

12

The Need of “Y” and “Z” Generations Soft Skills Development in Higher Education as a Requirement of the Modern Job Market

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The population born in 1998-2003 is gradually entering into the labor market. According to the theory of generations, such a population is simultaneously concerned with Generations “Y” and “Z”. Employers will find it challenging to hire employees of these generations, as their values and attitudes have been formed under the influence of information technologies. Most domestic enterprises and organisations are not ready or able to work in the information society. On the other hand, already today, employers are experiencing a shortage of labor, because the main reasons for its increase are the rapid pace of population ageing and the high migration flows of the working population in Ukraine. This situation causes the intensity of employment of “Y” and “Z” Generations employees, despite

the fact that they have no work experience and developed professional skills, as evidenced by the results of research [8]. The representatives of the employers' companies have been noted that Generation “Y” had problems with practical (59%) and theoretical (36%) training, lack of important skills (32%), 72% of employers emphasised that this generation had higher salary expectations, 53% had exaggerated ideas about their abilities, and 51% had higher career expectations. Moreover, this indicates that the level of education does not form the skills and competencies required by employers today.

Based on the results of the study [16], only 44% of young Ukrainians are satisfied with the quality of education in Ukraine, as a whole, and only a third believe that Ukrainian education meets the needs of today's labor market. By comparison, a 2014 Eurobarometer survey found that 73% of EU youth agree that their education has given them the skills they need to find a job in accordance with their qualifications. In addition, in 2016, 59% of EU youth stated that their national education system has been adapted to today's job market.

The inevitable reform of higher education in Ukraine is driven by the need to bridge the gap between the labor market needs of workers and the skills and competences of workers and their actual availability. In particular, representatives of “Y” and “Z” Generations State that educational services do not comply with applicable standards (62%); by the way, there is a lack of logistical, financial and other provision of higher education institutions (60%), impossibility or formal completion of practice (52 %) [16]. Under these conditions, employers will be forced to invest in the training of future employees of “Y” and “Z” Generations, and the absence of the so-called soft skills will prevent “Y” and “Z” Generations to realise their work potential.

In today's context, the so-called hard skills, that is, straight professional skills go to a lower stage, as evidenced by the results of other studies. In particular, The Future of Jobs

Report 2018 [4] states that dynamic changes in the structure and content of the professions of the future will require the formation of soft skills in employees.

The achieving an employee-employer balance of needs requires further researches for the identification of the opportunities and acquirement of relevant skills and competencies in educational establishments [10].

Research Results and Discussion

Nowadays, The Generation Theory (Howe, Strauss) has been used as an effective mechanism for managing not only company personnel, but also certain social processes that are changing the future. Given theory is based on the study of values of a certain generation, determined by the socio-economic conditions in which the formation of personality and worldview of their representatives have been done. It is important to identify the characteristics of employers (Generation “X”) and employees (Generations “Y” and “Z”), as this will form the result of their interaction.

N. Howe and W. Strauss [12] has been called “X” Generation as Unknown Generation, Thirteenth Generation, Generation MTV. This generation was born in a period of cultural renewal. They are the children of baby boomers, and as a result, they have been taught little by little about independence, freedom, free expression of thoughts and ideas. The representatives of this generation are result oriented; they are less loyal to any public and private institutions. They have their own social ideals; their principles are freedom, honesty, and survival. This generation is characterised by a shift in family settings (strengthening family ties, a focus on changing childcare settings, and more) that is associated with social change in society. The technological revolution has been influenced into the formation of values of this society [12].

According to Mark Prensky [13], Generation “X” is a digital immigrant. In communications, they prefer text messages or email channels.

In scientific researches “Y” generation has been named the Millennials, Generation Why, the Generation Next, the Generation Zero, Network kids, etc. Taking into account the time limits of birth of this generation, then this population is 14-38 years old. This generation is different from others by the impact of globalisation, communication technologies, the strength of family ties, the ability to choose one's personal development, and cultural diversity to form its values. Mainly “Y” Generation has been formed under the influence of information and digital technologies and differs from previous settings with regard to special requirements for the workplace and career opportunities [11]. Generation “Y” believes that employment, especially permanent employment, has little impact on their lives compared to other generations (Hart, 2006) [5]. However, representatives of this generation demand high standards for organising a professional environment. They expect quick and positive feedback about their activities and painfully receive the critics of their work (Twenge & Campbell, 2008) [6]. Self-centeredness, narcissism, selfishness and individualism are main personal characteristics of “Y” Generation. (Twenge, Konrath, Foster, Campbell & Bushman, 2008, Twenge Zhang, Im, 2004) [8]. Despite the following characteristics that characterise “Y” Generation, in solving problems they prefer teamwork, although they are goal-oriented, well-versed in multitasking and are able to use modern technologies in solving problems. (Shih & Allen, 2007) [15]. Millennials expect that in the workplace they will be given the opportunity of professional development, provided with the opportunity to learn throughout life and use their own talents and abilities (Kim et al., 2009, Morton, 2002) [9]. If these opportunities are not realised within a particular organisation, they can easily decide to change the job.

Therefore, representatives of this generation focus on: getting fast results; possibilities of own realisation; workplace comfort; flexible forms of employment; supporting informal style not only in communication but also in the work environment; entertainment components in any activity.

Nowadays “Z” Generation is started to form because people have been born after 2000 today are approximately 20 years old. This generation is also called Internet Generation, Generation M (multitasking), “Homelanders”). The period of their birth can be characterised by the instability of economic, social, political systems, disruption of the world order, increased incidents of terrorism, climate change, and the spread of violence. Generation “Z” differs from other by major manifestations of intolerance and the ability to perform and solve several tasks simultaneously like multitasking. This generation cannot imagine their lives without the information and digital technologies that shape their world and values, which can sometimes be a threat to their lives because they live in their own reality. It favours virtual communication, one-on-one training using information technology, and is knowledgeable in various fields as they gain knowledge from the Internet, provide visualisation and short, simple, interactive content [11].

The problem of forming soft skills in Generation “Z” is complicated by the specificity of their formation as individuals, which in the future will affect their attitude to employment and their competencies in the workplace. Since childhood, “Z” Generation has broad powers, which in the future will complicate their attitude to work and their own employment. From an infancy, they are considered “little people” and given the opportunity to make choices and make their own decisions. Thus, the research generation believes that their needs and desires will be prioritised anywhere [14].

In the context of this, it is worth noting the research of Barkley and other scientists on the willingness to work of “Z”

Generation. Analysing the requirements of employers, the following competencies have been identified: professionalism, communication skills, networking skills, enthusiasm, teamwork [3].

The main problem with Generation “Z” in the future may be low levels of emotional intelligence, that is, the ability to identify and manage one's own emotions and perceive other people's emotions. This situation is due to communication using technologies that lack voice intonation and visual contact. Thus, it will prevent the establishment of personal communication in professional growth.

Nowadays, “Y” and “Z” Generations, in addition to the professional ones, must possess so-called soft skills that are increasingly important for employers. Recent studies on future professional skills and abilities indicate a change in the demand for professions in the future. Demand for such professions as data analyst, software developer, e-commerce and social media specialist will be increasing in the nearest future. Demand has been also expected to increase for professionals with largely soft skills - customer service workers, sales and marketing specialists, training and development, culture, organisational development specialists, innovation managers [4].

Thus, in the future, most professions will require the formation of soft skills in employees. In addition, even today most companies have been guided by such competencies.

Wagner (2008), based on his conducted with US employers interview, has been formed the following seven survival skills:

- Critical Thinking and Problem Solving;
- Collaboration Across Networks and Leading by Influence;
- Agility and Adaptability);
- Initiative and Entrepreneurship;

- Assessing and Analysing Information;
- Curiosity and Imagination;
- Effective Oral and Written Communication) [17].

The Council of Industry and Higher Education (England) conducted a survey of 233 employers, which found that employers favoured so-called soft skills and non-professional skills. According to the study, the following skills are:

- communication skills (88%),
- team work (85%),
- honesty (81%),
- intellectual abilities (81%),
- confidence (80%),
- character (75%),
- planning and organisation skills (74%),
- writing skills (71%),
- numerical skills (68%),
- analysis and decision making skills (67%).

This survey also found that 60% of employers find it important to have a relevant diploma and 61% consider IT skills [2].

A Google internal survey shows that multidisciplinary teams that used soft skills in their collaboration have been the most effective one. The following skills like communication, understanding of others and responsive leadership have also been identified as important factors in Google's success [1].

An analysis of higher education bachelor's degree programs of in Ukraine showed that there are soft skills that have been formed during the educational process in their applicants (tabl. 12.1).

Soft competencies in “Economics” and “Finance, Banking and Insurance” have been most fully represented. In most educational programs, there is a problem with the formation of such a general competence as initiative and entrepreneurship, which is a component of leadership.

Table 12.1 The matrix of soft skills in educational programs of higher education in Ukraine according to Wagner

Bachelor education programs	List of general (soft) competencies						
	critical thinking and problem solving	cooperation	adaptability	effective oral and written communication	initiative and enterprise	obtaining and analyzing of information	imagination and interest
Economics	+	+	+	+	+	+	+
Accounting and taxation	+	+		+		+	
Finance, banking and insurance	+	+	+	+	+	+	+

Management	+	+	+	+		+	+
Marketing	+	+	+	+		+	
Law	+	+	+	+		+	
Computer Sciences and Information Technologies	+	+	+	+		+	+

Today digitalisation of all areas of life is gaining so fast – cloud technologies, development of BigData collection and analysis methods, crowdsourcing, biotechnology, drones and medicine based on 3D printing, crypto currency, Blockchain technologies etc. In modern world, the industrial revolution 4.0 dominates, the consequences of which are difficult to predict, but it can be argued that new demands will be put on the skills of workers, which will lead to the elimination of existing ones (tabl.12.2).

It is also necessary to take into account different levels of countries development, mainly in most of the “second or fourth” countries even the achievement of the second and third revolutions is only partially implemented, so their Industry 4.0 will be qualitatively different from the countries of the “golden billion”. Thus, it is obvious that the requirements for the skills

of workers in Ukraine and in the G7 countries will differ significantly. At present, it can only be argued that there will be a deepening of the differentiation of countries in terms of digitalisation.

Table 12.2. Comparing skills demand, 2018 vs. 2022, top ten

2018	Trending, 2022	Declining, 2022
Analytical thinking and innovation	Analytical thinking and innovation	Manual dexterity, endurance and precision
Complex problem-solving	Active learning and learning strategies	Memory, verbal, auditory and spatial abilities
Critical thinking and analysis	Creativity, originality and initiative	Management of financial, material resources
Active learning and learning strategies	Technology design and programming	Technology installation and maintenance
Creativity, originality and initiative	Critical thinking and analysis	Reading, writing, math and active listening
Attention to detail, trustworthiness	Complex problem-solving	Management of personnel
Emotional intelligence	Leadership and social influence	Quality control and safety awareness
Reasoning, problem-solving and ideation	Emotional intelligence	Coordination and time management
Leadership and social influence	Reasoning, problem-solving and ideation	Visual, auditory and speech abilities
Coordination and time management	Systems analysis and evaluation	Technology use, monitoring and control

Source: Future of Jobs Survey 2018, World Economic Forum.

Conclusion

The conducted critical analysis of the basic features conditions formation of "Y" and "Z" Generations shows that skills and competences must be taken into account during the process of study in higher education institutions, and representatives of Generation "Y" and "Z" must be aware of the need to obtain not only professional skills but also soft one.

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13

Additional Thematization in Zuko Džumhur's Travelogues and Potential Risks in the Interpretation of Travel Literature

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Particularly recent travelogues are often travelogues or memoirs that, only through the prism of travelogues, speak on the themes of home, freedom, conditions of displacement, ethnicity and race, gender and sexuality, etc. (Cho, 2015). Certainly, travel narrators (or characters who are the bearers of the same views and ideas) in such travelogues are not tourists, but travellers, liaisons, and explorers of different cultures and climates. Because of all this, in Postmodernism, travelogues have finally been approached with a dose of more significant respect and always new possibilities of interpretation and today it's even possible to read travelogues from the Universe (Mateo: 2016). Namely, in the Postmodern it is clear that travel literature has three dominant paradigms: identity shaping, identity exploration, and identity transmission (Lipski, 2018). For all that, the interpretation of travelogues and travel literature in general carries a number of risks. Understanding the discourse of additional thematisation in travelogues is, certainly, one of the greatest risks among all these risks.

Additional thematisation is, therefore, an important factor in bringing travel writing discourse closer to the established procedures of standard literary genres, because different thematic units can be freely added to the basic structure of travel and the description of subjects. In this paper the method of narrative analysis is mostly used, but also the method of literary history and criticism.

In terms of procedures by which additional thematisation is realised in the text of travelogue, two types are distinguished: basic, the type that is upgraded with narrator's general thoughts and opinions (direct) and additional thematisation by figural procedures (indirect). The first most often appears as a smaller textual unity, legitimises the subject of travel writing discourse, turns the travel writing into an experiment and, expanding the basic theme of travel, brings it closer to hierarchically higher genres. The second, figural, process can appear anywhere in the text, and it spreads travel writing discourse as an narrator's observation, a joke, or a short story (Duda, 1998). Both types of additional thematisation in travel writing discourse can occur individually, but also in a complex form together. Thus, it is precisely by this "addition" of different thematic units that travelogue discourse is built and shaped, distinguishing travelogue as a unique literary form, ie as a mixture of "real" and "unreal", a text that describes real climates, places and people, but with a whole series of narrator digressions, a story and a clue to think, just as in a novel or a short story. Therefore, any detailed analysis of additional thematisation in travelogues and the procedures by which it is realised, also contributes to a better literary-theoretical understanding of what is a travelogue as a very hybrid genre. Thought and figural additional thematisation, both are one of the basic poetic distinctly dominant features of the complex of Zuko Džumhur's travel-narrative work. They represent a basic upgrade in terms of bringing Džumhur's work closer to the key literary and poetic features of other literary genres, especially narrative ones. Because it is through the processes of additional

thematisation that Džumhur's narrators, by introducing various topics, anecdotes, jokes, observations, etc, create the fictitious-factual world of the travelogue, thus separating it from the mere informative description of the place, which is only the basic geographical base a place of historical, present, but also imagined future travel stories. When an uninformed reader decides to read Džumhur's travelogues, he or she, probably, above all, expects clearly presented information about which specific countries and cities or, in the broadest sense, places Z. Džumhur visited and what is specifically, in the geographical-civilizational-cultural sense, covered by his travelogues. The answer to this question is very simple at first glance, even with a cursory glance at Džumhur's series of books and their titles: Letters from Asia, Letters from Africa and Europe, Obituary of a Bazaar, Pilgrimage... where the superficial idea, that one can easily enter the geographical-civilization-cultural trace of the author's travel stories, is only partly possible. If such a reader goes further in reading Džumhur's travel stories, the matter becomes even more complex: Mostar, Afghanistan, Stockholm, etc, but also Journey Through Nonsense, An Old Man Flies on the Carpet, A Laughing Sole, A Thousand and One Sadness... The intensity of the process of additional thematisation, therefore, in Džumhur's work, is most simply evidenced by the titles of his travelogues or travel stories, very rarely titled by the place that the narrator of that travelogue visits (Juksekkobblestone, Džambaz-Tepe), versus additionally thematised poetically shaped strong positions text – titles like: Black Shine Stone, Sand and Stars, Shoe Cleaners. Thus, Zuko Džumhur's travelogues are so rich in additional thematisation that, from time to time, the reader, seduced by the spells of storytelling, almost unconsciously gets "additionally thematised", forgetting the place where the narrator's story is actually told. Because in order to focus in the reading process only on where all of Džumhur's travel stories were written in only one travel book, it is almost inevitable to make targeted notes in the form of maps of places visited. And this “additionally thematised”

reader's impression of the story accompanied by inexhaustible, extremely rich additionally thematic units or only incidental jokes, anecdotes etc. are always stronger, more interesting and more beautiful than a mere place, city or country from which a travel story is told. It is therefore important to shed light on the appearance of additional thematisation in Zuko Džumhur's travelogues, especially since this "additionally" shows that travelogue is certainly the most hybrid genre, always ready to offer a basis for new and different readings and interpretations. In addition, by "adding various thematic units" in which the subject can prove to be a skilled writer or thinker (Duda, 1998), Džumhur's narrators leave the impression not only of skilled writers or thinkers, but of truly excellent connoisseurs of culture and climate history. Because it is precisely the processes of additional thematisation through the narrator's distinct information that Džumhur's travelogues become real small encyclopaedias of historical and cultural knowledge in general and interprets many historical processes, bringing travelogue discourse closer to historical texts. But only again within the limits of a well – balanced relationship between fiction and faction, where literature, by its definition, only tolerates to a certain extent, always keeping in mind its primary goal – talking and seducing by text. *Metaphorically understood, the journey is the path to truth, spiritual peace and immortality. The traveler who aspires to the infinite must move in the finite. Man's life is certainly a temptation of the unknown and uncertain, so to live means, in fact, to travel from the limited and cramped to the unlimited and the multitude.* (Pirić, 2015: 108)

Seen this way, the relationship between fiction and faction in Džumhur's additionally thematised travelogues, leads reader to continue his/her objective research into the authenticity of the "facts" of everything that Džumhur's narrators are often well informed about, or only to discover within literature the rich inexhaustible magic of travelogue discursiveness and enjoy that beauty.

Here, precisely through additional thematisation, a great risk arises in the understanding and interpretation of travelogues and travel literature: Who and how, in general, „talks“ in travelogues? Can narrators in travelogues be trusted, if we know that all literature is fiction, in fact? The answer to this question is clear – good travelogues do not exist to look for facts in them, but to enjoy the magic of reading.

Both figural and thought-additional thematisation in Zuko Džumhur's travelogues most often appear in a combined form, and it would be difficult, and in some cases impossible, to make a complete distinction between them, mostly because hybridity, as a general feature of Zuko Džumhur's travelogues, can hardly be molded and limit in any sense. However, thought-additional thematisation, as already mentioned, appears as a smaller textual unit, legitimises the subject of travel discourse, turns the travelogue into an experiment and expands the basic theme of travel, bringing it closer to hierarchically higher genres. Figural additional thematisation most often appears as an observation, a joke or a short story. In the work of Zuko Džumhur it can be generally established with certainty that the type of figural, unexpectedly expanded additional thematisation, which grows into a „story“, is the most significant form of additional thematisation of this author. On the other hand, considering that thought-additional thematisation also brings the travelogue hierarchically "higher genres" and turns the travelogue into a test, it could also be established that Zuko Džumhur's travel writing is dominated by a complex mixture of thought-figural additional thematisation in terms of approximation travel writing discourse and stories. Actually, their complexity is much more complex than might be expected in terms of their precise demarcation. Considering that the distinction between thought and figural additional thematisation is reflected in the length of the text (thought-one is usually a shorter discourse of additional thematisation, and figural is usually longer), according to this criterion, Z. Džumhur's work would speak of a distinctly dominant and

unexpectedly expanded figural additional thematisation in travel writing of this author, where the place of travel discourse is only an occasion for a additionallythematized story. But for a story that doesn't always have the same and expected framed sequence of narration, but a text in which different types of autonomous jokes appear again and again in relation to that story, autonomous observations and fig. At the same time, it was precisely these segments of additional thematisation in Džumhur's work that created a completely new phenomenon in the Bosnian and Herzegovinian and Bosniak travelogues, ie. they enabled his transition from the traditional marginal, to the utterly borderline modern literary genre.

Until Zuko Džumhur, the Bosnian travelogue - as with other peoples of the time - based its interest on didactic geographical descriptions, ethnographic reports or cultural-historical information. Džumhur was the first to realize that the complete globalization of the world makes such information superfluous, in the last resort that such an approach is already used by film and television, "so he moved the travelogue into the sphere of personal experience ...". On the other hand, Zuko Džumhur retained the success and passion of the "old travel writers", that curiosity without which a travel story would not be a story. (Ključanin, 2000)

Precisely because of this, Zuko Džumhur's travelogues are an extremely interesting subject of literary study, and to any attempt to understand them in the way of abstract generalisations and general, all-out conclusions, should be approached with great caution, just as to "idea of travelogue genre" in general. Nevertheless, one of the basic characteristics lies in the multiple and generally hybrid literary-formative procedures that Džumhur often uses completely differently from travelogue to travelogue (even when it comes to describing seemingly close spaces within one border area of the

same culture). Also, this is their accentuated, above all, narrative additional thematisation character. If it's noticed that his travelogues are accompanied by illustrations, the task of their general and abstract literary interpretation becomes even more difficult. So in an attempt to discover, at least the conditional general characteristics of Džumhur's travelogues, one could start analysing Džumhur's text as a travelogue what it might imply, which, in turn, leads through their predominantly narratological analysis and analysis from the perspective of theory of prose.

In that sense, if Džumhur's travelogues were to be classified in a certain literary genre at all, they would certainly represent small, extremely additionally thematised travelogues of an intimate character, texts of a fictitious-factual nature, emphasised educational orientation with an abundance of historical data. But these discourses are also full of „bizarre and unusual details”, almost regularly accompanied by humour. Namely, these texts are achieved in the manner of visible admixtures of multifaceted influences of all other "mixed types": art reports, biographies, autobiographies, memoirs, diaries and essays, but partly also scientific prose and all the forms it implies (note, article, discussion, study, etc), as well as undoubted, "stable" (although today also more hybrid and more open) literary genres, such as short stories, even a poetry. These texts are achieved in the manner of visible admixtures of multifaceted influences of all other "mixed types": art reports, biographies, autobiographies, memoirs, diaries and essays, but partly also scientific prose and all the forms it implies (note, article, discussion, study, etc.), as well as undoubted, "stable" (although today also more hybrid and more open) literary genres, such as short stories, even a poetry.

It is in this approach to the interpretation of Džumhur's travelogues that the very dominant characteristic of his hybrid additionally thematised discourse is revealed, where the travelogue text, and even if the title is first considered as a

strong position of the text, description of place and other culture is not the only goal, meaning just an occasion for the much more complex phenomenon of travel as a story, of intimate subjective storytelling, all of which is accomplished with a multitude of complex narrative procedures in building a travel narrative. But, nevertheless, despite the difficult distinction between thought and figural additional thematisation, some dominant patterns could be established in Zuko Džumhur's travelogues:

- Additional thematisation in “history” of places that are the subject of travel discourse;
- Additional thematisation in descriptions of various famous historical figures, but seen in a new, different perspective of travelogue narrators;
- Additional thematisation in stories from the childhood of travelogue narrators;
- Additional thematisation as various short jokes, mostly humorous content.

All these additional-thematic phenomena are realised in such a way that Zuko Džumhur's travelogues are ultimately very complex travelogues, as it was emphasised, so they should be approached carefully, whereby the appearance of intermediality, ie the relationship between drawing and text can also be considered as additional thematisation phenomenon.

All this clearly shows that travelogues and travel literature in general, precisely because of its fictitious-factual character, must be approached with a dose of great caution, and that the best travelogues are, just like Zuko Džumhur's travelogues, in fact, the least geographical descriptions of places and events, and the most travel stories with all characteristics of prose in general. This paper wanted to show how highly hybrid and complex travelogues are, full of risks and challenges, both, in terms of genre orientation, but also in

terms of understanding and interpreting additional thematisation in them.

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14

Innovative Approaches to Curricula Modernisation for Master's Degree on the Fablab Platform

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The dynamic development of the economy in a post-industrial society poses new challenges to higher education, such as the market demand for highly skilled personnel, ensuring a high level of focus on innovation in education, rapid adaptation of curricula to the pace of industrial technology, automation and information networks development.

The education system must respond foremost to the challenges posed by technological factors and information technology. Only strong and coherent education-science-industry cooperation will make it possible to realise an innovative model of the modern economy development. One of the important problems of modernising higher technical education in a dynamic environment is the improvement of

innovative infrastructure and activities of higher educational institutions (HEIs).

Research Results and Discussion

Among the major academic challenges facing higher education in Ukraine at present are the inadequacy of educational programs with current requirements and outdated pedagogical approaches of instructors [1].

Important challenges of the dynamic changes in the economy and industry are the rapid aging of the higher education material and technical support, the lack of resources for sufficient support of the educational process, which immediately affects the educational services quality, especially for technical and natural sciences [1; 2].

Incorporating innovative approaches into the educational process involves not only the use of innovative technologies in education, but also the collaboration between the educational institutions and industry. This means adapting new technologies and equipment to the educational process in accordance with a set of professional competencies demanded by the employer. Another important source of innovation is the continuing training of teachers, engineering and maintenance personnel in key professional areas, along with a major upgrade of the educational content, including e-learning platforms.

Higher technical education is closely related to the world of work, it should anticipate labor market trends and respond to them, modernise specialties, offer students the mastering of new competences and qualifications for their successful career growth under the market economy. Due to the introduction of the National Qualifications Framework in Ukraine, such updated specialties and qualifications should become more relevant to the labor market demand [3].

An important element of the curriculum is its adaptability and compliance [3]. These features entail the adaptation of curricula to students' particular requests, possibility of choosing an individual educational trajectory, obtaining of basic knowledge in entrepreneurship via inclusion into the curricula those disciplines that provide the development of entrepreneurial competencies; the use of flexible learning technologies that allow individualisation of the learning process.

Curricula and pedagogics should incorporate the latest technologies. FabLabs (fabrication laboratories) and similar models of low-cost, high-tech, easy-to-use laboratories are increasingly being linked to institutions that provide technical and vocational education at both the secondary and tertiary levels, particularly in the United States. These labs often are integrated into technical education curriculums, and teachers build lab time into their lesson plans [4].

Such training courses have been developed within the project of the Erasmus+ programme of the European Union «Development of a network infrastructure for youth innovation entrepreneurship support on Fablab platforms» (561536-EPP-1-2015-1-UK-EPPKA2-CBHE-JP, <http://fablab-erasmus.eu/>). The project is coordinated by the Buckinghamshire New University (United Kingdom, UK) and its aim is creation of conditions for the development of engineering creativity, involvement of young people in entrepreneurial activity and promotion of employment through the creation and development of a network infrastructure of interaction between universities, business and industry on the platforms of production laboratories.

The information about FabLab platforms as determinant of the Ukraine's economy innovative development has been published in the previous edition (monograph) of the II International Conference "Business Risk in Changing Dynamics of Global Village" (BRCDGV 2019) [5].

Studying of the developed courses will increase the graduate's competitiveness by providing them with an opportunity to master necessary competences and skills such as an ability to

generate new ideas and projects, implement and commercialise them on the basis of acquired and natural leadership qualities, intelligence, professional experience; the ability to organise the development of creative initiative, invention activities; work effectively as a team member etc.

The project aims at piloting the courses on at least 20 students in each of the FabLabs established in the Ternopil Ivan Puluj National Technical University (TNTU) [6], Simon Kuznets Kharkiv National University of Economics[7], Integrated Manufacturing Engineering Department and the Educational and Scientific Complex “Institute of Applied Systems Analysis” (IASA) of National Technical University of Ukraine “Kyiv Polytechnic University” [8], Belorussian National Technical University and Belorussian State University which were its participants.

The Master’s degree training (90 ECTS credits for education-professional programme and 120 ECTS credits for education-scientific programme which is the matter of discussion) is carried out on the basis of the Bachelor’s degree.

The focus is on professional training which includes both theoretical and practical training in general academic disciplines and professional oriented ones. Such a structure is presented in Figure 14.1.

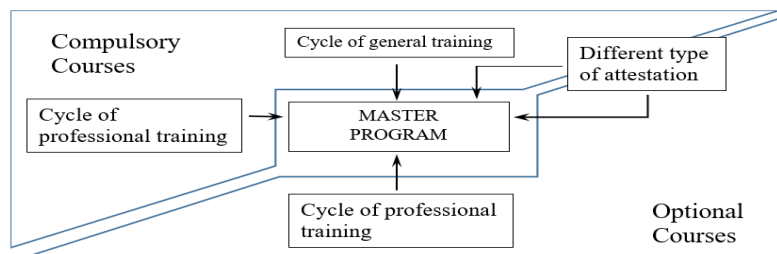


Figure 14.1. Structure of the educational process for the Master’s training (education-scientific programme for 133 “Industrial machinery engineering” specialty)

After dissemination events in September of 2019 two separate simultaneous pilot trainings were organised at the TNTU: the first – for 20 Master students majoring in “Industrial machinery engineering”, the second one – for 20 lifelong learning students of other specialties (generally these were students majoring in “Mechanical Engineering”, “Civil Engineering”, “Automobile Transport”, “Entrepreneurship, Trade and Stock-exchange activities”, “Finance, Banking and Insurance”).

All five courses developed within the project (Theory of Inventive Problem Solving, Rapid Prototyping and Manufacturing, 3D Design and Modelling, Project Management, Market Diffusion) were included to the curriculum of the 133 “Industrial machinery engineering” specialty as optional courses for the cycle of professional training. Every course was awarded 3 ECTS credits.

Simultaneously, e-component of the “Fablab training course” was offered at the e-learning platform of TNTUA Tutor (<http://dl.tntu.edu.ua/>) and is available to all students (ID 4806). Piloting versions of teaching materials were placed at the TNTU FabLab web-site as well (<https://fablab.tntu.edu.ua/training/>, Figure 14.2).

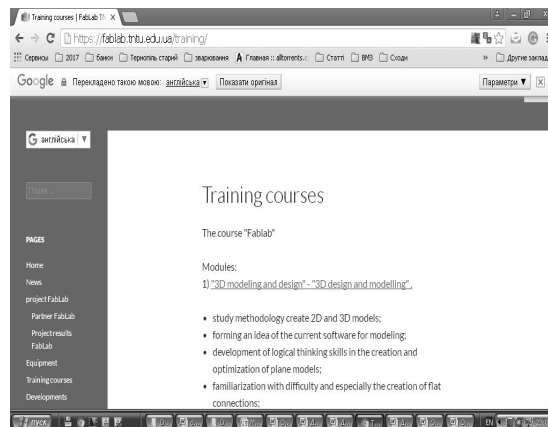


Figure 14.2. Fablab training courses at the TNTU Fablab web-site

Each training package includes course description, learning outcomes, course content, recommended reading, planned learning activities and teaching methods, assessment methods, criteria and procedure in its structure.

The content of the courses is as follows:

1) *“Theory of Inventive Problem Solving”*:

1. General information about the Theory of inventive problem solving.
2. Methods of contradiction resolution.
3. Laws of technical system evolution.
4. Substance-fields analysis.
5. Algorithm of inventive problem solving.

After successful completion of this course, students will able to: use the laws of creative thinking, the basic methods of activating the trial-and-error method, methods for overcoming the psychological inertia of thinking; understand the methodology of modern methods of finding the engineering solutions and be able to use the algorithm for inventive problem solving in practice; understand the typical methods of engineering contradiction resolution; physical, chemical, geometric effects used in physical contradiction resolution; standards of inventive problem solving; know the principles of technical systems development and the main problems accompanying each of the system development stages and the ways of solving these problems; use the methods of system analysis and synthesis for practical design tasks; use the methods of substance-fields analysis, to be able to study the structure of a technical system; understand the main types of information tools to support the process of inventive problems solving, the principles of using the bases of methods for contradiction elimination, standard solutions, indexes of effects; understand the method of using the algorithm for inventive problems solving for the development of new innovative technical objects.

2) *“Rapid Prototyping and Manufacturing”*:

1. Technologies of milling and laser cutting.

2. Technologies of additive manufacturing.
3. Distinctions between an additive manufacturing and CNC machining.
4. Examples of wares of additive production.
5. Materials for an additive production.
6. Chart of processes of additive production.
7. Application of additive manufacturing.
8. Advantages of additive manufacturing.
9. Structural elements of fused deposition modeling 3D-printers.
10. Quality of 3D-printing.

After successful completion of this course, students will be able to: use the basic technologies of rapid manufacturing of models and their elements; use technical devices and equipment for rapid prototyping; understand materials and diagram of additive manufacturing processes, application areas and advantages of additive manufacturing; know the main components of 3D printers using FDM technology; analyse factors that affect the quality of 3D printing.

3) “3D Design and Modelling”:

1. 2D-modeling.
 - 1.1. Software review for creation 2D-models.
 - 1.2. Creation of simple 2D-models.
 - 1.3. Creation of complex 2D-models.
 - 1.4. Features of modeling objects for engraving and cutting.
 - 1.5. Transition from 2D-models to 3D-models.
2. 3D-modeling.
 - 2.1. Software review for creating 3D models.
 - 2.2. Creation of simple 3D-models.
 - 2.3. Creation of complex 3D-models.

2.4. Recommendations for improving the quality of 3D-printing.

3. 3 D scanning and recognition.

3.1. Principles of 3D Scanners.

3.2. Scanning of 3D-objects.

After successful completion of this course, students will able to: create two-dimensional models; create essentially three-dimensional objects with the help of subtractive production technologies, to be able to represent an object in the form of an ensemble of its faces with various connections; construct three-dimensional models in modern CAD systems; work with slicers; eliminate the discrepancy between the geometry of three-dimensional virtual and material models in additive production, and also the features of building spatial connections; scan 3D objects.

4) *“FABLAB Project Management”*:

1. Project management methodologies.

2. The traditional, sequential methodologies:

2.1. Waterfall.

2.2. Critical Chain / Path Method.

3. The Agile Family:

3.1. Agile Methodology.

3.2. Scrum methodology.

3.3. Kanban.

4. The Change Management Methodologies:

4.1. Event Chain Methodology (ECM).

4.2. Extreme Project Management (XPM).

5. The Process-Based Methodologies:

5.1. Lean.

5.2. Six Sigma.

5.3. Lean Six Sigma.

6. Other Methodologies:

6.1. PRiSM.

6.2. Benefits Realisation.

After successful completion of this course, students will be able to: critically evaluate approaches to the problem solving from the problem definition, through selection of a solution method up to the evaluation of the final product; employ co-operative and synergistic approaches to team work, problem solving and opportunity development; employ critical judgment, select tools, methodologies, key theories and critical discourses that are appropriate to particular innovative ideas; utilise creative risk taking and experimentation, learn from failure and understand the implications of the actions.

5) “Market Diffusion”:

1. The new product diffusion.

1.1. Diffusion of innovation and product life cycle.

1.2. Factors affecting diffusion of innovation.

1.3. Marketing research of consumer behaviour.

2. Business model and Marketing-Mix.

2.1. Business Model Canvas.

2.2. Marketing-Mix.

2.3. Extended Marketing-Mix models.

2.4. Marketing-Mix analysis example.

3. Digital marketing of Innovations.

3.1. Marketing analytics.

3.2. Digital marketing channels.

3.3. Social Media Marketing and Public Relations.

After successful completion of this course, students will be able to: explain the concepts, definitions, models of market diffusion and to understand the theories on diffusion of technology and innovation; analyse the consumer’s behaviour for product innovation and to

define target groups of buyers; develop a business model for an innovative product; develop the main elements of marketing mix and to plan marketing strategy; use of the digital marketing tools and services to analyse current and future trends in the application of technology to business.

In order to enhance the content, structure and mode of delivery of the FABLAB courses the following recommendations should be considered:

- 1) to use e-learning activities which are available at the e-learning platform;
- 2) to organise open access to best examples of students projects;
- 3) to conduct lectures with industrial engineers and successful entrepreneurs;
- 4) to provide students with the opportunity to master version of 3D CAD software.

Conclusion

The introduced Fablab courses cover the theoretical and practical basis, which provide students with the opportunity to create an idea, describe it according to the algorithm for inventive problems solving, develop a 3D model and prototype and commercialise it. 3D Technologies Center “FabLab” in TNTU is able to deliver academic disciplines with 15 ECTS credits in total.

TNTU’s FabLab Center and its courses provide necessary competences required for the Master’s degree. In addition, the projects implementation in the TNTU Fablab Center will make it possible to increase the competitiveness of the TNTU’s graduates in the labor market.

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250 Business Risk in Changing Dynamics of Global Village BRCDGV-2020

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15

The risk of equating and transforming the motif of a warrior into a motif of a victim in Bosnian literature

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MA Nermina Delić

From the beginning of mankind to the present day, there is no society that has not survived or remembered the war. Therefore, war is a topic close to every human being, and therefore a very common topic in literature. Through the holy books, the Iliad, medieval novels to contemporary literature, images of war and warriors are frequent thematic hubs of literary texts. That image of the warrior has changed since time immemorial. Through gods and deities who were directly involved in the conflict of good and evil, superior warriors with supernatural strength, important military leaders and heroes who won battles, in the literary texts of contemporary authors we increasingly find characters who are, unwillingly, drawn into war conflicts and are powerless to influence not only the events of the war, but also those that accompany them in peacetime. The character of a warrior is synonymous with heroism because his actions are directed towards the higher goals of ideology and nation, but it often happens that after the

war, that hero-warrior becomes a victim of a new time, misunderstood and socially marginalised.

In this paper, we will try to show how social circumstances create heroes, but also how they turn them into tragic, misunderstood characters who lost the meaning of their own existence after the war, by using the example of the two novels, *Silence* by Meša Selimović, which thematises World War II, and *Quiet Flows the Una* by Faruk Šehić, which deals with the last war in Bosnia and Herzegovina (1992-1995).

In theoretical terms, we will rely on the idea of Northrop Frye, presented in the study *Anatomy of Criticism*. In historical criticism, Frye classified all fictional works in five modes depending on the hero's power in relation to the environment, because according to this author there is a "general distinction between fictional works in which the hero is separated from society and those in which he is included in society" (Frye 2000: 48). The first mode is a myth - the hero is a divine being and his power is superior to others¹. The second mode is romance - the hero is a human being but superior to the others². The main plot in the romance is reduced to the fight between good and evil, which continues the mythical mode, only with the heroes who are mortal (in the mythical mode, the heroes are immortal). The third is the high-mimetic mode - the hero is the leader, usually the king, but he is one of us. He is, according to Frye, "a degree superior to other people" (Frye 2000: 46), but subject to natural order and social criticism. The fourth mode is low-mimetic - the hero's power is equal to ours, he is an ordinary man, "we react to his ordinary humanity and demand from the poet the same canons of credibility that we find in our own experience" (Frye 2000: 46). The last mode is ironic - the hero is intellectually and physically weaker than an

¹ Ares in Greek, or Mars in Roman mythology.

² Medieval knights and other national heroes

ordinary man from his environment. Frye states that irony arose from low-mimeticism, because it “takes life exactly as it sees it” (Frye 2000: 53).

In his study, Frye portrayed the functioning of mode and the decline of hero power in representative works of Western European literature, arguing that "European fictional literature has been constantly lowering its centre of gravity over the past fifteen centuries" (Frye 2000: 47). Frye believes that in literature we no longer encounter heroes who can in any way influence the events in which they find themselves. When they find themselves in a war, the great expectations of the heroes disappear, and their experiences are characteristic of the heroes of the low-mimetic tragedy. For it, Frye says, he portrays a hero who is “broken by the conflict between the inner and outer worlds, between reality in the imagination and reality established by some social consensus” (Frye 2000: 52). According to this author, literature in the last 150 years tends to have an ironic mode. There are no more heroes in it, and the weakening of the power of the heroes works to strengthen the external factors that limit the action of the individual. Although in contemporary literature we no longer encounter the first three modes, the last two are very present because they arise from the reality and experience of ordinary people.

We also relied on the notion of war in society and literature, presented by Lawrence LeShan in *The Psychology of War*. According to LeShan, there is a significant difference in the notion of war between mythic and sensory war. In the mythical notion of war, there is a clear distinction between good and bad, heroes on the side of good fight evil, and the victory of good will bring a better future for all. On the other hand, sensory war reveals just the opposite picture; there are no good and bad sides, no heroes, no winners.

The paper will use the example of two novels to show the character of a warrior, his relationship to society and the way in which the war experience affects their world and

relationships in it. Although these are novels in which the focus is on different war conflicts, different ideologies and beliefs, with different formations of warriors, these two novels have many similarities. Both deal with the issue of war experiences of heroes, ways of adapting to the post-war period, dealing with life circumstances after the war and the impossibility of establishing a normal life in peace.

Silence by Meša Selimović

Within the philosophical scheme of existentialism, Selimović combines a variety of thematic-motivic material of early stories and novels (from *Insulted Men*, *Foreign Lands*, *The Girl with Red Hair* to the larger forms such as *Silence* and *Mist and Moonlight*). The experience of war, the dilemmas imposed by war, moral greatness or human weakness and fear, then the psychological, ethical and physical destruction of the human being, the gap between the two decisions, are just some of the thematic hubs we encounter in the writer's sequence. This author achieves a much more significant success with his later novels *Death and the Dervish* and *The Fortress* because it seems that the readership and literary critics, at the time of publishing the novel *Silence*, were not yet mature enough for the poetic expression that Selimović had.

After early stories that did not leave a significant trace in the literature of that time, Selimović stopped writing. After the pause, which was the result of a kind of discouragement in Selimović caused by only a few critical texts with negative qualifications, this author has psychologically nuanced and condensed prose by which Selimović will be recognized. He published his first novel *Silence* in 1961, and his second novel *Mist and Moonlight* in 1965, and finally in 1966 he was ready to publish his masterpiece *Death and the Dervish*.

Selimović's novels, including the novel *Silence*, are far from an epic and mythical view of history. The historical background is present mainly as a framework for a personal

story. His novels are actually stories about personal experiences of historical conflicts and shifts. There are no heroes in his novels who believe in the meaning of history, there are only people, victims of migrations, wars and changes in power systems.

Meša Selimović's novels, including the novel *Silence*, are in fact stories about human suffering and losses. The hero of the novel *Silence*, a returnee from the Second World War, comes to newly liberated Belgrade, believing that a new world awaits him, eager to start a new life, but neither he nor the city are the same anymore. He is a returnee who, after the war traumas, needs calm and stability, but full of dilemmas, he can no longer find that stable point, which he once had.

"Selimović gradually forces his hero - a pre-war student, who was morally hardened by the war but also burdened by a simple, naively schematic illusion about the conditions and chances of tomorrow's life in freedom - to follow the logic of life reality, and to get rid of the cliché of ideological purity of partisan orthodoxy. The course of the novel, from beginning to end, goes in the direction of a descent into reality with a burden of 'accumulated sensitivity' that undergoes rational analysis and seeks reasons. Intimacy with the world and with people, on which the vision of the future life of Selimović's hero is based, is shown not as an open perspective, but as an illusion (Đuričković 1991: 204).

He is unadapted, unanchored, one of the literary constellations of "tired heroes", who carries his maladaptation as a mark. "Therefore, he is forced to seek new support, emotional and spiritual support and shield from aggressive reality, whether it is shown in the face of war or in mutual misunderstanding and emotional and psychological distance between him as a returnee from the war and individual residents of the city in peace, and even some war comrades" (Nedić 2010: 180).

Selimović sees wars and heroic ecstasies as defeats, they do not bring joy but misfortune and suffering, and his warrior is "a resigned, disappointed hero, abandoned by illusions and the joy of life" (Đuričković 1991: 33). Therefore, it is not surprising that his hero returns with relief to the front, to the war, where it seems to him that "people are simpler". The historical background of the novel is suppressed in favour of events that leave a mark on the human soul and his experience of the world, which deviates from the epic depiction of historical events, and thus confirms the value of this work and its relevance.

After being asked what he fought for in the war, after learning that "peace betrays the warrior's dream", this "defeated winner" tries to find answers to the questions: Who am I? Who are we? Who else? The further away from the space of war, the more the main character becomes aware of the "space of change caused by small changes", constantly opposing each other what he wants to be and what he is. The protagonist is accustomed to a state of war and a uniform that he perceives as a temporary state, followed by peace:

"I will take off my uniform once, this transitional state will not last forever. And I will be something else. Whatever it was, whatever it was, I will be something else. Not because of the uniform, of course. Now I am attached to her in a strange way, she has become the skin of a certain man who has lived only once. I will take off my skin, I may not even feel it" (Selimović, 2006: 98).

The compositional novel represents a circular path. The beginning is the arrival from the battlefield, and the unnamed character crosses to the end point, stopping at the key positions that represent the chronotopes of peace and war. Each of these points / stations / positions is also an opportunity for the main character to find the lost self. Therefore, the very end of the novel bears the symbolic title *Beginning* because it points to the circular path of the narrative subject. The goal is also the

beginning, which has a fateful meaning for the hero because the only thing left for him is silence, and that is the inner, empty, not calming.

It is also the basic idea of the *Silence* - the problem of silence, in which man is confronted exclusively with himself, in which he listens to his inner voices, seeks himself in his intimacy, re-examines his readiness for a new life. "In the 'terrible silence', which is not fully explained or seemingly literary enough until the very end of the novel, there is uncertainty, insecurity, skepticism, fear, melancholy, but also the need for intimacy, understanding, friendship and love." (Nedić 2010: 180).

It is a constant struggle between consciousness and conscience, a struggle between the former universal pain, sorrow in man as an individual and a universal struggle for happiness, for a better life, for the victory of the beautiful, the good in us, the victory over demons and evil forces.

"There is still death in our eyes, and fear in our blood, and caution in every vein, there are still unstoppable movements of attack and defence in us, and suddenly nothing is what it was. Now there is silence within us, silence and strain. We are unaccustomed, we get used to it." (Selimović, 2006: 56).

Therefore, it is not surprising that the character in the novel does not have a name. Our hero belongs nowhere, he is in the interspace, looking to the future, but he is still not separated from the past, because all he has is in his memory. And silence is an integral part of his solitude, his search. Silence is a state in which he does not speak, does not write, does not make noise, and where he can speak louder than words, to be alone, to meet himself (Delić 2016: 274). It is a construct, the sum of different properties that different identities carry with them. The identity of the main character in the novel *Silence* feels the trauma of not belonging precisely

because of the impossibility of a "new" identification. Two opposing images appear in front of him: one black, the one from the battlefield with the smell of blood and human flesh, bursts of gunfire and a constant effort to survive. Another blacker, leading to the unknown.

The unnamed hero confirms that every identity is woven from a piece of the past that, no matter how much they want to, is never erased to the end, and its own existential knot is solved by going back to the beginning, leaving readers with multiple interpretations of the novel's end.

Quiet Flows the Una by Faruk Šehić

Faruk Šehić is a Bosnian-Herzegovinian author, whom critics call the leader of the "overrun generation" of writers born in the 1970s, who were biographically and thematically marked by the wars and the collapse of the common state. For the novel *Quiet Flows the Una* has been awarded³ many times, and the novel received excellent reviews from literary critics and readers.

“*Quiet Flows the Una* a poetic novel in an alternative narrative, the so-called ‘War letter’ within the poetics of memory which transcends, conditionally speaking, into an apocryphal and parabolic book, but also the autobiography of the Bosnian-Herzegovinian ‘trampled’ man as a microcosm of humanity. Her text is an authentic and characteristic pantextual experience of immediate and historical reality that is lyrically documented in the archive of Mustafa Husar's past. This means that Husar's biography is both a book about one man and about all of humanity. ” (Raljevic 2014: 375)”

³ For the novel *Quiet Flows the Una*, Šehić he received the Meša Selimović Award for the best novel published in Bosnia and Herzegovina, Serbia, Croatia and Montenegro in 2011 and the European Union Prize for Literature - EUPL 2013.

The narrative in the novel is defined by a war experience that does not allow the main character Mustafa Husar to know his own identity exposed to continuous trauma, but also does not allow him complete assimilation with collective memory matrices that profile a whole new view of the past, construct the present and determine the future of the collective, and thus determine individual destinies (Pečenković, Delić 2018: 405). *The Quiet Flows the Una* is opened by the confession of the main character Mustafa Husar, who in a hypnotic dream turns into a search for his own identity, a search for truth, or a search for a way to overcome the trauma caused by the war:

"You already know that the timeline between pre-war and post-war life has broken, the discontinuity should have been bridged. I will have to become a time traveler and go back. Fly through the war, even though it is impossible, and overcome your own nausea. Find the timeline and connect it to this moment of the present. Because I want to be whole, at least in memory." (Šehić 2012: 21)

After the war in Bosnia and Herzegovina, Husar indulged in the hypnosis of an Indian fakir from the flying circus Ramajana from India, and thus entered the space of his memories. Hypnosis becomes a simulation by which, in contrast to Baudrillard's *simulacrum*, i.e. the loss of the real, *the restoration of the real* is achieved, as well as the experience of authentic reality and the articulation of reality. At the beginning of his confrontation with himself, Husar reveals his other self: "I am not me sometimes, I am Gargano. The other is truly me. The one from the shadows. The one from the water. Shy, fragile, powerless." (Šehić 2012: 7).

The identity of Mustafa Husar was destroyed by the war. He splits and divides into "astronauts, adventurers, explorers of rivers and seas" (Šehić 2012: 7) embodied in the character of Mustafa Husar and the mindless Gargan embodied in the wound of Mustafa Husar: "In my wound on the forearm

lives a figure opposite me - black Gargano, with sooty hair and fiery eyes, we sometimes exchange identities, but I don't like that, because the world seen through his glasses is even worse and darker than mine.”(Šehić 2012: 76) Like Stevenson's *Dr. Jekyll* and *Mr. Hyde*, Gargano and Husar experience different modes of being, fully aware of each other, with different memories and different pasts (Pečenković, Delić 2018: 406). It is not possible to separate Husar from Gargan (he is faithful to his own radical otherness), because the imaginary power and wealth of the double, the one in which the subject's strangeness and intimacy with himself takes place, are based on his immateriality, on the fact that he is and it remains a fantasy”(Baudrillard 1991: 99).

Gargano lives under Husar's skin. Gargano are wounds that Husar secretly caresses, fearing what will happen if they heal once. Husar does not want Gargano to disappear but to establish domination over him, stable and irreversible. His wounds remind him of his other face, another *self*:

"Reading Steven Hawking's *A Brief History of Time*, I knew that I must never meet my antipode, the one who is anti-self, and even if we do, we must not look each other in the eye at the same time, because then we will both disappear with great emptiness. energy in the air, similar to the explosion of a fireworks rocket. Apart from this, there was no other fear. Gargano is safe, deep in the wound on my forearm, there is no possibility that we will ever meet, because he is in my flesh, locked under seven surgical clasps.”(Šehić 2012: 96.)

The narrative shifts from idyllic images of childhood to horrific scenes from the war allowing for the intertwining of history and imagination, reality and fantastic images. The currents and currents of the novel are united in one book by the river Una (Raljević 2014: 376). "There is no man from Una who is not able to look at the water for hours. When I look at the water, I forget about my existence, and it seems to me that I am disembodied, light and enchanted.” (Šehić 2012: 57) The

narration in the novel is built on a strong opposition between the present and the past, nature and culture, this now and the former self, because Husar emphasizes that his biography is just a series of coincidences “many of which I chose, some coincidences they chose me (...) I am one, and there are thousands of us. Unbreakable and broken”(Šehić 2012: 11).

The story of Mustafa Husar's life was initiated by the instinct of death, the disintegration of all previous possibilities and the transformation of reality into an illusion and vice versa. Husar is in a continuous state of discomfort. Restlessness and anxiety are condensed in monologues, war images and evocations of unpleasant physical and mental states (Pečenković, Delić 2018: 406). At the beginning of the narration, he emphasizes that his memories are dirty and disgusting, so ugly that they make it impossible for themselves: “Everything I remember makes me stop going back to the story (...) I know I can overcome that feeling of nausea and I know I can see everything in more beautiful colors, but then it seems to me that I will betray the desire for an uncompromising view of the past”(Šehić 2012: 9).

With poignant (auto) biographical, poetic and documentary testimony about unimaginable human crimes against man, humanity and humanity, the book *Quiet Flows the Una* writes a penetrating cry directed against the idea of war and any kind of terror. Before the war, Husar was a student, a gentleman, a lover of film and literature (Šehić 2012: 11). During the war, he found himself in the *womb* of death and alienated himself from life. He became part of a machine that destroyed life, and thus his own. He was both an executioner and a victim (Raljević 2014: 380). On this occasion, Mustafa Husar is in the space of a low-mimetic, even on the border of an ironic hero. The enemy is an ordinary man like him, and death is not heroic and sacred, but terrible and futile.

"People, I must admit, I killed a man, not just one, but several. When you shoot, then you have no load. Admittedly, it

doesn't hit every bullet, but some certainly get to the target. (...) I killed three people, and one autonomist. It's like some drug that knocks you off your feet, and then suddenly lifts you up with a rocket thrust, when it lifts you up you think you're on the roof of the world. I turned living bodies into shadows. (...) My conscience does not bite because of these people, whom I now imagine as ghostly portraits in photographs, where their heads are cut out with scissors. In a little while he will go from memory to darkness. (...) I killed because I wanted to survive Chaos. And because I did not know of any other way to survive "(Šehić 2012: 11-13).

Mustafa Husar is not waging war in the name of a ruler to be defended, nor in the name of higher goals. He is waging war to survive. Acceptance of committed crimes in this context can be understood as a liberating reaction to the committed crime of society, as a "negation of its negation of the individual" (Biti 2005: 41). Narrative overcoming of trauma is possible only with the help of creating a narrative which, "to the extent that by bridging the immanent rift (between oneself and the other, past and present, truth and delusion, participants and observers) works on identity formation" (Biti 2005: 23) and thus itself becomes an *act of witnessing*.

The "War Letter" of the Quiet Flows the Una confronts man with the truth, that is, with the truths of the possible worlds of man as the creator of his world. Husar's biography is both a book about one and many. It is an authentic and specific pantextual experience of immediate and historical reality recorded by memory, expressed in Aristotelian terms, as a scribe of the soul. He finally becomes whole. At the end of the novel, Mustafa Husar becomes a part of everything, finds the truth in himself and the meaning he aspired to ("He merged with that crowd, infected with a sudden love for all these people. If he could, he would embrace the whole horizon, together with the motionless celestial bodies.")

Thus, war is read in the book *Quiet Flows the Una* as the most terrible weapon of self-destruction of man and humanity, as opposed to "dreams and art" (Šehić 2012: 217) as man's strongest weapon against the downfall of humanity. The book is, therefore, a new cry of freedom (Raljević 2014: 381).

Conclusion

War and warfare are as old as humanity, and since ancient times the vocation of warrior has been celebrated as the embodiment of honour, heroism, nobility and pride. On the other hand, we paradoxically connect war with destructive energy, killing and destroying all values. Applying Fry's theory of mode to war literature confirmed how the meaning of war and warriors has been lost in modern times. The dominance of the low-mimetic and ironic mode led to the degradation of the war, and thus to the image of soldiers who, from heroes (in the mythical, romance and high-mimetic mode), become victims.

In the example of two novels *Silence* and the *Quiet Flows the Una*, written almost half a century apart, in which the heroes are returnees from the war, the meaninglessness of the war and man's participation in it is shown. In both novels, the heroes have the characteristics of antiheroes or victims, although they are initially presented as heroes of a low-mimetic mode who will realise some of their ideals (collective and personal) after the war. The hero from the novel *Silence* expects an encounter with the city of youth, an encounter with some past life when he was happy and loved. He visits famous places, streets, parks, recognises "every wall, every space", everything is the same as before and - everything is different. There is no trace of what he thought awaited him, "what he wants", while Mustafa Husar hoped to complete his studies and live a peaceful life on the banks of the Una. The mythical picture of war sets expectations, and the reality of war and everything that comes with it is shown as the opposite that will exclude heroes from the real currents of post-war life and turn them into victims of the new time.

The analysis showed that the characters of the soldiers accepted the mission of the war as an obligation in the hope that they would rise above their low-ranking position, that is, that they would have the opportunity to realize their dreams after the war. The low-mimetic tragedy necessarily involves the exclusion of heroes, so in these war testimonies we have a whole series of isolation, exclusion and non-belonging. Both students, with great hopes and desires for the future, go to war, so that after the war, they can continue where they left off. However, during and after the war it happens by facing the reality of war and the horrors but also the illusions they nurtured. Their lives cannot continue where they left off. They are forced to start from the beginning. The discontinuity caused by the war could no longer be bridged. Both heroes are in search of the real truth about themselves, excluded from the environment, and the war experience has marked them for a lifetime. They are torn between reality and imagination, what they are and what they want to be, which makes them the personifications of the heroes of the low-mime tragedy because they fail in their intention.

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PART III

Law and contemporary legal Issues

16

Tourism and the Environment : A Global Village for Humanity

Vishrut Jain

Nowadays everywhere we look around us there is pollution. It is like a dark haze has descended upon us signalling doomsday. Indeed, climate change threatens to render the earth a desert in a few hundred years. This aspect shows through most significantly in the aspect of human travel, especially in the form of tourism. Out of all the countries in the world, the vast majority are carbon negative save one – Bhutan, which is not only carbon neutral but in fact, the only carbon negative country in the world. This means it produces more oxygen than it consumes. This reflects in its customs and traditions, such as planting trees on happy occasions, for instance, Bhutan celebrated the birth of its prince a few years ago by planting a hundred thousand trees. Bhutan zealously guards the prime position that it holds in world ecology. It realises that one of the main reasons for its status is the fact that the resident population is not very high. The fact of the matter is simply that the environment will not be able to sustain a population beyond a certain threshold. It is evident that nations with higher population densities have greater levels of pollution and environmental degradation. As much as resident population is a

factor, there is also the influx of tourists which has the potential to negatively impact the environment. Therefore, the floating population is restricted, and this is why it imposes a heavy daily fee on every tourist. Recently, it extended this fee to include Indians, which they were hitherto exempt from paying. These are nothing but the palpable effects of the linkages between tourism and the environment. When we take a similar line of thought further, we realise that tourism extends beyond the traditional definition of floating population to include another category, being that of migrant population, such as refugees, who are a form of 'permanent tourists', whereby floating population converts into resident population, and this is an issue which must also be studied in this context. Even the Dalai Lama, who is the world's most famous refugee, has some surprising views on immigration. In a speech last year he said that refugees to the European Union should ultimately return home, adding that "Europe is for Europeans", a statement he stood by when challenged. "European countries should take these refugees and give them education and training, and the aim is return to their own land with certain skills," he said. One imagines this is because he believes that such overpopulation will negatively affect the environment. Mahatma Gandhi said, "There are enough resources for everyone's need but not for anybody's greed". Some amount of tourism is sustainable and essential for global harmony by way of exchange of ideas through travel, but beyond that the sole purpose of tourism is profit, and therefore it is a form of greed. Such type of tourism must be avoided, because a nation's resources are limited only to its needs.

Positive Impact of Tourism on Indian Economy and Environment

1. Positive effect on economy

Even if we look at hundreds of negative impacts that the excessive tourism might be causing, we can surely not ignore

the way in which it has been helping us to boost the Indian Economy and sustain it too. It helps in creating income and employment and has emerged as an important instrument for the same. Not just this, such tourism helps in generating employment, establishing small businesses, eradicating poverty and promoting sustainable human development. Statistically, Tourism contributes around 6.23% of the National GDP. Also, it is notable that around 8.78% of the total employment in India and almost 20 million people are engaged in the tourism industry.

Tourism is an extremely important source to accumulate foreign exchange in India. Accumulation of foreign exchange is an important aspect of any economy as it impacts the Balance of payment of the country. The tourism industry in India generated about US\$100 billion in 2008 and that is expected to increase to US\$275.5 billion by 2018 at a 9.4% annual growth rate. Not just this, preservation of National Heritage and Environment is another major thing that Tourism helps in promoting. The places that are of historical importance are often declared as heritage sites for the purpose of tourism. The leading example of such preservation of national heritage includes Taj Mahal, Qutub Minar, Ellora Caves etc. Had tourism not been the reason, they would have been decayed and no efforts would have been taken by the Government for its preservation. In addition to this, a lot of endangered species get extinct because they lose their natural habitat and in the name of tourism, natural habitats of many endangered species are conserved.

Other than just accumulating wealth, boosting the economy and generating employment, Tourism tends to develop the infrastructure of the nation and develops the multiple use infrastructure that benefits the host community, including various means of transport, healthcare facilities and sports centres. Also various hotels and high end restaurants that cater to foreign visitors. The development of infrastructure has

in turn induced the development of other directly productive activities.

Tourism also promotes peace and stability in the social structure of a nation. According to Honey and Gilpin (2009), the tourism sector will prove to be fruitful in encouraging peace and stability in the developing country like India by providing jobs, generating income, diversifying the economy, protecting the environment, and promoting cross-cultural awareness. But the major obstruction in the full utilisation of this sector are lack of regulatory framework and mechanism to reduce crime and corruption.

1. Positive effect on environment

When it is claimed that Tourism boosts the Indian Economy, it does that in various ways through various means. It gives direct financial contribution that is utilised to protect the sensitive areas and also conserve the habitat of various endangered species. The revenue generated from the ticket fee of various parks etc and other similar sources are invested to protect and manage the areas that are endangered or sensitive from an environmental point of view. Special fees for park operations or conservation activities can be collected from tourists or tour operators.

The revenue generated through entry fee is the direct way in which the government earns and collects the money from Tourism. There are numerous indirect and far reaching ways in which the Government generates money which is not related to any park or conservation area. These include licence fee for various adventure sports like rafting, any activity that is hazardous to the environment like Fishing, User fees and taxes on sales or rental of recreation equipment. The revenue generated through these sources are used to manage natural resources and devise and afford methods that help in optimum utilisation of resources. Other than this, these funds are utilised

for overall conservation programs and activities, such as park ranger salaries and park maintenance.

Sound environmental management of tourism facilities and especially hotels can increase the benefits to the natural environment. By planning early for tourism development, damaging and expensive mistakes can be prevented, avoiding the gradual deterioration of environmental assets significant to tourism. The development of tourism has moved the Indian government towards this direction leading to improved environmental management.

It will be very naïve to ignore the fact that Government alone cannot conserve or preserve the environment and the people play an important role in that and there has to be a collective responsibility from both the sides. Tourism makes people appreciate the importance of the environment and significantly spread the awareness regarding the problems that are arising and how the entire ecosystem is getting disturbed and the pollution is having a lasting impact. It brings people closer to the environment and it heightens the awareness among the people about how important the environment is for survival and also promotes environmentally conscious behaviour and activities to preserve the environment.

Protection and Preservation of Environment: Tourism can significantly contribute to environmental protection, conservation and restoration of biological diversity and sustainable use of natural resources. Because of their attractiveness, pristine sites and natural areas are identified as valuable and the need to keep the attraction alive can lead to creation of national parks and wildlife parks. In India, new laws and regulations have been enacted to preserve the forest and to protect native species. The coral reefs around the coastal areas and the marine life that depend on them for survival are also protected.

But irrespective of all the positive impacts on the Indian economy that have been stated, it is almost impossible to ignore the kind of damage it is causing to the environment. These damages are not really inevitable and can be prevented if enough adequate steps are taken towards a sustainable way of tourism. There has to be necessarily optimum utilisation of resources and no wastage of any human or material resource. This is the only way to neutralise the hazardous effect of Tourism on the environment.

Negative Impact of Tourism on Economy and Environment

1. Negative effect on economy

To take effective steps and to understand what exactly needs to be done in order to protect the environment and neutralise the negative effects, it is important for us to decode the problem and its root cause first. Tourism doesn't not only affect the environment and economy in a certain way, it sometimes also disturbs the social fabric of a community. It is very logical to say that more the no. of tourists will come, there are more chances of a place losing its culture and identity. We can understand this concept from the perspective of Goa. From 60's to 80's, the hippie culture was at its peak and Goa was the destination for such hippies. They came as tourists initially in large numbers and changed the entire culture of Goa with increased use of drugs, prostitution and human trafficking. This affected the entire country as a whole very negatively.

It is not necessary that people from different cultures can coexist very cordially. There may be instances where tourism can lead to tension, hostility and suspicion between the local communities and the tourists because there is no mutual respect and regard for each other's culture and lifestyle. The tension can lead to hatred that will finally result in violence and other hate crimes against the tourist. Such crimes will not just cause loss of life and property but also bring down the

reputation of the Country globally. Therefore discouraging the traders from the world from investing in India.

Tourism is often promoted by curtailing the freedom and autonomy that local communities enjoy in their area. They are promised a lot more than they actually receive. Usually, whatever the package costs is largely shared by the airlines, hotels and other international companies. The local businessmen, small shopkeepers etc. are given very little benefit. Also the employment is curtailed as the big hotel chains import food and do not employ local staff for top managerial posts and don't hire workers from the local area obstructing them from getting benefits out of tourism. This has often created a sense of antipathy towards the tourists and the government.

The financial losses can always be covered but the loss caused to the environment is irreversible and will lead to the destruction of the entire ecosystem endangering the entire mankind. In the next part, the negative effects of Tourism has been elaborated and they must be resolved within reasonable time.

Negative effect on environment

Recently the President of the United States Donald Trump along with his wife Melania visited the Taj Mahal in Agra on a trip to India. The Taj Mahal has suffered due to the effects of acid rain and millions of visitors to the site have damaged the ecosystem surrounding it due to overexploitation so much so that it is said that the monument will be closed off to the general public in the coming years. This is an example where all parties will suffer due to non-sustainable tourism – the tourists will not get to visit the "symbol of love" and the government exchequer will not be able to collect vast revenue generated through this monument of international interest and UNESCO heritage site. The ecosystem of each place has a limited carrying capacity and increased pressure on it due to

excessive tourism causes adverse effects on the Environment. When tourism at any place increases, it obviously leads to increased transport and construction activities which will involve cutting of forests and destabilisation of natural landforms. Also, increased no. of tourists lead to increase in solid waste dumping and depletion of water and fuel resources due to excessive use. The ecologically sensitive areas suffer the most if the flow of tourists is towards them because it leads to the destruction of rare and endangered species due to trampling, killing, disturbance of breeding habitats. The biodiversity, ecosystem and general profile of any area gets affected due to increased noise pollution, water pollution, untreated sewage, vehicular emission and depleting natural resources.

Increased Pollution due to excessive Tourism

When we talk about pollution, the first sector that we start blaming is the Industrial sector for obvious reasons but we need to accept that even other sectors like Tourism etc. contribute their fair share in it. Like any other sector, Tourism causes all kinds of pollution including air pollution, water pollution, noise pollution, vehicular emissions, sewage dumping, littering etc.

The increased tourism at any place definitely leads to an increase in transportation facility, both by road and rail. Increased transportation causes increased air pollution along with the vehicular emissions. Transport emissions and emissions from energy production and use are linked to acid rain, global warming and photochemical pollution. Air pollution from tourist transportation has impacts on the global level, especially from carbon dioxide (CO₂) emissions related to transportation energy use. And it can contribute to severe local air pollution. Some of these impacts are quite specific to tourist activities where the sites are in remote areas like Ajanta and Ellora temples. For example, tour buses often leave their motors running for hours while the tourists go out for an excursion because they want to return to a comfortably air-

conditioned bus. It is notable that too much of noise caused by the vehicles or other recreational activities at a tourist station does not only cause irritation, stress and loss of hearing capacity to the human beings but also ends up disturbing the ecosystem and the wildlife especially in sensitive areas.

As the no. of people in an area will increase, the waste dumped will be increased for sure. In areas where there is a high concentration of tourist, waste dumping is a genuine problem from the environmental aspect because improper disposal can lead to hazardous effect on the environment even affecting the scenic beauty of that place. In the areas that are famous for trekking and camping, the waste management becomes a problem because the garbage collection and disposal facilities are not enough to facilitate such increased load because tourists on expedition leave behind their garbage, oxygen cylinders and even camping equipment.

Construction of hotels, recreation and other facilities often leads to increased sewage pollution. Wastewater has polluted seas and lakes surrounding tourist attractions, damaging the flora and fauna. Sewage runoff causes serious damage to coral reefs because it stimulates the growth of algae, which cover the filter feeding corals, hindering their ability to survive. Changes in salinity and siltation can have wide-ranging impacts on coastal environments. And sewage pollution can threaten the health of humans and animals. Examples of such pollution can be seen in the coastal states of Goa, Kerala, Maharashtra, Tamil Nadu, etc.

A. Destruction and Alteration of Ecosystem

An ecosystem is a geographical area that does not only include the living organisms that live in that area like human beings, animals and microorganisms but also the things that sustains life in these living organisms like air, water, soil etc. and the natural cycles like wind, rain etc. Attractive landscape sites, such as sandy beaches in Goa, Maharashtra,

Kerela, Tamil Nadu; lakes, riversides, and mountain tops and slopes, are often transitional zones, characterized by species-rich ecosystems. The threat is most at places like these because it is attractive both to the developers and the tourists. The most common example of such places are Krushdei island near Rameshwaram which was once considered to be the paradise for marine biologists has been completely abandoned due to destructed coral and marine life. Also, excessive tourism at Jaisalmer is causing destruction to the desert ecosystem.

Also, animals are used to living in their natural habitat with their natural behaviour. It might alter their natural course of behaviour when the tourists come too close in the name of Jungle safari and wildlife watching. It has a degrading effect on animals as such safari as they often are accompanied by the noise and commotion created by tourists.

B. Depletion of Natural Resources

As Mahatma Gandhi said: 'There is enough for every one's need but not enough for anyone's greed.' It is an indisputable fact that the resources are limited and human wants have no end. Tourism is a leisure activity and is a result of unlimited human wants. Tourism development puts excessive and unreasonable pressure on the resources of an area that are already scarce. As we know that freshwater is one of the most critical natural resources but increase in tourism leads to overuse of water in hotels, swimming pool, personal use etc. This ultimately leads to shortage in water supply and also generating a lot of water waste. This problem is even worse in dryer regions and desert regions like Rajasthan where water resources are not even enough for the residents of that area. Also other resources like energy, food and other raw materials also get affected as they often are accompanied by the noise and commotion created by tourists. Because of the seasonal character of the industry, many destinations have ten times more inhabitants in the high season as in the low season. A high demand is placed upon these resources to meet the high

expectations tourists often have (proper heating, hot water, etc.).

Other than these, the land also gets highly affected with the increased tourism. As increased tourism will lead to increase in hotels and other recreational activities, this can be done only by cutting down trees that will lead to the soil erosion affecting the vegetation, greenery and the scenic beauty of that particular area. Forests often suffer negative impacts of tourism in the form of deforestation caused by fuel wood collection and land clearing e.g. the trekking in the Himalayan region, Sikkim and Assam.

Recommendations and Conclusion

Every coin has two sides. While there is no denying the fact that tourism boosts the economy, one must always also be mindful of the fact that tourism must be promoted in a sustainable manner so as to preserve the environment for the enjoyment of future generations. In fact the situation has become so severe that the present generation is itself in threat due to the harmful effects of environmental degradation. Eco-friendly tourism implies a way of traveling that follows the principles of environmental, social and economic sustainability. A commitment to low impact on the environment and culture. In fact, the United Nations World Tourism Organization (UNWTO) defines sustainable tourism as “one that completely considers the economic, social and environmental repercussions to satisfy the needs of visitors and the host communities”. Therefore, tourism must be promoted in such a way that it is a win-win situation for all stakeholders, be it the tourists, the host country, the economy and most importantly, the environment. It is time for all of us to join hands together and “Heal the World”, so let's make it a better place for everyone. Finally, let us keep in mind that after all, while hosting tourists in our country we must remember that guests are like God – “atithi devo bhava”.

17

Constitutional Provisions of Economic Welfare and its Reality in India

Mangal Kumar Raj

The constitution of India embodies the concept of welfare state and distinctly refers to economic justice. The preamble speaks of justice, social, economic and political. Article 38 of the chapter on directive principles of state policy enjoins the state to promote welfare of the people by securing and protecting, as effectively as it may, social order in which justice-social, economic and political-shall inform all institutions of national life. Article 39 would make the state responsible for providing adequate means of livelihood to the both sexes and require it to prevent undue concentration of economic wealth and means of production in a few hands. Article 41 relates to securing of right to work and institutes other ameliorative programs for the needy. Articles 43 especially enjoy the State to secure a living wage for all kinds of workers.

These ideals, however, are permitted to be implemented only in the contest of the democratic process and in the background of fundamental rights of the individuals. This limitation makes the process of implementation of a painful

and difficult one calling for careful planning, effective legislation and sympathetic judicial interpretation.¹

The government does not seem to be sincere about its responsibility towards serving the people as many scams and irregularities have come up in the central and state governments. The skewed policies relating to the expansion of capitalism, the forceful acquisition of lands from poor peasants, and neglect for the development of agriculture and rural development are making the situation worse.² The goal of social welfare cannot be achieved without economic welfare.

Welfare economics is the study of how the allocation of resources and goods affects social welfare. This relates directly to the study of economic efficiency and income distribution, as well as how they affect the overall well-being of people in the economy. In practical application, welfare economists seek to provide tools to guide public policy to achieve beneficial social and economic outcomes for all of society. *However, welfare economics is a subjective study that depends heavily on chosen assumptions regarding how welfare can be defined, measured, and compared for individuals and society as a whole.*

The Constitutional Framework

1. Constituent Assembly Debates and the Welfare Ideal:

In 1947, India commenced its long march to change the colonial legacy of economic arrangement, poverty, illiteracy, inequality and social injustice. Such a march was inspired by the vision, initiated and cherished in the national movement for more than seven decades. The nationalist Congress party's socio-economic and political agenda for independent India was incorporated into the provisions of the Indian Constitution after

¹ *Journal of the Indian Law Institute* © 1966 Indian Law Institute

² *Social Welfare and Constitutional Responsibilities of Government: An Analysis of the Current Scenario* by Avneesh Kumar, January 3, 2012.

much deliberation and discussion in the Constituent Assembly. When the Constituent Assembly met to discuss the resolution on aims and objectives of the Constitutions, the leaders laid down the promise of a welfare state.

The Indian Constitution enshrined welfare policies in its fold in order to bring about social transformation and economic development for India. However it had to make its strides from abysmally low level. India's situation required planning and a large public sector. A large section of the people had been denied access to education.³

The normative basis of the welfare ideal of independent India came to be formulated in the fundamental rights and directive principles of state policy, particularly the latter. While the political process and developmental policies in India have provided a specific expression to these provisions and their relation, the debates in the Constituent Assembly highlight the direction, possibilities and limitations of the welfare state envisaged in India

A significant debate was initiated in the Constituent Assembly regarding the fundamental rights and directive principles of state policy. The directive principles of state policy basically centred around the directives on which the state was supposed to secure for the well being of its people.

Dr. Ambedkar while passing the resolution on the aims and objectives of the Constitution in the Constituent Assembly declared: Clause (5) "WHEREIN there shall be guaranteed and secured to all the people of India justice, social, economic and political: equality of status of opportunity and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and

³ It is stated that for Indians illiteracy and ignorance was the norm in 1951. Only 25 per cent of males and 7.9 per cent of females were literate. See, Bipan Chandra, Mridula Mukherjee and Aditya Mukherjee, *India after Independence*, New Delhi: Penguin Books India, 1999, p. 2

(6) “WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes;”⁴ Jawaharlal Nehru also reiterated these objectives in his speech made on the eve of independence. *On 14 August 1947, Nehru said “Long years ago we made a tryst with destiny, and now the time comes when we shall redeem our pledge. The achievement we celebrate today is but a step, an opening opportunity, to the great triumphs and achievements that awaits us.”* He emphasised that the tasks ahead of the country included ‘the ending of poverty and ignorance and disease and inequality of opportunity’.⁵

The social revolution was considered to be the top most priority of the national agenda of the Constituent Assembly when it adopted the Objectives Resolution, which put across social, economic, and political justice, and equality of law, status and opportunity. The Directive Principles of State Policy were meant to pronounce “the ‘socialist’ as well as the social revolutionary content of the constitution.”⁶

The Constituent Assembly categorically stated that, the State shall make efforts to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. Responding to the discussion in the Constituent Assembly to make directive principles of state policy as justiciable. *Dr. Ambedkar said, “Surely ...it is not the intention, to introduce in this part these principles as mere pious declarations. It is the intention of this [Constituent] Assembly that in future both the legislature and the executive should not merely pay lip service to these principles but that*

⁴ See, *Constituent Assembly Debates, op. cit., 13, December, 1946, vol. I,*

⁵ *Constituent Assembly Debates, op. cit., 13, December, 1946, vol. I*

⁶ *Quoted from, Granville Austin, Working A Democratic Constitution, The Indian Experience, New Delhi: Oxford University Press, 1999, p.71.*

*they should be made the basis of all legislative and executive action.*⁷

Socialist State

The Preamble of the Constitution of India declares India as a “socialist”⁸ country, and this term itself gives a substantial proof of the existence of social welfare responsibilities of the government. The Supreme Court of India in the case of *D S Nakara v. Union of India*,⁹ made the following observation with regard to socialism-

“The principal aim of a socialist State is to eliminate inequality in income and status, and standard of life. The basic framework of socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave.”

As being a socialist state, the government is required to take steps to ensure that the minimum facilities of life are provided to every person, and there are equalities of income and material resources as far as democratically possible. A socialist state strives to achieve many ideals, some of them are-

- Removal of inequalities in distribution of economic resources
- Equality of opportunity for employment
- Equal pay for equal work.
- Elimination of exploitation of labourers

⁷ Quoted from, *Constituent Assembly Debates, op. cit., Vol. VII, Friday, 19 November 1948,*

⁸ *The word socialist was not there in the Preamble at the time of adoption of constitution of India at 26 November, 1949, but it was added by the 42nd Constitutional Amendment in 1976.*

⁹ AIR 1983 SC 130

- Maintenance of minimum level of egalitarianism
- Establishment of a welfare state
- Initiation of schemes relating to health, education, social security, and other such essential matters.

Social and Economic Justice

The Preamble of our Constitution uses two other concepts which create responsibilities on the state to involve actively in social welfare, namely “social” and “economic justice”. Under the concept of social justice the state is required to ensure that the dignity of socially excluded groups is not violated by the powerful,¹⁰ and they are considered on equal footing with others. It was said by the Supreme Court in the case of *Consumer Education and Research Centre v. Union of India*¹¹

“Social justice, equality and dignity of person are corner stone’s of social democracy. The concept ‘social justice’ which the Constitution of India engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen.”

Under economic justice it is contemplated that the state would not make any distinction among its citizens on the basis of their possession of economic resources. Economic justice also requires the state to try to narrow down the gap of resourceful and poor by distributive justice in terms of income and wealth. To achieve the ideals of social and economic welfare the state is required to involve in different social welfare schemes as like reservation for SC/ST/OBCs, MGREGA, Mid Day Meal Scheme, Sarva Sikha Abhiyan, etc.

¹⁰ As like in the name untouchability (Untouchability is abolished and its practice is forbidden by Article 17 of Indian Constitution), class superiority, rituals, etc.

¹¹ AIR 1995 SC 922

Directive Principles of State Policy

Part IV of the Indian Constitution deals with the Directive Principles of State Policy (DPSPs). These directive principles are most glaring examples of the scheme of social justice in our constitution, and these principles anticipate a lot of provisions for the welfare of people at large relating to education, environment, promotion of justice, free legal aid, living wages, protection of marginalised groups, forest and wildlife, etc.

The government is required to take all possible measures for the fulfilment of directive principles in its economic capacity. Some of the directive principles are:

- Article.39(a): The State shall direct its policy towards securing adequate mean of livelihood to man and woman;
- Article. 39 (A): Promotion of justice, equal opportunities, and free legal aid;
- Article. 41: Security of work, to education, and to public assistance in several cases;
- Article. 42: Security of just and humane conditions of work;
- Articles. 45: Free and compulsory education to every child till the age of 14 years, etc.¹²

Role of Judiciary in Welfare Economics

The judiciary took upon itself the task of infusing into the constitutional provisions the spirit of social justice. This it did in a series of cases of which *Maneka Gandhi v. Union of India* was a landmark. The case involved the refusal by the government to grant a passport to the petitioner, which thus

¹² Short form for of Article (of Indian Constitution).

restrained her liberty to travel. In a departure from the earlier view, the court asserted the doctrine of substantive due process as integral to the chapter on fundamental rights and emanating from a collective understanding of the scheme underlying articles 14 (the right to equality), 19 (the freedoms) and 21 (the right to life). *The power the court has to strike down legislation was thus broadened to include critical examination of the substantive due process element in statutes.*¹³

In *Francis Coralie Mullin* the court declared:

*“The right to life includes the right to live with human dignity and all that goes with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.*¹⁴

Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161, a PIL by an NGO highlighted the deplorable condition of bonded labourers in a quarry in Haryana, not very far from the Supreme Court. A host of protective and welfare-oriented labour legislation, including the Bonded Labour (Abolition) Act and the Minimum Wages Act, were being observed in the breach. In giving extensive directions to the state government to enable it to discharge its constitutional obligation towards the bonded labourers, the court said:

“The right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Article 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse,

¹³ Vinay Kumar Malhotra, *Welfare State and Supreme Court in India*, (Delhi: Deep and Deep Publications) p 269

¹⁴ *Ibid.*

opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief."¹⁵

Current Economic Policies and Neglect for Social Welfare

The model of globalisation was adopted in the hope that it would bring prosperity to the nation in the terms of higher production and economic growth. Indeed from 1991 onwards the gross domestic product of our country has gone up 8-9%, and India has emerged as global economic power. India has attracted a great deal of foreign investment, and the amount of international trade has increased manifold. But it has been observed by the scholars that the benefits of globalisation has been confined to elite sections of society, and its impact in terms of social welfare has been by and far negative.

The economic policies of our country are focussing (from 1991 onwards) more and more on the expansion of capitalism and privatisation, and continuously focus is diluted from the issues of social welfare. This inherently negative impact of the neo-liberal economic policies can be studied under following heads:

- *Increased Rich Poor Divide:* The gap between the rich and poor has been widened all over the world. At global level the richest 10% of the population earned 79 times higher than the poorest 10% used to, in 1980; till 2003 the income of top 10% population was 117 times higher than those of poorest 10%.¹⁶ In India the high rate of

¹⁵ *Central Inland Water Transport Corporation v. Brojo Nath Ganguly*, (1986) 3 SCC 227.

¹⁶ Robert Weissman, 'Grotesque Inequality: Corporate Globalization and Global Gap between Rich and Poor' (2003) July/August *Multinational Monitor Magazine*

GDP has substantially benefitted only the upper 10-15% people, and depressed employment for marginalised section of society.¹⁷ The top 10% of the population has a share of around 52% in the national wealth, and on the other hand the share of bottom 10% has been reduced to 0.21%.¹⁸ *The 2019 report by Oxfam, titled "Public good or Private Wealth?" showed that India's top 10% holds 77.4% of the total national wealth, while the top 1% holds 51.53% of the wealth. The bottom 60% population holds only 4.8% of the national wealth.*

- *Neglect for Agriculture:* From 1991 agriculture and farmers have been neglected by the government, and the average budgetary expenditure for irrigation is less than 0.35%.¹⁹ The agriculture investment, which was 1.9% of the Gross Domestic Product (GDP) in 1990-91, has been decreased to the extent of 1.3% of the GDP in 2003-04.²⁰ The expenditure on agriculture has decreased continuously as in the 9th plan it was 4.37%; in the 10th plan it was 3.86%, and in the 11th plan it was only 1.83%.²¹ The budgetary estimate for the Agriculture Ministry for 2019-20 is Rs 57,600 crore. The annual average growth rate registered at 2.88 per cent during 2014-2018 in agriculture and allied sectors. It was well below the prescribed target of 4 per cent per annum. The Gross Value Added (GVA) of agriculture and allied sector during 2018-19 was recorded at 2.9 per

¹⁷ Praful Bidwai, 'Shining and Starving' (2011) 28(17) Frontline.

¹⁸ Praful Bidwai, 'The Question of Inequality' (2007) 24(21) Frontline.

¹⁹ Era Sezhiyan, 'Globe for Rich- Zero for Poor: Globalisation of Indian Economy' (2007) XLV(20) Mainstream Weekly.

²⁰ The Research Unit for Political Economy, 'The Shaping of Agriculture by External Interests' (2005) 39/40 Aspects of Indian Economy.

²¹ Brinda Jagirdar, 'High Food Price, A Crisis on Our Plate' Businessline (October 16, 2011).

cent against 6.3 per cent in 2016-17. The budget for 2016-17 is the most recent example of the neglect of agriculture by the government; the budgetary allocation for “agriculture and allied activities” fell in comparison to the allocation for the previous year.²² *In the last twelve years there were more than 2 lakh suicides by the farmers, which is the evidence of pitiful conditions of agrarian sector. So, in such agricultural circumstances, it is important to know, those major reasons which have been causing severe problems in Indian agriculture are -*

- Rural- Urban Divide. ...
 - Lack of Investment in Agriculture. ...
 - Lack of Effective Policies. ...
 - Negligence of Natural resources. ...
 - Impact of Demonetization.
- *Devastation of Small Scale Industries (SSIs):* It was observed that more than 3 lakh small scale industries and more than three lac handloom and power loom units were closed down due to the impact of globalisation, because of decreasing bank loans to the SSIs. The allotment of funds to the SSIs has also been decreasing continually in terms of percentage; in seventh five year plan (1985-90) the outlay for SSIs was 0.42% of the total expenditure; in 8th plan it decreased to 0.33%, and in 9th plan it further decreased to 0.12%.²³ Even in the terms of growth performance the SSIs are lagging behind from the time of inception

²² R Ramakumar, 'InFarmer's Name' (2011) 28(6) Frontline.

²³ C Narasimha Rao, *Globalisation, Justice, and Development* (Serials Publication, New Delhi 2007), pg 280.

of globalisation; in 1990-91 the percentage of growth rate was 6.88%, but till 2002-03 it has been decreased to the extent of 4.69%.²⁴ The overall industrial sector growth was 6.9% as per the estimate of national income for 2018-19. This was almost equal to the 1990-91 industrial growth in comparison to recent year at 6.9%. The manufacturing sector experienced a growth of 6.9% during 2018-19. The contribution of industry to the GVA was 29.6% in 2018-19.²⁵ The SSIs are very important units for providing self employment in rural and suburban area, and they have potential to make people self sufficient, hence by neglecting the SSIs the government is definitely deviating from its welfare obligations towards people.

- *Ecological Damage:*At many places the environment was harmed by the factories of big companies without any action taken for the restoration as like contamination of water by Coca-Cola plant at Plachimada, Kerala; ecological damage by Pepsi at Himalayan pass;²⁶ damage of Tajmahal by industries of Agra; pollution of Ganga river by the industries of Kanpur city, etc,. In fact there has been total indifference from the side of government, and it has compromised the environment frequently for the sake of foreign investment. It has been seen that the government has failed to enforce the corporate environmental responsibility, so much so that the people affected by the Bhopal disaster could not be provided adequate compensation till now.
- *Regional Disparities in Development:*It has been seen that the impact of the economic policies of the

²⁴ *bid*, Rao, pg 281.

²⁵ *report-summaries › economic-survey-2018-19*

²⁶ *BBC News, 'Coke Paints the Himalayas Red' (August 15, 2002).*

government has not resulted in inclusive and equitable development, but rather big disparities have arisen in different regions. Generally speaking the southern states and western states have acquired accelerated economic growth, and the north eastern and central parts of nation are lagging behind.

- *Financial Inclusion, a Distant Dream:* Financial Inclusion which has been an issue of concern from the time of independence itself is still a distant dream. Half of the population in India does not possess a bank account, 90% people have no excess to credit or life insurance cover, and 98% had no participation in the capital market.²⁷

Conclusion and Observation

Indian Constitution is a “Social document”; it is unique in legitimising affirmative state action for bringing social and economic equality. The fundamental rights do not merely contain civil and political rights traditionally known as civil liberties but they also ensure social and economic justice is also given to the people of India in general, Women, Scheduled Castes and Scheduled Tribes in particular. Directive Principles of State Policy also ensure justice to the vulnerable sections. Therefore, directive principles of state policies are the economic and social rights of the people. Fundamental rights and Directive Principles of State Policy are Dr. Ambedkar’s ideology of social justice. The credit goes to Dr. Ambedkar ensuring for Constitutional social justice who is rightly named as the “Architect of our Constitution”.²⁸

²⁷ *Business Standard, ‘Financial Inclusion Imperative to Reap Demographic Dividend’ (January 24, 2011).*

²⁸ *shodhganga.inflibnet.ac.in.*

As a research student and based upon the study I would propose to put forward some suggestions and observation to the legislatures and all the law makers.

- The state is constitutionally obliged to take care of the needs of society, and to maintain the social, economic and political justice hence it must change its policies along with the changing needs of people keeping the welfare of the people at the centre. There needs to be a constructive policy to fill the gap between the rich and poor so that the people at the bottom level of the pyramid is brought into the loop of the developmental process, and we be successful in building an inclusive society.
- The bureaucracy still seems to have retained colonial characters and it the mindset in the working of the bureaucracy that needs some refreshment. The bureaucracy has to be well versed with the rights of the people. It is beyond comprehension as to why a citizen will have to approach the Courts for enforcement of their rights.
- Judicial reforms should be implemented with immediate effect to clear millions of cases which are pending in various courts all over the country. There is a need for police reforms and the legislature should participate intelligently to make sure that the welfare state of ours does not turn into a police state. Social welfare schemes launched by the government need strict monitoring and it is to be seen that the intended beneficiaries get the benefit and the perpetrators of frauds should be severely punished. Avenue of new social welfare schemes benefitting and affecting the mass poor and creating employment opportunity and removing economic backwardness should also be taken up on priority basis.

- Criminalisation of politics is an evil in a democracy and unless urgent steps are required to be taken to counter it. Political and administrative corruption is a sad reality of Indian administration and this cancer should be removed from the body politic of Indian democracy on an emergency basis.
- The state must focus to eliminate poverty and inequality among the different sects of society. Necessary and urgent steps are needed to be taken to reduce the actual number of persons below poverty line.
- The state must ensure that the benefits of globalisation are not confined to some particular sections of the society and there must be some law regarding corporate responsibilities.
- Since India still largely remains to be dependent on agriculture, there is a need to focus on the development of agriculture. The government must increase the public expenditure in agriculture and more funds must be devoted towards the area of research in agriculture as like in the area of production of better quality seeds.
- There has to be some corporate environment responsibility as we in our study have seen that environmental damage has mostly affected poor people because they lack sufficient resources to avoid the impact of pollution. The government must have strict environmental laws and there should be a proper administrative set up to monitor and see that all industries fulfil the requisite environmental clearance norms. Polluters Pays principle should be applied

strictly in case of breach and the State should be strict in ensuing proper compensation to the affected.

- There is a very urgent need for the enhancement on the spending on healthcare. The problem of malnourished children in India is to be addressed on an urgent basic. Government hospitals need to be well equipped with necessary infrastructure and medicine. Continuous effective steps needs to be taken to lift the child mortality rate.
- Female feticide should be declared as a grievous crime. Women empowerment programmes needs to be taken up on priority basic.
- There is a very urgent need for the enhancement on the spending on education and increase the enrolment rate in schools and college.

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18

Risk and Effects of Foreign Direct Investment in India

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Dipshi Swara

FDI refers to capital inflows from abroad that invest in the production capacity of the economy and are “usually preferred over other forms of external finance because they are non-debt creating, non-volatile and their returns depend on the performance of the projects financed by the investors. FDI also facilitates international trade and transfer of knowledge, skills and technology.”¹ The policy of Foreign Direct Investment (FDI) provides a mechanism of investment in an enterprise in one nation by another enterprise in another nation. FDI acts as the bridge to fill in the lacuna between saving and investment of resources and thus, plays one of the most essential roles in the growth of both developed countries as well as developing countries. It aims to increase the efficiency of the rate of input as well as output (which includes existing capacity of

¹ Economics for Everyone: Going Global–FDI Fables–FDI in Multibrand Retail, INDIA INFO LINE NEWS SERVICES (Aug.28, 2019, 11:00 PM), https://www.indiainfoline.com/article/news-top-story/economics-for-everyone-going-global%E2%80%93fdi-fables%E2%80%93fdi-in-multibrand-retail-113103104472_1.html.

production along with the new capacity of production that will be generated). In a way, it also helps in saving the domestic constraint and brings in the superior or ideal technology required for the venture from foreign.

The paper will study the impact and risks associated with FDI in four chapters. The **first** chapter talks about the determinants of FDI, the challenges in domestic country and the risks associated. The **second** chapter talks about the legal framework, routes of FDI and protection mechanism. The **third** chapter specifically deals with the risks of FDI on Indian economy. It is understood in the light of the break up of Walmart and Bharti enterprise joint venture. The **forth** chapter concludes the paper.

Literature Review

Sebastian Tocar (2018) has talked about the determinants of FDI including stable policies, economic and labour factors. They have been analysed in this research paper. Shuvrangshu Chakraborty (2018) gives a picture of current challenges as well as improvement areas for FDI in India. This has helped the author to understand how certain risks can be mitigated by overcoming these challenges and improving certain areas such as infrastructure, etc. Nidhi Varshney (2020) states the impact of FDI on Indian economy. Several risk factors explained here are analysed by the author such as political risk, natural resources, also intellectual property rights issues associated with the technological advancements and cost advantage. Sourangsu Banerji (2013) talking about the effects of Foreign Direct Investment (FDI) in the Indian Economy gives some statistics of how domestic business firms and quality of products start suffering when there are too many foreign investors. Right from monopoly to national secrets concerns also arise and must be prevented. Narendra Bhandari (2017) talks about the Walmart- Bharti enterprise formation, break up, strategies, reasons why the venture could not work. It presents a scenario that many foreign or domestic enterprises can suffer

if certain challenges associated with FDI are not mitigated and controlled. Suneera Tandon (2013) talks about the practical real day scenario of Bharti-Walmart venture. It was taken to draw a conclusion of how the venture broke and is currently operating individually in spite of huge losses.

Hypothesis

FDI is associated with risks and challenges and if they are not mitigated, it can lead to huge losses for domestic and foreign enterprise in spite of laws in place.

Research Objectives

The paper aims to achieve the following:

- i. To study the mechanism of FDI in India along with recent developments.
- ii. To study the impact of FDI on economy including risks that it comes with.
- iii. To analyse the legal framework of FDI in India.
- iv. To study the inter-relation between legal and market factors when it comes to FDI.

Scope & Limitations

The project is limited to the legal framework and social, environmental and market factors that are associated with risks and challenges in FDI. FDI is a vast topic and has its own area of study for individual sectors and economies. The paper has not dealt with that complex issue and is only limited to Indian scenario of risks, impacts and regulations.

Research Methodology

The research methodology adopted for this study is purely doctrinal. Various articles pertaining to FDI and Indian laws and policies with respect to them have been referred as secondary sources. The author has also referred particularly to the provisions of the Consolidated FDI Policy and RBI rules as

well as few domestic legislations have been studied as primary sources of research.

Country Risk and Effects of Foreign Direct Investment

Foreign Direct Investment (FDI) refers to any long-term investments made by an entity that is not a resident of the host country. A foreign company controls certain percentage of ownership in a business entity in another country.² It can be by incorporating a wholly owned subsidiary or company anywhere, by acquiring shares in an associated enterprise, through a merger or an acquisition of an unrelated enterprise or by participating in an equity joint venture with another investor or enterprise. FDI is not just about bringing money to but also skills, labour, technology and knowledge. “This investment is over a long duration of time and the idea is to make an initial investment and then subsequently keep investing to leverage the host country’s advantages. In return the host country grants its liberal policy, tax benefits, skilled labour and access to cheaper resources thereby providing access to a consumer market consequently enhancing the overall efficiency of the business.”³ The mechanism of FDI is beneficial for both the investor as he is getting involved in the business and would be looking forward to high returns, as well as the host country as it benefits by the increased know how or technology transfer to its workers, improvements and advancement in the overall productivity of the company and also making its place in the global trade era.

Post the economic reforms of 1991, the FDI route to India has become easier. FDI is one of the important tools of economic growth for a developing nation like India. So to

² *What Is Foreign Direct Investment (FDI)*, BUSINESS STANDARD (Feb.21, 2020, 7:20 PM), <https://www.business-standard.com/about/what-is-fdi>

³ Anubha Singh, FDI in India (Policies. Procedure and Legal Frame work),

increase inflow of FDI in India, the process is liberalised. India, today is a part of top 100-club on Ease of Doing Business (EoDB) and globally ranks number-1 in the greenfield FDI ranking.⁴ However, liberalisation of an economy always comes with regulations.

A. Recent Government Initiatives⁵

- i.** As of February 2019, the Government of India is working on a road map to achieve its goal of US\$ 100 billion worth of FDI inflows.
- ii.** In February 2019, the Government of India released the Draft National e-Commerce Policy which encourages FDI in the marketplace model of e-commerce. Further, it states that the FDI policy for e-commerce sector has been developed to ensure a level playing field for all participants.
- iii.** Government of India is planning to consider 100 per cent FDI in Insurance intermediaries in India to give a boost to the sector and attracting more funds.
- iv.** In December 2018, the Government of India revised FDI rules related to e-commerce. As per the rules 100 per cent FDI is allowed in the marketplace based model of e-commerce.
- v.** In September 2018, the Government of India released the National Digital Communications Policy, 2018 which envisages increasing FDI inflows in the telecommunications sector to US\$ 100 billion by 2022.
- vi.** In January 2018, Government of India allowed foreign airlines to invest in Air India up to 49 per cent with government approval. The investment cannot exceed 49 per cent directly or indirectly.
- vii.** No government approval will be required for FDI up to an extent of 100 per cent in Real Estate Broking Services.

- viii. In September 2017, the Government of India asked the states to focus on strengthening single window clearance system for fast-tracking approval processes, in order to increase Japanese investments in India.
- ix. The Ministry of Commerce and Industry, Government of India has eased the approval mechanism for foreign direct investment (FDI) proposals by doing away with the approval of Department of Revenue and mandating clearance of all proposals requiring approval within 10 weeks after the receipt of application.
- x. The Government of India is in talks with stakeholders to further ease foreign direct investment (FDI) in defence under the automatic route to 51 per cent from the current 49 per cent. They want to do this as part of indigenizing the defence system of India and give a boost to the Make in India initiative and to generate employment.
- xi. In January 2018, Government of India allowed 100 per cent FDI in single brand retail through automatic route.

B. Determinants Of FDI

The determinant varies from one country to another due their unique characteristics and opportunities for the potential investors. In the Indian context, following are the specific determinants:

- i. Liberal and Stable Policies: India's stable economic and socio policies have attracted investors across border. Investors prefer countries which stable economic policies.
- ii. Economic Factors: Economic factors like interest loans, tax breaks, grants, subsidies and the removal of restrictions and limitation, giving of tax exemption and subsidies to the foreign investors have attracted FDI.⁶

- iii. Cheap And Skilled Labour: There is abundance of labour available in India in terms of skilled and unskilled human resources. Foreign investors get attracted due to the presence of cheap and skilled labours. Example: Foreign firms have invested in BPO's in India which require skilled labor and we have been providing the same.
- iv. Infrastructure: India though is a developing country, has developed special economic zone where there have focused to build required infrastructure such as roads, effective transportation and registered carrier departure world-wide.⁷ The Information and communication sector, financial institutions, and legal system along with modern infrastructure have created a sound base for foreign investment in India.
- v. Unexplored Markets: In India there is large scope for the investors because there is a large section of markets that have not been explored or unutilized. Example: BPO was one sector where the investors had large scope exploring the markets where the service was provided with just a call, with almost customer satisfaction.
- vi. Availability Of Natural Resources: We are not alien to the fact that India has a large volume of natural resources such as coal, iron ore, Natural gas etc. Availability of natural resources increase the productivity.

C. Current Challenges And Improvement Areas

As explained above, India is definitely a lucrative place for FDI, but there are certainly some challenges and areas for improvement still present. But there are certain prevailing challenges for the global investors:

- i. Initialised resources: In spite of having abundance of resources, India has certain unutilised resources especially in the rural areas. The focus is to increase infrastructure 10 years down the line, for which the requirement will be an amount of about US\$ 150 billion. This is the first step to overcome challenges facing larger FDI.⁸

302 Business Risk in Changing Dynamics of Global Village BRCDGV-2020

- ii. Equity challenge: India is definitely developing in a much faster pace now than before but in spite of that it can be identified that developments have taken place unevenly. The urban areas have developed and modernised while rural areas still remain under developed. In order to achieve economic growth, it is essential to make sure that the rural section has more or less the same amount of development as the urbanised ones.⁹ FDI must be utilised towards achieving this economic and social equity.
- iii. Federal Challenge: There is a need to speed up the implementation of policies, rules, and regulations. To make it convenient for the investors, the implementation of policies should be at par in all the states.

D. Several risks involved in FDI

- i. Political Risk: Amongst the top items is the political instability of the country. Moreover, each new government has certain policies which are different from the ruling government and if there is a frequent change in government, this will lead to changes in policy and increased uncertainty.¹⁰ The support of the political structure has to be there towards the investing countries abroad. So, there has to be a common ground between the Parliament and the Foreign countries investing in India. This would increase the reforms in the FDI area of the country.¹⁰ Just take the example of the last elections in 2004, whereby a sudden change of event the Indian National Congress was able to come into power by forming a coalition government, by soliciting the vast majority of the poor people of the country, surprising the incumbent government which was relying heavily on a fast-growing economy, increased privatisation and a thriving middle class.¹¹
- ii. Bureaucracy: There are still lacunae in the implementation of policy and procedures especially, in the identification, approval and implementation process and this needs to improve.

- iii. Security Risk: This risk includes the geopolitical risk with Pakistan and the ongoing dispute over the Kashmir issue, also the incidences of domestic terrorism, not only in the Kashmir valley but also in Assam, Manipur and Nagaland, where numerous separatists group operate.¹²
- iv. Cost Advantage: One of the attractions of India is the lower cost advantage as compared to most western economies. The Indian Government would have to work on creating an atmosphere where this advantage can be maintained in order to attract foreign investors.¹³ Along with that there would be a need control inflation because if there is increased level of inflation then there would be increased costs and reduced returns. Tax incentives and reduced tariffs along with cost advantage reduces the risk factor for foreign investors.
- v. Intellectual Property Rights & Piracy: The IP laws must be stringent enough to offer safeguard to investors on maintaining their IP rights and prevent any instances of piracy. India has begun instilling intellectual property rules and regulations into the country but there is still a long road ahead. The mechanism of enforcement need to be improved in this regard.¹⁴
- vi. Privatisation And Deregulation: Increased privatisation of various sectors would definitely enhance the attractiveness of India as an FDI destination. Privatisation has always been a focus point for the Indian government be it privatisation in electricity, telecommunications, banking and insurance and other sectors. Privatisation plays a great role in attracting FDI.¹⁵
- vii. Infrastructure: Although the infrastructure of India is developing, there is still lack of modern and robust infrastructure at majority of places. Like proper roads, highways, adequate supply of clean water, uninterruptible supply of electricity etc. These need to be proper and advanced in order to attract investors and make them feel stable.

viii. FDI and Competition Policy: There are two opposing views regarding the relationship between competition policy and foreign direct investment. “On one hand, one could argue that developing countries should not prioritise competition policy because it would discourage foreign direct investment by creating additional regulatory barriers and risks for the investor. The argument is analogous to the notion sometimes implicitly suggested that developing countries could accept lower environmental standards to avoid deterring potential investments. On the other hand, it could be argued that competition policy attracts foreign investment because it provides a level playing field for fair competition among firms and a sound institutional environment.”¹⁶

Legal Scrutiny & Regulatory Mechanism

Investors must be provided with pre-investment protection and post-investment mechanism. It is only wise for the foreign investors to look into the nature of risks that could come their way if they are to invest in the business of some other country. After understanding the nature of risks, they need to be acquainted with the laws of the host country and be prepared with the means that would protect them. They need to be aware of the protection mechanism that the host country has to offer. Such pre-investment protection includes a number of investment protection mechanisms, other than those awarded to investors in customary international law, ranging from home state's unilateral initiative to multilateral initiatives by home and host states.¹⁷ Post- Investment Protection protects their property rights after their investment is realised in the host state and once their right to enjoy and benefit from their property is threatened by the latter. It would allow them to retrieve their property or grant them an adequate compensation for the losses they may have incurred as a result of such breach by the host state.¹⁸

E. Legal Framework

Foreign Direct Investments under Automatic Approval and Government Approval are regulated by the *Foreign Exchange Management Act, 1999* (FEMA vide Reserve Bank's¹⁹ Notification FEMA, amended from time to time).

FEMA consists of rules, procedures if a foreigner or a foreign company or even person resident outside India has to invest in business in India. For instance, if investment is to be made in the manufacturing sector or service sector, including the housing sector, insurance, banking, telecommunications, etc, different notifications by the Reserve Bank of India issued in terms of Section 6 of FEMA comes into play. Also, there are special class of foreign investors such as the venture capital funds, non-resident Indians and FII's.

The Secretariat for Industrial Assistance (SIA) has been set up by the Government of India in the Department of Industrial Policy and Promotion, Ministry of Commerce & Industry. The SIA provides a single-window service for entrepreneurial assistance, investor facilitation, receiving and processing all applications which require government approval, conveying government decisions on applications filed, assisting entrepreneurs and investors in setting up projects (including liaison with other organisations and state governments) and monitoring the implementation of projects.²⁰ The Government of India has set up the Foreign Investment Implementation Authority (FIIA) to facilitate quick translation of Foreign Direct Investment (FDI) approvals into implementation, and to provide a pro-active one-stop after-care service to foreign investors by helping them obtain necessary approvals, sort out operational problems and meet with various government agencies to find solutions to their problems²¹. The Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy & Promotion (DIPP) functions as the Secretariat of the FIIA.²²

F. Routes through which India gets FDI

During the fiscal ended March 2019, India received the highest-ever FDI inflow of \$64.37 billion.²³ There are sectors like automobile, IT, healthcare etc. which come under the 100% Automatic Route' category.²⁴ Others like infrastructure and insurance come in the category of up to 100% Automatic

Route category.²⁵ FDI is strictly prohibited in certain sector like agriculture, atomic energy.²⁶

The regulatory mechanism through which the flow of FDI in India is directed through:

Automatic route: The non-resident or Indian company does not require prior approval of the RBI or government of India for FDI.

Government route: The government's approval is mandatory. The company will have to file an application through Foreign Investment Facilitation Portal, which facilitates single-window clearance. The application is then forwarded to the respective ministry, which will approve/reject the application in consultation with the Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce. DPIIT will issue the Standard Operating Procedure (SOP) for processing of applications under the existing FDI policy.

FDI and Risks on Indian Economy

There are several benefits of FDI and therefore countries liberalize their economic policies to a great extent. But certain mitigating circumstances are required since FDI are also prone to risks.

- i. There may be a slight increase in inflation.
- ii. Small firm may not be able to compete and hence suffer.
- iii. If there is a lot of FDI into one industry e.g. the automotive industry then a country can become too dependent on it and it may turn into a risk that is why countries like the Czech Republic are "seeking to attract high value-added services such as research and development (e.g. biotechnology)." ²⁷
- iv. FDI can lead to monopoly of big businesses (with foreign money) in India thereby leading to destruction of all small competitors. It would mean that the foreign invested companies will be in complete control of prices.

- v. Monopoly will have its effect on product quality. Product quality will not be the priority since all small businesses whose products competed in quality would be destroyed. A severe impact on the imported consumable and perishable items especially fruits and vegetables which are most likely to go stale due to long distance transportation and constant refrigeration as they are going to follow a bigger route through foreign companies.²⁸
- vi. These are not just restricted to metropolitan cities. Also, establishment of large foreign businesses in metropolitan cities would affect neighbouring villages and towns, since products will be branched off to them. When FDI hit Thailand, 60,000 small shops closed. Through market saturation, large corporations are able to create widespread impact in an economy.²⁹
- vii. One of the biggest disadvantages of foreign direct investment are understood where the host country has some sort of national secret, something that is not meant to be disclosed to the rest of the world. Needless to say, foreign direct investment can have a direct and an adverse impact on the defence of a country, especially India which has constant security threats from neighbouring countries.³⁰

A. Case Study- Bharti-Walmart Joint Venture

Walmart is a mega retailer with headquarters in Arkansas, USA, was established in 1962. On January 31, 2015, Walmart had 4,516 stores in the US, 647 Sam's Club, and 6,290 stores internationally; making a total of 11,453 units worldwide³¹. In spite of all the legal restrictions and uncertainties at the central and state levels, Walmart saw a huge growth potential in India as mentioned above. It, therefore, signed an agreement with Bharti Enterprises on November 27, 2006 to establish a 50-50 joint venture to do wholesale business there. The partnership called Bharti Walmart Private Ltd, would operate stores called Best Price

Modern Wholesale. Both parties brought their own strengths to the joint venture. Walmart brought use of its global recognition, its goodwill as a brand, its financial strength and support and of course most notably its expertise in retail management across the world.³² Bharti Enterprises on the other hand being domestic provided an edge with the familiarity with the Indian laws, culture, economy and market of India. It also provided labour resources. This partnership, was like a dream venture which would establish relatively small size stores compared to their larger counterparts in other countries.³³

However, a successful functioning of a joint venture requires that the partners clearly define its goals, clearly spell out their respective responsibilities to accomplish these goals, and carry out those responsibilities. A joint venture's success or failure depends not only upon the partners accomplishing these goals and carrying out these responsibilities, but also on the socio-economic and political variables beyond their control. On October 9, 2012 the Walmart and Bharti announced the breakup of their joint venture. There are several reasons behind this widely celebrated Indo-American partnership.³⁴

- The requirement that those interested in making FDI in India's wholesale or multi-brand retail industry should source at least 30% of their products from local small and medium size industries is problematic for them. While this condition may be met in sourcing textiles and handicrafts items, it may not be easy to comply with it in sourcing some other products such as electronics.³⁵ Small and medium size companies don't have the ability to meet the large scale requirements of large retailer.
- Foreign investors also find the requirement to invest 50% of the FDI in back-end infrastructure difficult as few fear "India will become a dumping ground for Chinese goods."³⁶

- While lobbying is legal in the US, it is illegal in India. So when Walmart disclosed to the U.S. Senate and House of Representatives that it spent about \$25 million since 2008 on its lobbying activities in India that included enhanced market access for investment in India, there was a huge uproar in the Indian Parliament which led to the Indian government starting an investigation against Walmart.³⁷
- With 212 Easy Day stores, Bharti retail already had a strong foothold in the industry and was interested in growing its own retail business. So, when there was a lack of growth in the number of the Best Price Modern Wholesale stores, it suffered huge losses and got strained.³⁸
- To conclude, Walmart spent \$334 million to end its partnership with Bharti Enterprises. It paid \$100 million to buy Bharti Enterprises 50% share in the partnership; and it took a \$234 million loss for waiving the debt and other investments it had made in the Bharti Enterprises. It may be noted here that Walmart also incurred costs and losses associated with the closure of its about 50 underperforming units in Brazil and China.³⁹

Conclusion & Suggestions

FDI with its lasting nature and impact that is, as a tool for transfer of technology, managerial skills, access to international markets and enhancement of productive ability is more popular in the globalisation era. FDI provides the much – needed investible resources and foreign exchange for reviving Indian industry, improve the poor infrastructure, modernise the technological base and foster greater competition in Indian manufacturing sector. On the other hand, critics of foreign capital pointed out the poor record of multinational corporations in India, their excessive profitability and their limited technology transfer. On the basis of the study we can say that FDI is also prone to certain risks that can go on to

affect the economy, small business firms and consequently the quality of products. India has a great legal framework and liberalised policy. However, there is a need of proper monitoring. Foreign investment flows are supplementing the scare domestic investments in developing countries particularly in India. Also foreign investor never adopts environment friendly technique to maximise their profit.

- i. We should welcome inflow of foreign investment in such way that it should be convenient and favourable for Indian economy and enable us to achieve our cherished goal like rapid economic development, removal of poverty, internal personal disparity in the development and making our Balance of Payment favourable.
- ii. Attention to the development of infrastructural facilities such as roadways, ports, airports and supply of uninterrupted power so as to harness the many opportunities for example in telecommunications, transportation, trading and construction services, hotels and resorts.
- iii. Also a reduction in the fiscal deficit along with the development of special economic zones and the enactment of special laws would be appropriate to strengthen the investment possibilities in India.

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19

Bank Fraud: Critical Analysis of Emerging Trends

Navneet Govindam

Deepali Sinha

“A man who has never gone to School may steal from a freight car, but if he has a university education he may steal the whole rail road”

Franklin D. Roosevelt

Technological advancement has penetrated as a rule in nearly all the spheres of life. Fiscal and Banking sector is a leading model of dissemination of technology in day-to-day life. The earliest forms of digital banking trace back to the advent of ATMs and cards launched in the 1960s. As the internet emerged in the 1980s with early broadband, digital network began to connect retailers with suppliers and consumers to develop need for early online catalogues and inventory software systems. A downbeat consequence of this progression is multi-fold increase in Bank frauds which has escalated up by 45% in past 10 years in India.

This research paper aims at study of Banking fraud, Banking fraud risks, investigation and group security

professionals on trends in fraud typologies, challenges banks are facing in mitigating internal and external threats in contemporary time period, security in a digital age and how banks are structuring their teams and deploying resources to optimise their fraud risk management efforts.

This research paper is based on a non-doctrinal study based on various studies conducted to demonstrate a growth of bank frauds particularly with the increase in usage of technology in banking and allied sector.

This research paper concerns the hypothesis that 'Fraud costs are increasing at a faster rate than Fraud risk management expense. There is an urgent requirement of fundamental changes in the digital banking arena'.

In this study, an attempt is made to define bank fraud, demonstrate the various types of bank fraud, identify the emerging trends in bank fraud cases and suggest constructive to wrangle the situation.

Over the years, various economists and scholars from diverse fields have made efforts to identify and address the issue of bank frauds throughout the world. Bank Fraud may be defined as using deception to steal money or assets from a bank, financial institution or a bank's depositor. In general bank fraud may involve any deliberate action aimed at defrauding a financial institution. It may involve an intentional action aimed at receiving assets, money, securities, credits, or property from financial institutions through the use of pretense or false information.

Based on the nature of frauds identified over the years, Bank fraud can primarily be categorised as Internal Fraud and External Fraud. Internal frauds can be understood as frauds against bank in which active participation of an employee of the bank is identified. Classic example of this category is the Harshad Mehta Scam, R L Kamath, the Deputy General Manager in State Bank of India was responsible for covering of

shortfalls in the Securities portfolio. He also used to inflate the figures because he was in-charge of the section, which dealt in securities. Likewise, external frauds can be understood as a financial fraud carried out by an outsider i.e., a person who is not an employee of a bank. He may not be a customer of the target bank or the financial institution. Example of this kind of fraud can be demonstrated as frauds conducted by Vijay Mallya, Nirav Modi etc.

Ghosh Committee (1990) had classified the frauds perpetrated in banks as under:

- a. Misappropriation of cash tendered by the bank's constituents and misappropriation of cash in remittance;
- b. Withdrawal from deposit accounts through forged instruments;
- c. Fraudulent enactment of negotiable instruments by opening an account in fake / fictitious name;
- d. Misappropriation through manipulation of books of accounts;
- e. Perpetration of frauds through clearing transactions;
- f. Misutilisation / overstepping of lending / discretionary power, non-observance of prescribed norms / procedures in credit dispensation, etc.;
- g. Opening / issue of letters of credit, bank guarantees, co-acceptance of bills without proper authority and consideration;
- h. Frauds in Foreign exchange transactions mainly through non-adherence to exchange control manual provisions.

According to a study group of B D Narang on Large Value Bank Frauds, any transaction having the following features can be categorized as a bank fraud:

- a. Shortage of cash;

316 Business Risk in Changing Dynamics of Global Village BRCDGV-2020

- b. Fraudulent encashment of drafts, cheques, travellers cheques, dividend warrants etc.;
- c. Fraudulent endorsement of cheques, drafts, bills etc. with an intention of conversion to encash the same;
- d. Opening bogus bank accounts in the name of non-existing persons;
- e. Collecting fake instruments with or without connivance of bank staff;
- f. Siphoning off funds through the fake telegraphic / mail transfers, unauthorised debits of impersonal accounts and / or concealment of any unauthorised transaction by manipulating entries in the books of accounts;
- g. Creation of fixed deposits, credit balances and issuance of drafts, pay orders, stock invest etc. without consideration;
- h. Sudden disappearance of stocks as compared to the figures shown in the previous statement;
- i. Fudging of financial statements;
- j. Issuance of letters of credit, bank guarantees, etc. without recording liability in the books of accounts;
- k. Discounting of forged trade documents or documents without proper trade transactions;
- l. Transgression of the delegated authority and concealment from the competent authority resulting in loss to the bank;
- m. Misuse of computer code and breach of security of computer systems.

Thus, any and every illegal transaction resulting in unlawful gains to the fraudster by various ways have been put under the ambit of bank fraud. The primary basis of classifications is the method of perpetrating the fraud.

The Reserve Bank of India in a report issued in 2017 has classified bank frauds based on the provisions of the Indian Penal Code, 1860 as under:

- a. Misappropriation and Criminal breach of trust;
- b. Fraudulent encashment through forged instruments, manipulation of books of accounts or through fictitious accounts and conversion of property;
- c. Unauthorized credit facilities extended for reward or for illegal gratification;
- d. Cash shortages;
- e. Cheating and forgery;
- f. Fraudulent transactions involving Foreign exchange;
- g. Other types of fraud not under the ambit of specific heads as above.

When a Bank fraud is noticed it can be from any of the following sources:

- a. Customer;
- b. Bank official;
- c. Press;
- d. Central Vigilance Commission;
- e. Central Bureau of Investigation;
- f. Sources of Vigilance Department;
- g. Any citizen.

In all cases of Bank Frauds, prompt and well-planned action is needed to ensure:

- a. Minimum losses;
- b. Fast recovery of lost money;
- c. Apprehending of the criminal;

- d. Protection of evidence;
- e. Less adverse publicity;
- f. Booking of the case properly;
- g. Investigation;
- h. Follow-up in the Court.

In India, Loans (advances) constituted the highest number and quantum of frauds in financial year 2018-19 among all categories of fraud, while card/internet frauds constituted 27% of the total number of frauds, they accounted for just 0.3% of the total amount, indicating a lower amount involved per fraud in these cases. Public sector banks accounted for the highest number of frauds amounting to the quantum of 90.2 percent.

A study conducted by the KPMG International on Global Banking Fraud Survey in 2019 has depicted the most significant challenges faced by financial institutions in fraud risk today over the last two years among different categories of countries as discussed ahead. In America, the figures showed Cyber and data breaches, Faster payments, Open Banking, Evolving digital channels and Virtual currencies as the prime source for bank frauds. In Europe, Middle East and Africa Cyber and data breaches, Faster payments, Evolving digital channels, Payment services directive / Open Banking and Social engineering were identified as the prime area for fraudsters. In the Asia-Pacific region, Cyber and data breaches, Social engineering, Faster payments, Evolving digital channels and Open Banking were identified as the prime area of bank frauds.

The figures depict that across the globe, cyber and data breaches are the most significant challenge faced by banks in securing their money and assets. The past few years has witnessed a mounting high profile data breaches.

In an interconnected world, whilst a data breach may relate to one company, in one country, the data held often relates to individuals across the globe. Through these data breaches, cyber criminals are able to get hold of vast quantities of information, which can be used to facilitate identity theft, social engineering fraud and authorised push payments scams where personal data is used to gain a customer's trust, or facilitate the takeover of customers accounts. As, an example, in 2018 a major airline carrier experienced a data breach in which hackers obtained over 244,000 credit card details. The hackers charged between US\$9 and US\$50 for each card's information on the Dark Web, resulting in estimated takings of US\$12.2 million. It is found that the data of 3 billion users and 500 million users of Yahoo users in 2013 and 2014 respectively were put in public domain. Similarly, data of 145 million users of ebay in 2014, 148 million users of Equifax users in 2017, 412 million users of Adult Friend Finder in 2016, 500 million users of Chinese Huazhu Hotels in 2018, 50 million users of Facebook in 2018 and 500 million customers of Marriot International in 2018 were put in public domain.

The figures above demonstrate that the ongoing digitisation of the banking sector is certainly creating new fraud risks. Given the relationship between technology and fraud risks, there is urgent need among banks to prioritise fraud prevention and financial crime management within their digital strategies. The proportion of products and services delivered by banks through digital medium is ever increasing. More than 75 percent of the product and services today are delivered through digital channels. The World Payments report 2018 forecast that non-cash transactions will grow compound by 12.7 percent to 2021.

The data suggests that the first line of defence, or business units / customer-facing employees owns to 69 percent of fraud risks. The second line of defence, with group security providing risk and compliance oversight to the business units

owns the remaining 31 percent of the risk. Reporting lines for fraud risk owner varies with reporting being to Fraud committee, Chief Risk officer, Head of Compliance, General Counsel and Internal Audit. Interestingly, there appears to be no 'one' right model followed by banks globally to consistently structure their fraud risk management operations.

With less customer holding and withdrawal cash, due to the ease of digital banking and cashless payments, customer demand for face to face banking services is diminishing. Fewer bank branches, and the increasing use of digital banking by customers requires an enhanced automated approach by banks to mitigate evolving digital fraud threats. Further, Faster payments processing can pose a challenge with less time available for banks to scrutinise the transactions for fraud. Faster payments also pose the risk of reduced fraud recovery rates due to the velocity of payments if funds are transferred through multiple accounts in seconds and offshore.

It is pertinent here to understand how banks structure their fraud risk management operations to optimise resource allocation and to inform investment decision-making across their governance, people, processes and technology. Despite being a cost-centre, the total cost of fraud risk management to banks is not monitored by most of the banks. This makes it an outlier within bank operations and reduces visibility to the Board and Risk committees who make key budget, resourcing and investment decisions. In terms of accountability for the effectiveness of fraud functions, there are diversity of factors responsible for holding the fraud risk owner accountable for effectively preventing, detecting and responding to suspected fraud; and recovering fraud losses. The factors vary from no formal assessment to scorecards / key performance indicators, maintaining forecast losses to plan / risk appetite, business / customer satisfaction, mystery shopping and second line assurance.

There is need for a proper and consolidated fraud governance standard. The fraud risk management and fraud investigation must be owned by the banks itself. Banks in India shifted to core banking business and have moved transactions to payments through the electronic channels like ATMS, Internet banking etc. Fraudsters have also playing an active role as customer into this electronic world banking. The response of the banks related the fraud needed further improvements to overcome through the E-banking fraud easily. The following are the some ways of fraud risk management.

Every banking institute must have and maintain the strong “Transaction Monitoring Team”. The role of transaction monitoring team is to keep view on transaction taking place whether any suspicious transaction is going out or not as per the banking norms. If they found any suspicious transactions then necessary action should be taken against that account holder.

Every banking institute must also have and maintain the strong “Fraud and Prevention team”. The role of Fraud and Prevention team is to keep trace out the fraud activity and preventing that from fraud before it actually performed. Banks can have dedicated email IDs for customers to report any fraudulent activity that they may notice. A dedicated team can be created to reply to customer queries and concerns through the above email IDs. Phone banking officers and branch staff should also be trained on response to customers’ queries and concerns on frauds. Banks may contemplate the setting up of a fraud helpline for customers and employees to enable them to report suspected frauds and seek tips on fraud prevention. By doing this, banks can make available one more avenue for early reporting and detection of frauds.

Creation of fraud awareness among the customers and staff. Awareness on how to prevent and detect frauds is the basis of fraud management. Banks need to adopt various measures to create awareness amongst staff and customers. All

banks have a dedicated team to take care of the security of the physical infrastructure. This team should conduct regular security audits of various offices to check for deviations/lapses. It is the responsibility of this team to ensure that physical assets and data copied on magnetic/optical media do not go out of the offices of the bank without authorisation. Banks can have dedicated email IDs for customers to report any fraudulent activity that they may notice. A dedicated team can be created to reply to customer queries and concerns through the above email IDs. Phone banking officers and branch staff should also be trained on response to customers' queries and concerns on frauds. Creating and employee awareness and training about the various types of fraud and how to detect the frauds and their prevention ways. It is possible through proper mechanism and training program. A strong KYC (know your customer) process is the backbone of any fraud prevention activity. Know your customer, physical securities of documents of old customers and as well as of new customer also. All banks must have separate Department to manage frauds; their role is monitoring, investigation, reporting and awareness creation

Indian banking system detected Rs 71,500 crore worth of frauds in financial year 2018-19 which to put in scale is slightly more than the Rs 71,000 crore re-capitalisation package planned by the government to revive the health of its public-sector banks. Interestingly, over 90 percent of these losses were to the government owned banks while the share of incidents that emanated from these lenders was at 55.4 percent.

Overall, 3,766 incidents of frauds were detected in Financial Year 2018-19, a 15 percent spike from a year ago, while the losses incurred saw an 80 percent rise from the last year, even as Financial Year 2018-19 saw the most infamous banking fraud in India's history where Nirav Modi siphoned off nearly Rs 13,000 crores from Punjab National Bank in February 2018.

Most of the bank frauds are caused by cheating and forgery followed by misappropriation and criminal breach of trust. Another point of concern for regulators and policymakers came from the fact that it took banks an average of nearly 2 years to detect frauds. Large frauds above Rs.100 crore took banks nearly four and a half years to detect according to the Reserve Bank of India. Nearly Rs 52,000 crore worth of frauds detected were classified as big frauds.

To curb this menace, the central bank said that it is in talks with various agencies including the Ministry of Corporate Affairs to create an interlinked database for fraud monitoring. In furtherance, the regulators said that analytic engines of banks and user interface of fraud registry would be improved to create a more robust monitoring system. The RBI, in the report, said that they also subjected 57 banks through IT examination to check their cyber security preparedness and compliances.

In the context of changing global banking landscape, where branch networks are shrinking, volumes of digital payments are increasing and payments are being processed in seconds, fraudsters are creatively finding new ways to steal from banks and their customers. It is observed that the fraudsters are shifting focus from account takeovers to scams where customers are exploited as a weak link. More needs to be done by banks to educate and protect their customers.

The potential harm of insider fraud can be as great, if not greater, than external fraud, given the ability of employees to exploit weaknesses in controls to target the most valuable assets of a bank. Banks should continue to take a pro-active approach to detecting insider fraud.

In context of more countries implementing Open Banking, banking must enhance their ability to analyze big data within an open banking environment and navigate through Application Program Interfaces.

The methods used by both internal and external fraudsters continue to evolve. There is a growing need for banks to ensure the operational efficiency and effectiveness of digital fraud controls, leveraging advanced data analytics, and human expertise to predict, prevent and detect fraud. Ineffective systems impact fraud management information. Deficient reporting can also negatively impact the Board and Risk committees' ability to make appropriate resource allocation and investment decisions with fraud investment seen to fall short of financial crime.

Technology alone is not enough. Banks must plan beyond the technology to achieve results and optimum performance in their fraud operating model across governance, people, processes and technology.

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20

Democracy Vs Mobocracy : An Analysis in the Indian Perspective of Global Village

Shiv Shankar Singh

Indian democracy has been ascribed as the world's largest. Abraham Linkon, the former American President and one of the great historical figures in world history, defined Democracy as "the government of the people, by the people and for the people". Invariably, people construed being regarded as one of the root pillars of a nation's democratic set-up. The serene notion of 'Equality for all 'may to be regarded as yet another important pillar of democracy. Mohan Guruswamy in one of his articles in an online newspaper said "Democracy is dead and long live democracy and it is the citizens who mention the realism of Indian Democracy". According to him "The democratic way of life depends upon one human quality known as restraint. Latter flows from the spirit of accommodation, which leads to the path of reconciliation. Democracy is the only political system that seeks to reconcile diverse aspirations and demands to maximise their fulfilment". Nowadays, the inherent elements of Indian democracy are often being converted into 'mobocracy 'that could significantly be regarded as one of the basic socio-political issues of great concern. The rising incidents of mob lynching, in India, either on the pretext

of cow vigilantism or against certain community pose new question mark on the viability of our democracy as an ideal institution of governance for the ultimate wellbeing of the target populaces at large.

Roots of Indian Democracy

Historically viewed, Indian democracy has its deep root from ancient times itself. Invariably, Sabha, Samiti and Viditha were socio-political institutions with inherently democratic in nature during the Vedic era itself. Afterward, the existence of many republics during the period of Shakyamuni' Gautama Buddha and his adamant advocacy in favour of democracy along with his stress upon the development of democratic institutions too strengthens India's claim to it. Vajji, situated in the present Vaishali District of Bihar, is being regarded as the world's oldest example of a flourishing democratic republic in India.

's Generally speaking, democracy is recognised as a viable political institution for nation governance. But, in ancient times, the origin of Buddhism was pro-democratic and anti-orthodoxies and its assemblies in India too had worked successfully in a democratic manner. Hence, it has been more or less applied in the religious sphere also. From these the significance and relevance of democracy for India can well be understood in the context of a global village where India has adhered to the vedic notion of '*vasudeva kutumbakam*' that signifies the world as a family of humanity with varied issues associated with the same..Mahatma Gandhi, the legendary robust father of Indian Independence, himself described the importance and necessity of democracy for India emphasising upon its constant development and maturity for the ultimate inclusive development of the nation at large. It could also be well placed in the context of the global village scenario where humane concern for the wellbeing of humanity predominates. Through it, Gandhi looked forward towards the ensuing transformation of his serene political dream of Ram Rajya into a reality. Significantly, his doctrine and notion of Ramrajya

reflects his imagination where everyone, whether weak or strong, gets equal opportunity to rise and his security and honour are guaranteed. In short, Gandhi's Ram Rajya could somewhat be considered as being an advanced form of democracy.¹

In fact, a question may arise- whether there is a possibility of revolution of Gandhi's dream of Ramayana or an advanced form of democracy into a reality? If yes, then when? Mahatma Gandhi himself was also not sure about it. He knew that a human being always commits mistakes either knowingly or unknowingly. He was also aware that one cannot get rid of them immediately and completely. Similarly, a man-made institution cannot be expected to immediately become entirely free of evils.

Therefore, Mahatma Gandhi, along with other necessities, particularly stressed upon discipline, equal respect of law by all and priority accorded to social will over the individual will in a democracy. He was also of the view that indiscipline, disrespect of law and priority to the individual will over the social will are among the main causes behind every evils in a democracy. So, it is necessary to minimise them for making democracy disciplined and enlightened. Such evils indeed get reflected in the concept of 'mobocracy' where essence of democracy for human wellbeing is placed in a degraded position and stature within the ambit of a nation's political system at large.

Moreover, Mahatma Gandhi laid great emphasis on a healthy public opinion and expressed the need for responsible representation. The reason being if public opinion in democracy is not healthy and matured; it can be converted into a mobocracy instead of giving strength to it. On many occasions and at different levels this can be observed in many counties across the world including India.

Similarly, if representatives in a democracy are not responsible, they abet weaken it instead of safeguarding its interests and values for the humanity. Therefore, Mahatma Gandhi called upon the people to reduce possibility of abuse in democracy to the minimum from time-to-time. He, time and again emphasised upon making democratic system of governance firm, healthy, disciplined and responsible. Mahatma Gandhi's call to save democracy from becoming a mobocracy and to make it people-friendly and finally transforming it into a *Swarajya* was, and is, worth giving a thought.

Despite the large number of people coming together mobocracy can never be considered as reflection of a democracy. Due to lack of discipline and control over the crowd a mobocracy cannot transmit the will of the people. Hence, a mobocracy sometimes becomes more dangerous than a dictatorship. That is why; Mahatma Gandhi also said, "They [who are in a mob] have no mind, no premeditation. They act in frenzy."

Mobocracy may be regarded as an informal rule for the government devised without any reasoning by some of the dominant forces, backed by any conservative leaning towards religious or cultural or even political ideology that only signifies mob. And where these reserves the right to form the government and the rule the people; they vied to encroach upon the inclusive rights of populace.. In today situation, not unexpectedly, the remarks of Gandhi pertaining to mobocracy may be analysed in the context of reconciling the ideology of the Sangh Parivar with the immediate electoral interests of the Bharatiya Janata Party. Many cow protection groups in different parts of the country have already criticised him for the statement against cow vigilantism. But for the elections benefits in the Indian states of Uttar Pradesh and Gujarat; cow vigilantism and mob-lynching are often spread to crystallise the political atmosphere in India itself.

In fact, essential ingredients of democracy, in comparison to mobocracy may conveniently be mentioned hereunder:

- *Personal Freedoms*: People enjoy many personal freedoms such as freedom of religion and freedom of expression.
- *Political Freedoms*: People can speak freely, form associations, run for office and vote without being intimidated.
- *Political Equality*: All citizens have the right to vote and run for public office.
- *Rule of Law*: Everyone must adhere to the same laws. These laws are known, predictable and impartial (unbiased).
- *Common Good*: All citizens should be responsible, caring individuals that can work towards the common good. Ex. Volunteering, common courtesy (opening/holding door for someone), clearing your sidewalk and driveway in winter, removing weeds from your lawn, no parking on roads in winter, lawn-watering bans, paying taxes.
- *Human Dignity*: Protect and uphold the dignity of all people. Ex. Wheel chair access at any public place, nursing homes for elderly, shelters for homeless, food banks/drives for people in need.
- *Being Informed and Getting Involved*: Citizens should be informed and participate in issues that affect their community, province, nation and world. Ex. Community advocates, attending city council meetings, voting, watching/listening/reading news and current events.
- *Respect*: Individuals should respect the rights of others. Ex. Smoking bans, not driving under any influence, gay rights, anti-racism/sexism, and support minorities.

The question often arises to ascertain whether mobocracy contains basic elements of democracy and also how can a democracy be devoid of mobocracy? How can it be transformed into a real people's rule? How can it become a *Swarajya*? Mahatma Gandhi was of the opinion that it was possible through the process of constant reforms in democracy and not in avoidance of it and that too in accordance with demand of time and prevailing circumstances. Simultaneously, for the rise of the institution of democracy he rightly called upon the people to carry on their duties and to maintain discipline. However, the democracy in India often seems to be going in the reverse gear. Sometimes it assumes an irrational and unreasonable mentality of mob. Invariably in American English, the term "Mob" is synonymous to a gang of criminals and gangsters are also being referred as 'mobsters'. But, it is worth mentioning that the latter cannot be related with the pious and humane institution of democracy in any nation across the world at large

In this process Gandhi further spoke about people's awareness: it meant people's consciousness of their duties, rights and responsibilities towards the nation. I can see this as form of Fundamental duties. According to him people awareness is further requirement of Democracy and without awareness we never activate all its ingredients above stated. He fixed the responsibility of people's representatives on the one hand and the government on the other. He opposed the idea of such a democracy in which a handful of representatives, it doesn't matter if they are elected for a fixed period by the people itself, sat at the centre to work for it. Through that the real aim of democracy can never be achieved; the system cannot become a self-rule. In the words of Mahatma Gandhi himself: "*Democracy cannot be worked by twenty men sitting at the centre. For, it has to be worked from below by the people [consciously] from every village.*"³

In the furtherance of achieving the aim and objective of democracy, the culture of dissent should be respected. There are three basic element of culture of dissent.

- > Firstly faith on disagreed people,
- > secondly do positive argument with disagreed people,
- > Thirdly permit the restraint ideology by which it may liable to test in main stream ideology.

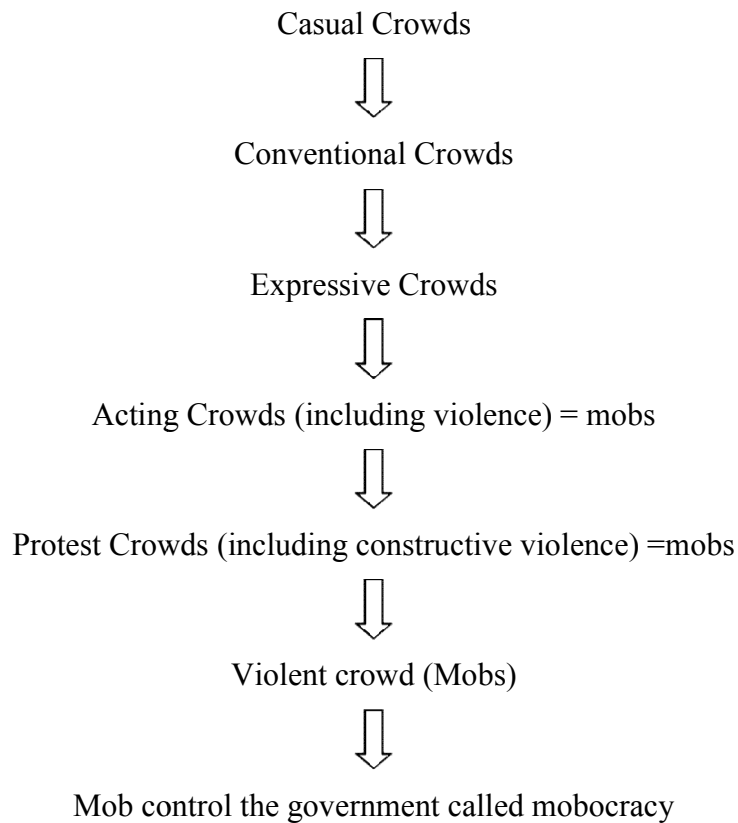
The culture of dissent is in itself sufficient enough to cure exiting loopholes in your society and very helpful in building of Democratic State.⁴ Today's India has numerous undemocratic concepts on the name religion, caste, region, race, gender etc. in the form of the cow vigilantism, mob lynching, and Hindu nationalism.

Stages of Mobocracy

The meaning of mobocracy is already decided where illegitimate mobs have all power to force, protect and regulate the Government and mob is the violent crowd. When be discuss of creation of mobocracy, these are in several following steps,

1. A *casual crowd* is a collection of people who happen to be in the same place at the same time. The people in this type of crowd have no real common bond, long-term purpose, or identity. An example of a casual crowd is a gathering of people who are waiting to cross the street at a busy intersection in a large city. True, they are all waiting to cross the street and to this degree do have a common goal,

but this goal is temporary and this particular collection of people quickly disappears once this goal is achieved.



2. *Conventional crowd* is a collection of people who gather for a specific purpose. They might be attending a movie, a play, a concert, or a lecture. Goode (1992) again thinks that conventional crowds do not really act out collective behavior; as their name implies, their behavior is very conventional and thus relatively structured.
3. An *expressive crowd* is a collection of people who gather primarily to be excited and to express one or more

emotions. Examples include a religious revival, a political rally for a candidate.

4. As its name implies, an acting crowd goes one important step beyond an expressive crowd by behaving in violent or other destructive behavior such as looting. A mob an intensely emotional crowd that commits or is ready to commit violence is a primary example of an acting crowd.
5. A fifth type of crowd is the protest crowd. As its name again implies, a protest crowd is a collection of people who gather to protest a political, social, cultural, or economic issue. The gatherings of people who participate in a sit-in, demonstration, march, or rally are all examples of protest crowds.

Casual, conventional and expressive crowds do not contain violence that means they can't be element of mobocracy but afterward acting and protest crowd contain violence so it consider as a part of mobs.⁵

In Indian democracy the contemporary facts are showing a little presence of the element of mobocracy, because some mobs which capture the government's stand on the numerous incident of killing in Cow vigilantism and Mob Lynching.

Theories of Mobs Behaviour

Some of the most important theories regarding crowd behaviour may be mentioned as follows:

- (a) Le Bon's Theory
- (b) McDougall's Theory
- (c) Freud's Theory
- (d) Allport's Theory
- (e) Turner's Theory.

In fact, the study of collective behaviour started with the study of crowd behaviour. In the 19th century, crowd behaviour was a significant area of study in the field of psychology. Early social psychologists such as Gustavo Le Bon and Gabriel Tarde suggested the origins of crowds in her instincts and mass imitation. On this basis, Le Bon proposed 'mob psychology' as a theory of crowd.

Since then sociologists have largely replaced psychological point of view of crowd behaviour. They have shown that behaviour in crowds is far more mindful, rational and socially organized than Le Bon believed. Not only this, they have broadened the field and coined the new term 'collective behaviour' to include mob, riot, panics and craze, rumour, audience, public and mass (social) movements, along with crowd.

Many theories have been propounded by various psychologists and sociologists to explain why the crowd behaves in a particular way, few of them may be examined. The behaviour of the crowd is always emotionally determined.

The things common to all people are such fundamental emotions as fear, anger and rage. In terms of these common elements, crowds form, feel and act. These provide a common bond and a basis for interaction in all conditions.

In the crowd the emotional tone is heightened by the concentration of attention, the suggestions of leaders, the use of verbal and other symbols, the excited gestures of the crowd members, and other circumstances of the occasion. On the basis of these emotional characteristics, the crowd is easily led. In the crowd, mostly critical faculties are in abeyance. Individuals accept as true the most improbable of statements.⁶

(a) Le Bon's Theory

According to Le Bon, the earliest and main exponent of crowd behaviour, the individual yields 'to instincts which had

he been alone, he would perforce have kept under restraint'. Like the hypnotised person, 'he is no longer conscious of his actsAt the same time that certain faculties are destroyed, others may be brought to a high degree of exaltation.

He is no longer himself, but has become an automation that has ceased to be guided by his will.... In the crowd he is barbarian. He possesses the spontaneity, the violence, the ferocity and also the enthusiasm and heroism of primitive beings'.

While explaining the crowd behaviour, Le Bon developed his most important notion of 'group mind'. Group mind makes people feel, think and act in a manner quite different from that in which each individual would feel, think and act where he in a state of isolation.

The group mind is not a mere collection (or the sum) of the minds of all the individual members of a group. It is a mind of its own distinct from minds working on different levels. Its working is based on emotions, appeals, suggestions and slogans.

Its acts are less rational and more emotional. It is an irresponsible mind focusing its attention on some immediate object. Its mental level is very low. It becomes easily excited and acts in a hypnotic way. It is on this account that individuals behave most irrationally in a crowd than otherwise behave individually.⁷

(b) McDougall's Theory

Psychologist William McDougall's theory of the behaviour of unorganised groups or crowd is practically the same as Le Bon's. He explains the two central phenomena of crowd behaviour, namely, the intensification of emotion in a crowd and the lowering of intellectual level, as follows: The former is due to the principle of direct induction of emotion by way of 'primitive sympathetic response'.

He says, the greater the number of people in whom the same emotions can be simultaneously observed, the greater the contagion. The individual under the influence of emotion loses the power of criticism and slips into the same emotion.

The collective emotion becomes intensified by mutual interaction. The intensification of emotion and unpreparedness for opposing the authority of the crowd, in their turn, inhibit intellectual processes and the lowering of intellectual level in a crowd.⁸

**McDougall described the behaviour of the crowd
in the following words**

A crowd is 'excessively emotional, impulsive, fickle, inconsistent, irresolute and extreme in action, displaying only the coarser emotions and the less refined sentiments; extremely suggestible, careless in deliberation, hasty in judgment, incapable of any but the simpler and imperfect forms of reasoning; easily swayed and led, lacking in self-consciousness, devoid of self-respect and of sense of responsibility Hence its behaviour is like that of an unruly child or it is like a wild beast.

(c) Freud's Theory

McDougall's theory of sympathetic induction to account for the intensification of emotion is not accepted by all scholars. Sigmund Freud in his essay on Group Psychology and Analysis of Ego remarks, 'There is no doubt that something exist in us which, when we become aware of signs of emotion; ... how often do we not successfully oppose it, resist the emotion and react in quite an opposite way? Why, therefore, do we invariably give way to this contagion when we are in group?' Freud traces it to our indirect impulses.⁹

Freud suggests that what holds any group together is a love relationship, i.e., emotional ties. This explains what he

considers to be 'the principal phenomenon of group psychology'. Using psycho-analytic approach of Freud, E. D. Martin interpreted crowd behaviour as the release for repressed drives.

Through a crowd, the restraints of a superego are relaxed and primitive ego-impulses come into play. The 'censor' within the individual is set aside in the crowd and the 'instinct' or basic 'id' impulses, which are normally confined to the inner depths of the personality, come to surface. The crowd thus provides a momentary release of otherwise repressed drives.¹⁰

How far the Freudian theory is helpful in explaining crowd behaviour, it is argued that it is not substantiated by factual observation. Sometimes, the crowd behaviour may be the expression of repressed drives, but it may not be true of all the crowds. Moreover, it is unable to explain all the features of crowd behaviour.

(d) Allport's Theory

F. H. Allport has also criticized McDougall's theory of sympathetic induction of emotion and behaviour. He offered the explanation of crowd behaviour by two principles, of which one is the principle of social facilitation.¹¹

According to this principle, a common stimulus prepares two individuals for the same response and when they are so prepared, the sight of one making that response releases and heightens that response in the other. The second principle is that of inter-stimulation.¹²

(e) Turner's Theory

Sociologist Ralf Turner has gone beyond inadequate psychological explanation of the crowd behaviour and developed an emergent norm perspective. The central thesis of this perspective is that even in the most violent and dangerous crowds, there is also social interaction, in which a situation is

defined, norms for sanctioning behaviour emerge, and lines of action are justified and agreed upon.¹³

Conclusion

Thus, all above explanations throw light on either one or the other factor of the complex phenomenon of crowd behaviour, which in the context of a nation's governance may be referred as 'mobocracy'. These also have global significance and concern for humanity at large. More or less, these could further be considered as incomplete and insufficient. There are multiple factors, such as anonymity, stimulation, emotionality, suggestibility, initiation, contagion, lack of volition, force of unconscious impulses, etc., which are responsible for the emergence of the typical behaviour of the crowd.

It may be ascertained that the theory of crowd behaviour has moved away from the older perspective (McDougall, Le Bon, etc.) that viewed the individual as coming under the sway of the crowd and losing its capacity for rational judgement before the sweep of an overpowering emotional contagion. Instead, sociologists now explain crowd behaviour by the same sociological concepts that explain social group behaviour.

In Indian scenario, all the terms anonymity, stimulation, emotionality, suggestibility, initiation, contagion, lack of volition, force of unconscious impulses are in existence and create the mix culture of mobocracy. Today the formation of group minds is according to agenda of religiosity and then using our emotions in through violence. Mobs, in an electoral significance may tantamount to represent vote politics and also as a means to influence the policy of the government pertaining to the people and nation at large. In this respect, the notion of 'mobocracy' finds its place of importance amongst the concerned vested interests at the cost of jeopardizing the inclusive interests of the concerned target participants to it. So it can be said that the existence of mobocracy is detriment for the existence of effective democracy in a nation across the

world that are somehow or rather constitute global village where negative socio-political trend in one nation tantamount affecting the same in the other ones too. Mobs, devoid of any rational activity, objective and behavior can act not only as an antithesis to the basics of democracy but also abet negating the doctrines of global village for the ultimate furtherance of world's humane interests and the same ought to tackled effectively and rationally as well.

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21

Global Concern Towards Safeguarding of Children's Right

Upendra Nath

*"Ayam nijah paroveti gananaa laghu
cheytasaam Udaarcharitanatum VASUDHAIVA
KUTUMBAKAM"*

*["The whole is one family to the noble minded – but to the petty
minded, there are a host of distinctions of mine and thine"]*

Pragmatically viewed, children could be ascribed being an indispensable global human asset designated to build a nation's destiny by the dint of their mental calibre and talent that eventually determines the ultimate prosperity of humanity at large. In their formative developmental phase of life, they ought not to be distinguished in terms of race, religion, nationality, sex, region and the alike. Somehow or rather, the extent of their wellbeing, protection of inclusive human rights and interests statutorily available within a country reflects the latter's socio-economic, legal as well as political ecology for the global comity of nations to ascertain the viability and prospects for the furtherance of humane protective and welfare doctrines in the target regions. It may also be envisaged that the dimensions of the children's rights concept is not only

universal but also an indispensable broad component of the larger human rights issues across the world. Their status and stature, in the present strife prone world where quest to the political and strategic hegemony reign supreme, has remained an issue of universal concern amongst the humane and conscious minded populace representing the world's fraternity within the ambit of global village doctrine. Albeit the statutory laws and regulations in most of the nations along with the various international treaties, pertaining to it, are often being dedicated towards protecting children's right, in global perspective has increased during the last century. Yet, unfortunately, in practice, many of these have remained to be confined simply as being a 'signature tune, rhetoric & the melody of children's welfare 'amongst most of the nations within the present international community itself.

Varied Dimensions of Concern for the Global Child's Right Violations

It is indeed an issue of global concern that the inclusive rights of children remain getting violated in one form or the other without consciously being taken into consideration and effective initiation vis-à-vis implementation of remedial measures devised by the concerned both at the global and domestic level. Basically the word "children", which is globally in vogue, denotes such populace of the target humanity who have not attained their prescribed medico-legal age of maturity whereby they could be ascribed mentally capable enough taking conscious and mature decisions pertaining to their activities that could serve their individual national and global interests. In fact, globally it depicts a population who are below 18 years of age. However, viewed pragmatically, it may be ascertained that all such target populations who are apparently either below their age of adolescent or maturity may be covered under the ambit of this definition of child for the global concern for the same. Such target population falling under the Lowest bracket of statutory

age, prescribed in the nation of their inhabitancy, ought to be made the subject of consideration and concern owing to the vulnerability of socio-economic and cultural situations to which they often remained exposed and warrants protection of their inclusive interests and human rights.

Significantly, the children's right to their individuality; identity; dignity & life get affected and violated owing to their being subjected to the varied forms of social ills requiring them either to follow or observe any of the unhealthy, irrational & unreasonable ancient traditions, customs, or totems that are prevalent within the ambit of their societal ecology itself. Similarly, their natural rights to the safe livelihood too get violated even in those circumstances whereby the abject menace of economic depravity & disparity forces them to enter into such avocations for which they are either unworthy of or are even physically and mentally unsuitable. Most of these could either be unethical or immoral & are mainly aimed to serve the vested interests & gains of some of the unscrupulous antisocial elements who roam about to prey on & exploit the child's innocence and helplessness. Often, these vulnerable sections of the world's target population also suffer owing to the state's indifferent attitude, and even adopting an unfair & unreasonable approach whilst addressing issues pertaining to ensure protection and safeguard of their best interests within its realm, when the children become victims to the armed conflicts by non-state militant forces. The latter remain adamant to vis-à-vis militarily challenge and subsequently destabilise the might of a state's established sovereign status, order and governance.

The menace of child labor; child marriage; physical and moral exploitation, sale & trafficking, and alike are indeed the issues of global concern to ensure protection and safeguard the child's inclusive rights pertaining to their right to life, health and social welfare, education, existence, sustenance and livelihood along with their protection through an adequate juvenile justice system, meant to reform and rehabilitate

children in conflict with law both at the national & international level. Varied aspects of child's right could be found mentioned in the international treaties that warrant being implemented in totality by the nations ratifying the same.

Invariably, when we pragmatically express our concern about the global initiatives towards the protection and preservation of the varied child's right; the categorisation of children warranting distinct attention, in accordance with the socio-cultural, economic and political ecology and environment wherein they strive for their survival & natural growth, becomes imminent being accorded distinct attention by the international community to safeguard their basic rights. It may be classified as:

1. Child with universal civil rights such as those of their dignity, life, food, shelter, health, clothing, nutrition education, and various other allied socio-cultural rights;
2. Child who are in conflict with the established socio-political norms, rules & 'law of the land.'

In the aforesaid context, it may be envisaged that although the global concern towards ensuring protection and the preservation of the children's civil rights are frequently being raised at various domestic and international forum; the need for the same pertaining to those who are in 'conflict with law', frequently gets ignored. The latter category implies rights pertaining to their being reformed & rehabilitated within the societal ecology without any distinction with the other constituent human units and unhindered access to the other basic necessities of life & livelihood along with their right against torture in detention; right to their speedy trial, free legal aid and fair justice through an appropriate state's criminal justice system against the one that have been formally prescribed for an adult detainee.. The provision for the same has adequately been laid down under the *'Riyadh Guidelines*

[1988] and the 'Beijing Rules' that warrants the international community to implement the same within its domain. Indeed the avowed doctrine of *Zero Tolerance* 'towards protecting the inclusive rights of the children, across the global socio-political and legal scenario, could construe being sine quo none for the sustainability of the global societal and humane values where 'child' constitutes being an indispensable constituent and unit within its ambit. It also emphasises to prohibit any form of violence, across the world, against the children in all settings by law and its enforcement and subsequently to ensure reducing socio-economic inequalities, not only through the state's sound policies but also executing the same on the ground itself.

Even though the rhetoric of the world's fraternity and institutions have persistently towards expressing their deep concern and commitment towards ensuring inclusive protection of child's rights from abuse, neglect, exploitation, violence etc. are an issue of formalism; yet, in reality, these get overshadowed under the other politico-economic and strategic issues and interests concerning global peace, security and alike. Somehow or rather, the 1989 UNCRC and other related international treaties & conventions have invariably laid down provisions relating to ensure protection of the people's inclusive human rights including those relating to the children constitutes its indispensable component. The same also get incorporated within the domestic laws of the comity of nations across the world over. Somehow it certainly justifies a cosmopolitan nature of the statutory mechanisms for ensuring child's right protection and safeguards in accordance to the avowed doctrine of 'global village' which considers the issues of inclusive child's right being a secular concept worth taking note of all the global fraternity of nations for the wellbeing of humanity at large.

Significantly, when the issues pertaining to the inclusive child's right protection are taken up for undertaking

any of the research work under an international law, then it also certainly become imperative for the concerned to acknowledge the fact that any violation and abuse of the child's right even within a nation's domestic ambit; it shall have a direct bearing upon the extent of prevailing human rights situations across the world over. In this respect, it is worth mentioning that in our recent years on 16th December 2014, the conscience of global humanity gets shaken when children were deliberately made the targets of terrorist attack, by the 'Talban' Islamic fundamentalists, at the Peshawar in Pakistan whereby about 140 children were brutally massacred. These incidences do signify that the militancy and non-state actors do not possess any moral and humane sentiments and concern for the children's human right and use the same as a bait to accomplish its nefarious aims and objectives. Such incidents indeed warrant the global concern and collective penal initiatives against the perpetrators of child's right violation.

In addition to above, the international community is presently, being encountered with the new challenges and threat to protect the rights of inhabitants and children as well from being abused and violated at the hands of the militias of Islamic State of Iraq And Syria [ISIS]. The latter is notorious for frequently releasing its 'torture' videos showing massacre and the killing of foreign nationals at the hands of its '*child brigade*' who are being specially trained for such inhuman motives and actions. Even though the comity of nations under the auspices of United Nation has considered bringing such actions under war crimes against the children's right but still more warrant being done. Even the consistent aerial bombings, on the abode of these militias in Syria and the adjoining regions, by the armed forces of Russian, American and other militarily strong nations, have resulted in more of the casualty of children & civilians, leaving the latter to remain in a state of fear and horror of their imminent unnatural death owing to it. Most of the erstwhile vibrant and progressive towns in Syria have now been ravaged to ruins and the inhabitants forced to

take shelter in millions of tents that were placed to accommodate the survivals of aerial bombings by the belligerents on the city. Pathetically the conscience of humane sentiments get shockingly shattered when the global agencies confirmed minimum of about 4 to 5 deaths of the children owing to the extremities of weather and the non-availability of adequate medical facilities and amenities for their succour. As such, child's right to life and livelihood remain in the state of jeopardy for human consciousness pondering to find a way out solution for the everlasting peace and tranquility thereat.

Initiatives for the Global Child's Right Protection

Since, 'child's right' could be construed as a microscopic constituent of the larger concept of a universal 'fundamental human right'; nations across the world, aspires that the inclusive rights of its 'human resources for the future' shall be well nurtured and their inherent talents and calibre be equally developed through various national and international initiatives. Pragmatically, every country aim to cherish its child populaces as a national asset that could conveniently be explored & developed for its overall progress. Since a child may be construed as a 'human being in making; the healthy growth and inclusive development of their personality do manifests & reflect the future prospects, growth and prosperity of both the nation and its human resources as well. However, in light of the current international scenario, the overall protection and safeguard of the child's right remained often being one of the most neglected components of the national policies that are being pursued by a country.

As mentioned above, various rights of the children, especially those pertain to their 'right to life, dignity & identity, continue to be violated in many of the war-ravaged nations and the region across the world. Instances ranging from the kids getting drowned alongside with their parents in the latter's bid

to cross over to the European countries as migrant refugee towards escaping the horrors of torture by the Islamic militias of ISIS [Islamic State of Iraq & Syria] whereby some found being washed up on the shores of nearby islands and alike, are some of those gory incidents during 2015s that had raised the global concern about the plight of such people. These are indeed the issues that deserve international concern and help so as to ameliorate the target populates from such crisis.

In this respect, '*The Universal Declaration of Human Rights*' may be considered as a basis for all the other international legal standards that either exists or are intended to be brought into practice in near future, amongst the member countries of United Nations, Apart from several other 'United Nation's Conventions' and laws with avowed aims to ensure protection and safeguard of the children's inclusive rights, across the world over. These could be in the context to many of the historical legal documents such as those of the 'Declaration of the Rights of the child' that was drafted by Eglantyne Jebb in 1923.

A much expanded version of the latter was adopted by the General Assembly in 1959 that eventually served as the basis for the current United Nations 1989 "Convention on the Rights of the Child (CRC)". The latter with its broad dimensions of varied human rights issues may correctly be regarded as the statutory & "*Magna Carte of children's right*", a legally binding international instrument across the world. Its implementation is also being monitored by the UN "Committee on the rights of the child". National governments, that have ratified it, commit and bind themselves accountable for such commitment before the international community, with an obligation to ensure protection of the children's rights within its realm. In other words, the CRC may be considered as one of the most widely ratified human rights treaty that has been solely dedicated to ensure protection & safeguard of the children's inclusive rights across the world.

In a broader perspective, the CRC could be construed as being based upon the four core principles, namely those of non-discrimination; the best interests of the child; the right to life, survival and development; and considering the child's views in those decisions which affect them, either directly or indirectly, according to their age and maturity. Invariably, the CRC, along with its other mechanisms for the international criminal accountability such as those of the International Criminal Court, the Yugoslavia and Rwanda Tribunals, and the Special Court for Sierra Leone, is said to have significantly increased the profile of children's rights across the world.

In the same vein, the 'Vienna Declaration and Programme of Action' also calls on the States to integrate the provisions of the 'UN Convention on the Rights of the Child' [CRC] into their national action plans. The latter warrants giving priority, as an international effort, not only over ensuring reduction of the infant and maternal mortality rates, malnutrition, illiteracy but also to provide access to safe drinking water and basic education to these target populations. It also aimed at combating the fallout of the devastating emergencies that often result from natural disasters and armed conflicts along with other grave issues that children face owing to their extreme poverty and depravity. The latter's exploitation and abuse too warrant being actively combated by addressing their root causes. In addition, effective measures too are required to counter the socio-economic menace of female infanticide, harmful child labour, trafficking and sale of children and their vital organs, child prostitution, child pornography and any other forms of child's rights abuse.

Children are often being subjected to a socio-economic menace of sexual exploitation across the world that virtually violates the children's inclusive rights and also results in disintegrating their dignity, identity and personality as well. Such issues involving children and adolescents are continuously on the rise over the past several years. The media have increased

awareness by documenting instances of serious human rights abuses such as young women and girls being sold into prostitution or sexual slavery; coerced into child pornography or trafficked across borders into bonded sexual labour and the alike. Often, economic depravity led children and adolescents of both sexes alike to trade sexual "favours" in exchange for food, shelter or other necessities, in much the same way as do their adult counterparts. Such menaces of '*child prostitution*' are commonly amongst the abandoned street children, who often becomes addicted to narcotics drug and subsequently struggles to eke out their livelihood from these immoral & unethical practices. Often in many of the developing or underdeveloped countries, girls and adolescent women are either "given" out in marriage or are expected to produce an extra income for their families through such 'sexual labour' in a socially acceptable tradition amongst these communities.. These practices eventually bring to light about the prevailing concerns & attitude of the community for the "girl child" and even encourage the inhuman menace of female infanticides amongst such societies. Reports as released in late 1996 by UNICEF and the International Labour Organization (ILO) draw attention to child prostitution as "one of the most intolerable forms of child labour".

Further, in accordance to the provisions of the UNCRC, many international human rights and children's rights organisations have called for the elimination of all forms of child labour and for the universal access to education. However, efforts to enhance their lives through elimination of child labour can also have a paradoxical effect of removing them from economically necessary work, thereby compelling these targeted groups to work in the highly exploitative street economy. For instance, in 1992, the Child Labour Deterrence Act was introduced in the U.S. Congress and was aimed banning importation into the United States of such goods which have been made by the children younger than 15.

However, the unanticipated response of the aforesaid Bill in Bangladesh was dramatic: Tens of thousands of children, who were employed in Bangladesh's vast, export-oriented garment industry, were immediately dismissed from their jobs. With few skills and limited access to education or to other legitimate sources of income, many of these children ended up in the streets, working as prostitutes or involved in other, equally dangerous forms of labour. However, when these situations were discovered by UNICEF and the local nongovernmental organisations; the Bangladesh Garment Manufacturers and Exporters Association subsequently negotiated and signed a Memorandum of Understanding with UNICEF and the ILO to assure that school placements would be arranged for those child workers who were terminated and that the latter would also receive stipends to offset their lost wages. In addition, the agreement also stipulated that the factory positions of terminated child workers would be offered to other qualified adult members of their family. However owing to negligent follow-up measures on these issues the initiatives get frustrated,. Nonetheless, the situation also demonstrates how well-intentioned but short-sighted interventions in child labour may increase vulnerability to sexual exploitation.

However, despite many of the declarations, against the sexual exploitation of children at an international level, the menace continues to exist as a worldwide phenomenon. News reports documenting the trafficking of young women from Eastern European countries to the West; the murder of several girls allegedly at the hands of child pornographers in Belgium and the hiring of child prostitutes by United Nations peacekeeping troops in Mozambique and the alike, highlights the global nature of these problems in a true sense of the term. These incidents also attest to the fact that such abusive practices against children is global and not merely confined either in developed or developing world.

In a positive note, a *'World Congress against the Commercial Sexual Exploitation of Children' [WCCSEC]*, was convened in the August 1996 at The Stockholm, Sweden. Primarily, it was proposed in 1994 by 'End Child Prostitution in Asian Tourism' (ECPAT), a Thailand-based nongovernmental organisation, and subsequently grew from the collaborations between ECPAT, the United Nations Children's Fund (UNICEF) and nongovernmental organisations that support the United Nations Convention on the Rights of the Child [UNCRC]. It resulted in the unanimous adoption of the *'Agenda for Action'*, a document that stipulates concrete measures to foster global cooperation and thereby to facilitate the prevention of sexual abuses and the protection of these vulnerable youths.

Enforcement of the International Statutes & Provisions for Child's Right Protection

With its avowed objective to put an end to the varied forms of child's right abuse and exploitation from across the world; the global comity of nations, through the varied international mechanisms & organisations for the statutory enforcement of UN resolutions, do commit themselves to ensure protection & safeguard of the children's inclusive rights in a realistic manner. These include the 'Child Rights Caucus for the United Nations General Assembly's Special Session on Children'. The latter was primarily set up to promote the state's full implementation and compliance with the Convention on the Rights of the Child, and subsequently to ensure that the issues of children's rights get accorded due priority during any of the UN General Assembly Special Sessions on the Children and its other preparatory processes associated with the same.

Apart from it, there also, exists *'The United Nations Human Rights Council'* that was created with a hope that it could certainly be more objective, credible and efficient in denouncing human rights violations worldwide in comparison

to the highly politicized United Nations Commission on the Human Rights. Along with it there also exists an '*NGO Group for the Convention on the Rights of the Child*' that is comprised of a coalition of international non-governmental organizations that were originally formed in 1983 to facilitate the implementation of the aforesaid UNCRC across the world.

Moreover, many countries across the world have constituted the "*children's rights ombudsmen*" or the 'children's commissioners', within its realm, with an assigned prime governmental duty to represent the public's interests through undertaking investigations and address complaints, from any individuals, pertaining to the incidences of children's rights violation taking place in their vicinity.

Significantly, in order to discourage the immoral practices of 'sex tourism involving children;' U.S. Congress had even passed 'The Violent Crime Control and Law Enforcement Act of 1994'. The governments of Australia, Belgium, France, Canada, Ireland, Italy, the United Kingdom Germany and New Zealand have also enforced similar extraterritorial laws legislation within their domain. The global concern for the child's right could also be envisaged by the fact that many countries, irrespective of its weak financial resources, vies undertaking initiatives on these issues within their domain. Some countries, like those of Kazakhstan, even incorporated provisions for child's right protection in its constitution at par to that of an international standard for the same. Similar endeavours were also taken up in *Lesotho* where the Children's Protection and Welfare Act and Court Rules have been drafted, under the aegis of United Nations Children's Fund (UNICEF), and are aimed to enhance the 'child justice system' in the country. A Child and Gender Protection Unit has also been set up in all of the police posts across the country, so as to provide a child-friendly reporting environment with ensured confidentiality.

Similarly, more countries like those of *Montenegro*, etc put emphasis on the need and requirements for the existence of law on juvenile justice along with the social & child care in the country. '*Victim-offender mediation*' programme in the country is a noble step which has been initiated towards reintegration of the juvenile offender in the social mainstream. Countries even vied to fully implement the 'UN Convention on the Rights of Persons with Disabilities'. Children also get protected from varied forms of domestic violence against them.

Even countries like *Ethiopia*, *South Africa*, *Timor-Leste*, *Albania* etc too have taken measures through establishment of The Child Labor Forum to oversee the implementation of laws to protect the working children from being exploited. In the same vein, *Timor-Leste* too has established its National Commission for Child Rights, aimed at developing child-friendly mechanisms for promoting protection and preservation of their rights. A youth parliament has also been introduced here, in order to give recommendations for policy formulations on education, health, employment and recreation in the country. The country is also in the process of finalising its Child Code and Juvenile Justice Bill, and even legislative measures such as the adoption of a national child rights action plan are taken to address the rights and concerns of children. In fact, Timor-Leste is a young democracy and aspires to give prosperous future to its nationals by the year 2030.

Moreover, 'The Global Coalition to Protect Education from Attack' (GCPEA), being a recently formed coalition of international organisations that includes the Council for Assisting Refugee Academics; Education Above All; Education International; Human Rights Watch; Institute of International Education Save the Children; UNESCO; UNICEF and UNHCR. aimed to protect child's educational right across the world. It emphasised that the armed forces and non-state armed groups should immediately stop targeting hospitals

schools, teachers and the students for attack and should also comply with the new United Nations Security Council measures that are being initiated to protect education in the zone where the armed conflict frequently takes place between the belligerents.

In fact, in one of its 'resolution on the children and armed conflict', which was adopted on July 12, 2011, the Security Council, under the aegis of the United Nations has specified the international bodies, such as those of the 'Children's Rights Division at Human Rights Watch' along with similar other bodies, that they should monitor such instances where the schools and hospitals are being assigned for the military use and also to ensure that the "schools should not be targeted in war". Even the Security Council has also raised its concern to prevent such attacks, by both the armed forces and the non-state armed groups, in order to make the schools safe for children even during any of the armed conflicts in its area of operation. In fact, such instances eventually results in the interruption of education in many countries owing to the frequent closure of schools, physical damage to the infrastructures, threat, intimidation, military use of the premises and the alike. But the same could be seen violated more frequently without any penal actions being taken against the guilty by the concerned international agencies.

Conclusion

Invariably, the nature of child's right comprised being secular, non-discriminatory and universal owing to its significance and indispensability towards determining the quality and calibre of a nation's future human resource in ensuing its ultimate growth and development. Children across the world suffer from one form of the abuse or the other within the ambit of a nation's inclusive political, socio-economic, cultural ecology and subsequently deserve international effort and initiatives to

ameliorate these through the active cooperation and support by the national governments itself. Issues pertaining to such abuse of child rights comprised specifically of malnourishment, adequate livelihood; safe drinking water, food, shelter, education, health, sexual exploitations and abuse, corporal punishment; children without parental care; abandoned children on the streets; child labour; child marriage; the children associated with armed groups and the alike. In the arena of an international law, states ought to be made increasingly accountable for any instances of violations and abuses which may be committed against the children within its domain. Often, child protection programmes should dynamically warrants being implemented in areas where vulnerable families and communities remained denied from the available existing child protection services that are unable getting delivered to the particular targeted groups of children for various reasons.

Again, the scourge of dreaded diseases like those of tuberculosis; HIV; AIDS etc along with the aftermath effects of war and other issues of conflicts in the strife torn areas and regions could pragmatically be regarded as a direct source of the rapidly increasing number of orphans and the infected babies, in particular girls, across the globe. It is worth envisaging herein that the extended family, which in the past, used to absorb such children, is being overwhelmed in the present time, which eventually gives rise to a new socio-economic phenomenon of 'child-headed house-holds' where the children themselves strive to earn livelihood for their family. It has eventually reduced the role of Children to become caregivers to their parents, thereby being devoid of their basic rights to childhood, education, health and the alike. To counter such tendency, sustained global health policy, specifically for the children, along with the adequate effective

machinery for implementation is warranted under the aegis of global bodies and initiatives for the same.

Children warrants being accorded special protection during armed conflicts taking place in any regions across the world. Measures like those of creating "*corridors of peace*" to allow relief supplies to reach women and children and assigning a "*day of tranquillity*" to vaccinate and to provide other health services for children and their families in the zone of conflict, ought to be promoted through mutual agreements between the belligerent parties to the conflict in any of the conflict zones of conflict under the aegis of United Nations Peace Keeping Forces. These are aimed to protect children and their families and to ensure their continuing access to food, medical care and basic services and to deal with trauma resulting from violence and to exempt them from other direct consequences of violence and hostilities. Invariably, it may be ascertained that "*if the international community is to succeed in protecting the inclusive rights of child, the world's most vulnerable citizens, then it must first succeed itself in according priorities whilst valuing them*".

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22

Issues in Retail Investor Participation in Mutual Fund in India

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Shivani

Mutual Funds are institutions that collect money from several sources-individuals or institutions by issuing units to invest them on their behalf with predetermined investment objectives and manage the same all for a fee. They invest the money across a range of financial instruments falling into a broad categories-equity and debt. Individual people and institutions can invest in equity and debt instruments by themselves but this requires time and skill. Mutual funds emerged as professional financial intermediaries bridging the time and skill constraint. They have a team of skilled people who identify the right place and construct a portfolio that promises to deliver the best possible returns at the minimum possible risk. More explicitly, the benefits of investing in equities and debt instruments are supposedly much better if done through mutual funds. This is because of the following reasons: Firstly fund managers are more skilled. They are trained to identify the best investment options and to assess the portfolio on a continual basis. Secondly they are able to invest in a diversified portfolio

consisting of say 15-20 different stocks or bonds or a combination of them. This could certainly reduce the risk. Mutual funds are able to maintain and track a diversified portfolio on a constant basis with lesser costs. So basically investors invest in mutual funds to cut off the risk to maximum because of the characteristics of mutual funds which includes professional management, diversification, convenience and liquidity. Because of these benefits, a mutual fund is proven to be the best vehicle for retail investors in investing capital in the market. Retail investors also known as individual investors or non institutional investors who buy or sell mutual funds through traditional or online brokerage firms or other types of investment accounts. If the investor is willing to take higher risk than correspondingly he can expect higher returns and vice versa. If the investment pertains to lower risk instruments, it would be followed by lower returns. For example-if an investor invests in bank Fixed Deposit, it would provide moderate return with minimal risk. But if the investor invests in the capital protected fund (e.g. stock market), the profit would be slightly higher compared to the bank Fixed Deposit but the risk involved also increases in the same proportion. The main focus of the Mutual fund is lower risk and higher returns.

In India, mutual funds are regulated by the Securities Exchange Board of India (SEBI) through SEBI (Mutual Fund) regulation 1996. SEBI has continued to modify and implement those regulations governing the mutual fund in an attempt to keep investor's protection at the heart of the heart of the regulatory framework. However SEBI's regulation to maintain investor protection is well thought and effective. SEBI has mandated before selling units to the public to make a number of mandatory yearly and half yearly disclosures. Among the requirements of disclosures is the report by the fund trustees on fund performance and expenses over the course of the year. SEBI has received praises for its disclosure requirements but on other hand faced rebukes also for not able to provide correct information to the investors. SEBI has not utilised its disclosure

requirements to fullest as an effective tool for investor protection considering the fact that the number India has many small investors or retail investors. SEBI should take some important measures to maximise the effectiveness of disclosure requirements as a method to protect Indian investors and to attract investment from retail investors.

How Mutual Fund Works?

Mechanism of Mutual Fund

Mutual Funds in India follow a 3-tier structure. There is a *Sponsor*(the first tier). A Mutual Fund sponsor is basically promoter of Mutual Fund Company. Sponsor either on its own or in association with another body corporate to establish a mutual entity to earn money from fund management through its subsidiary company which acts Investment manager of the fund.

Sponsors then,

1. Set up a Public trust under “The Indian Trust Act, 1882”, and appoint trustees to manage the trust. Gets trust registered with SEBI and also takes all the necessary approvals from the SEBI.
2. Create an Asset Management Company under “The Companies Act, 1956”.
3. As sponsor is the main entity promoting a mutual fund company and mutual funds are going to manage public money, SEBI has kept very strict guidelines for the eligibility of the Sponsor.

The second tier is *creation of Trust and appointment of trustees*

- ✓ *Creation of Trust:* Sponsors create trust through trust deed in the favour of trustees. Trustees manage the trust and they are primarily responsible to investors in Mutual Funds. They are primarily guardians of Unit Holder’s money.

- ✓ *Appointment of Trustees:* Sponsor with prior approval of SEBI appoints trustees. There should be at least four members in the board of trustees with at least 2/3rd independent. A trustee of one mutual fund cannot be trustee of another mutual fund, unless he is an independent trustee in both cases and has the approval of both the boards. The trustees are appointed by executing and registering a trust deed under the provisions of “Indian Registration Act”. This trust deed is also registered with SEBI.
- ✓ *Responsibilities of Trustees:* Primary responsibility of Trustees is to see that all the due diligence is done properly and all the regulations are properly followed. All schemes floated by the AMC have to be approved by the trustees. Trustees review and ensure that the net worth of the AMC is as per the regulatory norms. They have to furnish SEBI a report on the activities of AMC on half yearly basis.
- ✓ *Trustees* also enter in an agreement with the Asset Management Company.
- ✓ *Trustees* can obtain necessary information from the Asset Management Company. All the schemes have to be approved from Trustee before they are launched.
- ✓ *Trustees* have to appoint all key personnel like Fund Managers, Auditors, Custodian, Registrar, Compliance Officer etc. and to inform the SEBI about same.

The third tier is *Asset Management Company*

The mutual fund works as follows:

The sponsor approaches the SEBI which is the market regulator for mutual funds. Not everyone can start a mutual fund. SEBI checks the experience, net worth etc. Once a sponsor permits, the sponsor creates a Trust. Trusts cannot enter into contracts, therefore trustees had to act on behalf of the trust. Once the trust is created, it is registered with SEBI as a mutual fund. It is the trust which is the mutual fund. The role of the trustees is to manage money and to see whether the

money is being managed as per objectives. Trustees are seen as the internal regulators of mutual funds. They appoint AMC to manage investor's money. The AMC in return charges a fee for the services provided. This money is deducted from the money collected from them. The AMC has to be approved by the SEBI and functions under the supervision of its board of directors. It is AMC who in the name of the Trust provide new schemes and manage these schemes by buying and selling securities. In doing so the AMC has to follow guidelines provided by SEBI under SEBI mutual fund regulation 1996.

The AMC appoints fund managers who are specialised in market research and can tell better where to invest money to get profits. These fund managers are persons who get money from the investors. They do the market research and diversify the money.

AMC had to fulfil the disclosure requirements which will also protect the interest of the investors.

Disclosure by the AMC as per the SEBI mutual fund regulation 1996

In the functioning of the mutual fund, the important aspect is the disclosure requirements provided by the SEBI which provide the protection to the investors. Disclosure requirement includes- auditing and producing annual report, half yearly reports and other disclosures as such needed time to time.

Annual Report

AMC (Asset management company) provide application form by filling which investor invest in mutual fund. AMC should also provide certain disclosures even before the investor is the actual investor. However, the Indian regulatory scheme provides that no scheme may be launched by an AMC unless the scheme has been approved by the trustees and a copy of the scheme offer document has been filed with SEBI. The offer document must contain disclosures

that are adequate to enable an investor to make an informed investment decision. Each fund or asset management company must prepare an Annual Report and annual statement of accounts and funds. An auditor, selected by the fund's trustees, who is not associated in anyway with the AMC's auditor, must audit each fund's statement of accounts. The auditor's report must state that the auditor obtained all information and explanations necessary for the audit, that the fund's Balance Sheet and Revenue Account give a fair and true view of the scheme, its state of affairs and surplus or deficit for the applicable period, and that the fund's account statement was prepared in accordance with the accounting policies and standards specifically required by SEBI. An Annual Report or an abridged summary thereof must be mailed to each investor in the respective fund within four months of the fund's year-end. The most important disclosures required in an Annual Report are as follows:

- * A report by the trustees on the operation of the various schemes of the fund, the fund as a whole during the year, and the future outlook for the fund.
- * A Balance Sheet and Revenue Account prepared specifically in accordance with requirements laid out by the regulations.
- * A brief statement by the trustees on the investment objective of each scheme that makes up the fund and the basis and investment policy underlying each scheme.
- * The trustees must comment upon, and provide full justification for, the performance of the scheme. They must also make a statement putting the historical per unit statistics, like net asset value, net and gross income per unit, expenses per unit, expense ratio, and other important data points over the three previous years, in full perspective.

Half Yearly Disclosures

Twice a year each fund is also required either to send a complete statement of the scheme portfolio as well as its unaudited half-yearly financial results for that period to unit holders or to publish such information in one English-language daily newspaper that circulates throughout the entire country. This information must also be placed in a newspaper published in the language of the region where the main office of the fund is located, and the unaudited half-yearly results must be posted to the AVIC's website. The mandatory half yearly disclosure must take the specific form prescribed in the regulations and is also required to provide information on any fund dividends, profits or losses from the sale of investments, and other sources of income or losses as well as management, administrative, and other operating expenses. In addition, the half-yearly report must also include any other details necessary to provide a true and fair view of fund operations.

Other Disclosures

Funds have additional disclosure duties. In extraordinary situations the fund, asset manager, trustee, custodian, or fund sponsor is required to make any disclosure or submit any document that SEBI instructs such person or entity to make. Every fund is required to calculate and publish its Net Asset Value (NAV) in two daily newspapers at least weekly. Closed-end schemes calculate their NAV on a daily basis and publish that figure in at least two daily newspapers with a circulation covering the entire country. Fund trustees are also required to disclose any information to fund investors that might have an adverse bearing on the investors' fund holdings. Funds are also required to submit certain other quarterly, half-yearly and other reports to SEBI.

SEBI attitude towards retail Investors

The Securities and Exchange Board of India (SEBI) has to realise the fact that it has fallen short in its key role to develop

the capital market and increase the base of retail investors. SEBI could take various steps for improving the standards for protection of the interests of the Retail investors.

Some of the possible remedies are follows:-

1. SEBI should require each AMC to make complete disclosure of its annual returns over the AMC's entire lifetime. This would help the investor easily understand the experience and track record of the AMC. This is required because the AMC show selective reports that would directly impact the unitholder's money. The annual report and any other piece of information which is required for the investor to be in knowledge for making any decision has to be published on AMFI. SEBI should mandate that the AMC's annual returns over the relevant period be provided in the Annual Reports, SIDs, and KIMs of each fund that the AMC manages. This would ensure that investors know how good the relevant AMC is before making a purchase of fund units, as well as what the AMC's performance continues to look like while the investors hold their fund units. This would ensure that the investor would have relevant information to make effective choices and ensure that they do not fall for inferior schemes. AMFI is an important source of information rather than AMC.
2. Ban assured returns schemes-SEBI should ban assured return schemes because these schemes have operational problems. Under the current regulations, a guaranteed return scheme cannot be offered unless the promised returns are truly guaranteed and a statement appears in the offer document that informs investors who is guaranteeing the scheme and how that guarantee will be met. In one instance, a fund sponsored by Canara Bank failed to meet its commitments of paying at a NAV price as stated in its prospectus and ultimately had to be bailed out by its Sponsor, but only at the strenuous urging of the Reserve Bank of India and SEBI.

3. According to Indian mutual fund regulations, the offer document must contain disclosures that enable an investor to make an informed investment decision. Investors must be given such disclosures as are essential in order to keep them informed about any information which may have an adverse bearing on their investments. In 2003, there were rumors that Alliance Capital Mutual Fund was going to be sold, but the AMC and sponsor made no public statements on the matter so shareholders were left in the dark. Only after media speculation on the lack of material disclosures by the fund regarding its intention did the fund go public with its desire to remain in business in India. This unfortunate example highlights that small Indian investors are on the losing end of an informational asymmetry problem, which SEBI needs to rectify, funds should provide information regarding why a fund manager picked a particular stock or what the fund's general philosophy is in picking stocks.
4. Transparency in payment of fee-The fees that a customer pays to the distributor are coming directly out of the money that he invests, which should be brought to his attention in a very conspicuous manner. Investors should know that if the scheme is

Beating the overall market but paying an outrageously high level of fees to distributors it is, in effect, robbing shareholders from the benefits of that fund's performance.
5. Increased data access-To be fair, AMFI's website does currently provide copies of each fund's AMC's financials, but getting to this information involves numerous clicks of a mouse, when this information should be provided to the investor in a more conspicuous manner. The United States Securities and Exchange Commission established its EDGAR system as a central repository for all the information that a prospective investor might need. SEBI

should establish a similar type of database in order to make it easy for a new investor to obtain all the information and download the forms that one needs.

Criticism

The concern here is the relying upon the mutual fund industry itself to decide upon and implement the appropriate range of disclosure which may not serve the best interests of investors. The AMC and the members of the AMC like fund managers have a significant conflict of interest because they are in the business of managing mutual funds in order to make money, not necessarily to look out for the best interests of investors. There is no reason that mutual fund managers will serve their own interest rather than the investors when they have low range of profit. They are well aware that investors have very little ability to tell whether fund is actually performing or not. One of the main aspects of earning in Indian mutual fund industry is by collecting fees. So the problem here is they try to control investors and try to sway them towards the scheme where these fund managers could benefit more or they would serve only those (wealthy retail investor and institutional investors) who invest in that particular more profit gaining schemes. Such behaviour decreases the participation of the poor retail investors in the mutual fund which comprises major population of the country. So taking advantages of lack of awareness regarding the schemes and not having sufficient knowledge of the mutual fund market put these retail investors at the back seat.

Mutual Fund Industries Challenges In India

As huge opportunities are provided to market players for selling their products in under-penetrated market, at the same time it also imposes different roadblocks into these opportunities. Those challenges for mutual fund industries are:

370 Business Risk in Changing Dynamics of Global Village BRCDGV-2020

1. Untapped Market-the size of under-penetration in market is a sore part in industry. Especially with banking and financial services industry, where a large sum of savings being channelized into gold and real estate then that of capital market.
2. Distribution Channel-distributing mutual fund products continues to be a challenge against above situation. As per 2009 regulatory changes, entry load on mutual funds was restricted, which resulted in discouraging to sell mutual fund products. Subsequently IFAs and other distributors dropped out of the market. Later SEBI announced changes to commission structure for shifting from traditional front ended scheme to trail orientation sales incentive plans. This takes away urge to cause investment churn for commissions. Also, for deepen penetration, regulation permits mutual funds drawing 30% of new inflows from smaller towns.
3. Low level of awareness and financial literacy-this prevents to make an investment in mutual fund products. Cultural and behavioural change also plays a role in such prevention. Unawareness about low risk products in which they can invest.
4. Investors problem its all about lack of awareness and poor sales service. Before investing, new investors mainly don't get the concept, operations or advantages of making an investment in mutual funds.
5. Problem related to performance-in India mutual funds are wrongly promoted and creates very high expectations in the minds of the investors. Basically mutual funds are considered as an alternative to equity investing. Investors ignorance about mutual funds along with assertive selling by

promising greater return on it resulted into lack of confidence in investors as they unable to get higher returns.

Recommendation To Make Mutual Fund Successful

1. Investor's awareness
2. Financial inclusion
3. Increase the distribution strength-there is a need to increase the distribution strength of mutual funds network for the purpose of increasing the investor's surplus funds in mutual funds products.
4. New cadre of distributors to take industry forward-the new cadre of distributors will likely to draw together in inflows from smaller towns and cities. Cadre of distributors like postal agents, retired officials, school teachers, etc. These are crucial in deploying the savings of smaller towns and cities towards mutual funds investments.
5. Product design-if mutual funds products to be sold to the masses that too through public sector bank channel then it must be in simplified form. Like, products needs to imitate fixed deposit, must provide a predictable income, should be solution oriented. Reason given that if right product or solution is not available to be sold to the customer then it will be difficult to create pull factor.
6. Technology mix-a good technology mix will be needed for operational challenges and to improve existing infrastructures in order to bring in more efficiency with increasing scale of operations. It also plays key facilitators role in breaking down under penetrated market.

Conclusion

India's mutual fund has a long way to go. In its evolution, retail investors have important role in it. The retail investors '

participation is very important along with wealthy investors in the growth of the mutual fund. So also protecting the interests of retail investors a important aspect of SEBI. SEBI can provide such protection by providing more viable disclosure requirements in the SEBI mutual fund regulations 1996. SO to this end enhancing the disclosure requirements will serve the retail investors and other players in the mutual fund too. Assuaging the fears of the retail investors who are beginners in the mutual fund is most important reason for the improved disclosure requirements. Considering them the first timers in the mutual and providing them appropriate awareness regarding the mutual fund scheme would make them believe to invest in mutual fund.

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23

The Role of Globalisation in Adjudication of Environmental Issues

Suraj kumar

No one ignore the challenges of environmental issues in present the global village. Environmental globalization refers to the internationally coordinated practices and regulations regarding environmental protection. An example of environmental globalisation would be the series of International Tropical Timber Agreement treaties (1983, 1994, 2006), establishing International Tropical timber organization and promoting substantive development of tropical forest. Environmental globalisation is usually supported by NGO and government of developed countries, but opposed by governments of developing countries which see pro-environmental initiatives as hindering their economic development. The increasing pace of globalisation and how it affects the environment has been a major global concern. Although the research has been fraught with contrasting results, there are many who strongly believe that increased globalisation has been harmful to the environment.

A large number of environmentalists who support this view base their argument on the premise that globalisation

leads to an increase in global demand, resulting in increased production. This indirectly contributes to the exploitation of the environment and the depletion of natural resources.

Amid rising environmental concerns, an important question is whether *deglobalization* would have the opposite impact on the environment. Put differently, if globalisation is harmful, then should we expect that the current deglobalization trend will be less harmful for the environment?

It's an important question to ask right now considering the mounting anti-globalisation sentiments that have engulfed the Global north.

The adverse effect of globalisation on the environment is supported by what's known as top to bottom hypothesis. This school of thought argues that increased gains from globalisation are achieved at the expense of the environment because more open economies adopt looser environmental standards.

Those who support this bleak view of globalisation argue it creates global competition, resulting in a boost in economic activities that deplete the environment and its natural resources.

The increased economic activity leads to greater emissions of industrial pollutants and more environmental degradation. The pressure on international firms to remain competitive forces them to adopt cost-saving production techniques that can be environmentally harmful.

But in fact, deglobalization may not necessarily translate into reduced emissions of harmful gases such as CO₂, SO₂, NO₂, but could actually worsen it. Through what's known as the technique effect, we know globalisation can trigger environmentally friendly technological innovations that can be transferred from countries with strict environmental regulations to pollution havens.

Globalisation doesn't just entail the movement of manufactured goods, but also the transfer of intermediate, capital goods and technologies. That means multinational corporations with clean state-of-the-art technologies can transfer their green know-how to countries with low environmental standards.

It's widely recognised that multinational firms use cleaner types of energy than local firms, and therefore have more energy-efficient production processes. Deglobalization could mean these environmentally friendly technologies aren't passed on to countries that are trying to go green.

The rise of anti-globalisation forces also means less specialisation in sectors in which countries have comparative advantages.

This can create an inefficient allocation of resources that leads to the dissipation of scarce economic and natural resources. If every country has to produce to meet its domestic demand, in other words, it could result in duplication in production processes and therefore an increase in local emissions. Since some countries have weaker environmental standards than others, this could possibly worsen global emissions.

A good example of this is Iran, which has been slapped with economic sanctions, making the country less integrated in the world economy. The result has been domestic production that's wreaked immense havoc on the environment. As result of import bans of crude oil, for example, Iran started refining its own crude oil that contains 10 times the level of pollutants.

Globalisation has another benefit — it's been at the forefront of creating public awareness about labour and environmental standards through the platforms of international activities such as fair trade and eco labels.

Effect of Globalisation

Nobody knows all of the environmental and social effects of globalisation. The following listing is necessarily incomplete and brief. I have devoted the most space to the biological effects of globalisation. Items are in no particular order.

Loss of Biodiversity

Reduced Genetic Diversity in Agriculture A profound reduction of genetic diversity in agriculture is now underway. The process has been well documented for food plants, and pertains to vegetables, grains and tree crops. Since 1970, pharmaceutical, petrochemical and other transnational corporations have purchased more than 1,000 once-independent seed companies (Fowler and Mooney 1990; Hobbelink 1991; RAFI 1998, 1999, 2001). Loss of germplasm occurs as transnational drop all but the most profitable seed varieties from their inventories.

It is likely that losses of non-commercial varieties maintained by individual farmers, especially in Third World countries, are even greater, as representatives of giant seed corporations reach more and more agricultural areas that have been hitherto isolated from global trade. When this happens, local farmers drop a wealth of existing varieties in favour of the new, commercial, 'high-yielding' seeds. According to H. Sudarshan (Ramprasad 2002) over the last half-century, India has probably grown over 30,000 different indigenous varieties or landraces of rice. This situation has, in the last 20 years, changed drastically and it is predicted that in another 20 years, rice diversity will be reduced to 50 varieties, with the top 10 accounting for over three-quarters of the sub-continent's rice acreage.

Environmental Costs of Globalisation

The principal environmental costs of global free trade are well known. They include water, air and soil pollution, exhaustion of non-renewable and slowly renewable resources and global climatic change—all caused by globalisation-related increases in industrial activity, production agriculture and the fossil fuel energy used in the free trade-related transport of raw and finished materials, and by the overriding of local and national protective laws and customs. Regulating the environmental side effects of globalisation is another matter. As Yu et al. (2002) state, 'A country importing "dirty" products essentially "leaks" its pollution to exporting countries that have less strict standards.' Also, 'the conflict between trade and environment arises because countries with weak property rights appear to be more productive even when they are not, and export their natural resources unsustainably'. Article XX of the original General Agreement on Tariffs and Trade (GATT) was intended to safeguard 'exhaustible natural resources' and protect 'human, animal or plant life or health' (Yu et al. 2002), but enforcement of this article by the economists who run the World Trade Organisation (WTO) has been problematic, and is likely to remain so. Air, water and soil pollution have increased markedly as global trade has increased. For example, in Taiwan, exports have soared as a result of global trade: forests have been cleared for industrial development and tree farms, soil and water have been polluted by pesticides and fertiliser, and 90,000 factories dump their wastes into air and waterways (Bello and Rosenfeld 1990). Goldsmith (1996) notes that, 'The incidence of asthma [in Taiwan] has quadrupled since 1985, and cancer has now become the leading cause of death its incidence having doubled since 1965.' A few forms of environmental pollution related to globalisation are indisputable. One is the pollution provided by the transport of raw materials and finished goods that were formerly produced and consumed locally, or done without. The term 'in season', as applied to foods, is no longer comprehended by many First

World consumers: sweet peppers and strawberries from Mexico can be purchased in Canadian markets in mid-winter. Even heavy, minimally processed products are transported around the world to places where they already exist in abundant supply. For example, steel shipped from China has replaced American steel in domestic US markets. In many cases, the distant products are cheaper than local ones, because social and economic subsidies render transportation energy costs irrelevant, and because the cost of pollution is not included in the pricing. In the latter instance, as Yu et al. (2002) point out, 'Trade thus globalises a domestic Tragedy of the Commons'. Therefore, even when the environmental costs of globalisation are indisputable, the market cannot be relied on to control them.

Social Disruption

The social costs of globalisation are numerous and severe. Although a detailed discussion of them is beyond the scope of this article, some of these costs can be listed. They include: (i) a widening gap between rich and poor (both individuals and nations)-the richest 20 per cent spend 86 per cent of the world's wealth; (ii) the growing power of multinational corporations and the global interlinkage of financial markets, causing regional instability from resource extinctions and rapid geographic shifts of production and financial assets; (iii) social unrest leading to greatly increased prison populations (the number of people in jail in the US has gone from less than 200,000 in 1970 to 1.4 million in 2000; sharp increases in prison populations have also been marked in other countries, such as Great Britain and New Zealand, after joining the global free trade economy); (iv) the dissolution of families and communities; (v) the weakening of democracy where it previously existed; (vi) the privatisation and consequent deterioration of health care, education and other social services, especially in the US; (vii) the reduction in foreign aid generated by wealthy nations; (viii) a sharp increase

in the numbers of environmental/economic refugees; (ix) an increase in regional wars and international terrorism; (x) the loss of many of the world's languages; (xi) crippling of feedback and self-criticism (including the elimination of local control over local events); (xii) loss of knowledge and essential skills; and (xiii) the instability of highly complex and interlinked socio-economic systems (Abramovitz 2001; Ehrenfeld 1993, 1999; Goldsmith 1994; Gray 1998, 2002; Hertz 2001; Mander and Goldsmith 1996; McKnight 1995; Nettle and Romaine 2000; *New Scientist* 2002; Tainter 1988). Globalisation can be seen to be the principal, although not the only, underlying force in all of these adverse changes.

Spiritual Disruption

The Islamic scholar Sayyed Hossein Nasr (1996), author of perhaps the best book on comparative religious attitudes towards nature, has written extensively about the spiritual reasons for and consequences of the global spread of the materialism driven science and technology that originated in the West. Western religious thinkers, he notes, have been dealing for decades with our spiritual alienation from and destruction of the natural world, the earthly form 'in which the Sacred has manifested itself'. But 'only now is it beginning to dawn upon [the non-Western religions] that the present predicament is primarily the consequence of the loss of a sapiential knowledge of nature and an inner spiritual crisis and not simply the result of bad engineering.'

As Nasr points out: 'Non-Western societies are forced into a global "economic order" within which they have little choice but to follow models of so-called development that are formulated in the West and in which non-Western religions and philosophies hardly play a role.' This, of course, is true, but it is not only the non-Western religions whose environmentally wise teachings have been thrust aside by the globalisation bulldozer. The environmental wisdoms of Judaism and Christianity have also suffered, and have been distorted by

efforts to make them appear to justify and validate the environmental damage that is taking place (Berry 1979; Ehrenfeld and Bentley 1985).

Social and Economic Limiting Factors

Thoughtful critics of globalisation have realised that global free trade promotes the social and economic conditions most likely to undermine and bring to an end its own existence. The British social historian and economist John Gray (1998) has stated the paradox of globalisation very clearly. Noting that, 'In the United States [the principal exporter of globalisation] free markets have contributed to social breakdown on a scale unknown in any other developed country', Gray continues.

The central paradox of our time can be stated thus: economic globalisation does not strengthen the current regime of global *laissez-faire*. It works to undermine it. There is nothing in today's global market that buffers it against the social strains arising from highly uneven economic development within and between the world's diverse societies. The swift waxing and waning of industries and livelihoods, the sudden shifts of production and capital, the casino of currency speculation—these conditions trigger political counter-movements that challenge the very ground rules of the global free market. Today's regime of global *laissez-faire* will be briefer than even the *belle époque* of 1870-1914, which ended in the trenches of the Great War.

Not all those who have profited from globalisation have illusions about its permanence. Billionaire George Soros (1995) has written: 'The collapse of the global marketplace would be a traumatic event with unimaginable consequences. Yet I find it easier to imagine than the continuation of the present regime.'

In the largest sense, the impending demise of globalisation can be seen as just one more example of the hubris of replacing a multitude of intricate, long-evolving,

sometimes persistent social and economic systems with one overarching structure (Ehrenfeld 1981, 2002). The fact that this structure is based primarily on the organising principle of greed, rather than on socio-economic equity, stability, or, most important, long-term sustainability and survival, only makes matters worse.

Biological and Physical Limiting Factors

With their destabilising impact on the biosphere, excess consumption (primarily in the North) and technology, mobilised and greatly enhanced by globalisation, are putting demands that cannot conceivably be met on ecosystems and resources.

The Canadian ecologist and regional planner William Rees has noted that 7-9 ha of 'productive land and ecosystems [are] required to sustain the consumer lifestyle of the average North American with prevailing technology'. Yet only 2 ha of 'ecologically productive land and water' are available for each person on earth. His conclusion: 'Number of earth-like planets that would be required in the year 2000, with prevailing technology, to support the entire human population sustainably at North American material standards: five' (Rees 1999; see also Wackernagel and Rees 1996). Of all the categories of resource whose depletion is likely to bring an end to globalisation, the most likely to be limiting in the short term is energy. In 1973, the economist E.F. Schumacher (1999), writing in the second chapter of *Small Is Beautiful*, compared the fuel consumption of the rich and poor nations, and noted that it was 'implausible' given the global reserves of fossil fuel, that the entire world could consume energy at the (then) rate of the industrial nations, even assuming that one-fourth of this energy came from nuclear power. 'It is clear', he said, 'that the "rich" are in the process of stripping the world of its once-for-all endowment of relatively cheap and simple

True, technological advances are capable of reducing energy consumption for most applications, sometimes by a factor of three or four, or higher. But the process of testing, accepting, and incorporating new technologies on a global scale is slow; this is especially true in the developed world, where the mass of existing technology in production, housing and transportation creates an inertia that is difficult to overcome. It is also true in the Third World, where cultural barriers to technological change have their own inertia. And there are other factors that make a technological rescue unlikely. Technological development, itself, is highly dependent on both energy and wealth. For example, nuclear power plants take years before they recover the energy investment of oil required to build them.

New technologies always come with their own side effects, which are generally more expensive and difficult to deal with than the side effects of earlier technologies (Schwartz 1971). Nor are efficiency gains necessarily effective in saving resources and reducing pollution. Wackernagel and Rees (1996) write: Profitable efficiency gains—and these are the ones that get implemented—contribute to upward-trending expectations of returns to capital and higher investment in efficient firms. This induces the competitive spread of the efficient technologies to other firms and sectors, which may well increase total demand for resources. Ironically then, it is precisely the economic gains from improved technical efficiency that increase the rate of resource throughput.

In addition to increased efficiencies, technological advance brings new forms of energy consumption. For example, the digital age, which is often touted as energy-saving, turns out to be the reverse. According to Huber and Mills (1999), it takes about 1 pound of coal to create, package, store and move 2 megabytes of data. Under the PC's hood, demand for horsepower doubles every couple of years. Yes, today's microprocessors are much more efficient than their

forerunners at turning electricity into computations. But total demand for digital power is rising far faster than bit efficiencies are.

The principal energy resource fuelling globalisation is *cheap* petroleum. Without cheap petroleum it is hard to see how globalisation, which is grossly inefficient and wasteful of energy, could survive. As Daly (1996) has noted, 'Transport costs are energy intensive, and if energy is subsidised . . . then so is trade'. Extracting oil as if its supplies were unlimited is a form of subsidy, a way of externalising costs not only to society at large, but to future generations. It has been evident since the 1970s and earlier that supplies of cheap petroleum are declining rapidly, and that neither undiscovered reserves nor new energy technologies are going to be able to replace them (Duncan 2001; Duncan and Youngquist 1999). Apologists for the present system have tried to deny the reality of an energy shortage that is already well underway, but the absurdity of their arguments was made manifest as long ago as 1978 by Albert Bartlett in a classic article published in *the American Journal of Physics*. Bartlett chose as a limiting assumption that the entire volume of the earth is made of petroleum, and that every drop is recoverable. At the then-prevailing growth rate in energy consumption of 7.04 per cent per year, this earth full of oil, Bartlett calculated, would last only 342 years. But the earth is not made entirely of petroleum, and any realistic estimated lifespan of reserves of cheap oil is correspondingly much shorter.

When will petroleum production peak and start to decline? Estimates range from approximately 2004 to 2020 and beyond (Kerr 1998), with a number of leading petroleum geologists favouring the earlier dates (Campbell 1997). In one critical sense, however, energy (especially oil) production has already peaked: global energy production *per capita* (a function of both energy production and population growth) reached its maximum point in 1979, and has been declining ever since at a rate of approximately 0.33 per cent per year (Duncan 2001).

The electrical engineer Richard Duncan (2001), a leading authority on energy grids, predicted in his keynote address to the Geological Society of America's Summit 2000 meeting that the future global decline of energy production per capita will occur in two phases. First, energy production per capita between 2000 and 2012 will decline at an annual rate of 0.7 per cent. Duncan forecasts that this will result in unemployment, breadlines and homelessness, culminating in 'a rash of permanent electrical blackouts-worldwide'. From 2012 to 2030, the rate of decline will increase to 5.44 per cent.

Conclusion

It is far easier-and more realistic-to predict the disruption and possible demise of globalisation than to devise strategies to cope with the environmental upheavals to come. Presumably, physical environmental changes, including increases in atmospheric carbon dioxide, changes in temperature, melting of permafrost and oxidation of boreal peat deposits, changes in the distribution and abundance of rainfall and storm events, sea level rise and changes in the ozone shield will have to be dealt with primarily on an ad hoc basis, to the limited extent possible. Many biological changes, such as introductions of exotic species and extinctions will similarly have effects that are easy to describe but difficult or impossible to counter, especially with the reduced economic resources available.

Nevertheless, opponents of the worst abuses of globalisation have no excuse to abandon their efforts and wait for nature to bring globalisation to bay. In the realm of social and economic life, much work needs to be done to end the evils of the growing disparities of wealth, the exploitation of south by north, community disempowerment, and cultural and moral impoverishment-all of which globalisation fosters. Responsible critics of globalisation must do more to show the connection between globalisation and its dangerous side-effects, and to keep this association in the public eye.

We face the challenge of developing workable socio-economic systems that have a strong regional element and are not dependent on centralised, complex technologies-systems that preserve and enhance wealth in a sustainable way. And we must do this before the chaos of resource exhaustion, ecosystem collapse and global climate change makes the job even more difficult-or impossible. International trade in goods and ideas will and should continue, but the only form of globalisation that is acceptable is one that unites nations in meeting global threats and in preserving the environments, life forms and civilisations of this planet.

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24

Disability and Development Factor

Rakesh Kumar

The human person is a central subject of development and should be active participant and beneficiary of the right of development. We are talking about Rights of disabled person and working that how they contribute to develop our nation .But on the other side some people think that disabled are burden of nation. Recently an incident occurred in Sagamihara, Japan on 26 July 2016.A former employee at the centre of people with mental and physical illness who had expressed extreme view about euthanising the disabled returned to the facility outside Tokyo early on 26 July 2016 carrying a bag of knives.

States have right and duty to formulate appropriate national development policies and enforcement that aim at constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from. States have the primary responsibility for the creation of national and international conditions favourable to the realisation of right to development. Realisation of the right to development requires full respect in accordance with the Charters of UN.

Historically, people with disabilities have been the most disadvantaged group and they continue to be viewed as such in many countries. Thus as a result of negative attitudes, inaccessible environments and insensible policies and practices, the situation of people with disabilities is commonly associated with poverty, lack of education, lack of employment, lack of independent living and lack of empowerment. It is a history characterised by marginalisation and oppression.

The World Health Organisation (WHO) estimates that 10% of any population are disabled. In addition, approximately 85% of the world's children with disabilities under 15 live in developing countries. It is further thought that with disability, or impairment, being both a cause and consequence of poverty, the Millennium Development Goals cannot be achieved without a specific disability focus. People with disabilities have health, nutritional, educational and gender needs too, yet the goals related to these issues currently ignore the often unique needs of people with disabilities within these goals. The WHO estimates that up to 50% of disabilities are preventable, with 70% of blindness and 50% of hearing impairment in children in developing countries being preventable or treatable. Although this can be seen as more of a health issue than a disability politics one, its link to healthcare, malnutrition and poverty makes disability a development issue highlights how disability can exacerbate poverty because it can lead to isolation and economic strain for the whole family. Disabled children are more likely to die young, or be neglected, malnourished and poor, while the denial of education can lead to a lack of employment opportunities and so poverty. Similarly, poverty can lead to malnutrition, dangerous working and living conditions (including road accidents) bad health and maternity care, poor sanitation, and vulnerability to natural disasters – all of which can result in disability.

There is a growing consensus that people with disabilities should be included in development programmes, as the exclusion to date of this marginalised group will probably result in the non-achievement of the UN Millennium Commission's broadly inclusive global development agenda. However, if a person with a disability is dehumanised by cultural belief or stigma, as they are in India, then they can be 'invisibilised' and not considered worthy of rights. Disability is clearly a development issue.

Many people with disabilities are unable to make an effective contribution to their local community and economy yet, with the right support; they could be working and actively taking part in nation building. Many of them, currently out of work, represent a significant pool of potential skills and abilities if only that potential could be tapped. Instead of being empowered to work and earn, too many people with disabilities are left to depend on benefits and government and family support. Poor economic outcomes during their working lives prevent them from providing comfortably for old age, thus prolonging disadvantage into retirement.

Right to Development: Human Right Perspective

There is no doubt that disability affects human development. Reports say that a sizeable number of disabled persons do not attend schools or colleges. Dropout rate is higher among them. General education system fails to hold most of them for long. But the special education and special training have proved successful in this regard.

The five pronged strategy of United Nation has set the tone and tenor of law and policy across the globe in 1981. This includes helping PWDs in their physical and psychological adjustment in society; promotion of international and national efforts to provide proper assistance, training, care and guidance to make available opportunities for suitable work and to ensure their full integration in society; encouragement of study and

research projects designed to facilitate the practical participation of PWDs in daily life by improving their access to public buildings and transportation system; educating and informing the public of the rights of PWDs to participate in and contribute to various aspects of economic, social and political life, and promotion of effective measures for prevention of disability and rehabilitation of PWDs. These objectives thrashed out by UN General Assembly resolutions form anchor sheet for legislative endeavours of member states. This ongoing process of dole and charity into a progressive sounding equalisation of opportunity and full integration in society culminated into the Declaration on the Right to Development 1986. It emphatically says that ‘right to development is an inalienable human right’ and ‘all people are entitled to economic, social, cultural and political development.

Role of Various Sectors in the Development of Disabled Persons

I. Education System

Our education system continues to exclude children who have been disabled, not by their impairments, but by school buildings that are inaccessible, books that cannot be read, teachers who may not be able to communicate, principals who have closed the doors of their educational institutions, technologies that are rotting without use and policymakers who have a narrow vision of the future of the nation! We are hoping to be a developed nation, leaving millions of our disabled citizens behind! While the Rights of Persons with Disabilities Act, 2016 mandates a wide variety of efforts to ensure equal opportunities to disable students for getting quality education, it also clearly states that ”all Government educational institutions and other educational Institutions receiving aid

from the Government, shall reserve not less than five per cent seats for persons with disabilities”.

II. Employment

Financial independence is indispensable for human dignity and self esteem; and employment is one of the most important tools for an individual to secure financial independence. Persons with disabilities are not an exception and they too want to live a dignified living. They want to be productive members of the society and look for suitable works and employment opportunities for themselves. Persons with disabilities have their own specific skills, talent and capabilities and if these are tapped properly they too can make significant contribution in a country's development. The prospects of human right approach to disabled that provided much needed recognition to augment the rights of the disabled with special reference to the problems faced by the disabled in employment or at workplace has to be discussed elaborately here under in this paper in the light of various legislations, international conventions and judicial decisions in India.

III. Civil Society

It is matter of great concern that the abilities and potentials of differently abled persons have not yet been fully explored and tackled. Practically it is a great loss of human resources which, if discovered, matured, appropriately channelized and utilised, could add a new force to the progression of the society. Empowerment of the differently abled is very necessary in today's fast competing and changing scenario of society which has forces individuals to concentrate their efforts on different dimensions of life.

IV. Ministry of Social Justice and Empowerment

The Constitution of India ensures equality, freedom, justice and dignity of all individuals and implicitly mandates an inclusive society for all including persons with disabilities. In

the recent years, there have been vast and positive changes in the perception of the society towards persons with disabilities. It has been realised that a majority of persons with disabilities can lead a better quality of life if they have equal opportunities and effective access to rehabilitation measures.

There are five Composite Rehabilitation Centres, four Regional Rehabilitation Centres and 120 District Disability Rehabilitation Centres (DDRCs) providing various kinds of rehabilitation services to persons with disabilities. There are also several national institutions under the Ministry of Health & Family Welfare working in the field of rehabilitation, like National Institute of Mental Health and Neuro Sciences, Bangalore; All India Institute of Physical Medicine and Rehabilitation, Mumbai; All India Institute of Speech and Hearing, Mysore; Central Institute of Psychiatry, Ranchi, etc. In addition, certain State Government institutions also provide rehabilitation services. Besides, 250 private institutions conduct training courses for rehabilitation professionals.

National Handicapped and Finance Development Corporation (NHFDC) has been providing loans on concessional terms for undertaking self-employment ventures by the persons with disabilities through State Channelizing Agencies.

Panchayati Raj Institutions at Village level, Intermediary level and District level have been entrusted with the welfare of persons with disabilities.

India is a signatory to the Declaration on the Full Participation and Equality of People with Disabilities in the Asia Pacific Region. India is also a signatory to the Biwako Millennium Framework for action towards an inclusive, barrier free and rights based society. India is currently participating in the negotiations on the UN Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities.

The National Policy recognises that Persons with Disabilities are valuable human resource for the country and seeks to create an environment that provides them equal opportunities, protection of their rights and full participation in society. The focus of the policy shall be on the following:

- i. *Prevention of Disabilities*
- ii. *Rehabilitation Measures*
 - A. *Physical Rehabilitation Strategies*
 - (a) Early Detection and Intervention
 - (b) Counseling & Medical Rehabilitation
 - (c) Assistive Devices
 - (d) Development of Rehabilitation Professionals
 - B. *Education for Persons with Disabilities*
 - C. *Economic Rehabilitation of Persons with Disabilities*
 - (a) *Employment in Government Establishments*
 - (b) *Wage employment in Private sector*
 - (c) *Self-employment*
 - V. *Barrier-free environment*

Barrier-free environment enables people with disabilities to move about safely and freely, and use the facilities within the built environment. The goal of barrier free design is to provide an environment that supports the independent functioning of individuals so that they can participate without assistance, in everyday activities. Therefore, to the maximum extent possible, buildings/ places/ transportation systems for public use will be made barrier free.

VI. Issue of Disability Certificates

The Government of India has notified guidelines for evaluation of the disabilities and procedure for certification.

The Government will ensure that the persons with disabilities obtain the disability certificates without any difficulty in the shortest possible time by adoption of simple, transparent and client-friendly procedures.

VII. Social Security

Disabled persons, their families and care givers incur substantial additional expenditure for facilitating activities of daily living, medical care, transportation, assistive devices, etc. Therefore, there is a need to provide them social security by various means. Central Government has been providing tax relief to persons with disabilities and their guardians. The State Governments/ U.T. Administrations have been providing unemployment allowance or disability pension. The State Governments will be encouraged to develop a comprehensive social security policy for persons with disabilities.

VIII. Promotion of Non-Governmental Organisations (NGOs)

The National Policy recognises the NGO sector as a very important institutional mechanism to provide affordable services to complement the endeavors of the Government. The NGO sector is a vibrant and growing one. It has played a significant role in the provisions of services for persons with disabilities. Some of the NGOs are also undertaking human resource development and research activities. Government has also been actively involving them in policy formulation, planning, implementation, monitoring and has been seeking their advice on various issues relating to persons with disabilities. Interaction with NGOs will be enhanced on various disability issues regarding planning, policy formulation and implementation. Networking, exchange of information and sharing of good practices amongst NGOs will be encouraged and facilitated.

IX. Collection of Regular Information on Persons with Disabilities

There is a need for regular collection, compilation and analysis of data relating to socio-economic conditions of persons with disabilities. The National Sample Survey Organization has been collecting information on Socio-economic conditions of persons with disabilities on regular basis once in ten years since 1981. The Census has also started collection of information on persons with disabilities from the Census-2001. The National Sample Survey Organization will have to collect the information on persons with disabilities at least once in five years. The differences in the definitions adopted by the two agencies will be reconciled.

A comprehensive web site for persons with disability will be created under the Ministry of Social Justice & Empowerment. Organisations both in public and private sector will be encouraged to make their web sites accessible to the visually impaired using Screen Reading Technologies.

X. Research

For improving the quality of life of persons with disabilities, research will be supported on their socio-economic and cultural context, cause of disabilities, early childhood education methodologies, development of user-friendly aids and appliances and all matters connected with disabilities which will significantly alter the quality of their life and civil society's ability to respond to their concerns. Wherever persons with disabilities are subjected to research interventions, there or their family member or caregiver's consent is mandatory.

XI. Sports, Recreation and Cultural life

The contribution of sports for its therapeutic and community spirit is undeniable. Persons with disabilities have right to access sports, recreation and cultural facilities. The Government will take necessary steps to provide them

opportunity for participation in various sports, recreation and cultural activities.

XII. Amendments to existing Acts dealing with the Persons with Disabilities

Ten years have passed since the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 came into operation. With the experience gained in the implementation of the Act and developments in the disability sector, certain amendments to the Act have become necessary. These amendments will be carried out in consultation with the stakeholders. RCI and National Trust Acts will also be reviewed and if necessary, required amendments would be made.

Responsibility for Implementation

The Ministry of Social Justice & Empowerment will be the nodal Ministry to coordinate all matters relating to the implementation of the Policy.

An inter-ministerial body to coordinate matters relating to implementation of National Policy will be formed. All stakeholders including prominent NGOs, Disabled Peoples Organisations, advocacy groups and family associations of parents/guardians, experts and professionals will also be represented on this body. Similar arrangements will be encouraged at the State and Districts levels. Panchayati Raj Institutions and Urban Local Bodies will be associated in the functioning of the District Disability Rehabilitation Centres' District Level Committees to coordinate the matters relating to the implementation of the policy.

The Ministries of Home Affairs, Health & Family Welfare, Rural Development, Urban Development, Youth Affairs & Sports, Railways, Science & Technology, Statistics & Programme Implementation, Labour, Panchayati Raj and Departments of Elementary Education & Literacy, Secondary

& Higher Education, Road Transport & Highways, Public Enterprises, Revenue, Women & Child Development, Information Technology and Personnel & Training will setup necessary mechanism for implementation of the policy. A five-year perspective Plan and annual plans setting targets and financial allocations will be prepared by each Ministry/Department. The annual report of these Ministries/Departments will indicate progress achieved during the year.

The Chief Commissioner for Disabilities at Central level and State Commissioners at the State level shall play key role in implementation of National Policy, apart from their statutory responsibilities.

Panchayati Raj Institutions will play a crucial role in the implementation of the National Policy to address local level issues and draw up suitable programmes, which will be integrated with the district and State plans. These institutions will include disability related components in their projects.

Infrastructure created during the course of implementation will be required to be maintained and effectively used for a long period. The community should take a leading role in generating resources within themselves or through mobilisation from private sector organisations to maintain the infrastructure and also to meet the running cost. This step will not only reduce the burden on state resources but will also create a greater sense of responsibility among the community and private entrepreneurs.

Every five years a comprehensive review will be done on the implementation of the National Policy. A document indicating status of implementation and a roadmap for five years shall be prepared based on the deliberations in a national level convention. State Governments and Union Territory administrations will be urged to take steps for drawing up State Policy and develop action plane.

Policy in India has always leaned towards inclusion. From the constitution to the Kothari Commission in the early days of the republic, to the 2005 Action Plan for Children and Youth with Disabilities and the 2006 National Policy for People with Disabilities recently, the Indian government tends to write inclusive policies on education. However, these policies often are not perfectly inclusive. Many of them tend to discriminate against people with “severe” disabilities, or people with intellectual disabilities, especially in terms of mainstream versus special schooling. Still, at present, the policies governing the education system are inclusive. At present, the problem is with implementation.

Contribution by the Disabled Persons in the Development of Different Sector

You are not alone if you have a disability. Many people with disabilities have contributed to society. These include actors, actresses, celebrities, singers, world leaders, and many other famous people. A disability is often used to refer to individual functioning, including physical impairment, sensory impairment, cognitive impairment, intellectual impairment, mental illness, and various types of chronic diseases. Of course there are also millions of people worldwide who may not be famous in the sense society deems famous, but still live with, battle, and overcome their disabilities every single day of their lives.

We will find men and women who have made a difference to the world including pictures and the names of many famous and well known people who have, or had these disabilities (often referred to as being crippled, handicapped, or having a handicap in past times.) *Albert Einstein, Alexander Graham Bell, Cher, Thomas Edison, Franklin D. Roosevelt, George Washington, Francisco de Goya, Helen Keller, Ian Dury, John Milton, Lord Byron, Lord Nelson, Ludwig van Beethoven, Marla Runya, Marlee Matlin, Robin Williams,*

Sarah Bernhardt, Stephen Hawkings, Sudha Chandran, Tanni Grey-Thompson, Tom Cruise, Woodrow Wilson, Ravindra Jain, Arunima Sinha, Dr. Suresh Advani, Devendra Jhalaria, Mariyappan Thangavelu and Deepa Malik, these are some name who proved him/her self and give the contribution in the development of society

Conclusion

India is emerging as one of the largest economies in the world. The information technology is also booming. In addition to this, it is the second largest populous country next to China. Nowadays scholars, academicians and politicians are talking of achieving inclusive growth by formulating different plan strategies. Against background, in order to make India a developed country and improve its rank in different human development indicators by 2020, it is highly essential to provide the fruits of success to the really downtrodden section of the population, most particularly the disabled, whose number varies between five to 10 per cent in the country. Further, NGOs who are regarded as the key drivers of the society can play an effective and constructive role in achieving inclusive growth by including the disabled in the mainstream of the nations. The disabled can contribute to the advancement of the country be their sincerity, commitment to develop a conducive work culture, efficiency and capacity in building the country. Out of the total number of the disabled only two per cent have been educated up to different levels of the Indian education system. As it is not possible to provide employment to everybody in the public sector, what is required is compulsory vocational education, kindling in them the desire to have advanced training in computer technology and motivating them to form self-help groups that can make them self-sufficient and innovative. In achieving these goals the role of the NGOs as one of the vital organs of civil society is of immense significance. Despite rapid urbanisation and advancement in the field of science and technology, the physically challenged

children take admission; the physically challenged children take admission in the schools at the average age of 10/11 which also testifies to a sorry state of affairs. By the time they complete Class X they reach an advanced age and they are unwilling, out of a sense of shame, to study with far younger persons; disabled girls are the worst sufferers in this process.

Only enacting laws and acts would not address the real concerns and grievances of the weaker and minority sections of the population. Hence, NGOs, who are receiving much grant in aid from State, national and international agencies, should commit themselves to develop a congenial climate by creating a barrier free environment and generating awareness among the parents and help the disabled to lead a healthy and civic life like other able bodied persons in the society.

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25

Balancing State's Obligation with Special Reference to Prohibition Laws in Bihar

Pratyush Kumar

Article 47 of the Constitution casts a Constitutional duty on the State to raise the level of nutrition and the standard of living and to improve public health and in this regard the Article further casts a mandatory duty on the states that it shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. Article 39A provides for equal justice and free legal aid thereby ensuring that the people's right to secure justice is not hampered owing to poverty and / or any other reason. The benefits of these Articles are not available to the citizens as a matter of right. Citizens cannot approach the judicial system, by way of writs to get commands issued to the State to exercise functions to achieve objectives under these Articles. These articles fall under Chapter IV of the Constitution. The Directive Principles of State Policy casts responsibility upon the State by the way of directions. The State is free to follow its own course in following these directions, upon consideration of its policies, social needs and health of exchequer. Bihar Excise Act, 1915 [As amended by Bihar Excise (Amendment) Act, 2016] and Bihar Prohibition

and Excise Act, 2016 was a healthy initiative by the Government of Bihar to fulfil its constitutional obligations under Article 47. But, equally important was the aspect of protecting the constitutional rights, imparted to the people by the way of guarantee through provisions in Part III of the Constitution.

With coming of the prohibition laws in Bihar in the year 2016 a large number of litigations ensued which was to be tackled by the judicial strength that was stagnant on literally the same numbers year after year. The legislations came as an extra burden on the inadequate number of Judicial Officers, who were unable to cope with the pendency of cases during several years, thereby misbalancing the whole justice delivery system in the State of Bihar. The legislations acted as catalyst to the total pending cases and resulted in its increase. Meanwhile, the prisoners (both under trials and the convicts) are incarcerating in jail in grossly inhuman condition due to non availability of adequate prison infrastructure to cater the rising demand. This research brings an insight of the legal and governmental set up in the State of Bihar while examining the balance between several legal compulsions imposed on the government by the Constitution, legislations and judicial precedents.

Prohibition Laws in the other States

Other States, such as, Kerala, Gujarat, Nagaland, Mizoram, Manipur and Union Territory of Lakshadweep don't have harsh penal provisions like the one in the State of Bihar. The offences in the other states are compoundable and attract minor penalty or incarceration. The State of Nagaland allows the foreign Sovereigns to consume liquor under section 16 of The Nagaland Liquor Total Prohibition Act, 1989. Section 46 and 46A of the Gujrat Prohibition Act, 1949 prescribes rules under The Bombay Foreign Liquor Rules, 1953 for issuance of liquor license under visitor permits (for one week) and tourist permit (for period of tour).

Countries with liquor prohibition laws

Alcohol consumption, sale and manufacture has been prohibited in several countries of the world. According to Wikipedia, currently, alcohol prohibition is enforced in numerous Muslim-majority countries with complete or partial ban. The list includes Afghanistan, Bangladesh, Brunei, Iran, Iraq, Indonesia, Libya, Kuwait, Maldives, Mauritania, Pakistan, Saudi Arabia, Somalia, Sri Lanka (purchasing and possessing liquor by women), Sudan, United Arab Emirates (prohibition in emirate of Sharjah), Qatar and Yemen.

Global Strategy to reduce harmful use of alcohol

Sixty-Third session of World Health Assembly organised by World Health Organization (WHO) adopted a consensus resolution "WHA 63.13" endorsing global strategy to reduce harmful use of alcohol. It was for the first time, the delegations from all 193 Member States of World Health Organization (WHO) reached to a consensus on having a global strategy against harmful use of alcohol. It took 2 years for WHO to draft the strategy addressing the serious health burden which affects virtually all individuals on an international scale. Acute and chronic conditions arise with dangerous alcohol usage apart from the adverse social consequences arising out of alcohol consumption.

Every year, the harmful use of alcohol kills 2.5 million people, including 320 000 young people between 15 and 29 years of age. It is the third leading risk factor for poor health globally, and harmful use of alcohol was responsible for almost 4% of all deaths in the world, according to the estimates for 2004. Active collaborations of the Member States along with appropriate engagements of development partners, civil society, private sector and Public Health and Research Institutions is required to bring the global strategy in existence. Focus of the strategy can be summarised under two heads, i.e. (a) national action and (b) global action.

Ten priority areas for national action are:

- leadership, awareness and commitment;
- health services' response;
- community action;
- drink-driving policies and countermeasures;
- availability of alcohol;
- marketing of alcoholic beverages;
- pricing policies;
- reducing the negative consequences of drinking and alcohol intoxication;
- reducing the public health impact of illicit alcohol and informally produced alcohol;
- monitoring and surveillance.

The four priority areas for global action are:

- public health advocacy and partnership;
- technical support and capacity building;
- production and dissemination of knowledge;
- resource mobilization.

Judiciary on the liquor ban

The question of validity of the twin legislations of 2016, i.e. Bihar Excise Act, 1915 [pursuant to the Bihar Excise (Amendment) Act, 2016 and subsequent notifications (dated April 01, 2016 and April 05, 2016)] and Bihar Prohibition and Excise Act, 2016 is based largely on the merit of right to privacy and the inter relation between the Fundamental Rights and Directive Principles of State Policy. The Challenges before the Court is enormous and it will have to dive deep into the "Right to Privacy" judgment delivered by nine-judge

constitution bench of the Apex Court in Justice K.S. Puttaswamy (Retd.) and Anr. v. Union of India and ors. to arrive at a conclusion. Societal trends after the twin legislations shall also be taken into consideration while deciding the appeals and writs applications before the Supreme Court.

Tracing the evolution of privacy in various cases and writings, D.Y. Chandrachud, J. in his judgment concludes that:

"Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognizes the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognizes the plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to understand that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human life."

The judgment holds that there is an intrinsic relationship between development and freedom, Chandrachud, J. further quotes Nobel laureate Amartya Sen's writing in *The Country of Young boys* as under:

"... development cannot really be seen merely as the process of increasing inanimate objects of convenience, such as raising the GNP per head, or promoting industrialization or technological

advance or social modernization. These accomplishments are, of course valuable - often crucially important - but their value must depend on what they do to the lives and freedoms of the people involved. For adult human beings, with responsibility for choice, the focus must ultimately be on whether they have the freedom to do what they have reason to value. In this sense development consists of expansion of people's freedom."

Sanjay Kishan Kaul, J. has supported the view taken by Chandrachud, J. on Suresh Kaushal's case thereby making the judgment on Suresh Kaushal aspect makes it the view of 5 judges. Chandrachud, J. while holding the spirit of LGBT rights in Puttaswamy has held:

"The test of popular acceptance does not furnish a valid basis to disregard rights which are conferred with the sanctity of constitutional protection. Discrete and insular minorities face grave dangers of discrimination for the simple reason that their views, beliefs or way of life does not accord with the 'mainstream'. Yet in a democratic Constitution founded on rule of law, their rights are as sacred as those conferred on other citizens to protect their freedoms and liberties. Sexual orientation is an essential attribute of privacy. Discrimination against an individual on the basis of sexual orientation of each individual in society must be protected on an even platform. The right to privacy and the protection of sexual orientation lie at the core of the fundamental rights guaranteed by Articles 14, 15 and 21 of the Constitution [LGBT] rights are not so-called but are real rights founded on sound constitutional doctrine. They

inhere in the right to life. They dwell in privacy and dignity. They constitute the essence of liberty and freedom. Sexual orientation is an essential component of identity. Equal protection demands protection of the identity of every individual without discrimination."

Right to Speedy Justice

A five Judge Constitution Bench of Supreme Court held in Anita Kushwaha v. Pushap Sudan that access to justice is a fundamental right under Article 14 and 21. The Court held that rule of law, independence of judiciary and access to justice are conceptually interwoven.

"30. Four main facets that, in our opinion, constitute the essence of access to justice are:

- i) The State must provide an effective adjudicatory mechanism;*
- ii) The mechanism so provided must be reasonably accessible in terms of distance;*
- iii) The process of adjudication must be speedy; and*
- iv) The litigant's access to the adjudicatory process must be affordable.*

(i) The need for adjudicatory mechanism: One of the most fundamental requirements for providing to the citizens access to justice is to set-up an adjudicatory mechanism whether described as a Court, Tribunal, Commission or Authority or called by any other name whatsoever, where a citizen can agitate his grievance and seek adjudication of what he may perceive as a breach of his right by another citizen or by the State or any one of its

instrumentalities. In order that the right of a citizen to access justice is protected, the mechanism provided must not only be effective but must also be just, fair and objective in its approach. So also the procedure which the court, Tribunal or Authority may adopt for adjudication, must, in itself be just and fair and in keeping with the well recognized principles of natural justice.

(ii) The mechanism must be conveniently accessible in terms of distance: The forum/mechanism so provided must, having regard to the hierarchy of courts/tribunals, be reasonably accessible in terms of distance for access to justice since so much depends upon the ability of the litigant to place his/her grievance effectively before the court/tribunal/court/competent authority to grant such a relief. (See D.K. Basu v. State of West Bengal.

(iii) The process of adjudication must be speedy. "Access to justice" as a constitutional value will be a mere illusion if justice is not speedy. Justice delayed, it is famously said, is justice denied. If the process of administration of justice is so time consuming, laborious, indolent and frustrating for those who seek justice that it dissuades or deters them from even considering resort to that process as an option, it would tantamount to denial of not only access to justice but justice itself. In Sheela Barse's case (supra) this Court declared speedy trial as a facet of right to life, for if the trial of a citizen goes on endlessly his right to life itself is violated. There is jurisprudentially no

qualitative difference between denial of speedy trial in a criminal case, on the one hand, and civil suit, appeal or other proceedings, on the other, for ought we know that civil disputes can at times have an equally, if not, more severe impact on a citizen's life or the quality of it. Access to Justice would, therefore, be a constitutional value of any significance and utility only if the delivery of justice to the citizen is speedy, for otherwise, the right to access to justice is no more than a hollow slogan of no use or inspiration for the citizen. It is heartening to note that over the past six decades or so the number of courts established in the country has increased manifold in comparison to the number that existed on the day the country earned its freedom. There is today almost invariably a court of Civil Judge junior or senior division in every taluka and a District and Sessions Judge in every district. In terms of accessibility from the point of view of distance which a citizen ought to travel, we have come a long way since the time the British left the country. However, the increase in literacy, awareness, prosperity and proliferation of laws has made the process of adjudication slow and time consuming primarily on account of the over worked and under staffed judicial system, which is crying for creation of additional courts with requisite human resources and infrastructure to effectively deal with an ever increasing number of cases being filed in the courts and mounting backlog of over thirty million cases in the subordinate courts. While the States have done their bit in terms of providing the basic adjudicatory mechanisms for disposal of

resolution of civil or criminal conflicts, access to justice remains a big question mark on account of delays in the completion of the process of adjudication on account of poor judge population and judge case ratio in comparison to other countries.

(iv) The process of adjudication must be affordable to the disputants: Access to justice will again be no more than an illusion if the adjudicatory mechanism provided is so expensive as to deter a disputant from taking resort to the same. Article 39-A of the Constitution promotes a laudable objective of providing legal aid to needy litigants and obliges the State to make access to justice affordable for the less fortunate sections of the society. Legal aid to the needy has been recognized as one of the facets of access to justice in Madhav Hayawadanrao Hoskot vs. State Of Maharashtra where this court observed: "If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit in the Court under Art. 142, read with Arts. 21, and 39A of the Constitution, power to assign counsel for such imprisoned individual for doing complete justice. This is a necessary incident of the right of Appeal conferred by the Code and allowed by Art. 136 of the Constitution .The inference is evitable that this is a State's duty and not government's charity. Equally affirmative is the implication that while legal services must be free to the beneficiary, the lawyer himself has to be reasonably remunerated for his services.

Surely, the profession has a public commitment to the people but mere philanthropy of its members yields short mileage in the long run. Their services, especially when they are on behalf of the State, must be paid for. Naturally, the State concerned must pay a reasonable sum that the court may fix when assigning counsel to the prisoner. Of course, the court may judge the situation and consider from all angles whether it is necessary for the ends of justice to make available legal aid in the particular case. In every country where free legal services are given it is not done in all cases but only where public justice suffers otherwise. That discretion resides in the court."

In *Hussainara Khatoon v. State of Bihar* the Supreme Court held that speedy trial is an integral and essential part of the fundamental right to life and liberty enshrined under Article 21. It also pertained to Article 38A which makes free legal service an inalienable element of reasonable, fair and just procedure and that the right to such service was implicit in the Constitutional guarantee.

"The State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the state has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and Judicial apparatus with a view of ensuring speedy trial. The state may have its financial constraints and its priorities in expenditure, but, the law does not permit any government to deprive its citizens of Constitutional rights on a plea of poverty or administrative inability."

In *P. Ramchandra Rao v. State of Karnataka* a seven judge constitution bench withheld the decision of Apex Court in *A.R. Antulay* while the same judgment held, in para 22 to 27, that giving directions of a legislative nature is not a legitimate judicial function and hence the bar of limitation for Criminal Trials fixed by smaller Benches in *Common Cause v. Union of India*, *Rajdeo Sharma (I) v. State of Bihar* and *Rajdeo Sharma (II) v. State of Bihar* being directives of legislative nature were not correct.

In recent judgment in the case of *Mahila Vinod Kumari v. State of Madhya Pradesh* the Apex Court has shown great concern about alarming proportion of perjury cases in our country.

Statement on Pendency and other programs

The National Judicial Data Grid shows that the total number of Judges / Courts in Bihar is 1227. This figure includes the vacant Courts as well. During the course of this research the researcher found out this data of judges to be grossly incorrect. According to various reports laid down in the Parliament the total sanctioned strength of Judiciary in District and Subordinate Courts in Bihar is 1828 with 993 working Judges and 835 vacant seats. This includes 291 vacant seats in the Superior Judicial Services and 535 seats in the subordinate Judicial Services. 9 seats have been vacant due to elevation of Judges. In all India basis 22,474 sanctioned seats of Judicial Officers are there with a working strength of 16,728. A total of 5,746 seats of Judicial Officers are vacant in all over India.

On March 31, 2018 the High Court of Patna Judicature has declared 98 candidates as passed in District Judge (Entry Level) Direct from Bar Examination 2016. Another 182 candidates joined as Civil Judge (Junior Division) as the Bihar Public Service Commission recommended 192 candidates as passed in 29th Civil Judge (Junior Division) recruitment Examination, 2016. Hence, at present there are approximately

362 vacant seats in Civil Judge (Junior Division) in the State of Bihar. At present there are 32 Judges at the High Court of Judicature at Patna against the sanctioned strength of 53. The number of vacant seats at Patna High Court is 21.

Therefore, it is to be concluded that the data available on the website of National Judicial Data Grid is the data of the Courts which have computer and internet facility as is evident from the analysis of the actual working Judicial officers and Judges in the State of Bihar. Henceforth, the researcher believes that the total number of pending cases would further shoot up to a much larger figure.

According to the data presented before Lok Sabha, there are 46 Court Complexes in various districts of Bihar in which 1411 Courts functioned as on 29/03/2018. There are 39 Family Courts in Bihar to look after 46,735 cases pertaining to maintenance, restitution and divorce. There were 7,13,511 family disputes pending adjudication in various Family Courts in the country. All India Judge-Case ratio is 1175 case per judge, whereas it is 923 per judge in Bihar. Kerala has the highest Judge-case ratio of 2163 cases per judge. A total number of 1,45,650 cases were pending before Patna High Court whereas 41,84,160 cases are pending before various High Courts in India.

There is no Gram Nyayalaya constituted under section 3(1) of *Gram Nyayalaya Act, 2008* where State governments are responsible for establishment of Gram Nyayalayas in consultation with respective High Court. Gram Nyayalayas are functioning in 11 states of the country, i.e. Madhya Pradesh, Rajasthan, Karnataka, Orissa, Maharashtra, Jharkhand, Goa, Punjab, Haryana, Uttar Pradesh and Kerala.

There are 55 Fast Track Courts functional in Bihar in which 22,616 cases were pending as on December 31, 2017. The number of these fast track Courts shall be increased to 147 in the State of Bihar under the 14th Finance Commission (2015-

2020) with a budget of Rs. 338.43 Crores. Funds to the tune of Rs. 5000 Lakhs were sanctioned in the finance year 2016 -17 and of Rs. 4290 Lakh during the finance year 2017-18 under Centrally sponsored Schemes for the development of Infrastructure facilities for the Judiciary. Appointment of panel lawyer, Para Legal Volunteers (PLVs) and Village Level Entrepreneurs (VLEs) is under process through the central level. Free legal aid through Common Law Centres is also being provided. Bihar has 500 Common Service Centre.

Conclusion

On the basis of research and analysis of large amount of data, judicial pronouncements and other literature available in record time and testing them against the Wednesbury's unreasonableness, as described above, the researcher has concluded that the twin legislations, i.e. Bihar Excise Act, 1915 [pursuant to the Bihar Excise (Amendment) Act, 2016 and subsequent notifications (dated April 01, 2016 and April 05, 2016)] and Bihar Prohibition and Excise Act, 2016 was not based on adequate research, data collection, interpretation and analysis as the is evident from the various data and literature. The State has failed to keep its obligations balanced with regard to the rights of litigants on large scale and especially in case of offenders / convicts / accused persons of the aforesaid Act passed by legislature. The additional burden which the legislations have created on the judiciary is also clearly evident. The current judicial set up in the State of Bihar is not adequately geared up to meet the expected rise in the number of cases. Nonetheless, looking at the preparedness of the Bar and Bench the researcher is of the view that if the recruitment process is completed on time for a few years, there would be an ease in handling of pending cases, but even imagining that pendency would be resolved is a distant dream. Almost every person in Bihar, who comes to Court for adjudication of disputes is subjected to long process of delayed litigations. This is contrary to the litigants right to speedy justice. Further,

Handcuffing, bar fetters, inhuman conditions of prison are enough to reflect consistent breach of fundamental rights. The situation would aggravate with the increase in number of prisoners owing to Bihar Excise Act, 1915 [pursuant to the Bihar Excise (Amendment) Act, 2016 and subsequent notifications (dated April 01, 2016 and April 05, 2016)] and Bihar Prohibition and Excise Act, 2016 and the same has reflected in the order dated August 21, 2019 of the Patna High Court in Deepak Tanti & Anr. v. State of Bihar where it has invited clarification from the State Government as to how it is going to cope up with alarming rise in number of cases in the absence of adequate court, judicial officers and support staff.

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