/reports/genrep/rep_hasim1701.pdf) (accessed on 21/12/2014 at 8.00am)

37. FSSA Sec 3(1) (f)

38. *Ibid* Sec 3 (1) (zx) 'Sub-standard', an article of food shall be deemed to be sub-standard if it does not meet the specified standards but not so as to render the article of food unsafe.

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- In Europe, US and other developed countries it is mandated that only food grade lubricants and greases are to be used in plant and machinery which manufacture, process and pack the food, drinks, water and dairy products. Industrial lubricants, which are widely used even in food industries contain petroleum base oils and additives which generally have toxic substance which might dangerously contaminate food items causing severe health hazards. In US, to avoid this probable toxic contamination of food, only food grade lubricant like NSF<sup>39</sup> approved in US, are mandated by statutory bodies. In India no such regulations are mandated either by the Food Ministry or FSSAI, hence most plants of food process industry are using toxic industrial grade lubricants. Many smart food processing plants procure small pack of food grade lubricant to show during inspection and audits but 99% plants are using non food grade lubricants which are very toxic.
- The adoption of the international level standards<sup>40</sup> without preparing the domestic food industry will pose challenges for effective implementation of the Act. Gradual and steady harmonisation of domestic scenario with international regulations, keeping national interests in mind is the need of the hour. The small and medium scale industries may not keep track of the regulatory changes which make it difficult for them to identify the procedural and compliance changes introduced by the Act. In line with the popular adage 'slow and steady wins the race', at the outset the government must upgrade the local set up before trying to achieve the higher targets as set out by the provisions of the FSSAI. The gap between the existing system and the standards set by the Act will have to be cemented first before taking a leap. The government must realize that there is no point in setting higher targets and not able to reach them.
- Street Food hawkers in India are a major challenge in the implementation of FSSAI, who are generally unaware of food regulations and have no formal training in food handling. They also lack support services such as good-quality water supply, sanitary facility and waste disposal systems, which hinder their ability to provide safe food. Although standards are specified for water to be used as an input in the processing/preparation of food, the FSSAI does not specify standards for potable water, which is usually provided by local authorities. Thus, the food providers have to shoulder the responsibility of ensuring that clean water is used, even when tap water may not meet the required safety standards. This is a tall order for small food enterprises and street food vendors.
- Costs also rise if each vendor invests in water purification systems. If such facilities were provided to food vendors by the state authorities as it happens

39. National Sanitation Foundation is an independent, non-profit organization that certifies food service equipment and ensures it is designed and constructed in a way that promotes food safety. NSF is internationally recognized.

40. Codex Standards



in Malaysia and Singapore, India might be more successful in ensuring that this sector also maintains acceptable standards of hygiene and cleanliness. In a survey conducted by the Maharashtra government health department in 2006 it was shown that up to 20-25% of household food expenditure is incurred outside the home and some sections of the population depend entirely on street foods. There are millions of single workers without families and a large floating population who move in and out of the city for various purposes. These people largely depend on street foods for their daily sustenance from places of work, hospitals, railway stations and bus terminals. The food at these shanties are generally prepared and sold under unhygienic conditions, with limited access to safe water, sanitary services and garbage disposal facilities. Hence street foods pose a high risk of food poisoning due to microbial contamination, as well as improper use of food additives, adulteration and environmental contamination.

- An important CAC guide lines for food processing companies is to follow a food quality management system called Hazard Analysis and Critical Control Points (HACCP). Most of the countries have adopted the Codex Alimentarius Commission's guidelines, but unfortunately in India, FSSAI has not been successful in ensuring that all food processing industries follow this guide line.
- The Tiffin suppliers who are popularly known as Dabbawalas in Mumbai<sup>41</sup>, how will the same food safety laws be applied to them. If applied, the Act will restrict the manufacture and supply of economically priced food that serve millions of poor consumers and office-goers every day. The Act does not differentiate between the food products being manufactured by the agribusiness companies and the food products being sold by street hawkers and dhabas<sup>42</sup> that dot the national highways. *"Both organised sector and*

41. A dabbawala is a person in Mumbai, India, whose job is carrying and delivering freshly-made food from home in lunch boxes to office workers. They are formally known as MTBBSA (Mumbai Tiffin Box Suppliers Association), but most people refer to them as the dabbawalas. The dabbawalas originated when India was under British rule. Since many British people who came to India did not like the local food, a service was set up to bring lunch to their offices straight from their home. The 100-odd dabbas (or lunch boxes) of those days were carried around in horse-drawn trams and delivered in the Fort area, which housed important offices. Today, businessmen in modern Mumbai use this service and have become the main customers of the dabbawalas. In fact, the 5,000-strong workforce (there are a handful of women) is so well-known that Prince Charles of England paid them a visit during his recent trip to India. Several academic institutions regularly invite the dabbawalas' representatives for discussion, and to complement and enhance their academic content. At times, businesses find it useful to illustrate the application of how such a system uses Six Sigma principles to improve its operations. White Paper prepared by MBA Students at The University of North Carolina's Kenan-Flagler Business School. Nishesh Patel and Naveen Vedula <http://mumbaidabbawala.in/> (accessed on 9/2/2017 at 8.00pm)

42. Dhaba is the name given to roadside restaurants in India and Pakistan. They are situated on highways and generally serve local cuisine. [www.oxforddictionaries.com/definition/english/dhaba](http://www.oxforddictionaries.com/definition/english/dhaba).

  
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*unorganised sector are required to follow the same law with regard to specifications on ingredients, traceability and food recall procedures which is very difficult for unorganised sector entities like street vendors and small hawkers*<sup>43</sup>. While the general prescriptions and regulations spelled out by the Act, meet the requirements of the agribusiness companies, the same cannot be blindly applied to the small-time hawkers that provide cheaper food to the working class in the urban centres. These food vendors are the lifeline of economically disadvantaged people in urban areas who have no access to kitchen.

- The other challenge is the kind of materials used for storage and packing of food. Often food articles are packed in plastic or polythene wrappers which may not be of food grade. The beverages and water packing bottles have no controls which can result in seepage of toxins into liquids and the food packed. Regulation 2.3.14(2), The Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011, expressly prohibits the use of plastic articles in commercial establishments, for the purpose of sale or serving of food. Plastic articles of any form may be the plastic articles used in catering and cutlery, unless the plastic material conforms to the food grade. Even today, food establishments ranging from street hawkers to the posh restaurants have the fancy of serving the food in plastic plates and packing the food parcels using plastic sheet or plastic containers. For instance, Indira Canteens in Karnataka, is a state owned venture, feeds the people with subsidised food. At these canteens, hot food is served in plastic plates though FSSAI's Regulations clearly demonstrate that plastic should not be used either in packing or serving the food, as the hot food, when it comes in contact with plastic, plastic will react & release toxins and the food will turn carcinogenic and will not be fit for human consumption. The 'charity should begin at home first'. First, the state owned ventures/enterprises should give impetus to the guidelines stipulated by FSSAI.

#### V. SUGGESTIONS FOR THE EFFECTIVE IMPLEMENTATION OF FSSA

One of the basic requirements for the effective implementation of the Act is

1. To set up fully equipped laboratories and providing trained manpower to operate them. All testing has to be conducted only in accredited laboratories as at present not all the public sector food laboratories are accredited. FSSAI commissioned a gap analysis study for up gradation of 50 food laboratories under the Central and State government. The study indicated that *there is an urgent need to upgrade the infrastructure, strengthen staffing and training inputs and put in place more reliable laboratory management and operational procedures. The sub-group addressed that a network of efficient laboratories is the backbone of any credible food safety initiative. Most of the existing food laboratories lack*

43. Ravulapti Madhavi, "Is Food Safety Lurking in The Food Safety and Standards Act 2006?" Supreme Court Journal, [8th May to 12th June, 2008], Vol. 4.

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*infrastructure and facilities for testing of residues, heavy metals and microbiological parameters*<sup>44</sup>.

3. It is heartening to note that food testing science and technology is continuously evolving each day. The advanced and hi tech instrumentation and techniques to detect the minute levels of adulterants and undesirable substances in food articles demands sophistication right from the beginning like say, sampling and handling of sampling. With the advancement of technology, globally the legislations dealing with food have become more stringent than ever before and demanding the food industry to cope up with the thus set high standards as far as the quality of food is concerned. But lack of skilled human resource and adequate infrastructure circumvent this.
  4. The FSSAI and its allied committees namely, scientific committees, scientific panels, the central advisory committee require very efficient and highly skilled staff which are hard to come by.
  5. Adding fuel to fire is the changing scenario of food standards and their typical rigid requirements do not reach rural India where major portion of Indian population resides in rural India. Farming community is unaware of the unhealthy inputs that should be avoided in the farming practice in the form of insecticide, pesticides and chemical fertilisers, as it is a common knowledge that whatever goes in has to manifest in the final product, if the raw material for the food processing industries are adulterated, it is imminent danger that the end product will also be laced with adulterants.
  6. *Though agricultural extension services are established across the country, neither they provide information about the prevailing national and international standards nor do they assist the farmers by imparting technical knowledge about changing the cultivation practices and patterns to meet these standards*<sup>45</sup>. In order to set the standards for food, the availability of true and updated data not only on consumer related indicator but also on ingredient related indicators is crucial.
  7. In one of the studies conducted by the Federation of Indian Chambers of Commerce and Industry, the interviewed respondents strongly opined that since reliable data for the consumption of food is not available, the FSSAI should be mandated to embark on a comprehensive monitoring of data relating to the levels of food additives, contaminant levels and health survey and information & data regarding the hazards in the food industry and their source must also be collected and acted upon at once<sup>46</sup>.
  8. Campaigns should be conducted by both the state and central government creating mass awareness among the people about the need for food safety which ultimately results in healthy citizenry.
44. Government of India, Report of the Working Group on Drugs and Food Regulation for 12th year Plan, No 2(6)2010, Planning Commission, New Delhi, May 2011 at p 41
45. Sheeba Pillai, 'RIGHT TO SAFE FOOD: LAWS AND REMEDIES' Vol. 41, No. 2, Ban.L.J. (2012) 119-135
46. FICCI, 'Study on Implementation of Food Safety Standards Act- An Industry Perspective', May 2007 available at [foodsafetynews.filters.wordpress.com](http://foodsafetynews.filters.wordpress.com) (accessed on 9/2/2017 at 8.00pm)

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9. Agriculture should be prioritised which in turn will boost the food production. Only if there is enough supply of agricultural produce in the market, we can contemplate safe food and not when we have hungry bellies to feed as it is a common scenario that poor will consume anything. As an indirect approach to this, poverty alleviation programmes should be initiated profusely to increase the living conditions.
10. Farmers should be encouraged to desist from the rampant and unscrupulous use of chemical fertilizers and the government should incentivise the farmers to employ organic farming.
11. Good interaction with the food industry is the need of the hour while ensuring compliance as well as understanding the limitations that may exist.
12. It is not out of place to mention about the necessity to maintain cleanliness of the wash rooms in the eateries. These wash rooms are the breeding ground of bacteria and other pathogens, which can spread to even the eating place and also the kitchen, where the food is cooked. In most of the hotels, wash rooms are not kept clean. The authorities under the FSSA should not only look at the cleanliness in the kitchen but should also ensure cleanliness of the wash rooms.

## VI. CONCLUSION

Food adulteration is common in India. Even milk, consumed primarily by children, isn't spared. What's particularly worrying the author is, the kind of substances employed to adulterate, including toxic chemicals. This shows that the trade off between the risk of getting caught and the 'reward' of huge profits is skewed heavily in favour of the adulterator. The government must focus on raising the risks to the adulterator. One way of doing this is by hiking the penalty, including making it analogous to attempt to murder in extreme cases. It's equally important to regularly check foodstuff for its safety and adulteration and ensure speedy trials. It is appalling that though the object of this Act is to maintain the standards for the food and make it safe for the human consumption, yet the same has remained a distant mirage. The death and injury to human beings due to contaminated or adulterated food is not a stray case, questioning the very purpose of the Act.

The struggle of a common man to ensure safe food has become a constant litany in vain. The business of making food appear appealing and attractive often spoils the quality of what we eat. To make nation healthy, every citizen must be able to buy food that is safe and free from contamination. Food security cannot be guaranteed merely by providing a certain quantity of grain to each family but by ensuring that every grain that is distributed is wholesome and nourishing and not noxious. The ideology of food safety is a composite one beyond merely making the grain available physically. There is no point in having a legislation which has failed to give relief as contemplated by it. The authorities established under this Act have turned out to be only white elephants and eating up a major portion of our economic resources without doing much.

  
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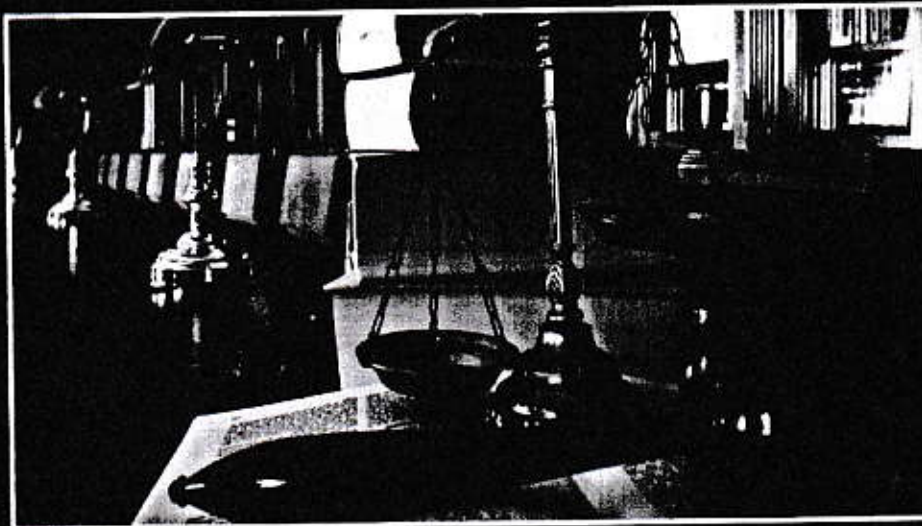


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# Special Economic Zones and Labour Laws in India

Dr. Sumithra. R\*

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## ABSTRACT

The migration of people from rural areas to the urban areas in search of better pastures has given rise to a varied form of exploitation of the man power. The people in order to make both ends meet in urban areas go the extra mile even to the extent of pushing themselves to the brink of exploitation. They are compelled to do so as the same is inevitable. The helplessness of these people is taken undue advantage of by the people who have set up their business enterprises in the Special Economic Zones. The statute enabling the setting up of Special Economic Zones has not exempted the application of labour laws there, yet, they are almost entirely absent. The study undertakes the different kinds of exploitation that the people working there are subjected to. Thousands of workers, try to earn their living in an atmosphere of unsecure employment and uncertainty. This is one of the problems that the urbanisation has led to and ultimately has resulted in urban impoverishment.

## INTRODUCTION

At the outset, the main aim of all our labour legislations is to safeguard the interests of our labour force. These labour legislations have unqualified application to the entire workforce. But this is not true in reality, as there are few islands that are created by the enabling legislation where these labour laws are either flagrantly violated or partially adopted but majorly omitted. These islands are Special Economic Zones (SEZ) which are supposed to be the saviours of our economy as they allege to create more employment opportunities, bring in investments both from outside the country as well as local investors thus boosting the economy, to bring in more foreign exchange and better technology. India copied the idea of SEZ from its neighbour China, where SEZs have contributed 22% of China's GDP, 45% of total national foreign direct investment, and 60% of exports. In China, SEZs have created over 30 million jobs, has increased the income of participating farmers by 30% and boosted industrialization, agricultural modernization, and urbanization. In India Special Economic Zones, Act was passed in 2005 by the Central government which resulted in setting up of SEZ in different parts of the country. As the subject of labour comes

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under the Concurrent list, the respective state governments are also authorised to pass their legislations based on the central legislations, modifying the same to suit their needs. The objective of this paper is to highlight the resultant conflict between globalisation and labour exploitation in the enterprises situated in SEZs.

After the setting up of these SEZs in India, the successive governments have been highlighting only one face of these SEZs ignoring the fact that the labour laws are flagrantly violated in these SEZs. But the Ministry of Commerce and Industry in its letter to the Press Information Bureau dated 07<sup>th</sup> August 2015, has very clearly stated that "the Central Government shall have no authority to relax any law relating to the welfare of the labour in the SEZs. All Labour laws are applicable in Special Economic Zones. The rights of the workers/labour are therefore protected under the SEZs Act. Ongoing review and reform, as necessary, of Government policy and procedure is inherent to Public Policy. The Government, on the basis of inputs/suggestions received from stakeholders on the policy and operational framework of the SEZ Scheme, periodically reviews the policy and operational framework of SEZs and takes necessary measures so as to facilitate speedy and effective implementation of SEZ policy".

#### NEED FOR THE STUDY

The Researcher finds the need to study this topic because of the flagrant violation of the labour laws in the SEZs, one of the results of the urbanisation. SEZs will be set up only in the urban areas congesting the already scrawny resources. SEZs have become the islands of non application of labour laws. The Researcher only hopes that these anomalies will be avoided in the labour code which is in the offing.

#### OBJECTIVE OF THE STUDY

Objective of the study is to find out various ways in which the basic rights of the workmen are violated and how the labour laws are being buried in the SEZs. Workmen still go to work in these SEZs owing to large scale displacement of the people from the rural areas to urban areas in search of better pastures.

#### METHODOLOGY ADOPTED

The methodology adopted is doctrinal based on both primary sources like judgements, Acts, decisions of the court, law commission reports and Secondary sources like journals, articles.

#### What are SEZs

SEZ is a designated geographical area where widespread/extensive infrastructural facilities, fiscal support and logistics support is extended by the state to enterprises to set up their business in these zones to promote the manufacture of goods for exports and to create more employment opportunities for the localities. SEZs can also be described as a geographical region that has economic laws that are more

  
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liberal than a country's typical economic laws. SEZs in India were established to instil confidence in the investors (both foreign and domestic), to generate greater economic activity and employment. The objectives of the SEZs also extend to promotion of export of goods and services, development of infrastructure. SEZ Act, 2005 is an enabling legislation for the creation of SEZs.

### Need for SEZs

SEZs are supposed to act as a medium by not only attracting the companies and enterprises from different countries which are looking out for cheaper, economic and efficient location to establish their offshore business, but it also encourages the local business enterprises to improve their export with the aid of new foreign partners at competitive price through a proper channel. The states in turn will have to offer relaxed tax and tariff policies which are different from the rest of the economic areas in the country, like duty free import of raw materials and tax exemption on the exports by the industries set up in the SEZs.

Though the SEZ Act, 2005 over rides some laws like providing financial benefits to enterprises located in SEZ, the Act mandates that in relation to labour and other standard/statutory labour laws will continue to be applicable in the SEZ. But the implementation of labour laws in these zones is not to be done by the Labour commissioner but by the Development Commissioner of SEZ, who has been conferred with substantial power over all aspects of governance of the SEZ. Economic reforms initiated by successive governments and the proliferation of SEZs in various parts of the country were thought to generate millions and millions of job avenues. The ensuing employment generation was supposed to compensate for the huge revenue losses suffered by the state, the sweeping displacement of the farmers and regional economic disparities. But the implementation of the SEZ Act, 2005 has pointed towards the serious apprehensions on the working conditions of the workers at the SEZs.

The Researcher is appalled about the kind of employment that exists in these SEZs that lures the investors with the promise of cheap labour and forced work environment. It is to anybody's guess that the SEZs promise of low-cost labour and a peaceful working environment will entice the investors to forego the interests of the workmen working in the SEZs. Even a thorough reading of SEZ Act does not establish if the labour laws governing the entire country are the same as those applicable to workers working in these SEZs. But on a closer inspection, it becomes obvious that workers working in the SEZs are subjected to a customized regime which omits the applicability of majority of the labour laws. One of the tools adopted by the employers to circumvent the application of labour laws is to hire the workmen on contract basis as casual labourers than the regular workmen. "Any attempt to dilute the constitutional imperatives in order to promote the so called trends of Globalization may result in precarious consequences. At this critical juncture the judge's duty is to uphold the Constitutional focus on Social justice without being in any way misled by the glitz and glare of globalisation".

  
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### Objectives of the SEZs

The first and the foremost objective as contemplated by the SEZ Act, 2005 is to create multi fold employment opportunities to both skilled and unskilled workers. The setting up of SEZs leads to a both direct and indirect employment opportunities. Once a SEZ is set up, the areas and localities in and around it will automatically witness development in the form of townships and the establishments of commercial ventures. Over a period of time, the vicinity becomes a hub of economic activities like malls, commercial complexes and amusement parks. All these could be considered as large scale indirect employment opportunities and sources of income. People who are unskilled will be absorbed in these establishments as we have been witnessing mass exodus of people from rural areas to urban areas in search of better opportunities.

The second objective is to attract the foreign investors by extending liberal trade policies, tax exemptions on returns on exports, exemption of custom duty on imports, exemption of income tax for a specified period of time. All these in turn will boost the exports and our local tradesmen may also be benefitted indirectly in terms of supplying goods to them. But unfortunately, the goods manufactured in these SEZs are primarily meant for export and never enter our local markets. We sacrifice the interests of our workforce to satisfy the needs of foreigners and foreign establishments, it is like 'Rob Peter to pay Paul'.

### Reason Behind Exempting the SEZs from the Application of Labour Laws

With the SEZ's endeavour to push for labour intensive export oriented consumer goods, the enterprise is located at the border between the formal and the informal sector, drawing the labour force from the agricultural sector. The moment a person is employed, he becomes entitled for all statutory benefits available for a workman in a formal sector, which in turn automatically escalates the production cost and can also dampen the national and international investment. Given the Indian labour law as well as the structure of the enabling law associated with SEZs, the available solution in such a situation has been to overcome the practice of law in a manner minimizing the coverage of labour law without actually challenging the law.

The SEZ Act 2005 received the assent of the President on 23/6/2005. Though the Act is unspoken about the labour laws that are to govern the rights of the workers in SEZs, a cursory reading of the Act reveals that the labour regime with respect to their rights has not been altered. But, upon close inspection of the administrative documents submitted by states, it is clear that the regulatory regime applicable to the labour force in the SEZs has been considerably modified to suit and to protect the interest of the investors.

### Short Comings of SEZ Act, 2005

Though SEZ Act, 2005, is a special legislation enacted for the establishment and administration of the SEZ s still it suffers from some of the following lacunae.

  
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### Shift of Power from the Labour Commissioner to the Development Commissioner

The Act has ousted the labour commissioner of his powers, authority and jurisdiction over the SEZs. Section 12 (3) of SEZ Act, 2005 has conferred the administrative control and power in SEZs on the Development Commissioner, who is also invested with the powers of the head of the Unit Approval Committee. This committee looks into the grant of licences and registration of the unit, resolution of commercial disputes and also disputes between the developer and the unit. The Government in an attempt to ensure smooth and uninterrupted functioning of the SEZs without any hindrances as regard labour issues has transferred the administrative powers of the Labour Commissioners to the Development Commissioner. This is done to support the Foreign Direct Investment, because it is the primary responsibility of the Development Commissioner to see to it that the enterprises in SEZ function without any hindrances, disturbances and interruptions and to make sure that the SEZs turn out ample earnings. Hence, there any form of labour rights redressal mechanism is only in paper and is conspicuous by its absence.

### Deprivation of the Labour Courts of their Jurisdiction on SEZs

The SEZ act, 2005 has curtailed the Labour Courts of their jurisdiction to entertain disputes emanating from SEZs and has instead created a Special Court under 23(1). The state government may with the concurrence of the High Court or the Chief Justice is empowered to designate one or more courts to try suits of civil nature arising in SEZs and also notified offences committed in the SEZs. The Act has completely barred any other court other than the designated court to try any suit.

### Working Conditions and Minimum Wages

The motto behind setting up any SEZ is un-disputably profit making. SEZ Act does not speak about the implementation of the Minimum Wages Act, 1948 in SEZ, it gives an opportunity to the employers to exploit and pay the wages which are far more less than prescribed by the Minimum Wages Act, 1948. It is documented that the minimum wages are generally not paid in any SEZ and the working conditions are also inhuman. More often, the workers are made to work extra without any extra financial benefit. There are instances where the employer categorises the workmen as apprentices beyond the permissible limit and escapes from the payment of proper wages. There are instances reported where a worker has been an apprentice for 6-7 years. There will be an inordinate delay in absorbing them as a regular employee only to dodge the payment of minimum wages to them. The absence of facilities such as, recreational facilities, canteen, crèche or dining space to provide decent working conditions to workers is common in most of the units in SEZ.

*Occupational hazards, stiff targets, overwork and unhealthy working environment take a toll on the health of worker.* In fact, the SEZ units are mandated to furnish the consolidated annual reports in the prescribed form to the Development Commissioner which includes the periodical / statutory returns required by the Workman's Compensation Act,



Payment of Minimum Wages Act, 1948. These returns can be construed as a self certification regarding the payment of minimum wages in the SEZ which is also a conclusive proof as to the payment of minimum wages. It accords blanket immunity to the employer against the violation of Minimum Wages Act. It is an irony that even after the government extends all kinds of support to the SEZs, there is no government report on the current status of wages or the social security of the workers working in units of SEZ. Studies have shown that Minimum Wages Act, 1948 has been implemented only on the paper as far as SEZs are concerned. Social security and Labour welfare measures like Provident Fund, ESI and bonus are limited only to the regular workers.

### PROHIBITION OF TRADE UNIONS

Article 19 (1) (c) of Indian Constitution guarantees the fundamental right to form association and unions. The right to form association implies the right to form trade unions. Trade Unions Act, 1926 and the Industrial Disputes Act, 1948 (ID Act) legalise the right of the workers to form an association or a union and bargain collectively notwithstanding the restrictions on certain employments including those in the government sector. Section 22 (2) of the Trade Unions Act, 1926 stipulates that not more than one third of the office bearers or five of them, whichever is less can be persons who are not employed in that particular enterprise and they could be outsiders. So, in principle, 50 percent of the office bearers of a trade union could be people not working in a particular industry. But, to make matters worse, the state governments are making major changes to the labour laws only for the SEZs, wherein it is proposed that the outsiders will not be allowed into the trade unions in SEZs resulting in a monopolistic - employer sponsored trade union and as can be gauged by anybody they will act as the mediator of the employers to repress the legitimate struggle by the workers. So if the non workers do not have an access / entry into the SEZ, the dream of forming an association or a union is a far cry and is a hallucination. On top of it, the state governments are making major amendments to the labour laws for the SEZs, where it is proposed that outsiders will not be allowed in trade unions in SEZs with the consequence that employer sponsored trade unions shall have the monopoly and will act as the agents of the employers to suppress any genuine labour struggle. Many of the times, workers are sacked for having demanded the implementation of ID Act and the Trade Unions Act, 1926.

### BAN ON STRIKES

A major reduction in labour laws in SEZs is that, SEZ Rules, 2006 direct the governments to declare all activities in the SEZ as "Public Utility Services". Since the subject matter of labour is under the concurrent list, both the Central government and the state government have the power to make laws with respect to it. Through amendment majority of the states have notified and placed the industries in First Schedule of the ID Act. Section 2(n) (vi) of the I D Act, authorises the government to declare in the public interest, an industry as a "Public Utility Service", implying that the workers

  
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cannot go on strike in the ordinary course. This is one of the controlling mechanism adopted to thwart the labour rights available to the workers though under the ID Act workers have the restricted right to strike. The workers are not allowed to strike the work unless they give a six weeks advance notice and also not during the conciliation proceedings. A strike by public utility workers shall be construed illegal if it is called for in contravention of Section 22 of the ID Act.

### UNCERTAINTY OF EMPLOYMENT/ JOB INSECURITY

As we have already noted, there are no trade unions in the SEZs which is blessing in disguise for the employers. The employees in the SEZ are at the mercy of the employer to retain their job. The employers hire and fire the employees at their whims and fancies jeopardising the job stability of the employees. Fact finding reports have exposed that even if there are any unions, the leaders are hand in gloves with the employers and as we have already mentioned in the trade unions at these SEZs, the employers enjoy the monopolistic rights and the leaders will act as the agents of the employers. There are instances reported wherein the conditions that are stipulated under Section 25F of the ID Act were also not met because the prevailing ID Act in practice in SEZ has no applicability in this regard. The workers may not be reinstated and back wages may not be paid even then, these workmen are barred from going to the labour court as per the dictum of SEZ, Act.

It has been observed that most of casual or contractual workers are not even given any formal appointment letters, contract papers or proper identity cards as proof of employment. Since workers do not possess records or proofs of employment, they can be hired and terminated without any reason. These contractual employees are not directly hired by the units in SEZs but through a Labour Contractor. Most of the times the same contractor supplies the labour force especially the unskilled and the menial staff to the entire SEZ. So even if the workmen change their job, invariably they will be under the same contractor not resulting in much of change in terms of conditions of employment or the wages. Wages due to the workers are paid to the contractor and the contractor in turn pays the same to the workers but not before deducting his commission. There is another gruelling truth that is the practice of employing the workers only on contractual basis and the job lasts for only 8-10 months then the contract gets terminated. These workers are again re-inducted in 2-3 months again on a contractual basis. This is done to ensure that they are not the workers for one full year which entitles them to all labour benefits. This is done to disturb their continuity of employment.

### MISERABLE STATE OF WOMEN WORKERS

The concept of empowerment of women through employment in the SEZs is a mere misnomer. Majority of the hired workforce is women workers who are contractual labourers and they lack bargaining power resulting in their exploitation. Though the authorities claim that there is no gender discrimination in wages paid to the men and women workers, but in practice, discrimination does exist. The wages paid to



women is proportionately less compared to men folk. The labour department does not have much power to control these menace in SEZs as these are protective zones. The companies prefer to employ young women who are unmarried as they will be immune from family responsibilities which mean long working shifts, no maternity benefits etc.

The stress is on minimising the production cost by employing the available cheap labour so that prices remain competitive in the global market. It is the labour that suffers the brunt of tight competition in the international market. To meet the production targets, women are compelled to work harder and longer until they burn out or quit. Another study conducted by Mr Swaminathan in 2005 reveals "*the crucial situation of women workers in SEZs, as they suffered from frequent headaches due to tension and intense concentration at work place, acute back pain, joint pain, swelling in the legs, severe abdominal pain, various types of allergies, skin ailments and piles*" (the result of sitting in the same position for hours). Non-implementation of social security measures in SEZs is evident. All these will ultimately result in job insecurity, high work pressure and stress and not surprisingly, premature burnout. A fact finding report on the workers and environment impact of Falta SEZ in West Bengal, located at around 55 kilometres from the heart of Calcutta city stated that there are no mechanisms for addressing these women workers grievances, and a life of low wages, permanent job insecurity and hazardous working conditions is what these workers face. Now that the governments have allowed the women to work in night shifts, women are even more vulnerable to varied hazards.

Cases of sexual harassment have also been reported by a large number of women labourers. An intensive study conducted by the Society for Participatory Research in Asia (2000) on SEZ units has observed that the problems of sexual harassment are rampant but not reported due to prevailing social stigma. The supervisors in the units are generally male and they use highly objectionable language, with female workers. It has also been reported that if a female worker is not able to meet the set production target, the supervisors even abuse them physically. Supervisors and contractors have been delegated with power to terminate any casual/contract worker, and this in turn creates fear and insecurity among female workers and can also lead to their sexual exploitation. Most of the times, if a female worker gets pregnant, her employment is terminated.

### CONCLUSION

SEZs do offer a glimpse of world-class industrial infrastructure. However, beneath the entire slick looking infrastructure, one cannot hide the truth of working conditions and the dismal status of workers. *It is evident that SEZ Act has contributed in non-implementation of labour laws and has encouraged it to a large extent. Various provisions of SEZ Act have ensured that the voice of the workers will go unheard. Political economy has created new citizenship, as it is visible in SEZ units.* It has been observed that, the workers are not voicing their ire/ agony primarily due to the availability of the surplus labour at even more lower wages which has been further fuelled by the

  
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absence of trade unions in SEZs. Workers are more often than not are compelled to pose a rosy picture of their work place when the factory inspectors or enquiry commissions come calling them. Units located in SEZs are declared to be public utilities which has restricted the right of work men to go on strike and has reduced the scope for collective bargaining by the workers. All these have resulted in exploitative work culture in SEZs, mainly with regard to the unorganised labour market. Consequently all this will impact the real development of the country negatively. Welfare measures should be undertaken rampantly in the SEZs so that the working conditions could be improved.

The SEZs have only strengthened the hands of the corporate elites which are already an enriched class. SEZs portray a lacklustre form of administrative affairs. The Researcher is mystified as to whether the trade liberalization and the proliferation of SEZs which sought to generate heightened economic activity and employment opportunities, is worth the miserable plight of the workers. Globalisation which is an engine for growth ought to benefit all people and should prove to be a boon and not a bane. It is not globalisation per se but the unfair and damaging effect from the way it is developing that is the humanitarian problem. The islands of labour law anarchy in the form of no labour law implementation, created by the SEZ Act should be stopped. The Researcher only hopes that the labour code which is on the anvil will address this anomaly.

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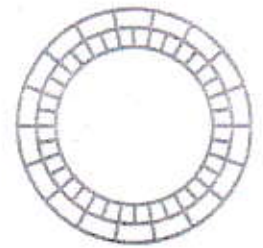
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## **HUMAN RIGHTS DIMENSION IN FREEDOM OF RELIGION AND NEW DIMENSION OF SECULARISM IN INDIA**

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## HUMAN RIGHTS DIMENSION IN FREEDOM OF RELIGION AND NEW DIMENSION OF SECULARISM IN INDIA

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Sadashivappa M.S\* & Dr. M.S. Benjamin\*\*

### ABSTRACT

Human Rights may be regarded as those fundamental and inalienable rights which are essential for life as Human being. Human rights are the rights which are possessed by every human being irrespective of his or her Nationality, Race, Religion, Sex etc., simply because he or she is a human being. Human rights are the foundation of all basic freedoms, liberties, justice, democracy and rule of law in the world. They are necessary to preserve, protect and promote peace in the world.

Freedom of religion is a principle that supports the freedom of an individual or community, in public or private to manifest religion or belief in teaching, practice, worship and observance. Freedom of religion is protected under various International instruments and under various provisions of Indian Constitution. In India every person has right to freedom to choose and practice his or her religion. Freedom of worship-of belief and non- belief is an important element of democracy, contributing to social peace, encouraging full political participation.

In India judiciary has played pivotal role in protection of basic human rights and fundamental freedoms by recognizing freedom of religion includes freedom of conversion also, which may play a significant role in the judicial history concerning protection of human rights particularly right to freedom of religion.

In this Article Author will discuss the new dimension of secularism, reason for conversion, Untouchability, religious fundamentalism, fanaticism, targeting religious minorities, religious hate speech which are hurdle to the National growth and internal security.

**Keywords: Human Rights, Secularism, Freedom Of Religion.**

  
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## INTRODUCTION

Human Rights may be regarded as those fundamental and inalienable rights which are essential for life as Human being. Human rights are the rights which are possessed by every human being irrespective of his or her Nationality, Race, Religion, Sex etc., simply because he or she is a human being. Human rights are thus, those rights which are inherent in our nature and without which we cannot live as human beings. Human rights are sometimes called fundamental rights or birth rights or basic rights or inherent rights or natural rights. Human Rights take new forms according to the changing requirements and needs of contemporary times.

Freedom of religion is a principle that supports the freedom of an individual or community, in public or private to manifest religion or belief in teaching, practice, worship and observance. Freedom of religion is protected under various International instruments and under various provisions of Indian Constitution. The Indian Constitution provides for the religious liberty of both the individual and associations of individual united by common beliefs, practices and discipline. The freedom of religion guaranteed by the Indian Constitution is not confined to citizens but extends to all persons including aliens. Thus religion refers to the body of ideas as well as the practices and performances peculiar to a religion.<sup>1</sup> It is considered by many people and most nations to be a fundamental human right.

Religion is a fundamental human right that protects the conscience of all people. The freedom of religion guaranteed by the Indian Constitution is subject to various restrictions. Religion is commonly but not always associated with a particular system of faith and worship of a transcendent deity or deities. In human rights discourse it includes support for the right to non-religious beliefs, such as atheism or agnosticism. In 1993 the Human Rights Committee described religion or belief as theistic, non -theistic and atheistic beliefs as well as the right not to profess any religion or belief. Freedom of worship-of belief and non- belief is an important element of democracy, contributing to social peace, encouraging full political participation. Religious tolerance and equal treatment of all religious groups and protection of their life and property and places of their worship are an essential part of secularism enshrined in our Constitution.

### Meaning of Freedom of Religion

The word 'Religion' which comes from the Latin word 'Religare' means 'to tie,' 'to bind fast'

<sup>1</sup> Ratilal Gandhi's case-1954- AIR-388.

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religion is a system of belief in the existence of supernatural beings. According to 'Emile Durkheim' Religion is a 'unified system of beliefs and practices relative to sacred things.' It is difficult to define the term religion; however it may be described as 'Man's faith in a power beyond himself' or a belief in an Everlasting God', who manages the affairs in the world and gives reward or punishment to beings according to their Actions. What constitutes essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself, which are subject to judicial scrutiny for this purpose.<sup>2</sup>

In the case of *Davis V. Benson*<sup>3</sup> the U.S. Supreme justice Field observed that the term religion has reference to one's views of his relations to his CREATOR and the obligations they impose of reverence for his being and character and of obedience to his will. Constitution of India does not define the term religion. In Indian context, it is not always enough to say the term religion as reference to one's views of his relation to his creator, because a religion like Buddhism or Jainism does not believe in God or Creator. Thus the word 'Religion' is not to be confined to a system of beliefs, tenets or doctrines but should be seemed to include the scheme of forms, rites and ceremonies forming part of a religion or religious denomination or sect.

### Historical Background Of Human Rights And Freedom Of Religion

In the development of the idea of the Fundamental rights of man, the notion of the law of Nature played the paramount and principal part, with the Stoics in Greek and Roman history, along with Cicero and subsequently with the Christian Fathers, it was Natural law, as lying behind and above all positive law, which was the transcending authority delimiting the earthly power of the State in relation to the Individual.<sup>4</sup> Human Rights are outcome of Natural Rights. Men are born and remain free and equal in rights, the purpose of all political association is the conservation of the Natural and Inalienable rights of Man; these rights are Liberty, Property, Security and Resistance to Oppression.<sup>5</sup> Magna Carta of England granted by King John in the year of 1215, which established the principle that everyone is subject to the law, even the King, and guarantees the rights of Individuals, the right to justice and the right to a fair trial. The Virginia Declaration of Rights of Men, including the right to reform or abolish 'inadequate' government. The Constitution of United States of America enumerated various Human Rights. French Declaration of 1789, is very important document which granted Right to Equality,

<sup>2</sup> *Quereshi V. S.O. Bihar*, AIR-1958 S.C. 731.

<sup>3</sup> 133 U.S. at 342, 1889.

<sup>4</sup> *Implementation of Basic Human Rights*, Manoj Kumar Sinha, Lexis-Nexis, 1<sup>st</sup> edition-2013.

<sup>5</sup> *The New Universe of Human Rights*, J.S. Verma, Universal law publishing co.pvt.ltd,2004,edition,page-42.

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Liberty and Fraternity. These documents played very vital role in protection and conservation of Human Rights.

The Twentieth Century saw the codification of common values related to freedom of religion and belief in numerous International Treaties, Declarations and Conventions. The United Nations recognized the importance of freedom of religion or belief in 1948<sup>6</sup>, which states 'Everyone shall have the right to freedom of thought, conscience and religion<sup>7</sup>'. This right shall include freedom to have a religion or whatever belief of his or her choice'. Similar provisions can be found in other conventions and also Regional and Specialized human Instruments.

In 1966 the United Nations adopted the International Covenant on Civil and Political rights, which reads as 'Everyone shall have the right to freedom of thought, conscience and religion. It includes freedom to have or to adopt a religion or belief of his choice and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.'<sup>8</sup>In 1981 the General Assembly made studies towards achieving the goal of introducing a treaty on Freedom of Religion or belief, adopting the 'Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief. It lacks any enforcement procedures it remains the most important contemporary codification of the principles of freedom of religion and belief.

Human Rights as such are incorporated in various International Human Instruments, such as, the International Covenant on Civil and Political Rights-1966, and the International Covenant on Economic, Social and Cultural rights-1966, regional human rights treaties, National Constitutions, Legislations and even Judicial Pronouncements. The range of Human Rights as contained in these instruments, treaties and national legislations is very wide and covers variety of rights including traditional Civil and Political rights on one hand and newly developed economic, social, religious and cultural rights, one the other.

### **Constitution and Protection of Freedom of Religion**

India as a land of many faiths enjoyed a long tradition of religious tolerance. The tolerance shown by some Indian rulers indeed furnishes some of the outstanding instances of religious tolerance in World history. The Indian Constitution forbids promotion of any particular religion

<sup>6</sup> Universal Declaration of Human Rights-1948.

<sup>7</sup> Article-18 of Universal Declaration of Human Rights-1948.

<sup>8</sup> Article -18 of International Covenant on Civil and Political Rights-1966.



by the State. It enables the State to make grants for religious purposes without discriminating between followers of different faiths. The Constitution of India confers on every person the right freely to profess, practice and propagate religion. The provisions ensuring the freedom of religion that is, Articles 25 to 28 are incorporated in the form of justifiable fundamental rights and every citizen in the country irrespective of his religion is allowed to move the Supreme Court for enforcement of these rights which form the basic core of Constitutional Secularism.<sup>9</sup>

Constitution of India also protects the Freedom of Religion in its various provisions. Such as Article-13, declares the inconsistent laws against part-III or other provisions of the Indian Constitution as void, Constitution also provides for equality before law and equal protection of laws within the territory of India,<sup>10</sup> it extends to freedom of religious laws also. There shall not be any discrimination on the ground of religion.<sup>11</sup> Article -27 of the Indian Constitution provides for No special taxes for promotion of religion. The Indian Constitution explicitly provides for the state contributions to Hindu Temples and Shrines,<sup>12</sup> and also provides no religious instructions in State educational Institutions.<sup>13</sup> Constitution also protects the freedom of religion under Articles, 16, 29, 325, 330, and 332. Indian Secularism is very unique kind of secularism in the World.

The Constitution of India accepts the concept of secularism and provides for a secular state. However many modifications are made in the concept secularism in view of the State and Society in India. The Constitution of India has provided for its own form of secularism which is based on Indian tradition of tolerance and freedom of religion in modern times. In India the practice of Untouchability, is prohibited under Article-17 of the Constitution, for this purpose parliament enacted 'Protection of Civil Rights Act-1955, which punishes preaching and practice of Untouchability. Though India is facing these practices even today, which leads to conversion to other religion and set back to the growth of the nation.

### **Indian Judiciary and Freedom of Religion**

The Judicial justice is the highest kind of justice to be done with aggrieved parties. Judiciary has played vital role as protector, provider and investigator in modern World. It is the duty of State to ensure Constitutional mandates. Liberty plays very important role in the inner and outer

<sup>9</sup> Article-32 of the Indian Constitution.

<sup>10</sup> Article-14 of the Indian Constitution.

<sup>11</sup> Article-15 of the Indian Constitution.

<sup>12</sup> Article- 290 of the Indian Constitution.

<sup>13</sup> Article -28 of the Indian Constitution.

  
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personality of person. Freedom of Religion is one of such liberty. Religion is a personal matter and hence the State shall not interfere in the personal matters of Religion. In case of violation of the Fundamental Rights, the Judiciary has played very important role in India. In this way it is concluded that the concept of Freedom of Religion enshrined under Article-25 of the Indian Constitution is very dynamic concept. The Supreme Court of India is really supreme in protection of freedom of religion guaranteed under the Constitution.

In *The Commissioner, Hindu Religious Endowments, Madras v. The Sri, Lakshmindra Thirtha Swamira of Sri. Shirur Mutt.*<sup>14</sup> Supreme Court laid down first time the 'Test of Essential Religious Practices'. Court held that what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. Court holding the view that the Mahant was held to have a legal right in the property, which along with the beneficial interests therein, would be enjoined by him so long as he held his office. The term person under Article-25- meant individuals and the Mahant of Shirur muth was considered to be such a person eligible to exert his rights under said article.

Court also held that Shirur muth and its followers came under the purview of Article-26, which contemplated not only a religious denomination but also any section thereof. The issues pertaining to administration of religious properties were not matters of religion but in accordance with the law they can manage the property. Accordingly, provisions which allowed excessive interference of State officials in Shirur math's administration were struck down. Section-21 of the said Act<sup>15</sup>- held unconstitutional, since interference the freedom of religion. Section-76 of the Act- to be a statute imposing taxes which levied beyond the legislative competency of the State Legislature, thus, finding it liable to be struck down.

In *S.R. Bommai, v. Union of India*,<sup>16</sup> mainly discussed on Constitution of India-1950, Preamble and Articles-15, 16, 25,26,27,28,30,51-A, 356, Scope of Preamble, Secularism-Meaning, role of Religious tolerance, equal treatment of all religions and Concept of Positive

Secularism. Religion vis a vis Secularism is a part of the Basic Structure of the Constitution and also Effect of 42<sup>nd</sup> Amendment. Articles-14,15,16,26,30 and 44 by implication prohibit the establishment of theocratic State and prevent the State either identifying itself with or favoring

<sup>14</sup> AIR-1954-SC 282.

<sup>15</sup> Section-21- Power to enter religious institutions.

<sup>16</sup> AIR 1994 SC 1918.



any particular religion or religious sect or denomination.<sup>17</sup> Section 123 of the Representation of the people's Act-1951, which prohibits appealing to any religion or seeking votes in the name of any religion. Section-29-A, states that 'Every party contesting elections and seeking to have a uniform symbol for all its candidates has to apply for registration. While making such application, the association or body has to affirm its faith and allegiance to the principles of Socialism, Secularism and Democracy, among others.

In *Reverend Stainislaus v. State of Madhya Pradesh & Ors.*<sup>18</sup> The Constitutional validity of the Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968, was challenged in the High Court of Madhya Pradesh and the constitutional validity of the Orissa Freedom of Religion Act, 1967 was challenged in the High Court of Orissa. The two Acts prohibit forcible conversion and make the offence punishable. In this case Court observed that the Legislative Competency of State Legislatures concerning Anti-conversion laws were upheld.

In *Indian Young Lawyers Association and others v. State of Kerala of others*,<sup>19</sup> Supreme Court lifted the ban on entry of women belonging to menstruating age group in the Sabarimala temple of Lord Ayyappa in Kerala, holding the view that such prohibition does not only violate the fundamental right to religion and equality, as guaranteed by the Constitution but is also highly regressive and derogatory in substance. The issue regarding exclusion of women in Sabarimala temple was brought before the Supreme Court in 2006 by an association of lawyers through Public interest litigation under Article 32 of the constitution. In recent past, there have been several cases where the issue of religion-based equality and protection of religious rights has cropped up before the courts.

In *Mohd. Hanif Quareshi and others v. The State of Bihar (1958-AIR-731)* challenged the Constitutional validity of the prevention of Cow slaughter laws, on the ground that they infringed their fundamental rights guaranteed under Articles-14, 19(1)(g) and 25 of the Constitution. They put total ban on the slaughter of all categories of animal of the species of

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<sup>17</sup> Article-14, Equality before law, Article-15, Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, Article-16, Equality of opportunity in matters of public employment, Article-25, Freedom of conscience and free profession, practice and propagation of religion, Article-26, Freedom to manage religious affairs, Article-27, Freedom as to payment of taxes for promotion of any particular religion, Article-28, Freedom as to attendance at religious instruction or religious worship in certain educational institutions, Article-30, Right of minorities to establish and administer educational institutions, Article-44, Uniform civil code for the citizens, Article-51-A, Fundamental duties and Article-356, Provisions in case of failure of Constitutional machinery in States.

<sup>18</sup> (1997-AIR 208)

<sup>19</sup> (2019)11 SCC 1.

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bovine cattle. Court held that they did not violate the fundamental rights of the petitioners under Article-25 as it had not been established that the sacrifice of a cow on that day was an obligatory overt act for a mussalman to exhibit his religious belief and idea.

In *Dr. M. Ismail Faruqui and others v. Union of India*,<sup>20</sup> there was a long-standing dispute relating to the Ram Janma Bhumi-Babri Masjid structure in Ayodhya which led to communal tension and violence from time to time and ultimately led to the destruction of the disputed structure on 6th December, 1992. This was followed by widespread communal violence which resulted in large number of deaths, injuries and destruction of property in various parts of the country. The said dispute has thus affected the maintenance of public order and harmony between different communities in the country. As it is necessary to maintain communal harmony and the spirit of common brotherhood amongst the people of India, it was considered necessary to acquire the site of the disputed structure and suitable adjacent land for setting up a complex which could be developed in a planned manner wherein a Ram temple, a mosque, amenities for pilgrims, a library, museum and other suitable facilities can be set up. The Acquisition of Certain Area at Ayodhya Ordinance, 1993 was accordingly promulgated by the President on 7th January, 1993. By virtue of the said Ordinance the right, title and interest in respect of certain areas at Ayodhya specified in the Schedule to the Ordinance stand transferred to, and vest in, the Central Government.

Therefore the Central Government passed 'The Acquisition of Certain Areas at Ayodhya Act-1993, which provides for the acquisition of certain disputed area at Ayodhya and for matters connected therewith or incidental thereto. Then this Act was challenged on the ground that it violates the Articles 25 and 26 of the Constitution and the present case not fall within the ambit of Entry-42, List-III but is referable to Entry-1, List-II and, therefore, the Parliament did not have the competency to enact the same. In British India, the right to worship of Muslims in a Mosque and Hindus in a temple had always been recognized as a Civil right. Section-4 of the Act abates all pending suits and legal proceedings without providing for an alternative dispute mechanism for resolution of the dispute between the parties thereto. This is an extinction of the judicial remedy for resolution of the dispute amounting to negation of Rule of law, therefore, unconstitutional and invalid.

Section-4 can be severable from the remaining Act, accordingly, the challenge to the Constitutional validity of the remaining Act, is rejected. Pending Suits and other proceedings

<sup>20</sup> AIR (1994)SCC-360.

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relating to disputed area, stand revived for adjudication of the dispute. Special reference made by the president of India under Article-143(1) of the Constitution is superfluous and unnecessary and does not require to be answered.

## CONCLUSION

The protection of Human Rights is necessary for the development and growth of an Individual personality, which ultimately contributes in the development of the Nation as a whole. Human Rights and Fundamental freedoms are indivisible, the full realization of Civil and Political rights without the enjoyment of Economic, Social and Cultural rights, is impossible. Our civilization lacks humane feelings. Secularism is a passive attitude or religion tolerance. It is a positive concept of equal treatment of all religions. Laws can be made regulating the secular affairs of Temples, Mosques and other places of worship and mutts. One cannot conceive of a democratic form of government without the political parties. If the Constitution requires the State to be secular in thought and action, the same requirement attaches to political parties as well.

In India freedom of Religion includes freedom of Conversion also; Anti-Conversion laws passed by the State Legislatures are the violations of the Constitutional Mandates of Secularism. Certainly, these legislations affect the religious freedoms. Targeting religious minorities groups often takes place. Religious hate speech and religious fundamentalisms are great set back to the growth of the nation. Religious freedoms includes, privacy of religion, food and practices which are essential elements of religions. States are under obligation of Constitutional and International Instruments, to protect the religious freedoms. Political parties, group of persons or individual who would seek to influence electoral process with a view to come to political power, should abide by the Constitution and the laws including Secularism, Democracy, Sovereignty, Unity and Integrity of the Nation. They should not mix religion with politics. They are under the obligation of protecting human rights.

  
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INTERNATIONAL SEMINAR

# PROCEEDINGS

28<sup>th</sup> AND 29<sup>th</sup> FEBRUARY 2020, INDIA

**INTERNATIONAL SEMINAR ON VIOLENCE AND  
ATROCITIES AGAINST CHILD AND HUMAN RIGHTS  
INFRINGEMENT: PROBLEMS AND PERSPECTIVES**

**PUBLISHED AND ORGANISED BY  
CENTRE FOR ADVANCED LEGAL STUDIES AND RESEARCH (CALSAAR)  
IN ASSOCIATION WITH KERALA LAW ACADEMY LAW COLLEGE,  
THIRUVANANTHAPURAM**

  
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ON  
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**Special Address**

**BASIC HUMAN RIGHT OF A CHILD: DICHOTOMIES**

**Dr. K. B. Kempe Gowda\***

Children and Childhood across the world have broadly been construed in terms of a 'Golden Age', synonymous with innocence, freedom, joy, play and the like. But they are vulnerable especially when very young. Children are vulnerable hence they need to be cared for and protected from 'the harshness of the world outside and around'. Children are wholly subservient and dependent. Childhood is nothing short of world of isolation, sadness, exploitation, oppression, cruelty and abuse. In Ancient Greeks and Romans, children by and large were taken for granted by their parents and patriarchal society and they labeled as problem population. Father has endowed with absolute power and authority over his family (*patriaepotestas*) and uncontrolled corporal chastisement over wife, children and other family members. Ancient Greeks left girls and children born with disabilities on the wild hill sides, where exposure or animals were sure to kill them.

Five stages of childhood were identified in the Indian tradition.

- i) Garbha or the foetal period.
- ii) Ksheerda (0 – 6 months) infant lives on milk.
- iii) Ksheerannada (6 months-2 years) early childhood in which weaning takes place.
- iv) Bala (2 – 5 years)
- v) Kumara (5 – 16 years)

These are associated with major rites and rituals like *namakarana*, *mundan* (*tonsure*) and *upanayana* (initiation into religion). These are the process for socialization of a child.

**CONSTITUTION OF INDIA**

Before 1950 child related legislations were bits and pieces of various legislations, implementation of the same were not only tardy but half-hearted. Part III and IV of the constitution recognized the rights of the child for the first time and included several articles dealing with their liberty, livelihood, development of the childhood, non-discrimination in education spheres, compulsory & free education and prohibition of their employment in factories, mines and hazardous employment. Justice is the first promise of the constitution, preambular commitment and parliamentary imperatives.

\* Dr. K. B. Kempe Gowda, Professor & Principal, Vivekananda College of Law, Bengaluru.

  
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## CONSTITUTIONAL GUARANTEES

Art. 21 A: Free and compulsory elementary education between 6 to 14 years. Art.24: Right to be protected to any hazardous employment till the age of 14 years. Art. 39(e): Right to be protected from being abused and forced by economic necessity to enter occupations unsuited to their age or strength. Art. 39(f): Right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and guaranteed protection of childhood and youth against exploitation and against moral and material abandonment. Art.45: Right to early childhood care and education to all children until they complete the age of 6 years. Apart from these Articles 14, 15, 21, 23 and 29 are available.

### Right to Education

The judicial craftsmanship and legal engineering of the Supreme Court, many articles in part-IV were declared as fundamental rights, ex: Art. 45. But the Supreme Court missed an opportunity to retain its revolutionary interpretation in the *Mohini Jain's* Case (1992) and fortified it in *Unnikrishnan's* Case (1993). Art. 21(e): 86<sup>th</sup> Amendment Act 2002

*"The state shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the state may, by law, determine".*


*Ng. Komon V State of Manipur (2010), Gau. H.C. (shifting of school),* the court ordered against the decision of the state to close down Govt. Primary School in a particular village for shortage of students and shift it to some other place relying upon Art. 21.

### Right Against Exploitation:

*Art. 23 and 24: Nonpayment of minimum wages amount to 'forced labour'. People's Union for Democratic Rights Vs. Union of India 1982 (Asiads Case) & SalalHydel Project V State of Jammu and Kashmir 1983, Court held Art. 24 was enforceable even in the absence of implementing legislation and in a public interest proceeding. But the SC took note of the sociological angle and possible resistance from parents and society to the total elimination of child labour and allowed continuance of child labour. (M.C. Mehta V State of Tamilnadu.)*

### Right to Health and Nutrition:

*Art. 38 Impose liability on state to secure social order for the promotion of the welfare of the people, 39(e) provides that the health and strength of workers, men and women and the tender age of children are not abused, the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Art. 47 Consider it is the primary duty of the state to improve public health, human conditions of work and also raise level of nutrition and standard of level of its people. Gaurav Jain V Union of*

  
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*India (1997): Children of the prostitutes have the right to equality of opportunity, dignity, care, protection and rehabilitation so as to be part of the main stream of social life without any pre-stigma attached on them and directed the constitution of a committee to formulate a scheme for the rehabilitation of such children and child prostitutes and for its implementation and submission of periodical reports of its registry. Lakshmikanth Pandey V Union of India (1984), Justice Bagvathi framed elaborate guidelines relating to adoption of Indian children by persons inside and outside of India in the absence of legislation to contain possibility of child trade for prostitution as well as slave labour.*

### **Dichotomies**

**Breast feeding as a basic right:** Continuous breast feeding requires conviction on the part of mother and she requires information to this effect. The advantages of breast feeding are developing loving bond with the baby, lowered risk of bleeding after delivery, delayed risk of consumption, reduced risk of Cancer, quicker retaining of figure and calming effect but in spite of these advantages mother refuse to feed the baby for loss of beauty and figure. The breast feeding provides a child complete nutrition, protection against infections, reduce the possibility of allergic disorders, reduced risk of cancer, better teeth, lower risk of diabetics, enhanced intelligence and protection against sudden infant's death syndrome. The following are the relevant legislations which assure protection to both mother and the child.

- (i) *The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992.*
- (ii) *Nursing breaks as per The Maternity Benefit Act 1961.*
- (iii) *Section 11 of Maternity Benefit Act 2015 and 2017.* (iv) *KCSR rules for feeding mother.*

**The author is also highlight the 'Right to know' of a child in surrogacy and IVF and Child rights, ensuring Mental Health under The Mental Health Act, and counseling for the children of farmers who committed suicide and Psychiatric disorder.**

*Children are vulnerable section of society. The countries future lies in the health and betterment of children. However, many legislations and concerted effort of the active judiciary, the exploitation of this section of society is prevalent and it poses a danger to the social health and morality. Hence, there is a need to sensitize every section of the society to protect children from exploitation and abuse.*

  
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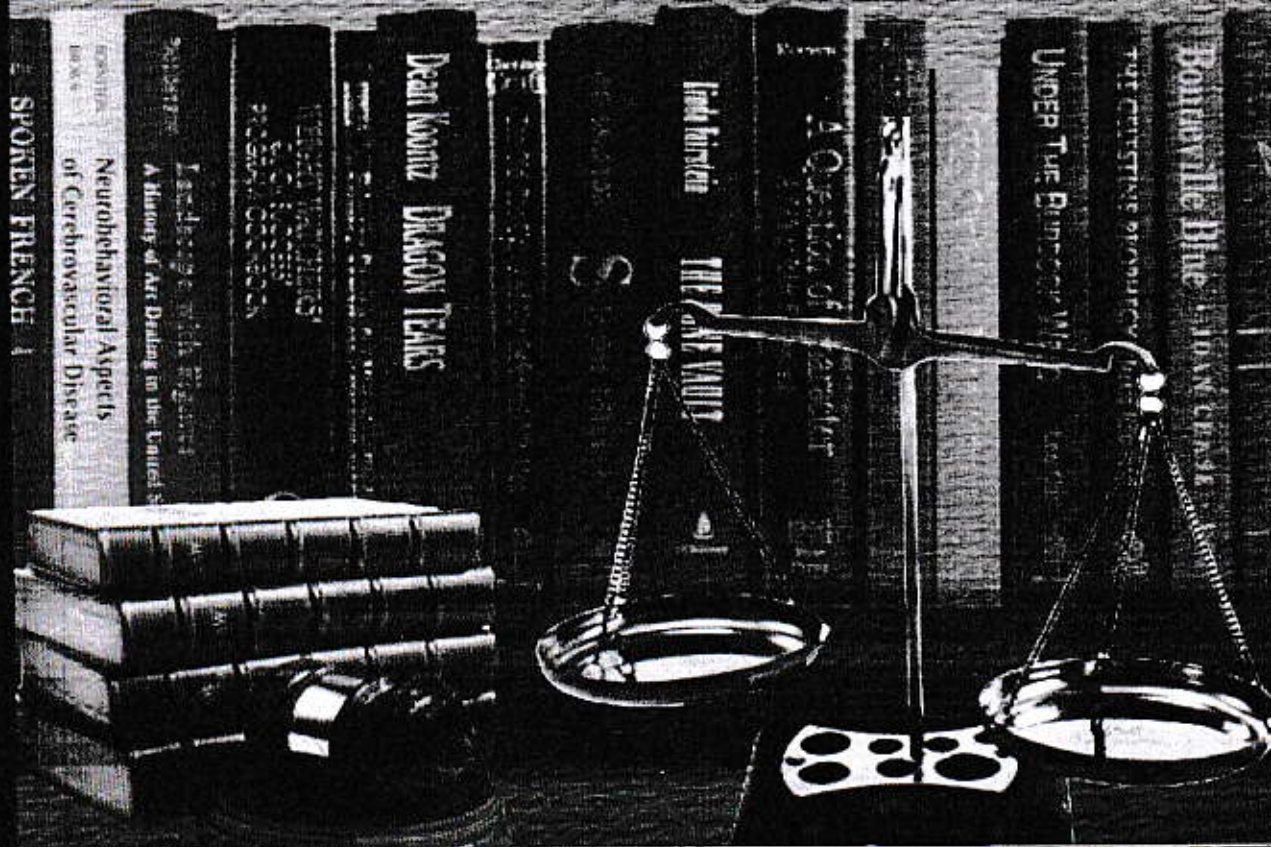
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## RIGHT TO SAFE FOOD IN INDIA - AN UNENDING LITANY

Dr. Sumithra R. \*

### Introduction

*'Food is the most primitive form of comfort'*<sup>1</sup>, Food is the fundamental need of all living creatures<sup>2</sup>. It is inevitable for the existence of life on earth, whose fulfillment could alone sustain life. As has been propounded globally, Right to Food is a basic Human Right which is not territorial in nature. However, the obligations to protect and employ the same in the municipal sphere are primarily domestic, in the relationships between respective states and their own people where the major obligations of national governments are towards the people living under their jurisdiction. But, the author is dismayed at the stark contrast between the prevailing harsh reality where people are still struggling for two square meals a day which is safe for consumption and which meets the requirements of law and an ideal situation where people would enjoy the basic necessities of life including food, as contemplated by different International instruments. Unfortunately, Food Security and Food Safety have remained two different aspects and not part of each other. When food itself has become scarce, safe and standard food is a distant mirage for the people. Despite, there being legislation for food safety and standards, injury to the people due to unsafe food are on the rise. Though food safety has become a global concern yet no major breakthrough in India.

In 1985, The United Nations General Assembly Guidelines for Consumer Protection<sup>3</sup> stated that 'When formulating national policies and plans with regard to food, governments should take into account the need of all consumers for food security

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- 1 Sheilah Graham was a British-born, nationally syndicated American columnist during Hollywood's "Golden Age".
- 2 Sec 3 CD Food Safety and Standards Act 2006, Any substance, whether processed, partially processed or - unprocessed, which is intended for human consumption and includes primary food, genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum and any substance including water used in food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substance.
- 3 AIRE5/39/248, 16 April 1985

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and as far as possible adopt standards from the Food and Agriculture Organisation's and the World Health Organisation's Codex Alimentarius Commission<sup>4</sup>. Right to safe food has become a global concern because of which United Nations Organisation is constantly endeavouring to secure this Right globally through various Conventions and entered into Treaties and Agreements with all its member nations. India being a member nation of the United Nations Organisation is obligated to adopt the recommendations of the conventions and to implement the obligations under the treaties and other international agreements. Article 253<sup>5</sup> of Indian Constitution empowers the state to make legislation for giving effect to international agreements and treaties and for adopting the spirit of the International conventions.

### India and Codex Standards

India became a member of the Codex Alimentarius Commission<sup>6</sup> in the year 1964 when the Prevention of Food Adulteration Act, 1955 was the legislation in India to deal with the menace of adulterated food. The object and purpose of the Act were to eliminate the dangers to human life from sale of unwholesome articles of Food. It was enacted to curb the extensive menace of food adulteration and is a legislative measure for social defence.<sup>7</sup>

The Act suffered from many shortfalls. Erstwhile, the Indian food regulations comprised of various food laws that were enacted at different points of time under the ambit of various ministries of Government of India. Historically they were introduced to complement and supplement each other for achieving total food safety and quality. The result was that the food sector in India was governed by a number of different statutes rather than a single comprehensive enactment. The Food Safety and Standards Act, 2006 (FSSA) came into effect, subsuming various central Acts, FSSA has laid lot of emphasis on the responsibilities of the food business operators<sup>9</sup> which is in the interest of the general public as it affects the public health and has laid restrictions on the advertisement and prohibition as to unfair trade practices.<sup>10</sup> The Act has set up a statutory Food Safety and Standards Authority of India (FSSAI) for laying down science based standards for articles of food and to regulate their

4 A body that was established in early November 1961 by the Food and Agriculture Organization of the United Nations (FAO), was joined by the World Health Organization in June 1962. Sumeet Malik's 'Handbook of Food Adulteration & safety Laws' 1st Edn 2011, Eastern Book Company, Lucknow

5 'Legislation for giving effect to international agreements'

6 CAC

7 Prakash C Juneja, 'Prevention of Food Adulteration Act and Consumer Protection', 8, Central Law Quarterly, 371 (1988).

8 Prevention of Food Adulteration Act of 1954, Fruit Products Order of 1955, Meat Food Products Order of 1973, Vegetable Oil Products (Control) Order of 1947, Edible Oils Packaging (Regulation) Order of 1988, Solvent Extracted Oil, De-Oiled Meal and Edible Flour (Control) Order of 1967, Milk and Milk Products Order of 1992 and also any order issued under the Essential Commodities Act, 1955 relating to food. Yetukuri Venkateswara Rao's, 'Commentary on Food safety and Standards Act 2006', Asia Law House, Hyderabad. (2011)

9 FSSA Sec 26

10 Ibid Sec 24

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manufacture, storage, distribution, sale, import to ensure availability of wholesome food for human consumption. The Act has established a single reference point, FSSAI for all matters relating to food safety and standards by moving from multi level, multi department control to a single line of command. Ministry of Health and Family Welfare is the administrative machinery for the implementation of the Act. Thus setting of science based standards is the most important objective of the Act. The Act adopts the 'Food Safety Management System' which includes the adoption of Good manufacturing practices, Good hygienic practices, Hazard Analysis and Critical Control Point and such other practices as may be specified by the regulation for the food business<sup>11</sup>. It is the responsibility of the food business operator to ensure that articles of food comply with the requirements of the Act at all stages of production<sup>12</sup>. The manufacturers, packers, wholesalers, distributors and sellers shall be liable for such article if they do not meet the standards set by the Act<sup>13</sup>. The Act imposes the responsibility on the food business operator to recall the articles of food if they do not satisfy the required standards of the Act<sup>14</sup>. If the Designated officer has reasonable ground for believing that a food business operator has failed to comply with any regulations under this Act, he may serve an improvement notice on the food business operator requiring him to<sup>15</sup> take certain measures necessary within the period mentioned in the notice. If a food business operator has been convicted of an offence under this Act and if the court feels that there is a health risk with respect to the food business, Prohibition order may be imposed on him<sup>16</sup>. The Food Safety Officer has been conferred with several powers and on any misuse of the same by him makes him liable too, to a penalty of Rs.1 lakh.<sup>17</sup>

Thus, India has an obligation to provide its people with articles of food which are devoid of anything that is detrimental to their health. The Act has set standards for food which make them fit for human consumption. The Act clearly demonstrates that no article of food can contain any food additive or processing aid unless it is in accordance with the provisions of the Act. Further, no article of food should contain any contaminant, naturally occurring toxic substances or toxins or hormone or heavy metals in excess of such quantities as specified by regulation. The food should also not contain residues of insecticides or pesticides or veterinary drugs or antibiotics, solvent residues, pharmacological active substance and micro-biological counts in excess of tolerance limits prescribed by the Act.

For carrying out the various responsibilities under the Act, a huge infrastructure with large paraphernalia has been elaborated under the Act. The Food Authority must establish Scientific panels on food additives, pesticides and antibiotic residues,

<sup>11</sup> Ibid Sec 3(10) (s)

<sup>12</sup> Ibid Sec 26

<sup>13</sup> Ibid. Sec 27

<sup>14</sup> Ibid Sec 28

<sup>15</sup> Ibid Sec 32

<sup>16</sup> Ibid Sec 33

<sup>17</sup> Ibid Sec 39

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genetically modified organisms and food, contaminants in the food chain, biological hazards, labelling and method of sampling and analysis. Food laboratories established by the Central or State Government are accredited by the National Accreditation Board for testing and calibration laboratories and these must be recognised by the Food Authority. The Act also mandates for a food safety audit which involves a systematic and functionally independent examination of food safety measures adopted by manufacturing units is made to determine whether such measures and related results meet the objective of food safety. The Act has also constituted Scientific committees, Central Advisory Committee, appointed Food Safety Officers, Food Analysts. Chapter IX of the Act deals with various offences and the penalties elaborately.

FSSAI under the Ministry of Health and Family Welfare has been designated as the nodal point for liaison with the CAC. One of the commonly known parameters of Codex standards is residues of unwanted or harmful agrochemicals used in various stages of production such as Maximum Residue Levels of Pesticides. The other one is the presence of unwanted microbes as was the case with Indian mangoes. The 28 member European Union temporarily banned the import of Alphonso mangoes and four other vegetables from India on May 15 2014 owing to the contamination by pests such as fruit flies and other quarantine pests. The National Codex Contact Point<sup>19</sup> has been constituted by the FSSAI for liaisoning with the CAC and to coordinate Codex activities in India and its most important function is to act as a link between the Codex Secretariat, National Codex Committee<sup>19</sup> & Shadow Committee;<sup>20</sup> coordinate all relevant Codex activities within India, receive all Codex final texts regarding standards, codes of practice, guidelines and other advisory texts and working documents of Codex sessions and ensure that these are circulated to those concerned. The NCC has to advise the government on the implications of various food standardisations, food quality, food issues which have arisen and related to the work undertaken by the CAC so that national economic interest is considered when international standards are discussed.

### **Implementation fall out of the FSSA**

Food regulation anywhere in the world is a difficult and challenging task. Food regulation is expected to be a facilitator for the industry, but very often they both are at loggerheads. The FSSA is very impressive and ambitious in its object but the effective implementation though may not be impossible yet is a colossal task and fraught with many challenges. The following quoted incidents demonstrate the failure of the Act.

<sup>18</sup> NCCP

<sup>19</sup> NCC

<sup>20</sup> Shadow Committees will work under the NCC. The Food Authority has appointed the Shadow Committees of the NCC on subject matters corresponding to the Codex Committees to assist the NCC in the study or consideration of technical matters.



- Few countries rejected milk produced from Kolar district from Karnataka due to fluoride content above the permissible limit<sup>21</sup> but we were oblivious of this contamination and consumed it.
- Karnataka State Human Rights Commission issued a notice on January 30th to Labour Commissioner seeking his response to the complaint that 60 employees in one of the garment factories in Bangalore fell ill after consuming contaminated water<sup>22</sup>. The Commission took notice of the media reports and issued a notice suo-moto.
- In a crackdown on the food adulteration, the south zone police at Charminar at Hyderabad raided two milk adulteration units and apprehended two persons. They mixed skimmed milk powder with milk powder of inferior quality.<sup>23</sup>
- On March 8th 2017, three children aged between 14 & 15 yrs died hours after consuming the food for dinner at a hostel run by a residential school.<sup>24</sup> The students died, hours after they complained that the sambar served during dinner was bitter.
- As many as 14 students took ill after consuming lunch at the SC/ST student's hostel at Yadgiri, a place at Karnataka on 10<sup>th</sup> March 2017.<sup>25</sup> These students complained that the contaminated water used to cook the food had resulted in the incident.
- Stale food was served in Rajdhani Express, one of the most prestigious trains run by our railways<sup>26</sup>. The passengers complained that the food served for dinner was stale and that bad smell emanated from food packets. If this is the scenario in state owned enterprise, one can imagine the scenario at hotels and other motels.
- A total of 60 students took ill after having the mid-day meals provided to them at government higher primary school at Benakatti in Bagalkot District.<sup>27</sup> One of the students complained that she found a lizard in the sambar, after rice and sambar were served to them and soon the students started vomiting.
- The National Human Rights Commission suo-moto issued a notice to food regulator FSSAI over reports of pesticides being found in food items more than the prescribed limits<sup>28</sup>. In its notice, NHRC directed FSSAI to submit its reply within eight weeks from the date of receipt of notice. Maximum Residual Levels of pesticides in fruits and vegetables and other food products have been fixed under the Food Safety and Standards (Contamination, Toxins and Residues) Regulation, 2011. Presence of pesticides residues beyond these levels in food

<sup>21</sup> Deccan Herald, Bangalore Edition dated July 15, 2017, 'High fluoride content: Milk exported from Kolar rejected'.

<sup>22</sup> Ibid dated January 1, 2014, 'KSHRC issues notice'

<sup>23</sup> m.timesofindia.com/city/Hyderabad (accessed on January 4th at around 10.00pm)

<sup>24</sup> Deccan Herald, Bangalore Edition dated March 11, 2017

<sup>25</sup> Ibid

<sup>26</sup> Ibid dated 29th March 2017

<sup>27</sup> Ibid dated 15th March 2017

<sup>28</sup> <http://economictimes.indiatimes.com/industry/cons-pr-ducts/food/nhrc-notice-to-fssai-over-reports-on-pesticides-in-food-items> (accessed on 3rd April 2017 at around 5.20pm)



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products including food, vegetables and meat is treated as a violation of the said regulations, which attracts penal action under the Act.

- A pregnant woman discovered a dead lizard in her French fries at a fast food outlet in Kolkata.<sup>29</sup> These instances are not lone instances but only a few which saw the light of the day, many such instances go unreported owing to so many reasons.
- Ninety five students fell ill after consuming midday meal, in which a lizard was found, at Gaddikeri Government High School on December 12th 2018.<sup>30</sup>
- On 14th December 2018, 12 devotees were killed and another 70 devotees fell ill and were admitted to hospitals after consuming prasada at the temple in Chamarajanagar.<sup>31</sup>
- The death toll rose to 15.
- On 20/12/2018, over 100 children fell ill after consuming their midday meal in separate incidents in Ballari and Bagalkot districts.<sup>32</sup> On 31-12-2018, over 100 kids became ill after consuming food in which they had spotted a lizard.<sup>33</sup>
- This is in continuation of the above mentioned incident, where the children living at the government run Balamandira, Siddapura complained that they are used to seeing the worse stuff in their food. Stones and worms are routinely served along with rice and sambar.<sup>34</sup>
- On January 26th 2019, two women died after consuming temple prasada in Chintamani in Chikkaballapur districts.<sup>35</sup>

These instances are not the only incidents of fall out of FSSA, but only a few which saw the light of the day; many such instances go unreported owing to so many reasons. All these instances go unheeded and also raise a question if state owned enterprises are exempt from the purview of the Act. In spite of the Act being in place for more than a decade, we are not able to prevent deaths and injuries caused due to unsafe food. At this juncture the author is sceptical about the effective implementation of the Act and has thus undertaken to study the difficulties involved in the implementation of the Act.

### Challenges Faced in the Implementation of FSSA

- In India, food industry is of different sizes such as the organised sector, small scale and unorganised sectors, though the small scale sector and domestic market in itself is quite large.

<sup>29</sup> When health is at stake' Deccan Herald, Bangalore Edition dated 5<sup>th</sup> April 2017,.

<sup>30</sup> Ibid 'Lizard in midday meal, 95 students fall ill', dated 13th December 2018

<sup>31</sup> Ibid 'Poison-laced 'prasada ' kills 12 at temple', dated 15<sup>th</sup> December 2018

<sup>32</sup> Ibid ' Over 100 kids ill after eating midday meal' , dated 21 st December 2018

<sup>33</sup> Ibid 'Lizard in dinner:Over 100 kids ill', dated 1 st January 2019

<sup>34</sup> Ibid ' What is on the menu? Anna sam bar, worms and stones " dated 2nd January 2019.

<sup>35</sup> Ibid ' 2 women die after eating prasada, 10 in hospital'-dated 27th January 2019.



The requisites of standards in each sector are different. The food chain is infested with various stake holders ranging from a small farmer to street vendors to retailers to the big industrialists. The protocol for standardisation of food articles should keep in mind the actual users of these standards, environment, the culture and the present infrastructure of the country which seems to have been overlooked by the legislators.

- The major stumbling block for the implementation of the Act is the population of India which is 127,42,39,769, and is 17.25 per cent of the global population<sup>36</sup> and accounts for a third of the world's poor as remarked by the World Bank<sup>37</sup> earlier this year. When one third of the people are living below poverty line, access to food in itself is a major challenge and the concept of 'food safety' is a far cry. The cascading effect of poverty is illiteracy because of which not many people are aware of FSSA. Though, this Act was enacted in 2006, a decade ago, till today consumer awareness about this legislation in urban areas is very poor and nil among ruralites. People came to know about the existence of this Act only after the Maggi noodles incident which took place in June 2015.
- The FSSA has used certain expressions without defining them because of which confusions galore. Expressions like 'Good Manufacturing Practices', 'Good Hygienic Practices' and 'Hazard Analysis and Critical Control Point' have not been defamed at all. Another glaring loophole is that the Act expressly exempts the animal feed and standing crops or plants prior to harvesting<sup>38</sup> from its purview. It is common knowledge that pesticides, insecticides find their way into the animal feed and also into the end agricultural produce. An effort to achieve food safety must be a comprehensive endeavour. Food safety can be achieved only by initiating reforms in agricultural practice, dairy sector and poultry farming. The expression 'sub-standard,'<sup>39</sup> is not well articulated and states that even if the food article does not meet the standards set by this Act, the food is still not considered unsafe. If this is the case, then there is no point in subjecting the food to test to see if they will meet the requirement under the law.
- In Europe, US and other developed countries it is mandated that only food grade lubricants and greases are to be used in plant and machinery which manufacture, process and pack the food, drinks, water and dairy products. Industrial lubricants are manufactured using petroleum base oils and additives which generally have toxic substance which might dangerously contaminate food items causing severe health hazards. In US, to avoid this probable toxic contamination of food, only food grade lubricant like NSF<sup>40</sup> approved in US, are mandated by statutory bodies.

<sup>36</sup> Jansankhya Sthirata Kosh or National Population Stabilisation Fund (NPSF) 2017

<sup>37</sup> [planningcommission.nic.in/reports/genrep/rep/hasim 170 l.pdf](http://planningcommission.nic.in/reports/genrep/rep/hasim%20170.pdf) (accessed on 21/12/2014)

<sup>38</sup> Section 3(1) (f) FSSA

<sup>39</sup> FSSA Section 3 (1) (zx) 'Sub-standard', an article of food shall be deemed to be sub-standard if it does not meet the specified standards but not so as to render the article of food unsafe.

<sup>40</sup> National Sanitation Foundation is an independent, non-profit organization that certifies food service equipment and ensures it is designed and constructed in a way that promotes food safety. NSF is internationally recognized.



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In India no such regulations are mandated from Food Ministry and FSSAI, hence most plants of food process industry are using toxic industrial grade lubricants. Many smart food processing plants procure small pack of food grade lubricant to show during inspection and audits but 99% plants are using non food grade lubricants which are very toxic. The industrial lubricants are not safe to use in food processing plants because they are formulated using many toxic material having toxic ingredient while certified food grade lubricants are formulated using non toxic materials and also approved by third party like NSF stating that these products are safe for food process industry.

- The adoption of the international level standards<sup>41</sup> without preparing the domestic food industry will pose challenges for effective implementation of the Act. Gradual and steady harmonisation of domestic scenario with international regulations, keeping national interests in mind is the need of the hour. The small and medium scale industries may not keep track of the regulatory changes which make it difficult for them to identify the procedural and compliance changes introduced by the Act. In line with the popular adage 'slow and steady wins the race', at the outset the government must upgrade the local set up before trying to achieve the higher targets as set out by the provisions of the FSSA. The gap between the existing system and the standards set by the Act will have to be cemented just before taking a leap. The government must realize that there is no point in setting higher targets and not able to reach them.
- Street Food hawkers in India are a major challenge in the implementation of FSSA, who are generally unaware of food regulations and have no formal training in food handling. They also lack support services such as good-quality water supply, sanitary facility and waste disposal systems, which hinder their ability to provide safe food. Although standards are specified for water to be used as an input in the processing/preparation of food, the FSSA does not specify standards for potable water, which is usually provided by local authorities. Thus, the food providers have to shoulder the responsibility of ensuring that clean water is used, even when tap water may not meet the required safety standards. This is a tall order for small food enterprises and street food vendors.
- Costs also rise if each vendor invests in water purification systems. If such facilities were provided to food vendors by the state authorities as it happens in Malaysia and Singapore India might be more successful in ensuring that this sector also maintains acceptable standards of hygiene and cleanliness. In a survey conducted by the Maharashtra government health department in 2006 it was shown that up to 20-25% of household food expenditure is incurred outside the home and some sections of the population depend entirely on street foods. This is one of the consequences of rapid urbanization, with millions of people having no access to kitchen or other cooking facilities. There are millions of single workers without

<sup>41</sup> Codex Standards

  
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families and a large floating population who move in and out of the city for various purposes. These people largely depend on street foods for their daily sustenance from places of work, hospitals, railway stations and bus terminals. The food at these shanties are generally prepared and sold under unhygienic conditions, with limited access to safe water, sanitary services and garbage disposal facilities. Hence street foods pose a high risk of food poisoning due to microbial contamination, as well as improper use of food additives, adulteration and environmental contamination.

- An important CAC guidelines for food processing companies is to follow a food quality management system called Hazard Analysis and Critical Control Points (HACCP). Most of the countries have adopted this Codex Alimentarius Commission's guidelines, but unfortunately in India, FSSAI has not been successful in ensuring that all food processing industries follow this guide line.
- The Tiffin suppliers who are popularly known as Dabbawalas in Mumbai<sup>42</sup>, how will the same food safety laws be applied to them. If applied, the Act will restrict the manufacture and supply of economically priced food that serve millions of poor consumers and office-goers every day. The Act does not differentiate between the food products being manufactured by the agribusiness companies and the food products being sold by street hawkers and dhabas<sup>43</sup> that dot the national highways. "Both organised sector and unorganised sector are required to follow the same law with regard to specifications on ingredients, traceability and food recall procedures which is very difficult for unorganised sector entities like street vendors and small hawkers<sup>44</sup>". While the general prescriptions and regulations spelled out by the Act, meet the requirements of the agribusiness companies, the same cannot be blindly applied to the smalltime hawkers that provide cheaper food to the working class in the urban centres. These food vendors are the lifeline of economically disadvantaged people in urban areas who have no access to kitchen.

42 A dabbawala is a person in Mumbai, India, whose job is carrying and delivering freshly-made food from home in lunch-boxes to office workers. They are formilly known as MTBSA (Mumbai Tiffin Box Suppliers Association), but most people refer to them as the dabbawalas. The dabbawalas originated when India was under British rule. Since many British people who came to India did not like the local food, a service was set up to bring lunch to their offices straight from their home. The too-odd dabbas (or lunch boxes) of those days were carried around in horse-drawn trams and delivered in the Fort area, which housed important offices. Today, businessmen in modern Mumbai use this service and have become the main customers of the dabbawalas. In fact, the 5,000-strong workforce (there are a handful of women) is so well-known that Prince Charles of England paid them a visit during his recent trip to India. Several academic institutions regularly invite the dabbawalas' representatives for discussion, and to complement and enhance their academic content. At times, businesses find it useful to illustrate the application of how such a system uses Six Sigma principles to improve its operations. White Paper prepared by MBA Students at The University of North Carolina's Kenan-Flagler Business School. Nishesh Patel and Naveen Vedula <http://lmurnbaidabbawala.in/> (accessed on 9/2/2017 at 8.00pm)

43 Dhaba is the name given to roadside restamants in India and Pakistan. They are situated on highways and generally serve local cuisine. [www.oxforddictionaries.com/definition/english/dhaba](http://www.oxforddictionaries.com/definition/english/dhaba)

44 Ravulapti Madhavi, "Is Food Safety Lurking in The Food Safety and Standards Act 2006?", Supreme Court Journal, [8th May to 12th June, 2008], Vol 4



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- The other challenge is the kind of materials used for storage of food. Often food articles are packed in plastic or polythene wrappers which may not be of food grade. The beverages and water packing bottles have no controls which can result in seepage of toxins into liquids and the food packed. Regulation 2.3.14(2), The Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011, expressly prohibits the use of plastic articles in commercial establishments, for the purpose of sale or serving of food. Plastic articles of any form may be the plastic articles used in catering and cutlery, unless the plastic material conforms to the food grade. Even today, food establishments ranging from street hawkers to the posh restaurants have the fancy of serving the food in plastic plates and packing the food parcels using plastic sheet or plastic containers. For instance, Indira Canteens in Karnataka, is a state owned venture, feeds the people with subsidised food. At these canteens, hot food is served in plastic plates though FSSAI's Regulations clearly demonstrate that plastic should not be used either in packing or serving the food, as the hot food, when it comes in contact with plastic, plastic will react & release toxins and the food will turn carcinogenic and will not be fit for human consumption. The 'charity should begin at home first'. First, the state owned ventures/enterprises should give impetus to the guidelines stipulated by FSSAI.

### Suggestions for the Effective Implementation of FSSA

*One of the basic requirements for the effective implementation of the Act is*

1. To set up fully equipped laboratories and providing trained manpower to operate them. All testing has to be conducted only in accredited laboratories as at present not all the public sector food laboratories are accredited. FSSAI commissioned a gap analysis study for up gradation of 50 food laboratories under the Central and State government. The study indicated that there is an urgent need to upgrade the infrastructure, strengthen staffing and training inputs & put in place more reliable laboratory management & operational procedure. The sub-group addressed that a network of efficient laboratories is the backbone of any credible food safety initiative.
2. Most of the existing food laboratories lack infrastructure and facilities for testing of residues, heavy metals and microbiological parameters.<sup>45</sup>
3. It is heartening to note that food testing science and technology is continuously evolving each day. The advanced and hi tech instrumentation and techniques to detect the minute levels of adulterants and undesirable substances in food articles demands sophistication right from the beginning like say, sampling and handling of sampling. With the advancement of technology, globally the legislations dealing

<sup>45</sup> Government of India, Report of the Working Group on Drugs and Food Regulation for 12th year Plan, No 2(6)2010, Planning Commission, New Delhi, May 2011 at p 41

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with food have become more stringent than ever before and demanding the food industry to cope up with the thus set high standards as far as the quality of food is concerned. But lack of skilled human resource and adequate infrastructure circumvent this.

4. The FSSAI and its allied committees namely, scientific committees, scientific panels, the central advisory committee require very efficient and highly skilled staff which are hard to come by.
5. Adding fuel to fire is the changing scenario of food standards and their typical rigid requirements do not reach rural India when major portion of Indian population resides in rural India. Farmers are unaware of the unhealthy inputs that should be avoided in the farming practice in the form of insecticide, pesticides and fertilisers, as it is common knowledge that whatever goes in has to manifest in the final product, if the raw material for the food processing industries are adulterated, it is imminent danger that the end product will also be laced with adulterants.
6. Though agricultural extension services are established across the country, neither they provide information about the prevailing national and international standards nor do they assist the farmers by imparting technical knowledge about changing the cultivation practices and patterns to meet these standards.<sup>46</sup> In order to set the standards for food, the availability of true and updated data not only on consumer related indicator but also on ingredient related indicators is crucial.
7. In one of the studies conducted by the Federation of Indian Chambers of Commerce and Industry, the interviewed respondents strongly opined that since reliable data for the consumption of food is not available, the FSSAI should be mandated to embark on a comprehensive monitoring of data relating to the levels of food additives, contaminant levels and health survey and information & data regarding the hazards in the food industry and their source must also be collected and acted upon at once.<sup>47</sup>
8. Campaigns should be conducted by both the state and central government creating mass awareness among the people about the need for food safety which ultimately results in healthy citizenry.
9. Agriculture should be prioritised which in turn will boost the food production. Only if there is enough supply of agricultural produce in the market, we can contemplate safe food and not when we have hungry bellies to feed as it is a common scenario that poor will consume anything. As an indirect approach to this, poverty alleviation programmes should be initiated profusely to increase the living conditions.
10. Farmers should be encouraged to desist from the rampant and unscrupulous use

<sup>46</sup> Sheeba Pillai, 'RIGHT TO SAFE FOOD: LAWS AND REMEDIES' Vol. 41, No.2, Ban.L.J.(2012)119-135

<sup>47</sup> FICCI, 'Study on Implementation of Food Safety Standards Act- An Industry Perspective'. May 2007 available at [foodsafetynews.filters.wordpress.com](http://foodsafetynews.filters.wordpress.com) (accessed on 9/2/2017 at 8.00pm)



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of chemical fertilizers and the government should incentivise the farmers to employ organic farming.


11. Good interaction with the food industry while ensuring compliance as well as understanding the limitations that may exist.
12. It is not out of place to mention about the necessity to maintain cleanliness of the wash rooms in the eateries. These wash rooms are the breeding ground of bacteria and other pathogens, which can spread to even the eating place and also the kitchen, where the food is cooked. In most of the hotels, wash rooms are not kept clean. The authorities under the FSSA should not only look at the cleanliness in the kitchen but should also ensure cleanliness of the washrooms.

### Conclusion

Food adulteration is common in India. Even milk, consumed primarily by children, isn't spared. What's particularly worrying the author is, the kind of substances employed to adulterate, including toxic chemicals. This shows that the trade off between the risk of getting caught and the 'reward' of huge profits is skewed heavily in favour of the adulterator. The government must focus on raising the risks to the adulterator. One way of doing this is by hiking the penalty, including making it analogous to attempt to murder in extreme cases. It's equally important to regularly check foodstuff for adulteration and ensure speedy trials. It is appalling that though the object of this Act is to maintain the standards for the food and make it safe for the human consumption, yet the same has remained a distant mirage. The death and injury to human beings due to contaminated or adulterated food is not a stray case, questioning the very purpose of the Act.

The struggle of a common man to ensure safe food has become a constant litany in vain. The business of making food appear appealing and attractive often spoils the quality of what we eat. To make nation healthy, every citizen must be able to buy food that is free from contamination. Food security cannot be guaranteed merely by providing a certain quantity of grain to each family but by ensuring that every grain that is distributed is wholesome and nourishing and not noxious. The ideology of food safety is a composite one beyond merely making the grain available physically. There is no point in having a legislation which has failed to give reliefs as contemplated by it. The authorities established under this Act have turned out to be only white elephants and eating up a major portion of our economic resources without doing much.

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## LEGAL REGULATION OF FOOD SAFETY AND STANDARDS IN INDIA- CHALLENGES IN IMPLEMENTATION

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### INTRODUCTION

The meal time prayer propounds,

*'Aum annapate annasya no dehyanamivasya shushminah.*

*Prapradataramtarisha urjam no dhehi dvipade chatushpade'<sup>1</sup>.*

This means oh lord, the giver of food! May you provide us with healthy and energy producing food, grant happiness to those that give food in kindness. May this food give us strength.

Food is the fundamental need of all living creatures. It is inevitable for the existence of life on earth. Food has been defined as 'any substance, whether processed, semi processed or raw, which is intended for human consumption and includes water, drinks, chewing gums, and any substance which has been used in the manufacture, preparation or treatment of food'<sup>2</sup>. Food, a basic necessity of life, derives its importance from the fact that it stimulates the appetite and supplies a variety of ingredients that give energy (carbohydrates, fat, dietary fiber); replace worn out tissues, thus promoting growth (protein); and help in preventing and curing diseases. The concept of healthy eating for healthy living and longevity is not new.

### THE RIGHT TO FOOD

The Right to food is a basic Human Right derived from the ICESCR 1966<sup>3</sup>, recognizing the "Right to an adequate standard of living, including adequate food," as well as the "fundamental right to be free from hunger". States have the obligation to "respect, protect and fulfil" that is, first, the state must not itself deprive anyone of access to adequate food; second, it must protect everyone from being deprived of such access in any other way and third, when anyone is in fact without adequate food, the state must proactively create an enabling environment where people become self-reliant for food or, where people are unable to do so, must ensure that it is provided. Every individual is a Rights-holder, fully entitled to demand that the state perform these duties.

In India multiple regulations for Food<sup>4</sup> have been enacted at different points of time to supplement each other. This incremental approach led to incoherence and inconsistency in the food sector regulatory scenario. The Food Safety and Standards Act, 2006<sup>5</sup> is a statute that integrated eight different food laws<sup>6</sup>, and is a major

<sup>1</sup> Yajurveda (Yajurveda 11/83)

<sup>2</sup> Webster's Millenium College Dictionary, 4<sup>th</sup> edition, Wils, Dreamstach India, NewDelhi 2004

<sup>3</sup> International Covenant on Economic, Social and Cultural Rights

<sup>4</sup> Section 3 (j) Any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food, genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum and any substance including water used in food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substance.

<sup>5</sup> FSSA 2006

<sup>6</sup> Prevention of Food Adulteration Act of 1954, Fruit Products Order of 1955, Meat Food Products Order of 1973, Vegetable Oil Products (Control) Order of 1947, Edible Oils Packaging (Regulation) Order of 1988, Solvent Extracted Oil, De- Oiled Meal and Edible Flour (Control) Order of 1967, Milk and Milk Products Order of 1992 and also any order issued under the Essential Commodities Act, 1955 relating to food.

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transformation that brought paradigm shift in the food regulatory scenario of the country. The food processing industry is one of the largest sectors in India in terms of production, growth, consumption, and export. Food processing industry is widely recognized as the 'sunrise industry' in India and is of enormous significance for India's development because of the vital linkages that it promotes between the two pillars of the economy, that is, industry and agriculture. Initiating a new era in food safety, the FSSA 2006 came into force across the country making it at par with international standards. The Act ensures improved quality of food for the consumers by following the general principles of Food Safety<sup>7</sup> and censures misleading claims and advertisement by those who are in food business<sup>8</sup>.

Erstwhile, the Indian food regulations comprised of various food laws that were enacted at different points of time under the ambit of various ministries of Government of India. Historically they were introduced to complement and supplement each other in achieving total food safety and quality. The result was that the food sector in India was governed by a number of different statutes rather than a single comprehensive enactment. Each ministry prescribed its set of rules and standards under relevant Acts and Orders, often creating confusions and sometimes contradictory environment for the industry. In general, this regulatory system resulted in lack of comprehensive, integrated food law under single regulatory authority that ensures public health, safety and also failed to specify quality norms for meeting the globally recognized standards. The FSSA, 2006 came into effect, subsuming various Central Acts.

### THE FOOD SAFETY AND STANDARDS ACT, 2006

Due to the mounting pressure from the industry and stakeholders for a single regulatory body and an integrated modern food law, the then Prime Minister of India Sri Atal Bihari Vajpayee in 2002 constituted a task force to review India's food and agro industries management policy. The task force made wide-ranging recommendations. One of the major recommendations was the consolidation of the various food laws under one umbrella so that a single authority can supervise the effective implementation. The task force proposed setting up a food regulatory authority. The task force also suggested an urgent need to align Indian food standards with international standards and that the government and industry should work together to ensure that India is well represented and fully heard in international forums like Codex Alimentarius Commission<sup>9</sup>.

The Ministry of Food Processing Industries took a keen interest and initiative in the implementation of the task force recommendations and drafted a new Food Bill in 2002. However, formulating a single legislation that would replace the existing multiple laws was rather difficult and slow, considering the number of stakeholders involved and the nature of India's food processing industry, which is dominated by numerous small-scale units. After extensive discussions and consultations, the Food Safety Standards Bill, 2005 was drafted and on January 15, 2005 was posted for public comments. The President of India signed the Bill on August 23, 2006 and was finally enacted as, The Food Safety and Standards Act, 2006<sup>10</sup>. The FSSA, 2006 has 12 chapters containing 101 sections and two schedules. The Act, inter alia, incorporates the salient provisions of the Prevention of Food Adulteration Act 1954 which is now repealed and is based on international legislations, instrumentalities and Codex Alimentarius Commission. This Act with its three tier structure, an apex food safety and standards authority, a central advisory committee and various scientific panels and committees lays more emphasis on science based and participatory decisions while adopting the contemporary approach in both standard setting and implementation.

<sup>7</sup> Section 18 of FSSA 2006

<sup>8</sup> *Id.* Section 24

<sup>9</sup> A body that was established in early November 1961 by the Food and Agriculture Organization of the United Nations (FAO), was joined by the World Health Organization (WHO) in June 1962

<sup>10</sup> Act No. 34 of 2006

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## AN OVERVIEW OF THE ACT

The Act established a single reference point for all matters relating to food safety and standards, by moving from multi-level, multi-departmental control to a single line of command. The Act established the Food Safety and Standards Authority of India (FSSAI) as an apex regulatory authority consisting of a Chairperson and 22 members<sup>11</sup>.

The Act prescribes general provisions for Food additives<sup>12</sup> and processing aids are to be added only in accordance with provisions / regulations under the Act<sup>13</sup>. Foods are not to contain any insecticides or pesticides residues, veterinary drugs residues, antibiotic residues, solvent residues, pharmacological active substances and micro-biological contaminants in excess of limits prescribed under the regulation<sup>14</sup>. Regulations to be made for the manufacture, distribution or trade of any novel foods, genetically modified foods, irradiated foods, organic foods, foods for special dietary uses, functional foods, nutraceuticals, health supplements, proprietary foods<sup>15</sup>, etc. The Act provides the general administrative principles to be followed by the Central Government, State Governments and FSSAI while implementing the provisions of this Act<sup>16</sup> and prohibits advertisements which are misleading or deceiving or contravenes the provisions of this Act<sup>17</sup> and prohibits unfair trade practices<sup>18</sup>. All imported food articles are subject to this Act. No person shall import any unsafe or misbranded or sub-standard food or food containing extraneous matter<sup>19</sup>. Responsibility is imposed on the food business operator to ensure that the articles of food satisfy the requirements of this Act at all stages of production, processing, import, distribution and sale within the businesses under his control<sup>20</sup>. The Act also imposes certain liabilities on the manufacturers, packers, wholesalers, distributors and sellers if an article of food fails to meet the requirements of this Act<sup>21</sup>. The Act compels the establishment of food recall procedures<sup>22</sup> and also the licensing and registration of food business<sup>23</sup>. The FSSAI and the State Food Safety Authorities are responsible for the enforcement of this Act<sup>24</sup>. Small business operators and temporary stall holders are exempted from the license but need to get their businesses registered with the local municipality<sup>25</sup>. There are general provisions relating to offences and penalties for failure to comply with the requirements of this Act. The Act makes provision for graded penalties where offences like manufacturing, storing or selling misbranded or sub-standard food is punished with a fine, and more serious offences with imprisonment<sup>26</sup>.

## MAJOR CHANGES UNDER THE FSSA

One of the primary changes that FSSA has brought about is imposing the responsibility of food safety on the manufacturer<sup>27</sup> for the first time, which was on the Food Inspector under the erstwhile Prevention of Food Adulteration Act 1954 for examination and prosecution. With the introduction of the supply chain concept under

<sup>11</sup> Section 4 of FSSA 2006

<sup>12</sup> *Id.* Section 3 (k) 'Food additive' means any substance not normally consumed as a food by itself or used as atypical ingredient of the food, whether or not it has nutritive value, the intentional addition of which to food for a technological purpose in the manufacture, processing preparation, treatment, packing packaging.....but does not include contaminants or substances added to food for maintaining or improving nutritional qualities.

<sup>13</sup> *Id.* Section 19

<sup>14</sup> *Id.* Section 21

<sup>15</sup> *Id.* Section 22

<sup>16</sup> *Id.* Section 4

<sup>17</sup> *Supra* note 7

<sup>18</sup> *Id.* Section 24

<sup>19</sup> *Id.* Section 25

<sup>20</sup> *Id.* Section 26

<sup>21</sup> *Id.* Section 27

<sup>22</sup> *Id.* Section 28

<sup>23</sup> *Id.* Section 31

<sup>24</sup> *Id.* Section 29

<sup>25</sup> *Id.* Section 31 (2)

<sup>26</sup> *Id.* Section 48 to 67

<sup>27</sup> *Id.* Section 26

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the FSSA, the focus will not be on inspection but on each person in the chain-sourcing, manufacturing, storing, distributing- assessed by Food Safety Officers<sup>28</sup>. FSSA prohibits the manufacture, import, storage, sale or distribution of any such article of food which is unsafe, i.e., food whose nature, substance or quality is injurious to health. There are specific responsibilities laid down under the FSSA for the Food Business Operators<sup>29</sup>, for ensuring the safety of food articles<sup>30</sup>. FSSA extends its jurisdiction to all persons by whom food business is carried on or owned under the definition of FBOs. The FSSA also provides for food recall procedures<sup>31</sup> whereby an FBO is required to immediately inform the competent authorities and co-operate with them, if the food which he has placed in the market is unsafe for the consumers.

Many customer friendly steps have been initiated to implement FSSA like an online licensing portal and online food import clearance system. The procedure for harmonisation of Indian food standards with those of the Codex Standards<sup>32</sup> has been initiated. Notified referral labs<sup>33</sup> for purpose of food analysis have been established. Creating awareness through mass media for various stakeholders on topics like licensing and registration, misleading claims made by companies, misbranding, adulteration, hygiene practices and safe food messages, checking the safety of the imported food presently at select ports. FSSA will go a long way in boosting consumer confidence and giving the much needed boost to the food processing sector but the effective implementation is fraught with plentiful challenges. India presents a unique case of vastness and complexity. The very fact that the Act extends its jurisdiction to all persons by whom food business is carried on or owned under the definition of FBOs is a huge base to cover. Further, "Food Business"<sup>34</sup> includes food services, catering services, sale of food or food ingredients. Indian FBOs ranges from small time street hawkers to swanky high street food dealers with numerous intermediaries & complex processes and it is indeed a challenge to provide for regulatory oversight from farm to fork.

### ISSUES OF FOOD SAFETY AND STANDARDS ACT

1. Multiplicity of Legislations- there were around eight sets of laws<sup>35</sup> that were regulating the food products and food items. Aggregating all these laws under one law and effectively implementing it.
2. Foods for special dietary purposes or nutraceuticals<sup>36</sup> or functional foods or health supplements which had flooded the food market were omitted from the purview of all laws. There was no specific law applicable to them.
3. Accountability- there was no concept of absolute liability unless things went wrong. At the outset, the food business operators were held not responsible but the food inspectors whose duty it was to inspect the food items were responsible in case of any eventuality.
4. Concept of self regulation- instead of regulating, prevention is better than cure must be the policy of the government by compelling the food business operator for self regulation.
5. Adopting a production to consumption approach to food control.
6. Increasing the role of consumers in decision making.
7. Imported foods were left out from the purview of the law as long as they satisfied the norms of the country in which they were manufactured.

<sup>28</sup> *Id.* Section 38

<sup>29</sup> FBO

<sup>30</sup> *Supra* note 19

<sup>31</sup> *Supra* note 20

<sup>32</sup> Codex Standards is a collection of internationally recognized standards, codes of practice, guidelines and other recommendations relating to foods, food production and food safety and set by Codex Alimentarius Commission

<sup>33</sup> Section 43 of FSSA 2006

<sup>34</sup> Section 3 (n) Any undertaking (profit or non-profit/public or private) carrying out any of the activities related to any stage of manufacture, processing, packaging, storage, transportation, distribution, import

<sup>35</sup> *Supra* note 2

<sup>36</sup> Nutraceutical is a new word, invented by Dr. Stephen DeFelix in 1989. It is two words put together: nutritional and pharmaceutical. Nutraceuticals are dietary supplements that are also called functional foods. Oxford Dictionary Thesaurus 2001, Indian edition, Oxford University Press

  
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8. Microbiological hazards<sup>37</sup>, pesticides residues, increased and misuse of food additives in the food.
9. In the event of the adulterated food in the market there was no food recall mechanism.
10. Adopting risk analysis as an essential discipline to improve food safety.
11. Food safety<sup>38</sup> is an important health issue. As countries witness a growth in International food trade, development of complex food types, processes and handling, there has been a parallel rise in the level of awareness on different food and water borne diseases. Food safety is becoming a growing global concern with regulatory regimes worldwide being faced with the challenge of minimizing or rather, curtailing food safety risks. Consuming contaminated food or beverages can result in illness or death. Approximately 5,000 deaths occur from food-borne illnesses every year. There are many preventative measures that can be taken at home and in restaurants to avoid potentially hazardous foods.

### CHALLENGES IN THE IMPLEMENTATION THE OF FSSA

1. Population of India in 2011 was 1,21,01,93,422<sup>39</sup> and accounts for a third of the world's poor as remarked by the World Bank<sup>40</sup> earlier this year. The proportion of people living below poverty line (BPL)<sup>41</sup> in India has come down from 37.2 per cent in 2004-05 to 21.9 per cent in 2011-12 — a decline of 15.3 percent as reported by the planning Commission<sup>42</sup>. Poverty and illiteracy have become major primary challenges in India for food safety and standards. It is often said that the poor will consume "anything" to mitigate their hunger. This may or may not be true. On one hand, survival depends mainly on access to a minimum quantity of food, on the other hand, consumption of food which does not meet minimum safety standards can also jeopardize survival. Governments must take the necessary steps to ensure that food quality and safety considerations form an integral part of their food security system.
2. The adoption of the international level standards<sup>43</sup> without preparing the domestic food industry will pose challenges for effective implementation of the Act. The small and medium scale industries that do not keep track of the regulatory changes will find it difficult to identify the procedural and compliance changes required under the Act. First the government must upgrade the local set up before trying to achieve the higher targets as set out by the provisions of the Act. The system should be upgraded in a phased manner before trying to take a leap. The gap between the existing system and the standards set by the Act will have to be cemented first. The government must realize that there is no point in setting higher targets and not able to reach them. No point in putting the cart before the horse.
3. The introduction of preventive measures at all stages of the food production and distribution chain, rather than only inspection and rejection at the final stage, makes better economic sense. Food hazards<sup>44</sup> and quality loss may occur at a variety of points in the food chain. A well structured, preventive approach that controls production and process is the preferred method for improving food safety and quality. Potential food hazards can be minimized along the food chain by employing good practices. Strategy for laying emphasis on introduction of food safety preventive measures at different levels of food sector need to be devised. The centre for the task of reaching the masses should be identified from where such message could be spread in the country. The ideal place for such activity could be the market place, where producers and

<sup>37</sup> Microbiological hazards include food poisoning bacteria such as *Salmonella*, *E.coli* and *Bacillus Cereus*. Bacteria are very small, visible only when examined under a microscope. If food poisoning bacteria are present in food, the food may look, smell and taste normal. If such food is eaten it may result in illness, such as sickness and diarrhoea, and even cause death in some situations. [http://cooksafedumgal.gov.uk/FoodSafetyRefresher/safety\\_03.htm](http://cooksafedumgal.gov.uk/FoodSafetyRefresher/safety_03.htm)

<sup>38</sup> Section 3 (q) 'Food safety' means assurance that food is acceptable for human consumption according to its intended use

<sup>39</sup> <http://censusindia.gov.in/2011-prov-results/indiaatglance.html> accessed 21/12/2017 at around 7.30 am

<sup>40</sup> [planningcommission.nic.in/reports/genrep/rep\\_hasim1701.pdf](http://planningcommission.nic.in/reports/genrep/rep_hasim1701.pdf) accessed on 21/12/2017 at around 8.00am

<sup>41</sup> An income of less than \$1.25 per day per head of purchasing power

<sup>42</sup> Supra note 37

<sup>43</sup> Supra note 29

<sup>44</sup> Section 3(u) 'Food hazard' means a biological, chemical or physical agent in or condition of food with the potential to cause an adverse health effect





buyers interact through sellers of food commodities. Various activities such as involving various stakeholders for changing emphasis from end product quality control to preventive measures throughout the food chain and introducing concepts like traceability need to be involved. Identification of key personnel at the grass root level for implementing the food safety preventive measures is essential.

4. In India the streets are dotted by food hawkers who are generally unaware of food regulations and have no training in food handling. They also lack support services such as good-quality water supply and waste disposal systems, which hamper their ability to provide safe food.
5. Although standards are specified for water to be used as an input in the processing/preparation of food, the FSSAI does not specify standards for potable water, which is usually provided by local authorities. Thus, it puts the responsibility on the food providers for ensuring that clean water is used, even when tap water does not meet the required safety standards. This is a tall order for small food enterprises and street food vendors. Costs also rise if each vendor invests in water purification systems. If such facilities were provided to food vendors, like in Malaysia and Singapore, India might be more successful in ensuring that this sector also maintains acceptable standards of hygiene and cleanliness. In a survey conducted by the Maharashtra government health department in 2006 it was shown that up to 20-25% of household food expenditure is incurred outside the home and some segments of the population depend entirely on street foods. This has been one of the consequences of rapid urbanization, with millions of people having no access to a kitchen or other cooking facilities. There are millions of workers without families and a large floating population who move in and out of the city for work, and these people largely depend upon street foods for their daily sustenance from places of work, schools, hospitals, railway stations and bus terminals. These foods are generally prepared and sold under unhygienic conditions, with limited access to safe water, sanitary services or garbage disposal facilities. Hence street foods pose a high risk of food poisoning due to microbial contamination, as well as improper use of food additives, adulteration and environmental contamination.
6. Shortage of testing laboratories and equipment has hampered the implementation of the Act and Government of India may also find it difficult to identify, recruit and then continuously train people for the accredited laboratories.
7. The Act also mentions certain terms like 'Food Safety Management System'<sup>45</sup>. However, it is not clear from the Act what these terms imply and whether the CODEX definition of such terms is to be followed.
8. Take the case of the Tiffin suppliers who are popularly known as Dabba walas in Mumbai<sup>46</sup>, how will the same food safety laws be applied to them. Will it not restrict the manufacture and supply of food that serve millions of poor consumers and office-goers every day. The Act does not make any distinction between the food products being manufactured by the agribusiness companies and the food products being sold by street hawkers and dhabas<sup>47</sup> that dot the national high ways. While the general prescriptions and regulations

<sup>45</sup> Section 3 (s) 'Food safety management system' means the adoption of 'Good Manufacturing Practices', 'Good Hygienic Practices' and Hazard Analysis and Critical Control Point' and such other practices as may be specified by regulation, for the food business

<sup>46</sup> A dabbawala is a person in Mumbai, India, whose job is carrying and delivering freshly-made food from home in lunch boxes to office workers. They are formally known as MTBSA (Mumbai Tiffin Box Suppliers Association), but most people refer to them as the dabbawalas. The dabbawalas originated when India was under British rule. Since many British people who came to India did not like the local food, a service was set up to bring lunch to their offices straight from their home. The 100-odd dabbas (or lunch boxes) of those days were carried around in horse-drawn trams and delivered in the Fort area, which housed important offices. Today, businessmen in modern Mumbai use this service and have become the main customers of the dabbawalas. In fact, the 5,000-strong workforce (there are a handful of women) is so well-known that Prince Charles paid them a visit during his recent trip to India. Several academic institutions regularly invite the dabbawalas' representatives for discussion, and to complement and enhance their academic content. At times, businesses find it useful to illustrate the application of how such a system uses Six Sigma principles to improve its operations. WHITE PAPER prepared by MBA STUDENTS AT THE UNIVERSITY OF NORTH CAROLINA'S KENAN-FLAGLER BUSINESS SCHOOL. Nishesh Patel and Naveen Vedula <http://mumbaidabbawala.in/>

<sup>47</sup> Dhaba is the name given to roadside restaurants in India and Pakistan. They are situated on highways and generally serve local cuisine. [www.oxforddictionaries.com/definition/english/dhaba](http://www.oxforddictionaries.com/definition/english/dhaba)





spelled out meet the requirements of the agribusiness companies, the same cannot be blindly applied to the small-time hawkers that provide cheaper food to the working class in the urban centers.

9. Indiscreet, rampant and unscientific use of chemical fertilizers in agriculture and injecting the dairy animals with hormones to increase its yield would find their way into the end product which is meant for human consumption. The Act excludes plants prior to harvesting, standing crops and animal feed from its purview. Any harmful input<sup>48</sup> that could affect the safety standards of end food products is not effectively covered. It is difficult for food processing industries to take the onus for ensuring that such standards are within the acceptable levels in processed food when raw material fails to meet these standards. The Act should have integrated agriculture and food industries. The Act should have also banned the use of some of the insecticides and pesticides so that the same does not find its way into the raw material for food processing industries. The government banned the use of Endo sulfan, a pesticide<sup>49</sup>, after lot of agitation by the public. The constant exposure of people to Endosulfan has resulted in people getting crippled and facing health hazards like severe neurological and congenital deformities.
10. It is a terrifying challenge to tackle the huge variety of food safety- related issues in the context of the country's sheer size, diversity and complexity of food markets. The central government has tried to create some islands of excellence in, for example, the dairy sector by launching nationwide annual food safety and hygiene audits of dairy plants. The National Productivity Council is a partner in those efforts. But unless they are transformed into a mass movement inculcating food safety concerns and consciousness among all sectors and the general public, a significant nationwide impact will not be felt.
11. The Indian food industry is dominated by microenterprises and Home-based units who prepare food products like condiments, traditional and ethnic food. It is thus imperative for policy prescriptions to address these sectors before an impact on the overall food safety scenario is felt.
12. The business culture and consumer participation are two key factors which determine the success or failure of food safety campaigns. The business culture is simply the attitude of entrepreneurs toward all stakeholders. Ideally, that culture should be characterized by the ability to welcome and adjust to change and efforts should be made for putting consumer's best interest at the top of the business agenda. An ideal policy environment should inspire the food industry, especially the Small and Medium Enterprises sector, to adopt the best possible food safety assurance practices not only to gain a competitive edge but also to fulfill its social responsibility. This means that a thorough understanding of country-specific business cultures is essential before launching large-scale food safety campaigns. On the whole, in diverse countries like ours, an understanding of region/province-specific business cultures is essential.
13. Food safety records are invariably poor when consumers are ill informed, unorganized, and not vocal. Mass food safety movements are, to paraphrase the definition of democracy, for consumers, by consumers, and of consumers. Their success can only be ensured with active consumer involvement. Most food campaigns fail because they are excessively controlled by government functionaries with little or no involvement of consumers or consumers' organizations. The organization and empowerment of consumers coupled with timely redress of grievances form an integral part of any meaningful food safety move. While consumers have every right to expect uncompromising food safety standards at competitive prices, they must also be ready to pay extra money. The most influential and widely quoted statement on consumer rights was from US President John F. Kennedy in 1968, who highlighted consumers' "right to safety, right to information, right to choose, and right to be heard." Consumer International defined eight basic consumer rights to: satisfaction of basic needs; information; choose; safety; representation; redress; consumer education; and a healthy environment. Thus consumers and consumers' rights organizations need to be in the forefront in exercising their right to food safety and involved in policy formulation. This is possible only when they are vocal, well organized and present everywhere instead of only in large cities. The government must allow representation of consumer organizations in regulatory bodies and on consultative committees so that their

<sup>48</sup> Pesticides in vegetables or antibiotics in animal feed

<sup>49</sup> Endosulfan is a harmful insecticide and can cause several health hazards in human beings.

[http://www.indiaenvironmentportal.org.in/files/Effect\\_of\\_endosulfan.pdf](http://www.indiaenvironmentportal.org.in/files/Effect_of_endosulfan.pdf)





views are heard and reflected in policies. The real challenge lies in accepting and honoring the rights of consumers and educating them on those rights. Alert, organized consumers are essential for creating a food safety chain reaction and turning it into a mass movement. Isolated legislative efforts and export centric initiatives may succeed at best in creating some islands of excellence, leaving the majority of the population untouched.

14. While the professional manner in which the constitution of various committees is spelled out is commendable, what is intriguing the Researcher is the lack of adequate peoples' representation in Food Safety and Standards Authority. Only one member each from a consumer organization and agribusiness companies have been slated to be on the Authority. This is grossly unfair. Overstuffed by bureaucrats and also headed by a senior bureaucrat, there is no space in the authority for the informal food sector.
15. Some economists have apprehended that the objectives of the Act appears to be directed at eliminating the competition that informal food sector including the dhabas and tiffin carriers pose to the agribusiness companies. As long as food is being sold at such cheap prices, the agribusiness companies will find it difficult to gain a strong foothold in the Indian market. The food offered by the dhabas and the hawkers has generally been found to be more hygienic and fresh than what is sometimes offered in the top hotels, where many of the dishes that are served are usually cooked from frozen foods loaded with preservatives. It is also important that the Act takes into consideration not only food safety but also sets up criteria for monitoring the nutritive and human health aspects of the food products being sold. Food safety has often been misconstrued as nutritionally fit. If the junk food sold through the fast food joints was good for human consumption i.e., even if it conformed to safety standards, there is no reason that obesity should emerge as the biggest killer worldwide. In the United States, where junk food is a habit, resulting obesity has now emerged as the biggest threat to nation's health.
16. Unlike in the European countries, hotels, restaurants and supermarkets are not the only sources for food consumption in India. Home cooking is the major source of people's daily food and therefore regulations on industrialized and preprocessed food alone won't do.
17. Another serious lapse is the silence on labeling of food products specifying whether they are genetically modified or not is also in tune with the commercial interests of the multinational companies. They have been spearheading a global campaign that does not provide the consumers a choice between a normal product and a GM food - Which in reality means that the government has no objection to genetically modified crops being grown and consumed by the people. But it has been shown that these GM crops and seeds can impact food safety and health of the consumers in the long run.
18. The time limit for prosecution also has been fixed as the trial to start within a year from the date of commission of offence. As of now more than one lakh cases relating to food standard offences are pending in various courts across the country. Deadlines have been extended many times for licensing and registration of food business operators, frustrating the very purpose of the Act.
19. Coordination between agriculture and food industry is the need of the hour as the Act exempts standing crops from its purview<sup>50</sup>. Integrated farm to table concept should be adhered to. There is a need for greater involvement of rural sector in food safety issues as most of the food articles for food processing industry are sourced from rural areas.

#### CONCLUSION

Food adulteration is common in India. Even milk, consumed primarily by children, isn't spared. What's particularly worrying is the kind of substances used to adulterate, including toxic chemicals. This shows the tradeoff between the risk of getting caught and the 'reward' of huge profits is skewed heavily in favour of the latter. The government must focus on raising the risks to the adulterator. One way of doing this is by hiking the penalty, including making it analogous to attempt to murder in extreme cases. It's equally important to regularly check foodstuff for adulteration and ensure speedy trials.

<sup>50</sup> Supra note 2





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To fully realize the benefits of the Act, FSSAI needs to maintain total transparency in rule framing. Involvement of industry and other stakeholders and transparent public consultation, directly or through representative bodies, during the preparation, evaluation and revision of food law is essential for setting of sound scientific standards.

  
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XI

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## INDIRA CANTEEN VIS-VIS FOOD SAFETY STANDARDS ACT 2013

*Dr. N. Sathish Gowda\* & Sumithra.R\*\**

### INTRODUCTION

It has been propounded globally that Right to Food is a basic Human Right. However, the obligations to protect and employ the same in the municipal sphere are primarily domestic, in the relationships between respective states and their own people where the major obligations of national governments are towards the people living under their jurisdictions. However, it should be documented that the international community also has obligations to respect basic human rights and one of them is the Right to food. Hungry person in any part of the world is a part of the world community and he has Rights claims not only in relation to his own nation but also in relation to the world at large. The human right to adequate food will be hollow if obligations to honour this right are restricted only to one's own government or one's own state as the Researcher strongly believes that 'children born into poor countries are not born into a poor world'. Universality can be attributed to Human rights in the real sense only when the international community lends a helping hand and steps into the shoes of the national government which has failed to fulfil its obligation to respect this basic right, transcending all national boundaries and does what needs to be done to assure the realization of those rights. Paradoxically, despite there being a plethora of international instruments to strengthen the 'Right to food', we are not able to achieve a major breakthrough and hunger is still dogging the society. There seems to be no effective mechanism in place and no firm commitment on the part of the world community with regard to the human right to adequate food due to which even today we find more than 900 million people who are starving for food throughout the world, most of them in developing countries.<sup>1</sup> This stark contrast is despite the Millennium Development Goals and Sustainable Development Goals which have vowed

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1 The Committee on Economic, Social and Cultural Rights General Comment No. 12: The Right to Adequate Food (Art. 11) para. 5.



## STANDARDS

the Human Right. Municipal sphere states and their efforts are towards to be documented. The basic human rights in any part of the world aims not only in large. The human rights for this right are as the Researcher is not born into a world in the real sense and steps into it to fulfil its obligation towards and does its. Paradoxically, to strengthen the mechanism in place with regard to we find more than the world, most of the Millennium which have vowed

to rid the world of hunger and malnutrition by 2015 and 2030 respectively. In this context, the Researcher legitimately believes that, may be the obligations of the international community need to be well articulated and the same should be implemented in true spirit with lot of fervour. In this Research paper, the Researcher has made an attempt to study the genesis of Right to food, its growth both in the international and national arena, efforts of Karnataka state to specifically enforce its obligation of ensuring Right to Food to all its people through Indira canteens, the noncompliance of the provisions of Food Safety and Standards Act 2006 by these canteens and suggestions for improvements. The right to be free from hunger and malnutrition is a fundamental human right of every human being. The human right to live in dignity, free from want, is itself a fundamental right, and is also essential to the realization of all other human rights – rights that are universal, indivisible, interconnected and interdependent<sup>2</sup>. Universal and sustainable food security which in turn ensures a continuous availability of food is a means to achieve the social, economic and human development objectives that members of the world community agreed upon at various world conferences in Rio, Vienna, Cairo, Copenhagen, Beijing and Istanbul. The right to adequate food is also emphasized in the most basic international human rights treaties, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.

The Right to food has been essentially recognized in a wide range of human rights instruments. In the year 1941, the US President Franklin D Roosevelt's "Four Freedoms" speech outlined one of the freedoms as 'the Freedom from want'.<sup>3</sup> These freedoms were generally refined and became the basis of the 'United Nations Charter' and more significantly in the 'Universal Declaration of Human Rights' which encompassed the concern of 'freedom from want' through inclusion of economic and social rights, particularly by recognizing

2 Para 1.4 Government of India, Law Commission Of India, 'Need for Ameliorating the lot of the Have-nots' – Supreme Court's Judgments Report No. 223 April 2009

3 <http://www.history.com/this-day-in-history/franklin-d-roosevelt-speaks-of-four-freedoms> accessed on 22/11/2017 at around 1.19pm

4 Article 1(3) of the UN Charter 1945



this right as a component of an adequate standard of living<sup>5</sup>. The Right to food is a human Right derived from the International Convention on Economic Social and Cultural Rights, recognizing the '*Right to an adequate standard of living, including adequate food*' as well as the '*fundamental right to be free from hunger*'. States have the obligation to '*respect, protect and fulfil*' that is, first, the state must not itself deprive anyone of access to adequate food; second, it must protect everyone from being deprived of such access in any other way; and third, when anyone is in fact without adequate food the state must proactively create an enabling environment where people become self-reliant for food and where people are unable to do so, must ensure that it is provided. Every individual is a Rights-holder, fully entitled to demand that the state perform these duties. The ancient Indian concept of Dharma laid extraordinary emphasis on individual and social action for growing and sharing food in abundance. It was realized that '*life arises from food and world is sustained by food*'. *Do not turn away any one who comes seeking your hospitality which is the inviolable discipline of life*<sup>7</sup>.

### RIGHT TO FOOD UNDER THE INDIAN CONSTITUTION

It is only the Constitution that plays a fundamental role in the realization of the Right to food as it is the supreme law of the land and the source of all political power within a nation. The Indian Constitution does not expressly recognize the fundamental Right to Food. A careful examination of the Preamble of the Constitution reveals that India is not a police state<sup>8</sup> anymore but a welfare state<sup>9</sup>, which strives to achieve the overall development of all its citizens and is based on the principles of equality of opportunity, equitable distribution

5 Article 25 of the UDHR 1948

6 '*Annadbhavanti bhutani*' as stated in Bhagavadgita 3.4. GV Sharma Pandith's '*Dharma Shastra*' 1st Edn 2011, Divya Chandra Publishers, Bangalore

7 '*Tatryopanishad III 7 and III 10*'. GV Sharma Pandith's '*Dharma Shastra*' 1st Edn 2011, Divya Chandra Publishers, Bangalore

8 A nation in which the police, especially a secret police, summarily suppresses any social, economic, or political act that conflicts with governmental policy. [dictionary.reference.com/browse/police+state](http://dictionary.reference.com/browse/police+state) accessed on 24/12/2014 at around 7.00am

9 A welfare state is a concept of government in which the state plays a key role in the protection and promotion of the economic and social well-being of its citizens.



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of wealth, and public responsibility for those unable to avail themselves of the minimal provisions for a good life. The constitution strives to achieve a Socialistic form of society<sup>10</sup> that tries to secure Social justice to all its citizens. Article 21 though couched in negative language, confers on every person the fundamental Right to life and personal liberty which has become an inexhaustible source of many other rights.<sup>11</sup>

But the Supreme Court has reiterated in several of its decisions that the Right to Life guaranteed in Article 21 of the Constitution in its true meaning includes the basic Right to food, clothing and shelter<sup>12</sup>. The maiden case concerning specifically the Right to Food that went up to the Supreme Court in 1986 was the case of '*Kishen Pattanaik v State of Orissa*'<sup>13</sup>. *P.N. Bhagwati*, CJ observed in this case "No one in this country can be allowed to suffer deprivation and exploitation particularly when social justice is the watchword of our Constitution. It is the bounden duty of the state government to see that everyone is provided with bare necessities of life and no one is driven to a position where he is compelled to sell his sweat and labour for a pittance".<sup>14</sup> The justiciability of the specific Right to Food as an integral Right under Article 21<sup>15</sup> had never been articulated until the Right to Food petition

<sup>10</sup> Constitution (42nd Amendment) Act 1976

<sup>11</sup> *Ibid*

<sup>12</sup> *Maneka Gandhi v Union Of India*, AIR 1978 SC 597

<sup>13</sup> 1989 Supp(1) SCC 258 The petitioner wrote a letter to the Supreme Court invoking the epistolary jurisdiction, about the extreme poverty of the people of Kalahandi in Orissa where hundreds of people were dying due to starvation and where several people were forced to sell their children. The letter prayed that the State government should be directed to take immediate action in order to ameliorate this miserable condition of the people in Kalahandi. In its judgment, the Supreme Court took a pro-government approach and directed the state to take macro level measures to address the starvation problem. This was the first case specifically taking up the issue of starvation and lack of food.

<sup>14</sup> *Id.*

<sup>15</sup> 'Protection of life and Personal liberty'

<sup>16</sup> 2000(5) SC ALE30 In 2001, Starvation deaths had occurred in the state of Rajasthan, despite excess grain being kept for official times of famine and various schemes. The PUCL, petitioned the court for enforcement of the food schemes and the Famine Code. They grounded their arguments on the Right to Food, deriving it from the Right to life. Over two years, various interim orders were made by the court, but with meager implementation by the national and state governments. In 2003, the court issued a strong judgment which found the Right to life was imperiled due to the failure of the schemes. The Court noted the paradox of food being available in granaries but that the poor were starving and it refused to hear arguments concerning the non-availability of resources given the severity of the situation and ordered that all individuals without means of support (older persons, widows, disabled adults) are to be granted an Antyodaya Anna Yozana ration card for free grain and



filed by PUCL in '*PUCL v Union of India*'<sup>16</sup> in 2001.

In tune with the international obligation and to give a physical manifestation to the same, NFSA, 2013<sup>17</sup> was passed with the sole objective of providing for food and nutritional security<sup>18</sup> in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity. The beneficiaries of the Act being 75% of the rural population and upto 50% of the urban population who receive subsidized food grains<sup>19</sup> under Targeted Public Distribution System<sup>20</sup>, thus covering about two-thirds of the population. Right to safe food has become a global concern because of which United Nations Organisation is constantly endeavouring to secure this Right globally because of which it has passed various conventions and entered into treaties and agreements with all its member nations. Erstwhile, the Indian food regulations comprised of various food laws that were enacted at different points of time under the ambit of various Ministries of Government of India. The Food Safety and Standards Act<sup>21</sup>, 2006 came into effect, subsuming various Central Acts.<sup>22</sup>

Historically they were introduced to complement and supplement each other in achieving total food safety and quality, with the result that the food sector in India was governed by a number of different statutes rather than a single comprehensive enactment. FSSA was passed based on the standards

State governments should progressively implement the mid-day meal scheme in schools.

16 National Food Security Act.

17 Nutrition security is defined as secure access to an appropriately nutritious diet (ie,protein, carbohydrate, fat, vitamins, minerals, and water) coupled with a sanitary environment and adequate health services and care, in order to ensure a healthy and active life for all household members- Food &Agricultural Organisation of UN as stated by Ashok Gulati, Jyothi Gujral, T Nandakumar in National Food Security Bill-Challenges and Options in Discussion paper no 2 of Commission for Agricultural Costs and Price

18 Schedule I- The eligible persons will be entitled to receive 5 Kgs of foodgrains per person per month at subsidised prices of Rs. 3/2/1 per Kg for rice/wheat/coarse grains.

19 TPDS

20 FSSA

21 Prevention of Food Adulteration Act of 1954, Fruit Products Order of 1955, Meat Food Products Order of 1973, Vegetable Oil Products (Control) Order of 1947, Edible Oils Packaging (Regulation) Order of 1988, Solvent Extracted Oil, De- Oiled Meal and Edible Flour (Control) Order of 1967, Milk and Milk Products Order of 1992 and also any order issued under the Essential Commodities Act, 1955 relating to food. Yetukuri Venkateswara Rao's, 'Commentary on Food safety and Standards Act 2006', 1st Edition 2011, Asia Law House, Hyderabad



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set by the Codex Alimentarius Commission<sup>23</sup> called Codex Standards<sup>24</sup>. The Commission's main goals are to protect the health of consumers and ensure fair practices in the international food trade. Food safety<sup>25</sup> considerations include the origins of food including the practices relating to food labelling, food hygiene, food additives<sup>26</sup> and pesticide residues, as well as policies on biotechnology & food and guidelines for the management of governmental import and export inspection and certification systems for foods. In considering market to consumer practices, the usual thought is that food ought to be safe in the market and the concern is safe preparation and delivery of the food for the consumer. This includes a number of routines that should be followed to avoid potentially severe health hazards. The tracks within this line of thought are safety between industry and the market and then between the market and the consumer.

FSSA 2006 has laid lot of emphasis on the responsibilities of the food business operators<sup>27</sup> which is in the interest of the general public as it affects the public health and has laid restrictions on the advertisement and prohibition as to unfair trade practices.<sup>28</sup> The Act has set up Food Safety and Standards Authority of India<sup>29</sup> whose main task is to protect the interest of the consumers of food by requiring the food business operators to adhere to the requirements as stipulated by it. The Act has also tried to tackle the menace of imported food<sup>30</sup>.

23 A body that was established in early November 1961 by the Food and Agriculture Organization of the United Nations (FAO), was joined by the World Health Organization (WHO) in June 1962. Sumeet Malik's 'Handbook of Food Adulteration & safety Laws' 1st Edn 2011, Eastern Book Company, Lucknow

24 Codex Standards is a collection of internationally recognized standards, codes of practice, guidelines and other recommendations relating to foods, food production and food safety. 'Food Safety and Standards Act 2006, Rules, Regulations 2011', 7th Edition 2007, International book company, New Delhi.

25 Section 3(1)(q) FSSA Food safety means assurance that food is acceptable for human consumption according to its intended use. 'Food Safety and Standards Act 2006 along with Rules and Regulations 2011', 3rd Edition 2013, Commercial law Publishers (India) Pvt Ltd.

26 *Id.* Section 3(1)(k) Any substance not normally consumed as a food by itself or used as atypical ingredient of food, whether or not it has nutritive value, the intentional addition of which to food for a technological purpose in the manufacture, processing, preparation, treatment

27 Section 26 FSSA

28 *Id.* Section 24

29 *Id.* Section 4

30 *Id.* Section 25

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The novelty of this Act lies in introducing the Food recall procedures<sup>31</sup> which is the need of the hour taking into considerations the number of people being affected by food adulteration even after this Act has come to play and the recent example is that of Maggi noodles manufactured by Nestle Company. Though this Act was enacted in 2006, more than a decade ago, consumer awareness about this legislation is very poor and people became aware of the existence of this Act only after the Maggi noodles incident which took place in June 2015. Maggi noodles were withdrawn from the market as a part of food recall procedure after the same was found to have contained dangerously high levels of lead. *“Product recall is unheard phenomenon in India, and mislabelling is quite rampant in packaged foods which deliberately leave out listing chemical flavour enhancers like Monosodium Glutamate (MSG). But public pressure is mounting on Nestle to take back the contaminated products. There are also demands that the celebrities advertising the brand, namely Bollywood icons Amitabh Bachchan and Madhuri Dixit, be prosecuted for doing so”*<sup>32</sup>. But the same has hit back the markets with a bang after getting the clearance from the Mumbai High Court.<sup>33</sup>

These two major food laws in India are complementary to each other, the first one dealing with the quality of food and the second one dealing with the definite quantity of food grains entitlement & also nutritional security for a major portion of the citizens, should have been enacted simultaneously in order to secure the basic Right of the people ‘the Right to Food’ effectively. These two major Food Laws in India intend not only to feed the burning hungry bellies with safe food but also ensure nutritious security to its people in the country.

Our Karnataka state has gone one step further to establish Indira Canteens drawing its inspiration from Amma Canteens that were established in Tamil

31 *Id* Section 28

32 ‘Nestle Caught In Food Safety Storm In India’ <https://www.forbes.com/sites/saritharai/2015/06/04/food-multinational-nestle-caught-in-food-safety-storm-in-india> accessed on 19/12/2017 at around 11.31am

33 ‘Maggi noodles go back on sale in India after recall’, <http://www.bbc.com/news/business-34759615> accessed on 19/12/2017 at around 11.41am



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Nadu by the then Chief Minister. Indira canteens were launched on 16<sup>th</sup> August 2017, an initiative to provide subsidized food to the local people through the chain of restaurants. The canteens have been established in every ward within the BBMP<sup>34</sup> limits and speculations are rife that shortly, the same may be extended to head quarters of all taluks and districts. These canteens are alleged to have been established to cater to the needs of the people who are economically disadvantaged. The menu is different for each day in a week & highlights the standard prices for the three meals: Rs 5 for breakfast, and Rs 10 each for lunch and dinner, which is very nominal. While the actual cost of three meals works out to be Rs 57, the customer pays Rs 25 and the rest is borne by the BBMP. Each canteen is supposed to serve 250 people per meal. Though there is no bar on a person buying as many plates of food as possible, the only rider is he will be issued only one token at the counter at a time. This means, if a person wants to buy another plate, he has to come back in queue to stake his claim. Take outs/parcels are barred and only spot dining is allowed. Customers are not given bills. Currently the canteens work on a coupon system, where coupons/tokens of different colours are given for different meals to avoid misuse of the same by the consumers. The number of tokens per meal is noted down by the canteen staff and handed over to BBMP for monthly reimbursement. The system operates on a hub-and-spoke model. The food is being cooked at the centralised kitchen and the same is being dispatched to the canteens in air conditioned carriers in order to maintain the quality of food. But shortly each assembly constituency will have a kitchen where food will be prepared, and transported to all the canteens within that constituency. Food is served in plastic plates and drinking water is made available. Overall, nodal officers are responsible for ensuring cleanliness and quality of food through periodic inspections, resolving complaints etc. In addition, the canteens are clean and are fixed with CCTV surveillance cameras to keep a vigil.

"The BBMP has come out with a mobile app for the canteen, which is divided into four different modules. Under the first module which is for the citizens, the app will provide location of five nearest canteens along

<sup>34</sup> Bruhat Bengaluru Mahanagara Palike



with the menu of the day. There is also an option to rate the canteen and the citizen can also exercise the option of filing complaints on the app<sup>35</sup>. The capital expenditure on building kitchens and canteens, along with acquiring equipments, is around Rs 87 crore for the entire city. Cost of building one canteen is Rs 28.5 lakhs; building all 198 canteens in all BBMP wards would cost around Rs 56.4 crores. The cost of building a kitchen is Rs 61 lakhs; and thus building 27<sup>36</sup> of these costs around Rs 16.4 crore. Another Rs 14.5 crore is for equipments/ accessories for the kitchens and canteens<sup>37</sup>. The attempt and rationale behind this project is quite commendable. The efforts of the state to feed even the last person in the society, is in accordance with its commitments as enumerated under NFSA 2013. The target beneficiaries of these canteens are supposed be weaker sections of the society, but the Researcher was appalled to see that more than 50% of the crowd at these canteens seemed to be unqualified to be the beneficiaries. Nowhere it is explicitly stated that these canteens are meant only for one section of the society which is the real target. ie no mechanism to ensure that the services of these canteens are reaching the target group. Though, in principle, this project is in consonance with the objectives of NFSA the same has flagrantly violated the provisions of FSSA. After a video on one of the social network that was widely circulated, exposed the way in which utensils in the canteens were washed, raising questions about cleanliness and hygiene, the commissioner admitted that the video was from a canteen shot on August 17 2017. *“Those were still the initial days. Imperfections have been taken care of”*<sup>38</sup>. But, it is not a matter of concern for the mishap. Mishaps can happen anytime, irrespective of initial days or final days. The Researcher wonders as to, how the authorities can take a chance and if only mishaps can be the eye-openers for them. Why should the

35 <http://www.deccanchronicle.com/nation/current-affairs/310717/bengaluru-whats-on-menu-check-it-on-indira-canteen-app.html> accessed on 19/12/2017 at around 2:40 pm

36 As on today only 27 kitchens are functioning

37 <http://www.thehindu.com/todays-paper/tp-national/tp-karnataka/indira-canteen-kitchens-to-cost-rs-285-lakh-each/article18789972.ece> accessed on 19/12/2017 at around 2:48pm

38 <http://www.thehindu.com/news/cities/bangalore/changes-planned-in-indira-canteens-based-on-feedback/article19758600.ece> accessed on 19/12/2017 at around 10:56pm



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authorities wait for something to happen and then clamour to initiate suitable measures. Health of people is something that cannot be tossed around. State cannot be absolved of its duty to take utmost care and in the event of any untoward incident, the state cannot excuse itself contending that they were initial days. They cannot treat the consumers of Indira canteens as guinea pigs. This callous attitude of the authorities display the scant concern they have for the consumers and is in line with the saying, 'king can do no wrong' and they must not be allowed to play ducks and drakes with people's health. The state should not only to feed the people but ensure that the food is safe.

The Researcher visited few Indira canteens to see how they operate, of course the premises is clean but leaving lot of other things to be desired for. First of all long queue greeted the Researcher & not many customers appeared to be economically poor, food does not arrive at scheduled time, shortage of food, no mechanism to weigh the food served as they are required to serve a particular quantity of food, food got over much earlier than the scheduled time because of which many had to return without food.

### VIOLATION OF THE PROVISIONS OF FSSA BY INDIRA CANTEENS

1. First of all the kitchens where the food is being cooked is not kept open for public inspection. In fact when one of the local television channels wanted to take the video clippings of the kitchens, they were prevented from doing so and were also assaulted for not heeding to their instructions. What puzzles the Researcher is that if everything is in order why should the authorities hesitate to make it public.
2. Section 19 of the Act speaks about the use of additives or processing aid and provides that no article of food shall contain any food additive or processing aid unless it is in accordance with the provisions of the Act. But how to make sure of the compliance of this provision by Indira canteens.
3. Section 26(3) dealing with the responsibility of food business



operators, mandates that no food business operator shall employ any person who is suffering from infectious, contagious or loathsome disease. But we do not know if the person handling food conforms to the sanitary and hygiene requirement during the preparation of food.

4. Section 26(4) states that a bill, cash memo or invoice in respect of the sale of any article of food given by a food business operator is to be deemed to be a guarantee about the nature and quality of food. But in these canteens, no bill is given only tokens are issued which does not bear a testimony to the quality of food bought and absolves the food business operator of all his liability if there are any lapses as the token does not contain any statement.
5. A Writ Petition vide No WP 39144/2017, was filed by a student of Law in the Karnataka High Court at Bengaluru Bench, petitioning to know if Indira Canteens have obtained licence under Section 31 of FSSA from the Food Safety and Standards Authority of India, a statutory body established under FSSA to issue license to the food business operators and if so, the same to be displayed in the premises of all the canteens. The authorities stated that they have obtained the required licence issued by the appropriate authority under FSSA but they admitted that they have not displayed the same in the premises and which they agreed to do shortly. But till date nothing has been done.
6. SCHEDULE 4 PART II which deals with General Requirements on Hygiene and Sanitary Practices to be followed by all Food Business Operators applying for license entry 7 deals with Food Testing Facilities, states that a well equipped laboratory for testing of food materials for physical, microbiological and chemical analysis in accordance with the specification/standards laid down under the rules and regulations shall be in place inside the premise for regular/ periodic testing and whenever required. But the kitchens



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where the food is cooked, does not have laboratories attached to it. In fact the regulations demands that whenever there is a fresh batch of food prepared, the same is to be tested at the inhouse laboratory for any physical, microbiological and chemical analysis and the test report must be displayed in the prominent place in the premises along with the date, batch number and quantity. There is flagrant violation of even this provision.

7. Food is being served in plastic plates which the authorities contemplate to be environment friendly. But the recent notification by the FSSAI urges the food business operator not to pack any hot food item in plastic covers, as the moment, hot food comes in contact with plastic, it reacts and turns carcinogenic, in turn rendering the food unsuitable for human consumption. If this is the case how can hot food be served in plastic plates.
8. No cash bill/memo is given for the food bought but only the tokens are given. Due to this any person who consumes food in these canteens and his health suffers, he cannot approach the consumer forum espousing his cause as he does not have a bill to produce. The Consumer Act 1986 states that when any person buys anything for a lawful consideration renders him to be a consumer and if there are any discrepancies in the goods bought, may ask for damages. Here people are buying food for lawful consideration, may be at a subsidised price yet renders the purchaser to be a consumer. Now that he does not possess the bill he loses the Right to Judicial Remedy which is a violation of Article 21.
9. When the Researcher visited one of the canteens, consumers expressed their anguish that though they are required to serve 300gm of rice, in reality only 200gm lands in the plate of a consumer, the standard measurement in all these canteens being a ladle with which the food is served. Here also, as a consumer he is suffering from deficiency of service.



10. Utensils are manually cleaned with no automation, which makes the Researcher apprehensive about the cleanliness of the utensils used for serving the food.
11. Regulation under the Act stipulates that every food business operator should display a helpline number which the customers should be able to contact/complain in case of any irregularity, but none of the Indira canteens have displayed the helpline number and when queried the persons at the premises pleaded ignorance in this regard.
12. At these canteens, filtered drinking water is provided, but the Researcher could not know the source of the same as we cannot be sure if the water is potable and fit for human consumption and there is no display of board enumerating the fitness of water for human consumption.

#### SUGGESTIONS

The Researcher at the outset is glad that the state has made an earnest effort to reach the poor and needy who do not have access to kitchen as Bengaluru witnesses large footfall every day and this mostly consists of floating population. The authorities should carry out suitable corrections in their operation to make it more effective.

1. First of all, kitchens should be kept open for public viewing, to instil the confidence in the minds of the consumers that they are consuming food that is cooked hygienically.
2. Every canteen should have a kitchen, than cooking in a centralised kitchen and transporting the same to the canteens. All of us are aware of the difficulty that we face in Bengaluru for commuting. If the food is prepared in the premises, the cost of transportation, handling which adds to the cost of the logistics can be cut down in turn reducing the cost of the food further and the food can be kept ready at the scheduled time.



3. Attempt should be made to feed more people. The Researcher witnessed that many people had to go back without food as currently only 250 people per meal are being fed.
4. Bill for the food bought must be issued with a guarantee establishing the quality of food served. In case of any harm to the health of consumers after consuming food at these canteens, he may be able to take a recourse to the consumer forum as Indira canteen does not serve food free of cost and we are to buy the same which makes us consumers and not beneficiaries of charity work.
5. The state ought to make sure that proper quantity as per the requirement is served and not less than what is contemplated by the project which amounts to deficient service.
6. Drinking water should be made safer as majority of people in Bengaluru suffer from water borne diseases.
7. The state should clear the ambiguity whether these canteens are for everyone's use or for only one particular section of the population. If it is for one segment of the society, then the awareness should be created among the people to respect the same and not to indulge in deprivation of this right of a particular section of the society.
8. Every canteen should display a helpline number which is toll free to enable the consumers to contact in case of any suggestion or help.
9. Food should be served in an environment friendly and bio degradable plates like areca nut fibre plates which in turn may give impetus to rural small industries.
10. The state should make sure that people who are employed in these canteens enjoy good health and do not suffer from any contagious disease. The government should conduct periodic medical check of the food handlers.



### CONCLUSION

We have witnessed the degeneration of Amma canteens in Tamilnadu after the fall of a particular leader. The Researcher only hopes that this fate will not befall on Indira canteens as well, after a hefty chunk of public money has gone into it. Indira canteens are not the permanent solution to the problem of hunger. Instead, the state should initiate such measures which in the long run help to fight this problem. Indira Canteens are built with pre cast concrete structures with no foundation; the structure looks attractive with the picture of a leader on it. In the same way, this project also has no proper foundation, ill conceived and superficially planned with a short sighted view. Instead, the state should create more employment opportunities, carry out more poverty alleviation programmes, develop the infrastructure and add to the capital assets. Our priority sector 'agriculture' should be revitalised which can provide food for the entire population and employment to more than half of our population. The state should strive to achieve the overall development of all regions so that there will be no influx of people from rural areas to urban areas in search of better pastures, which in turn cuts down the necessity of time gap arrangements like Amma Canteens and Indira canteens. 'The state need not strive to protect its people from the cradle to the coffin, but need to expose them and make them strong'. We have a popular belief that "A child will not grow healthy if he is being fed by others but he has to eat on his own so that he knows how much to eat".

  
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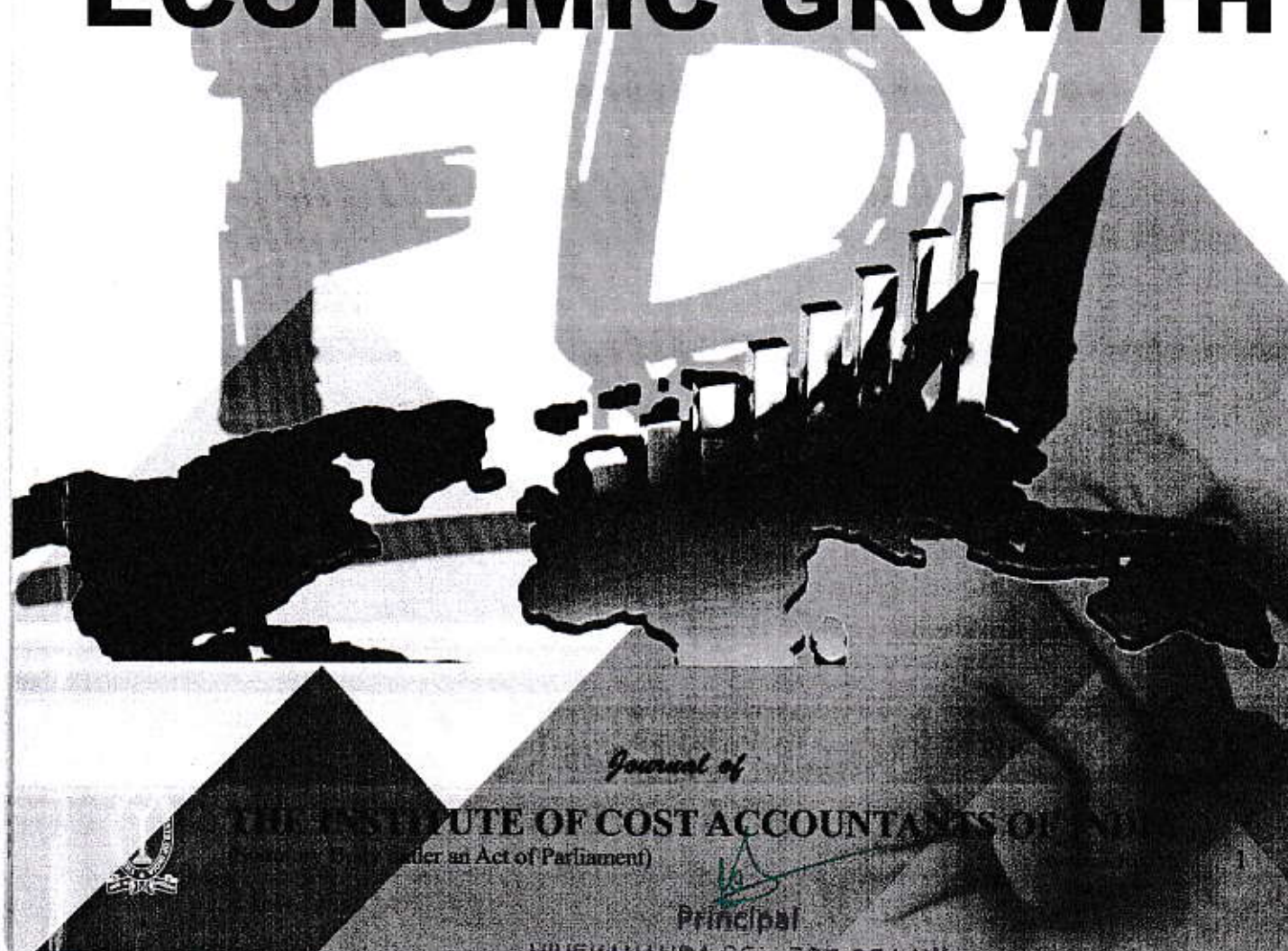


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## FOREIGN DIRECT INVESTMENT AND ECONOMIC GROWTH



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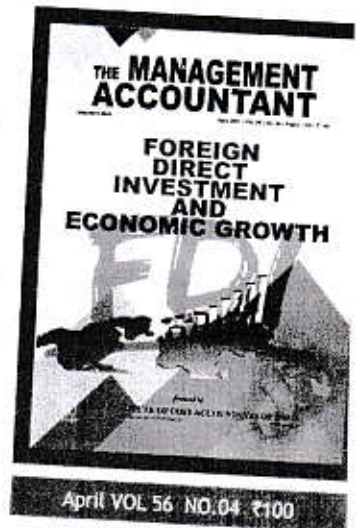
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# INSIGHTS ON INDIA'S FDI POLICY CONTRIBUTIONS AND IMPLICATIONS TO THE DEVELOPMENT OF ECONOMY

## Abstract

*Foreign Direct Investment (FDI) is considered as one of the sources of foreign investment and one of the best avenues available for the economies to develop themselves. It is a type of investment made by one enterprise in a country located outside its political borders. FDI has gained relevance globally as an instrument of economic integration and provides access to the innovative technology which promote the efficiency and productivity of the existing production capacity and generates new production opportunity in the emerging economies. In order to attract more and more FDI's, the GOI took several initiatives to improve the foreign investments and kept on amending its FDI policies periodically*



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## Introduction:

Improvement in the economic condition of the country depends on various factors like financial condition, technology, labour skills and education system. But these are not available in equal measures in all the countries. Hence, no country in the world is self sufficient and self reliant. Therefore, most of them largely depend on other nations. Most of the advanced economies with their surplus reserves try to penetrate into the economies (developing & under developed) as they are rich in above mentioned factors. FDI (Foreign Direct Investment) plays an important role in accelerating the growth of such economies. FDI is considered as a major source of non-debt financial resource for economic development.

At present, most of the emerging economies like India, Brazil, and Mexico have taken a lot of initiatives to attract FDI by providing various attractive incentives. FDI is one such source which bridges the gap from opportunity constraint to opportunity development and growth. In the progress of economic development, foreign investments help to overcome various constraints such as poverty and unemployment and even while providing improvement in productivity from the

existing capacity. However FDI has both positive & negative effects on host economies.

This research paper clearly exhibits how the FDI has contributed for the development of Indian economy, its contribution to the Indian GDP, sector wise flow of FDI in India, pro's & con's of FDI to Indian economy & other relevant factors that are directly associated with economy growth.

## Review of Literature

**Dr. S N Babar and Dr. B V Khandare, (2012)**, "Structure of FDI in India during globalization period". The study mainly focused on changing structure and direction of India FDI during globalization period.

**Singh (2009)** stated in their study that foreign direct investment (FDI) policies play a major role in the economic growth of developing countries around the world. The paper highlighted the trend of FDI in India after the sector-wise economic reforms.

**Devajit (2012)** conducted the study to find out the impact of foreign direct investments on Indian economy and concluded that Foreign Direct Investment (FDI) as a strategic component of investment is needed by India for its sustained economic growth and development through creation of jobs, expansion of existing manufacturing industries etc.

**Zafar, S.M.Tariq & Waleed Hemdat (2016)** in their study found that FDI flow in India has increased too much in comparison to past. They also found that FDI inflow influenced the GDP of the nation and both were moving at a matching pace and was having positive impact on economic growth.

**Bhavya Malhotra (2014)** in her study tried to study trends and pattern of FDI along with assessing the determinants of FDI Inflows. In her study he found that Indian economy has a tremendous potential and FDI has a positive impact on economic growth.

**Dr. Jasbir Singh, Ms. Sumita Chadha, Dr. Anup Sharma (2012)** in their study they draw conclusion that maximum global foreign investment's flows are attracted by the developed countries rather than developing and underdeveloping countries.



**Statement of the problem**

It was considered once upon a time, that, Indian economy was an under developed economy because of the stringent rules & regulations. After the implementation of LPG policy & relaxation in FDI policies, the economic condition of the country accelerated towards development.

At present, most of the the advanced economies like USA, UK, JAPAN etc., have considered that Indian economy is no more a developing economy, but is a developed one. This paper is an attempt to bring out the factors that have contributed for development, the sectors

that are attracted towards FDI & their contribution for economic development of India .

**Research Methodology**

This study is based on the data & information gathered from secondary sources viz., reports published by the GOI, RBI reports relating to foreign flows, reports published by the Department for Promotion of Industry and Internal Trade (DPIIT), economics journals and internet sources.

**Objective of the study**

- ⊙ To study the evolution of FDI in

Indian economy.

- ⊙ To study the routes of FDI inflow.
- ⊙ To study the sectors Permissible and Prohibited under FDI.
- ⊙ To study the contributions(pros) and implications(cons) of FDI to Host and Home economies.
- ⊙ To study the year-wise FDI inflow and sector-wise FDI Equity inflows (Top 35 sectors) in India.
- ⊙ To study FDI contribution towards GDP of the economy.

**1.1 Table indicating the Evolution of FDI in Indian economy.**

Stages	I	II	III	IV	V	VI
<b>Policies &amp; Regulations</b>	<b>Industrial Policy, 1948</b>	<b>MRTP Act- 1969 FERA-1973</b>	<b>Industrial Policy 1991 (LPG Policy) FEMA-1999</b>	<b>Consolidated Documentation</b>	<b>Consolidated FDI Policy &amp; Make in India initiative</b>	<b>Initiatives taken by the GOI on (consolidated) FDI policy,2020</b>
<b>Decisions &amp; Amendments</b>	<ul style="list-style-type: none"> <li>➤ To promote industrialization, foreign investment was allowed.</li> <li>➤ Stringent rules and regulations were imposed regarding inflow of foreign capital to protect the national interest of the economy</li> <li>➤ Actions were taken to maintain the ownership and majority holdings in Indian hands.</li> </ul>	<ul style="list-style-type: none"> <li>➤ <b>MRTP Act, 1969:</b> <ul style="list-style-type: none"> <li>• This Act was introduced in order to have control over the operation size of the organization, product pricing and services offered by the foreign companies.</li> </ul> </li> <li>➤ <b>FERA,1973</b> <ul style="list-style-type: none"> <li>• This Act limited the extent of investment in foreign equity up to 40%, with the exception of 74% for technology intensive export intensive and core sector industries. (Now MRTP Act has been replaced by Competition Act , certain Foreign Trade Policies and FERA Act has been replaced by FEMA Act)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>➤ As per industrial policy 1991, 51% of FDI was allowed in automatic route in 35 high priority industries which require large capital inflows and advanced innovative technologies.</li> <li>➤ In 1996, automatic approval route for FDI was expanded. The automatic route was increased from 35 industries to 111 industries.</li> <li>➤ FIPB (Foreign Investment Policy Board) was constituted for processing FDI proposals.</li> </ul>	<ul style="list-style-type: none"> <li>➤ In 2000 all activities were placed under automatic route except for a small negative list.</li> <li>➤ Insurance and defense sectors were opened up with a cap of 26%.</li> <li>➤ In 2005, Telecommunication sector cap was increased from 49% to 74%.</li> <li>➤ FDI up to 51% in single brand retail was allowed in 2006.</li> <li>➤ Consolidation of existing FDI regulations to a single document enabled ease of reference.</li> </ul>	<ul style="list-style-type: none"> <li>➤ In Pharmaceutical Sector, the FDI was allowed up to 74% under automatic route and beyond that in the government route.</li> <li>➤ In defense sector, foreign investment was allowed up to 49%. Up to 100% will be permitted through the government route.</li> <li>➤ For aviation sector, 100% FDI has been allowed in automatic route.</li> </ul>	<ul style="list-style-type: none"> <li>➤ In August 2020, the Government of India amended Foreign Direct Investment Policy, 2017 on commercial coal mining policy making it approved only under the Government route. In 2019, the Central Government amended FDI Policy 2017, to permit 100% FDI under automatic route in coal mining activities.</li> <li>➤ In May 2020, Government increased FDI in defense manufacturing under the automatic route from 49% to 74%.</li> <li>➤ In April 2020, Government amended existing consolidated FDI policy for restricting opportunistic takeovers or acquisition of Indian companies from neighboring nations.</li> <li>➤ In March 2020, Government permitted non-resident Indians (NRIs) to acquire up to 100% stake in Air India.</li> </ul>

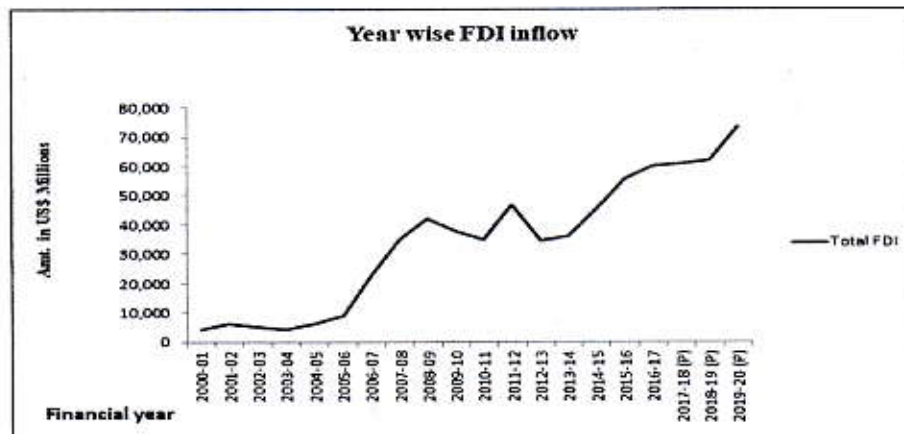


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1.5.1 Table indicating the year wise FDI inflows

(Amount US\$ Million)

SL.NO	FINANCIAL YEAR	Equity		Re- invested earnings +	Other capital +	FDI FLOWS INTO INDIA	
		FIPB Route/RBI's Automatic Route/ Acquisition Route	Equity capital of unincorporated bodies #			Total FDI Flows	%age growth over previous year (in US\$ terms)
1.	2000-01	2,339	61	1,350	279	4,029	-
2.	2001-02	3,904	191	1,645	390	6,130	(+) 52 %
3.	2002-03	2,574	190	1,833	438	5,035	(-) 18 %
4.	2003-04	2,197	32	1,460	633	4,322	(-) 14 %
5.	2004-05	3,250	528	1,904	369	6,051	(+) 40 %
6.	2005-06	5,540	435	2,760	226	8,961	(+) 48 %
7.	2006-07	15,585	896	5,828	517	22,826	(+) 155 %
8.	2007-08	24,573	2,291	7,679	300	34,843	(+) 53 %
9.	2008-09	31,364	702	9,030	777	41,873	(+) 20 %
10.	2009-10	25,606	1,540	8,668	1,931	37,745	(-) 10 %
11.	2010-11	21,376	874	11,939	658	34,847	(-) 08 %
12.	2011-12	34,833	1,022	8,206	2,495	46,556	(+) 34 %
13.	2012-13	21,825	1,059	9,880	1,534	34,298	(-) 26%
14.	2013-14	24,299	975	8,978	1,794	36,046	(+) 5%
15.	2014-15	30,933	978	9,988	3,249	45,148	(+) 25%
16.	2015-16	40,001	1,111	10,413	4,034	55,559	(+) 23%
17.	2016-17	43,478	1,223	12,343	3,176	60,220	(+) 8%
18.	2017-18 (P)	44,857	664	12,542	2,911	60,974	(+) 1%
19.	2018-19 (P)	44,366	689	13,672	3,274	62,001	(+) 2%
20.	2019-20 (P)	49,977	1,226	14,052	8,200	73,455	(+) 18%
<b>CUMULATIVE TOTAL</b>		<b>472,877</b>	<b>16,687</b>	<b>154,170</b>	<b>37,185</b>	<b>680,919</b>	-



The above table and the graph indicate the year wise FDI inflows to Indian economy from the past 20 years through FIPB's/ RBI's automatic route, Reinvestment earnings and equity capital of unincorporated bodies. The above figures are measured in terms of US Dollars.

1.5.2 Table indicating the Sector-wise FDI Equity inflows (Top 35 Sectors)

SL.No	Sectors	Amount of FDI Inflows	
		(In Rs Crore)	(In US\$ Million)
1	SERVICES SECTOR (Finance, Banking, Insurance, Research And Development Sector, etc.)	471,730.06	82,002.96
2	COMPUTER SOFTWARE & HARDWARE	276,006.42	44,911.21
3	TELECOMMUNICATIONS	219,188.59	37,270.95
4	TRADING	176,004.68	27,594.95

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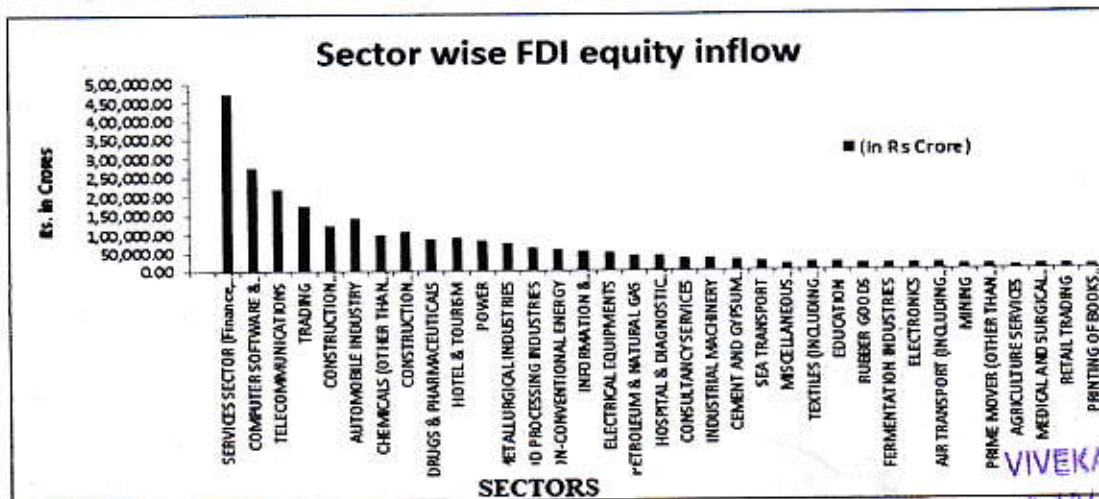
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	CONSTRUCTION DEVELOPMENT: Townships, housing, built-up infrastructure and construction-development projects	123,963.97	25,662.33
	AUTOMOBILE INDUSTRY	143,741.68	24,210.68
	CHEMICALS (OTHER THAN FERTILIZERS)	98,554.35	17,639.48
	CONSTRUCTION (INFRASTRUCTURE) ACTIVITIES	108,382.52	16,846.88
	DRUGS & PHARMACEUTICALS	87,814.31	16,500.62
0	HOTEL & TOURISM	91,778.50	15,288.97
1	POWER	82,650.58	14,987.93
2	METALLURGICAL INDUSTRIES	74,595.40	13,401.78
3	FOOD PROCESSING INDUSTRIES	61,811.45	9,980.75
4	NON-CONVENTIONAL ENERGY	57,144.30	9,225.51
5	INFORMATION & BROADCASTING (INCLUDING PRINT MEDIA)	55,361.25	9,208.14
6	ELECTRICAL EQUIPMENTS	50,719.96	8,604.02
7	PETROLEUM & NATURAL GAS	40,915.45	7,824.16
8	HOSPITAL & DIAGNOSTIC CENTRES	41,154.70	6,726.93
9	CONSULTANCY SERVICES	34,701.93	5,834.81
0	INDUSTRIAL MACHINERY	32,588.56	5,619.50
1	CEMENT AND GYPSUM PRODUCTS	29,327.06	5,281.37
2	SEA TRANSPORT	25,482.60	4,241.88
3	MISCELLANEOUS MECHANICAL & ENGINEERING INDUSTRIES	19,031.46	3,636.79
4	TEXTILES (INCLUDING DYED,PRINTED)	20,343.63	3,447.53
5	EDUCATION	20,731.59	3,244.83
6	RUBBER GOODS	18,011.38	3,018.07
7	FERMENTATION INDUSTRIES	17,192.31	2,989.45
8	ELECTRONICS	16,192.60	2,791.11
9	AIR TRANSPORT (INCLUDING AIR FREIGHT)	17,703.78	2,751.92
0	MINING	15,616.67	2,731.07
1	PRIME MOVER (OTHER THAN ELECTRICAL GENERATORS)	13,130.02	2,227.49
2	AGRICULTURE SERVICES	11,449.75	2,164.72
3	MEDICAL AND SURGICAL APPLIANCES	13,048.80	2,129.50
4	RETAIL TRADING	14,161.96	2,127.01
5	PRINTING OF BOOKS (INCLUDING LITHO PRINTING INDUSTRY)	11,623.71	1,787.15

Source/ Scale  
 ⊙ FEDAI ( of month  
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1.6 Table ind



Multiple bar

The above table and graph indicate the sector-wise FDI equity inflow. Here the top 35 sectors have been considered for the purpose of analysis.

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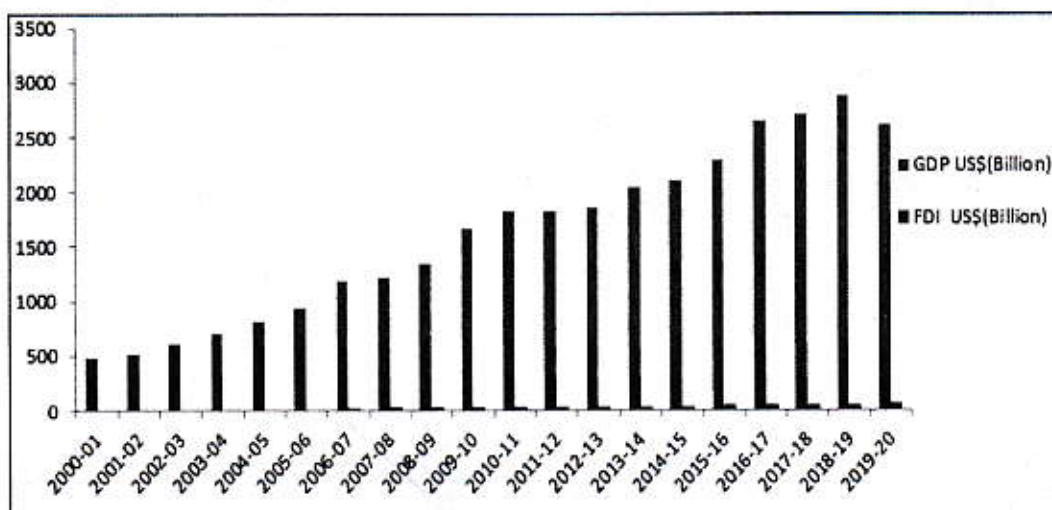
### Source/ Scale:

- ⊙ FEDAI (Foreign Exchange Dealers Association of India) conversion rate from rupees to US dollar applied, on the basis of monthly average rate provided by RBI (DEPR), Mumbai.
- ⊙ From 2000-01 to 2019-20.
- ⊙ # Figures for equity capital of unincorporated bodies are estimates (1.5.1).
- ⊙ (P) Represents the figures are provisional.

### 1.6 Table indicating FDI in percentage of GDP

Years	GDP US\$ (Billion)	FDI US\$ (Billion)	FDI as a % of GDP
2000-01	485.44	4.029	0.83
2001-02	514.94	6.13	1.19
2002-03	607.7	5.035	0.83
2003-04	709.15	4.322	0.61
2004-05	820.38	6.051	0.74
2005-06	940.26	8.961	0.95
2006-07	1190.9	22.826	1.92
2007-08	1216.74	34.843	2.86
2008-09	1341.89	41.873	3.12
2009-10	1675.62	37.745	2.25
2010-11	1823.05	34.847	1.91
2011-12	1827.64	46.556	2.55
2012-13	1856.72	34.298	1.85
2013-14	2039.13	36.046	1.77
2014-15	2103.59	45.148	2.15
2015-16	2294.8	55.559	2.42
2016-17	2652.75	60.22	2.27
2017-18	2713.17	60.974	2.25
2018-19	2875.14	62.001	2.16
2019-20(P)	2610	73.455	2.81

### Multiple bar diagram indicating GDP and FDI (in US \$) of Indian economy for past 20 years

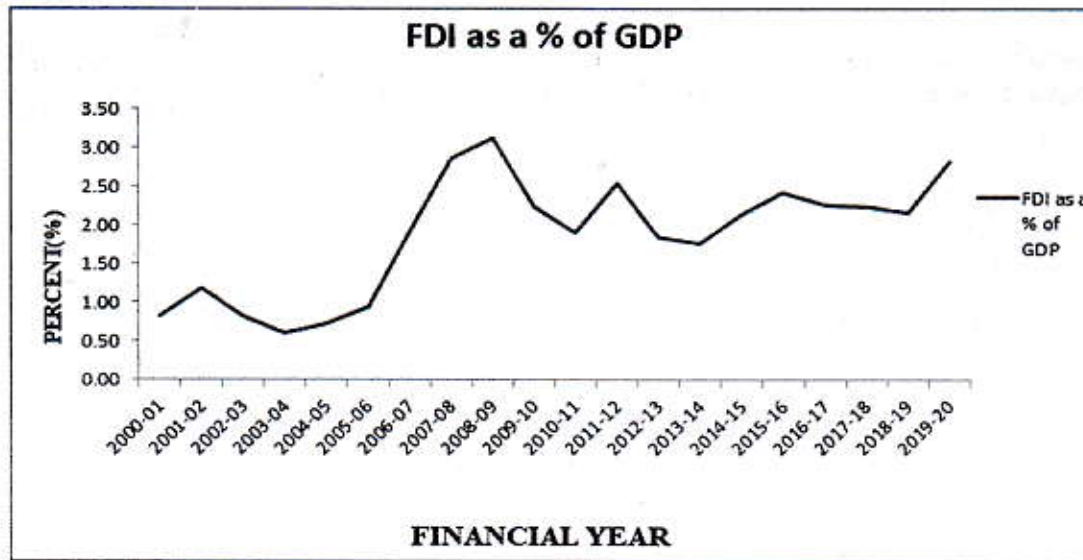


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## OVER STORY

graph indicating FDI as a % of GDP



bove table, multiple bar diagram : graph shows the GDP of the economy, FDI inflow to the y for the past 20 years and FDI ntage of total GDP of economy s on an increasing trend.

ce:

EDAI (Foreign Exchange Dealers Association of India) onversion rate from rupees to JS dollar applied, on the basis of monthly average rate provided y RBI (DEPR), Mumbai.

MacroTrends

P: Figures are provisionals.

ings of the study:

paper exhibits the evolution of india in different stages and the porary developments that have ed in the economy at different routes of FDI inflow and the that are eligible for FDI and the which are ineligible.

1.5.1 and its graph represents nds of FDI inflow into the y from the past 20 years. Up ear 2008-09 the FDI flow into omomy was on an increasing ue to economic depression in r 2008, the flow of FDI from nced economies has decreased. ecovery from such economic sion, the flow of FDI to Indian y is on an increasing trend.

1.5.2 and its graph represents

the quantum of FDI equity inflow(in Rs crores) to various sectors. Here the service sectors(i.e Banking, Insurance, Finance, Research and Development) are more attracted towards FDI equity inflow. Other sectors like computer software, hardware, telecommunication, constructions, automobile industry, hotel and tourism are also attracting the foreign flow in a fair measure.

Table 1.6 and its multiple bar diagram and line graph represent the GDP of the Indian economy, FDI inflow to the economy for the past 20 years and FDI in percentage of total GDP. Here, the contribution of FDI towards Indian GDP is at its best. From the past 20 years, the trend is at its best, since the FDI's contribution has increased from \$4.029 billion(2001) to \$73.455 billion{2020 (P)}. In the year 2008-09 FDI's contribution to the total GDP was around 3.12%, but due to economic depression, the FDI inflow rate was decreased, which directly impacted the GDP growth of the economy. Presently, the average rate of contribution of FDI to GDP is at 1.87%, which is moderate.

### Conclusion:

From the above conceptual study, I conclude that FDI is one of the tool which has contributed for the development of the home and host economies. However, it carries both advantages and disadvantages. Hence the GOI has to undertake various innovative initiatives and steps to

inculcate competitive policies which are adjustable to the global environment conditions regarding promotion and inclusion of FDI's for economic growth of the country. **MA**

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A STUDY ON EMERGING TRENDS IN DEVELOPMENT OF WOMEN ENTREPRENEURSHIP

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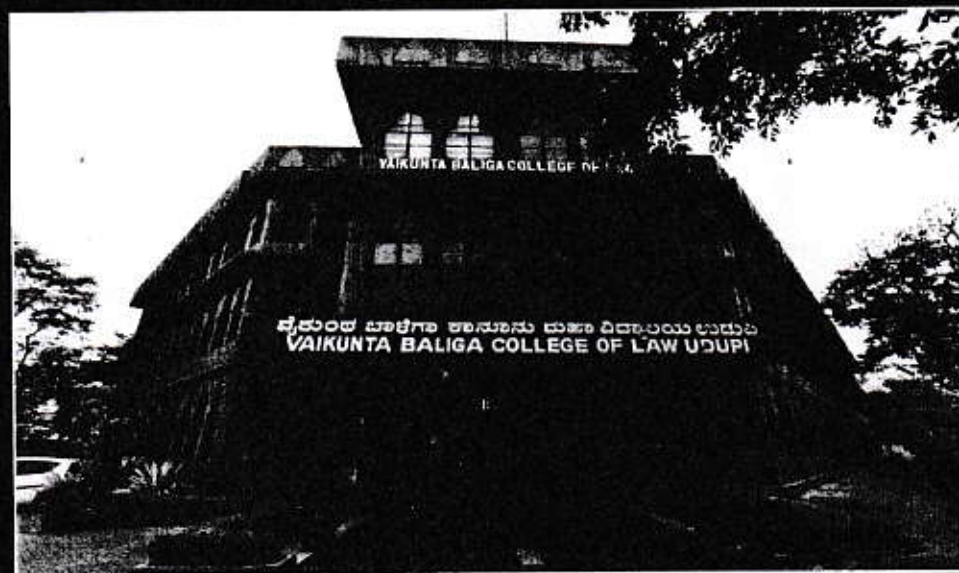


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**ONE DAY NATIONAL SEMINAR ON -  
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INSTITUTIONS AND THE REVISED ACCREDITATION  
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rof (Dr.) Nirmala Kumari.K  
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# INNOVATIVE METHODS OF TEACHING: A ROADWAY TO QUALITY EDUCATION

Smt. Bhuvaneshwari S Kolaki \*

## ABSTRACT

*Ancient Universities in India were known for imparting quality education. Indian higher education system ranks 3<sup>rd</sup> in the world in terms of students, next to China and the United Nations. But in recent past, the quality of education was lost and an attempt to improve that is in the run. In this era of technology, education has reached its next level. The traditional way of teaching and learning have become obsolete. Students are more attracted towards technology than classroom teaching. To create interest in the minds of students, teachers should adopt new methods of effective teaching. In order to ensure quality education, the National Assessment and Accreditation Council (NAAC) has taken a pledge in that regard. Being a regulatory body, NAAC has been encouraging new methods of teaching in higher education institutions. The idea behind recognizing innovative methods of teaching, is also to equip the teacher with present generation needs. In view of the above, new pedagogy has to be adopted to bring revolution in teaching and learning process. Hence, the present paper throw light upon newer methods of teaching, their relevancy, adaptability and the impact on stakeholders.*

**Keywords:** *different methods of teaching, relevancy, adaptability, impact.*

## INTRODUCTION

Countries development always depends on its three kinds of resources i.e. financial, physical and very important human. The human resources refers to the skills, knowledge and experience of the population of a country.<sup>1</sup> Since Vedic period, India has always been known for imparting knowledge. The field of economy in India, has seen an excellent development with advancement of education.<sup>2</sup> Our nation's growth relies on well-educated and

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\* Assistant Professor, Vivekananda College of Law, Bengaluru

<sup>1</sup> Team ASM IBMR, Emerging Trends in Higher Education in India, <https://www.asmibmr.edu.in/blog/emerging-trends-in-higher-education-in-india/>, last accessed on 18/7/2021

<sup>2</sup> Pragyaa, The Indian Education system: Overview, [sociologygroup.com/indian-education-system-features-pros-cons/](http://sociologygroup.com/indian-education-system-features-pros-cons/), Last accessed on 22/7/2021 at 10.30 p.m.

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skilled workforce. To build India a market of global standards, it is very important that every child gets the benefits of quality education.<sup>3</sup> Quality education is imperative for the altogether development of any human being.<sup>4</sup> India's higher educational institutions have been continuously providing corporate leaders to pioneering world over.<sup>5</sup> Education means in India the continuous process of teaching, learning and training of human capital in schools and colleges.<sup>6</sup> But day by day no doubt the quality of education has lapsed with the mushroom growth of the higher educational institutions and universities.<sup>7</sup>

With a view of improving quality of education National Accreditation and Assessment Council (NAAC) was established with primary aim of Assess and accredit. Through the assess and accreditation the NAAC ensures institutional quality and provides an opportunity to the institutions to know their strengths and weaknesses, internal areas of planning and resource allocation, creates collegiality of quality and moreover encourages institutions to initiate new and modern ways of pedagogy.

**Today's students are tomorrow's leaders.** Hence, to make the process of leaning more attractive and impressive, it is pertinent to know the various innovate methods which can be adopted in assuring the quality education and contributing in the process of nation building.

### INNOVATIVE METHODS OF TEACHING

*A teacher's job is to take a bunch of live wires and see that they are well-grounded.*

Darwin D Martin

Teachers are most arguably forms part of nation building. They will mould the students as informed and responsible citizens. Till the beginning of 21<sup>st</sup> century, teachers turned out to be sufficient not only in terms of the numbers

<sup>3</sup> Editorial, Education, smilefoundationindia.org, Last accessed on 17/7/2021

<sup>4</sup> Editorial, Vol.68, No.1, Kurukshetra, Nov 2019, p.4

<sup>5</sup> NandiniJawli, "Major Strides in Higher Education", Vol.XL, No.21, Employment News, Aug-2015, p.1

Sunder Picghi, CEO of Google, an IIT graduate from Kharagpur, CEO of Microsoft SatyaNadel, graduate of Manipal Institute of Technology.

<sup>6</sup> Education in India, Toppr.com/guides/economics/human-capital-formation-in-india/education-in-india/qg, Last accessed on 20/7/2021, at 7.30 p.m.

<sup>7</sup> V S Suryawanshi & V S Shinde, "NAAC Assessment : A Booster for Higher education", Special issue -Role of NAAC in the Educational Development of Higher Education in India, International Multidisciplinary E- Research Journal, Sep-2019, p.80



but also in terms of methodology of teacher training.<sup>8</sup> But the period of educator seeming to have unlimited knowledge and one-way learner-educator interaction has come to an end.<sup>9</sup> To gather the lost interest, the paradigm shift is the need of an hour from the age old traditional methodologies.

Academic performance among students are driving better and the educational environments are changing all over the world by the adoption of innovative teaching methodologies.<sup>10</sup>

**Some of them are discussed below:**

1. **Active Learning:** This process of learning engages the students in reading, writing, discussing or in solving problems. The instructional strategies are used to involve them doing the new things and make them to think about the things they are doing.<sup>11</sup> It encourages the students for critical thinking, creative thinking, analyzing *etc.* For example law students can be given a hypothetical problem and extracts the variety of ways of resolving the same.
2. **Group discussion:** This method of teaching allows a teacher to arouse critical thinking in the students. It also helps the teacher to demonstrate that they appreciate contribution and provoke them to think more deeply and come out with ideas more firmly.<sup>12</sup> Discussion facilitate student process information rather than simply receive as it is. The teacher shall have clear idea about what he/she wants from that discussion.
3. **Project based Teaching:** Another important mode of teaching towards improving the quality education is project based teaching. In this method of pedagogy the student will work on the given topic. It is no doubt develops the skills of research, critical approach towards the concept,

<sup>8</sup> Sanjay Singh, "Teacher Education and Development in Rural India", Vol.68, No.1, *Kurukshetra*, Nov 2019, p. 21

<sup>9</sup> 25 Learning Methodologies That Every 21st Century Education Professional Should Know <https://blog.learnlife.com/25-methodologies-educators-should-know>

<sup>10</sup> "8 methodologies that every 21<sup>st</sup> century teacher should know", <https://www.realinfluencers.es/en/2019/05/09/8-21st-century-methodologies/>, Last accessed on 23/7/2021 at 11.30 p.m.

<sup>11</sup> Dr. HaseenTaj, "Activity Oriented & Technology Based Pedagogy in Higher education", Contents of Lecture delivered at Faculty Induction Programme organized by UGC-IRDC, Bangalore University, Bengaluru

<sup>12</sup> Vijay P Tiwari, "Teaching Methods to Make Learning Easy and Interesting", Vol-46(3), *Indian Bar Review*, 2019, p.21



logical thinking and lastly prepare them to analytical writing. The adoption of the same by Karnataka State Law University is a welcoming move and well-appreciated by the student community.

**4. Role Play:** It is viewed as very flexible teaching methodology as it does not require any special tools, technology and environment.<sup>13</sup> Through this method student can be taught to respect values, concerns and positions acquired by other people. It also allows the students to see the given problem from different perspectives.<sup>14</sup> For example *Donogue v. Stevenson* (A ginger-beer) case can be given for role play.

**5. Case Study/Simulations:** Being law teachers we are more familiar with this kind of teaching to our students. The Bar Council of India in promoting and providing quality education to the budding lawyers have made it mandatory the simulation exercise in the practical courses. By this method students are expected to read the case, supplementary articles to support his/her argument. In this way student will learn how to approach and solve the problem. The involvement of all students must be guaranteed by the teacher.

**6. Seminar Method:** This is one the most modern and popular mode of teaching wherein the students are encouraged to prepare themselves on the given topic and present the same before their friends. It helps them to overcome the stage fear and also build a sense of confidence on the concept/subject. The sense of responsibility makes them sensitive and attentive towards the topic. The Karnataka State Law University has taken steps towards imparting quality education to its students by making seminar compulsory for 5 marks.<sup>15</sup>

<sup>13</sup> Ian Glover, "Role-play: An Approach to Teaching and Learning", [https://blogs.shu.ac.uk/shutel/2014/07/04/role-play-an-approach-to-teaching-and-learning/?doing\\_wp\\_cron=1627502994.9373879432678222656250](https://blogs.shu.ac.uk/shutel/2014/07/04/role-play-an-approach-to-teaching-and-learning/?doing_wp_cron=1627502994.9373879432678222656250), Last accessed on 26/7/2021, at 10.45 p.m

<sup>14</sup> *Supra-note*, 12

<sup>15</sup> Other modes of effective teaching are: **Visit method-** For better learning experience and appreciating the things students can be taken to various places. The students of Law could visit various courts, tribunals, government departments like Weight and Meteorology Department, State Pollution Control Board, Consumer Fora etc.

**Lecture Method:** Very vital and most familiar mode of effective teaching for quality enhancement. Many educational institutions though not equipped with technology still manage to bring good results only because of the faculty members who are not less than any google, any source of information.



## TECHNOLOGY BASED INNOVATIVE METHODS OF TEACHING

In the present day scenario, technology has become part and parcel of education. Technology can facilitate the teachers to fulfill their aim of improving student performance.<sup>16</sup> Some vital one are explained below-

- 1. Smart Board Teaching:** Smart board teaching is considered as one of the effective method as it helps to rejuvenate the students by showing a deeper level of involvement and understanding. The teaching will be transformed into more interactive and collaborative experience by using multimedia content. Therefore, smart board classes are mandatory under NAAC for providing quality education.<sup>17</sup>
- 2. Social media Platforms:** Platforms like You Tube, Moodle, Zoom, Google Meet, Microsoft teams so on so forth are widely used tools for sharing information and knowledge. These are known as very effective mode of communication. According to the norms of NAAC the college/institution website shall be updated on daily bases as to steps taken to reach out the students who are not able to attend the classes. During pandemic you Tube, Facebook live, on instagram many lectures were organized by not by educational institutions but also the bar and benches.
- 3. Flip Learning:** This method allows the teachers to implement a methodology or various methodologies. It allows the students to participate in class activity more actively. Students in this method watch online lectures, collaborate in online discussion or carry out research at home.

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<sup>16</sup> "How Important Is Technology in Education? Benefits, Challenges, and Impact on Students", available at <https://soeonline.american.edu/blog/technology-in-education>, Last accessed on 26/7/2021, at 6.30 p. m.

<sup>17</sup> "Innovative Methods of Teaching Strategies: That Will Help Every Teacher in the Classroom", Available at, <https://fedena.com/blog/2019/02/innovative-methods-of-teaching-strategies-that-will-help-every-teacher-in-the-classroom.html>, last accessed on 24/7/2021, at 9.45 p.m.



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**4. Digital Books:** As we have witnessed during the first wave of Covid-19 the whole country went on 21 days of lockdown. Radical transformation have brought in the world of education through digitization of text books.<sup>18</sup> Many National Libraries have gave access to their libraries to for continue the process of learning. The books were allowed to read and download. The Supreme Court library is one among them.

### ADAPTABILITY OF INNOVATIVE METHODS OF TEACHING

Adaptability means being able to respond effectively to the change.<sup>19</sup> Any new thing for that matter is very difficult to cope up with. But teachers and students are now quite acquainted with technology and ease of teaching and learning. In the whole process of learning students actively participate to build their knowledge and sharpen their skills. The teachers on the other hand, only leads them and guides them to focus on the objectives of the study.<sup>20</sup> When the Karnataka State Law University introduced the Internal Assessment and Paper presentation as part of the curriculum students and teachers face difficulty both in writing and guiding. But as the time passes the students and teachers are familiar with procedure and process. The new methodology is improving the research qualities in the student and making the students more familiar with different subjects and concepts.

The main aim and object of the NAAC is improving the quality of education in Indian higher educational institutions. The digitization of education remains one of the top most priority of governments as the internet penetration has been estimated to reach 55% by the end of 2025.

As we all are facing the challenges in reaching the students in this pandemic the online teaching has become mode of learning worldwide. Even the teachers and student community successfully managing with new methods of teaching and exploring many new ways of teaching and learning.

<sup>18</sup> Amol Arora Tech trends that are shaping classrooms education in India, Available on <https://www.hindustantimes.com/education/tech-trends-that-are-shaping-classrooms-education-in-india/story-Qs7kwfYeu1G1htcJxURihI.html>, Last accessed on 27/7/2021 at 8.45 p.m.

<sup>19</sup> Collie, R.J., & Martin, A.J. (2016). Adaptability: An important capacity for effective teachers. *Educational Practice and Theory*, 38(1), 27-39

<sup>20</sup> Sujatha Mehta, "Modern Teaching Methods – It's Time For The Change", <https://eduvoice.in/modern-teaching-methods/>, Last accessed on 25/7/2021 at 7.30 p.m.



## CONCLUSION AND SUGGESTIONS

Education regards as a national wealth essential for the nations growth and prosperity.<sup>21</sup> It is not sufficient on the part of government to strive to provide only education to all but to make an effort to provide quality education to all. The quality of education can be ensured by departing from traditional method of teaching and adopting new methods of teaching.


The responsibility of quality check is on the University Grant Commission which established the NAAC to perform the function of quality checker.

By making all the higher educational institutions to undergo the Assessment and Accreditation the discipline in institutions are maintained. Every education institution has to plan and bring out some innovative ideas in improving the standard of teaching and learning.

## SUGGESTIONS

1. Need based training is extended to teachers.
2. UGC sponsored programme like Faculty Induction Programme and Refreshers Course shall be completed within two years of teachers appointment.
3. The managements and government shall provide the basic infrastructure to enable teacher to adopt new methods of teaching.

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<sup>21</sup> Dr. Anil Kumar Tandi & Rasmita Bishi, "Legal Education", Vol-46(4), *Indian Bar View*, Oct-Dec 2019, p.127



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## DOMESTIC VIOLENCE AGAINST WOMEN IN INDIA- AN OVERVIEW

Mr. Sadashivappa M.S & Dr. M.S. Benjamin

### ABSTRACT

*Domestic violence is a Human Rights issue and impediment to growth of a Nation. Domestic violence is widely prevalent but remained largely invisible in the public domain. The history of suppression of Women in India is very long though we have general legislations like Indian Penal Code-1860, Dowry prohibition Act-1961 and other legislations did not provide remedy for issues relating to Domestic Violence and the same has been responsible for enactment of special legislations for protection and promotion of the status of Women. The Protection of Women from Domestic Violence Act-2005, enacted by Parliament in accordance with the obligation imposed under various International Conventions and also keeping in view the rights guaranteed under Articles 13, 14, 15, 21, 39, 51-A(e) and various other provisions of the Constitution of India. The said Act defines the term Domestic Violence involves a pattern of psychological, physical, sexual, financial and emotional abuse. Acts of Assault, threats, humiliation and intimidation are also considered acts of violence. This Act provides four fold support that is residence orders, custody orders, protection*

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- \* Research Scholar, Department of Studies and Research in Law , University of Mysore, Manasa Gangothri, Mysore.
  - \*\* Associate Professor, Department of Studies and Research in Law, University of Mysore, ManasaGangothri, Mysore.



orders and defendant's money supply. Act also lays down the role and duties of 'Protection Officer's, public officials whose role is to ensure that victims have access to legal aid, emergency facilities, courts, shelters, rehabilitation centers and hospitals. During the Covid-19, Pandemics, Domestic violence cases are drastically increased due to stress, anxiety, job insecurity, financial issues, family burden, alcoholism and other factors. The present article mainly focuses on legislative and Constitutional development for the protection of the Women from Domestic Violence including digital violence, inter-parental violence, issues relating to Notional income, agenda of sustainable development goals, U.N.O. on violence against women and role of Judiciary in order to protect the rights of Women and Children.

**KEYWORDS:** Domestic violence, Human rights violations, Sustainable development goals

## INTRODUCTION

Domestic violence is a human rights issue and serious problem for development. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. The phenomenon of violence against women within the family in India is complex and deeply embedded. Women are always subject to violence not only from husbands but also from members of the family. During the Vedic period, women enjoyed a fair amount of freedom and equality. The Vedic period can be termed as the period of feminine glory and also of masculine sagacity and liberalism. In the post-Vedic period, the status of women suffered a setback when various restrictions were put on women's rights and privileges. In British period the status of women drastically changed due to western impact on the socio-cultural life of India. Covid-19 related lockdown made the situation even worse. During the lockdown period women in India filed more domestic violence complaints than recorded in a similar period in the previous years. This increase in cases of domestic violence is not only restricted to India but also the whole world. Women in India are usually less privileged than men in terms of access to material resources. Systematic discrimination and neglect towards female leads to declining sex ratio of women compare to men. In many cases, women are lack of the social and economic support structures that would enable them to effectively resist domestic violence or to leave abusive relationships. To mitigate this situation 'The Protection of Women from Domestic Violence' Act-2005, is passed by the Parliament. This

  
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legislation will act as a deterrent to the occurrences of domestic violence and assures the families peaceful co-existence among their members. In case of domestic violence every women in a domestic relationship shall have the right to reside in the shared household, and that she cannot be excluded or evicted from it except through legal process.

Violence is an act of aggression that crosses the boundary of another person's autonomy and identity. Domestic violence manifests as verbal, physical or psychological abuse often in forms that are more subtle than the violence elsewhere in society. Violence among members of family or household; these cases, one person dominates the will of the other person by using force or emotional coercion, any person may be the victim of such violence but usually women become the victims of such violence. The expression domestic violence includes physical abuse, sexual abuse, verbal abuse, emotional abuse, digital abuse and economic abuse. Article-I of the Declaration on the Elimination of Violence Against Women and the Platform for Action from the Fourth World Conference on Women, both define violence as 'any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.

Domestic violence defined under section 3 of the D.V Act among others, takes in economic abuse also. The definition of economic abuse under the explanation 1 to section 3(4) of the Act clearly and unequivocally demonstrates the entitlement of the aggrieved person to claim maintenance from the opposite party.<sup>1</sup> All these factors render the issue of domestic violence very different from other forms of violence, because of the women's weak and vulnerable position inside their home. It also explodes the myth that women are subjected to harassment and violence on the streets and at their workplace while the home is the safest 'heaven'.<sup>2</sup>

### HISTORICAL BACKGROUND OF VIOLENCE AGAINST WOMEN

History is the study of the past human activities. Human society is composed of Males and Females and the society is stratified on the basis of sex. Every

1 CHOUDHARI, Protection of Women from Domestic Violence Act-2005, Premier Publishing Company.(2014)P-217.

2 MAMTA RAO, Law Relating to Women and Children, Eastern publishing company, 4th edition-2018, at-233.



human being is born free but the Women's freedom has always been restricted in the name of Custom, Religion, Honor, Family welfare and Social Status. With the development in civilization and with coming into existence institution of marriage the subject of cruelty changed drastically and one spouse, be it male or female, started perpetuating cruelty upon the other spouse but as there was no forum to redress this grievance, so the instances of cruelty remained confined to four walls of the house. Women were exploited at earlier stages in the name of religion and other social evils.

In Indian society, the position and status of Women has been continuously changing in the course of time. In Vedic period the position of Women was glorious on account of freedom and equality. The great Women like Apala, Visvara, Yamini, Gargi and Ghosa stole the lime light and became front runners in the Society. The wife has been called the root for prosperity, enjoyment and Dharma in Mahabharata.<sup>3</sup> During the post Vedic period, the women had suffered drastic hardships and restrictions as propounded by Manu. The women position was further degraded during the medieval period with invasions of India by Alexander and the Huns, consequently, women were placed behind the veil due to security threats. In medieval period social evils, like child marriage, sati, female infanticide, dowry, Devdasi and polygamy had also spread widely in the country. Notably in the British period the position of Women had drastically changed due to western impact on the Indian Society.<sup>4</sup> During the legendary period husband was considered to be next to God and wife was kept as a door mate to be used by men as and when desired. The concept of 'Pati-Parmeshwar'(husband is god) propounded by Hindu Shatras held the field at that time but with the modernization of civilization the concept went under carpet. A woman of modern times is entitled to insist that her husband treat her with human dignity and self-respect befitting to the status of a wife and her life with the husband is peaceful and happy.<sup>5</sup> The Women has been bounded as a mysterious creature as well as a devoted mother and self-sacrificing wife during various periods of time. Indian woman has passed through various phases from the ages to which history can take us back to now. She enjoyed respectable status in some of the earliest ages and often suffered and crushed under the wheel of decline.

3 Dr. S.C. TRIPATHI, Women and Criminal Law, Central Law Publication, Second Ed-2014, p-1.

4 Id-at p-2.

5 A.S.ARORA,,Laws on Cruelty Against Husband, Kamal Publishers New Delhi-2012,p-1.



In the Vedic period, there were high ideals of womanhood. This position deteriorated in later Vedic civilization. A daughter began to be regarded as a cause. All moral and social rules framed by male dominant society ignored their Identity, Individuality and Integrity. Evil and inhuman practices came to be inflicted upon them in the name of custom. Such as, Sati system, Child marriage, dowry system etc., violence against women is an obstacle to the achievement of the objectives of equality, development and peace. Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms.<sup>6</sup> The orthodox and conservative thinking of society is one reason for behind considering women physically and emotionally weaker than men. In India around two-thirds of married women are victims of domestic abuse. Various causes lead to domestic violence in India such as, arguing with partner, neglecting children, refuse to have sex with the partner, not cooking properly or on-time, without informing going outside, alcoholism, neglect to take care of family members and suspicion of sexual involvement.

### LEGAL AND CONSTITUTIONAL PROVISIONS FOR THE PROTECTION OF WOMEN

In India earlier legislations have given protection to women against torture, cruelty and harassment under the provisions of section-498-A,<sup>7</sup> 304-B<sup>8</sup> of Indian Penal Code-1860 and Dowry Prohibition Act-1961, Commission Sati (Prevention) Act-1987, Immoral Traffic (Prevention) Act-1956, Indecent Representation of Women (Prohibition) Act-1986, the Medical Termination of Pregnancy Act-1971 and So on. The laws themselves become failure though not fully and it becomes necessity for enacting the special legislations, such as Protection of Women from Domestic Violence Act-2005. Chapter XXA of Indian Penal Code-1860 inserted for punishing husband and his relatives for subjecting a woman to cruelty.<sup>9</sup> Similarly section-113A<sup>10</sup> and 113B<sup>11</sup> of Indian Evidence Act-1872, provided for the burden of proof of innocence was shifted to accused in case of abatement of suicide by married woman within seven years of

6 P.K.DAS, Protection of Women from Domestic Violence, Universal Law Publishing Company, 3rd Edition-2009, page-236

7 Section-498-A, States that if a husband or relative of husband of a woman subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and also liable to fine.

8 Meaning of Dowry Death and punishment thereof:

9 CRIMINAL LAW (SECOND AMENDMENT) ACT, 1983.

10 Presumption as to abatement of suicide by a married woman.

11 Presumption as to Dowry death.



marriage. Under section-198A of Criminal Procedure Code-1973, Court can take cognizance of the offence upon police report or upon complaint by party or women's parents, brother, sister etc.,

The Constitution of India is a living document, law of the land and changes according to the needs of the society. Under the various provisions of the Constitution women are protected. Articles 14 and 16 of the Constitution intend to remove social and economic inequality to make equal opportunities available. Article-14, guarantees equal treatment to persons who are equally situated. Article-15(3) empowers the State to make special provision for the advancement of weaker sections of the Society that is women and children. In various cases courts have upheld the validity of special measures in legislation or executive orders favoring women. Article-21 protects the Right to life and Personal liberty of persons it includes right to live with human dignity it means that there shall not be any violence against women. Article- 39, states that State to direct its policy towards securing that the citizen, men and women, equally have the right to an adequate means of livelihood. It is the duty of every citizen of India to renounce practices derogatory to the dignity of women.<sup>12</sup> Various other provisions of the Constitution of India also provides various protective measures for the empowerment of Women.

The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under sections 498-A of the Indian Penal Code-1860. The civil law does not, however address this phenomenon in its entirety. It is therefore, proposed to enact a law keeping in view the rights guaranteed under Articles-14,15 and 21 of the Constitution of India, to provide for a remedy under the civil law which is intended to protect the occurrence of domestic violence in the Society.<sup>13</sup>

The Protection of Women from Domestic Violence Act-2005 contains the following features. It is a Comprehensive legislation it covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared Household and are related by Consanguinity, marriage or

12 Article-51-A(e) of the CONSTITUTION OF INDIA, 'to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

13 Dr. S.C. TRIPATHI, Women and Criminal Law, Central Law Publisher, 2nd Edition-2014, page-138.

  
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through a relationship in the nature of marriage or adoption. In addition, relationship with family members living together as a Joint family are also included. Even those Women who are Sisters, Widows, Mothers or singly Woman, living with the abuser are entitled to legal protection under the present enactment.<sup>14</sup> The said act also provides right of women to secure housing, powers of magistrate to pass protection orders, appointment of protection officer and also expand the term domestic violence as domestic violence include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered this definition.

#### VARIOUS INTERNATIONAL CONVENTIONS FOR THE PROTECTION OF WOMEN AGAINST DOMESTIC VIOLENCE

The Prohibition against Sex discrimination was first articulated in the United Nations Charter of 1945 and later reiterated in the Universal Declaration of Human Rights-1948, which enshrines the rights and freedoms of all human beings. The United Nations organization developed its policy on domestic violence in -1981. Pursuant to the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All forms of Discrimination against Women came into force. However this convention did not in unequivocal terms include violence against women or domestic violence, and therefore, in 1992, a Committee on Convention on the Elimination of All forms of Discrimination against Women was promulgated in 1992. The World Conference on Human Rights (1993) at Vienna, which was one of the main turning points in Women's right, declared that human rights of Women and of the girl child are inalienable, integral and indivisible part of Universal Human Rights. The full and equal participation of Women in Political, Civil, Economic and Cultural life at the National, Regional and International levels, and the eradication of all forms of discrimination on grounds of Sex are priority objectives of the International Community. In 1993, United Nations Declaration defines the term domestic violence as 'an act of gender-based violence that results in or is likely to result in, Physical, Sexual or Mental harm or suffering to Women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.'<sup>15</sup> In 1995, at the Fourth World

<sup>14</sup> *Ibid*

<sup>15</sup> U.N. Declaration on the Elimination of Violence against Women, New-York, U.N-1993.



Conference on Women in Beijing, China, the topic of domestic violence was taken into account.

The Preamble to the Declaration on the Elimination of Violence against Women states that 'violence against women constitutes a violation of the right and fundamental freedoms of women.'<sup>16</sup> Various Human Rights Conventions emphasize on Development, Dignity and Non-Discrimination and also United Nations Sustainable Development Goals reiterated the Gender equality, protection of Planet and People for future. Further the Declaration on the Elimination of Violence Against Women, 1993 states that; "any act of gender-based violence that results in or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life".<sup>17</sup> There are various conventions, conferences and declarations which protects the Women from violence such as Universal Declaration of Human Rights-1948, The United Nations Convention on the Elimination of Discrimination against Women, 1967, The United Nations Convention of the Elimination of All Forms of Discrimination against Women, 1979, United Nations World Conference on Human Rights-1993, Convention against Torture and other Cruel, Inhuman or Degrading Treatment/Punishment-1984, etc., Thus, International and Regional human rights conferences directed the States to take reasonable steps to prevent violence on women and ensure that victim was given adequate compensation.

### INTER-PARENTAL VIOLENCE

The most common type of domestic violence is inter-parental violence, which refers to violence occurring between parents. Exposure to inter-parental violence has a major impact on the functioning of Children and Families. Furthermore exposure to inter-parental violence is associated with higher levels of emotional, physical and sexual abuse of children. Young people are exposed to violence regularly in their homes and communities. Such exposure can cause them significant physical, mental and emotional harm and affects their adulthood. In case of Inter-Parental violence within the family increases the risk of subsequent violent delinquent behavior. An early experience of maltreatment and inter-

<sup>16</sup> General Assembly Resolution No;48/104,1993.

<sup>17</sup> Article -1. Of Declaration on the Elimination of Violence against Women and the platform for Action from the Fourth World Conference on Women.

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parental violence within the family leads to the perpetration of violence in adolescence. Parental attachment and rejection are closely related to family conflict and parental violence.

### DIGITAL FORM OF VIOLENCE

Domestic Violence includes the various forms of violence including digital form of violence. Many forms of online abuse have taken place during the Covid-19, pandemic as life has shifted to Online and people spend more time on digital devices. This abuse has impacted on the mental well-being of Victims. Online and Social media have become new and powerful vehicles for misogynistic threat and harassment which can result in the silencing of Women. Violence against Women in Online Sphere may be in the form of Cyber harassment, revenge porn and threats or rape, sexual assault or murder. In digital violence perpetrators may be Partners or Ex-Partners, Colleagues, Schoolmates or as is often the case, Anonymous individuals. It is a barrier to Women's participation in public life.

### WOMEN AND NOTIONAL INCOME

Man and Woman are two halves of humanity. Neither can reach its highest creative excellence without the cooperation of the other. The Women contribution to the National economy by rendering service to the family is immense and invaluable, if the family is safe the Society will be safe, ultimately it leads to National growth. The term Domestic Violence includes economic abuse also. The Societies attitude towards Women is also one of the cause for Domestic Violence. Traditionally, Women are treated as Dependent, Non-Earner, Inferior and Burden, that is the reason they use to abuse economically, though, She used to work without rest and pay for the welfare of the family, because she was a House-wife. Unpaid domestic works are done by Women without recognition and these works cannot be computed in terms of money. The Supreme Court of India has recognized the Notional Income of Women in LathaWadhwa,<sup>18</sup> Arun Kumar Agarwal<sup>19</sup> and Various other cases while awarding compensation to dependents in accident cases by considering the work of Women at Home and in the Society by changing the name House wife as Home Maker. In the Society the gratuitous work of Women is equal to her husband. State has to take steps to

18 LathaWadhwa V. State of Bihar, (2001) 8 SCC-197.

19 Arun Kumar Agarwal V. National Insurance Co. Ltd., (2010) 9 SCC-218.



recognize her work by providing Social Security and Social Welfare Schemes, by ensuring economic stability with a view to prevent Violence against Women.

### JUDICIAL APPROACH TOWARDS THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE

In India the Judiciary being a final interpreter of the Constitution and Highest Judicial Authority plays an important role for the protection of Rights of the Citizens of the Country because the Judiciary has power to issue suitable directions to the respective States and Central Governments for the effective implementation of the law relating to Vulnerable Sections of the Society. Woman is also considered as a Vulnerable and Weaker sections of the Society. Supreme Court in its various judgments has protected the interests of the Women. There are some important cases as follows;

In *Maroti lande v. Sau. Gangubai Maroti lande*<sup>20</sup>, where the Court was of the view that deprivation to the benefit of a matrimonial home amounts economic abuse and it generates a continuous cause of action.

In *Ritesh Ratilal Jain and others V. Sandhya Ritesh Jain and others*<sup>21</sup> Court has held that where the husband had left the Respondent-wife to her parent's house as he wanted to desert her. It was the case of respondent-wife that no provision was made for her maintenance and she has no source of income therefore it was held that the act of husband amounted to economic abuse because economic abuse is also comes under the definition of the Domestic Violence.

In *Darbar Singh V. State of Chhattisgarh*<sup>22</sup> where appellant husband was convicted under section-498-A of I.P.C. since, the wife of appellant had committed suicide due to harassment done by appellant, the incident had occurred almost nine years back and the appellant was in the custody for one year and fifty days. He also suffered agony of the trial and long pendency of the appeal. Considering the facts and circumstances of the case it appeared that no fruitful purpose would be served by sending appellant back to jail. Therefore to meet the ends of the justice the Court while upholding the conviction of the

20 2012 Cri LJ 79

21 2013 Cri LJ 3909 (Bom)

22 2013 Cri LJ 1612 (Chhattisgarh)



appellant under section-498-A of I.P.C. restricted the jail sentence awarded him to the period already undergone by him besides enhancing the fine.

In *V.D. Bhanot V. Savitha Bhanot*<sup>23</sup> the Apex Court upheld the Delhi High Court view that even a Wife who had shared a Household before the Domestic Violence Act, came into force would be entitled to the protection of the Domestic Violence Act, hence the Domestic Violence Act entitles the aggrieved person to file an application under the Act, even for the acts which have been committed prior to the commencement of Domestic Violence Act-2005.

In *Preetam Singh V. State of U.P.*<sup>24</sup> Court held that a wife even if she was driven out of her matrimonial home prior to the commencement of the 2005 Act, if continues to be deprived of all or any economic or financial resources to which she is entitled under any law or custom, is entitled to move an application under Section-12 of the Act. The aggrieved person who had been in domestic relationship with the respondent at any point of time even prior to coming into force of the Act and was subjected to domestic violence, is entitled to invoke the remedial measures provided for under the Act.

In *Rupali Devi V. State of Uttar Pradesh and Others*<sup>25</sup> Supreme Court holding the view that definition of 'domestic violence' in 2005 Act contemplates harm or injuries that endanger the health, safety, life, limb or well-being, whether mental or physical, as well as emotional abuse. Said definition certainly has a close connection with Section-498-A of the Penal Code, undoubtedly, encompass both mental as well as the physical well-being of the wife. Even the silence of the wife may have an underlying element of an emotional distress and mental agony. Finally Court held that the Courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section-498-A of the Penal Code.

*Nutan Gowtham V. Prakash Gowtham*<sup>26</sup> in this case he filed a Divorce petition which was granted ex-parte. Trial court also directed responded husband to admit minor son to boarding school according to son was admitted in school

23 (2012) 3 SCC 183.

24 2013 Cr LJ 22 (All)

25 (2019) 5 SCC 384.

26 (2019) 4 SCC 734.

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maintenance was also granted as per the court order appellant wife permitted to take custody of son during summer vacation of 2018 and leave him in boarding school once school reopens as soon as inclined to continue in boarding school the court held that child cannot be compelled to admitted in particular school against his or her wishes by giving these kind of judgment's the supreme court uphold the rights and interests of both women and children.

In *Shyamal Devda and others V. Parimala*<sup>27</sup> Supreme Court held that the petition Under Domestic Violence Act-2005, can be filed in a Court where 'person aggrieved' permanently or temporarily resides or carries on business or is employed. Section 18 of the Domestic Violence Act relates to protection order. In terms of section-18 of the Act, intention of the legislature is to provide more protection to woman. Section-20 of the Act empowers the court to order for monetary relief to the 'Aggrieved party'. When acts of domestic violence is alleged, before issuing notice, the Court has to be prima facie satisfied that there have been instances of domestic violence. In the present case, the respondent is residing with her parents within the territorial limits of Metropolitan Magistrate Court, Bengaluru. In view of Section 27(1)(a) of the Act, the Metropolitan Magistrate court, Bengaluru has the jurisdiction to entertain the complaint and take cognizance of the offence.

In *Satish Chandra Ahuja V. Sneha Ahuja*<sup>28</sup> the Supreme Court has enlarged the scope of Matrimonial home for the purposes of the Protection of Women from Domestic Violence Act-2005, as wife is also entitled to claim a right to residence in a shared household belonging to relatives of the husband.

All these decisions are related to domestic violence as mentioned earlier judgments of the Supreme Court holding that the wife would have the right of maintenance which would partake even if the right to residential home.

## CONCLUSION

Domestic violence is not only visible but it is a part and parcel of life of women in India. Violence starts with her from the day her mother conceives her existence in the womb and since then every phase of her life, she has to fight for her survival in this society. A woman who has been foundation stone of family and society in general who gives birth to life, nurtures life, shapes it and

27 AIR-2020 S.C.762.

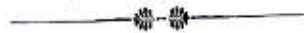
28 (2021)1 SCC414.

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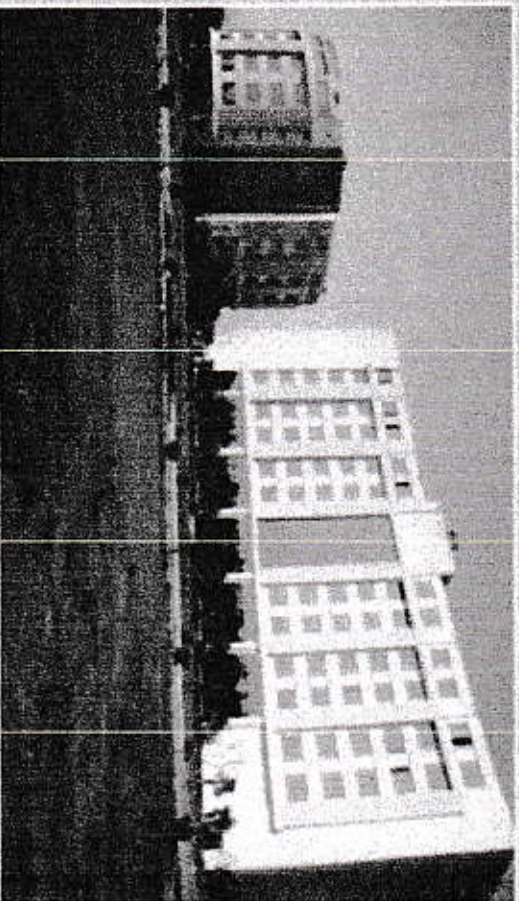
transmitter of tradition and culture from generation to generation. She is subjected to Domestic Violence irrespective of her age, race, caste, religion, social, economic and political status. The silent sufferings of a woman are making her an easy prey to the male domination which is supported by the prevalent patriarchal society. Thus domestic violence not only hampers women but also impedes the growth of the country. Therefore effective implementation of laws and education of women, eradication of suppression, women empowerment and sensitization of domestic violence issues are needed for the protection of women from violence. Our Civilization lacks humane feeling. We are humans who are insufficiently humane. We must realize that and seek to find a new spirit. We have lost sight of this ideal because we are solely occupied with thoughts of men instead of remembering that our goodness and compassion should extend to all Creatures. The long-standing failure to protect and promote human rights and fundamental freedoms in the case of violence against women is a matter of concern to all States. It should be addressed and combat these violence against women for the purpose of peaceful existence in a society and growth of a Nation. No Law, Custom, Tradition, Culture or Religious consideration should be invoked to excuse discrimination against Women. Developing a holistic and multidisciplinary approach to the challenging task of promoting families, communities and States that are free from violence against Women is necessary.



  
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# Relevance of Hostile Witness and Forensic Investigation in Criminal Justice System: A Critical Analysis

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## Abstract

*Criminal justice system in India faces the heat because of failure in the investigation by the investigating agencies, failure of the prosecution in producing the relevant evidence and even the judiciary which fails to admit the evidence of expert witness. Witness in criminal justice system is considered as the key player but when the same witness turns hostile, the whole edifice of the case collapses. Non-corroboration with earlier statements by the hostile witnesses is a big setback to the criminal justice system. When witness turns hostile the prosecution becomes helpless and fails to prove the guilt. The rate of acquittal increases and diminishes the public faith in the judiciary. Hands of the judiciary are tied and tightened as they rely only on the eye witnesses to great extent. Therefore, it is the need of the hour to shift the focus from traditional pieces of evidences to forensic investigation and expert witnesses to minimize the chances of acquittal. The present paper deals with the definition of witness, importance of the role played by the witnesses, the provisions relating to hostile witness, need for forensic investigation and the case laws which have been proved on the basis of forensic investigation.*

**Keywords:** *Witness, hostile witness, forensic investigation, expert witness and case laws*

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## Introduction

Indian criminal justice machinery functions through three important procedures viz., investigation, prosecution and adjudication. Criminal Justice for its success mainly depends on the ability of the investigating agency which collects the evidence of a case and prosecuting agency which places these evidences before the judge. The investigating agency thus stands as a doorway of the criminal justice and strengthens the foundation of the case.<sup>1</sup>

The prosecution in criminal cases always gives away the battle because of non-reliable, untrustworthy and important witness who deviates from his earlier statements and helps the hardcore criminals to escape from the purview of law. Threat, coercion and intimidation are some of main reasons which stop the witness from adhering to his earlier statement. Criminals have gained some sort of confidence due to poor performance of prosecution which fails to produce the reliable evidence before the court and encourages repetition of crimes in the society. Hence, leads to low rate of conviction. Efficacy of criminal justice system in any country is primarily judged on the basis of the conviction rate as it is the ultimate result of the combined efforts of the system.

The conviction rate in comparison to the institution of criminal case is poor all over India. A total number of 41, 16,498 which includes 11, 40,787 old and 29, 75,711 new cases were reported for investigation in India. In 20, 94,996 cases the charge sheets were filed by the police in the year 2016 with rate of 72.9%. During the year 2017, 28, 74,811 cases were disposed off by the police and 12, 41,443 cases were pending for the investigation at the end of 2017. In the same year, a total of 1, 11, 07,472 cases were reported for the trial. During 2016, 12, 74,348 cases were completed among those 5, 96,078 cases resulted in conviction with rate of 46% and remaining resulted in acquittals.<sup>2</sup> The alarming rate of acquittal of the accused persons shown above has shaken the confidence of the public on dynamics of court room justice.

## Role of Witness in Criminal Trial

To build a criminal case the evidence having quality of reliability and admissibility in the eyes of law is essential which may either direct or substantiate the incident. For that

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- 1 P.Ch.Tripathy, "Prosecution System in Criminal Justice In India-An Appraisal of the Drawbacks and Failures", Indian Journal of Criminology, 22(2), July (1994)
  - 2 Annual Report Ministry of Home Affairs 2017-2018, available at <https://mha.gov.in/sites/default/files/ministry%20of%20home%20affair%20ar%202017-18%20for%20web.pdf>
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witnesses are required<sup>3</sup>. Therefore, Jeremy Bentham says, "Witnesses are Eyes and Ears of Justice." In a criminal trial witness plays an important role in ascertaining the truth of the case.

### Meaning of Witness

The word 'Witness' has been defined nowhere in the Code of Criminal Procedure. A person is a 'witness' who swears to tell the truth and only the truth, who is not concerned to any party, gives proof or confirmation in an incident. The 'Witness', in Dharmashatras is a person who himself has seen, heard or experienced the disputed matter. According to Black's Law Dictionary a witness is one who sees, knows or vouches for something or one who gives testimony, under oath or affirmation in person or by oral or written deposition or by affidavit.<sup>4</sup>

Evidence in legal parlance consists of variety of things produced before the court for the purpose of proving or disproving something. Evidence may be in the form of statements, documents, photographs, maps and video tapes. Trial evidence consists even the statement of witnesses does not matter which party has called, it also includes the evidence received in the form of exhibits and any agreed or stipulated facts.

The Justice Mallimath Committee<sup>5</sup> in its report on Criminal Justice Reforms has urged that the witness acts as an *amicus curie* in criminal trials by giving evidence in the court of law which helps to bring out the truth. Therefore, witness always takes an oath to speak the truth, only the truth and nothing but the truth. From the above discussion it is clear that it is the witness who helps the prosecution in bringing out the truth before the court of law and on the basis of that the court will adjudicate and punish the culprit. But, the witness in India most of the times turns hostile. Hostile Witness now has become a menace to Indian Criminal Justice Mechanism.

3 Brisketu sharan Pandey, " *Hostile Witnesses in Our Criminal Justice System*", Cri.L.J 17, (2005)

4 P. Ramanath Iyer, "The Law Lexicon: The Encyclopaedic Legal & Commercial dictionary", 1987 (2002)

5 The Committee has been constituted in the year 2002 by the NDA Government to report on "Reform of Criminal Justice System", headed by former Justice. V S Mallimath, Chairman, Karnataka and Kerala High Courts, under the membership of S. Vedacharya, IAS (Retd.), Amitabh Gupta, Former DGP of Rajasthan, Prof. (Dr) N R Madhav Menon, the then VC, West Bengal University of Juridical Sciences, Kolkata, D V Subha Rao, Advocate Former Chairman, Bar Council of India and a member Secretary, Durga Das Gupta, Ministry of Home Affairs.

  
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### Hostile, Adverse or Unfavorable Witness

Criminal Justice System has been criticized because of high rates of acquittals. Drastic decrease in convictions is due to witnesses turning hostile. Most often, witnesses give false evidence or retract their earlier statements at a later stage, which finally results in acquittal of the accused.<sup>6</sup> The word 'Hostile' nowhere used in Indian Evidence Act-1972. Hostile means adverse, unfavourable or alien. In a criminal trial when a prosecution witness is summoned to produce evidence, he appears before the court but does not confirm his previous evidence/statement recorded or collected by the investigating agency. He is called adverse witness, hostile witness or unfavourable witness.<sup>7</sup>

The Supreme Court in *Sat Pal v. Delhi Administration*,<sup>8</sup> has defined a hostile witness as "one who is not desirous of telling the truth at the instance of the party calling him and an unfavourable witness is one called by the party to prove a particular fact, who fails to prove such fact proves an opposite fact". Section-154, Indian Evidence Act-1872, enumerates as follows; Questions by party of his own witness. The court may in its discretion, permit the person who calls witness to put any questions to him which might be put in cross examination by the adverse party. It is hereby submitted that, when the witness is not willing to give evidence on behalf of his own party, then the opposition gets strong reasons to disprove the charges laid on the culprit. It leads to acquittal.

### Factors witness turning hostile

1. **Frequent Adjournments of cases:** Frequent adjournments of cases are a common practice in Indian Courts. Ministry of Law and Justice for the speedy disposal of cases wants bring National Litigation Policy to regulate the court room procedures. Under that policy the Ministry of Law and Justice has suggested to impose costs on the parties to the suit who seek frequent adjournments and on judicial officer who obliges the same. According to National Judicial Data Grid<sup>9</sup>, the cases which are pending less than two years is 3932190 in Civil Cases and 8930900 in Criminal cases which is 46.69%.
2. **Absence of witness protection programs:** In India we do not have the concept

6 *Supra-Note-4*, Sairam Sanath Kumar.

7 Mahindra Nath Rai, "Hostility is Menace," Cri.L.J, 8 (2005)

8 AIR 1976 SC 294

9 Monitoring tool which will identify, manage and reduce the pendency of cases in Indian courts. It is a part of the on-going e- Courts Integrated Mission Mode Project.

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of witness protection programme. But, Indian courts are emphasizing on the victim protection programme where JJ. A K Goel and U U Lalit observed: "for the protection of witness and in the interest of justice section 309 of the Criminal Procedure Code has to be complied with by the trial courts and eye witnesses must be examined and his statements has to be recorded under section 164 of the Cr.PC as early as possible."<sup>10</sup>

3. **Defaults in payment of allowances:** In *N R Bhat Vs CBI*, the Karnataka High Court has expressed its deep concern over the witness who has been called to court to give witness. J. A Chandrashekar, while hearing the case suggested that the witness needs to be called to court only when there is necessity. If the witness is present in the court, the statement has to be recorded on that day only. He also said that it is difficult for the witness to come for every hearing and at the end of the day to know that the case is posted for the next date. The court further made reference to the allowances paid to the witness under Karnataka (Payments of Expenses of Complaints and Witnesses Attendance in Criminal Court) Rules, 1967, has to be updated keeping in mind the present cost of living. Most of the times the allowances will not be paid to the witness because of insufficient fund. The Single bench suggested that principal district judge or the unit head will have to ensure to get release the same fund from the High Courts.
4. **Lack of adequate facilities in courts:** Another factor for the witness turning hostile is inadequate facilities in the court. Chief Justice Deepak Mishra also urged that the State government has to provide essential facilities to the court for the timely disposal of the cases. He also said that availing the basic facilities in court is litigant's right to life. J.Madan B Lokur while hearing a *suo motto* petition on the over polluted prisons said that people cannot expect the justice by the courts which function from the 'dilapidated' structures which do not offer basic facilities such as water, electricity and even the toilets.
5. **Intimidation:** Intimidation is a threat with any injury to his person, reputation or property, or to the person in whom that person is interested, to do any act which he is legally bound to do, or to omit to do any act which he is legally entitled to do. The Delhi High Court observed that due to 'intimidation and threat' witnesses are turning hostile in a large number of cases.<sup>11</sup>

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<sup>10</sup> Doongar Singh vs State of Rajasthan, SC Nov 28 2017

<sup>11</sup> *Supra-Note 3*, Brisketu sahran Pandey.

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In *Tessta Setalved v. State of Gujarat*<sup>12</sup> Supreme Court has directed the lower courts not to use strong and offensive words against the witnesses and asked to delete such portions from the judgment of courts.

### Effects of Witness Turning Hostile

In many land mark case the witnesses have turned hostile and gave adverse evidence which indeed helped the opposition to seek the benefit of doubt in favour of their parties to the crime. *Best Bakery Case*,<sup>13</sup> In Hanuman Tekri area Baroda where the Best Bakery was located 14 people were killed in the mob violence on March 1, 2002. The eye witness in this case was Zehraunissa Sheikh, daughter of the bakery owner turned hostile and allowed all the 21 accused enjoy their acquittal.

Likewise, in *Salman Khan's hit and run case*,<sup>14</sup> the big twist in Salman Khan's hit and run case was the deposition given by his police bodyguard before the court that on the day of incident Salman Khan was not driving his SUV. In his earlier statement he actually stated that he asked the actor not to sit on the steering which can be proved to be dangerous as he was drunk but the actor does not paid heed to the bodyguard's words. Hence, he declared as hostile witness by the court. Ramasrey Pandey a man from bakery who got injured also didn't stick to his earlier statement and said that he didn't see the actor in the SUV. Therefore, it is submitted that witnesses turning hostile are leading to delayed criminal proceeding and also preventing the courts in pronouncing the punishments.

### Scientific Evidence and Expert Opinion

Science plays a significant role in the detection of crime and apprehension of the criminals. Its application to the administration of law is known as "Forensic Science."<sup>15</sup> Hence, Science should be used in the criminal justice administration to find reliable truth. The very basis of the Forensic investigation is to set the law in motion and to help the prosecution to prove the guilt beyond all reasonable doubt. Uncorroborated evidence of a single witness was regarded as insufficient for the decision of a case, unless the witness happened to be a person possessed of exceptional qualifications and was agreeable to both the parties<sup>16</sup>. In Indian criminal justice system most of the crimes till today are solved by

12 AIR 2015 SC

13 2004 CriLJ 2050

14 2002 to 2015

15 Som Datta Vasudeva, "The Science and the Crime", CriLJ 328 (2006)

16 Manu, 69-70.

  
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the age old traditional i.e. adversarial method of investigation where the guilt has to be proved beyond all reasonable doubt which is next to impossible. Most of the culprits will be acquitted because prosecution fails to prove the guilt. Hence, it is submitted here that there is an urgent need to shift from the traditional method of investigation to scientific method of investigation.

### **Scientific Evidence: Concept and Meaning**

The use of expert testimony in the court room has become a common practice. Lawyers and other professionals demand for expert evidence by psychologists has increased since 1980s, reflecting growing recognition that psychologists "have unique contributions to make to judicial proceedings".<sup>17</sup>

**Scientific:** According to Oxford Dictionary "Scientific" means 'involving science', or 'technical.'

**Evidence** is defined by Andre Choo, "is the scientific information with which the matters requiring proof in a trial are proved".

Sec.322 (1) of the Code of Criminal Procedure-1974 defines Evidence, as "all facts and statements which have been disclosed by enquiry and are not restricted to dispositions recorded by the Magistrate". According to Sec.3 of Indian Evidence Act-1872, 'the primary purpose of evidences use by the court for ascertaining truth of fact or point in issue'.

Hence, it is clear from the above definitions that evidence is technical in nature and scientific evidence means evidence which involves a point in issue which is scientific in nature. Once it has been proved that evidence is technical in nature then it has to be substantiated by expert who can define the concept in scientific way.

**Expert:** "An expert is one who has acquired special knowledge, skill or experience in any science, art, trade or profession; such knowledge may have been acquired by practice, observation or careful studies". Secs. 45 and 47 of Indian Evidence Act -1872 deals with expert opinion and scientific evidence.<sup>18</sup>

Sec.45- Opinion of Expert, "When the Court has to form an opinion upon the point of foreign law, or science or art, or as to identify of handwriting or finger impression, the

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17 Subhas Chandra Singh, "Expert Testimony: The Forensic Psychologists as Expert Witness", Cri.LJ Jan 17 (2007)

18 Collector, Jabalpur v/s A.Y.Jahangir, AIR 1971 MP 32

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opinions upon that point of persons specially skilled in such as foreign law, science or art or in questions as to identify of hand writing or finger impressions are relevant facts, such persons are called experts”.

Expert's opinion is considered as relevant under the Indian Evidence Act and valuable for success of prosecution. Opinion of medical officers as to the injury of person, opinion about the weapon used in crime, post-mortem examination and opinion about cause of death, chemical examination, ballistic examination reports, fingerprint reports, etc. are some examples of expert's opinion, which are considered to be good piece of evidence to make prosecution successful in the court of law.

### **The criminal cases in India solved with help of forensics evidences**

#### **Sushil Sharma v. The State (Delhi Administration) <sup>19</sup>**

In this particular case the appellant killed his wife by firing 3 bullets on the suspicion that, she was having an affair with some other man at their house. After killing his wife he cut her body into pieces and filled it in the bag. Thereafter, he took that body to one of the restaurant which was owned by his friend, there his friend and accused tried to burn the body in tandoor. The parents of Mrs Sharma lodged the complaint where police found after investigation that somebody's body has burnt in tandoor. They sent the remains to the Forensic and submitted the report to the court. The DNA of deceased and her mother's was matched and the court found the accused guilty.

#### **Sister Abhaya murder case<sup>20</sup>**

On 27<sup>th</sup> March 1992 a nun Sister Abhaya of the Knanaya Roman Catholic Church was succumbed to death and her body was traced in well in St Pius X convent located in Kottayam. On the day of the incident Sister Abhaya seems to be got up early in the morning nearly by 4 am to prepare for her degree exams. Then she went to the hostel's kitchen to get some water from the refrigerator from where she was found missing and later her body was lying in the well. The modern scientific investigation methods viz., polygraph tests; brain mapping/brain fingerprinting and Norco analysis was used to solve the case. Subsequently two fathers of the church were arrested. On 7<sup>th</sup> March 2018, one of the accused priests was acquitted by the CBI Court by saying; no substantial evidences

19 1996 CriLJ 3944

20 Sr. Sefhy vs Union of India

  
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were found to prove the presence of the priest at time of incident. 26 years old case is still pending before the CBI court.

### **Death for pump loot and murder<sup>21</sup>**

Another crucial case which was solved by adopting the scientific method of investigation and which ended up in conviction. The Additional District Judge, Darbhanga imposed the death penalty on Pappu Bihari and Rahul Yadav, guilty of looting the petrol pump and murdering three persons, under sections 302, 120(B) , 396, 394, and 412 of the Indian Penal Code and Section 27 of the Arms Act. The accused had attacked Soni Fuel Centre at Nehra Bazaar, on July 27, 2011 and they also looted Rs 22,000. The case, cracked through scientific investigation initiated by then senior superintendent of police Vikas Vaibhav. The forensic teams such as fingerprint experts, ballistic expert and portrait experts had collected evidence against the accused.

The police were successful in tracking the phone numbers of the culprits due to that they reached them. Meanwhile the portrait team had prepared the rough sketches of the two accused and got matched to the phone number user. The police arrested the accused and they confessed before the police and led the investigating team to the firearms. The used bullets recovered from the crime scene were also matched by the ballistic team, confirming the weapons used in the attack. The team of fingerprint experts also collected the impressions of the duo's fingers as well as their palms, confirming their involvement in the attack at the petrol pump in Nehra Bazaar. .

In *Santosh Kumar Singh v. State*,<sup>22</sup> 25 years old, law student was raped and found dead in her residence at Delhi on 23 January 1996. The prime suspect was Santosh Singh who was her senior in the college. The Trial Court had acquitted the accused on the ground that the vaginal swabs and slides and the blood sample of the accused were tampered with and relied upon some text books for this purpose and denied to accept the DNA report given by the laboratory. The High Court and the Supreme Court allowing the appeal held that there was no reliable evidence for suggesting that the sample had been tampered with, and even criticized the trial Court for relying on text books which were not put to the expert. The Supreme Court and the High Courts are of the opinion that the DNA report cannot be doubted and must be accepted as scientifically accurate as DNA finger printing is an exact science.

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21 Jitendra Kumar Shrivastava, "Death for pump loot & murder-CafI details trap accused", [https://www.telegraphindia.com/1130417/jsp/bihar/story\\_16791809.jsp](https://www.telegraphindia.com/1130417/jsp/bihar/story_16791809.jsp), Last accessed on 9/8/2017, 11.30p

22 (2010)9 SCC 747



Recently the same position regarding the value of the DNA profiling has been reiterated in *Dharam Deo Yadav v State of U.P.*<sup>23</sup>, wherein, modern forensic techniques for criminal investigations such as DNA profiling have been lauded, because of reliable witnesses failing to give testimony, or turning hostile due to intimidation. Though it is conceded that the DNA testing may in a particular case not be cent percent accurate, as that would depend on the quality of the analysis and whether the sample collected was kept free from contamination.

Hence, it is hereby submitted that judiciary also relies on the scientific evidences submitted by the police and prosecution. Therefore, it is necessary for the police to trace the evidence by means of forensic team and send to the forensic lab where the examination will be done and report will be submitted

### Conclusion and Suggestions

Hence, it is hereby submitted that the practice of hostile witness is curse on Indian Criminal Justice System. Conviction is mere a day dream in many crimes because the witnesses turns hostile. The witnesses rarely come forward in India, to give evidence as they face a lot of problems. They are not treated properly and they will be subjected to humiliation by asking irrelevant questions by the opposite lawyer. The basic facilities were not provided by the State in protecting the witnesses. Most of the times in serious crimes witnesses are threatened by the accused that will be released on the bail. The long delays in prosecution cases are another major setback to criminal justice administration in India. Therefore, rate of conviction is low in India. There is a need to create the fear in the minds of the criminals by convicting them with severe punishment. This can be made possible by the house of justice only by relying on the forensic evidences collected by the investigating officer.


### Suggestions

- There is need for establishing more mobile forensic units.
- The crime scene has to be protected by the intrusion of the public.
- The evidences collected must be sealed, properly handled and without much delay sent to the forensic lab for the examination.
- The expert must be called to substantiate the report submitted by him.

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23 (2014) 5 SCC 509

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