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"Power of arrest is under arrest": A critical analysis in light of code of criminal procedure, 1973

A Nirmal Singh Heera, N Prabhavathi

Assistant Professor, School of Law, SASTRA University, Thanjavur, Tamil Nadu, India

Abstract
Arrest brigs humiliation – Arrest curtails the freedom of individual - Arrest involves restriction of personal liberty of a person arrested and as such violates the basic human rights of liberty - Though the Constitution of India as well as international covenants recoginse the power of the state to arrest any person as a part of its major role in maintaining the law and order problem, the Constitution of India mandates that *"No person shall be deprived of his life or personal liberty except according to procedure established by law*." Article 22 (1) provides that *"no person who is arrested shall be detained in custody without being informed, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice"* - Further, Article 22 (2) also mandates that "*every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate*" - According to the national Human Rights Commission, these provisions are not strictly adhered to - Therefore, in this paper the authors are going to analyse under what circumstances the arrest can be made and what are the legal provisions and guidelines, available for making arrest and what the remedies are available for non-compliance of the procedure for arrest.

Keywords: personal (individual) liberty, code of criminal procedure, 1973, arrest, guidelines for arrest

Introduction

"Crimes in India 2015 statistics" published by National Crime Records Bureau, Ministry of Home Affairs shows that a total of 36,36,596 persons were arrested by the police under various IPC crimes during 2015 as against 37,90,812 persons in 2014, showing a decrease of 4.1%. Out of 36,36,596 persons arrested 2,69,663 were from the State of Tamilnadu. The arrest rate [1] at all-India level increased by 3.7% in 2012 over 2011 (from 259.9 in 2011 to 269.5 in 2012), 6.4% in 2013 over 2012 (from 269.5 in 2012 to 286.8 in 2013), 6.2% in 2014 over 2013 (from 286.8 in 2013 to 304.7 in 2014). However, it decreased by 5.2% in 2015 over 2014 (from 304.7 in 2014 to 288.8 in 2015). The arrest rate in the State of Tamil Nadu is 389.9. The female persons arrested under various sections of IPC crimes accounted for 4.9% (1,79,052 out of 36,36,596) of total arrestees during 2015. The maximum number of arrested persons under IPC were in the age-group of 18yrs & above-below 30 yrs. accounting for 45.9% (16,72,711 out of 36,36,596 persons) of total arrestees followed by persons in the age group of 30 yrs. & above – below 45 yrs. (37.4%) (13,60,448 out of 36,36,596 persons), persons in the age group of 45yrs & above – below 60 yrs. (14.1%) (5,14,486 out of 36,36,596 persons) and persons in the age group of 60yrs and above (1.4%) (49,877 out of 36,36,596 persons). A total of 39,074 juveniles (below 18 yrs.) were apprehended under the IPC crimes during 2015.

Out of 1,87,20,169 persons whose cases were for trial, trials were completed in respect of 21,77,036 persons. Out of these disposed cases 8,69,013 persons were convicted, 12,70,936 persons were acquitted and 37,087 persons were discharged by different courts during the year 2015. The overall conviction percentage at all India level for the persons arrested in IPC cases was 39.9% (8,69,013 out of 21,77,036 persons whose trials were completed).

Objectives of the paper

- To analyse the legal provisions of the arrest.
- To understand the procedure/circumstances for arrest.
- To know the directions and guidelines of the arrest.
- To know the remedies available for non-compliance of the procedure for arrest
- To give suggestions for effective implementation of the procedure for arrest**.**

Arrest

The term "arrest" has not been defined in the Code, though the process of making the arrest has been mentioned under section 46 of the Code. Arrest means "the apprehension of a person by legal authority resulting in deprivation of his liberty". Under Section 46, the police officer or other person making the arrest shall *actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action* [2]. If the person to be arrested forcibly resists the endeavour to arrest him, or attempts to evade the arrest, the police officer or other person *may use all means* necessary to effect the arrest [3]. However, this right to use all necessary means for making an arrest shall not extent to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life [4]. The bare perusal of this section shows that no formality, for police officials, is necessary while arresting a person.

Object of arrest

Arrest may be necessary not only for the purpose of securing

the attendance of the accused at the time of trial, but it may also become necessary as a preventive or precautionary measure in respect of a person intending to commit a cognizable offence [5] or a habitual offender or an ex-convict or a person found under suspicious circumstances [6].

Whether mere registration of FIR in cognizable offences will lead to arrest?

While answering to the question, the Hon'ble Apex Court of India, in *Lalitha Kumari Vs Govt of U.P and Ors* [7], the Court observed that *"while registration of FIR is mandatory, arrest of the accused immediately on registration of FIR is not at all mandatory. In fact, registration of FIR and arrest of an accused person are two entirely different concepts under the law, and there are several safeguards available against arrest. It is not correct to say that just because FIR is registered, the accused person can be arrested immediately. It is the imaginary fear that "merely because FIR has been registered, it would require arrest of the accused and thereby leading to loss of his reputation", Thus, the arrest of a person and registration of FIR are not directly and/or irreversibly linked and they are entirely different concepts operating under entirely different parameters. On the other hand, if a police officer misuses his power of arrest, he can be tried and punished under Section 166* [8]*" - the Court asserted.*

Procedural Safeguards of the arrested person:

Section 41, Cr. P.C. confers powers on any police officer to arrest a person under the circumstances specified therein without any order or a warrant of arrest from a Magistrate. Section 46 provides the method and manner of arrest. Under this Section, no formality is necessary while arresting a person. Under Section 49, the police are not permitted to use more restraint than is necessary to prevent the escape of the person. Section 50 enjoins every police officer arresting any person without warrant to communicate to him the full particulars of the offence for which he is arrested and the grounds for such arrest. The police officer is further enjoined to inform the person arrested that he is entitled to be released on bail and he may arrange for sureties in the event of his arrest for a non-bailable offence. Section 56 contains a mandatory provision requiring the police officer making an arrest without warrant to produce the arrested person before a Magistrate without unnecessary delay and Section 57 provides that the arrested person shall not be detained in police custody exceeding twenty four hours excluding the time for necessary journey from the place of Arrest to the Magistrate's Court. There are some other provisions also like Section 53, 53A, 54 and 167 which are aimed at affording procedural safeguards to a person arrested by the police.

Check on the Misuse of Power of Arrest:

Though there are several constitutional and statutory provisions for safeguarding the personal liberty and life of individuals, the Apex Court of India time and again observed that growing incidence of torture and deaths in police custody has been a worrying issue. Therefore, in order to curb the menace of misuse of power of arrest, in some cases, the Supreme Court of India issued several directions. In *Joginder Kumar vs State Of U.P* [9], to curb the menace of the power of arrest, the Supreme Court of India held as follows:

"No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a *reasonable satisfaction* reached after some investigation *as to the genuineness and bona fides of a complaint* and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do". Accordingly certain guidelines were issued by the Apex Court for the effective enforcement the fundamental rights.

Again in *D.K Basu Vs State of West Bengal* [10], the Apex Court observed that "abuse of police power is not only peculiar to this country, but it is widespread. It has been the concern of international community because the problem is universal and the challenge is almost global". Further the Court by referring constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen observed that *"growing incidence of torture and deaths in police custody has been a disturbing factor. Experience shows that worst violations of human rights take place during the course of investigation…."* Therefore after analyzing the various provisions of the Code and Constitutional provisions, eleven directions [11] was issued to be followed in all cases of arrest or detention *till legal provisions are made* in that behalf as preventive measures. Further, the Apex court directed that failure to comply with the eleven directions shall apart from rendering the concerned official liable for departmental action; also render his liable to be punished for contempt of court. The points to be mentioned here is most of the (excluding direction 8 & 9) directions were incorporated in the Code by way of Cr.P.C (Amndt) Act, 2008 [12]. Further, Section 60A provides that "no arrest shall be made except in accordance with the provisions of this Code or any other law [13] for the time being in force providing for arrest".

Authority of Handcuffing:

In *Citizens For Democracy Vs State Of Assam And Ors* [14], the Apex court directed that "handcuffs or other fetters shall not be forced on a prisoner - convicted or under-trial-while lodged in a jail anywhere in the country or while transporting or in transit from one jail to another or from jail to court and back. *The police and the jail authorities*, on their own, *shall have no authority to direct the hand- cuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to court and back.*

Where the police or the jail authorities have well-grounded basis for drawing a strong inference that a particular prisoner

is likely to jump jail or break out of the custody then the said prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate. Further, the court directed that *any violation of any of the directions issued* the Supreme Court by any rank of police in the country or member of the jail establishment *shall be summarily punishable under the Contempt of Courts Act apart from other penal consequences under law* [15]".

National Human Rights Commission's Guidelines regarding arrest [16]

The National Human Rights Commission (NHRC) also issued several guidelines for making arrest of a person. The guidelines are as follows:

The guidelines issued by the NHRC are divided into three categories: (i) Pre Arrest guidelines (ii) Arrest guidelines and (iii) Post arrest guidelines. Apart from these guidelines, it has also contains the mechanism for effective implementation of these guidelines.

Pre-arrest Guidelines

According to the pre arrest guidelines of the NHRC, the power to arrest without a warrant should be exercised only after a reasonable satisfaction is reached, after some investigation, as to the genuineness and bonafides of a complaint and a reasonable belief as to both the person's complicity as well as the need to effect arrest.

- Arrest cannot be justified merely on the existence of power, as a matter of law, to arrest without a warrant in a cognizable case.
- After Joginder Singh's pronouncement of the Supreme Court the question whether the power of arrest has been exercised reasonably or not is clearly a justifiable one.
- Arrest in cognisable cases may be considered justified in one or other of the following circumstances:
  - The case involves a grave offence like murder, dacoity, robbery, rape etc. and it is necessary to arrest the suspect to prevent him from escaping for evading the process of law.
  - The suspect is given to violent behaviour and is likely to commit further offences.
  - The suspect requires to be prevented from destroying evidence or interfering with witness or warning other suspects who have not yet been arrested.
- The suspect is a habitual offender who, unless arrested, is likely to commit or further offences. (3rd Report of National Police Commission).
- Except in heinous offences, as mentioned above, an arrest must be avoided if a police officer issues notice to the person to attend the police station and not leave the station without permission [17].
- Police officers carrying out an arrest or interrogation should bear clear identification and name tag with designations [18]. The particulars of police personnel carrying out the arrest of interrogation should be recorded contemporaneously in the register kept at the police station.

Arrest Guidelines

The NHRC listed out the following guidelines for making arrest:

- As a rule, use of force should be avoided while affecting arrest. However, in case of forcible resistance to arrest, minimum force to overcome such resistance may be used [19]. However, care must be taken to ensure that injuries to the person being arrested, visible or otherwise is avoided.
- The dignity of the person being arrested should be protected. Public display or parading of the person arrested should not be permitted at any cost.
- Searches of the person arrested must be done with due respect to the dignity of the person, without force or a aggression and with care for the person's right to privacy. Searches of women should only be made by other women with strict regard to decency [20].
- The use of handcuffs or leg chains should be avoided and if at all, it should be resorted to strictly in accordance with the law repeatedly explained and mandated in judgment of the Supreme Court in *Prem Shankar Shukla v. Delhi Administration* and *Citizen for Democracy v. State of Assam.*
- As far as is practicable, women police officers should be associated where the person or persons being arrested are women. The arrest of women between sunset and sunrise should be avoided [21].
- Where children or juveniles are sought to be arrested, no force of beating should be administered under any circumstances. Police officers, May for this purpose, associate respectable citizens so that the children or juvenile are not terrorised and minimal coercion is used.
- Where the arrest is without a warrant, the person arrested has to be immediately informed of the grounds of arrest in a language which he or she understands [22]. Again, for this purpose, the police, if necessary may take the help of respectable citizens. These grounds must have already been recorded in writing in police records. The person arrested should be shown the written reasons as well as also given a copy on demand.
- The arrested person can, on a request made by him or her, demand that a friend, relative or other person known to him be informed of the fact of his arrest and the place of his detention [23]. The Police should record in a register the name of the person so informed.
- If a person is arrested for a bailable offence, the police officer should inform him of his entitlement to be released on bail so that he may arrange for sureties.
- Apart from informing the person arrested of the above rights, the police should also inform him of his rights to consult and be defended by a lawyer of his choice [24]. He should be informed that he is entitled to free aid at States expense.
- When the person arrested is brought to the police station, he should, if he makes a request in this regard, be given prompt medical assistance. He must be informed of his right. Where the police officer finds that the arrested person is in a condition where he is unable to make such request but is in need of medical help, he should promptly arrange for the same [25]. This must also be recorded contemporaneously in a register. Only a female registered practitioner should examine the female requesting for medical help [26].
- Information regarding the arrest and the place of detention should be communicated by the police officer effecting the arrest without any delay to the police control room and

District/State headquarters [27]. There must be a monitoring mechanism working round the clock.

- As soon as the person is arrested, police officer effecting the arrest shall make a mention of the existence or non-existence of any injury on the person of the arrestee in the register of arrest. If any injuries are found on the person of the arrestee, full description and other particulars as to the manner in which the injuries were caused should be mentioned on the register. The entry shall also be signed by the officer and the arrestee. At the time of release of the arrestee, a certificate to the above effect under the signature of the police officer shall be issued to the arrestee.
- If the arrestee has been remanded to police custody under the orders of the court, the arrestee should be subjected to medical examination by a trained Medical Officer every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory [28]. At the time of his release from the police custody, the arrestee shall be medically examined and a certificate shall be issued to him stating therein the factual position of the existence or non-existence of any injuries on his person.

Post Arrest Guidelines:

The NHRC also issued guidelines to be followed after arresting a person. The guidelines are as follows:

- The person under arrest must be produced before the appropriate court within twenty four hours of the arrest [29].
- The person arrested should be permitted to meet his lawyer at any time during interrogation [30].
- The interrogation should be conducted in a clearly identifiable place, which has been notified for his purpose by the government. The place must be accessible and the relatives or friend of the person arrested must be informed of the place of interrogation taking place.
- The methods of interrogation must be consistent with the recognised rights to life, dignity and liberty and right against torture and degrading treatment [31].

Latest Law and Judgment on Arrest:

In *Arnesh Kumar vs. State of Bihar and another* [32], the Supreme Court of India while dealing with the concept of arrest forced to observe as follows:

"Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr. PC. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive".

The Court, Further, held that "Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the Legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, the Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short 'Cr.PC), in the present form came to be enacted".

Under this section a person accused of offence punishable with imprisonment for a term which *may be less than seven years* or *which may extend to seven years* with or without fine, *cannot be arrested by the police officer* only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary (i) to prevent such person from committing any further offence; or (ii) for proper investigation of the case; or (iii) to prevent the accused from causing the evidence of the offence to disappear; or (iv) tampering with such evidence in any manner; or (v) to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or (vi) unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

Law further requires the police officers to record the reasons in writing for not making the arrest. Eventually, the Court compelled to state:-

"In pith and core, the police office before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses(a) to (e) of clause (1) of Section 41 of Cr. PC".

If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that condition precedent for arrest under Section

41 Cr. PC has been satisfied and it is only thereafter that he will authorise the detention of an accused. The Magistrate before authorising detention will record its own satisfaction, may be in brief but the said satisfaction must reflect from its order.

Apart from section 41, Section 41A also aimed to avoid unnecessary arrest or threat of arrest looming large on accused requires to be vitalised. Under this section in all cases where the arrest of a person is not required under Section 41(1), Cr. PC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police office is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 Cr. PC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid, the Court observed.

Finally, the Apex Court issued certain directions for not to make any arrest automatically and mechanically. Further the court held that "failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction".

For not following the directions mentioned above, the Supreme Court of India awarded compensation for a doctor and an advocate holding that their liberty was curtailed in violation of law. Further, the Court held that when the individual liberty is curtailed in an unlawful manner, the victim is likely to feel more anguished, agonized, shaken, perturbed, disillusioned and emotionally torn. It is an assault on his/her identity. The said identity is sacrosanct under the Constitution. Therefore, for curtailment of liberty, requisite norms are to be followed [33].

Whether a Judicial Officer can be arrested by the police?

In *Delhi Judicial Service Association vs. State of Gujarat* [34], the Apex Court of India observed as follows:

"No person whatever his rank, or designation may be, is, above law and he must face the penal consequences of infraction of criminal law. A Magistrate, Judge or any other Judicial Officer is liable to criminal prosecution for an offence like any other citizen". But, in view of the paramount necessity of preserving the independence of judiciary and at the same time ensuring that infractions of law are properly investigated, the following seven guidelines were issued by the Apex Court:

i) If a judicial officer is to be arrested for some offence, it should be done under intimation to the District Judge or the High Court as the case may be.
ii) If facts and circumstances necessitate the immediate arrest of a judicial officer of the subordinate judiciary, a technical or formal arrest may be effected.
iii) The facts of such arrest should be immediately communicated to the District and Sessions Judge of the concerned District and the Chief Justice of the High Court.
iv) The Judicial Officer so arrested shall not be taken to a police station, without the prior order or directions of the District & Sessions Judge of the concerned District, if available.
v) Immediate facilities shall be provided to the Judicial Officer to communication with his family members, legal advisers and Judicial Officers, including the District & Sessions Judge.
vi) No statement of a Judicial Officer who is under arrest be recorded nor any *panchnama* be drawn up nor any medical tests be conducted except in the presence of the Legal Adviser of the Judicial Officer concerned or another Judicial Office of equal or higher rank, it' available.
vii) There should be no handcuffing of a Judicial Officer. If, however, violent resistance to arrest is offered or there is imminent need to effect physical arrest in order to avert danger to life and limb, the person resisting arrest may be over-powered and' handcuffed. In such case, immediate report shall be made to the District & Sessions Judge concerned and also to the Chief Justice of the High Court.

But, the burden would be on the Police to establish necessity for effecting physical arrest and handcuffing the Judicial Officer and if it be established that the physical arrest and handcuffing of the Judicial Officer was unjustified, the Police Officers causing or responsible for such arrest and handcuffing would be guilty of misconduct and would also be personally liable for compensation and/or damages as may be summarily determined by the High Court.

The Court further added that, the above guidelines are not exhaustive but these are minimum safeguards which must be observed in case of arrest of a judicial officer.

Suggestions and Conclusion

i) No doubt, the Indian police have to perform a difficult and delicate task, particularly in view of the deteriorating law and order situation, communal riots, political turmoil, terrorist activities, etc [35]., But, in order to check the misuse of the police power of arrest, we would like to suggest the following:
ii) As pointed out by our Hon'ble Apex Court of India, Transparency of action and accountability perhaps are two possible safeguards. Attention is also required to be paid to properly develop work culture, training and orientation of police force consistent with basic human values. Therefore, Training methodology of the police needs restructuring. The force needs to be infused with basic human values and made sensitive to the constitutional ethos.
iii) Efforts must be made to change the attitude and approach of the police personal handling investigations so that they do not sacrifice basic human values during interrogation and do not resort to questionable form of interrogation.
iv) With a view to bring in transparency, the presence of the counsel of the arrestee at some point of time during the interrogation may deter the police from using third degree methods during interrogation.
v) Moreover, the as mentioned in the "Enforcement of Guidelines [36] *(Supra note:18)*" of the National Human Rights Commission, wide spread publicity should be given to make aware of the procedure for the arrest so as to reduce the misuse of police powers on arrest.
vi) Police Standing Order 622 [37] that gives wider discretionary power to the police officials to arrest in

cognizable cases has to be deleted or suitably amended in consonance with the discussion we had earlier.

vii) So as to arrest the misuse of power in the hands of police personal, Apart from rendering departmental action and contempt of court, erring police personnal has be booked under the relevant penal provisions of law.

Therefore, we conclude that from the above analysis, it is categorically clear that the power of arrest has been arrested by the judicial pronouncements and by the Code of Criminal Procedure, 1973, as amended in 2008. If any police official ignoring the above provisions and guidelines discussed above, arrests any person then the affected person should be awarded compensation, apart from rendering the erring officials departmental action, contempt proceedings and penal action.

References

1. Arrest Rate means number of persons arrested under IPC crimes per 1,00,000 population.
2. Section 46 (1).
3. Section 46 (2).
4. Section 46 (3).
5. Cognizable offence" mean an offence for which, a police officer may arrest without warrant. See Section 2 (c).
6. See: Sections 151, 41 (2) r/w Ss.110, 41 (1) (h), 41 (1)(b), 41 (1)(ba) and (d) – Taken from R.V. Kelkar's Criminal Procedure, By, Dr. K.N. Chandrasekharan Pillai, EBC, 6th Edi, 2014, P.48.
7. (2014) 2 SCC 1. This is the latest verdict by the Hon'ble Apex Court of India in which the Court directed and declared that when a complaint is lodged disclosing the commission of cognizable offence, the registration of F.I.R is mandatory. Exception is also available. For details, see the Judgment.
8. Section 166 of IPC says "Public servant disobeying law, with intent to cause injury to any person. – Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.
9. Equivalent citations: 1994 AIR 1349, 1994 SCC (4) 260.
10. (1997) 1 SCC 216.
11. For details of the directions see D.K. Basu's Case.
12. See Sections 41 (B) (a),(b),(c) 50A (1),(2),(3), 54, 41(D) and 41 (C).
13. Under Article 141 of the Indian Constitution, the Law declared by the Supreme Court of India is binding. Also see Article 144.
14. AIR 1996 SC 2193.
15. See also: Prem Shankar Shukla v. Delhi Administration, [1980] 3 SCR 855, Sunil Batra Etc. v. Delhi Administration and Ors. Etc., [1979] 1 SCR 392.
16. Available at: http://nhrc.nic.in/Documents/sec-3.pdf. Last visited on 21.12.2016. Also see: Badru Ram and Ors. vs State Of Rajasthan: RLW 2006 (4) Raj 3110, 2006 (4) WLC 734.
17. Section 41-A.
18. See Section 41-B (a) of Cr.P.C.
19. See also Section 46 (2), ibid.
20. See also Section 51 (2), ibid.
21. See also section 46 (4), ibid.
22. See also Section 50, ibid.
23. See also Section 41–B(c) and 50-A.
24. See also Section 41-D.
25. See also Section 53 & 54.
26. See also Section 53 (2) & Proviso to Section 54.
27. See also Section 41 - C
28. See also Section 55-A.
29. See also Section 57 & Article 22 (2) of the Indian Constitution.
30. See also section 41 – D & Article 22 (1), ibid.
31. See Article 21 of Indian Constitution & see also ICCPR, 1996 & UDHR, 1948 & Human Rights Act, 1993.
32. (2014) 8 SCC 273.
33. Dr. Rini Johar & Anr. Vs State of M.P. & Ors. Writ Petition (Criminal) NO. 30 of 2015, Date of Judgment: June 03, 2016
34. Equivalent citations: 1991 AIR 2176, 1991 SCR (3) 936.
35. For more information see: D.K.Basu Vs Sate of West Bengal (*Supra Note - 12).*
36. For enforcement guidelines see the *Supra Note: 18* website.
37. PSO 622 Read as follows: Discretion to arrest in cognizable case: A Police Officer has discretion whether, or not, to arrest a person of his own motion, in a cognizable case and in instances where the position of the accused person and the nature of the charge against him render his arrest without warrant an unjustifiable hardship, application should be made to the magistrate to issue a process for his appearance.

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Computer devices have changed the concept of the crime of property larceny

Khasan Ochilov
Independent researcher of department Criminology and criminal law at Tashkent state university of law, Uzbekistan

Abstract
The concept of crimes involving theft of another's property with the use of computer technology, corpus delicti analyze, object, objective side, subject, subjective side, distinction from other similar crimes.

Keywords: computer devices, theft of another's property, use of computer technology crimes

Introduction

In recent years, in mass media we often face with term "computer crimes". Of course, this is not surprising. Nowadays, it is hard to imagine any industry - media, communications, trade, industry, banking, stock exchange operations, public administration and others, without computers.

Currently, all the important functions of the society related to the computer and computer networks. Computer technology has become an integral part of today's society, its great contribution to the development of society, with the development of the global economy and the rapid integration of the countries of the world community led to the formation of negative term such as "computer crimes".

Today, the lack of a perfect mechanism in the legal system and the fight against computer crime creates difficulties in current situation [1]. The role of computer information systems in society, increasing the scale of the use and processing, increasing the number of global Internet users maintaining computer networks and government is actively considering entering these systems and the protection of information on criminal offenses actual problems.

In general, one of the reasons for increase in crime regularly as a result of the crime, including the amount of money: at the same time damage from the bank larceny in developed countries amounted about 19 thousand US dollars, while damage from computer criminal on average amounted 560 thousand US dollars? In general, researchers have a wide range of opinion and comments regarding the study of computer crime as a part of crime [2].

For example, Yu. M. Baturin says that "computer criminal in the legal aspect of crime does not exist as a separate group, but a lot of traditional crimes are modified by including computer equipment, so we can talk about the aspects related to computer crime without dividing them into special groups" [3].

We also expressed this view, the contents of the computer crime, which covers a wide range of crimes. Larceny theft of others property takes a special space among computer crime.

Larceny of others' property by using computer devices is characterized by a number of specific features in the computer crime system. First of all, we need to mention some differences of crime system.

Nowadays, one of the aspects of computer crime in legal literature [4] takes special place: this is a group of computer crimes at the same time an instrument of a crime and subject to criminal (or tool) to perform the function. However, this type of computer crime is not proper for the larceny of others' property by using computer devices. Larceny of others' property by using computer devices in accordance with the subject of criminal offenses, the electronic lists of non-cash money of account and the computer is only an instrument of a crime that is also important.

For deeper understanding the nature of larceny of others' property using a computer crime we need to identify the "robbery, larceny" concept.

In European countries (France, Germany and Spain) and the United States there are different approaches to the concept of the existing Criminal Code Pillage [5].

The meaning of larceny of property so that the victim illegally deprived a certain amount of material wealth or rights for them.

M.H.Rustamboev notes that "larceny is - looted property to the benefit of others, larceny, and other parties to put illegal and free." [6] The same meaning given by E.S. Tenchov [7] and by A.I. Rarog [8].

R.Kabulov notes that "Pillage is another property owner or the owner of the property possession for personal benefit or for others, free of charge, malicious, illegal and intentionally possessed, and as a result the owner gets material damage [9] ".

V.V.Veklenko, S.S.Niyozova, A.K.Irkaxadjaev and E.O.Alauxanov [10] think about the important and unique among the mercenary purposes, the right to return to the method with the condition that the accused or other parties, such as the damage to the owner.

Sh.Yo.Abduqodirov and U.M.Mirzaev [11] talked about the larceny of property of others through using a computer, estimated this type of crime as "using and taking others properties for the benefit of them and others through the illegal use of computer and free focus".

However, the above-described definitions do not reveal the full contents of larceny. For all types of larceny will not be able to commit the use of computer tools and in all cases, the computer tool as a separate element of an offense is incorrect. Thus, the computer larceny definition Pillage what computer

types carried out using the methods described in the stories can be enhanced computer Pillage think it would be more correct.

Larceny committed using computer technology for above unique feature, however, this type of crime is characterized by a number of peculiarities.

Firstly, the offense of Larceny of others' property by using a computer according to the subject of crime in electronic form, in cash (non-cash) and cash money from the special account in the form of digital or non-cash means of plastic cards;

Secondly, Larceny of others' property by using a computer radically differs from the other Larceny crimes depending on the recipe. That is, a) the subject of a criminal attack to the identity (in the form of information may have property, weapons that can be used by means of a computer (program), instead using the damage);

Thirdly, as this crime happens in cyber environment, the person who committed the crime is often not defined or a high level of latency of the offense is followed.

Fourthly, the opportunity of performing the illegal action in a certain distance, speed of crime performance and opportunity to hide the name of those who performed crime, as well as damages to the victim, which can be very high;

Fifthly, this special knowledge of the crimes in the field of information and communication technologies is almost impossible to open and expose;

Sixthly, any person as a victim of this crime, but as a legal entity, bank or credit institutions and bank accounts of physical and legal entities will be shown;

Larceny of others' property, using a computer today, the scope of the scope of the crime of plunder, using a computer or any other property crimes also discussed the issue of the crime of larceny. Of the existing criminal law, using a computer, embezzlement, fraud, theft and liability are available and provided.

A.V.Raspopova, wrote about it, "Larceny of others' property, using a computer, mainly clearly shown in theft, fraud, embezzlement or extortion, or cause damage to property by deception or abuse of trust, illegal business, commercial, illegal possession of tax or banking secrecy and disclosure of credit card fraud is evident in the crimes [12]."

We cannot join the opinion of the author. The reason, mentioned by the researchers, fraud, deception or abuse of trust by way of damage to property, illegal business, commercial, financial or banking secrecy and disclosure of illegal possession of a fake credit card according to the nature and content of such acts is not included into pillage of the property of others, and accordingly larceny, using a computers in pillage cannot be assessed.

One type of larceny of others' property by using a computer is computer fraud and learning it is plays important role. "Computer fraud" occurred in the 70 years of the last century.

If to talk about computer fraud, in the content of its lawyers, who can be seen to interpret computer fraud in different ways. In particular, T.Tropina defines "computer fraud" as it does not lies to people, indeed it “lies” to computer systems. The author notes that, with regard to computer crime, "fraud" in the traditional sense of the meaning of these concepts is different concept. She says that, in essence, to obtain information illegally, and so on, the computer system of "cheating" [13] is carried out. However, in our view, the cases of computer fraud are debatable. Researchers’ assessing computer fraud as "to trick the computer tool" to represent or assessing computer as the victim of the system is wrong.

In particular, the issue of December 21, 2001, the Plenum of the Supreme Court of the Republic of Belarus "Larceny of property on the application of the criminal law and judicial practice" law approach [14] is appropriate, in our opinion. Its content is regarding "Larceny committed using computer technology can only be done through computer manipulation, the victim or the person entrusted with the property being lied through using the information processing system will be demonstrated."

However, if to analyze the norms of the criminal laws in many foreign countries, "computer fraud" responsibility given in many norms concepts as "abuse of trust" and "deception" were not used. In other words, without setting connection between the fraud and computer fraud, computer fraud is widely defined as computer pillage a consensus without any proof. This situation can be met criminal laws of many European countries (for example, Germany, Austria, Sweden, Denmark).

In recent years, various lawyers are offering to fill in the criminal law with law about "computer fraud". For example, D.A. Zykov [15] and S.D. Brajniklar [16] offered to include special law about computer fraud into criminal law. However, law about computer fraud cannot be added. Indeed, the use of the criminal law of each term should be clear, to apply to all legal acts in one meaning, ambiguous and vague terms should be avoided. The researchers used "deception and abuse of trust" terms cannot be related to computer systems, because there are no signs of intelligent and free, and it creates obstacles to call it as "based on deception, voluntarily surrendered victim".

Also it should be noted that, that this acts as a computer is used as a medium of a crime in cyberspace is necessary to distinguish from fraud. Today, one of the popular movements of people cheating is the auction web. At the same time, setting communicating tool with the victim of computer, the environment is seen as an alternative to the normal environment. Web sites allows not to communicate directly with the victim of the violation, it is difficult to assess the personality of the criminal, helps to ensure the safety of its services.

Some researchers thank that, "such acts are not committed by changing the computer data in violation of the law, in other words, the relations in the field of information security are not raped and robbery, and because of that larceny is not a cause of such manipulation, such acts are appropriate to traditional fraud and does not cause criminal law to be qualified with other norm of criminal law [17]”.

In our view, larceny property through fraud, by using a computer does not require qualification. After all, this is a sign of criminals, even though fraud is performed through computer information technologies, but the computer is not an instrument of a crime, but because it a tool of communication (relation), calling it as computer fraud is denied. When the data stored in the computer information system of the computer as a tool by the modification of the deception carried out and as a result, the property larceny, in this case, making qualification of this act as computer fraud is right.

Taking into account the above comments, larceny of others’ property through using a computer is understood as, the right

to property or proprietary computer using the computer information system, through the modification of data in violation of the law intentionally, freely and without condition.

Moreover, larceny by using the computer should be given criminal responsibility, norms, reasons are following: first, the crime of larceny of others' property, using a computer is spreading rapidly across the world in recent years, increasing the potential risk; Second, larceny of the property of others, using a computer crime, in many cases, will not be reflected in the official statistics, in other words, this type of crime is defined with high latency, based on official figures suggests not to diminish the fight against crimes of this type; Third, larceny of the property of others through computer technologies crime differs from the simple crime of larceny, this requires right qualification in compliance with the purpose of determining the responsibility.

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Registration of first information report vis-a-vis the powers of the court: A study

Dr. Mukund Sarda

Prof., Principal & Dean, Bharati Vidya Peeth University, New Law College, Pune, Maharashtra, India

Abstract
The scope of the powers of the court under Section 156 (3) of Criminal Procedure Code has been studied in depth. Specific or unproperly worded prayer or lack of complete details will not be fatal to maintainability of a petition. A complaint against public servants, sanction of competent authority is required for registration of a case against them. The guidelines in Priyanka Srivastava's case has been summarised for the proper application of Sec 1556 (3) of Cr PC. A good account is given about the recommendations of the study and in paritucular, the magistrate may require the filing of affidavit's in order to ascertain the truth of the complaint, before the magistrate exercises the power to direct registration of FIR.

Keywords: pre cognizable, sanction for prosecution for public servant, reproduction of factual allegations, complaint to accompany affidavits, priyanka srivastava guidelines

1. Introduction
Section 156(3) of the Criminal Procedure Code, which operates at the pre-cognizable stage, confers powers on a magistrate, who is empowered to take cognizance under Sec 190 of Criminal Procedure Code, to order investigation into any cognizable case. In Panchabhai Popatbhai Bhutani & Others [1] the Supreme Court ruled: "A petition under Section 156(3) cannot be strictly construed as a compliant in terms of Sec 2(d) of the code and absence of a specific or improperly worded prayer or lack of complete and definite details would not prove fatal to a petition under sec 156(3) in so far as it states facts constituting ingredients of a cognizable offence. Such petition would be maintainable before the magistrate".

2. Text of the article
In a case, where the petitioners were public servants and an FIR against them for acts in the discharge of duties without the sanction of appropriate authority, whether the magistrate can give a direction to register an FIR against them came up for consideration before the Supreme Court [2]. Basing on an earlier decision in Anil Kumar's case [3], it was held that the magistrate could not have passed the order for registration of FIR without sanction by the appropriate authority. Earlier case-laws were relied upon [4]. No such sanction is necessary, in case of persons, who are not public servants [5].

3. Scope of Sec 156 (3) Cr PC
The scope of Sec 156(3) of the Criminal Procedure Code has been explained and detailed by the Supreme Court [6] thus:-

i) It is well settled that the law neither prescribes any particular format for application under Sec 156(3) Cr Pc [7] nor contemplates verbatim reproduction of the factual allegations or all the ingredients of the alleged offence;
ii) Nevertheless, it is imperative that the application under Section 156(3) should contain facts disclosing cognizable offence;
iii) Failure on the part of the Police to exercise powers under Section 154 Cr pc despite intimation;
iv) Thereupon the magistrate exercising powers under Section 156(3) Cr Pc to order investigation of the crime.

Stressing the need for application of mind by the magistrate, he cannot refer the matter under Sec 156(3) Cr Pc against public servants for acts done in the discharge of their duties without a valid sanction order [8]. It was further laid down in the case [9] thus:-

a) The application of the mind by the magistrate should be reflected in the order;
b) The mere statement that he has gone through the complaint, documents and heard the complaint, as such, as reflected in the order will not be sufficient;
c) After going through the complaint, documents and hearing the complainant, what weighed with the magistrate to order investigation under Sec 156(3) of Cr Pc should be reflected in the order, through a detailed expression of his views is neither required nor warranted.

4. Priyanka Srivastava guidelines
In Priyanka Srivastava's case [10] the Supreme Court laid down a detailed guidelines on this crucial issue under Sec 156(3) of Cr Pc which can be summarised thus:-

i) The magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind;
ii) He may have to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order;
iii) Power under Sec 156(3) Cr Pc warrants application of judicial mind;
iv) A court of law is involved;
v) It is not the police taking steps at the stage of Section 154 of Cr Pc;
vi) A litigant at his own whim and fancy cannot invoke the authority of the magistrate;
vii) A principled and really grieved citizen with clear hands must have free access to invoke the said power;
viii) It protects the citizen but when pervert litigants takes this route to harass the fellow citizens, efforts are to be made to scuttle and curb the same.
ix) A stage has come to this Country, where Sec 156(3) Cr Pc applications are to be supported by an affidavit duly

sworn by the applicant who seeks the invocation of the jurisdiction of the magistrate;

x) In appropriate cases, the magistrate would be well advised to verify the truth and also can verify the veracity of the allegations;

xi) The affidavit can make the applicant more responsible;

xii) Such kind of applications are filed in a routine manner without taking any responsibility whatsoever, only to harass certain persons;

xiii) It becomes disturbing and alarming when one tries to pick up people, who are passing orders under a statutory duty, which can be challenged under the said Act or under Art 226 of the Constitution;

xiv) It cannot be done to take undue advantage in a criminal court, as if somebody is determined to settle the scores;

xv) The warrant for giving a direction that an application under Sec 156(1) Cr Pc be supported by an affidavit so that the person making the application shall be conscious and also endeavour to see that no false affidavit is made;

xvi) If the affidavit is found to be false, he will be liable for prosecution in accordance with law;

xvii) Prosecution will deter him to casually invoke the authority of the magistrate under Section 156(3) Cr Pc;

xviii) Veracity can also be verified regarding the nature of the allegations of the case;

xix) In a number of cases pertaining to sphere of fiscal nature, medical negligence and others criminal prosecutions are filed;

xx) The magistrate is also aware of the delay in lodging FIR.

In cases, where the allegations are made in a petition under Sec 156(3) of Cr Pc who are public servants and the acts done in the discharge of duties, magistrate cannot given any direction to register FIR without a valid sanction from the appropriate authorities [11].

5. Unwarranted Criminal Prosecution

The Supreme Court deprecated the practice of subjecting police officers to unwarranted criminal prosecution when the court observed: [12] Subjecting police officers to unwarranted criminal prosecution for having registered a case will certainly peril the fair investigation of the said crime.

Allowing the aggrieved and disgruntled persons to hold the police machinery at ransom by unjustifiable vexatious prosecutions will affect the morale and effective functioning of the police machinery which in turn will have serious and far-reaching adverse impact on the interests of the society.

It is worthwhile to follow the principle laid down by the Supreme Court in Lalitha Kumari Vs. Government of UP [13] which stipulates that the police must conduct a preliminary inquiry in certain cases to ascertain whether the information reveals the commission of a cognizable offence. This procedure will weed out frivolous and vexatious compliant. The magistrate will be able to send only deserving cases for investigation by the police.

6. Conclusions & Recommendations

In conclusion, it may be suggested as follows:-

i) Magistrates acting under Sec 156(3) Cr Pc will be competent to order registration of the case (FIR) and the investigation that follows.

ii) Magistrates, while passing orders, act by the application of mind which should be reflected in the order;

iii) Cr Pc be amended to provide that applications under Sec 156(3) be accompanied by a sworn affidavit to make complainants responsible;

iv) Instead of ordering the police to register FIR, magistrates may order preliminary enquiry by the police to ascertain the truthfulness and genuineness of complaints.

v) In cases involving public servants magistrates should not pass orders directing FIR to be registered, unless a valid sanction under Section 197(1) is produced by the prosecution;

vi) In regard to complaint against police officers for registering FIR, detailed scrutiny be made regarding genuineness of the complaint before registering the case so that vexatious prosecutions are averted;

vii) Magistrates must send only deserving cases for police investigation.

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WMD under Islamic International Law

Jaber Seyvanizad

Young Researchers and Elite Club, Urmia Branch, Islamic Azad University, Urmia, Iran

Abstract
After the appearance of WMD in twentieth century, nothing could fundamentally jeopardize the human life as much as the weapons of mass destruction. The weapons that have this potential to completely destruct our planet for numerous times. Even though there are some limiting rules concerning WMD usage under the current international law which is mostly manifested in the framework of Non Proliferation Treaty, according to advisory opinion of International Court of Justice on 8July 1996, there is no any certainty on illegality of threat or use of nuclear weapon in international law sources. On contrary, the legal regime governing on WMD under Islamic international law prescribes the different prescription. Through the descriptive approach, this article attempts to extract the precise position of Islamic international law concerning the issue of WMD. Results are indicating that there is a definitive prohibition on WMD utilization, insofar as all noted Islamic scholars including Shias and Sunnis have consensus on its proscription.

Keywords: WMD, international Islamic law, Quran, hadiths, Islamic scholars

1. Introduction
Regardless of the time of war or peace, Islam has a clear approach towards WMD. Every Muslim combatant is committed to target just his enemy. According to 190 verse of *Baqareh* chapter of Quran, God has required Muslim to battle just with militants and prohibit them from trespassing and killing civilians. All Shia and Sunni Scholars have consensus on prohibition of war against civilians. Regarding the nature of WMD, destruction of civilians including, innocent people and environment in case of WMD utilization is unavoidable. With regard to the same results of WMD utilization in present time and used weapons in Early Islam, it can be definitely concluded that the WMD usage is permanently forbidden under the Islamic law. For example in Early Islam Prophet has prohibited the combatant from cutting and burning the enemies' trees and farms. We know that the minimum damage of WMD usage- even for testing –is imposing the irreparable harms to environment such as destruction of farms and burning trees and harvests. Exactly there is the same story about the chemical weapon usage at present and poisoning the enemies' waters in Early Islam. According to the authentic sources- which will be broadly mentioned in the next parts- there was a definitive banning on enemies waters poisoning, because it can remarkably harm civilians on one side, and about the militants, its usage is unfair and accordingly forbidden. Presenting the Islamic prescriptions on WMD, this article tires to extract the tenets of Islamic law from the first-handed sources emanating from the leading scholars works.
In order to make religious inferences of the rule about the utilization of nuclear weapon, a *Faqih* must give priority to recognition of subject (Nuclear weapon). Because if someone doesn't know what a nuclear bomb is, how its destructive effects are, what its radius of the adverse and disastrous influences in length and width of human life is, what effects will it have on the next generations, and how many people annihilate in the time of explosion; basically cannot deduce and present a correct result from Islamic sources.

A nuclear weapon is different from conventional weapons; destructs environment and also has destructive effects on human life, human genetic and generation. Today, after years of Hiroshima nuclear explosion, it can be seen that its disastrous effect has still remained, and now we know that when uranium is used even in a weakened scale, it has lots of destructive effects, and generally the production of these weapons jeopardizes the international security. Hence, consideration of the human and moral principles in production of weapons -that is, how much destructive weapon can be produced? - are the issues that must be scrutinized by *Faqih* in issuance of Fatwa.
For the issuance of a Fatwa, a Mujtahid first must seek *Ijtidadi* reason to determine related rule governing on the subject, and in case of lack of *Ijtihadi* reason, and emergence of doubt has to seek the *Fiqahati* reason including the principles: *Isteshab*, *Baraat*, *Ihtiyat* and *Takhyeer* (Sheikhe Ansari, 1989, p315). The issue of banning the use of nuclear weapons in terms of abundance of banning reasons in Islamic texts including: Quran, Hadiths, Sunnah and Consensus indicating the expressions of the infallible Imams, the subject has the verbal frequency in the sources i.e. there are too many reasons in the religious school of Sunnis and Shias collectively indicating the prohibition of the use of nuclear weapon. In this section a great number of those reasons will be analyzed and there is no any need to present the *Fiqahati* principle and reasons.
Of course, having the power and enjoyment of divine possibilities in case of non-violating someone's right is permitted, and too much evidence indicate its permission under the tenets derived from Quran, Hadiths and Reason, like the verse stating: "*He it is Who created for you all that is on earth. Then He Istawa (rose over) towards the heaven and made them seven heavens and He is the All-Knower of everything*" (Baqarah, 28). The energy resources are for all human beings and this is the right of nations to utilize these God-given blessings, and in this respect, no one has to be

allowed by the other one. Also the other verses state that: "*And surely, we gave you authority on the earth and appointed for you therein provisions (for your life). Little thanks do you give*" (A'raf, 10) or "*And has subjected to you all that is in the heavens and all that is in the earth; it is all as a favour and kindness from Him. Verily, in it are signs for a people who think deeply* "(Jathiya, 13).

The issue of equipping a weapon for defending the country is rationally and religiously indispensable, and on this basis Imam Khomeini considers it as a state task (Khomeini, 1983, 23) and this Khomeini's view is supported by many Islamic tenets. For example based on the verse stating: "*And make ready against them all you can of power, including steeds of war to threaten the enemy of Allah and your enemy, and others besides whom, you may not know but whom Allah does know"* (Anfal, 60). All Muslims must appear powerful before enemies, but the content of this verse must be scrutinized to be specified on its limits. The purpose of having weapons is creating fear among the enemies and this is the subject of the aforementioned verse. The verse has not stated you can use any evilness and rascality to threaten your enemy. When we proved nuclear weapon is not from instances of power, rather instances of evilness and brutality, it does not turn to talk of having it. Such things like having nuclear, biological and chemical weapons are out of instances of this verse.

In Hadiths and under the Sunnah, emphasis on equipment and having science and power in favor of peaceful and divine purposes is because of encouraging them (enemies) to give up their evilness. Human is perfectionist inherently and enjoyment of material powers can be defined under this process. Hence, enjoying the peaceful nuclear energy under the international law provisions is legal and permitted.

1.2 The Reasons Study of Prohibition on WMD Use

1.2.1 Quran

1. The verses indicate the prohibition of homicide, such as:" *Because of that We ordained for the Children of Israel that if anyone killed a person not in retaliation of murder, or (and) to spread mischief in the land - it would be as if he killed all mankind, and if anyone saved a life, it would be as if he saved the life of all mankind*" (Ma'idah, 32) and "*No person earns any (sin) except against himself (only), and no bearer of burdens shall bear the burden of another*". (An'am, 164) The first verse indicates killing an innocent one before divine system is considered as killing all humans, so absolutely killing inhabitants of a city or country in which live many innocents is very heinous act before God. The second verse indicates no one must be victimized by other one's sin and everybody is responsible for his behaviors.
2. The verse introduces the destruction of generations and cities as the clear instants of corruption on the earth which is the minimum damage of nuclear armaments; "*And when he turns away (from you "O Muhammad "), his effort in the land is to make mischief therein and to destroy the crops and the cattle, and Allah likes not mischief*" (Baqarah, 205)
3. The verse that prohibits the absolute domination on atheists; "*Except those who join a group, between you and whom there is a treaty (of peace), or those who approach you with their breasts restraining from fighting you as well as fighting their own people. Had Allah willed, indeed He would have given them power over you, and they would have fought you. So if they withdraw from you, and fight not against you, and offer you peace, then Allah has opened no way for you against them*" (Nisa', 90) expressing after ceasefire, Muslims do not have the right to refight against their enemy and take some concessions, hence when taking concessions from the enemy is invalid, how is it possible to kill innocent civilians who never interfered in war?
4. The verse that prohibits killing innocents; "*and kill not anyone whom Allah has forbidden, except for a just cause*" (An'am, 151).
5. The verse expressing the proportionality in punishments; "*The sacred month is for the sacred month, and for the prohibited things, there is the Law of Equality (Qisas). Then whoever transgresses the prohibition against you, you transgress likewise against him. And fear Allah, and know that Allah is with Al-Muttaqun (the pious)*" (Baqarah, 194).
6. The verse forbidding the committing evils; "*he commands them for Al-Ma'ruf (i.e. Islamic Monotheism and all that Islam has ordained); and forbids them from Al-Munkar (i.e. disbelief, polytheism of all kinds, and all that Islam has forbidden)*" (A'raf, 157). The clear example of "evil" which has been prohibited in verses and Hadiths obviously can be this one, and if supposed to be examples for "forbidding the evil", this one is definitely one of them.
7. The verse emphasizing on criminal justice and referring to principle of distinction; "*And fight in the Way of Allah those who fight you, but transgress not the limits. Truly, Allah likes not the transgressors*" (Baqarah, 190)

1.2.1.1 The Implication of the Verse of *E'tedah* on Banning the Use of nuclear weapons

The verse 190 the *Sura* of Baqarah is one of the most significant verses related to the prohibition of WMD use, because some principles and general rules of war are extractable by it, including:

A) Principle of Proportionality in War Armaments

When your enemy utilizes some strong or weak weapon, the opposite side must react proportionately, not utilize a very stronger weapon. But in retaliation against the nuclear weapon there is nothing for defending, and in case of retaliation the human generations will be jeopardized and will have many irreparable damages permanently.

b) The Principle of Distinction between Civilians and Combatants

The distinction between civilians and combatants includes: children, women, elderlies, patients, wounded, service powers, animals, trees, farms and generally environment. Based on this verse, the use of any weapon that is the instance of transgress is a major sin and forbidden in Islam. Likewise, the extension of war beyond the war zone that causes the harassment, even if for animals and environment is a major sin. Because it seems that the proscription in "*E'tedah* verse" is unconditional and includes any transgression, even about the environment.

1.2.1.2 Comments of the Qur'an Commentators

Fortunately, lots of Islamic commentators such as Sunnis and Shias, in addition to what was mentioned about the Islamic prohibition concerning the use of weapons of mass destruction, have very useful and great comments, some of which were mentioned:

1. Ayatollah Tabatabai believes that the prohibition of war extension beyond the war zone is unconditional and includes all children and elderlies (Tabatabai, 1955, p87) [1] about the samples of "*E'tedah* verse" he expresses: if a war starts before the conciliation proposal, such war is religiously forbidden because it is the clear instance of the transgression.
2. Ayatollah Makaram states: based on the verse, in addition to the prohibition of war extension beyond the war zone, the utilization of poisonous materials to pollute the enemies water sources i.e. chemical and biological war is not permitted either. (Makarameshirazi, 1975, p9) [2].
3. Moqaddase Ardabili believes: some samples of transgressions which have been specified under Islamic tenets consists of the beginning of war before the enemy, killing the atheist which is under the contract with Muslims and illegal killing (Moqaddaseardabili, p306) [3].
   The Sunni commentators, likewise the Shia commentators, have extracted the prohibition of WMD use from the E'tedah verse, for example:
4. Whba Zuhayli as a Sunni scholar in his exegesis (Almonir) states: the beginning of war, killing Muslims, war against civilians such as; children, elderlies, destruction of houses, tree felling and burning farms are the samples of transgression. (Zuhayli, 1997, p179) [4].

1.2.2 Hadiths

1. Imam Ali (A.s) states: let your heart be replete with people kind and do not be like brutal animals toward them....because people are dividable into two groups; either are your religious brother or one like you in creation. (Sayyed Razi, 1994, p53) [5].
2. The Hadiths from the holy Prophet and the other Imams have generality on Islamic prohibition of houses destruction, burning farms, killing civilians and animals, spreading toxins into the enemy's dwelling place. In this respect, Toosi narrates: When holy prophet had to have a war against enemies, he used to gather his soldiers and tell them: move in the name of God, in favor of his way and because of his religion, do not transgress, fulfill your obligations, do not kill children and elderlies, do not dismember and do not cut down trees unless it is inevitable. (Toosi, 1986, p139) [6] Koleini as well narrates that: When Prophet chooses a commandant for war, always advises him to observing the divine piety toward himself and the other soldiers and then say fight in the name of God and in favor of God and only kill people who are atheist but fulfill your obligation and do not overdo and do not kill children and do not dismember. (Koleini, 1987, p30) [7] There are some Hadiths that have been narrated by Sunni scholars, for instant Abi Shabih says: "in the name of God and based on the divine religion, free the captivates and do not kill children and women, do not indulge in order to increase your war spoils, be kind and do goodness because Allah loves them".(Abi Shabih, 1988, p654) Termezi also narrates that: "When Prophet chooses a commandant for war always advise him on observing the divine piety toward himself and the other soldiers and then say fight in the name of God and on behalf of God and only kill people who are atheist but fulfill your obligation and do not overdo and do not kill children and do not dismember". (Al Termezi, 1983, p86) [8].

Each of the following principles which have been extracted from Quranic sources, can be argued for expressing the legal fundamentals of the use prohibition of unconventional nuclear and biological armaments:

1) Prohibition of action battle with the intention of revenge and bleeding
2) Prohibition of the beginning war before ultimatum and inviting to conciliation
3) Prohibition of dismemberment of enemy's casualties
4) Prohibition of breach of war agreements and treaties
5) Prohibition of cutting and burning trees and farms
6) Prohibition of captivating before ultimatum and inviting to conciliation
7) Prohibition of killing enemy's soldiers despite of the possibility of their captivation
8) Prohibition of killing animals
9) Prohibition of war after accepting islam by enemy
10) Prohibition of war against the *ahl al ketab* whereas they are ready for conciliation
11) Prohibition of extension of war after receiving the conciliation proposal by enemy
12) Prohibition of houses and towns destruction
13) Prohibition of water obstruction against the enemy
14) Prohibition of killing the escaping soldiers of enemy
15) Prohibition of killing the civilians including: children, women, elderlies, monastics, nurses, wounded, patients and messengers
16) Prohibition of killing the enemy's soldiers which have participated in war by duress
17) Prohibition of killing the hirelings
18) Prohibition of children participation in war
19) Prohibition of non-precision attacks in order to avoid unlawful damages
20) Prohibition of disabled use in process of war

1.2.2.1 Study of the Conceptual Indications of Some Hadiths on Prohibition of Production and Usage of Nuclear Weapons

A). Some *Nabavi* Hadiths in religious texts on prohibition of poisoning the enemy's dwelling; Holy Prophet has prohibited poisoning in polytheist's dwellings. (Toosi, 1986, p143) [6].

It seems that even though there is a prohibition on poisoning, it is not limited to poison and include all sorts of weapons of mass destruction, because there is no any difference among water, weather or land poisoning using the other unconventional weapons. Therefore, if there is the word of poison in Islamic texts, it refers to any weapon leading to the destruction of innocents out of war zones including, humans, animals, farms and environment. (Toosi, 1986, p143) [6].

1.2.2.2 Some Supporting Implications

- Firstly: definitive priority, because when there is a prohibition on the usage of poison harming a limited area, usage of nuclear weapon is absolutely prohibited under Islam.

- Secondly: In wordings of Hadiths there is no any specific emphasis on water, weather or land, rather there is a general banning that includes all sorts of WMD.
- Thirdly: In such rules; that there is a prohibition because of a damaging nature, it is evident that the weapons of mass destruction, in terms of having the same function, definitely are forbidden.
- Fourthly: any extension of war to civilian areas is forbidden, no matter it happens by poison or any other kind of unconventional or nuclear weapons.

Consequently; based on the indication of Hadiths on prohibition of poisoning in war and regarding the same function of WMD, it can be concluded, the use of nuclear weapon is religiously banned.

1.2.2.3 Comments of Islamic Scholars on the Prohibition of Poisoning During War

Based on these Hadiths, many scholars consider the poisoning on war and civilian areas unlawful, some of them include the followings:

1) Sheikheh-Toosi in his book (Al Nahayah) that in every legal case, expressing only the related Hadith, specifies the rule governing on the case by scrutinizing in "Hadith", instead of "argument", and expression of legal case - because the practice of Sheikh in this book is the issuance of the fatwa based on the wordings of Hadith- states: "indeed the poisoning on atheists dwelling is prohibited". (Toosi, 1979, p51)
2) Ibne Edris states: "killing the atheists is permitted, but that must be distinguished between fighters and civilians, also the use of poison is not acceptable, because poisoning in their dwelling is forbidden". (Helli, 1989, p7) [9].
3) Abolmakarem believes that: "the poisoning in atheistic towns is prohibited, and fighting in forbidden months is unlawful, of course about some of those who believe in this rule, unless they start the war and Muslims have to be the defender". (Abolmakarem, p201)
4) Karaki says: "if it is possible to be the winner without resorting to poisoning, use of poison in atheist realms is unlawful". (Karaki, 1993, p385) [10].
5) Shahid alavval believes that: "based on better comment, poisoning is prohibited". (Shahid alavval, 1996, p32) [11].
6) Shahid Thani in his book (masalek) states: "poisoning for killing innocent people is forbidden". (Shahid Thani, 1992, p24) [12].
7) Allamah Helli in his book (Ershad) States: "by various ways it is possible to fight against enemy but by resorting to poisoning, unless you have to do it". (Allamah Helli, 1990, p344)
8) Ayatollah Sadr, in addition to the fatwa on prohibition of poisoning the atheist dwellings, goes one step further and expresses: "even though in Sokoni's Hadith the title of poison has been utilized, but the poison undoubtedly does not have subjectivity, rather in terms of criterion includes any unconventional weapon". (Sadr, 1999, p384)
9) Grand Ayatollah Khoyi believes that: "based on Prophet's prohibition on poisoning the polytheists' realms, that is unlawful". (Khoyi, 1989, p371) [13].
10) Lots of contemporary sources of emulation have prohibited in their fatwas the use of unconventional armaments during war. Ayatollah Makaram says: in addition to the prohibition of war extension to the civilian zones; elimination of jungle, farms and poisoning i.e. chemical and biological war is forbidden. (Makaram, 1974, p9) According to the authentic Hadiths and previous and contemporary religious Scholars fatwa, the use of unconventional weapons is prohibited by religion, because it is recognized as the "modern sample" of poisoning.

Some Hadiths Indicate the Prohibition of Using the Incendiary Weapons during War

1) Based on this Hadiths, holy Prophet "bans the dates burning". (Al Ameli, 1988, p43)
2) Toosi narrates from holy Prophet; "do not punish by burning, because only God of fire has the right to punish by fire". (Toosi, 1986, p143) [6].

1.2.2.4 Comments of Islamic Scholars on Incendiary Weapons

Many Scholars of the Islamic world, according to such Hadiths expressed: use of the incendiary weapons in the battle field is forbidden. Undoubtedly, part of the weapons of mass destruction is incendiary, hence they will be subject of these Fiqhi opinions. For example:

1) Mohagheghe Al Helli in Sharay'e believes that, any use of incendiary weapon is forbidden. (Mohaghegh, 1994, p66) [14].
2) Mohaghegh Al Thani also illegalizes the use of incendiary weapons, burning the trees, agricultural crops, animals and the innocent. (Karaki, 1987, p385)
3) Ibne Al Edris is one of those who has expressed; "fighting by incendiary weapons is not permitted". (Helli, 1989, p7) [9].

Conclusion: According to the valid Hadiths and fatwas, it can be concluded that, any use of unconventional armaments during a war is prohibited, because they can be recognized as the samples of incendiary weapons.

1.2.2.5 Islamic Scholars View about the Banning the Use of WMD

1.2.2.5.1 Shia Scholars

The Shia Scholars, based on the *E'tedah* verse and other valid Hadiths, believe that the use of weapons leading to mass destruction is prohibited and the principle of distinction and proportionality must be considered, nevertheless, WMD absolutely cannot cover such principles and lead to irreparable damages for nature and humanity. Some of them include the followings:

1) Do not let the polytheist wives help them in war against Muslims, but in case of coerce you can kill them. (Toosi, 1979, p292)
2) When there is no any necessity, you do not have right to kill women during war. (Alborraj, 1985, p303) [15].
3) In war against polytheists, when one of them obeyed you and accepted your logic, his killing is not permitted because he is your religious brother. If he is unruly, try to control him and if they are not combatant, their killing is not permitted. (Helli, 1912, p911)
4) During war; killing the insane, children and women of polytheists is not permitted unless there be a necessity. (Helli, 1992, p486)
5) Only in case of necessity, killing the insane, children and women in war against polytheists is permitted. (Helli, 2000, p80)

6) Do not kill elderlies, children and women. (Najafi, p73) [16].
7) Holy Prophet has banned killing the children, elderlies and disabled in war against polytheists and atheists. (Miyanji, 1990, p91) [17]

1.2.2.5.2 Sunni Scholars

The Sunni Scholars, like the Shia Scholars, based on the Verses and Hadiths have issued the Fatwas on prohibition of WMD and any action leading to the extension of war to civilian zones and destruction of houses, trees, farms, animals and environment, here I mention some of them:

1.2.2.5.2.1 Hanafi Scholars

1) In war against enemies of religion; insane, women, child, blind, cripple, hand-cut and disable elderlies must not be killed. (al hanafi, 1998, p128)
2) The basis of war against someone is his ability in fighting, hence the aforementioned people do not include this basis. (al shokani, 2001, p411) [18].
3) The elderlies, children, disabled, women and civilians must not be damaged during war against enemy. (al enayah, p425) [19].
4) When allah has said raise against people who have raised against you, we can conclude that there is no any permission for war against the disabled, because they cannot raise against anybody. (Sarakhsi, 1996, p450) [20].

1.2.2.5.2.2 Shafe'i Scholars

1) Because of *Nabavi* prohibition, Muslims do not have the right to kill disabled and women, also killing the intersexes is not permissible, because in case of doubt about the gender of person, Muslims must treat with caution and let them be live. (Al Noovi, p295) [21]
2) Shafei said: Holy Prophet has prohibited his soldiers from killing women and children. (Ibne Edris, 1983, p253) [22].
3) Killing children, women, the insane and intersexes has been prohibited. (Al Sherbini, 1958, p223) [23].
4) Majority of Scholars have expressed, if women and children raised against the Muslims in order to kill them, in this case killing them is permitted. (Al Noovi, 1999, p48)

1.2.2.5.2.3 Hanbali Scholars

1) Ibne Abbas in his comment on the verse 190 of Baqarah has said: killing women and children and elderlies is prohibited. (Ghodamah, p544) [24].
2) Under the Islamic jurisprudence, not killing atheist women and children after Muslims domination is a well-stablished rule, especially when there is a Nabavi Hadiths in this respect. (Al Abdoalrahman, p400)

1.2.2.5.2.4 Maliki Scholars

1) There is an authentic Hadiths from holy Prophet proscribing killing women and children, accordingly that is forbidden under Islam. (Alazhari, p414) [25].
2) Based on Quran and Sunnah, killing children, women, elderlies and hirelings has been banned. (Al Gharafi, 1994, p389) [26].

2. Conclusions

According to all Islamic formal sects including Jafari, Maliki, Hanafi, Shafei and Hanbali, using the unconventional chemical, biological, nuclear and even unknown weapons in all sorts is permanently forbidden. The verses of Quran explicitly prohibits the usage of WMD and considers the destruction of cities and societies like fighting against God. The tenets of respecting "just war" is extractable from the Hadiths sources. Accordingly, every Muslim has been prohibited from killing the civilians, home and farms destruction, animal killing, poisoning the enemies' water and expanding war zone to civilian areas. All of the aforementioned cases imply the definitive prohibition of WMD under the International Islamic law, since the damages of WMD usage is remarkably heavier than them. Almost in no issue like WMD usage, there is a strong consensus among the Muslim scholars on its ban. Shia and Sunni scholars unanimously proscribe the resorting to WMD. The manifest instance of this approach is the issuance of Nuclear Fatwa by grand Ayatollah Khamenei in prohibition of nuclear weapons which was registered in United Nations as an internationally formal act. According to the general principles of Islamic international law containing the "just war", "fulfillment of promise", "sustainable peace", "Not harming others", "proportionality" and "distinction" any resorting to WMD, regardless of its function, including destruction, testing or deterrent policy is everlasting prohibited.

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Judicial approaches on women empowerment

Dr. PK Rana

Reader, M.S. Law College, Cuttack, Odisha, India

Abstract
In India, feminine glory was at its zenith in the vedic period which has been marked as a portal when our founding fathers enshrined not only the noble principles of equality, liberty and social justice but also provided for benign discrimination, in favour of women. To achieve this constitutional goal, our judiciary has done respectable services, which deserves its credibility

Keywords: Status of women, Protective Discrimination, Adultery and Judicial Activism

1. Introduction
The status of women in India is a mirror image of their counter-parts in other parts of the world and has swindled from prominence to insignificance on account of social, cultural and political developments from ancient to modern era. The woman was made to suffocate and yearn for identity in the system, where her personality was de-personified to anonymity. Be it the health, nutritional, educational social, political and economic aspect of life, the woman had to compromise and take a back seat. The system was developed which created unfair and unequal distribution of the necessities of life amongst the sexes. Efforts have always been made to bring about a change in the society and its norms especially in addressing the cause of women. These efforts resulted in challenging the age-old discriminatory practices and in recognizing the women as a human being worthy of equal share in the development.

The Framers of the Constitution were aware of the sociology of the problem of the emancipation of the female sex. They realized that equality was important for the development of the nation. It was evident that in order to eliminate inequality and to provide opportunities for the exercise of human rights it was necessary to promote education and economic interests of women [1].

2. Constitutional Concommitment
The principle of equality was adopted in the Constitution [2] with special protective clauses for women [3] in addition to fundamental promise of Liberty. Equality and maintenance of Dignity of an individual [4]. The equality was all pervasive even in the matters of employment [5].

The contours of right of existence and procedural propriety were duly recognised [6] in addition to prohibition of trafficking in human beings [7]. It is ardent duty of the State to eliminate the inequalities in status, facilities and opportunities [8] and provide equal means of livelihood [9] as well as equal pay for equal work [10]. Necessary protection is to be accorded by the State against economic exploitation as well as of health and strength of women [11]. The people are expected to renounce the practices derogatory to the dignity of women [12]. Necessary participation in the political life is ensured [13] at panchayat [14] and municipal [15] levels for women under the provisions of the Constitution.

3. Participatory Sexual Act
Adultery as an offence totally insulate a woman from criminal liability and holds the male responsible for it on the premise that the women is only the victim and not the perpetrator of crime. Section 497 of I.P.C. is thus often challenged as violative of equality provision. In *Yousuf Abdul Aziz* v. *State of Bombay* [16] the same question arose. The court opined that Constitution provides for specific protection to females and sex is a sound classification. Similar stance was taken in *V Revathi* v. *Union of India* [17], wherein the court opined that the aggrieved husband whose wife has been disloyal to him has no right to prosecute his wife, in as much as by the very definition of the offence, only the man can commit it, not a woman. The philosophy underlying the scheme of these provisions appears to be that as between the husband and the wife social good will be promoted by permitting them to 'make up' or 'break up' the matrimonial tie rather than to drag each other to the criminal court. Similarly in *S. Vishnu* v. *Union of India* [18] the court opined that the contemplation of the law evidently is that the wife, who is involved in an illicit relationship with another man, is a victim and not the author of the crime. The offence of adultery is an offence against the sanctity of the matrimonial home, generally committed by the man.

4. Protective Discrimination Benefit
The Constitution provides reservations to women and the same benefits are available to the women of exploited class. But in *Valsamma Paul* v. *Cochin University* [19], the court denied the benefit of reservation to a lady of upper caste who married a man of lower caste on the ground that the female had an opportunity of having the advantageous life in the life. Similar stance was taken by the apex court in *Meera Kanwaria* v. *Sunita* [20], wherein the court opined that an upper caste female marrying a lower caste male can not avail the benefit of reservation as such recognition testamounts to the fraud on the Constitution. In *K.S.Jayashree* v *State of Krerala* the petitioner was denied the admission in the MBBS course as the family income of the petitioner was higher than the caste and income criterion specified by the government to claim the benefit of reservation under Article 15(4). The Supreme Court while dismissing the petition opined that the determination of social backwardness does not depend solely on caste, though it is one of the relevant test. Social backwardness is in the ultimate

analysis the result of poverty which is aggravated by the considerations of the caste.

Apart from judicial determination concerning reservations in public employment, the judiciary has struck a death knell to discriminatory provisions in the service rules against the females. In *C.B.Muthamma* v. *Union of India* [21], the validity of Indian Foreign Service Rules was challenged which provides that the females in Indian foreign service should take the permission of the government before the marriage and any married woman can be made to resign on the satisfaction of the government that her domestic commitments are likely to come in the way of her official duties.

In *S.R.Venkataraman* v. *Union of India* [22], the female was compulsorily retired from the service on account of an adverse entry in the service record. She contended that the retirement was arbitrary as the proper assessment of her service record has not been made. The court opined that when a public body is prompted by a mistaken belief or influenced by extraneous matters in the exercise of the powers in a manner not warranted by law or to arrive at a contradictory conclusion, it shall be an abuse of the powers.

In *Air India* v. *Nargesh Meerza* [23], the court struck down the discriminatory provisions in the service rules which provided tht an airhostess can continue in service up to the age of 35 and the same could be terminated if she contracts a marriage within four years of initial service or on the first pregnancy. Though the court opined that the right to equality does not warrant adoption of a technical, pedantic or doctrinaire approach and there can be classification on the basis of marriage. Yet it disapproved the powers vested in the managing director concerning the extension of retiring age in the absence of guiding principles. The court accorded its disapproval to the argument about the attractiveness of the air-hostesses as based on pure speculation and an artificial understanding of the fairer sex.

The court has come to the rescue of the non-regular female employees in providing them the maternity benefit which was being paid to the regular female employees. The court opined that there is no justification in denying the maternity benefits to the casual or daily wagers [24]. on the question of indecent of females the court has taken the stance that there is nothing wrong in cabaret dance in hotes provided such a performance is not indicent [25]. The court has always taken a serious view of the indecent depiction of females in publications [26]. The court has expressed its non-satisfaction over the law concerning sexual harassment when it gave direction to the government to implement guidelines concerning sexual harassment [27]. The court emphasized that it is the duty of the employer to prevent the commission of the acts of sexual harassment and to initiate disciplinary proceeding against the guilty. The court has opined that the contents of the fundamental rights guaranteed in the Constitution are of sufficient amplitude to encompass all facets of gender equality including preventing sexual harassment.

5. Conclusion

Thus the Indian judiciary has done commendable service in protecting and preserving the rights of the females as well as sensitizing the society concerning the rights of the half of the human population. The Indian judiciary has struck at the injustices perpetuating in the Indian system against the women and tried to maintain the balance. The judiciary has removed the inequalities and has left no stone unturned to ensure the dignified life to the women-folk.

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Critical analysis on criminalization against burning of widows

Dr. PK Rana

Reader, M.S Law College, Cuttack, Odisha, India

Abstract
The glorification of Sati has culminated in India even after establishing her sincere claim as one of the incoming socio-economic power in the world. The most controversial Sati case has been that of an incident took place in 1987 which forced our lawmakers to think against such social onslaught activities as criminal offence. For this, law is not the only source to combat rather popular consciousness along with women empowerment is quite essential.

Keywords: Practice of Satee, Bengal Regulation of 1929, and Commission on Sati (Prevention) Act, 1987

1. Introduction
It is strange that in the 21st century, one should still come across the practice of Sati has been performing in India, which had outlawed by Lord William Bentinck, on an initiative taken by the great social reformer Raja Rammohan Ray in an early 19th century. Since that time, India grew as a nation, gained independence became one of the biggest economies of the world, developed nuclear capability and all indicators point to emergence of the country as a super power in another two decades. It is irony that even after more than a century and half years of the Bentinck's Regulation; the issue of Sati remain alive in our sub-continent, which shows that the status of women has continued to be so low that the society is not beyond burning widows to make her join her dead husband in his journey to the another world.

2. Historical Background on Practice of Sati
Max Muller gives references to the custom of widow burning among Greeks and Synthians. Similarly Barbosa, a Portugese traveler, described the practice of Sati was not only confined to the princely states but also to other states like Vijaynagra Kingdom [1]. It appears that the practice of Sati started in Brahmanical India a few centuries before Christ. None of the Dharmasashtras contain any reference to Sati. The Manusmriti is entirely silent on it, the Mahabharata is also very sparing in its reference to widow burning. In epigraphic records, reference is made to the practice of Sati in the Gupta-era. The *Jauhar* practiced by the Rajput ladies of Chittor are well known. Though several smritikars disapproved such a practice, once it took root, the learned commentators and digest writers were found to support it with arguments of heavenly abode, devotion to husband, etc. Harita says, "that woman who follows her husband in death purifies three families, namely, of her mother, of her father and of her husband" [2]. From the accounts of travelers, it appears that widow burning prevailed more in Bengal during the centuries immediately preceding its abolition than anywhere else in India. Cole Brooke wrote in 1795 A.D. that the martyrs of this superstition have never been numerous. He described it as a practice which was in vogue in some parts of Rajasthan.

During the British Regime, The Sati Regulation Act, XVII of 1829 was enacted after much consultation within and without the government. It was called:
"A Regulation for declaring the practice of suttee or burning or burying alive of the widows of Hindus, illegal and punishable by the criminal courts [3]."
Thus the Act was a major departure from the previous policy on Sati. It was intended to punish all Sati as a criminal act. There was no longer any distinction between legal and illegal Sati. Section 1 of this Act was more like a preamble. It stated:
"The practice of suttee or of burning or burying alive the widows of Hindus is revolting to the feelings of human nature: it is nowhere enjoined by the religion of the Hindus as an imperative duty…."
In unequivocal terms Section 2 declared Sati to be illegal and punishable by criminal courts [4].

3. Bengal Regulation 1929
It was 1929 that Lord William Bentinck with the help of Raja Rammohan Roy introduced a formal law prohibiting Sati, called "Indian Sati Regulation Act, 1829", which had immense impact. Aiding and abetting a sacrifice whether voluntary or not was deemed to be a culpable homicide and the Court had the discretion to decide the punishment after referring to the nature and circumstances of the case. The drafters of the Indian Penal code in 1860, under the East India Company watered down the severity of the penal provision on Sati when Sati, as a voluntary act got included in the general provision on suicide and such suicides were put outside the pale of legal definition of murder by inserting an exception number 5 to S.300, which says that: "Culpable homicide is not a murder when the person whose death is caused, being above the age of 18 years, suffers death or takes the risk of death with his own consent."
Sati, for the said section, is an offence only if the act appears to be involuntary. However, the act of committing Sati can be punished for culpable homicide [5] and abetment to commit suicide [6]. This act can also be punished under other provisions relating to offences affecting life covered under Chapter XVI of the code such has attempt to murder [7] and attempt to culpable homicide [8].

4. Legal Prohibition of Sati in Independent India

Sporadic incidents of Sati have been reported from time to time since 317 BC in the Punjab, right up to Roop Kanwar in 1987 and Mathura in 1991, Banda in 1992, a teenaged girl named Pawan, on September 26, 1994, who was saved by the Police in the nick of time and recently 65-years-old Kuttu on February 6, 2002. Till 1987, there were three laws in force regulating Sati. Two out of these were passed in the British times. The Regulations were (1) Bengal Sati Regulation, 1829, (2) Tamilnadu Sati Regulation 1830 and (3) Rajasthan Sati (Prevention) Act, 1987. The Roop Kanwar incident forced the then Rajasthan Government to bring in the State a Sati Prevention Ordinance, 1987, which was passed by the legislature on October 1, 1987. The Central Government followed it with a central legislation called the Commission of Sati Prevention Act, 1987, the sole legislation on this issue which applies to the whole of the country except Jammu and Kashmir. This Act overrides exception 5 of 300 of I.P.C and any law of any State in force on the day this Act was enacted. This Act adopts the provisions of the Ordinance passed by the Rajasthan Legislature. As per sec 3 of the Act any person who attempts to commit Sati forcefully or voluntarily and does any act towards such commission can be punished with imprisonment for a term of maximum one year or with fine or with both. Section 4 of the Act talks of punishing a person who abets a woman to commit Sati. The punishment prescribed for this is either death or life imprisonment besides the accused is also liable to pay a fine. The law also makes punishable any activity that could be termed as glorification of Sati as per Sec. 5 of the Act. Section 7 of part III of the Act provides for removing any structure that is used for worship or performing ceremonies to honour a woman who has committed Sati. This part also talks of provisions with regard to seizure of property by a magistrate and police. Cases with regard to this act, according to the statue have to be presented before special courts, which are constituted and function under part IV of the Act [9].

5. Comparative analysis of the regulation of 1829 and the act of 1987

The Regulation of 1829 was in force from the time of its promulgation throughout the territories immediately subject to the Presidency of Fort William which was essentially the region around modern Kolkata. It is essentially administrative in nature and declared Sati as amounting to culpable homicide that could be tried by a Criminal Court, which would use its discretion in awarding the punishment. The regulation laid down stringent provisions obliging a host of officers to furnish information on the proposed or actual event of Sati in their jurisdiction. It sanctioned a fine of Rs. 200. And in event of failure to pay the fine, the accused would have to undergo imprisonment for a maximum of 6 months on the officers appointed by the British Government who fail to furnish required information about the crime. Aiding and abetting sacrifice whether voluntary or not was deemed to be culpable homicide. Punishment was at the discretion of the court according to the nature and circumstances of the case. No plea for leniency was to be admitted on the ground that the victim had desired to be sacrificed. The regulation also clarified that none of the provisions of the regulation may be read to mean that death penalty could not be handed to the accused in Sati cases.

The Act of 1987 bears a worthwhile comparison with the regulation of 1829 though they are different in their focus and content. Whereas the regulation was strictly administrative in nature, and focused on the methods to get a proper enforcement of the law of the land treating Sati as culpable homicide, the act passed in 1987 on the other hand criminalized the act of abetting Sati in any manner and laid down a definite punishment for the crime of committing Sati and participating in its glorification in a special enactment. The regulation did not prescribe any punishment for those that actually committed the crime but it imposed harsh fines and even imprisonment on a very large number of land revenue functionaries, police authorities who allowed sati to take place due to their tacit support. The main culprits were meant to be prosecuted under the criminal law of the land. There is no administrative injunction of the Government even today which comes down so heavily on officers and other quasi-government authorities who could have been in a position to prevent the commission of sati but failed to do so. The present Act focuses on the persons directly concerned with the act of sati and defines what sati implies and even what is meant by glorification.

The new Act has taken a major step ahead of the 1829 regulation as it prohibits the practice of sati glorification which could well be considered as a part of freedom of citizens to practise their religion guaranteed under Art.25 [10] of the constitution and section 295 [11] of Indian Penal Code that prohibits defiling damaging of places of public worship. In 1829 the British rulers were careful not to mention the word religious practices in the regulation and no offence has been made of glorification as such or to worship of sati in temples. The rulers were so circumspect of the religious sensibilities of the subject people that in the first draft of the regulation they had even advised that the criminal cases involving sati should not be tried by a Mohammedan judge, but, later after a public debate on the issue, perhaps realizing that by doing so these may encourage the people view sati as a lighter offence than a culpable homicide, they dropped this provision. In 1987 the government has shown greater confidence in handling religious sensibilities of people and the Act criminalizes sati worship, sati glorification and arms the executive with the power to remove a sati temple. These provisions however need to be implemented so that they do not remain empty words on paper.

The main thrust of the regulation of 1829 has however not been replicated in the 1987 Act. The regulation created a moral fear amongst all concerned authorities under Government who did not actively participate suppressing sati and there is no provision paralleling the administrative measures in the 1829 regulation which will make the police remain on their toes to check sati from being committed. In the present situation it becomes necessary for the media to play the role that was meant to be performed by the various levels of Government functionaries and bring all case of sati to the knowledge of the public. It is said that before Roop Kanwar incident took place there had been another incident of sati which encouraged the Roop Kanwar sati incident and that the other sati had gone unnoticed. Fortunately due to technological revolution it is not necessary to depend on Government functionaries alone and the roving cameras of the media can help in law enforcement as well. Media has assumed an important role in the proper enforcement of the sati prevention laws.

6. Conclusion

The practice among the Indian women of ending their live by setting themselves ablaze with the pyre of their deceased husbands or being forced to do so, in the yesteryears – the "Sati Pratha" though banned now, reflects the extent of dependence of women on their men. However, legislation alone cannot by itself solve deep-rooted social problems; one has to approach them in other ways too. Therefore, what is required is not only a strong legal support network but also opportunities for economic independence, essential education and awareness, alternative accommodation and a change in attitude and mindset of society, judiciary, legislature, executive, men and the most important woman herself.

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2. Ibid, at. 182.
3. Regulation Act 17 of. R.M. Roy, 'A Conference between Advocate for and an Opponent of the Practice of Burning Widows Alive', Nov. 30, 1818; A second Conference on said subject on dt. Feb. 26, 1820. See more details V.P.Varma, 'Modern Indian Political Thought, 11th Edn. Patna. 1929.
4. Section 5 of the Regulation.
5. S.299 of Indian Penal Code
6. S.306 of Indian Penal Code
7. S.307 of Indian Penal Code
8. S.308 of Indian Penal Code
9. Sati Verses Murder, The Hindu, 3 December, 1999.
10. Article 25 makes it clear that all persons are equally entitled to freedom of Conscience and right freely to profess, Practice and propagate religion.
11. S.295 of the Penal Code provides that this section penalizes destruction, damage or defilement of places of worship and places of veneration with the intention or knowledge to insult the religions feelings of any class of person.

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Judicial examination on noise pollution: A critical analysis

Dr. PK Rana

Reader, MS Law College, Cuttack, Odisha, India

Abstract
Noise being the major health hazard for human beings and therefore it is recognized as one of the component of Environment pollutant. Noise pollution from the industries, is considered as the major health hazards for the people living in the vicinity. In order to check this, legal and administrative measures shall be enforced effectively.

Keywords: Noise pollution, Public Interest litigation, use of Loud speakers, Public nuisance

1. Introduction
Noise Pollution is a big problem of our society. It is increasing day by day specially in urban and industrial areas. Airports, Industries, Highways, construction activity and railway station are considered to be high noise level area. Noise Pollution has been identified as "a slow agent of death."

The American Jurisprudence [1] analyses noise as an unwanted sound that unwanted effects, a sound without value. The Encyclopedia Britannica defines noise as any undesired sound and the Encyclopedia Americana defined it as unwanted sound. According to environmental noise being major health hazard for human beings it is recognized as "Environmental Pollutant". The Central Government has recently notified the noise Pollutant (Regulation and Control) Rules, 2000 on Feb. 19, 2000 for preventing adverse impact on human being including harmful psychological effects. It provides for ambient air quality standards in respect of noise for different areas/ zones.

Day time means from 6 a.m to 10.00 p.m. Silence zone means an area comprising not less than 100 meter around hospitals, educational institutions, religion places and Courts. They are to be declared by competent authority that which zone will be silence zone. It is unwanted because it lacks an agreeable amicable quality. It may be said that noise therefore sound but it is pollution when the effects of sound become undesirable.

2. Public Interest Litigation
Public Interest Litigation (PIL) can be filed by any public spirited person or institution under article 32 to the Supreme Court of India and under 226 to the High Court of any state. It is a new orientation of judicial discourse demonstrating collaborative effort on the part of the petitioner. State or Public authority and the court to secure observance of constitutional or legal rights conferred upon the vulnerable or weaker section of the society, workers or handicapped persons and to secure social justice to them. It also demonstrates the effect of public spirited person, journalists and social activists to ameliorate the suffering of the toiling masses, worker, and the weaker section of society. The seed of the concept of PIL, were initially sown in India by Justice Krishna Iyar in 1976 while disposing an industrial dispute *Mumbai Kamgar Sabha, Bombay* v. *Abdul Bhai* [2]

3. Judicial Discourse
In Chairman, Guruvayur Devaswom Managing Committee, *Guruvayur* v. *Sup. of Police* [3], a writ was filed under Art. 226 of the Constitution of India against the order of Police officer to remove the loudspeaker which was installed for a festival season. The respondent alleged that such type of loudspeaker caused irreparable damage of ear and they were installed without obtaining sanction from any competent authority. After filing writ petition on which stay was granted by single judge; the Guruvayur temple authorities approached the Kerala State Pollution Control Board to get expert opinion regarding the use of horn type loudspeaker. Report of State Pollution Control Board found that there were no noise pollution if put at the height of 3 meter in temple premises. The court accepted the expert opinion of the Pollution Control Board and permitted the use of horn type loudspeakers and the police authorities were directed to give sanction to Management Committee of the temple to erect such loudspeakers [4].

In *Bijayananda Patra* v. *Dist. Magistrate, Cuttack* [5] held that noise is considered as unwanted sound that may adversely affect the health and well being of the individuals. Noise Pollution connotes unwanted sound in the atmosphere. The Himachal Pradesh High Court in *Smt. Ved Kaur Chandel* v. *State of H.P* [6] accepting he PIL for threatened pollution of air, water and noise from the establishment of the tyre retreading unit observed that Pollution Control Board has a heavy responsibility to ensure that before starting the industry. It takes necessary precaution not to cause air, water and noise pollution.

In *Citizen Council Jamshedpur* v. *State of Bihar* [7], PIL was rejected by the H.C of Patna. In this case, PIL was filed by the residents of the locality under Art. 226 praying to reject the permission granted to the Handloom and Khadi Board to organize exhibition in a public park. The petitioner submitted that park is used for morning walk and children of the locality play there. Besides this, the exhibition would cause air pollution and noise pollution. The Court after considering all the factors held that since the petitioner failed to produce any evidence that exhibition would be health hazard and cause noise pollution and that the exhibition had already started. So petition was not maintainable.

In the case, of *M.C. Mehta* v. *Union of India* [8], the petitioner filed PIL under Art.32 seeking a direction against Haryana

Pollution Control Board to control air and noise pollution caused by stone crushers, pulverizes and mine operations in Faridabad within a radius of five Km. from tourist resort of Badkal lake and Surajkund.

The Court held that to preserve environment and control pollution within the vicinity of the two tourist resorts, it was necessary to stop mining in area. Further the Court directed to develop green belt of 200 meters at 1 Km. radius all around the boundary of two lakes and leaving another 800 meters as a cushion to absorb the air and noise pollution.

Noise pollution from the industries was also recognized as health hazard in *V.Lakhmi Pathy* v. *State of Karnataka* [9] by the H.C of Karnataka. In this case, it was found that industries were established in an area in development plan of the city. Polluted air, land and noise nuisance posed danger to health of residents of the area. So Court ordered for the closure of the industries of that area. The Court also held that pollution of air and noise is violative of Art. 21 of the Constitution of India.

Landmark decision made by the Supreme Court in Church of God (Full Gospel) in *Indian* v. *KKRMC Welfare Association* [10]. The question before the Court was whether right to practice any religion, profess and propagate it is in the form of use of loudspeakers and other instruments authorities a person/ institution to violate the rules framed under the Environment (Protection). Act. 1986 regarding the noise pollution level. The Court answered in negative and denied the right of the Church of God to use amplifier and other noise making devices for prayer and observed that the noise rule are required to be enforced. It is high time when they should be implemented.

4. Conclusion

The judiciary in India has done a commendable service towards combating noise pollution, which is considered as one of noticeable result of modern civilization. The above discussion amply proves that noise pollution has assumed threatening dimension and needs to be nipped in the bud. The Noise Pollution (Regulation and Control) Rules, 2000 is a welcome venture, but these rules are not sufficient to control this menace. Some immediate and efficient measures must be taken in this regard. Therefore, it is suggested that prescribed standards must be enforced effectively and strictly.

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2. AIR 1976 SC 1455.
3. AIR 1998 Ker 122.
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9. AIR 1992 Kant 57.
10. AIR 2000 SC 273.

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Gender, culture and crimes

Saif Al-Rawahi

Assistant Professor, College of Law, Sultan Qaboos University, Muscat, Oman

Abstract
There is no doubt that in all societies, response to crimes, particularly serious ones, is significantly affected by the gender of the defendants or sometimes the gender of the victims. Within societies, female gender expectations and gender roles are different from those of males. There are some kinds of crimes that can be expected to be committed by women, but there are others that are not. On the one hand, there is no gender role corresponding to the former kinds of crimes, or at least it is not clear. On the other hand, if a woman commits a crime that society does not expect her to commit, such as killing her children, she will invariably be treated harshly by that society. Society's expectations depend on the culture and tradition more than the law. Since regulations, in general, make no difference in dealing with crime on the basis of gender, in practice the situation may be different. The aim of this paper is to consider how gender affects the way the law and society respond to different types of crime and violence. It will argue that gender plays a significant role in dealing with various crimes within the criminal justice system.

Keywords: evil woman, femininity, gender, race, violent crime

Introduction

The relations between gender and crime are deep, persistent and paradoxical.[1] Gender has been recognized as one of the most important factors that play a significant role in dealing with different kinds of crimes within criminal justice systems.[2] It has long been considered that men and women differ in their offence rates and patterns and in their victimization experiences. Braithwaite (1989) [6] clearly stated that crime is *"committed disproportionately by males."*[3] Such a statement appears to have a significant effect on the way that both law and society respond to different kinds of crimes.[4] The idea that crimes are committed primarily by males has had a major effect on criminological thinking and on criminal justice policies. This effect is different from one society to another and from time to time within one society, since gender roles and expectations are changing.

Although as a general statement it can be said that the law does not differentiate between men and women, research conducted in the field of criminology have clearly shown that social characteristics of offenders such as race, gender and class, have influenced the decisions made in the CJS.[5] For example, Morris (1987) [30] has considered in his study that women are treated more leniently than men within the CJS, and they are less likely to be arrested, convicted and jailed.[6] This paper will consider whether society's views about gender roles and expectations affect the way that it responds to crimes, particularly violent crime. These issues and questions will be examined by using concrete examples (statistics and cases), without focusing on any one country or only one type of crime.

Gender, Crimes and Cultural Views

There is no doubt that in all societies, response to crimes, particularly serious ones, is significantly affected by the gender of the defendants or sometimes the gender of the victims. Within societies, female gender expectations and gender roles are different from those of males. There are some kinds of crimes that can be expected to be committed by women, but there are others that are not. On the one hand, there is no gender role corresponding to the former kinds of crimes, or at least it is not clear. On the other hand, if a woman commits a crime that society does not expect her to commit, such as killing her children, she will invariably be treated harshly by that society. Society's expectations depend on the culture and tradition more than the law. Since regulations, in general, make no difference in dealing with crime based on gender,[7] in practice the situation may be different.[8]

Even today in some societies, women are perceived as sexual objects and are expected to remain within male-dominated ideologies such as homemaker and nurturer, subordinate to men.[9] In societies such as Pakistan,[10] women are considered to be the *'property'* of men, and domestic violence may be understood as the right of men over the women with whom

[1] Frohmann, L. and Mertz, E. *Legal Reform and Social Construction: Violence, Gender, and the Law*, *Autumn* 1994, Vol. 19, 4 Law & Social Inquiry. pp. 829-851. P: 830.
[2] See Edwards, S., S.M. *Sex and Gender in the Legal Process*, 1996, Ashford Colour Press. P: 193.
[3] Braithwaite, J. 1989. *Crime, shame and reintegration*. Cambridge, UK: Cambridge University Press. Page: 44.
[4] Gruhl, J. and Welch, S, *Women as Criminal Defendants: A Test for Paternalism*, (Sep., 1984), Vol. 37, 3 The Western Political Quarterly. pp. 456-467. P: 1.
[5] See Feinman, C. *Women in the Criminal Justice System*, 1994, Praeger Publishers, Westport. PP: 15-17.
[6] Morris, A, *Women, Crime & Criminal Justice*, 1987, Basil Blackwell Inc.
[7] See, Fenman, Supra note 5 and Daly, K, *Discrimination in the Criminal Courts: Family, Gender, and the Problem of Equal Treatment*, 1987, 66 Social Forces. PP: 152-175.
[8] Methods of responding to crimes in practice will be discussed in detail in subsequent sections of this paper.
[9] Oakley, A, *Gender and Society*, 1984, Adlershot Gower, London. P: 56.
[10] Approximately 70% to 90% of females in Pakistan are subjected to domestic violence. See *Crime or Custom? Violence against Women in Pakistan*, Human Rights Watch 1999, p. 1.

they live.[11] In fact, violence against females by their male relatives is something that may be accepted by the society and the family if she has been considered to have violated the traditional gender roles in her society. Nagina Bibi, a seventeen year old girl from Pakistan, was engaged by her father to her cousin, but her brother wanted her to marry his wife's brother. On April 14, 1999, after her brother saw her talking to the cousin chosen by their father on the street, he and another brother reportedly tied her with a rope to a wooden post in their home, sprinkled kerosene over her and set her on fire. She was taken to a hospital with burns on 75% of her body, and after 23 days, she died. Nagina's family claimed that this was due to a stove explosion, but she told doctors that her brother had set her on fire because she had disobeyed him.[12] In such societies, males believe that if a female is defiant, then there is nothing morally or legally wrong with beating or even killing her. If men do engage in violence, they justifiably believe that they will not be prosecuted.[13] In such societies, the unequal position of women results from social oppression as well as economic dependency on men. A woman who attacks her alleged batterer in these societies is considered to have violated *"not just traditional gender roles of passivity and care-giving, but also a sexual hierarchy that grants men power over her."*[14] This is a major cause of violence against women; for instance, five Pakistani women per day are killed, and two women per day, in the region of Punjab[15] alone, are kidnapped.[16]

On the other hand, it is commonly accepted that murders of male batterers by female victims of domestic violence be treated more seriously by both the legal system and society.[17] In most societies when a man kills his wife or his daughter or his sister, it is acceptable by the public. While if a woman kills her violent husband, she will be definitely charged. It is widely considered that women who commit crimes have been perceived as males that have the worst characteristics of females. Lombroso and Ferrero (1985) [26] emphasized that women who commit crimes are seen as genetically more male than female, therefore biologically abnormal.[18] So females who did not act according to pre-defined standards were diagnosed as pathological and requiring treatment; they were to be *'cured'* or *'removed'*.[19] Moreover, it is commonly believed that women who commit crimes, particularly serious crimes, are either evil or mentally ill when they commit an offense.

In addition, female defendants are viewed differently, as it is believed within some societies that women who conform are pure wives, mothers and respectful daughters who benefit society.[20] Therefore, if they commit a crime, they will be categorized as *'mad,'* not *'bad'*.[21] Non-conforming women may be those who engage in activities associated with men, or those who are likely to commit crimes. These women, as Bottoms (1996) stated, are doubly damned and doubly deviant.[22] Furthermore, it has been argued that white and black females occupy different rungs on the social hierarchy. Nooruddin (2006) stated that white women in the USA are generally considered more valuable than black women, and they are accorded a different set of values and roles than are black women.[23] Within some societies, white women have been considered as *'gentle creatures'* in need of protection, while black women have been characterized as lazy, promiscuous, and irresponsible.[24] As a consequence, white and black females are treated differently by their society and within the legal system. For example, white women who *'protect themselves'* from violent attackers will be treated with leniency, while black females *"are more likely to be blamed for getting into such a situation and for 'bringing it' on themselves."*[25] Based on these perceptions, it is likely that white women who kill their batterers will be treated less severely than black ones if they have done the same.[26] This point will be clear when the relevant cases will be discussed in the next part of this paper.

Gender and the Legal System

As a significant improvement in responding to violent crimes in England and Wales, new instructions issued to officers in a Force Order in June 1987 have been implemented.[27] This Order considers assaults that occur in the home to be as serious as assaults that occur in public. Also, it considers the importance of police support to victims and connection with local agencies, and reminds officers of their powers of arrest. [28] The Home Office Circular of 60/1990 gave the police guidance that encouraged a quick and effective response in arresting suspects if the protection of the victim required it. However, follow-up studies have not been very positive. For example, in a study conducted in Streatham, London in 1989, only 204 suspects were arrested out of 446 domestic violence-related crimes.[29] 105 of those arrested (52%) were charged, 66% received two months in prison, and 5% received no further action. [30] Nevertheless, Force Order 1987 has been recognized as an effective tool against domestic violence, since studies conducted prior to the Order showed that domestic violence was regarded by the police as problematic and a waste of time.[31] Also, the studies considered that arrest was rarely used and was not considered a practical means of dealing with the

[11] Nooruddin, I. *BLIND JUSTICE: 'SEEING' RACE AND GENDER IN CASES OF VIOLENT CRIME*. available from: http://psweb.sbs.ohiostate.edu/faculty/nooruddi/research/nooruddin.pg2007.pdf. Page: 4. Retrieved Nov 24, 2016.

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[14] Nooruddin, Supra note 11. Page: 4.

[15] A region where violence against women in Pakistan is common.

[16] Human Rights Commission of Pakistan's 1999 Report, http://www.hrcp.cjb.net.

[17] Nooruddin, Supra note 11.

[18] Lombroso, C. and Ferrero, W, *The Female Offender*, 1985, Fisher Unwin, London. P: 43.

[19] Ibid.

[20] Feinman, Supra note 5. P: 16.

[21] Lloyd, A. *Doubly Deviant, Doubly Damned*, 1995, Penguin, Sydney. P: 36.

[22] Bottoms, A, *Sexism and the Female Offender*, 1996, Gower Publishing, Sydney. P: 1.

[23] Nooruddin, Supra note 11. Page: 5.

[24] Ibid.

[25] Ibid.

[26] Ibid.

[27] See Hanmer, J, *Women and Policing in Britain, in Women, Policing, and Male Violance*, 1989, Hanmer, Radford and Stanko, Routledge. Also, Grace, S, *Policing Domestic Violence in the 1990s*, 1995, Home Office Research Study No. 139, HMSO.

[28] Edwards, Supra note 2, P: 193.

[29] Buchan, I. and Edwards, Susan, S. M, *Adult Cautioning for Domestic Violence, Police Requirements Support Unit*, 1991, Home Office Science and Technology Group, June. P: 84.

[30] Edwards, Supra note 2.

[31] Edwards, S. M and Armstrong, G, *Policing Prostitution: A Profile of the SOS*, July-Sept 1988, Police Journal. PP: 209-219.

problem. [32] Many officers believed that women were responsible for male violence, *'because women have sharper tongues than men, and they go on and on.'* [33]

Gender's effect on the way that the law and society respond to different kinds of crimes can be seen from the fact that police hold stereotypical attitudes towards females and the crimes they commit. Also, it can be seen from courts practice and sentencing patterns that women are jailed for minor offenses and *"that the 'evil woman' thesis and the 'double deviance, double jeopardy' thesis are used against women in court."* As mentioned above, criminal laws broadly apply equally to women and to men. However, sex and gender sometimes have significance as legal categories in relation to criminal acts. For instance, male homosexual acts have at certain times been defined as criminal in most western countries, while lesbian acts have not. Also, the law often treats the prostitution activities of males and females differently. Under English common law, for example, women charged with an offense committed in the presence of their husbands (except murder and treason) could rely on the presumption that they acted under compulsion[34] until this was abolished in 1925. Furthermore, it was widely believed that women must be protected from criminal acts, rather than held responsible for them.[35]

Women, by and large, are not expected to be violent. [36] Women are more in need of protection and they are mostly seen as less culpable and less likely to be recidivists; they therefore should be treated more leniently.[37] In accordance with this hypothesis, enforcement officers and judges are less likely to see women defendants as *'posing a threat'* to society and they believe that those defendants need to be protected, thus subsequently affecting their sentencing decision. Many judges think carefully before deciding to send a female to prison.[38]

In fact, such a hypothesis has been supported by research, which finds that women are less likely than men to commit crimes, especially violent crimes. Perhaps one of the main reasons for the fact that the crime rate for women is very low compared to men is that most law enforcement officers and judges are men. Men have orthodox views about women and how they should behave. Therefore, they tend to be less harsh with them. Moreover, the main expectation of many studies was that male defendants who were accused of killing women were more likely to be convicted and less likely to receive a reduced charge.[39]

In considering how gender affects the way that the law responds to different crimes, it is important to consider the practices of the police, the crown prosecutor's service, and the courts. The effectiveness of the criminal justice system remedies depends on their implementation in practice.[40]

- **Gender and Police Practices**

In dealing with different kinds of crimes, some studies have suggested that the offenders' character and attitude is a key factor which influences the decision made by the police. For example, women were found to be more likely to show behavior that the police would not consider as offensive.[41] It has been considered in many studies in the UK and in the USA that females see the police as people who will help them, while males see them in a more cynical light.[42] The police simply categorize women as non-serious and non-persistent offenders; therefore, they are less likely to be arrested by the police.[43] It has been demonstrated that the police deal with women more leniently than they do with men; also, it has been found that women are cautioned rather than arrested for indictable offences more often than men.[44]

In accordance with the chivalry hypothesis, on the one hand, women are in need of protection because they are seen as physically and emotionally weak, and are therefore considered to be protected by the criminal justice system rather than punished.[45] On the other hand, males are considered to be in a protector position for women and therefore should not be expected to harm them. Accordingly, if they do so, they will receive highly punitive sentences.[46] In fact, a number of researches have supported this hypothesis by finding that men were treated harshly compared with women.[47] However, although the sex of an offender plays a significant role in police decisions, it has been argued that the fate of women within the CJS in regard to crimes depends on how well a woman can represent the traditional stereotypical female role.[48] Lloyd (1995) [25] stated that women often use their *'femininity'* to their advantage, which makes it very difficult to argue equal rights for both sexes.[49] Moreover, the nature of the offence has been found more effective and beside it the offender sex was found weak. For example, as women, prostitutes complained about being treated seriously and being subjects of harassment.[50] Also, Heidensohn (1994) has found that rape

[32] One Police Officer stated (Interview 12, North London sample 1985) that 'we don't want to take action in these occasions anyway.' Police were concerned that the victim was likely to withdraw the allegation. '…if she withdraws it goes down the drain, that's the job.'(interview 13, North London sample). '…if you were walking in the street and some one smashed you in the eye, I would arrest. If you were walking in the street and your wife hit you, I wouldn't.' (Interview 16, North London sample). Edwards, Supra note 2. P: 196.

[33] Edwards, Supra note 2. P: 196.

[34] Mannheim, H, *Comparative Criminology*, 1965, Vol. 1, London: Routledge & Kegan Paul. PP: 691-693.

[35] Bardsley, B, *Flowers in Hell: an Investigation into Women and Crime*, 1987, Pandora Press, London. P: 37

[36] Naylor, B, *Women's Crime and Media Coverage: Making Explanations*, 1995. Oxford University Press. P: 78.

[37] See Gruhl and Welch, supra note 4; Spohn, C, *Gender and Sentencing of Drug Offenders: Is Chivalry Dead?* 1999, 9 Criminal Justice Policy Review. PP: 365-399; Spohn, C and Beichner, D, *Is Preferential Treatment of Female Offenders a Thing of the Past? A Multisite Study of Gender, Race, and Imprisonment*, 2000, 11 (2) Criminal Justice Policy Review. PP: 149-184; Spohn, C, Welch, S, and Gruhl, J, *Women Defendants in Court: The Interaction between Sex and Race in Convicting and Sentencing*, 1985, 66 Social Science Quarterly. PP: 178-185.

[38] "Interviews with judges in Massachusetts by Daly in 1989 revealed that judges worried about the social costs of imprisoning women, since they expected that women were likely responsible for caring for any dependents in the family." Daly, K, *Rethinking Judicial Paternalism: Gender, Work-Family Relations, and Sentencing*, 1989, 3 (1) Gender & Society. P: 9-36.

[39] Curry, Lee and Rodriguez, Supra note 40 and Baumer, E. P, Messner, S. F and Felson, R. B, *The Role of Victim Character and Victim Conduct in the Disposition of Murder Cases*, 2000, 17 Justice Quarterly. PP: 281-307.

[40] Edwards, Supra note 2. P: 192.

[41] Morris, Supra note 6.

[42] Mawby 1980 in Ibid.

[43] Ibid.

[44] 12% of women aged twenty-one or over received cautions compared to 10% of men in 1985. from: Morris, Supra note 6.

[45] Curry, Lee and Rodriguez, Supra note 40. P: 323.

[46] Ibid.

[47] Ibid.

[48] Nooruddin, Supra note 11. P: 6.

[49] Lloyd, Supra note 22. P: 56.

[50] Heidensohn, F. *Women & Crime*, 1985, Macmillan Publishers Ltd. PP: 101-103.

victims were being disbelieved and aggressively questioned by the police.[51]

In addition, it has been considered that police decisions were significantly influenced by the factors of race and class.[52] In one case a police officer stated, *"We had one Irish fellow living with a black girl, she's got a baby by someone else, and now she's expecting his baby. She wanted to go out at night 'clubbing'. He objected. The house was a tip. I wiped my feet as I walked out. That's how bad it was. It's quite obvious she doesn't want to know. He whacked her and we didn't arrest him. She was making his life Hell! Nothing to be gained from arresting him.*"[53]

It is important to bear in mind, moreover, that women who experience domestic violence do not often report it to the police. It has been found that the police are often contacted as the very last option. [54] The reasons for women's silence have been widely recognized in the literature. For instance, women are discouraged from reporting from feelings of shame and from a belief that the police will do very little to help. In the UK, it has been found according to research that only 75% of cases are reported to the police by the victims. [55] Furthermore, it has been found that witnesses respond negatively to the crimes they have witnessed.[56] For example, Kitty Genovese of New York was killed by her husband, watched by witnesses who thought it was none of their business.[57]

- **Gender and Courts Practice**

In considering the effect of gender on the treatment of defendants in the criminal justice process, female offenders were found more likely to be released even before the trial and they were less likely to be sentenced severely.[58] The impact of gender in the way that the law and society respond to different kinds of crimes can be clearly seen in court decisions.

First of all, criminality in men was a common feature of their natural character, whereas women's biologically-determined nature was antithetical to crime.[59] On the one hand, it has been argued that, because of the fact that women are seen as less of a risk to society, when they do commit a crime, they will be treated leniently.[60] Albonetti (1991)[1] considered this as one important impact of offender gender on judges and jury in making lenient decisions;[61] when the offenders are female, there should be no or less certainty.[62] On the other hand, viewed as more culpable for their crimes and posing a greater risk, males would be treated more harshly. [63] For instance, men are more likely to receive long-term prison sentences.[64] However, some argue that sentencing patterns of women offenders demonstrate that they are treated harshly. A report published by the National Association of Probation Officers emphasized that in 1994, only 11% of males were jailed for theft compared to 23% of females. Moreover, 35% of the females who were jailed had no previous convictions, compared to 12% of males.[65] Also, 53% of women prisoners had been convicted of two or fewer offences compared to 23% of men.[66] One of the main reasons behind this hypothesis is that some offences are not expected to be committed by females. In other words, they are observed to be atypical of offending women. [67]

Because of the fact that it is considered inappropriate for females to commit violent acts such as armed robbery, when they do so, it was found that they were dealt with more punitively.[68] The thesis that has been used here is that of the *"evil woman,"* which suggests that the female has compromised her role expectations by committing an offense which is not seen as appropriate to offending women. Thus, they are treated more negatively.[69] In the cases of Sarah Thornton, who is a female, and *R. V. Palmer*,[70] who is a male, the facts were mostly the same, but the outcomes in court were different. Sarah was convicted and received a life sentence for the offense of murdering her evil husband. She argued that it was an accident; she sharpened a kitchen knife, pointed it at her violent husband, expecting him to knock it away, and accidentally stabbed and killed him. This was interpreted as indicative of her intention to kill him. She told one of her friends that *"I am going to kill him"* a few months before the incident, which was not treated as an expression of exasperation, but as an indication of intent. She stated that, *"I didn't walk in there with the intention of stabbing him. I just wanted to show him how far he had driven me."*[71] In contrast, in the case of R. V. Palmer,[72] the appellant stabbed his wife and killed her. He argued that he brought a knife from the kitchen only to frighten her, but accidentally killed her. Unlike Thornton, he was charged with manslaughter, not murder. Then, the Appeals Court reduced his sentence from seven years to five. Thornton, meanwhile, continues to serve her life sentence.

Furthermore, Heidensohn (1985) [22] argues that extreme harshness is experienced against women in the courts because they are, as offenders, very rare due to their low levels of crime and the rarity of ever appearing in court; therefore, it is likely

[51] Ibid.
[52] Morris, Supra note 6.
[53] Buchan and Edwards, Supra note 30. P: 85.
[54] Edwards found that 50% of women in shelters have never contacted the police, and many women tell no one at all. Radzinowicz, L and King, J, *The Growth of Crime*, 1977, London, Penguin. P: 38.
[55] Mawby, R, *Bystander Responses to the Victims of Crime: is the Good Samaritan Alive and Well?* 1985, Vol. 19, 1-4 Victimology. PP: 461-77. P: 461. Also see Edwards, Supra note 2. P: 192.
[56] Witness reporting accounted for 25% of the crimes reported to the police. Radzinowicz and King, Supra note 41.
[57] Mawby, Supra note 42. Also see Edwards, Supra note 2. P: 192.
[58] Gruhl and Welch, supra note 4. P: 1.
[59] Lombroso, Supra note 19.
[60] Albonetti, C.A, *An integration of theories to explain judicial discretion*, 1991, 38 Social Problems. PP: 247-266.
[61] See Steffensmeier, D, Kramer, J. H, and Streifel, C, *Gender and imprisonment decisions*, 1993, 31 Criminology. PP: 411-446.
[62] Curry, Lee and Rodriguez, Supra note 40. P: 324.
[63] Ibid.
[64] Steffensmeier, D, Ulmer, J, and Kramer, J. H, *The interaction of race, gender, and age and*
criminal sentencing: The punishment cost of being young, Black, and male, 1998, 36 Criminology.
PP: 763–797.
[65] Cited in The Guardian 10.7.95.
[66] Cited in The Guardian 19.9.95.
[67] In Edwards, S, *Women on Trial*, 1984, Manchester University Press, New Hampshire. Also, see Morris, Supra note 6. it was found that females were refused bail because they committed crimes which were not expected to be committed by women.
[68] Nagal 1981 in Supra note 6.
[69] Ibid.
[70] (1913) 2 KB 29.
[71] Yarwood, J. D. *DOMESTIC VIOLENCE Selected media references and sources relating to male victimization*, December 2003, Dewar Research. From: http://www.dewar4research.org. Retrieved Nov 24, 2016.
[72] (1913) 2 KB 29.

that more of them will be convicted for their offences.[73] He believes that women are understood less than men by the courts, in terms of both their culture and family structure; therefore, assumptions lead to stereotypes about *"appropriate"* behaviour, and by offending against their traditional sex roles, they are observed as both *"rule breakers and role deviants*."[74]

Among women themselves, it has been found that divorced and separated women received relatively severe sentences, as did women who came from deviant family backgrounds. This is due to the fact that these women are not considered respectable.[75] As a concrete example, in the cases of Khoua she and Andrea Yates, there was a general belief that they were treated differently by the criminal justice system in the USA because of their backgrounds. Both of these women are American citizens, but they came from different backgrounds. Khoua her was a twenty-four-year-old working mother separated from her husband and an immigrant who had been living in the United States for several years.[76] She was sentenced to fifty years imprisonment for the second-degree murder of her six children.[77] Andrea Yates was a married, thirty-six-year-old, white, middle-class, fundamentalist Christian homemaker. She drowned her five children in a bathtub. She was found guilty of two capital murder charges and not guilty of killing her other three children on grounds of insanity.[78] Her lawyer argued that she was suffering from postpartum depression at the time of the murders.[79] In the end, the jury recommended a sentence of life in prison instead of the death penalty.[80] Her lawyers lodged an appeal[81] and won. She will now be eligible for parole in 2041.[82] The reduction in penalty on appeal has been seen as a degree of leniency in the punishment of her crimes.[83]

In addition, it is important, in order to consider how gender affects the way that the law responds to different crimes, to know whether victim gender interacts with offender gender.[84] It has been found that there was interactive effect between victim gender and offender gender,[85] in that males convicted of victimizing females were punished more harshly than any other victim gender/offender gender combination.[86] Curry et al (2004) found that the longest sentences are meted out to male offenders who victimize females.[87] Moreover, in the cases where white females were victims of homicide, it has been found that offenders were more likely to receive death sentences.[88] Also, recent research in the USA found that in most cases where the victim was a white female, sentences were harsher than in other cases.[89] Nooruddin (2006) stated that *"the sexual stratification hypothesis argues that relations between black men and white women violate the dominant group's power most directly."*[90] Accordingly, abuse of white females by black men is considered particularly heinous in the USA, and therefore treated more severely.[91] Thus, a white female who reacts against a black male batterer would be seen as most worthy of '*protection*' by society, resulting in the fact that she would be treated least harshly by the courts.[92] Also, if a white male batterer is killed by a black female, she will be treated harshly by the court, in accordance with such a hypothesis.[93] However, some studies found no direct effect of victim gender on length of sentence.[94] It has been stated that victim gender may not affect the chances of imprisonment, particularly for violent crime, but it may have a significant impact on sentencing length.[95]

Conclusion

Despite the fact that laws on paper deal with men and women equally, it is not guaranteed that male and female defendants will be treated equally. The way that both society and the legal system respond to different kinds of crimes—elements such as political statutes, class, ethnicity, physical and mental disability and age—may play significant roles.

In cases where women are accused, the police distinguish between two kinds of women, *'good mothers'* and *'bad mothers'*. They find it difficult when the former are accused and the opposite with the latter.[96] This may justify the argument that it is not the gender of the offender which influences sentencing, but the female's role within the family.[97] It has been found that in cases where females could prove their respectability by showing that they had no alcoholic or psychiatric history, they often received a less punitive

[73] Heidensohn, Supra note 55.
[74] Ibid. P: 102.
[75] Morris, Supra note 6.
[76] Her had been in the United States since 1988. See Lourdes Medrano Leslie & Curt Brown, Mother: Killing Kids Saved Them From Suffering, STAR TRIB. (Minneapolis-St. Paul), Jan. 9, 1999, at 1A [hereinafter Mother: Killing Kids].
[77] Mother Gets Fifty Years for Killing Six Children, TIMES-PICAYUNE (New Orleans), Dec. 1, 1998, at A8.
[78] Bill Bickel, Andrea Yates, at http://crime.about.com/library/blfiles/blandreayates.htm. Retrieved Nov 27, 2016.
[79] Therapist: Texas Mom Not Ready for Trial, NEWSDAY, Sept. 20, 2001, at A30.
[80] Christian, C, Jury Gives Yates Life Term with No Parole for Forty Years, HOUS. CHRON., Mar. 16, 2002, available at: http://www.chron.com/cs/CDA/story.hts/special/drownings/1298197. Retrieved Nov 27, 2016.
[81] Teachey, L, Lawyers Submit Notice of Appeal in Yates's Murder Conviction Case, HOUS. CHRON., Apr. 4, 2002, available at: http://www.chron.com/cs/CDA/story.hts/special/drownings/. Retrieved Nov 24, 2016.
[82] Yates Family Points Fingers, (Mar. 18, 2002), at: http://www.cbsnews.com/stories/2002/03/ 14/national/main503693.shtml. Retrieved Nov 24, 2016.
[83] Nooruddin, Supra note 11. Page: 3.
[84] Curry, Lee and Rodriguez, Supra note 40. P: 336.
[85] Glaeser, E.L. and Sacerdote, B, *The determinants of punishment: Deterrence, incapacitation and vengeance*, 2000, (Discussion Paper 1894). Harvard Institute of Economic Research. Cambridge, MA: National Bureau of Economic Research.
[86] Nooruddin, Supra note 11. Page: 7.
[87] Curry, Lee and Rodriguez, Supra note 40. P: 337.
[88] Williams, M.R and Holcomb, J. H, *The Interactive Effects of Victim Race and Gender on Death Sentence Disparity Findings*, 2004, 8 (4) Homicide Studies. PP: 350-376.
[89] Stauffer, A. R, Smith, M. D, Cochran, J. K, Fogel, S. J and Bjerregaard, B, *The Interaction Between Victim Race and Gender on Sentencing Outcomes in Capital Murder Trials: A Further Exploration*, 2006, 10 (2) Homicide Studies. PP: 98-117.
[90] Nooruddin, Supra note 11. Page: 6.
[91] Williams and Holcomb, Supra note 89.
[92] Nooruddin, Supra note 11. Page: 6.
[93] Ibid.
[94] Myers (1979) has found no effect of victim gender on the sentencing decision at all. Myers, M. A, *Offended Parties and Official Reactions: Victims and the Sentencing of Criminal Defendants*, 1979, 20 Sociological Quarterly. PP: 529-540
[95] Curry, Lee and Rodriguez, Supra note 40. P: 338.
[96] Carlen (1983) in her study interviewed 15 Scottish sheriffs and found that all individuals disliked imprisoning women and felt uneasy when a woman was accused; however, to overcome these unsettled feelings, the sheriffs differentiated between "good" and "bad" mothers, stating, "If she's a good mother, we don't want to take her away. If she's not a good mother, it doesn't really matter"(Carlen PG 67 (1983)).
[97] Morris, Supra note 6.

sentence.[98] Kennedy (1995) argues that the "*Madonna*" is more acceptable in court than a "*whore*."[99] A woman who can show remorse and passivity, which are approved feminine traits, will be treated more leniently than a woman who does not show these characteristics. Furthermore, Morris (1987) [30] pointed out that Magistrates' Courts took into consideration the women's domestic circumstances, such as the responsibility for children, when they decided sentences against them.[100]

From researches and cases that have been discussed, it has become clear that both the conviction and sentencing stages of criminal procedures are affected by the gender of victims and defendants, and, in general, female defendants are treated more leniently by the courts.[101] Certain trends and patterns in female criminality, as compared with male criminality, have long been observed. Namely, women commit a small percentage of all crime, crimes committed by females are less serious, rarely professional and less likely to be repeated, and, consequently, women formed a small proportion of prison populations.

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[100] Morris, Supra note 6.

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Understanding the concept of 'Sovereignty'

Swati Singh Parmar

Assistant Professor, Amity Law School, Amity University, Uttar Pradesh, India

Abstract
Sovereignty is one of the basic principles of state arrangement at global level and also one of the most poorly understood concepts in international law. The interpretation of this principle is open to change across time and space in the backdrop of historical and political contexts, offering full array of analysis.

Keywords: westphalian sovereignty, popular sovereignty, basket theory, chunk theory

1. Introduction

Sovereignty is the central organizing principle of the system of states. However, it is also one of the most poorly understood concepts in international relations. This confusion emerges from at least two sources.

- First, as will be discussed below, sovereignty is in fact a relatively recent innovation connected to the emergence of the nation-state as the primary unit of political organization.
- Second, what is more, a number of contemporary issues have placed increasing limits on the exercise of sovereign authority.

These two factors raise questions about the fixity of the concept of sovereignty often assumed by international relations scholars. A more sophisticated view of sovereignty now envisions states and non-state actors as engaged in a continual process of renegotiating the nature of sovereignty.

Sovereignty has also been explored as a "social construct." According to this view, *"Numerous practices participate in the social construction of a territorial state as sovereign, including the stabilization of state boundaries, the recognition of territorial states as sovereign, and the conferring of rights onto sovereign states* [1]." This approach tells that no particular characteristics in here in the concept of sovereignty, but that its nature depends very much on the customs and practices of nation-states and international systems [2], which practices could change over time.

2. Historical Background

Origin of the Concept

The international system was not always arranged in terms of sovereign states. It is interesting to note that the medieval world knew nothing of national sovereignty. Theoretically, there existed Christendom, with its twin heads of Pope and Emperor, a unifying concept which exercised considerable influence upon political and philosophical thinking until the close of the middle Ages. After the decline of the authority of the church and the long struggle between the Pope and the Emperor, Christendom disintegrated. Out of this chaos emerged nation-states, with their monarchs engaged in a struggle against all external and internal adversaries. While externally they had to fight the still lingering influences of the Empire and the Papacy, internally they were troubled by the fissiparous tendencies of feudalism in the form of a miscellaneous assortment of petty lords. But the discovery of the New World dealt a death blow to feudalism, and the invention of gunpowder permitted vigorous kings to raise powerful armies without the approval of baronage. Within the space of 50 years powerful nation-states emerged in England, France and Spain and a little later in Sweden, Russia and other parts of Europe [3]. The kings refused to recognize any superior, both within and without, and jurists came to their aid with a legal theory which served both as a weapon of defence and as a justification for the claim of royal supremacy.

Thereby originated the notion of sovereignty in order to help kings meet an intolerable situation. The concept of sovereignty in the European feudal times was multipolar in nature as the supreme authority was not reposed in a single seat: it had twin heads of Pope and Emperor.

Through the middle ages alternative feudal arrangements governed Europe and city-states lasted up until the modern period. The development of a system of sovereign states culminated in Europe at the Peace of Westphalia in 1648. This agreement essentially allowed the ruler to determine the religion within his borders, but it also represents both the internal and external aspects of sovereignty. (Internal sovereignty means supreme authority within one's territory, while external sovereignty relates to the recognition on the part of all states that each possesses this power in equal measure.) As Europe colonized much of the rest of the world from the fifteenth through the nineteenth centuries, the state system spread around the globe. Through this time, sovereign authority was clearly not extended to non-Europeans. However, the process of drawing boundaries to clearly demarcate borders would be critical for defining sovereign states during decolonization.

The second, current, movement appears to be the gradual circumscription of the sovereign state, which began roughly after World War II and continues to the present. Much of international law, at least until WWII, was designed to reinforce sovereignty. However, driven by the horrors of the Nazi genocide and the lessons of the Nuremberg war crimes tribunal, the society of states forged a series of agreements under the auspices of the United Nations that committed states to protect the human rights of their own citizens, a restriction on authority whiting the state. The post-war period also saw the

growth of intergovernmental organizations to help govern interstate relations in areas ranging from trade and monetary policy to security and a host of other issue areas. At the same time, much of the non-Western world gained their independence in the decades after World War II, setting up a scenario in which many of the new states were not fully sovereign [4].

3. Early Thinkers

i) Machiavelli

Although he did not expound the theory of Sovereignty, Machiavelli, in his work, *The Prince*, published in 1532, suggested the new theory of the State and the methods of securing its advancement. He discounted all restraints upon the ruler, legal or moral, and pleaded for an absolute and irresponsible control exercised by one man who should embody in himself the unity, strength and authority of the State [5]. He paved the way for other writers. In the words of Machiavelli:

"Those who have been present at any deliberative assemblies of men will have observed how erroneous their opinions often are; and in fact, unless they are directed by superior men, they are apt to be contrary to all reason [6]*. . . . . The only way to establish any kind of order there is to found a monarchical government; for where the body of the people is so thoroughly corrupt that the laws are powerless for restraint, it becomes necessary to establish some superior power which with a royal hand, and with full and absolute powers, may put a curb upon the excessive ambition and corruption of the powerful.* [7]*"*

In sum, it was just the public interest that required an absolute type of sovereignty, which justified the use, by the prince, of any kind of instrument, irrespective of its moral implications, including force ("the stick"), bribery, or deceit.

ii) Jean Bodin

Jean Bodin, who is said to be-the first to have formulated this theory in 1576 in his *De Republica*, was, like all other writers, deeply influenced by the circumstances of his time. His preoccupation was merely to show the supremacy of the monarch over his own subjects in, his own territory and his freedom from the control of other real or pretended sovereigns, such as the Pope or the Emperor. He wanted to find out the secret of stability in a politically unstable world. Being a sixteenth-century Frenchman and a patriot, his decision was inevitably in favour of monarchy. He was convinced that a State, in order to be a State, must have one, and not more than one, supreme power from which its laws proceeded.

He said expressly that the sovereignty of States comprised this one thing, namely, to make and give laws to each of the citizens and subjects, and that since the sovereign made the laws, he clearly could not be bound by the laws he had made himself. In other words, sovereignty was essentially an internal power - the power of a superior over an inferior [8].

But this did not mean that the sovereign was above all laws. As Bodin, defining sovereignty as an *"absolute and perpetual power vested in a Commonwealth"*, added:

"If we insist however that absolute power means exemption from all law whatsoever, there is no prince in the world who can· be regarded as sovereign, since all the princes of the earth are subject to the laws of God and of nature, and even to certain human laws common to all nations [9]*."*

This theory of sovereignty, clearly circumscribed by law, however, came later to be distorted, and sovereignty came to be identified with absolute power above the law.

The whole purpose of Bodin, as we have seen, was to establish order.

iii) Thomas Hobbes

The pursuit of the same purpose led Hobbes, writing in the midst of a civil war and political crisis in England, to take the concept of sovereignty to an extreme position. In his *Leviathan,* published in 1651, Hobbes stated that men needed for their security *"a common power to keep them in awe and to direct their actions to the common benefit"* and that the person or body in whom this power resided was the sovereign. Law neither made the sovereign nor limited his authority; it is might that made the sovereign, and law was merely what he commanded. Further, since the power that was the strongest could not be limited by anything outside itself, it followed that sovereignty must be absolute, illimitable and irresponsible. Hobbes did realize that such power concentrated in a single centre was unpleasant to live under, but argued that it was the lesser of the two evils, life and men being what they were, and compared to *"the miseries and horrible calamities that accompany a civil war of that dissolute condition of masterless men"* [10].

The hold of sovereignty had become so strong upon the thinking of that age that when it became obvious that the personal monarch no longer fitted the role, they started a hunt for the "location" of sovereignty somewhere else. As Hobbes had said the absolute and uncontrollable power need not be vested in a single individual. It could be enjoyed by a group like the British Parliament [11].

iv) John Locke and J.J. Rousseau

With the coming of constitutional government, Locke, and later Rousseau, propounded the theory that the people as a whole wore the sovereign, and in the eighteenth century, this became the doctrine which was held to justify the American and French Revolutions [12]. But all that changed was the bearer of sovereignty. In substance, the claim of the sovereign remained unaltered. Whether the individual was called a subject or a citizen, the sovereign held unlimited sway over him. Thus, by the end of the eighteenth century, Europe found itself under the *"incubus of a malign and sinister heritage"* of juristic theory which attributed to the State, a juristic entity, contrary to the earlier sovereign, who was a personal monarch, an absolute and unlimited power above the law [13].

v) John Austin

In the international sphere, the national State claimed sovereignty, in the sense of independence from outside control, with the same vigour as its absolutist predecessor. Thus, in 1832, in his Lectures on Jurisprudence, Austin defined sovereignty in the following terms:

"If a determinate human superior, not in the habit of obedience to a like superior, receives habitual obedience from the bulk of a given society, that determinate superior is sovereign in that society, and the society (including the superior) is a society political and independent."

At the time that the philosophy of sovereignty, in the modern sense of the term, first developed it was certainly conceived as an absolute prerogative of the sovereign entity. The inherent dignity of the King was above the earthly idea of life and

death, and also above the law. The conception of the sovereign power as the supreme entity, over the law and the life and death of the subjects, was shared by most theorists and philosophers from the early modern times, such as Nicolò Machiavelli, Jean Bodin, and Thomas Hobbes, although such an idea was often the result of considerations of *realpolitik* rather than of supernaturalism-based thoughts.

From these premises, the objective idea of sovereignty that emerged in early modern Europe was of a power concentrated in the hands of an authority bundled into a single entity, which governed a collectivity unified by the sharing of a single set of interests and confined within territorial borders. The sovereign authority held supremacy in the collective interest.

When Europe came out of the Medieval darkness (politically speaking), the internal absoluteness of sovereignty was not yet reflected in its external dimension. In particular, the Holy Roman Empire retained a nearly exclusive power over religious matters, and this allowed the Pope to interfere in the internal affairs of independent "sovereign" States. The transition from the "vertical" structure - headed by the Pope and the Holy Roman Empire-to the "horizontal" structure of independent sovereign States-which in principle were equal in authority and legal legitimacy-was consolidated in 1648 with the Peace of Westphalia (ending the Thirty Years' War in Europe), which introduced the so-called Westphalian sovereignty.

4. The Westphalian Sovereign Ideal

The traditional tale of sovereignty is summarised neatly by Glanville, who suggests that it

"is repeatedly told…that sovereignty was established sometime around the 17th century (at the Peace of Westphalia…) *and, since that time, states have enjoyed 'unfettered' rights to self-government, non-intervention and freedom from interference in internal affairs* [14]*"*

The sovereignty fairy tale holds that states, by virtue of being sovereign, enjoy the inviolable right to non-intervention, non-interference and self-government. Although, this ideal seemingly never existed; the discourse that it perpetuates is very significant. Without this ideal and the rights it supposedly grants to states, it would be impossible to discuss whether intervention violated sovereignty at all. Furthermore, this narrative also plays a significant role in entrenching the notion that states have a right to do as they please within their territories and to do so without interference.

Debunking the Myth

It is possible to refute the Westphalia myth fairly easily. This essay will contest the myth on three grounds: firstly, the non-intervention norm did not originate at Westphalia; secondly, the myth has seemingly never matched reality due to frequent cases of intervention; and thirdly, sovereign power has never been truly unchecked. The norm of non-intervention often associated with the Peace of Westphalia was actually codified at a later date during the mid-eighteenth century [15]. This undermines the rather dubious claim that *"in the history of sovereignty one can skip three hundred years without omitting noteworthy change* [16]*"*. Philpot is here certainly guilty of perpetuating the Westphalian myth.

Moreover, the extent to which the 'traditional' conception of sovereignty, specifically the non-intervention aspect, existed in practice is debatable. But it is unlikely it ever truly operated in the international system. As Krasner notes *"the principles associated within both Westphalian and international legal sovereignty have always been violated* [17]*",* seemingly suggesting that the Westphalian ideal never existed. The frequent violation of sovereignty norms leads Krasner to deem them 'organized hypocrisy' as they are widely understood but frequently compromised [18]. This take on sovereignty appears fairly rigid and static because it treats sovereignty as a constant with fixed characteristics, thus discounting the notion that it can change. Therefore, for Krasner, sovereignty constitutes something that can be violated by greater intervention. Moreover, Glanville also refutes the myth on the basis that the reality of sovereignty never matched the ideal anyway. He argues that sovereign authority has always involved varied and evolving responsibilities since it was first espoused [19]. He rebuffs the idea that sovereignty was absolute and empowered states with unfettered rights to do as they saw fit, instead arguing that sovereign power has always been to a degree – checked.

The Westphalian ideal of sovereignty was interpreted by the literal rule of interpretation. This may be attributable to the fact that the 'sovereignty' was the crucial element in the peace treaties of Westphalia. The literal rule of interpretation of the concept of sovereignty support the positivist view of sovereignty as the positivist approach focuses on the natural and ordinary meaning of the text.

5. 'Popular' Sovereignty

Popular sovereignty or the sovereignty of the people is the belief that the legitimacy of the state is created by the will or consent of its people, who are the source of all political power. It is closely associated to the social contract philosophers, among whom are Thomas Hobbes, John Locke and Jean-Jacques Rousseau. Popular sovereignty expresses a concept and does not necessarily reflect or describe a political reality [20]. It is often contrasted with the concept of parliamentary sovereignty, and with individual sovereignty.

Benjamin Franklin expressed the concept when he wrote, "*In free governments, the rulers are the servants and the people their superiors and sovereigns* [21]."

The term "squatter sovereignty" is used by Jefferson Davis in his book- A Short History of the Confederate States of America. This probably derogatory term referred to the influx of new citizens in order to manipulate the ultimate sovereign votes.

Popular sovereignty is an idea that also dates to the social contracts school (mid-17th to mid-18th centuries), represented by Thomas Hobbes (1588–1679), John Locke (1632–1704), and Jean-Jacques Rousseau (1712–1778), author of The Social Contract, a prominent literary work that clearly highlighted the ideals of "general will" and further matured the idea of popular sovereignty. The central tenet is that legitimacy of rule or of law is based on the consent of the governed. Popular sovereignty is thus a basic tenet of most democracies. Hobbes and Rousseau were the most influential thinkers of this school, all postulating that individuals choose to enter into a social contract with one another, thus voluntarily giving up some rights in return for protection from the dangers.

A parallel development of a theory of popular sovereignty can be found among the School of Salamanca (see e.g. Francisco de Vitoria (1483–1546) or Francisco Suarez (1548–1617)), who (like the theorists of the divine right of kings) saw

sovereignty as emanating originally from God, but (unlike those theorists) passing from God to all people equally, not only to monarchs.

Republics and popular monarchies are theoretically based on popular sovereignty. However, a legalistic notion of popular sovereignty does not necessarily imply an effective, functioning democracy: a party or even an individual dictator may claim to represent the will of the people, and rule in its name, pretending to detain *auctoritas.*

6. The Chunk Theory

The world is thus composed by a number of sovereign entities that have absolute dominion within their territorial borders, all of these sovereign entities being in a relationship of parallel equality with each other. In other words, they all possess an identical set of sovereign features, and the sovereign powers belonging to each of such entities stop exactly where the sovereign powers of another begin. This is the so-called chunk theory of sovereignty, according to which sovereignty may only be possessed "in full or not at all," being represented as a monolithic chunk of identical stones, any one of which is possessed by a sovereign entity [22].

From the standpoint of international law, the translation of this theory into practical terms shows the connection between the concept of sovereignty, at least in its strict and narrowest sense, with the notion of constitutional or legal independence.

7. The Basket Theory

The degree of independence exercised by States varies greatly in reality. It is necessary to emphasize that even for the most powerful States in the world sovereignty is not absolute. For instance, a number of States have definitively delegated a wide range of powers to other entities, as has happened with the European Union. Thus, the so-called basket theory of sovereignty appears as much more coherent to the concrete reality existing in the real world than the chunk theory [23]. According to the basket theory, sovereignty is to be seen "in variable terms, as a basket of attributes and corresponding rights and duties [24]." Any sovereign entity owns a basket, but the content of the different baskets varies considerably; certain sovereign entities have baskets with many more attributes of sovereignty than others, and as a result, entities possessing more of these attributes have a higher degree of independence.

8. Sovereignty as Symbolic Form

Jens Bartelson, a Professor of Political Science, has, in his book '*Sovereignty as symbolic form'* given a short and stimulating overview of the concept of sovereignty by interpreting it in symbolic form. He has given a unique insight into the origin of the concept of sovereignty. He makes a unique claim that sovereignty in its concept.

According to the author, sovereignty is to be interpreted in terms of 'symbols' and in the form of 'geometrical expressions'. Although we have grown accustomed to regarding sovereignty as a defining characteristic of the modern state and as a constitutive principle of the international system, Sovereignty as Symbolic Form argues that recent changes indicate that sovereignty has been turned into something granted, contingent upon its responsible exercise in accordance with the norms and values of an imagined international community. Hence we need a new understanding of sovereignty in order to clarify the logic of its current usage in theory and practice alike, and its connection to broader concerns of social ontology.

As per his interpretation, the concept of sovereignty gained its momentum after the age of great discoveries which was heralded by the Spanish and the Portuguese explorers. These explorers discovered new found lands in the far flung areas of world. With discoveries, came the concept of geographical maps and consequently the imaginary lines of latitudes and longitudes defined, caged and limited the new territories in a definite form.

In its external aspect, sovereignty was exerted over these territories. Maps, in turn, were made possible because of the application of a précised subject called 'geometry'. Bartelson interprets that the notion of indivisibility of sovereignty must be equated with a decimal which is one of the main features of mathematics.

In its internal aspect, sovereignty came to be identified first as a symbol in the form of a crown and this symbolic interpretation paved way for the political and legal understanding of sovereignty. The concept of sovereignty allowed the king to be the sole proprietor of political power in a defined territory. As the concept of nation-state grew, the idea of sovereignty became entrenched in the legal order of the nation-state. The concept of sovereignty now became unchallenged in its internal sphere.

9. Conclusion

The various interpretations of the concept of 'sovereignty' by different thinkers clearly tell that the concept of sovereignty was open to interpretation across time and space. From 'traditional sovereignty' to 'popular sovereignty' and now its symbolic manifestation, the meaning of sovereignty has undergone many changes. In early times, sovereignty was interpreted in strict sense, owing supremacy and indivisibility to the authority of State. This later changed into 'popular sovereignty', where the sovereignty of a state was derived from the will of its subjects, i.e., the individuals. And now, amidst various international players and multipolarity, the concept of sovereignty is again being reshaped. This is indicative of the fact that sovereignty is essentially a fluid concept whose meanings and conceptions have been changing as per the polity, times, among other factors.

This position is indicative of the fact that 'sovereignty' is interpreted by way of 'Teleological' or the 'Purposive' approach of interpretation. According to McDougal, who has influenced the teleological approach, many concepts of the international law are imprecise and travel in opposite direction (such as 'intervention' and 'state sovereignty' under the present study). In such a decentralised system, the function of interpretation is not to dictate specific decision, as the case was in the interpretation of Treaty of Westphalia, but to draw attention of the policy makers towards crystallised community expectations.

As argued by many thinkers that in the neo world order, the concept of sovereignty has faded away or shrank, but to this, I would suggest that in reality the dimensions of sovereignty has changed. The watertight conceptualisation of 'sovereign' in 'absolutist' terms is not justifiable to categorise national supremacies in an evolved global scenario.

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Status of women from ancient to modern days in India

R Jaya Bharathi

Assistant Professor in Law, Shri P. Basi Reddi College of Law, Kadapa, Andhra Pradesh, India

Abstract
Women deserves to be conferred supreme status for the reason, she is not only creature of the world but also instrumental for growth and development of the family including the progress of her husband in particular. The role of a woman as a model and ideal housewife contributes a lot for building a progressive nation tomorrow. It is to be noted that, only woman as a housewife attends all her duties regularly and punctually throughout the year for 365 days without aspiring for a single day as a holiday. The problem is, needs to be examined in the context of rights for establishment of a just and equitable social order, where nobody can be treated or exploited by another as unequal. No law, custom, tradition, culture or religious consideration should be invoked to excuse discrimination against women.

Keywords: women, no law, custom, tradition, culture or religious

Introduction
The status of women in almost all parts of the world is discriminatory and prejudicial because of male dominated society's practical inequality between men and women everywhere. women in fact, not only in a primitive society, but also in this modern global world in certain places, irrespective of rural or urban, rich or poor has been treated as a tool in kitchen room and toy in the hands of her husband and collaterals. Since the time immemorial, women as a whole in this universe were placed inferior to men as the women could not act independently and had to rely on a man for doing anything. In other words she had to take the consent of her father or husband for taking any decision [1]. It is an admitted fact that ours is a civilized society, and in our society, human relationships play a very important part. These relationships necessarily involve mutual trust, regard for each other, because without them, human relations cannot come into existence, nor they can be perpetuated with benefit to both the parties. The global problem of the present day is, gender injustice or gender inequality. There has been discrimination between men and women, male domination and suppression of women since pre-historical times. Women, who constitute half of the world's population, work 2/3rd of the world's working hours earn just 1/10th of the world's property and remain victims of inequality and injustice. Consequent to these discriminatory practices, social, economic and cultural resulting in cumulative inequalities in both the developed and developing countries, the ideas and goals enshrined in various social legislations and international conventions invoking/envisaging women's equality/welfare remain unrectified. As human development moves centre stage in the global development, debate, gender equality is emerging as a major global challenge [2].

Status of Women in Ancient Period
Life begins from a ladies womb. The sole privilege and power to create – srijan -is what makes her lord of this world in the true sense. She is the force behind every man in one form or the other –mother, wife, sister, and daughter and so on. But all these sound mere rhetoric and speechifying when the majority suppress and downgrades its better half, making them no more than a better half. Hinduism defines women to be a man's half-batsman. It is a clearly and symbolized through "shiv- shakti" that a man is incomplete without a women. Holly books have preached equality of both sexes. But even today's ultra-modern India the situation remains the same as it was centuries ago. Women have unique position in a every society whether developed, developing or under developed. In spite of her contribution in the life individuals human begin; she still belongs a class or group of society which is in disadvantaged position on account several social barriers and impediments. The face and style of women exploitation has changed from visible to invisible. However, the cruelty and extent is unchanged. The status of women ancient period was considered more powerful than man and treated as goddess of "Adi Shakti". The birth of a girl child in the ancient society was heralded as the arrival of Goddesses Lakshmi. Ancient texts of all religions prescribe what should be the qualities of women. Any women who do not possess those qualities are not "good" and social sanctions may be invoked against her. Manu states that where woman are worshipped, God dwells there. In order to be worshipped, she must possess worship able qualities but these qualities are understood and imposed from the point of view of the society and not the woman herself. The image building begins even before birth. She should be virtuous as defined by the society; she should be tolerant, renunciate and sacrifice to the extent the society demands of her. In other words, the woman's individuality and personality cannot blossom on its own naturally; she is cast into a mould---an image approved by the society [3]. This image forming process has led to socio-economic deprivation and oppression. According to Rig Veda woman is the queen of house. Satpatha Brahmana says that the wife is her co-equal with each other. It was believe that is her husband's ardhagini. This epoch still retained a certain liberty of expression for women's religious aspirations. Women where glorified as "the lamp of home" and it is laid down that a home is void without a women to run it .It is also said that a virtuous wife gives a good status to her house. The status of woman decreased during the medieval

period. Women completely lost their glory. During this period there were main customs such as sati, ban on widow remarriage, child marriage she had no choice selection of life partner. In purely Indian context, Indian women have come a long way from the Vedic ages. There have been changes in every aspect of her life, yet she has miles to go before she rests [4]. With invasions of India by Alexander and the Huns, the position of women was further degraded. Their education and training came to a sudden halt. For reasons of security, movement outside was restricted which in turn denied opportunities in community affairs. With invading armies roaming the countryside, women were put behind the veil [5].

Struggle for Women's Freedom in 18th & 19th Centuries

The Indian setting in the late 18th and 19th century was incontrovertibly much more complex than this due to its colonial antecedents. To begin with, it must be mentioned that even a partial authentic account of the initiatives and role of women activists or reformers on this issue is yet to be documented as far as India is concerned. A fragmented version attests that the social reformers of the 19th century sought legal changes from British colonial administration with a view to improving the status and conditions of women [6]. The woman question was definitely as part of a broader agenda of social and political reform, need and expediency of the day. For the colonial regime it was part of a 'civilizing mission' to liberate Indian women from the indigenous 'barbaric and degenerate' tradition. In that Century, especially after the emergence of Raja Ram Mohan ray on the socio-political scenario with Swamy Dayananda Saraswathi, Justice Ranade, Sister Nibedita, Gopal Krishna Gokhale, Swamy Vivekananda, Annie Beasant, Pandita Rama Bai, Mahatma Gandhi, Kasturba, Mira Ben with long struggles, attention of Government could be drawn to the said plight and exploitations of women and new legislations were enacted to save women from the victimization of crimes. The centuries have been passed but women's conditions are not changed yet. Time is a witness of all this. Helpless women are suffering in the form of discrimination, exploitations, degradation, aggression and humiliation.

International and Constitutional Protection for Women

The intensification of women's issues and rights movement all over the world is reflected in the form of various Conventions passed by the United Nations [7] viz. Convention on the Political Rights of Women, 1953., Convention on the Nationally of Married Women, 1957., Declaration on Elimination of Discrimination Against Women, 1967., Convention on the Elimination of All Forms of Discrimination Against Women, 1979, Declaration on the Elimination of Violence against Women, 1993, Vienna Conference, Beijing Conference etc. The Constitution insists on equality of status and it negates gender bias [8]. The framers of the Indian Constitution were well aware of the inequality between men and women (gender discrimination) and incorporated certain specific provisions for uplift ment of the status of women i.e, Article 14, 15(3), 16, 21, 21-A, 23, 24, 25, 39, 39-A, 42, 44, 51-A (e), 243-D and 243-T. Though the Indian Constitution provides equality of status and of opportunity to women, discrimination is persisting in one form or the other. The reason is the women's physical structure and the performance of material functions place her at a disadvantage in the struggle for subsistence and her physical well becomes an object of public interest and care in order to preserve the strength and vigor of the race [9]. Discrimination against women continues to exist even today as it is so deep-rooted in the traditions of Indian society. The root cause for the discrimination of women is that most women are ignorant of their rights and the position of equality assured to them under the Indian Constitution and legal system. Enlightened women should fight to bring awakening in other women regarding their rights by bringing awareness about their status in society as they constitute half of the Indian population [10]. In tune with various provisions of the Constitution, the State has enacted many women-specific and women-related legislations to protect women against social discrimination, violence and atrocities and also to prevent social evils like child marriages, dowry, rape, practice of Sati, etc.---the problem , however, is in non-implementation of such laws and the lack of sensitivity of the society to deal with such issues. In particular, provisions in the criminal law, in favor of women, or in the procedural law discriminating in favor of women, have been upheld [11].

Crimes against Women

A woman plays different of roles during her life time. At the work place she is labour, farm worker, employee, sometimes employer, scientist, educator, academician and professional. She is also activist, policy maker and law maker at the social and community front. Today's women are playing multi-tasking roles. A working women nevertheless has to be all-rounder she has to constantly keep in mind home, fulfill its requirements first before she is leaves her house. In India nearly half of the population comprise of women. Yet, they are dominated, suppressed, harassed, ill-treated, subjected to mental and physical violence and sometimes even denied of their basic human rights. They are the ones who are made to sacrifice and suffer without any right of complaining for it. Females are brought up in that manner. There are different kinds of violence or crimes committed by males in the male dominated society. Violence against women is rampant in all corners of the world. Such violence is a human rights violation that manifests itself in a number of ways including violence against women in custody, Acid attack, Bride burning, Physical, Emotional, Economic and Psychological abuse, Domestic Violence, Female genital mutilation, Human trafficking, Dowry death, Honour killing, Human rights violations based on actual or Perceived Sexual Identity, Sexual Assault and harassment at work places, Rape, Kidnapping and Abduction, Molestation, Gender Based Asylum, Importation of girls, etc are rampant not only in India but at global level. A central theme the women's movement all over the world has been violence against women both in their homes and outside. This is directly linked to their unequal position in a patriarchal society cutting across both class and community. The first categories of violence focussed on were rape and murder of young brides for dowry. Rape is a crime, not only against the person of a woman; it is a crime against the entire society [12]. Dowry in the sense of the bride's price or the bridegroom's price, spread like a contagious disease and ultimately became regular practice [13]. It was released that there were other more brutal expressions of the widespread phenomenon of domestic violence which included wife beating, cruelty, torture and humiliation. This realisation made women's groups demanded that wife abuse be treated as an offence too. is then that the real picture emerges and we realize that the whole bulk of this

protective legislation is a very modest attempt to combat the deep-rooted and all pervasive evil of horrendous crimes that are committed against women every day. The list of crimes that are committed against women seems amaranthine, varying from simple harassment, physical and mental torture to even denying them the very right to exist. Scientific techniques are misused to kill girls even before they are born or else crude methods like feeding them the juice of berries are used to sniff out life soon after they are born [14]. The places where these crimes are committed and the persons by whom they are committed are also endless. These are crimes that are committed within the four walls of the house, those that are committed at public places right in the glare of the public. In spite of the plethora of protective laws the index of these crimes touching dizzying heights. The incidence of these crimes is very high, it knows no barriers of caste, class, religion or socio-economic strata. Earlier, it was thought to be the preserve of the uneducated people of lower castes but now-a day's women from all social strata and professions are victims of these crimes. Professionals like doctors and judges, executives and lawyers etc. Most of the women are still treated as second class citizens. The media exposure and the laws have very little impact; they are themselves contradictory and often betray the pro-male bias. Crimes against women are as old as civilization and equally ancient are the efforts to combat and arrest them. These efforts have not succeeded and crimes are still maintaining their upward trend. These are records of women being raped, abducted, beaten and subjected to humiliating treatment. Women have been subjected to socio-economic and cultural deprivations for such a long time that there is a general indifference and lack of awareness for crimes against them. Women are reared in an atmosphere which slowly but positively helps in the development of a feeling of inferiority, they become used to the institutional legitimating of their low status and find nothing wrong in some of the crimes that are committed against them. Most of the protective laws fail because of defective enforcement; proper implementation of these laws will go a long way in curbing crimes against women [15].

Patriarchal system impact on Women:

Indian society is male dominated. Man occupies a superior status and the women are merely his appendage. A women is never an entity in her own right, she is "first the daughter, next the wife, and last the mother of a man". Men are consciously taught to be aggressive and tough while women are conditioned to be submissive and docile [16]. In India sub-continent there have been infinite variations on the status of women diverging to cultural malice's, family structure, class, caste property rights and morals**.** Patriarchy is a popular system all over the world. In literal sense it is the dominance of the father, which in turn means domination of the male gender. Such domination was not on women. It included the vulnerable comprising of children, slaves, etc. Therefore the patriarch could dominate over other men as well if they were in a lesser status and a vulnerable situation [17]. At the core of patriarchy lies a relative power equation. Patriarchy, therefore, is not class or caste specific. In the male dominated society, a female, right from her birth is treated unequally. Amongst the large sections of the Indian population and especially weaker sections of the society, a female child is unwelcome and is treated as a liability. Killing of female child and even female foetus is still prevalent in India. One of the reasons why a female child is unwelcome is, the parents dread the cost of marrying a daughter as notwithstanding enactment prohibiting the system of dowry in India, dowry is still prevalent in India either directly or indirectly not only amongst the poor, but even amongst the middle classes and rich families also [18]. The girl child, a perpetual burden to the family, particularly in the rural areas, has to work from the morn to night on and do every duty possible. The routine of work of a girl of poor rural families and of lower-middle class urban families is simply staggering. Even a not too exhaustive list of their work is sure to take one out of the one's breath [19]. But, unfortunately, discrimination goes on unabated whether it is in the field of survival, health, education, employment or in other broader perspectives of social life. All these are culturally determined as culture demands that a boy is more valued than a girl. This psychology is very much prevalent even in times of natural calamity and / or disaster. Even if the infant mortality rate in India today is not alarming, the survival of the girl-child still remains very precarious. Owing to the deliberate neglect of the girl in respect of food, nutrition and education, her inability becomes very much constrained. Growing up in such an atmosphere of discrimination the personality of a female child often is affected and being subjected to further discrimination when she goes out and faces the outside world. Her personality often becomes totally impaired and she starts believing that being a female she is inferior to a male and accepts the act of discrimination as quite normal and obvious.

But that is not only reason why a female right from her birth and childhood has a suffer discrimination. The other most important reason for which a female has to suffer such discrimination not only in the Indian society but world over including in the so-called developed countries is a preconceived notion that a female is inferior to a male both physically and intellectually although there is no medical and scientific basis of such a notion [20]. At home a female child is not treated equally to male child and is discriminated against in the matter of food, clothing, education and other matters. In this realm of the patriarchal domination, women are treated as chattels and upon marriage dominion over them was transferred from the father to the husband within the confines of perpetual tutelage [21].This discrimination very often arises from the traditional mind-set that the real life for a female starts after her marriage and it is the duty of the parents to rear up the daughter till she is given in marriage. Because of such deep-rooted pre-conceived notion a female not only suffer discrimination at her parental home, but also suffers the same outside the home when she goes out and faces the outside world in various spheres of life, including the educational institution. Later on even in the work place, she suffers such discrimination. She is not only subjected to sexual abuse but she may also be subjected to ridicule, apathy, and sensitivity. The unkindest cut, because of such discrimination by the society, a woman suffers, if she is a victim of sexual harassment and rape. She, although is the victim and not the accused, she suffers further humiliation from the society and in fact she is ostracized by the society. Women's health is affected by many factors, including biological differences and social conditions, discrimination and lack of access to and inadequate health care and other services. Lack of food, deficient housing and inadequate access to safe drinking water pose a threat to rural and other women's health. Morbidity and

mortality rates of women, due to inadequate to reproduction health, are still high.

Conclusion

Since women comprise the majority of the population below the poverty line and are very often in situations of extreme poverty, given the harsh realities of intra-household and social discrimination, macro-economic policies and poverty eradication programmes will specially address the needs and problems of such women. There will be improved implementation of programmes which are already women oriented with special targets for women. There is a need for targeted efforts to ensure that rights of women in difficult circumstances who include destitute women, women in conflict situations, women affected by natural calamities, women in less developed regions, the disabled, widows, elderly women, single women in difficult circumstances, migrants, women heading households, those displaced from employment, women who are victims of marital violence, deserted women and prostitutes, etc. For the emancipation for women in every field, economic independence is a paramount importance. Along with economic independence, equal emphasis must also to be laid on the total development women---creating awareness among them about their rights and responsibilities---the recognition of their vital role and work they do at home. It is unfortunate but true that discrimination against the female starts when she is still in the womb, through female foeticide. Apart from foeticide, there are many other issues and one of them which is a cause for anxiety, is trafficking in women and girls. It is a gross violation of their human rights. Women are being treated as chattels and commodities. Crimes in the form of trafficking of the girl child, prostitution, domestic violence and incest are on the increase. Take integrated measures to prevent and eliminate violence against women. Provide women with access to saving and credit mechanisms and, institutions. Study the causes and consequences of violence against women the effectiveness of preventive measures, Legal literacy of women by creating awareness of rights among women through media, published literature and voluntary agencies. In tune with various provisions of the Constitution, the State has enacted much women-specific and women-related legislation to protect women against social discrimination, violence and atrocities and also to prevent social evil like child marriages, dowry, rape, practice of Sati, etc. Let us resolve to empower women, for in that alone lies the progress of the society.

A girl child is not a burden but an essential constituent of the society. The key to her empowerment lies not in her being killed in the womb but in her receiving education and becoming economically independent. Most of the women in our country are illiterate, and in comparison to males, are ignorant of basic law. Most of the times, they do not register a case against those persons who violate their persons or commits crimes against them. Lack of awareness, political participation, poverty, traditional oppression and customs, place an Indian women at a receiving end. Though violence stalks women's lives everywhere, law can do little unless present cultural and social perceptions change. This calls for a resolve from all of us. Awakening of the collective consciousness is the need of the day. Change of heart and attitude is what is needed. If women were to receive education and become economically independent, the possibility of many pernicious social evils dying a natural death may not remain a distant dream. Laws are not enough to combat the growing menace of gender injustice. A wider social movement of educating women of their rights is what is needed. Human rights for all must be made the focal point in good governance. To ensure progress of the nation and usher in a just and caring society. There can be no doubts about the inevitability of the human rights regime as the foundation of a good value based society---For human rights take a backward step, if gender justice is not achieved. Women's equality in power sharing and active participation in decision making, including decision making in political process at all level will be ensured for the achievement of the goals of empowerment. The society must respond and change its attitude. Gender equality concerns each and every member of the society and forms the very basis of a just society. Human rights issues, which affect women in particular, play a vital role in maintaining the peace and prosperity of a just society.

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Durable solutions for protection of refugees and their correlation with social and economic rights

Ruchi Lal

Assistant Professor, IMS Law College, Noida, Utter Pradesh, India

Abstract
This paper scrutinizes the importance of three durable solutions i.e. local integration, voluntary repatriation and resettlement in addressing the protection need of refugees. A durable solution is in stark contrast with emergency relief which is meant only to satisfy the immediate physical wants of refugees for a short duration. The ultimate goal of any durable solution is to successfully re-integrate the refugees within the society. In this regard, the paper attempts to establish the correlation between the durable solutions and social and economic rights, and comes to the conclusion that the protection of the social and economic rights of refugees lie at the core of the each durable solution i.e. local integration in the country of asylum; resettlement in a third country; or voluntary repatriation to the country of origin, and indeed the respect for these entitlements will ensure better implementation of these durable solutions.

Keywords: refugees, durable solution and social and economic rights

Introduction
The protection of refugees must include the search for an appropriate durable solution to their plight. A durable solution is attained when refugees no longer have any physical, legal, social and economic protection needs that are related to their displacement and can resume their normal lives in a safe and healthy environment [1]. In this context it becomes imperative to define the term 'durable solution'. Goodwin-Gill has defined durable solution as 'a process of integration into a society which will successful and lasting only if it allows the refugee to attain a degree of self-sufficiency, to participate in the social and economic life of the community and to retain personal identity and integrity [2].' This definition emphasises upon integration as the foundation of any durable solution and is more in line with the contemporary human rights approach, rather than the traditional wisdom which recognised durable solution as a means to put an end to refugee flows [3].
Today there are three recognised durable solutions:
- Voluntary Repatriation
- Local Integration
- Resettlement in a third country

A) Voluntary Repatriation
Voluntary Repatriation is considered to be the most beneficial and desirable solution for the refugee crisis post-cold war era [4]. When the conditions in the country of origin are such that it permits return in safety and with dignity, return to home country is adjudged as the best solution as it enables refugees to resume their lives in a familiar setting under the protection and care of his country of origin. So voluntary return to one's own country may result in restoration of original conditions of living, restoration of citizenship and it also puts an end to pain and sufferings in exile [5]. It is regarded as a most desirable solution also for the reason that because of mass influx of refugees as is witnessed in countries like India, the other solutions of resettlement in third countries and the local integration in host countries do not seem to be a practical solution [6].

Voluntariness
For repatriation to be a lasting and sustainable solution, it is imperative that refugees must choose to return to their country of origin on their own accord without any physical, psychological, or material pressure [7]. This implies that refugees cannot be forced to return to their country of origin against their will that in their personal evaluation has not transformed and hence, still is similar to the circumstances that forced them to flee [8].
Despite the fact that the question of voluntary repatriation has not been directly dealt with in the 1951 Refugee Convention, it can be implied forthwith from the principle of *non-refoulement*, meaning thereby that the returning refugees against their will would amount to *refoulement*. An individual having a genuine fear of being persecuted in the country of origin is termed as a refugee and according to the concept of *non- refoulement* such a person cannot be forced to repatriate [9].

Legal Basis for Voluntary Repatriation
Article 13(2) of the UDHR provides that, 'everyone has a right to leave any country including his own and to return to his country.' This Article applies to every person including refugees. In normal circumstances this implies that an individual is at liberty to leave or, for that matter, return to his country of origin without any hindrances by the State. The right to return has been recognised and protected in other international human rights instruments as well. The 1951 Refugee Convention and the 1967 Protocol do not make any specific reference to voluntary repatriation. However, the cessation clauses of the 1951 Convention indirectly address the issue in the following manner [10]:
a) Article 1C (4) of the 1951 Convention specifies that refugee status will cease to operate if a refugee on his own accord re-establishes himself in the country or origin;
b) With respect to the 'ceased circumstances', the cessation clauses in Articles 1C (5) and 1C (6) provides that the effective conclusion of a voluntary repatriation programme

can signify that the conditions that prompted the flight of refugees have come to an end.

Repatriation may itself cause serious problems. Therefore, the General Assembly has extended the mandate of UNHCR and increasingly authorised UNHCR involvement in the rehabilitation and reintegration programmes [11]. Earlier, the viewpoint was that the role of UNHCR was till the time refugees reaches the country of origin but in the extended role, the UNHCR has the responsibility to monitor the safety and security of returned refugees and also to provide reintegration assistance to refugees [12].

Existing UNHCR Mandate for Voluntary Repatriation

The existing mandate of the UNHCR for voluntary repatriation relates to the following:

a) To ensure that the repatriation of refugees is voluntary in nature.
b) Encourage and assist in establishment of climate of national protection that are favourable to wilful return of refugees in safety and dignity.
c) Assist in the spontaneous voluntary repatriation [13] even when the circumstances are not appropriate for return.
d) To make suitable arrangements in cooperation with local NGOs and other humanitarian agencies for transportation and reception of returning refugees.
e) Monitor the status of returned refugees in the country of origin and supervene if it deems essential.
f) To support and enhance national legal and judicial capacity-building in order to better assist the states to deal with the reasons of refugee movements.
g) To generate funds from the donor community for providing active assistance to the local government in dealing with effective repatriation of returnees.
h) To operate as a channel for medium and long term rehabilitation support provided by NGOs, and other humanitarian agencies.

In the year 2014, 126,800 refugees voluntarily went back to their country of origin, majority of them with the assistance of UNHCR. However, this figure was significantly lower than 2013 when 414,600 refugees were reported to be voluntarily repatriated. The reason for this declining trend, according to UNHCR is wars, ethnic persecution and political instability prevailing around the world in last few years [14]. The countries that reported the largest numbers of repatriations included the Democratic Republic of the Congo (25,200), Mali (21,000), Afghanistan (17,800), Angola (14,300), Sudan (13,100), Côte d'Ivoire (12, 400), Iraq (10,900), and Rwanda (5,800). Together these eight countries constituted 95 per cent of total voluntary repatriation during the 2014 [15].

Voluntary repatriation will continue to be a preferred durable solution but its success is mostly dependent upon the willingness of the country of origin that refugees should return and also on the free and informed decision of the refugees themselves. However, there are some important aspects, which are to be taken care of before repatriation of refugees. Firstly the return has to be in safety and with dignity [16]. Return in safety not only means physical security but also freedom from any kind or persecution or punishment. Return with dignity, on the other hand, signifies acceptance of the refugees by the national authorities and local community so that rights of the returnees are fully restored and protected. Secondly, it is important to ensure that repatriation is voluntary in character. The third important aspect is to monitor the guarantees given to returnees by the country of origin. In this regard, UNHCR plays an important role, apart from mobilizing funds from donors to provide reintegration assistance both to the returned refugees as well as to the country of origin.

B) Local Integration

Barbara Harrell-Bond has defined local integration as creating circumstances in which both the local population of the country of asylum and the refugees can co-exist participating in the social and economic life of country with no bigger friction than that which already subsists within the host community [17].

As a durable solution, local integration has three inter related aspects [18]:

a) It's a *legal process* where asylum country confer upon refugees increasingly vast range of rights like right to work, to take up other income generating activities, right to property, freedom of movement, right to education etc. Here, in due course, there is also a possibility of conferring upon refugees the permanent residence rights and citizenship of the asylum country.
b) It's an *economic process* whereby refugees become financially independent and therefore, they increasingly become less dependent upon the aid and other humanitarian assistance by the asylum country and by other international organisations.
c) It is a *social and cultural process* through which the refugees become integrated within the local population participating in the social and cultural life of the host country free from any fear of discrimination or exploitation.

Legal basis for Local Integration

The concept of local integration as a durable solution has been recognised in Article 34 of the 1951 Refugee Convention which imposes an obligation upon the contracting states to, as far as possible, to facilitate the assimilation and naturalisation of refugees and to make every effort to expedite such proceedings. In 2005, the Executive Committee of the UNHCR in its conclusion No. 104 (LVI) emphasized the significance of local integration as a burden sharing activity and endorsed the role of UNHCR in providing assistance and support to the countries allowing refugees within their territories …and also in generating funds and other developmental support from the international community [19]. This conclusion also highlighted the need for the refugees to become self-reliant so facilitate local integration [20]. The 2005 UNHCR's Executive Committee Conclusion on Local Integration also highlighted the importance of legal, economic and social aspects of local integration which are together essential for enabling refugees to successfully integrate into the host community [21].

Very few countries today publish data on naturalized refugees. In the year 2014, only 27 countries reported naturalisation of refugees due to which it becomes difficult to determine the extent of local integration. In the year 2014, 27 countries reported the according of citizenship to 32,100 refugees, particularly in Canada (27,200), France (2,400), Tanzania (1,500), and Ireland (560) [22].

C) Resettlement

Resettlement is a process of screening and transportation of refugees from the country of first asylum to a third country which has consented to provide them with permanent residency

status. The resettlement country should provide to such refugees protection against *refoulement* and also confer upon them similar rights as is enjoyed by the citizens of the country [23].

According to Ropert Colville, 'resettlement is geared to the special needs of an individual whose life, liberty, health or fundamental human rights are in jeopardy in the country where he or she first sought asylum. It is a highly complex, organised process that involves identifying those in urgent need and finding a suitable country for them [24].'

Refugees often have to suffer gross violation of human rights not only in the country of origin but also in the country where they seek asylum. Their life, liberty, freedom may be threatened in the country of refuge often making their stay unsustainable [25]. Furthermore, the government of the host country maybe incapable or unwilling to provide effective protection to refugees and to tackle their special protection problems. In such a situation, judicious resettlement of refugees to a third country becomes an appropriate solution to address their protection needs.

Resettlement within UNHCR's mandate

UNHCR has recognized resettlement as a sensible means to provide permanent solution to the problems of refugees whose life, liberty, safety, health or human rights are in danger in the country of first asylum [26].

Under the patronage of UNHCR resettlement has three core functions [27].

a) It is a mechanism to provide protection and to safeguard those refugees whose life, liberty, safety, health or other fundamental rights are at danger in the country of asylum.
b) Secondly, along with voluntary repatriation and local integration, it is durable solution for refugees to address their varied protection needs, to reinstate their safety and dignity, and also to provide them a secured future.
c) Thirdly, it is a mechanism for international burden-responsibility sharing, whereby States support each other in keeping with the spirit of international solidarity ensuring that the impact of refugee influxes is not solely borne by country of first asylum.

Agenda for Protection and Convention Plus

Fresh impetus and wider perspective was provided to resettlement with the adoption of the *Agenda for Protection* in 2002 and the Convention Plus initiative in 2004.

The *Agenda for Protection* emphasised upon the extension of resettlement prospects by [28]:

a) Increasing the number of countries offering resettlement;
b) Developing resettlement as a tool for assisting as many refugees as possible;
c) Enhancing capacity building initiatives with new resettlement countries;
d) persuading the countries to enhance their resettlement quotas;
e) To enlarge the absorption of the varied refugee communities; and
f) To put in place more flexile resettlement criteria.

The *Agenda for Protection* provides a valuable outline to collaborate the efforts of Nation States, NGOs, UNHCR and other humanitarian agencies on the issue of resolving refugee crisis [29] Of specific relevance to resettlement is Goal 5 of the Agenda, which calls for the expansion of resettlement opportunities, and more efficient use of resettlement both as a protection tool and as a durable solution [30]. Goal 3 of the Agenda summons the States and UNHCR to utilize resettlement as a means of responsibility and burden-sharing. The obligations of States to comply with the objectives and to cooperate with UNHCR in attaining the goals continue to keep the *Agenda for Protection* alive as an essential soliciting and advocacy instrument.

Convention Plus was an initiative of the UNHCR intended to improve and facilitate the international protection and effective resolution of refugee problems by way of multilateral special agreements. One of the primary subjects for such agreements is the use of resettlement as a means of protection, a durable solution and a fundamental form of burden-sharing [31]. Developing on the experiences of the Working Group on Resettlement as well as the prior endeavours of resettlement partners, the Multilateral Framework of Understandings on Resettlement [32] was evolved to provide direction to the tackle to specific situations and to facilitate the strategic use of resettlement [33].

In the year 2014, UNHCR, reported that there were only 27 countries in the world providing for opportunities of resettlement to refugees [34]. There were a total of 103,800 refugees in 2014 whose file UNHCR presented for consideration to different countries. Those to benefit from the resettlement efforts of UNHCR were mainly from Syria, Democratic Republic of the Congo, Myanmar, Iraq, and Somalia [35]. Under its resettlement programme, the United States of America continued to admit the largest number of refugees worldwide with 73,000 resettlement reported during 2014 which was factually more than two-thirds (70%) of total resettlement around the world.

Correlation with Social and Economic Rights

For refugees, whatever is their background and wherever they seek refuge, all too often they share a common predicament: their human rights are in jeopardy, and they face practical problems in accessing the social and economic entitlements [36]. The denial or lack of access to these rights can impede the process of finding an effective durable solution. In fact, the success and sustainability of each durable solution requires that refugees are able to enjoy social and economic rights.

Voluntary repatriation is a preferred long-term solution for the majority of refugees in the world. However, in order to be a viable solution it is imperative that the return of refugees to the country of origin should be safe, and social and economic conditions should be conducive for their reintegration.

In any refugee repatriation, assistance plays a very important role. The social and economic rights in terms means of right to work, housing, food, drinking water, health services, education have to be guaranteed. In this regard the UNHCR primarily promotes an integrated voluntary repatriation process comprising of 'four Rs'- repatriation, reintegration, rehabilitation, and reconstruction [37]. This approach requires coordinated efforts of both national government and humanitarian agencies, and also requires funds from donors. The overall aim of this coordinated approach is to develop a favourable social and economic environment to facilitate the sustainable voluntary repatriation [38]. In fact, voluntary repatriation to the country of origin will not be successful and will lead to renewed displacement of returnees if they are not able to rebuild their lives in a tenable manner, which means

they must be able to realize social and economic rights.

Where voluntary repatriation is not a viable option, conditions should be created in the asylum country for the integration of the refugees into the local community and facilitate their involvement in the social and economic verve of the country [39]. One of the critical ways of achieving this objective is by making accessible social and economic rights to refugees in the country of asylum.

Successful local integration necessitates that refugees are granted a progressively wider range of social and economic entitlements by the country of refuge that are broadly commensurate with those enjoyed by its citizens. These include access to adequate food and clean water, right to work and education, access to public relief and assistance, including health facilities etc. Realization of family unity is another important social aspect of local integration.

Denial of social and economic rights can result in a refugee population failing to integrate for generations [40]. Refugees, who are not able to enjoy such fundamental rights, may have no choice but to move onwards of their own accord to another country where they believe they can realize their social and economic rights.

Thus, refugees who are denied social and economic rights, specifically employment and education, in a country of asylum will often look for resettlement to another country where they can realize these rights. Again for resettlement to be effectively implemented, it is essential that resettlement states guarantees a better standard of living to refugees, their families and dependants by ensuring access to social and economic entitlements similar to those enjoyed by nationals.

Hence, from above it is clear that the protection of the social and economic rights of refugees lie at the core of the each durable solution i.e. local integration in the country of asylum; resettlement in a third country; or voluntary repatriation to the country of origin, and indeed the respect for these entitlements will ensure better implementation of these durable solutions.

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