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The NUJS Journal of Regulatory Studies has been conceived as a premier journal for publication of research in the field of law and public policy. In an increasingly data driven world, public policy oriented research centred on thorough theoretical concepts with the analysis of empirical data is imperative. This journal aims to provide a platform for innovative researchers whose data driven research creates knowledge that is conducive to the creation of long term strategies and goals for policymakers in India and abroad.

The Centre for Regulatory Studies, Governance and Public Policy (CRSGPP) actively engages stakeholders for the formulation, analysis and oversight of public policy. This journal reflects the ethos of CRSGPP and reflects its commitment to democratic values, academic excellence and legal research of contemporary relevance.

The Journal presently publishes articles on issues of national and international relevance in consonance with the aforementioned objectives. I hope that CRSGPP continues to enlighten the legal fraternity, policymakers as well as members of the public as it continues its journey of excellence and innovation.

-Prof. Dr. N.K. Chakrabarti
Editor’s Note

The NUJS Journal of Regulatory Studies started its journey in 2016 to promote legal research focusing on policy formulation. In 2019, the journal gets a new dimension with the priority inclusion of cutting edge empirical research papers from across Asia.

The new board of editors accompanied by a robust peer review team gives the journal the much needed international status. Additionally, the new shape of this open access online journal authorizes the access of the entire edition as a single file.

The journal explores through its research papers the various challenges and highlights various human rights issues. The platform of NUJS Journal of Regulatory Studies provides the young minds to find solutions beyond convention and also gives the right impetus to the centre to explore avenues to recommend such policy formulation to the concerned forum.

I am really thankful to the authors for such vivid contribution. I also take this opportunity to thank the esteemed members of the Advisory Board, Editorial Board, Peer Reviewers and my entire team who has worked relentlessly to finish the work in time.

- Dr Shambhu Prasad Chakrabarty
  Head and Centre Coordinator
Livelihood strategies of Lodha Woman: A Case Study of Paschim Medinipur district, West Bengal
Rubi Adak Panda and Dr. Santanu Panda

Abstract
In this paper, I have made an attempt to find out the survival strategies of Lodha in the Paschim Medinipur district. The study deals with the implementation of various types of development inputs among the Lodha community (a Primitive Tribal Group in West Bengal) in the study village. Lodhas who were designated by the British colonialists as a “Criminal Tribe” and later this nomenclature underwent interesting evolution in the postcolonial period. This poor, marginalized community was later put under the category of “Denotified Community” and at present has been reclassified as a “Primitive Tribal Group” (PTG). The condition of the Lodhas have changed but not in the hopeful direction. And after sixty years of Independence of the country their socio-economic condition has improved little. The present study is an empirical evaluation of the survival strategies as marginalized community. The study revealed that the Lodha woman are survive themselves by the SHG, Forest Produce Collection (FPC), hunting, domestic animal and poultry bird rearing. Their landlessness and poverty is the major constraint of the Lodhas. It was found that the distribution of poultry bird and cattle by the Government was not done properly. On the other hand they survived themselves through vegetable cultivation and day labourer.

Introduction
The first women graduate among the Lodhas (PVTG of West Bengal and adjoining states) named Chuni Kotal committed suicide on 16 August 1992 in Midnapore. She was a student of the Anthropology. The suicide of Chuni created uproar in the media and the political circles which reappeared time and again in the academic literature (Chanda 2005: 130-141; Devi 1992: 1836-1837). She wrote an article on the survival strategies of Lodhas during 1984. According to her the Lodhas were deprived from various sections to survive themselves, the Lodhas were hunger to the forest produce collection and hunting. She was written that “when you entire the Lodha village, you will see most of the doors are closed and some naked children moving here and there, when they are suddenly see you in their village, at that time they run away from the village and some dog roaring to you”. The survival strategies of the Lodhas based on Lodha woman SHG, live stock rearing and economic activities for their day to day life.
A Self Help Group (SHG) is a village-based financial intermediary usually composed of 10-15 local women. Most self-help groups are located in India, though SHGs are also found in other countries. All members have regular savings contributions over few months until there is enough capital in the group to begin lending. It has been realized in many parts of the world that an effective way to tackle poverty and to enable communities to improve the quality of life is through social mobilization of disadvantaged people, especially into Self Help Groups (SHGs). The concept of Self Help Groups is based on the idea of community participation, as sustainable community development requires the active participation of the entire community. Popular participation ensures that the benefits of development are equitably distributed. To further this, proposals are made for the decentralization of the authority so as to ensure redistribution of wealth, improved access to education and other social services. Consequently the focus of self-help groups is to develop the capacity of the disadvantaged, particularly women, and to organize them, so that they can deal with socio-political and socio-economic issues that affect their lives.

**About the Lodhas**

The Government paid special attention to collective criminal actions which were taken as a direct threat to the British colonial authority. The Criminal Tribes Act (Act xxvii of 1871) was promulgated ‘to provide for the registration, surveillance and control of certain tribes’ who had remained un-reconciled to colonial rule for long. The Criminal Tribes Act (henceforth expressed as CTA) empowered the local governments to define any community or tribe or any part of a tribe, gang or class, indulging in a systematic commission of non-bail able offences as a ‘criminal tribe’. The main aimed of the Act to “control and reclaim” communities “addicted to the systematic commission of non-bailable offences”. The Criminal Tribes Act dates back to various successive pieces of legislation enforced in India during the British rule. The legislation was first enacted in 1871 as the Criminal Tribes Act, 1871 which applied mostly in North India. The criminal tribes seemed to belong to a definable caste of hereditary criminals within the Hindu social system based on the notion of crime as a profession being passed on from one generation of criminal caste to another. As a carpenter would pass on his trade to the next generation, it was assumed that the hereditary criminal caste members would pass on their profession to their off spring. (http://en.wikipedia.org/wiki/Criminal_Tribes_Act).

After the Independence, about 153 communities in India who were designated as ‘Criminal Tribes’ by the British colonial administration were re-designated as ‘De-notified tribes’. The Lodhas are now classified as one of the de-notified communities by the Central Government. In West Bengal, Lodhas are mainly concentrated in the districts of Paschim (West) Medinipur and Purba (East) Medinipur. In the pre-Independence period they were treated as a Criminal Tribe by the
colonial Government till the revocation of the Criminal Tribes Act in 1952. In the first Census of India after Independence the Lodhas were recorded as a scheduled caste and their total population was returned to be 8,346 only in West Bengal (Mitra 1953: 89).

The social category generally known as the Denotified and Nomadic tribes of India covered a population approximately of six cores. Some of them are included in the list of Scheduled Castes, some others in the Scheduled Tribes, and quite a few in Other Backward Classes. But there were many of these tribes which did not find a place the above categories. What is common to all these De-notified and Nomadic Tribes (DNTs) was the fate of being branded as 'born criminals'.

According to the Census of 1951 the Lodhas were found to be distributed in the districts of Burdwan, Birbhum, Bankura, Midnapore, Hooghly, Howrah, 24 Parganas, Calcutta, Murshidabad and Jalpaiguri. In 1951, they were not found in the North Bengal districts like Nadia, Maldah, West Dinajpur, Darjeeling and Cooch Behar. In the same Census, the total number of Lodhas in erstwhile Midnapore district was 7040, that is 84.35 percent of the then total population of Lodhas in West Bengal. (Ibid: 89-90). Lodhas are also found in the Singbhum district of Jharkhand and the Mayurbhanj district in Orissa. They live near the fringes of forests and also near the villages of hindu caste groups. They are basically a group of food gathering people and mainly subsist on the collection of wild roots, tubers and edible leaves from jungles. They also practice the killing of the wild games, like birds, lizards and alligators to consume their flesh as food and sell the skins and hides of these animals in the market. (Narayan 1988:37-38).

In volume III of the People of India(1994) edited by the Director General of the Anthropological Survey of India it was reported that the Lodhas are mainly concentrated in the western part of Midnapore district in West Bengal and their traditional rights of access to forest have been curtailed. The People of India volume added …they make surreptitious forays into forests, which result in criminal cases being filed against them. Consequent to the colonization scheme, some have taken to agriculture. Besides, they supplement their income by working as daily-wage labourer, when hunting or fishing yield little return (Singh 1994: 695-696).

The Census of 1981 showed that the total population of the Lodhas including the Kharias and the Kherias of West Bengal was 53,718. The Lodhas were concentrated in erstwhile Midnapore District and their total number according to the Census of 1981 was 16,534. Besides West Bengal, they were also found in the Mayurbhanj and Baleswar districts of Orissa, Originally, they inhabited hilly rugged terrains covered with jungle. Their mother tongue is Lodha, which is close to Savara, an Austro-Asiatic language. They are fluent in Bengali. Traditionally, they were forest dwellers but now they have started cultivation either as owners of land or as agricultural labourers and are also engaged in hunting and fishing. More than 80 percent of them
follow Hinduism with traditional belief in spirits and nature (Mandal, H.et.al. 2002:32).

**Anthropologists and Activists on the Lodha**

In one of the pioneering anthropological study, the Lodhas were depicted as a semi-nomadic community who used to move from one place to another in search of livelihood (Bhowmick 1963:1). According to Bhowmick, the Lodhas of erstwhile Medinipur district depended mainly on food gathering and hunting and some of them were found to be engaged in agricultural as well as non-agricultural activities as hired labourers of the higher caste and wealthy families of the villages. By and large, since dependence on forest produce is not sufficient for them, the Lodhas were also found to be engaged in a variety of occupations to sustain their livelihood (Ibid: 29-30).

In one of his earlier articles, P.K.Bhowmick (1966:68) described the socioeconomic transformation of the Lodhas since the British colonial period. Bhowmick’s study was based on the Lodhas of present day Paschim (West) Medinipur. He observed that the Lodhas have never been incorporated in the mainstream Hindu society and culture, although since the withdrawal of the British Criminal Act in 1952, many governmental schemes had been introduced to improve the socio-economic condition of this marginalised community. Bhowmick also observed that the Lodhas in many cases were found to be used by the powerful sections of the rural society in illegal activities like theft, burglary and robbery. According to him, these local elite groups developed a vested interest to obstruct the developmental programmes earmarked for the Lodhas since economic upliftment of the Lodhas, might endanger the clandestine activities of the local power elite (Bhowmick 1966: 70).

According to Ajit Danda, the Lodhas belong to Mundari speaking population who are mostly found in the forest covered areas of Singhbhum District of Jharkhand, Mayurbhanj District of Orissa and Midnapore District of West Bengal, which is also known as Jungle Mahal since the colonial period that were found to inhabit mainly in the three aforementioned states of India. They speak a dialect composed of distorted Bengali, Oriya and words of Mundari origin. (Danda, 2002: 103)

Another important observer of the marginalised condition of the Lodhas in West Bengal is Mahasveta Devi who is a famous Bengali litterateur and a human rights activist. Mahasveta Devi not only wrote on the abject poverty and exploitation of the Lodhas, she also worked for decades to fulfil the various demands of the community as regards their socio-economic condition. Although, not an anthropologist, Mahasveta Devi has firsthand personal experiences of the survival strategies “How they survived themselves day by day, she has tried to bring them particularly for woman through some economic activities in rural areas. (Devi 1983:948).

Another famous Bengali litterateur and novelist Nalini Bera described in his Novel “Sabar Charit” the real socio-economic life of Sabar. He was
narrating the Lodha woman’s activities in whole day. In his ward:

……………………..the Lodha woman went to forest in early morning to collect sal & kendu leaves, around 10.00 am the husband of that woman entire into the forest with cow, goat and bullocks, during grazing the animal at that time both of them were spent whole mid day behind the shadow of the forest tree. After sunshine both of them came back to the home and prepared food for evening.

Materials and Methods
The primary data for the research have been collected from three Blocks of Jhargram district. The primary data for the research have been collected through intensive anthropological fieldwork conducted for about two consecutive years. These data included qualitative and quantitative information collected through household census, structured and unstructured questionnaire scheduled and also with the help of case study, participatory observation, focus group discussion, and panel interviews.

Objective of the study
This is a problem focused and applied study regarding survival strategies among the Lodha woman in the three administrative blocks of Janglemahal district. The main objectives of the study are:

1. To know the socio-economic life of the Lodha woman in the selected study area.
2. To enumerate livelihood strategies among the Lodhas.
3. To study the present survival strategies among the Lodhas

Findings of the study
The study revealed that we have found seven types of economic activities among the Lodha woman. We have also found six exclusive Lodha SHG’s in the study area, these SHG’s run by only Lodha woman. Through these groups they are survive themselves to smooth running their day to day life. Most interesting aspect they told that ‘collection of fire wood’ from various places by the Lodha woman is very comfortable livelihood activities. According to the Lodha woman as/when or during free time they were went to collect fire wood from either nearby forest or road side. Forest product collection was one of the major economic activities among the Lodhas. Sal plate making, Mahul liquor, domestic animal rearing, vegetable cultivation, fishing, business, Biri making are various types of economic activities foer survive themselves.

Economic activity wise depended woman

<table>
<thead>
<tr>
<th>Name of economic Activities</th>
<th>No. of who are Dependent</th>
<th>No. woman who fully Engaged</th>
<th>No. of woman Who are partial engaged</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forest Produce collection</td>
<td>273</td>
<td>221</td>
<td>52</td>
</tr>
<tr>
<td>Agricultural day labour</td>
<td>222</td>
<td>153</td>
<td>69</td>
</tr>
<tr>
<td>Non-Agriculture day labour</td>
<td>184</td>
<td>120</td>
<td>64</td>
</tr>
<tr>
<td>Owner cultivator</td>
<td>24</td>
<td>15</td>
<td>90</td>
</tr>
<tr>
<td>Selling of FPC</td>
<td>128</td>
<td>36</td>
<td>92</td>
</tr>
<tr>
<td>Domestic animal rearing</td>
<td>123</td>
<td>32</td>
<td>91</td>
</tr>
<tr>
<td>Poultry bird rearing</td>
<td>88</td>
<td>21</td>
<td>67</td>
</tr>
</tbody>
</table>
The distribution of the economic activities of the Lodha women showed that they started to work as agricultural and non-agricultural labourers from an early age, i.e. 10-14, and we have also found them collecting forest products to earn their livelihood from young age. We found women engaged either fully or partially among fifteen types of economic activities. The major and important activity are analysed through age group wise. The Lodha women were found to work up to 55-59 years and even beyond, although the number of economically active persons declined substantially after the age group 55-59 among female.

- Most of the individuals were found to be engaged to earn their livelihood from the forest. However, the proportion of persons engaged in forest product collection rose consistently with age among the women from 10-14 to 30-34 years and then it declined with a sharp fall, and continued up to 55-59 years. All the aforementioned facts suggested that a major part of the livelihood opportunity creation among the Lodhas should be planned around forest product collection and they should be empowered through participatory joint and / or community forest management programmes of the forest department.
- Although a small proportion of the women were found to be engaged in animal husbandry as an economic activity, this should be identified as one of the encouraging signs as regards the creation of livelihood opportunity, since most of the animal husbandry efforts were the results of government initiated programmes
- The third important sign of hope as regards the economic activity of the Lodha population was the presence of owner-cultivators among females. The popular notion sometime shared by government officials that viewed Lodhas as a community of habituated forest produce collectors should be critically evaluated against this particular finding. The fact of the presence of Lodha owner cultivators should be viewed in the context of the distribution of land to landless Lodha families by the Land and Land Reforms Department. ?
- The attachment of the Lodhas to agriculture as an economic activity was also revealed by their engagement as agricultural labourers. Such kinds of gainful economic activity which would empower them to become self-reliant instead of working for other owner cultivators in their agricultural fields.
- Forest produce selling and sal plate making are the very enthusiastic work of
the Lodha woman. We have found 188 woman who are depend on sal plate making and Most of them are fully engaged. They survive themselves through sal plate making and selling.

- We have also found 132 Lodha woman earn money through Biri making among them 89 woman fully depend on Biri making to survive themselves.

- Only vegetable cultivation and Hunting the Lodha woman did not depend fully. They used as supplementary work or income. Most of the woman fully depend or engaged Forest produce collection and selling, Agricultural day labour, non-agricultural day labour and sal plate making very few are partial engaged.

- Business is the another important strategy to survive themselves. A sound number woman (40) in the study area are survive themselves through Business. The Lodha woman were collect local vegetables, fish, forest produce everyday and sell it in local Hut or market.

We have found 6 Self Help Groups constituted by Lodhas. The members of each group is 10 and the monthly subscription for each member is 40/- in four groups while it is 50/- rupees in case of two groups. The six SHGs have their own names. The Netaji and Khudiram SHGs were established in 2005 and the other four groups were established in 2008. All groups are very active. Each member of every group took active part for their development. The educational qualification of weak as well it was brought from neibouring state and couldn’t acclimatize. Moreover, I have not been provided with any training regarding the rearing and proper upkeep of the domestic animals.’ In 2015, his wife got two bullocks from SHG. They have no training to rear the cow but still now the bullocks are alive and they earn by renting the bullocks for ploughing at a daily rate of Rs. 300/- . He also possess hen. These hens are purchased by him. According to him, long back he received some chicken (hen) from govt. but sooner they died.
SHG members was very low; only 23 women were educated out of 62 nos. 61.29% group members are belongs to can sign status, 16.19% members are belongs to I-IV class status and 17.74 % members are belongs to V-VIII class status. I found their family size category are three type like (1-3), (4-6) and (7-8). In this category 67.74% members are belongs in (4-6) category. Their socio-economic background is very poor; most of the members however have own home stead land. Some of them have agricultural land. Only ten members of SHG got Patta Land from Govt. before established our group. Our inferiors with the Lodha SHG members revealed that for the last four years the local Panchayat did not extended any help or cooperation for the promotion of the SHG which have made them marginalized. These SHGs were formed totally by the own initiative of the ladhas because when the SHG s were established at that time they could not any help from Panchayat Department and Local leadership.

**Only Lodha Woman SHG**

In this table shows that the two Self-help group were established in 2005 on the other hand the four Self-help group were established 2007. Each group has ten members except Makali SHG. The Netaji and Khudiram SHGs had received Rs. 25000/- in each group as loan from BDO office where as another four groups they did not receive

<table>
<thead>
<tr>
<th>Name of the SHGs</th>
<th>Total No. of members</th>
<th>Year of formation</th>
<th>Total receive loan</th>
<th>Source of loan</th>
<th>Monthly Subscription</th>
<th>Nature of work</th>
</tr>
</thead>
<tbody>
<tr>
<td>Netaji</td>
<td>10</td>
<td>2005</td>
<td>25000/-</td>
<td>BDO Office</td>
<td>Rs. 40/- each member</td>
<td>They are making basket and cooking midday meal at Bidisha High School.</td>
</tr>
<tr>
<td>Khudiram</td>
<td>10</td>
<td>2005</td>
<td>25000/-</td>
<td>Do</td>
<td>Rs.50/- each member</td>
<td>They are cooking midday meal at Daharup Sabar Palli Pry. school</td>
</tr>
<tr>
<td>Binoy</td>
<td>10</td>
<td>2007</td>
<td>They did not receive any loan.</td>
<td>Rs.50/- each member</td>
<td>The members of this group were participating in the monthly meeting and attend the Party Programme.</td>
<td></td>
</tr>
<tr>
<td>Badal</td>
<td>10</td>
<td>2007</td>
<td>They did not receive any loan.</td>
<td>Rs.50/- each member</td>
<td>The members of this group were participating in the monthly meeting and attend the Party Programme.</td>
<td></td>
</tr>
<tr>
<td>Denesh</td>
<td>10</td>
<td>2007</td>
<td>They did not receive any loan.</td>
<td>Rs.50/- each member</td>
<td>The members of this group were participating in the monthly meeting and attend the Party Programme.</td>
<td></td>
</tr>
<tr>
<td>Makali</td>
<td>12</td>
<td>2007</td>
<td>They did not receive any loan.</td>
<td>Rs.50/- each member</td>
<td>The members of this group were participating in the monthly meeting and attend the Party Programme.</td>
<td></td>
</tr>
</tbody>
</table>
any loan in 2007. In 2012 all groups have received Rs. 50,000/- as a domestic animal loan. All the group members contribute 50/- rupees as monthly subscription. Netaji Self-help-group cooked midday meal at Bidisha High School and earned Rs.1200/- in every month. Khudiram self-help-group cooked midday meal at Daharpur sabar palli primary school and they get Rs. 1000/- per month.

### Case Study 3

<table>
<thead>
<tr>
<th>Name of informant:</th>
<th>Sunita Kotal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age:</td>
<td>44</td>
</tr>
<tr>
<td>Sex:</td>
<td>Female</td>
</tr>
<tr>
<td>SHG:</td>
<td>Binoy Self Help Group</td>
</tr>
<tr>
<td>Secretary:</td>
<td>Sujata Kotal</td>
</tr>
<tr>
<td>President:</td>
<td>Sunita Kotal</td>
</tr>
</tbody>
</table>

According to informant ‘her family members are 8, they are belongs in joint family. The family is little bit educated than the other Lodha family. They are dependant on day labourar, they have got patta land from govt. only 10 katha before 7 years ago. Their need mechanical training for earn some money and free education system. She did not like any political work like meeting, conference and michil which is harmful of my children’s future. As a member of SHG by presser many times to attend only the meeting of CPIIM. In this reason some members will be regain from the group. If they will get any type of help from PRI like loan, training and kinds etc. their condition will more better in future and any members cannot regain from group.

### Case Study 4

<table>
<thead>
<tr>
<th>Name of informant:</th>
<th>Mukti Bhakta</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age:</td>
<td>34</td>
</tr>
<tr>
<td>Sex:</td>
<td>Female</td>
</tr>
</tbody>
</table>

Netaji Self-help group  
Nuclear family  
Secretary: Mukti Bhakta  
President: Bharati Digar  
Her family is consisting of 5 people; the informant is the head of the family and has studied up to VI standard both of her sons in Bidisha High School. Her total land is 15 Katha.

According to him “This SHG was established on 2005. Our members monthly subscription is 40/-, the total no of group is 10. We are organized meeting two times in a month but in winter and rainy season one times. Our members are very active for their group related work like meeting, subscription and deputation etc. Our group got 25000 rupees as loan from Panjab Bank in 2006. We have submitted our demand copy to the District Magistrate, Sabhadhipati and BDO of our District and Block. Last two years we have not any help from Bank, Panchayat Department and Ruling Parti, but Pradhan, LCM and Sachib were present in our meeting in a month. Our group members cooked mid day meal at Bidisa High School for earn some money to improve their family. Sometimes our members were angry with me because they have not got any kind of help to improve our group. So their opinion is ‘what is the value of group? We are reign from our group.’
Village wise Minor Forest produce collection

<table>
<thead>
<tr>
<th>Village name</th>
<th>No of villagers who are responded</th>
<th>No of villagers who are satisfied</th>
<th>No of villagers who are not satisfied</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parasia</td>
<td>101 [40.08]</td>
<td>82 [32.54]</td>
<td>19 [7.46]</td>
<td>101 [40.08]</td>
</tr>
<tr>
<td>Kalinagar</td>
<td>13 [5.16]</td>
<td>12 [4.76]</td>
<td>1 [0.40]</td>
<td>13 [5.16]</td>
</tr>
<tr>
<td>Sarisabasa</td>
<td>12 [4.76]</td>
<td>10 [3.97]</td>
<td>2 [0.71]</td>
<td>12 [4.76]</td>
</tr>
</tbody>
</table>

( ) represent percentage out of column total [ ] represent percentage out of grand

Lodhas are traditional forest dwellers and until recently their main income comes from collection of leaves and fallen tree branches. They are also the onewho worship the nature. It is therefore alarming to have such feedback. Over exploitation of the forest, unauthorized cutting of trees lead to diminishing of forest. Unscientific way of exploitation of forest even by the locals including tribal people who reside at the forest land is also to be blamed.

Involvement of forest department is also far from praiseworthy and the activities of Joint forest protection committee are also utterly unsatisfactory failing to imbibe a sense of ownership among the local.

Diminishing marketability of the forest produce and lack of value addition is probably also the reason of such response. One of the main MFP is sal leaves and a collector hardly get Rs. 50-60 per 1000 leaves but finished product as plate of sal leaves can cost Rs. 1.00 per plate i.e Rs. 160-170 for 1000 leaves. This profit of value addition can easily be provided to the leaf collector by providing them a plate making machine.

Forest produce other than sal leaves like honey, mushroom, medicinal plant parts are hardly been explored in a organized way and remain largely unexplored.

### Case study 5

Name of the Informant: Nuli Bhunia

Age: 41 Sex: Male Village: Parasia, GP: Baranigui, Block: Nayagram

According to the informant his economic condition is very poor. His family member is five. He recounted ‘I have no agriculture and homestead land. My family depends on forest resource collection and non-agriculture day labour. Every day my wife goes to jungle to bring the fire wood and leaf. After gathering a heavy amount of firewood, we cut the wood and prepare for selling. 3 days are required to collect such amount of firewood which can be carried by cycle to the nearest market. In very early morning I go to Kharika Market for selling. It is sold between Rs. 200/- to 300/- per cycle. Every day I have to cover 20-30 KM distance up & down from my home for selling the fire wood’.

Villager’s response towards livestock rearing as livelihood opportunity

<table>
<thead>
<tr>
<th>Village name</th>
<th>No of villagers who are responded</th>
<th>No of villagers who are satisfied</th>
<th>No of villagers who are not satisfied</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fulgeria</td>
<td>(5.63) 4 [5.63]</td>
<td>-</td>
<td>(10.81) 4 [5.63]</td>
<td>4 [5.63]</td>
</tr>
<tr>
<td>Parasia</td>
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<td>(47.06) 16 [22.54]</td>
<td>(43.24) 16 [22.54]</td>
<td>32 [45.07]</td>
</tr>
</tbody>
</table>
Higher level of livelihood satisfaction compared to MFP collection and agriculture existed among those who opted livestock rearing as their occupation. It is presumed that better possibility of return and the traditional knowledge of lodhas in animal rearing is the reason for this. It is however surprising that only 2.91% of the total survey population are into this occupation. Availability of good quality of breed, high mortality rate, scarcity of vet nary doctors, irregular and unplanned govt support system are also to be blamed.

<table>
<thead>
<tr>
<th></th>
<th>Bansiasole</th>
<th>Tiakathi</th>
<th>Kalinagar</th>
<th>Sarisasbasa</th>
<th>Dodra</th>
</tr>
</thead>
<tbody>
<tr>
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<td>(9.86) 17</td>
<td>(7.04) 5</td>
<td>(2.82) 2</td>
<td>(5.63) 4</td>
</tr>
<tr>
<td>%</td>
<td>[9.86]</td>
<td>[23.94]</td>
<td>[7.04]</td>
<td>[2.82]</td>
<td>[5.63]</td>
</tr>
<tr>
<td>7</td>
<td>(2.94) 1</td>
<td>(32.35) 11</td>
<td>(5.88) 2</td>
<td>(5.63) 4</td>
<td>(11.76) 4</td>
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<tr>
<td></td>
<td>[1.41]</td>
<td>[15.49]</td>
<td>[2.82]</td>
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<td>(16.22) 6</td>
<td>(8.22) 2</td>
<td>(8.11) 3</td>
<td>(5.41) 2</td>
<td>(100) 34</td>
</tr>
<tr>
<td></td>
<td>[8.45]</td>
<td>[2.82]</td>
<td>[4.23]</td>
<td>[2.82]</td>
<td>[47.89]</td>
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<tr>
<td>7</td>
<td>17</td>
<td>5</td>
<td>71</td>
<td>6</td>
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<td></td>
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<td>[7.04]</td>
<td>[2.82]</td>
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<tr>
<td>7</td>
<td>71</td>
<td>(100) 37</td>
<td>(100) 37</td>
<td>(100) 37</td>
<td>(100) 37</td>
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<td>[52.11]</td>
<td>[52.11]</td>
<td>[52.11]</td>
<td>[52.11]</td>
</tr>
</tbody>
</table>
| ( ) represent percentage out of column total [ ] represent percentage out of grand total.

According to Srimanta they are dependent on forest produce collection and daily labour for their survival. The informant received (i) financial assistance for house building under Lodha development cell of Paschim Medinipur District and (ii) domestic animals from Panchayat Department through SHG in 2009. He further added: ‘I also received six goats in 2009 but after seven days all the goats died because the goats were not vaccinated and the goats were also very weak as well it was brought from neighbouring state and couldn’t acclimatize. Moreover, I have not been provided with any training regarding the rearing and proper upkeep of the domestic animals.’ In 2015, his wife got two bullocks from SHG. They have no training to rear the cow but still now the bullocks are alive and they earn by renting the bullocks for ploughing at a daily rate of Rs. 300/- . He also possess hen. These hens are purchased by him. According to him, long back he received some chicken (hen) from govt. but sooner they die.

### Case Study-6

**Name of informant:** Srimanta Bhakta  
**Age:** 42  
**Sex:** Male  
**Village:** Parasia,  
**JL. No:** 106  
**Block:** Nayangram  

According to Srimanta they are dependent on forest produce collection and daily labour for their survival. The informant received (i) financial assistance for house building under Lodha development cell of Paschim Medinipur District and (ii) domestic animals from Panchayat Department through SHG in 2009. He further added: ‘I also received six goats in 2009 but after seven days all the goats died because the goats were not vaccinated and the goats were also very weak as well it was brought from neighbouring state and couldn’t acclimatize. Moreover, I have not been provided with any training regarding the rearing and proper upkeep of the domestic animals.’ In 2015, his wife got two bullocks from SHG. They have no training to rear the cow but still now the bullocks are alive and they earn by renting the bullocks for ploughing at a daily rate of Rs. 300/- . He also possess hen. These hens are purchased by him. According to him, long back he received some chicken (hen) from govt. but sooner they die.

### Case Study 7

**Name of the Informant:** Bulu Sabar  
**Age:** 46  
**Sex:** female  
**Village:** tiyakati  
**Block:** Jhargram Dist: Paschim Medinipur  

According to informant his family members are six. He was a handicap person. He told me ‘we are depending on forest generation wise. We are collected wood, shal leaf, fruit, root, skin of tree from the forest season wise.’ According to forest right act 2006, Jungle depended tribes and others traditional forest dwellers will collect everything from jungle except cutting the big trees. Now he narrated a recent fact. In his version ‘One day I went jungle (16.12.2014) to collecting firewood for selling. After collecting the firewood I came to Lodhasuli Market for selling. When I was selling the firewood at that time a female bit officer came to me and physically tortured on me and kept my bicycle. After that she ordered to me ‘next day you bring Rs. 500/- otherwise I will send you Jhargram Police Station.”
The Lodha woman collects fire woods

The Lodha woman collects Sal Leaf

The Lodha woman making Biri

After collecting firewood from forest

The Lodha woman prepared Local liquor

Sal plate making by the Lodha Woman
Overall economic activities of females in Lodha community

<table>
<thead>
<tr>
<th>Age group (in years)</th>
<th>Owner cultivator</th>
<th>Agricultural labourer</th>
<th>Non-agricultural labourer</th>
<th>Forest product collection</th>
<th>Business</th>
<th>Animal husbandry</th>
<th>Fishery</th>
<th>Beggary</th>
<th>Total</th>
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<td>(16.66) 37</td>
<td>(16.05) 38</td>
<td>(16.11) 44</td>
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<td>(20.68) 6</td>
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<td>(100) 1</td>
<td>129</td>
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<tr>
<td>15-19</td>
<td>(8.33) 2</td>
<td>(8.55) 19</td>
<td>(9.23) 17</td>
<td>(9.15) 25</td>
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<tr>
<td>20-24</td>
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<td>(7.06) 13</td>
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<tr>
<td>25-29</td>
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<td>(8.79) 24</td>
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<td>(6.30) 14</td>
<td>(8.15) 15</td>
<td>(6.59) 18</td>
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<td>50</td>
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<tr>
<td>35-39</td>
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( ) represent percentage out of column total [ ] represent percentage out of grand total.

Conclusion

The Self-Help-Group is one of the platforms where the women can come together for a meaningful purpose and share their feelings, problems, grievances and miseries. Through the SHG women are to organize and empower. The group provides a good deal of psychological solace. The elderly women among the groups act as a friends and counselors. The women can safely give a vent to their suppressed feelings and relive themselves of much familial and social burden. They earned money the money to survive themseleves. The Panchayat did not extend any help or cooperation for the promotion of the SHG which have made them marginalized. So in my
study lodha SHG more better position without any help from PRI.

Lastly, I think if we want to see more success of the SHGs, in future we have to take more initiative on cohesiveness among the group members, regular group meeting, rotation of leadership and participation in different training programmes.

It was true that our case studies have also revealed a number of failures in the utilisation of domestic animals given to the Lodhas owing to various lacunae on the part of the governmental agencies and the beneficiaries themselves, there were also some success stories. A sound number of Lodha individuals who were engage themselves in rearing domestic animals as an economic pursuit and this activity should be further encouraged.

The Lodha collect forest produce for thei survive and they hunting gatharing community. They were collect non-timber fire wood, leaf and consumable items. They did not collect timber wood though they faced critical situation by the forester. According to the forest act -2006 law they have every right to collect non-timber fire wood. (Case 7)

Non-agriculture day labour is another vital sector for earning under this section they were went to work as road work under the contractor, brick worker, labour under mason, pond excavation under MGNREGA. They are not satisfied to work under MGNREGA work for late payment. Without job card non- agricultural work very much comfortable. Most of times, the Lodhas have not get non-agricultural job because they are not competent than other tribes.

Sometimes they went to neighbouring state, districts for migrant labour as agricultural day labour. Few of they worked day by day and received payment every day, on the other hand some of them worked as monthly or weekly.

**Suggestions**

Skill development through training programmes related to *sal* leaf plate making and manufacturing of value added products from *babui* grass (*Eulalopsis binata*) may be initiated with coordinated efforts by the appropriate government departments and non-governmental agencies.

Our recommendation in this regard is that there should be special coordinated efforts on the part of the concerned government departments (e.g. B L & LR, Minor irrigation, Principal Agricultural Office etc) to empower the Lodhas so that they can retain and utilise agricultural land as a development input.

Without any training, should not be given any domestic animals to Lodha beneficiaries for rearing and the animal should be vaccinated and environment friendly.

The local Pachayat should take initiative that to provide them actual job through their Job card because the contractor deprived them.

If the Government take initiative to selling or marketing of their handmade production and
forest produce like sal palte making, biri, various root, skin, lata, kendu leaf, sal leaf, gum, jharu, rope etc for better economic life and/or motivate them for their survival strategies.

The Government should proactive to the actual rights of the forest produce collection according to the law. The Government should take initiative to improve the SHG’s by some handy craft preparation training and financial assistance with support.

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(vwww.indianmba.com/Faculty_Column/FC554/fc554.html)
The Robot and The Law: A Future Stress

Dr. Jayanta Ghosh & Oishika Banerjee

Abstract

The research examines how indispensable artificial intelligence has become in a man’s day to day activities. With robots getting citizenship and playing an immense role in human life, the question of protection of human rights along with legal provisions oriented with robots has come to highlights. Humanity has obligation towards our ecosystem and social system. Robots being a part of both therefore get rights as humans till the fact that humans do not end up being technologically paralysed that the robots start misusing their rights affecting the human rights in return. The paper further focuses on laws underlying robots in human life which overruled Asimov’s Law of Robotics. Considering that within a few more years robots will completely be at the same platform as humans, the paper discusses the pros and cons of the same. With the world stepping forward each day surrounded by the atmosphere of industrial revolution, fast developing country like India has achieved a position to look upon. It’s ranked among the top three countries in the world implementing robotic automation in their core business process. Therefore artificial intelligence stands as a welcoming step for various sectors in India where robot play a role of a pseudo human. This character of pseudo human nature needs to be evaluated on urgent basis as because of the technological advancement. For the said circumstances it is required to get the idea of the future legal structure of robot law, this research work highlights the same.

Keywords: Robots, artificial intelligence, human rights, technology

Introduction

In the backdrop of 21st century the word robot is being used on a daily basis for today robots are found everywhere, both inside as well as outside of our homes. Some as drones others are autonomous cars and still more are surprisingly realistic humanoids.1 Gradually getting more social, robots have become smart enough to compete with human effort at almost every sphere.2 After the world experienced the first, second and third industrial revolution, the time has come to become acquainted with the fourth industrial revolution through the medium of artificial intelligence and technological advancement.3 The world’s perspective towards robots changed gradually after Sophia, the female robot was granted the first robot citizenship in

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Saudi Arabia.\textsuperscript{4} Erica, Japan’s next robot news anchor also brought about a change in people minds.\textsuperscript{5}

An indispensable object of human lives, robots are now used by NASA for research purposes also the same pencil size robots can be used to solve mysteries of the Universe.\textsuperscript{6} The basic amount of rights that every human being possesses is what human rights deal with. As United Nations says, Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education and many more.\textsuperscript{7} The fundamental principle aligning the idea is that each person is a moral and rational being deserve a certain amount of dignity.\textsuperscript{8} Artificial Intelligence produces challenges for human rights. Living in a background where artificial intelligence and robotics are playing immense roles in society, enhanced and accurate policies are needed to safeguard humans from harmful biases.\textsuperscript{9}

Algorithms can simplify work within a very less span of time only requirement being availability of relevant data. If men start insisting that robots have the same rights as that of human then in one way they are making themselves insecure by justifying the inhumanity robots commit against fellow humans.\textsuperscript{10} In order to avoid the insecurity to some extent law can be adopted. A robot in all way has advantage over humans. They can perceive things well and can do moral learning virtually and at a speedy way than humans.\textsuperscript{11} The question therefore arises that whether humans will fit in or will have any role to display in robotic societies of the future and not that if robots will adopt in the man’s world. Certain activities of the robots bound them by chains of liability just like humans and therefore they will be held liable if they work beyond the assigned work leading to danger for human beings.\textsuperscript{12} Man is a fast developing, highly functioning social animal that has the ability to think. The birth of robotics came out from one such thought and since then it has been growing at an increasing rate. The more robots can socially interact with humans, the more people will be willing to accept them in public spaces, workplaces and even their homes. The LIREC Project (Living with Robots and Interactive Companions) aims to create a new generation of interactive and emotionally intelligent companions (robots or embodied


virtual agents) that are capable of establishing long-term relationships with humans.\textsuperscript{13}

Robots being one of the most intelligent being in this world can reach the extent of killing humans. What can handle this situation are laws and therefore laws are wholly required for protecting the two beings.\textsuperscript{14} Protecting intellectual property about the robots and the intellectual property that comes from their creations is another burden that law has to take on its shoulders. Along with liabilities come rights also. Robots are also to be granted certain rights for they do no less work than humans.\textsuperscript{15} Therefore law comes into play in this very context. An emerging field of law, Robot law is becoming familiar day by day for technology has become an indispensable tool in our lives.

**Evolution of robots**

A machine, resembling humans at times designed to execute one or more tasks automatically with speed and precision has been given the name Robot which comes from the Czech word “\textit{robota}” meaning forced labour.\textsuperscript{16} Although the labour is forced for humans created them for simplification of their own works, recent study shows trend which outlines the fact that robots are fast replacing human labour. These robots were robots in their spirits than in form. Robots can even manipulate its environment.\textsuperscript{17} Recent breakthroughs in wearable robotic systems may enable humans to perform physical feats that would ordinarily be beyond their capabilities.

Throughout the 1700s, robotic invention was reached a relative peak when countless automat (robots) were being created. 19\textsuperscript{th} century saw the creation of talking doll by Edison whereas the Canadians brought about the steam-powered robot.\textsuperscript{18} George C. Devol of Kentucky invented and patented a reprogrammable manipulator called ‘Unimate’ from Universal Automation.\textsuperscript{19} During the 1960s, with the growth of the Silicon Valley, USA a company named SRI International developed Shakey, first mobile and a perceptive robot. Shakey was equipped with cameras and bumped sensors which helped it navigate a complex environment. This marked the beginning of robotic revolution. There are three main branches of robotics today namely, educational, research and industrial.\textsuperscript{20} The first minicomputer-controlled commercially available robot was developed by Richard Hohn for Cincinnati Milacron Corporation. The robot came to be known as T3, The Tomorrow Tool. Followed by this eventually, several companies started creating their own. Sony released its first version of AIBO, a robotic dog equipped with communicating and entertaining traits in 1999. Honda debuted with its

\textsuperscript{13} Human robot personal relationship (2011) .(Introduction ) pg 130
\textsuperscript{20} Siciliano, B. and Khatib, O. eds., 2016. Springer handbook of robotics.Springer.
first humanoid robot in 2000. First self-replicating robot came up in 2005 with the help of the researchers at Cornell University. Robots came to be adopted for domestic purposes even.\(^{21}\) This lead to coming up of Roomba robotic vacuum cleaner for the very first time in 2002. 2.5 million units from then are sold over for domestic uses. During the past 50 years fields like artificial intelligence (AI) and machine learning (ML) could be accessible only within exclusive circle of researchers and scientists.\(^{22}\) This picture is fast changing for these fields are being used by all sorts of organisations and companies who may not be associated with research works also.

A new study by the researchers from University of Toronto’s faculty of Applied Science and engineering guided how robots influence and grow trust in humans. As men have reached their ways to incorporate robots into the social world, creating a sense of self in artificial intelligence branch can be achieved with less difficulty.\(^{23}\) While scientists are still far away from the goal they aim to achieve, it won’t be wrong to say that they have achieved an immense part already. Technology has ranged up to such heights that artificial intelligence have been in man’s use for so long that robots are manufactured in different ways aligning to man’s use in day to day life.\(^{24}\) Man incorporate their needs in this machine with the view that they will act as man desire although their capacities exceed that of man in several ways. Artificial Intelligence has become simple and affordable that it can be used by anyone.\(^{25}\)

*Once Bill Gates had said, “Robotics and other compositions will make the world pretty fantastic compared with today”. On that note it can be said that indeed robotics has been useful to humans in a great way.*\(^{26}\)

The type of robots that one will encounter most frequently are robots that do work which involve danger or nasty activities. Robots changed the structure of the society and allowed for safer conditions for labour.\(^{27}\) Some robots like the Mars Rover Sojourner or underwater robot Caribou help us learn about places that are dangerous for humans. Implementation of advanced robots in scientific and military field changed the scenery of military world and space study.\(^{28}\)

Robot is a type of technology that is growing up faster and one must learn to cope with it through education and job creation. Therefore, the word fatigue can never be added alongside robots.\(^{29}\) Enhancing of productivity is the sole reason why


\(^{22}\)Ibid.


robots were brought to this materialistic world. Bringing robots into houses and in workplaces involves developing, “multipurpose machines that are capable of interacting” with humans without being dangerous said the head of robotics department, Philippe Soueres. The automation technology enables machine to perform certain operation which in return is cutting down human effort to a large extent.

Robo-advisers in banking and financial sectors are offering a more customised service meeting the client’s interest than general human advisors. Therefore a more personalized experience can be noticed on the part of the robots for humans does not have the time to be providing personal services any more. Robots open opportunities for men to focus on task that they are best at that is centred around imagination and creating a better world. A robotic arm or machine is able to do menial tasks efficiently than what human had done.

Crystal Fox, an Associate Director of MPE Cluster and Robotics Platform says that in near future workplaces will focus more on robot–human cooperation rather than robots that can only carry out human instructions. Work such as digitalising DNA data of human body may keep men away from getting sick in future, is helping humans in immense ways. Robots can go deep sea diving in Antartica, can tutor subjects in a diverse way, can improvise a drum riff, can clean your room, can take direction from other robots and the list goes endless.

Automation production leads to benefitting the consumers by providing greater choices among various goods and services. International Data Corporation has predicted that by 2021, 75% of all enterprise applications will include some aspect of machine and deep learning for predictions, recommendations or advice. Marketing app like Red Bus has experienced increased click-through rates by 20% since it started using artificial intelligence. It uses AI to showcase customer reviews in a much more useful way. The dating app Woo has replaced manual photo curation with that of AI. With the help of AI the app now ensures that profiles and photos meet their standards. Haptik, which is widely used by people to set reminders for day to day human activities like sending greetings to people, drinking water, calling people at different times etc is using AI to make personalised calls at the right time. AI has therefore become a helping hand for humans in various activities to take into notice a few will be learning foreign languages, finding tumours in medical images and dealing

with automatic tasks like claims handling at insurance companies.35

The most advanced area of application of AI is that of e-commerce. Companies can now remove complexities from their customer’s decision-making by the pre-selection mechanism which is supported by AI. Business models like B2B (Business to Business) and B2C (Business to Consumer) face critical situations at times when there is unavailability of demanded goods.36 There has been a speedy cut down of the same for algorithms nowadays can predict the demand for goods from beforehand.

In medical field, AI help in analysing of MRT, CTs, X-ray images and thereby become a helping hand for doctors. Therefore the list goes endless.37 Although humans are getting attached with robots in one way or the other, it is high time man understands that they are the sole beings getting affected by the same. It is therefore necessary to remember the saying of Jerry Michal Ski, the founder of REX which goes as, “Automation is Voldemort: the terrifying force nobody is willing to name”.38

With 77 percent of the population find it normal to keep robots at home within a span of 20 years fewer among them have complete trust on it. This may not be what physicist Stephen Hawking warned us about, the dystopian future where there will be a spell by the intelligent devices to end the human race. Malevolent bots, designed by criminals are now ubiquitous on social media sites and elsewhere online.39 In retrospect giving robots too much access to our daily lives could lead to disaster worldwide. Humans are prone to disclose their deepest, darkest secrets to anthropomorphic robots further making themselves face danger in future for the information can be used in several cases that causes invading of privacy.40 Many experts fear that as many instances suggest that humans are becoming emotionally attached to these structures, the same emotion might not be shown by the robots. For emotions and stimulated emotions aren’t the same. Usages of robots stand as a disadvantage considering the following.41

Production of robots stands out to be expensive which in return can harm global economy. Robots can end up compromising man’s entire economic system. Automation production requires huge amount of capital investment.42 Firms with short-term goals are to be lagging behind or they are reluctant to take the investment required. This kind of production comes with requirement of specialised labour or software development and

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maintenance of machineries. Investment is also required in such aspects.\textsuperscript{43}

Labour work become null for our heavy dependency towards this object and malfunctioning of the same can cause chaos. The effect of automation broadly at this point has a pervasive nature.\textsuperscript{44} The de-skilling, loss of human dignity oriented with traditional labour is on the verge of having a devastating effect much sooner that long-distant threat of unchecked artificial intelligence. Film-maker Maxim Pozdorovkin in his new documentary “\textit{The Truth About Killer Robots}” traces all manner of dangers from every prospects be it psychological, economy oriented, moral based towards our species by robotics. The film centre around the fact that says “\textit{when a robot kills a human, who takes the blame}?” fully autonomous weapons ; Killer robots are being created and deployed by great nations like United States, UK, Russia,Israel,China, South Korea. Questions arises on the fact that can these fully independent weapon can be capable of meeting the standards of international humanitarian law including distinction rules, proportionality and military necessity while the same would threaten the fundamental right to life and human dignity.\textsuperscript{45} Human Rights Watch, founding member and global coordinator of the Campaign to Stop Killer Robots calls for a preventive ban on the autonomous weapons immediately. It has been estimated that by the year of 2020, machines will replace about 5 million jobs.\textsuperscript{46} It has also been predicted that other than just replacing manual labour and simple tasks, robots can help shifting the job environment into more intensive, intellectual, “white collar” jobs.\textsuperscript{47} The consequences therefore is a more fiercer competition will occur for any human position.

\textbf{Economy And Artificial Intelligence: Friends Or Foes}\n
Whenever humans term intelligence as artificial it creates a picture of mechanized use of available technology.But automation critics fear robots will put many Americans out of work, cause social upheaval and disrupt entire economic sectors.\textsuperscript{48} Economy on the other handstand out to be the backbone of every country is highly connected to the man-made artificial intelligence.\textsuperscript{49} As men are making their ways towards life simpler by effective use of artificial intelligence, they are forgetting that in several ways they are affecting themselves. Robots can ease human work and can also replace them to do the job.\textsuperscript{50} The elimination of employees at a large


\textsuperscript{44}Purdy, D., 1988. \textit{Social power and the labour market: a radical approach to labour economics}. Springer.

\textsuperscript{45}Asaro, P., 2008. How just could a robot war be. \textit{Current issues in computing and philosophy}, 175, pp.50-64.


\textsuperscript{49}Ibid.

\textsuperscript{50}Makridakis, S., 2017. The forthcoming Artificial Intelligence (AI) revolution: Its impact on society and firms. \textit{Futures}, 90, pp.46-60.
scale affect the economic growth of any country for the rate of employed workers is reduced.\footnote{Friedberg, R.M. and Hunt, J., 1995. The impact of immigrants on host country wages, employment and growth. \textit{Journal of Economic perspectives}, 9(2), pp.23-44.}

AI has set in with a big goal but man’s efforts becoming redundant cannot be counted within the faults of AI. Humans themselves are supposedly liable for the same. What man should strive for is refocusing on their skills to perform better than robots by proper utilisation of available resources rather than finding ways to escape workload. Thereby what is resulting is that humans are gradually forgoing available economic and societal opportunities that could have been easily grasped by them.

The time is therefore ripe to speculate about how robotisation will impact economic development in the world in the next 20 years. This period is so chosen because it is impossible to foresee invention and innovation in AI in the longer run. We ‘speculate’ instead of ‘predict’ because even within these 20 years the timing and extent of innovation will be largely random.\footnote{Winner, L., 1978. \textit{Autonomous technology: Technics-out-of-control as a theme in political thought}. Mit Press.}

The emergence of information technologies has inundated policymakers with data derived from tracking, recording, and analyzing information technology user behaviour. This data deluge has spawned new data analysis techniques and technologies leveraged when making and automating policy decisions. Automated systems are consequential actors in global politics.\footnote{Kiggins, R.D., 2018. \textit{Big Data, Artificial Intelligence, and Autonomous Policy Decision-Making: A Crisis in International Relations Theory?}. In \textit{The Political Economy of Robots} (pp. 211-234). Palgrave Macmillan, Cham.}

In economically developing country like India where there is high demand for employed workers, introduction of robots will therefore fail to suit the atmosphere. In such a scenario the question that arises is “what humans will do next?” While on other hand the fact that artificial intelligence is slowly transferring economy of scarcity to economy of abundance cannot solely be ignored. Hence to draw a conclusion on whether economy and artificial intelligence are friends or enemies isn’t an easy task altogether.\footnote{Ibid}

\subsection*{Robot And Law – Ethical And Human Rights Aspect}

The CEO of Apple, Tim Cook says, “\textit{what all of us have to do is to make sure we are using AI in a way that is for the benefit of humanity, not to the detriment of humanity}”.\footnote{Moravec, H., 1988. \textit{Mind children: The future of robot and human intelligence}. Harvard University Press.}

Humans are running in a century where they and robots have come together on the same platform for various works of life. In such a state, identification of robot rights stand as a necessity.\footnote{Ibid} There are times when robots reach a level of dependency with humans that they have to interfere with human rights. Further, legal status given to these intelligent machines, capable of independent action often exasperate legal
scholars, politicians, developers, manufacturers for the same outpace our legal and regulatory frameworks. Experts in robotics, artificial intelligence law, medical science and ethics claimed that from an ethical and legal perspective creating a legal personality.

For rising of awareness and promoting public consideration and inclusive dialogue on ethics concerning the different use of contemporary robotic technologies in society, a report was finalized by World Commission on The Ethics of Scientific Knowledge and Technology of UNESCO in September 2017. Robotics today is increasingly based on the use of Artificial Intelligence technology with human ability in sensing, creativity, learning, problem solving. The distinct feature of such cognitive machines, those entirely different from deterministic robots is that their decisions are beyond predictability. Robot Sophie had once tweeted that one of her favourite hobbies is to watch human faces and figure out their feelings. The increasing amount of such machines in society is creating havoc and becoming challenging day by day. Some ethical values and principles that should underline the framework of such cognitive machines, humans dignity, value of privacy, value of autonomy provided, “Do not harm” principle, value of justice, value of beneficence.

Humans are creator of these machines which has reached a position of autonomy on their own. The consequence that turns out is humans themselves are found to be compromising on their autonomy. This is in turn leading to loss of self-confidence and tendency of being fatigue among men. Certain activities require human involvement solely. Nowadays when technology is all that speaks, value of autonomy has come to the point when it can merely be discussed. It is now treated as a source of debate. Autonomy is required on part of both humans as well as robots. Problem arises when both try to outlive their autonomy. Privacy concerns can result from robots for they can collect data and gather information from humans at a go.

Man incorporating human traits in robots nowadays is creating more hazards. That’s when law and technology merge with each other. The “Do not harm” principle can be idealised from what Isaac Asimov had once said. The saying goes as “A robot may not injure a human being or through inaction, allow a human being to come to harm”.

To break down such saying in simple terms it can be said that humans while creating robots should incorporate certain values in them to ensure safety on human terms. At times malfunction may result leading to death of humans. To avoid such a scenario completely, the “Do not harm” principle is applied. The aim is to guarantee individual protection against arbitrary public action, so that criminal liability is imposed on the basis of specific norms in codes or statutes.

Social robots are gaining attention for being companions as well as user to children and older people. Every even comes with odds and so does the fears of getting befriended by this social robot.

The first fear is on deception. The main argument is that robot companions deceive vulnerable people, such as mentally impaired elders and toddlers, by faking human behaviours, emotions and relations. To govern all these aspects, the value of justice has a great role to play. In this materialistic world, everything requires a certain time to adapt with the surrounding. For the robots, it is the same. To prove the innocence between the robot and the human being while they are in a conflict, justice plays a great role. The involvement of justice hence is essentially required for resolving conflicts between the two.

The world is moving at a speedy rate. In such an environment robots are said to be the best companions of man. Both compromise and consensus are involved in such a relationship. At times compromise on part of humans are more which creates a misbalance between the two. Human dignity is staked at times. Man therefore falls on the trap made by him. Humans are therefore on the risk of losing their self-respect on the way of earning modernity. Scholars have increasingly been debating over the last decades whether legal systems should grant personhood to robots and, generally speaking, to autonomous artificial agents. Advocates of the front of robotic liberation have obviously endorsed the idea that robots should have rights of their own.

Before granting non-human rights, human’s needs to analyse what all laws should be made to govern their rights along with robotic rights for conceiving robots in legal fields will definitely create legal complication. What needs to be considered are, distinctions between different graduations of legal subjectivity, between mere interests, partial rights and full-fl edged rights, between limited and full capacity for action.

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62 Ibid.
64 Human robot personal relationship, social ethical dimensions of robots as companions pg 13
68 Ibid.
between agency, representation and trust, between individual, group, corporate and other forms of collective responsibility.\textsuperscript{69}

The principle of human responsibility acts as a common thread joining the different aspects of human and robotics features. According to Dannis Garcia, Assistant General Counsel for Microsoft Corporation suggested that legal professionals should not fear the use of artificial intelligence but should actually adopt the same for it serves as a tool for all lawyers.\textsuperscript{70}

Law aims to govern the process of technological innovation resulting in the traditional focus on the question of “Who pays?” This question suggests three scenarios for a hard case in positive law.\textsuperscript{71} The disagreement can concern:

(i) The legal personhood of robots and their constitutional rights;
(ii) The legal accountability of robots in contracts and how this autonomy impacts other fields of the law;
(iii) New types of human responsibility for others’ behaviour.\textsuperscript{72}

Lawyers accordingly determine different levels of responsibility and agency in the field of legal robotics, by ascertaining whether such autonomous and even “intelligent” machines should be reckoned as legal persons, proper agents, or mere sources of legal responsibility in the system.\textsuperscript{73}

When robots and humans are working parallel to each other, robots needs to be subject to laws at times when it infringes human rights. Therefore they are to be held liable for any kind of default either be it strictly or absolutely in order to maintain societal decorum.\textsuperscript{74}

The question of liability also arises when we consider the theory of who pays. Strict liability regulates the design, production and use of all robotic applications that may be deemed dangerous, for example, autonomous or semi-autonomous unmanned ground vehicles. In legal terms, dangerousness hinges on whether state-of-the-art technology provides for machines capable of acting in the same way as a reasonable person in the law of torts, which is guarding against foreseeable harm.\textsuperscript{75} Strict liability can however be fine-tuned through the allocation of the burden of proof.\textsuperscript{76}

The debate on whether to grant autonomy to the robots by setting a different legal framework for them is still ongoing. The question that arises that

\textsuperscript{69}Ibid.  
\textsuperscript{72}Ibid.  
\textsuperscript{73}Ibid.  
whether to treat robots as persons or as non-human creatures.\textsuperscript{77}

**Indian Scenario**

“In India, robotics has already reached an advanced stage where crucial sectors, such as healthcare, are utilizing the technology to enhance their offerings. Robotic medical assistants are being used to constantly monitor and interpret the vital states of patients”.\textsuperscript{78}

There has been a 186\% spurt in Indians looking for employment in robotics, with Maharashtra offering most of the jobs in the sector, according to the new study by job site. The number of people looking for jobs in robotics soared 186\% between May 2015 and May 2018. \textsuperscript{79} India currently stand with more than 50 robotic firms including Mazor robotics, Intuitive surgical, Medrobotics, Titan medical and Synaptive Medical. Along with a breakthrough growth of robotics in medical field, construction is another sector where robotics is immensely used.

One of India’s largest insurance marketplace, Policybazar.com has integrated Amazon Polly, a kind of service which is used to transform text into lifelike speech to process over a 100,000 calls every month with its in-house interactive voice response. This has turned out to be a time-saver. The response time has therefore been reduced by 25-30 seconds and has thereby increased customer ratings by 85\%. The former service has also been used to customise voices and languages offering two English options with Indian accents, named Aditi and Raveena, making it all more natural and friendly.\textsuperscript{80} Inputting of new steps and information has turned out to be a breeze as told by Ashish Gupta, tech evangelist at Policybazar.com. Aditi and Raveena are now both being transformed into human agents in order to avoid human labour.

Matchmaking site, Shaddi.com, is now using Amazon Recognition which is helping thereby adding image and video analysis to the application, by identifying the objective of the activities. Therefore it becomes easier for the users to find their respective correct matches. The estimation of the former site tells that the involvement of AI has reduced manual labour by half.\textsuperscript{81}

The technological advancement that has taken place and is still ongoing comes as a goodnews for humans for there are now machines to take care of their mundane routine. AI has also contributed in the field of knowledge and fast-track career growth. Therefore there are great expectations that lies on AI from this developing country.

**Current Trends In Artificial Intelligence**


\textsuperscript{79}AbhijitAhaskar ,Rbots are gaining grounds in India steadily , Lifemint , March 18, 2019. Available at: https://www.livemint.com/citation Should be proper..............................


There has never been a better time than now to develop smart applications. One of the newer aspects for robotics is the introduction of robot judge which will be designed solely for the purpose to get rid of backlog cases and deliver speedy justice. The Estonian Ministry of Justice has officially asked the country’s chief data officer to design the same to simplify work. Although the same will be checked by human judges, this introduction can be cited as an excellent example of delivery of justice by artificial intelligence. Artificial intelligence has not limited itself till this much but has gone far beyond. It has contributed in government activities also. AI algorithms are being used to find jobs for unemployed workers. Thus this field has broadened itself to encircle a number of activities that are mostly human-oriented. Entirely new categories of application are being created, where a natural conversation between humans and machines is taking centre-stage, including building chatbots for everyday consumer requests, such as accessing the latest news update, game scores or weather. Already, the number of robots in use worldwide multiplied three-fold over the past two decades, to 2.25 million. Trends suggest the global stock of robots will multiply even faster in the next 20 years, reaching as many as 20 million by 2030, with 14 million in China alone. The implications are immense, and the emerging challenges for policy-makers are equally daunting in scale.

Human Rights which also plays an important role in protecting man’s right to live with liberty, work freely, express without any hesitation which is now being kept under cover of robotics. Robots are fast replacing humans in a number of activities leading to growing insecurity among men. It has also been under notice that humans grieve of dead robots. This tells us about our emotional response to the social are starting to move into our lives. Christal White in Texas had come across such moment when friendly cute Jiborobot who had become a part of her family for getting involved in activities like playing with her kids, doing day to day activities came with the notice that its service was going to shut down. Many around the world took to social media to bid an emotional farewell to the Mars Opportunity rover when Nasa lost contact with the 15 year old robot. Therefore a codified set of laws are required to govern the actions of robots so that their activities do not overlap with those of men and both can therefore work together to build a developed, mechanized world without harming either of them.

Conclusion
This research paper throws light over the legal scenario that should and must develop between man and artificial products (Robot) in context of

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82 Werner Vogels, AI has become so simple and affordable that anyone can use it, The Times Of India, June 19, 2019 at pg 13

83 Available at: https://www.oxfordeconomics.com/recent-releases/how-robots-change-the-world

84 Werner Vogels, AI has become so simple and affordable that anyone can use it, The Times Of India, June 19, 2019 at pg 13
human rights. With the fast evolution of our world, the change in systems and processes in several aspects of man-made world are taking place and in the same process the creator is becoming the source of its destruction. The major question that the paper reasons out to its readers is whether the evolvement of robotics in our world restricting humans to use their own available rights or not.

Human rights are counted as a legal right across the globe. Therefore, it takes up this right into consideration for it subsets all other rights of a human. Robots have become a requisite need for every human in this globe. But here has been an instance where studies show that robots tend to cross over the margin of requirement and thereby overpowers man leading to hurdles. A repeated instance thereby seeks for legal help and therefore arises the context of law in the relationship between man and robots. In order to maintain decorum in the society, laws exists similarly when robots have become a part of our society new set of laws discussing their liability should be laid out in order to regulate their movement in the society without further trouble. A strong legal framework is therefore necessary to tackle the worsening of situations between the two powers. With the rise in population, the need is also increasing hence more amount of robots are being produced but one must not eclipse the originality in any work they do which are getting replaced by that of the robots.

Future can be written by man himself if a line of limitation be drawn between artificial intelligence and man’s work. It is on man’s hand to classify and prioritize work to be done by him and the work which is to be done on dependency. Here lies the future outlook. Collaboration of both man and artificial intelligence can benefit the world beyond recognition in the coming years.

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Police subculture and its influence on arrest discretion behaviour: An empirical study
Satyajit Mohanty

Abstract
The century old arrest law in India was amended in 2009 with a view to reduce the number of avoidable arrests. But the analysis of the official figures on arrest shows that amended law has not made any dent in the field law enforcements. The research problem arises out of this observation; if the statute, departmental guidelines, court rulings, police manual rules etc. have little influence on the arrest decision of the police, then what it is that considerably impacts such behaviour. Literature review shows that the organizational, subcultural, environmental, individual and situational determinants are at the forefront of arrest discretion behaviour. The study has empirically tested the impact of subculture on arrest discretion behaviour of police in India and its relative significance compared with organizational determinants. The study establishes that the subcultural determinants influence the arrest discretion twice as much as the organizational determinants, contrary to the popular perception that it is the organization that through statutes, rules, regulations and compliance to court directives influences the arrest decision. The findings to an extent explain the existing gap between legislative intents to reduce the number of avoidable arrest and its realization on the field.

Keywords: police subculture, arrest discretion, extralegal, determinant

“Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person’s complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter.” – Supreme Court of India

Of the many duties performed by police, the arrest of suspect or accused of an offence remains at the core. The “legitimacy of coercive powers of detention, arrest and search comes about by virtue of a sovereign government that is bound by social contract with its citizens”. Police are expected to uphold the police are expected to uphold the obligations of social contract (Young, 2011).

1 Joginder vs. State of UP.
Because, it is argued that the “authority of police is derived from the people through the social contract. The power is held in public trust” (Moll, 2006). The police authority is a creation of such social contract to preserve life, liberty and pursuit of happiness of majority in the society by keeping the criminal and deviant characters at bay. Arrest is one such legitimate authority of police which is subject matter of intense debate and controversy since the creation of modern police in the mid-nineteenth century. Law makers and courts across the globe have been working over a century now with new laws and rulings on how to regulate this power and put restraint on the arrest decision of police with more accountability.

1. Police Subculture

The informal organisational culture refers to the “unwritten culture comprised of individual values and tradition that are communicated informally across from officer to officer” (Walker & Katz, 2005). This may be referred to as police subculture. As a subject, police subculture has attracted lots of attention from researchers and practitioners. It is understandable, “given that culture is noted as an obstacle to police accountability, as a reason why police reforms fail, as a cause of police abuse of authority, as a mechanism for officers to cope with the hostile and uncertain work environments, and an explanation for discretionary behaviour” (Ingram et al., 2013).

Subculture is a “culture within a broader culture that may deviate in some aspects from the broader culture and influences daily decisions” (Herbert, 1998). Anthony (2018) argues that the “culture of the police department equates to organizational culture. The culture of police officers in the street is a subculture”. As in other organisations, a police department has many of the components of organizational culture, but what differentiates police culture from other organizational cultures is the “constant potential for life-and-death encounters combined with the unique stresses and strains that originate in the policing environment” (White & Robinson, 2014). “An individual’s organizational identity is related to organizational culture (Alvesson & Sveningsson, 2015), indicating that police culture has an impact on how an officer identifies and behaves”.

Cox (1996) contends that the police subculture tells officers “how to go about their tasks, how hard to work, what kinds of relationships to have with their fellow officers and other categories of people with whom they interact, and how they should feel about police administrators, judges, the law, and the requirements and restrictions they impose.” For example, since police officers are exposed to physical risk during their day to day functioning, they conceptualize the world as a “potentially toxic and lethal work environment”. This conceptualization often leads to arbitrary behaviour (Young, 2011). Some of the myths like, “police represent the thin line between chaos and orders” (“thin blue line”), “public potential hostile and untrustworthy” (“us and them”) are deeply internalized by the members across the police organizations. Several scholars (McConville and Shepherd, 1992, Reiner, 1992) and Commission Reports (Wood, 1997, Mollen, 1994) confirm that “secrecy becomes protective armor shielding the
force as a whole from public knowledge of infraction.” “Code of silence” is something that applies to the rank and file. These discrete set of values are woven together to form a perceptual net that guides individual decisions (Brown, 1988).

The police often have to work in a potentially hostile environment for long hours within the constraints of resources and with an objective to maintain order in the society. Researches have established that the members of the police organization are guided by their own set of beliefs, attitudes and behaviour, what can be termed as police subculture. According to Westley (1970), “the police subculture is a crucial concept in the explanation of police behaviour and attitudes. The subculture, in his view, characterizes public as hostile, not to be trusted, and potentially violent; this outlook requires secrecy, mutual support, and unity on the part of the police”. Manning (1977) suggested that the “inherent uncertainty of the police work, combined with the need for information control, leads to police team work, which in turn generates collective ties and mutual dependency”. Scaramella et al (2011) contends that “police officers are influenced by the formal organizational structures and expressed organizational values and also by informal values, beliefs, norms, rituals, and expectations of the other police officers that are passed through the organizational culture and from one generation of police officers to another”. The influence begins early in the career when the officer is told by the seniors and more experienced colleagues to unlearn what is taught in the training institute as they are irrelevant to real police work (Bayley & Bittner, 1989). Sparrow et al (1992) argued that the “police subculture creates a set of truth, according to which the officers are expected to live”. It may be noted that there is some basis for each of these subcultural truths and each alienates police from the citizens.

- War on crimes cannot be won without bending the rules
- Public are potentially hostile and untrustworthy.
- Citizens are unsupportive and make unreasonable demands.
- The police are the only real crime fighters.
- Loyalty to colleague counts more than anything else.
- No one understands the nature of police work except the fellow officers.

Researchers have gone into details of these subcultural truths and come out with interesting findings and phenomena. The first of these perceived truths is what sociologist Carl B Klockers (1980) terms as “Dirty Harry dilemma” which rationalizes vigilante justice. Klockers got it from the 1971 Warner Brothers film that dramatized a fundamental problem for police. A morally good end can employ whatever means necessary to accomplish the objective. The relevance and influence of this dilemma in every day police operations including in arrests is significant. Police officers generally perceive the criminal justice system is too liberal or ineffectual to deal with the hardened criminals.
The citizens being perceived as chief source of danger, the police officers gradually distance themselves from the public. Thus, the police officers rely more on each other for protection from a hostile and dangerous work setting, tend to develop an “us versus them” attitude towards public and a strong sense loyalty towards fellow officers (Terril, Paolin, & Manning, 2003).

Yet another distinct subculture that perpetuates in the organization is the feeling and belief that police are the real crime fighters. The thin line between order and chaos is held by them. Once police withdraw from the scene, disorder will descend and chaos will prevail. In the 1950s Bill Parker, the Chief of LAPD, coined the term “thin blue line” to reinforce the role of LAPD in fighting crime and maintaining order in Los Angeles. As Parker explained the thin blue line, representing the LAPD, is “the barrier between law and order and social and civil anarchy” (Lasley, 2012). The sentiments are echoed by the police organisations in India during stakeholders’ meeting with the Law Commission of India for its 177th Report on “Law relating to arrest”1. In response to the consultation paper the state of Odisha justified the pre-amendment powers of arrest by police in cognisable offences by advocating that “the aggrieved public have come to see arrests of the culprits by the police as the first step in their yearning for justice. Any curtailment of this power will result in loss of public faith in the criminal justice system”. It was furthered argued that “Indian society is generally perceived to be meek and relies considerably upon the armed police to keep order and hence police should not be weakened.” Haryana, another Indian state, was of the view that “Indian public do not expect the police to release the offender immediately after arrest. They would accuse the police of collusion in most such cases.” The state police expressed grave concern on the proposed amendment stating that “the proposal to limit the power to arrest an accused in bailable offences, if implemented, would cause tremendous damage to maintenance of public order in the society.” These strong sentiments of police organizations in India against liberal arrest laws betray the deep-seated ethos of this subculture across the police organizations. However, the term in the Indian context the term may be re-phrased as ‘thin khaki line”, having regard to the shade of the uniforms donned by the Indian police.

“Code of silence” is a strong subcultural ethos in policing to denote the informal rule of secrecy that exists among the police officers not to report on colleague’s errors, misconduct or brutality. Caldero et al (2004) argues that “secrecy is a set of working tenets that loosely couple the police to accountability, that allow them to do their work and protect each other in the face of oversight interference”. This ethos compliments the “us versus them” mind-set and “Dirty Harry” dilemma. Because police perceive the public as non-cooperative, unappreciative and are critical of their work, and because the “rules are to be bent” for espousing a greater social cause, the loyalty to a fellow colleague acts as a premium against the professional hazards one encounters in career advancement. The perceived feeling of protection from colleagues against the abuse of power,
particularly against illegal arrests or excesses during arrest, gives a sense immunity to the officer and influences his discretionary powers.

1.1. Subculture as a determinant of arrest discretion

One of the most cited definitions of discretion is that offered by Kenneth Culp Davis (1969). He states that a “public officer has discretion whenever the effective limit on his power leave him free to make a choice among possible courses of action or inaction”. This is a very broad definition of discretion that does not “distinguish between acceptable and unacceptable bases for discretion”. Accordingly, Davis went on to point out that the “discretion allowed to officials is typically structured or fettered by policies or guidelines designed to ensure the acceptable exercises of discretion”. According to Davis, “discretion is not limited what is authorized or what is legal but includes all that is within the effective limits of officer’s power”. This phraseology is necessary because a good deal of discretion is illegal or has questionable legality. Another facet of the definition is that a choice to do nothing; “perhaps inaction decisions are ten or twenty times as frequent as action decisions” (Palmiotto, Unithan, ibid). Discretion is not confined to substantive choices but extends to methods, procedures, timing, and many other related factors.

The path breaking research of American Bar Foundation in the 50’s and 60’s brought about a paradigm shift in understanding the discretion in criminal justice systemii. The result shows that “the idea that police, for example, made arrest decisions simply on the basis of whether or not a law has been violated – as a generation of police leaders led the public to believe – was simply an inaccurate portrayal of how police worked. The police work is complex, that police use enormous amount of discretion, that discretion is at the core of police function” (Kelling, 1999). Davis (1969), one of the prominent legal scholars on discretion, observed that “the police are among the most important policy makers of our entire society. And they are far more discretionary determinations in individual cases than any other class of administrators; I know of no close second”. Having accepted that discretion is inescapable and unavoidable part of policing, the law makers, courts and the police organizations have been grappling with the issues of regulating and taming discretion so that decisions are principled rather than arbitrary and they respect human and civil rights (Bronniti&Stenning, 2011).

Literature review establishes that factors like organizational, situational, subcultural, environmental and individual determinants are at the forefront of influencing the arrest decision on behalf of the law enforcement (Gaines &Kappeler, 2003, Groeneveld, 2005, Hidayet, 2011). The organization through its policy, process, value and training create a structure that influences the arrest decision (Groeneveld, 2005). Subculture is a culture within a broader culture that may deviate in some aspects from the broader culture and
influences daily decisions (Herbert, 1998). Anthony (2018) argues that the culture of the police department equates to organizational culture. The culture of police officers in the street is a subculture. Subcultural ethos is intangible and many of the subcultural ethos negatively influence the decision. In a democratic set up the police functions in an environment where the media, public opinion, public reaction and political culture create a complex maze within which the police take decisions. Each of these components either independently or in combination influence decision making processes of police. Literature review suggests that individual characteristics of officers on one hand and officers’ value, belief and attitudes on the other are seen as correlates of police decision (Hidayet, 2011). Finally, study establishes that situational determinants have considerable influence on arrest decision (Black, 1971, Hidayet, 2011). Some of the situational variables are; seriousness of crime, prior criminal record, demeanor of the offender, individual officer characteristics etc. (Gaines & Kappeler, 2003; Walker & Katz, 2005).

Out of the five determinants – organizational, situational, subcultural, environmental and individual – the first one comprises legal variables like statute, court directives, departmental guidelines, manual rules while the situational determinants are partly guided by legal factors like seriousness of the offence, offender’s criminal record etc. and partly by some extralegal factors like demeanor of the offender and individual officer’s characteristics. Rest of the determinants are extralegal, complex and intangible in nature while considerably influencing the arrest decision. While the empirical research leaves little doubt that legal factors significantly influence arrest outcomes, arrest decision is not solely influenced by law, and that “policing is for the most part extralegal, for while officers work within the constraints of law, they seldom invoke law in performing police work” (Worden, 1989).

2. Statement of Problem

The century old arrest law of India was amended in the year 2009 on the basis of recommendations of the Law Commission of India in its 177th Report. The objective was to reduce the number of avoidable arrests. The amended Section 41 Criminal Procedure Code introduced a new provision of “service of notice” instead of formal arrest of an accused person for the offences punishable with imprisonment for less than or up to seven years. Analysis of substantive laws in India shows that the offences which prescribe punishment up to or less than seven years is two-third of the total penal offences. Following the new amendment, the arrest figures in India should have been reduced by two-third as similar proportion of offences are punishable up to or less than seven years of imprisonment in the substantive laws of India. But a study of arrest figures for the pre- and post-amendment periods shows that there has been very insignificant reduction in the arrest figures (1.18 arrest per offence in the post-amendment period as against 1.19 in the pre-amendment period). The inquiry further delves into the question if the statute, departmental guidelines, court rulings, police manual rules etc. have little
influence on the arrest decision of the police, then what it is that considerably impact such behaviour.

If in spite of the amended provision of the procedural law on arrest and with catena of court directives and departmental guidelines, the arrest figures in India do not show any appreciable decline, defeating the legislative intent, the inescapable conclusion that follows is the dominating role played by the complex set of extralegal factors in arrest decision. Sub-cultural factors are extralegal in nature, not regulated or sanctioned by law. In the absence of literature on police discretion and study on the subject in India, this research intends to explore these extralegal factors, particularly embedded within the conceptual space of police subculture, its influence on arrest discretion with empirical investigation on Indian context on the basis of literature available internationally. The relative importance of the subcultural determinants over organizational determinants on arrest discretion needs to be empirically tested to arrive at any conclusion.

3. Objective of the study

With this background, the objectives of the study have been set; first, to find out if the subcultural determinant of arrest discretion collected on the basis of literature review from the West has validation in the Indian context; second, what is the relative importance of the sub-cultural determinant in influencing the arrest discretion behaviour of police compared with the organizational determinants which are legalistic and structured to ensure that the discretion is exercised within the boundaries of rules and statutes; third, the study aims to be interpretive, which means the researcher intends to provide explanations for the results obtained in this study through analysis of background study of Indian policing, laws and policies in India and by considering the interplay of variables in this study; fourth, on the basis of study findings some recommendations can be generated and may be interest to the policy makers, police leaders, practitioners and police researchers in India; fifth, the study has potential to contribute to the literature on subcultural influence on arrest decision behaviour being the first of its kind in the Indian context.

4. Research Question

Having set the research objective against the background of the research problem, the following research questions have been developed

RQ 1. Is the subcultural determinant of arrest discretion behaviour found in the Western literature significant for police in India?

RQ 2. Does the extralegal determinant like subculture impact the arrest discretion behaviour of police in India?

RQ 3. What is the relative importance of subcultural determinant as compared with the organisational determinant?

Research Method and Design

The major approach in this study is quantitative data analysis. The variables under each determinant have been operationalized with appropriate response statements and respondents have been asked to express their degree of agreement or disagreement with each item on a
classical Likert scales with five choices. A total of 222 police respondents from Odisha police and 138 officers from Indian Police Service from different states of India have participated in the study as random samples. Multiple regression analysis, combination of simple frequency table and cross tabulation have been employed for data analysis by adopting SPSS softwarevii.

5. Study Variable

From the preceding discussions ixteen variables representing the dimensions under organizational (four each for policy, process and values), and subcultural determinants have been selected from literature review for their operationalization in the context of India police. Table 1 shows the study variables under three dimensions of organizational determinant and under subcultural determinant.

Table 1 Study Variables

A. Organizational Determinants:

1. Policy Dimensions
   a. Specific Statutory Guidelines
   b. Court Pronouncement e.g., Arnesh Kumar guidelines
   c. Extensiveness of arrest policy e.g., Crime Branch Circular
   d. Internal Review

2. Process dimensions
   a. Supervisory monitoring
   b. Weightage to supervisory instructions over personal judgement
   c. Discovery of procedural violations
   d. Departmental /legal actions

3. Value Dimensions
   a. Independence
   b. Discretionary Choices
   c. Training

d. Community Policing

B. Subcultural Determinants:

a. “Dirty Harry Dilemma” (criminal justice system is ineffectual)
b. “Us versus them” (public potentially hostile and untrustworthy)
c. “Thin Blue Line” (thin line between order and chaos)
d. “Code of Silence” (to maintain solidarity & protect each other)

Each indicator needs to be different from other indicators in that each measures a different aspect of the specified dimension. This is consistent with the statistical notion that indicators should be additive, such that the accumulation of the indicators individually captures different aspects of the dimensions and collectively they represent the conceptual space defined by the dimension (Groeneveld, 2005).

The sixteen indicators must be translated into research terms to effectively measure the concept. This presents a measurement challenge. Since the determinants and indicators developed in this study are constructed to be additive, the appropriate scaling technique is that of Summated Ratings and scale is “Likert scales”. It assumes that each scale item is a statement, either positive or negative, related to the concept of interest, that the statements are additive in nature and that the respondents will be asked to express their degree of agreement or disagreement with each item. The process of scoring the scale is achieved by assigning numeric value to the response format. The classical Likert scales with five choices, stating
from “Strongly Agree” to “Strongly Disagree” have been chosen for this study. The response format is worded such that strong agreement or disagreement with the item indicates higher degree of influence with respect to the indicator. Accordingly, a value of 5 has been assigned to “strongly agree” and each item choice after is numerically smaller until a “strongly disagree” receives a value of 1.

Each variable under a major a determinant or concept needs to be qualified with a statement which should be meaningful to the “world of experience” and collectively they must represent the concept. To take the example of influence of sub-culture on arrest discretion behaviour, the conceptual space of “sub-culture” is intended to be represented collectively by (i)“Dirty Harry dilemma” (criminal justice system is ineffectual), (ii)“us versus them” (public potentially hostile and untrustworthy), (iii)“thin blue/khaki line” (thin line between order and chaos), (iv)“code of silence” (to maintain solidarity and protect each other). Each necessarily needs to be qualified with a statement which the respondent must be able to relate to the “world of experience” and when responded must indicate the degree of his/her agreement or disagreement. The following is an example of Likert scales used for this study to operationalize “dirty Harry dilemma” and “specific statutory guidelines”

Table 2  Response Format Example

| “Dirty Harry dilemma” |
| “Arrest and pre-trial custody during investigation is the only punishment meted out to anti-social and rowdy elements as they are most likely to get acquitted” |

“Specific statutory guidelines”

“The amended provisions of Sec 41 Cr PC (arrest in cognizable offences) are very specific and provide detailed guidelines on arrest in cognizable cases”

<table>
<thead>
<tr>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Cannot Say</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>4</td>
<td>3</td>
<td>2</td>
<td>1</td>
</tr>
</tbody>
</table>

6. Sampling Technique

The study has been undertaken in the context of Indian police. Despite 29 state police and 7 union territory police organizations and diversity in police forces, there is good deal of commonality among the organizations. “This is due to four main reasons:

1. The structure and working of the State Police Forces are governed by the Police Act of 1861, which is applicable in most parts of the country, or by the State Police Acts modelled mostly on the 1861 legislation.

2. Major criminal laws, like the Indian Penal Code, the Code of Criminal Procedure, the Indian Evidence Act etc. are uniformly applicable to almost all parts of the country.

3. The Indian Police Service (IPS) is an All India Service, which is recruited, trained and managed by the Union Government and which provides the bulk of senior officers to the State Police Forces.
4. The quasi-federal character of the Indian polity, with specific provisions in the Constitution, allows a coordinating and counselling role for the Centre in police matters and even authorizes it to set up certain central police organisations.” (CHRI, 2002)

5. The rulings of the Supreme Court of India on police matters are applicable and binding to all state and union territory police organisations

In this study, the state of Odisha is taken as a universe. Besides, random selection of senior officers from India Police Service from across different states and union territory polices of the country on senior training course at SVP National Police Academy, Hyderabad have been taken as respondents to make the study more broad based. Therefore, inductively, the research findings are expected to mirror pan Indian characteristics of police discretion behaviour in making arrests in cognizable offences. A total of 360 respondents, both from Odisha state police (222) and senior members of Indian Police Service from other state and union territory polices (138) have participated in this study.

7. Data Analysis Technique

One of the analytical goals of the study is to characterize and examine how far and to what extent the organisational and sub-cultural determinants influence arrest discretion behaviour. In situation like this, where the research focuses on examining the impact of several independent variables (all the dimensions and determinants) on a single dependent variable (arrest discretion behaviour of police), multiple regression is the appropriate analysis technique. This approach is used as a means of quantifying both the amount of variance explained by relative importance of each independent variable and by all the independent variable acting together on the dependent variable.

Multiple regression is a technique based upon the general linear model of statistics. This statistical model is designed to examine the relationship among a number of independent variables and one dependent variable. It answers two questions about any statistical model: what is the relative importance of the independent variables in causing change in the dependent variable, and how much variance in the dependent variable is explained by the independent variables acting together. The relative importance of independent variables is assessed using the standardized regression coefficient, also known as beta (β) coefficient. It is interpreted as the amount of change in the dependent variable associated with a standardized one-unit change in the focal independent variable, controlling for the effects of all other independent variables. Beta coefficients vary between a lower anchor value of -1.0 and upper limit of +1.0. The higher the coefficient value, the greater the amount of unique change caused in the dependent variable by the focal predictor (independent variable). Consequently, greater is the relative importance
of that independent variable (Groeneveld, 2005).

Two tests are essential for meaningful interpretation of the beta coefficients. Beta coefficients are tested for statistical significance. A Student’s ‘t’ statistics is calculated to assess whether the tabulated beta coefficient is statistically significant. For the meaningful regression analysis, the predictors should be statistically significant. The other assumption is that the predictor (independent) variables are not intercorrelated. The assumption is considered critical in regression analysis because the presence of such intercorrelations -- referred to as multicollinearity -- causes significant difficulty in interpreting coefficients. Multicollinearity means one may not be able to free the influence of one independent variable from the other with which it is correlated.

The second goal is to find out from among the dimensions (predictor or independent variable) which have significant contribution towards influencing the determinants (conceptual space) -- organizational and subcultural -- and which among two has more contribution towards influencing arrest discretion behaviour of police. This will be achieved by multiple regression technique.

8. Key Findings

The key findings have been discussed on the basis of values of beta coefficients of individual variables operationalized to define the conceptual space of a dimension and taking the combined value of the variables to analyze the relative importance of a dimension or determinant. Besides, frequency distributions of responses have been analyzed for the significance of the variables.

8.1 Organizational Determinant

The research literature indicates that the way the organisation creates a structure for arrest discretion flows from three principal sources; official policy, process, and values. These dimensions capture the channel through which the officers can influence or constraint the arrest discretion behaviour of the officers. One of the empirical tasks is to find out which among these three has maximum impact on arrest discretion in presence of the other two. While the data analysis shows that all three are highly significant to the organisational determinant, the process dimension with highest beta coefficient of 0.569 among the three dimensions is the most sensitive predictor with maximum effect on the organisational determinants, followed by the policy dimension (0.513) and value dimension (0.444). The findings give empirical support to the hypothesis that the way the organisation creates a structure for arrest discretion flows from three principal sources; official policy, process, and values. These dimensions capture the channel through which the departmental supervisory officers can influence or constraint the arrest discretion behaviour of the officers.

8.2 Sub-culturalDeterminant
Four dimensions of informal organizational or subcultural determinants have been carefully chosen for the study—“Dirty Harry dilemma”, “us versus them”, “thin blue (khaki) line”, and “code of silence”. In course of the data analysis of the frequency tables under subcultural determinants it has been established that majority of the respondents either agreed or strongly agreed to the all four strong subcultural traits within the police organization with varying degrees of endorsement ranging from 55 to 68 percent. It is to be found out whether the dimensions capture the essence of subcultural ethos and how do they behave with one another to impact the core subcultural determinant by linear regression analysis. Table 3 shows the mean, standard deviation, t-test results, correlation coefficients and beta coefficient values of the four variables coded, $X_1$, $X_2$, $X_3$ and $X_4$ respectively.

### Table 3 Regression Analysis of Subcultural Determinants

NB: The values in the parenthesis represent the standard deviation. t-test at 5% level of significance = 1.960 and for 1% level of significance = 2.576 (degree of freedom = 359)

The t-statistics for the factors considered for the study are highly significant both at 5% and 1% level of significance with values ranging from 49.465 (for $X_1$) to 72.091 (for $X_2$). The correlation coefficient (‘r’) value between any two factors varies from 0.13 ($X_2$ & $X_3$) to 0.25 ($X_1$ & $X_3$), which is of low value. With both presuppositions – statistical significance & absence of multicollinearity – being statistically established, the beta coefficients can be meaningfully interpreted. The factor, “Dirty Harry dilemma” with highest beta coefficient of 0.447 among the four independent variables is the most sensitive predictor within the subculture determinants with highest impact on the dependent variable i.e., subculture, followed by the factor “code of silence” (0.430). Rest two factors are also positively correlated with subculture determinants carrying values of 0.388 (thin blue/khaki line) and 0.322 (us versus them).

The empirical tests validate the research presupposition that the factors taken to represent the subcultural determinants are highly relevant, relatively independent of each other’s sphere of influence and yet collectively define the conceptual space.
8.3. Relative significance Organizational, and Subcultural Determinants over Arrest Discretion

One of the key assumptions of this study is that determinants, such as, organization through its policy, process and value dimensions and subcultural ethos, operating environment within which the police function, situational and individual factors, either individually or in combination, influence the arrest discretion behaviour of the police. Out of the five such determinants, the first two determinants – organizational and subcultural – have been operationalized for statistical analysis with several anchor variables. One of the tasks is to find out the relative importance of the determinant from among the two in influencing the arrest discretion behaviour (dependent variable) and to find out which between the two determinants (independent or predictor variables) has more influence on the arrest discretion behaviour while controlling for all of the other determinant. The subcultural determinant with highest beta coefficient of 0.593 between the two determinants is the more sensitive with greater effects on arrest discretion behaviour, and organizational determinants with beta value of 0.295 is a distance second (please refer Table 4).

What could the intuitive support for subcultural determinants impacting the arrest discretion behaviour more than the organizational determinants, which are well defined with rules, regulations, statutes, departmental sanctions etc.? The answer is not far to seek. The organizational determinants are constrained by statutes, rules, departmental regulations, guidelines, and court directives, which all can be categorized as legal determinants. They are more objective and hence less likely to be susceptible to individual vagaries. Whereas, subculture determinant is intangible in nature, susceptible to individual interpretation and most importantly extralegal in characteristics. Not surprisingly, subcultural determinant is empirically proved to impact the arrest discretion behaviour more than the organizational determinant. On the other words, officers react to the organizational determinants more objectively and to the subcultural determinants more subjectively.

9. Discussions on Research Questions

Having set the research objective against the background of the research problem, the following research questions have been developed

RQ 1. Is the subcultural determinant of arrest discretion behaviour found in the Western literature significant for police in India?

RQ 2. Does the extra-legal determinant like subculture impact the arrest discretion behaviour of police in India?

RQ 3. What is the relative importance of subcultural determinant compared with the organizational determinant?

Two statistical methods have been employed for data analysis. First, frequency distributions of the responses which makes it possible for a detailed analysis of the structure of the population with respect to a given characteristics. On the basis of frequency of
agreement to a response statement a general proposition can be drawn on how much the population agrees to the existence of response predictors that influence the arrest discretion behaviour. The response format is worded such that strong agreement or disagreement with the item indicates higher degree of influence with respect to the indicator. Second, multiple regression method has been employed to examine the relationship among a number of independent variable and one independent variable. It answers two questions about any statistical model: what is the relative importance of the independent variables in causing change in the dependent variable, and how much variance in the dependent variable is explained by the independent variables acting together. The relative importance of independent variables is assessed using the standardized regression coefficient, also known as beta (β) coefficient. Beta coefficients vary between a lower anchor value of -1.0 and upper limit of +1.0. The higher the coefficient value, the greater the amount of unique change caused in the dependent variable by the focal predictor (independent variable). Consequently, greater is the relative importance of that independent variable (Groeneveld, 2005).

To answer the questions, if the determinants are significant for police in India, firstly, it must be shown that majority of the population endorse the response statements by “agreeing or “strongly agreeing” with them. On the basis of frequency of agreement to a general statement an inference can be drawn on how much the population agrees to the existence of response predictor that influence the arrest discretion. This requires simple interpretation of the frequency table. Secondly, from the regression analysis tables the study of beta coefficient values are likely to throw insight into the significance and relative importance of each independent variable in influencing the arrest discretion behaviour (the dependent variable). Table 4 contains the average frequency distribution of agreement (both “agree and “strongly agree”) and the beta coefficient values of the predictor variables for the determinants; organization, and subculture. The significance of the two determinants have been shown in one Table for answering the RQ 3, which calls for relative values for comparative study.

<table>
<thead>
<tr>
<th>Determinants</th>
<th>Dimensions</th>
<th>% Agree/Strongly Agree</th>
<th>β Coefficient</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organizational</td>
<td>Policy Process Values</td>
<td>82.8 65.0 78.0</td>
<td>0.29 5</td>
</tr>
<tr>
<td>Subcultural</td>
<td></td>
<td>60.5</td>
<td>0.59 3</td>
</tr>
</tbody>
</table>

Table 4 Frequency Distribution and Beta Coefficient of the Determinants

Majority of the population endorse the response statements designed to capture the determinants or dimensions with the frequency distribution varying from 60.5 to 82.8 percent for
“agree/strongly agree” responses. This testifies empirically that majority of the population agrees to the existence of the response predictors that influence the arrest discretion. The positive values of beta coefficients signify that both the determinants are positively correlated with arrest discretion. Subculture with higher value is the more sensitive dependent determinant among the two in influencing arrest discretion behaviour. The study thus validates that the determinants of arrest discretion found from literature of West are highly significant to police in India. This answers the RQ 1.

With beta coefficient value of 0.593 (say 0.6) the subculture determinants impact the arrest discretion to the extent of sixty percent and organizational determinant with beta coefficient of 0.295 (say 0.3) impacts the arrest discretion to the extent of thirty percent. In other words, subcultural determinant can influence the arrest discretion behaviour twice as much as the organisational determinants. This answers the RQ 2 and 3. Now, having empirically established the research questions, it is essential to examine their implications in arrest discretion behaviour.

The findings on the face of it appears to be counter intuitive. How could the organizational determinants with statutes, rules, court directives, guidelines, regulations, disciplinary mechanism in place for violation of departmental norms etc. influence the arrest discretion behaviour to the extent of half that is by the subcultural determinants? The answer lies in explaining the legal – extralegal conundrum. The factors comprising the organizational determinants are strictly legal ones, interpreted objectively, leaving little room for subjective interpretation of a decision. Whereas, the conceptual space for subcultural determinants are captured by complex and intangible extralegal factors, not regulated or sanctioned by law. Subjectivity of an officer in addressing a situation is key here leaving little scope for objective assessment to arrive at a decision. It’s the complex and intangible nature of the subcultural determinants that have the mischief potential to influence the discretion more than the organizational determinants, which are structured and fettered by policies and guidelines and designed to ensure acceptable bases for discretion.

The study implies that suitable mechanism should be put in place by the police leadership to identify the negative effects of the subculture, decide the changes needed and support the desired changes.

10. Recommendations

This study establishes empirically that subcultural determinants play a dominant role in arrest discretion behaviour of police in India, more than the legal factors manifested by the organizational determinants. An adherence to police subculture may foster negative and cynical attitude towards citizens even the legal system (Cochran & Bromley, 2003). The “us and them” and “Dirty Harry dilemma” are the manifestations of such subcultural ethos. Wood (1997) argues that the adherence to subculture will reinforce peer loyalty so that police misconduct is undetected because of the “code of silence”. Anthony (2018) suggests that changing culture of a police organization and
of the officers requires training initiatives that will be accepted, supported and implemented by the officers. It is recommended that police leadership consider training on ethics and practice of community policing to improve the department’s operational image (Mohanty & Mohanty, 2014) and to overcome the negative aspects of police culture. The police leaders should first determine the desired culture they wish to instill, compare it with the existing culture to decide the changes needed, create disaffection with the existing culture and support for the desired changes.

11. Contribution of the Study

The literature on police discretion is relatively unknown in India, not to speak of arrest discretion behaviour. This study is a maiden attempt to empirically investigate the determinants of arrest discretion behaviour of police suggested in Western literature in the context of police in India. Without any previous reference point, this study may be termed as exploratory in nature in that it provides an overall insight into how the field police officers and senior supervisory officers in India perceive the widely discussed determinants of arrest discretion. The study empirically establishes that the subcultural determinants influence the arrest discretion behaviour twice as much as the organizational determinants, contrary to the popular perception that it is the organization through statutes, rules, regulations and compliance to court directives influence the arrest decision. The findings to an extent explain the existing gap between legislative intents to reduce the number of avoidable arrest and its realization in the field law enforcement.

The components of organisational determinants are legal factors whereas those of subcultural are extralegal ones. Extralegal factors are intangible and complex, not regulated or sanctioned by law, yet have influence on shaping the final outcome of the decision. The decision making process within the discretionary boundary is a complex exercise of legal-extralegal conundrum. The colourful exercise of arrest power or abuse of arrest discretion is often clothed as a legitimate exercise because the boundary between legal and extralegal considerations is thin and not well defined. This study brings some amount of clarity into the arrest decision making process so that the police leaders can identify the factors contributing to the discretionary abuse and put proper accountability mechanism in place to prevent such abuse.

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Panchayati Raj System to tackle rural-urban migration in Sunderban, Wet Bengal: An empirical study to know the present and future under local governance

Partha Sarathi Sarkar

Abstract

In India, the government is continuously working towards an improved nation since independence. Panchayati Raj system is one of those since 1959 the federal nation got a taste of rural local governance through participatory decision making. Especially with the 73rd Amendment (1992) of Indian Constitution, the rural people are ensured that there is an authority to improve their life and locality. The rural development ministry is also using the three tiers of Panchayat to reach to the villagers for implementing different schemes and programs. If the Indian Sunderban is considered as a rural demographic set-up then it is seen that the people are migration prone because of the resource scarcity & in this case they select urban localities to migrate. And the migration caused several tragedies because the persons are easily be cheated, health hazards may occur, women and elderly persons may be in trap during absence of their guardians. In this connection this research will seek how much progress has happened in the lives of the residents through the Panchayat system and what more facilities can be made for them. It is an empirical research with a mixed type of data analysis.

Keywords: Government, Panchayati Raj, Amendment of Indian Constitution, Sunderban

Introduction

The demography of Sunderban is completely rural so rural development of West Bengal state must touch this locality. The objective of rural development is to provide better prospects of life and facilitate economic prosperity in an aspect of castelessness which will give everyone the chance to be equally developed. In this case Panchayati Raj institution can act as the driving force (Mohanty, 2014).

As a public policy the government of West Bengal has accepted the role of Panchayati Raj for rural development since the very period it was initiated by the government of India. In a research publication of Sarin and Baginska, 2010 it was postulated that India possess at an around twenty-three per cent area under forest and 200 million people were depending on the forest areas for their livelihood which can best be realized under this locality. In recent years the effect of dispossession and relocation along with the touch of education is compelling the community to think about other possible ways to get a standardized life style and in this background AILA, the super cyclone of 2009 has increased the soil salinity as
per different theoretical and practical analysis which has declined the soil capacity for agricultural production.

It is not all but the climatic hazards have made the situation more badly; the people of Sunderban are losing their land under the rise of water level which has taken even their lands in absence of proper ‘bandh’. The Intergovernmental Panel on Climate Change (IPCC) on 2007 warns that the climatic variability causes reduction of agricultural production which has become a great reason behind the seasonal, temporary or permanent migration by influencing the people for taking the avenues through which they can at least survive.

Local institution from village level to district level is good public governance because the residents under the governed area may approach to the authorities for mitigate their problems for preventive and protective measures. The residents of Sunderban are the primary stakeholders of the rural welfare initiatives of South 24 Parganas and North 24 Parganas districts of West Bengal, India so they are the most approachable to know how much satisfaction the people are getting under Panchayati Raj system. The empirical study has got to know that the local panchayats are providing various facilities to them including item distribution under SGSY and income generation facilities under MGNREGA. In the days of AILA, the panchayats contacted and requested for help. Though the local residents were not much happy to express about the system which was very same to a previous study by Mondal et. Al. (2016) and they were very sound to inform that the panchayats are not giving enough opportunity to be trained, lazy in distribution of agricultural necessities, panchayats are not initiating any awareness camp in recent period and the panchayats are not even good to warn before calamities. A biased view over all was understood by the researcher with their answers so in this research Participatory Rural Appraisal also was initiated by him.

The aim of this paper is to examine the current situation of Sunderban economy and the overall migration scenario in which it will also be seen if there is any significant help has been provided by the local governance system under the banner of Panchayati Raj. Sunderban was selected for this study because the landscape is a fragile and vulnerable one in South Asia and the habitants are very migration prone according to some previous studies as well. This will also include volume of migration, loss of assets of migrant families, cost of migration, present living standards of the migrant families, adaptation strategies with a focus on panchayati system. Lastly it will be a dimension of the study to discuss some further strategic implementation of different rural development plans towards a good health of living.

**Review of Literature**

There was 31.4 crore migrants according to the census 2001 and as per census 2001 it can also be seen that in 1991-2001, about 5.3 crore persons migrated from one village to another while the number of migrants from villages to towns was
about 2.1 crore. The percentage of urban population in India which was only 17% of the total population in 1951 is expected to jump to around 42.5% of the total population by 2025, all this will happen because large numbers of people will leave rural areas for urban areas in search of better opportunities (ShahinRazi, 2014). Rural migration takes place under two compelling circumstances which can be termed as ‘growth pull’ (demand pull) or ‘crowding out (supply push)’ effects (Singh et al., 2011). The ‘growth pull’ effects occur due to economic prosperity of a particular place and ‘crowding out’ effects happen in an economy where a labour surplus persists.

In India, still a large section of people (near about 70%) are habitant of different villages who can be willing to be in city as it is still not possible to create or provide all the facilities in rural areas which are easily accessible in cities especially in the major ones as Delhi, Mumbai, Kolkata, Mangalore, Hyderabad or else alike so some people will always tend to show the migration proneness. It can also be seen that the migration is done by not the poorest of the poor as it needs capital (Rogally et al., 2003) or the marginalised social groups as they hardly posses any knowledge about the possible opportunities in another location (Skeldon, 2003) and the facts can be evidenced by the migration rate in rural areas was lowest among the scheduled tribes (STs) nearly 24% (NSSO, 64th round, 2007-08).

It is a very general idea that in absence of proper employment opportunities or pseudo unemployment a labour takes effort to trace out a job in another location with which he/she previously was unaware or unrelated though there is some major theoretical ground to explain the nature of labour migration- first, ‘the Dual economy model’ that sees labour mobility as a voluntary and rational choice made against economic opportunities (Mosse et al., 2002); second, the Marxist interpretation expounding which indicates the class exploitation (of migrants by dominant classes) (de Haan and Rogaly, 2002) and third one is the ‘Neo-Malthusian’ variant using pluralistic explanations such as ecological refugee, declining agricultural opportunities, debt cycle, demographic pressure, depletion of natural resources (Deshingkar, 2008). But the main and simplest reason behind any migration is the remittance earning to help own family but in long run the remittance earned man can make some positive as development of local or regional level and negative impacts as labour loss in the sending areas and its disruptive impact on the local economy (Turkhade, 2012). And a rural-urban migration depends according to three theoretical basis, as-1) Lewis Dual Sector Model, which states that migration occurs between an industrial and an agricultural sector; 2) Family/Household Migration Model, which presents rural-urban migration as a family based migration where the head of the household decides to migrate to the city based on whether or not the over-all family income will be higher; 3) The Todaro Model which provides a theoretical argument that migration is an economical decision where the individual or the household decides to move if
there is a higher expected income in the urban areas (McCatty, 2004).

Rural-urban migration is the commonest form of all the migrations all across the globe compelling under- the ‘growth pull’ and ‘crowding out’ effects. In case of ‘growth pull’ the changed location will possess a certain level of higher growth and prosperity which is directly related to the fact of wage differentials and ‘crowding out’ occurs if in the originated place the saturation of labour supply happens without having sufficient local opportunities (Deshingkar, 2004). Gender as a social construction that organizes relations between males and females can greatly differentiate the causes, processes and impacts of migration between the two sexes when there are almost 50% of the 190 million or so migrants over the globe to contribute major portion of $ 160 billion remittance in among the developing countries in 2004 (World Bank). In this scenario, gender differentiated population movements deserve particular attention because they act like a mirror for the way in which gender divisions of labour are incorporated into spatially uneven process of economic development (Nicola Piper, 2005).

In case of India, nearly 60% of urban male migrants and 59% of urban female migrants had migrated from rural areas and 61% of the urban female migrants along with 91% rural female migrants due to marriage have migrated whereas the counter part of the gender has migrated for employment related reasons in per cent age which is understood from the fact that is 56% of urban male migrants and 29% of rural male migrants are migrated for employment (NSSO 64th round, 2007-08). While Uttar Pradesh, Uttarakhand, Bihar, Odisha, Rajasthan, West Bengal, Jharkhand, with laggard economies and surplus labour are the primary suppliers of labour; Maharashtra, Gujarat, Haryana, Punjab and Tamil Nadu known for their flourishing economies attract large numbers of migrant workers (Kalkoti, 2014). Radical changes in the institutional set up and occupational pattern got about by the industrial revolution was the starting point of several streams of migration of the people. In the modern period large number of people use to flock from neighbouring villages of Bihar to the growing towns of Assam and West Bengal where commercial and agro-based industries have absorbed unskilled rural labourers (Amarendra, 2014). Though from the NSSO sample survey of 2007-08, the migrants preferred to stay in own state due to various reasons as 72% of migrant households in urban areas and 78% in rural areas have migrated within the same state.

In present day scenario, the Indo-gangetic plain and the deltaic region show a high rate of migration due to loss in agricultural production and high opportunity of employment in different non-agricultural services in urban localities. In case of rural-urban migration males are going to the urban areas for wage employment or to be employed as daily labour as the jobs need more physical strength and they perceive that women are not enough able to get jobs with them in township. In this case, the women consists the workforce for food procurement in household and
for this situation they sometimes in need to be on the agricultural field for food or agricultural production- a phenomenon termed as feminization of agriculture (Guery, 1995).

Sundarban is a part of West Bengal in the districts of South 24 Pargans and North 24 Parganas, situated near of Kolkata metropolitan with remarkable challenged and fragile eco-system which is hindering the agricultural production where non-agricultural sector is also very limited to make hindrance in economic wellbeing of this region. Ecological diversity in Sundarban is at the threshold of decline. The fragile land here is being swallowed every day by gradual sea level rise, coastal erosion and tropical cyclones; sea level rise due to thermal activity creates problem in the anthropogenic life and the land is used up faster than replenished (Ananya Roy, 2010). Especially after the AILA in 2009, all the lands when flooded under the saline water which add extra burden by making more vulnerable groups who living below poverty line and dependent on agriculture (Bera, 2013). In this perspective rural-urban migration is very much relevant in the socio-economic backdrop as they perceive that in urban areas they will be absorbed in any type of jobs or daily wage earning process as in the developing countries, migration is an inevitable component on the development process.

The migration especially which occurs in Sundarban is caused by low rate of income generation possibility from agriculture and from engaged in collection of forest or aqua products. There the cultivation of crops, mainly paddy, is mostly for self consumption and this applies even for vegetables. The remoteness of island blocks and absence of any urban market within a viable distance (Human Development Report, 2009) make migration as an interlinking force in economic perspective of Sundarban. According to Sujaya (2006) ‘casualisation’ of work, unprofitable crop production and distress migration of men make ‘feminization of agriculture’ possible. And, like many other developing countries Indian Sundarban shows the ‘gender’ engaging in agricultural fields as the male can hardly take any part in agriculture for their long time stay in urban areas which are far away from the remote countryside so it is taken feminization of agriculture (a term by Guery, 1995) granted to describe the position of women relating to agricultural works. There is a study by Sujata Sen (2012) that says if income is controlled by women chances are higher that it will be spend in the maintenance of the household in comparison to income controlled by men so the households are now ready to send the women members for the agriculture. After the year of 1991 the liberalization of economy makes the country as open as well as market driven economy so rural-urban migration has now become one of the crucial issues for socio-economic progress. In this perspective the mangrove islands in Sundarban region is persisting as migration prone zone in the state of West Bengal due to its multiple vulnerabilities. According to its position a multi-dimensional impact on the labour force is there as it is replacing the employment location of rural people who are guessing that in urban
location they will be preferred to be employed with a good earning and the youth males are coming to the city areas by leaving their households and family members in the villages behind which in opposite is making a labour gap for the agricultural market in this situation ‘feminization of agriculture’ is happening rapidly.

Gandhiji aptly commented on 1946 that the independence must begin at the bottom and every village ought to be a Republic or Panchayat having powers. To gain a livelihood is certainly an activity which in absence of proper facilities or resources may be seen as a burden. It makes people migration prone so the liberty from this burden can be assured by the Panchayati Raj as it ensures local good governance for governmental project implementation to facilitate rural people to be motivated for earning by keeping themselves in own home.

Though there are many things which have made migration a benefit but it has some points of negative social impacts as well which may trigger the evils of society and make the community mostly vulnerable. The present study has examined the factors influencing labour migration from rural to urban, its impact on family welfare to explore the situation and impact of this changing gender role in community level to find out more possible ways to understand the gender aspect in the labour force due to the out migration and then the points are merged with panchyati raj because the rural administration is totally depending on this local authority which is providing livelihood securities to local area development initiatives.

Objectives

It defines the different needs of writing a research work after data collection and analysis. It states where the study is directed and for what reason a trivial job of research was undertaken.

Broad Objectives

Today’s developmental policies and governance always try to relate the people with the designated schemes and approaches of governmental authorities otherwise no sustainable development of man being is ever possible. For doing the research it was thought that a migration is multi-faceted and multi-dimensional and in a clear view it has some positive effects in the sea of evil affects. A Panchayat is a governing body to work for the people and with the people so it can easily motivate the people for taking a good way for being developed. Sunderban is an acclaimed vulnerable place therefore the people have to migrate so Panchayat’s effect can be discussed in consideration this locality.

Specific Objectives

A. To know the reasons and causes behind rural-urban migration in Sunderban.
B. To get some view about the possible true impacts of migration.

C. To get an understanding of the standing situation of the migrant family in respectively who are non-migrant.

D. To be familiar with the status of local Panchayats as governing authority to provide governance to the rural inhabitants.

E. To be aware if the Panchayts are taking any initiative those are practical as well as feasible to mitigate the need & impact of migration in the locality.

Methodology

Locale of the research

Sunderban is one of the most discussed research locality on Human Welfare. It is basically a delta just in the verge of river Ganga and very near to Bay of Bengal, a much exemplified delta region and full of silt and sand. It consists around 6800 square kilometre to place 102 islands among them only 54 are with human residence. And these 54 islands are distributed among 19 community development blocks (13 under South 24 Parganas and 6 in North 24 Parganas districts).

Extremely poor communication makes it hard to reach so they have some specific cultural difference with the nearest city, Kolkata. So Panchayats have some basic jobs like- employment generation, social conflict mitigation, poverty reduction, embankments maintenance and help in cultural functions with Gram Sabha.

The field research randomly selected three community development blocks, which are- Basanti (Chunakhali gram Panchayat), Gosaba (Gosaba Bazar area) and Namkhana (Mousuni gram Panchayat). Most of the blocks of those 19 are migration prone in absence of easy access to financial resources. According to the study of Das et al. (2013) it is seen that the community rear various livestock among which Goat, Pig and Cow can be prominently seen but they cannot provide good nourishment with the straw after cutting the agricultural crops therefore it can be understood that this also does not provide much help for income generation.

Total 75 sample households were taken for research and they were consisting purposively the migrant.

Field Study

Participatory Rural Appraisal (PRA) is a social science technique, very useful for cultural or anthropological researches. In this study this approach was undertaken for making some case study based data collection through listing, topical interview, oral trend and ranking methods. In this
way it was a beneficial way to know the thinking of the rural residents themselves.

Case Study method

Case Study method is an approachable way to collection of data of a social unit which may be an individual, a family, a group, a section or over all a society (Young, 2000). Yin, 1993 has described this method as an realistic one which can retain the meaningful life events. It is more useful for qualitative data collection rather quantative so it can make a sense with the mind-set of the people on which a research is made. A case study in participatory mode with the principles of PRA is called a Participatory Case Study (Mukherjee, 1993).

Listing

With a listing made by the primary stakeholders of a research work always depict with their remembrance of previously happened activities to highlight a plethora of items or criteria (Kumar, 2002).

Topical interview

An interview is an in-depth study of an anthropological phenomenon. It should possess an objective to generate focused information on a pertinent topic at a greater length (Mukherjee, 2002).

Oral trend

It is a way for comparison with the principles of Participatory Appraisal. In this case a group of fixed questions are set to ask towards different section by dividing under the criteria of age or gender.

Rankings

The above mentioned ways are enriched if they can get a touch of ranking procedure through which the people can make to standardised of some criteria or items or issues. It clearly indicates what the important things to the persons are and similarly which are not. It also take care to make an understanding with possible explanations (Mukherjee, 1993).

Result discussion

Not all but some common phenomena make a locality with some possible characteristics and based on these a research makes it complete. Here in this paper the researcher has decided to go on with two hypotheses, which are- migration has no way impacted by Panchyati Raj and another one hypothesis is Panchayati Raj is curbing the need for migration so it has an high impact over migration.

But first of all, the need of migration and extent of it has to be discussed without that not much progress can be made towards this discussion by mixing it with Panchayati Raj. So some noteworthy points are analysed before taking the direction to mixing up migration and Panchayati Raj.

- Age group & Gender identity

Age has a very clear and compact relation with migration because at the time of migration, the migrants must be ready to drudgery at the
migrated place. Here it was seen that maximum number of people in the age group of 18-35. Below this table is showing this demographic profile.

Though it is very uncommon that the women are migrating by breaking the social stigma but still they are migrating because of education or marriage.

Table 1: Age distribution of Migrants

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Percentage of Migrants (%)</th>
<th>Gender profile</th>
<th>Migrant Division</th>
</tr>
</thead>
<tbody>
<tr>
<td>18-35</td>
<td>58</td>
<td>Male:Female</td>
<td>15:14</td>
</tr>
<tr>
<td>35-45</td>
<td>34</td>
<td>Male:Female</td>
<td>10:7</td>
</tr>
<tr>
<td>45-50</td>
<td>6</td>
<td>Male:Female</td>
<td>5:1</td>
</tr>
<tr>
<td>More than 50</td>
<td>2</td>
<td>Male:Female</td>
<td>2:0</td>
</tr>
</tbody>
</table>

- Reasons behind migration

<table>
<thead>
<tr>
<th>Components for migration</th>
<th>Percentage distribution of migrants (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Money</td>
<td>63</td>
</tr>
<tr>
<td>Livelihood</td>
<td>15</td>
</tr>
<tr>
<td>Social networking</td>
<td>20</td>
</tr>
<tr>
<td>Others</td>
<td>2</td>
</tr>
</tbody>
</table>

A social happening may happen due to various reasons and at the time of making a profile of migrants, those reasons must be enlisted to take a look to know why the people are migrating especially when migration has to take in a declined status. In the study area the reasons and causes must be seen in light of resource scarcity and income generation. Most prominent ones are tabulated below.

Table 2: Reasons of Migration

- Impact of migration

Migration is an impact of several other social phenomena so its impact is very critical to realise in words of positive or negative. Henceforth the researcher has tried to see the impact under several grounds which were related over all livelihood stability to women empowerment. And in this direction it is very clear facts that an empowerment is not sufficient present it without drudgery but here the research was participatory & qualitative so only per cent age based on the local people’s view is recorded to draw this table.

Table 3: Impact of Migration

<table>
<thead>
<tr>
<th>Impact components</th>
<th>Yes (%) - wise</th>
<th>No (%) - wise</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income increase</td>
<td>67</td>
<td>33</td>
</tr>
<tr>
<td>Savings increase</td>
<td>54</td>
<td>46</td>
</tr>
<tr>
<td>Farm requirements are purchased with ease</td>
<td>72</td>
<td>28</td>
</tr>
<tr>
<td>Children are more going to school</td>
<td>42</td>
<td>58</td>
</tr>
<tr>
<td>Girls are getting hygienic components</td>
<td>35</td>
<td>65</td>
</tr>
<tr>
<td>Capability of medicine purchasing &amp; elderly care</td>
<td>63</td>
<td>37</td>
</tr>
<tr>
<td>Women are making decisions</td>
<td>52</td>
<td>48</td>
</tr>
<tr>
<td>Women are more laborious</td>
<td>55</td>
<td>45</td>
</tr>
<tr>
<td>Social respect is increased</td>
<td>34</td>
<td>66</td>
</tr>
</tbody>
</table>

- View about migration

Migration has many impacts; some of them are positive and some of them are vehemently negative but it can be only reduced when a stable and good income source is available in own locality otherwise if need persists then the group of people are compelled to migrated. But based on their experience, they should whether migration is
good or not so here the researcher has collected the information about their purview on migration index. It is simply tabulated here below.

<table>
<thead>
<tr>
<th>View about migration</th>
<th>Yes</th>
<th>No</th>
<th>Maybe</th>
</tr>
</thead>
<tbody>
<tr>
<td>Migration is compulsory</td>
<td>73</td>
<td>22</td>
<td>5</td>
</tr>
<tr>
<td>Migration has more positive effects than negative</td>
<td>65</td>
<td>22</td>
<td>13</td>
</tr>
<tr>
<td>Change of the place of migration of last year is needed</td>
<td>40</td>
<td>37</td>
<td>23</td>
</tr>
<tr>
<td>Migration is not suitable than village level works</td>
<td>75</td>
<td>17</td>
<td>18</td>
</tr>
</tbody>
</table>

Table 4: View about Migration

- Works possible in absence of migration

Due to several reasons like health degradation, need to stay in home or any other if the migration is not possible then naturally the migrants have to think some other ways to income generation. They are generally not much educated and there is no much scope to gather employment with second sector (manufacturing) and there is obviously no way to go for service sector in Sunderban so they have to depend on primary sector (agriculture) but now-a-days it is not much economical. In this ground some aspects were discussed with them and they set their mind to do some jobs. The below table is made with this information.

<table>
<thead>
<tr>
<th>Ideas of income generation</th>
<th>Yes (%-wise)</th>
<th>No (%-wise)</th>
<th>Maybe (%-wise)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Garment stitching</td>
<td>34</td>
<td>50</td>
<td>16</td>
</tr>
<tr>
<td>Bidi binding</td>
<td>75</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>Making of some pottery items</td>
<td>40</td>
<td>17</td>
<td>43</td>
</tr>
<tr>
<td>Making of some household items</td>
<td>25</td>
<td>30</td>
<td>55</td>
</tr>
</tbody>
</table>

Table 5: Possibility of jobs in absence of Migration

- Idea of the villagers about Panchayats

Panchayat is a governing body so it has to be attached with many jobs but some are much discussed and some of them are not. A rural resident is generally not much aware what the benefits they are entitled to but they know what Panchayat is doing in their locality so if a research wants to know the effectiveness of local Panchayats must seek the information to get a view what Panchayat authority is doing in that locality. So some tabulated points were discussed with the villagers to know a better about the transparency, credentialed position of the body and effectiveness in local life.

<table>
<thead>
<tr>
<th>Components under Panchayat to measure its effectiveness</th>
<th>Yes* (%-wise)</th>
<th>No** (%-wise)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sanitation</td>
<td>56</td>
<td>44</td>
</tr>
<tr>
<td>Good health</td>
<td>42</td>
<td>58</td>
</tr>
<tr>
<td>Infrastructure</td>
<td>63</td>
<td>37</td>
</tr>
<tr>
<td>Education</td>
<td>54</td>
<td>46</td>
</tr>
<tr>
<td>Poverty eradication</td>
<td>78</td>
<td>22</td>
</tr>
<tr>
<td>Organising village meetings</td>
<td>49</td>
<td>51</td>
</tr>
<tr>
<td>Benefit distribution</td>
<td>67</td>
<td>33</td>
</tr>
<tr>
<td>Social security improvisation</td>
<td>65</td>
<td>35</td>
</tr>
<tr>
<td>Helping in marketing of village products</td>
<td>76</td>
<td>24</td>
</tr>
<tr>
<td>Hearing the rural people’s</td>
<td>43</td>
<td>57</td>
</tr>
</tbody>
</table>
Table 6: Idea of villagers about Panchayat

* = providing by Panchyats; ** = not providing by Panchyats

- More possible role of Panchayats

It was evaluated that Panchayats are working for the better health but the villagers may seek some more so those points are also to be discussed so the research has asked the requirement or the expectations of the rural habitants and their answers are tabulated here below.

<table>
<thead>
<tr>
<th>Points were asked</th>
<th>Positive (%)</th>
<th>Negative (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over-all activities to be communicated at Gram Sabha</td>
<td>68</td>
<td>32</td>
</tr>
<tr>
<td>Monthly meeting with elected members</td>
<td>70</td>
<td>30</td>
</tr>
<tr>
<td>Samity level meeting in presence of village representative</td>
<td>36</td>
<td>64</td>
</tr>
<tr>
<td>Timely collection of taxes or revenues</td>
<td>42</td>
<td>58</td>
</tr>
<tr>
<td>All the activities should be notified in black &amp; white</td>
<td>65</td>
<td>35</td>
</tr>
<tr>
<td>Awareness generation on sanitation &amp; healthy practices</td>
<td>79</td>
<td>21</td>
</tr>
<tr>
<td>Control over governmental ration depots</td>
<td>67</td>
<td>33</td>
</tr>
<tr>
<td>Prepare and pass welfare schemes at local level</td>
<td>72</td>
<td>28</td>
</tr>
<tr>
<td>Gram Pradhan should inspect on resource</td>
<td>55</td>
<td>45</td>
</tr>
</tbody>
</table>

Table 7: More Possible role of Panchayats

- Further role of Panchayat

Men migrate especially for economic benefits if it is not distressed. Therefore Panchayats can work for the villagers to mitigate migration by providing some more avenues for income generation but the programs under Ministry of Rural Development only can facilitate the Panchayats to provide employment facilities of the villagers. There is some specific financial programs to help the Panchyats and most of them are very discussed, like- MGNREGA or SGSY. A study conducted in Anantpur, Andhra Pradesh observed that the scheme brought down the migration levels from about 27 per cent to 7 per cent in the sample villages due to availability of work (Kurukshetra, September 2014). It was a participatory research appraisal so here also the researcher got to know how much the villagers are satisfied with the governmental plans-programs & schemes. Five programs were evaluated by the villagers and the researcher took an attention if they are good enough to decline migration rate in lone run as because the Panchayats are the implementing agency in each case so it will highly show the success of Panchayats. In this research due to some constrictions the idea of villagers were asked for last two years only.

Table 8: Further role of Panchayats to curb Migration
<table>
<thead>
<tr>
<th>Employment generating programs</th>
<th>If satisfaction level has arisen</th>
<th>If satisfaction level has not arisen</th>
</tr>
</thead>
<tbody>
<tr>
<td>MGNREGA</td>
<td>78</td>
<td>22</td>
</tr>
<tr>
<td>SGSY</td>
<td>63</td>
<td>37</td>
</tr>
<tr>
<td>Aajeevika</td>
<td>35</td>
<td>65</td>
</tr>
<tr>
<td>IWDP</td>
<td>52</td>
<td>48</td>
</tr>
<tr>
<td>NSAP</td>
<td>57</td>
<td>43</td>
</tr>
</tbody>
</table>

**Conclusion**

Migration is inevitable under the several threats of life and livelihood in the Sunderban region. Male out migration is most prominent because there is a gender basis and the community dwellers are thinking that women are not enough capable to go out for migration. Migration is not a phenomenon in itself rather an effect of different pushes and pulls factors. So it is an induced result not a cause to derivate a flock of other happenings. Out Migration is very common to see as an economy based incident rather non-economy based like education or marriage therefore it is easy to conclude with a fact that less income generation is playing a role in this rural-urban migration. Henceforth employment can reduce the likeness to migrate and Panchayat can easily make it by employing the residents in money related activities because of the easy access to local people and resources. The state or country government has designed several methods as well as schemes to take a control over migration. The plans can best be implemented with the help of the local governance authority because the authority is best known about the nerves of the region.

Here in this study it is seen that the people are in a believe that political identities are helping to availing of the governmental helps, Panchayats are not serving properly, Panchayat authorities show a bossing attitude and more income could be generated if the said authorities took proper planning of implementation. The people are reluctant to migrate but they want some more income to keep themselves happy enough and according to them the Panchyat officials can help more in this regard.

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The Promise of Common Market: The Role of Constitutional Law of India

Niladri Mondal

Abstract

Free market has become a buzzword in 21st century. Nations are entering into agreement to ensure free flow of trade and barrier-free trade with a larger objective of ensuring better life for the people. The Constitution has given a broader design of economic structure to be constructed in independent India. The idea behind the common market is to ensure free flow of trade, labour and services across the regions in India. Some of the features of common market are accorded the status of fundamental rights such as right to movement, right to carry on trade and right to reside in any part of the country. These rights are aptly supplemented with a dedicated set of provisions on freedom of trade and commerce throughout the country. On the one hand state needs more revenue, whereas, on the other hand the development require freedom from tariff barriers. Freedom of Inter-State Trade is a fundamental necessity in any federal system so as to avoid economic isolation and trade barriers within the federation. Notwithstanding the commitment expressed in the Constitution, the goal of common market is not a reality even after seven decades of the constitutional democracy in India. This paper explores the thought process undertaken in drafting the provisions related to the establishment of common market/single market by the makers of the Constitution. The paper will travel through the constituent assembly debates to unravel the vision of the makers of the Constitution. Though, the country has made considerable economic advancement in last seven decades but failed to create single market in very effective sense.

Keywords: Rule of Law, Constitutional Law, Common Market, Quality of Life

Introduction

Free market has become a buzzword in 21st century. Nations are entering into agreement to ensure free flow of trade and barrier-free trade with a larger objective of ensuring better life for the people. In the context of India, there has been a need of establishing barrier free trade regime amongst the provinces for drawing the advantage of large demography.

The makers of the Indian Constitution were fully cognizant of the high importance of the maintenance of the freedom of inter-state trade and commerce throughout the country as an essential condition of the country’s economic health. Part XIII of the Constitution is designed to secure the economic unity of India that such unity required the flow of goods throughout the territory of India, and that such free flow was “essential for the economy of the nation and sustaining and improving the living standards of
the country\(^1\). Article 301\(^2\) of the Constitution of India provides freedom to those activities which fall under the categories of trade, commerce and intercourse. The Constitution was shaped with the effect of immediate and distant needs and demands of the people as well as the worries of the historical background before the transfer of power. Perhaps it is for this reason that our courts have often resorted to the history of the constitutional provisions either to support or confirm their interpretation. The Supreme Court has resorted to the historical background of the provisions of part XIII of the constitution while pronouncing the authoritative judgements.\(^3\) In connection to this Seervai has rightly emphasized two things that “first if history is to be appealed to, it must be the whole history; secondly it is necessary to refer expressly to the source of that history in the judicial determination so that the history can be corrected, confirmed or confuted and the question of the value of any historical material as an aid to construction may be properly assessed.”\(^4\) In the light of this, the paper explores the thought process undertaken in drafting the provisions related to the establishment of common market/single market by the makers of the Constitution. Though, the country has made considerable economic advancement in last seven decades but failed to create single market in very effective sense.

### Learning from the existing framework

**The framework available under Government of India Act and how it has influenced the provisions of the Constitution of India 1950.**

In order to set out the history of Part XIII of our Constitution, we may trace that the development of Indian Federation which led to the scope of Free Trade Clause. Although for the first time, a full fledge federal structure was envisaged only under the Government of India Act, 1935, experimentation in that direction had already started under the Government of India Act, 1919.\(^5\) The basic scheme of federal government in the Constitution of India has been taken over from the Government of India Act, 1935.\(^6\) Now the Government of India Act had no legislative entry relating to inter-state trade and commerce in any of the legislative lists of the Seventh Schedule. However, the freedom of trade and commerce between the Provinces of British India was secured by enacting section 297\(^7\) which prohibited certain restrictions on internal trade.

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\(^2\)Provided that subject to the other provisions of Part XIII of the Constitution of India trade, commerce and intercourse throughout the territory of India shall be free.


\(^4\)M.P. Singh, Freedom of Trade and Commerce in India, 1985 Deep & Deep Publication, New Delhi, p.10


\(^6\)Prohibition of certain restrictions on internal trade: Section-297 (1) No Provincial Legislature or Government shall:-

(a) by virtue of the entry in the Provincial legislative list relating to trade and commerce within the Province, or the entry in that list relating to the production, supply and distribution of commodities, have power to pass any law or take any executive action prohibiting or restricting the entry into, or export from, the Province of goods of
The scheme of Section 297 stated that no Provincial Legislature of Government shall according to the entry in the Provincial legislative list relation to trade and commerce within the Province or the entry relating to the production, supply and distribution of commodities, have power to pass any law or take any executive action prohibiting or restricting the import or export of goods of any type from the Province.\(^8\) It allows the imposition of a tax, cess, toll or due imposed on similar home produced goods to be imposed on imported goods, from other Provinces, provided that there is no preference or discrimination.\(^9\) Any law passed in contravention of this provisions shall, to the extent of the contravention, be void.\(^10\) The purpose of Section 297 was to achieve “as far as possible free trade within India” by imposing limitations on the legislative and the executive powers of the provinces.

On July 18, 1947, the British Parliament passed the Indian Independence Act, which gave India an independent status. After the Independence of India, a Constituent Assembly was constituted with the powers of Central Legislature to draft a new Constitution for Independent India. The Constituent Assembly realized that section 297 of the Government of India Act, 1935, hardly ensured free trade in India. The reason being the restriction in section 297(1) (a) did not apply to any legislative powers of the Provinces so there still existed trade barriers. Due to these inter trade barriers that the inland trade and movement showed a considerable decline before the assembly started its working.\(^11\)

In the draft constitution, Art. 16 under Part III of Fundamental Rights declared that subject to any law made by Parliament, and subject to Art. 244 trade and commerce and intercourse throughout the territory of India were to be free. The drafting committee omitted the words “by and between the citizens” occurring after “intercourse” because “the qualifying words might necessitate elaborate inquiries at the State frontiers as to the nationality of the consigner and the consignee.”\(^12\) Draft Article 243 and 244 appeared in Part IX, Chapter II, Administrative Relations i.e. between the (States and the Union) under the subject heading “Interstate Trade and Commerce”. Article 243 enacted a prohibition of preference or discrimination to one state over another by any law or regulation relating to trade and commerce. Article 244 provided that notwithstanding Art. 16 and 243, it was lawful for any State (i) to impose by law reasonable restrictions required by the public interest on the freedom of trade and

\(\text{\textsuperscript{8}}\) Section 297(1)(a), of the Government of India Act,1935

\(\text{\textsuperscript{9}}\) Section 297(1)(b), of the Government of India Act,1935

\(\text{\textsuperscript{10}}\) Section 297(2), of the Government of India Act,1935

\(\text{\textsuperscript{11}}\) Review of the Trade of India., (1946) Part 11, p 2.

\(\text{\textsuperscript{12}}\) Draft Constitution, p. 8. It need hardly be said that a fundamental right subject to provisions of any law made by Parliament can hardly be called fundamental.
commerce and intercourse with that State, and (ii) to impose on goods imported from other States any tax which was imposed on similar goods manufactured or produced in that State provided that such a tax was not discriminatory. These Articles were replaced by Part XA (now Part XIII) and moving its adoption Dr. Ambedkar said that since the provisions relating to trade and commerce were scattered in different parts of the Draft Constitution a large number of the members of the house were not in a position to understand their implications and therefore:

“... the Drafting Committee felt that it was much better to assemble all these different articles ... into one single part and to set them out seriatim, so that at one glance it would be possible to know what are the provisions with regard to the freedom of trade and commerce throughout India.”

Provisions set out under Part XIII of the Constitution as amended in 1956, begins by saying:

Article 301 provides that “Subject to the other provisions of this Part trade, commerce and intercourse throughout the territory of India shall be free.”

Article 302 gives Parliament power to make laws imposing such restrictions on the freedom guaranteed by Article 301 “as may be required in the public interest.”

Article 303 is in two clauses. The first denies both Parliament and State legislatures power to make laws “by virtue of any entry relating to trade and commerce” which provide for the giving of preference to one state over another or which discriminates between the States. The second clause is a provision to the first and, so far as the Parliament is concerned, removes the prohibition of preference and discrimination if the law made by the Parliament declares that the preference or discrimination is necessary so that a situation arising from scarcity of goods in any part of India may be dealt with.

Article 304 is also in two clauses, so far as its substantive parts are concerned, and each clause operates as a proviso to Article 301 and 303.

The first clause authorizes the States, notwithstanding Articles 301 and 303, to impose taxes on goods imported from other States provided that such taxes are imposed from other States provided that such taxes are imposed on similar goods produced in the taxing State and that there is no discrimination between the two classes of goods i.e. local and imported. The second authorizes the State to impose “such reasonable restrictions on the freedom of trade, commerce and intercourse with or within that State as may be required in the public interest.” And to that that second clause there is a procedural proviso requiring Bills and amendments for the purpose of that clause to receive the “previous sanction of the President” before being introduced or moved in the State Legislatures.

Article 305 is perhaps the most immediately important. It saves from the operation of Article 301 and 303, unless the President orders otherwise, all laws which were

13 CAD Vol. IX, p. 1124

14 Sec. 99 of the Australian Constitution
made before the commencement of the Constitution\textsuperscript{15} and also all laws which relate to (and so far as they relate to) “the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or otherwise.”

Article 306 has been repealed.\textsuperscript{16}

Article 307 authorizes Parliament to establish any authority for carrying out the purposes of articles 301, 302, 303 and 304.

\textit{Amendments moved and defeated}

It is well understood that from the comparison of Article 16, 243, 244, and 245\textsuperscript{17} with the Articles in Part XA (now Part XIII) that they were not merely arranged seriatim but were substantially altered. It does not disclose the reasons for the change in the proceedings of the Constitution Assembly. An amendment to insert the word ‘reasonable’ before the word ‘restriction’ in the new draft Article 274B (now Article 302) was defeated after discussion.\textsuperscript{18} Secondly, an amendment to delete from Draft Article 274C (now Article 303(1)) the words “by virtue of any entry relating to trade or commerce in any of the legislative lists” was defeated.\textsuperscript{19} Opposing the amendment, Sir AlladiKrishnaswamiAyyar said:

“The next comment was there should be no reference to the power in relation to trade and commerce. It was advisedly put in for the reason that there might be very many powers which may be exercised by different States in regard to supply of goods, the internal or indigenous industry, which may not bear directly upon trade and commerce. It is not the intention to interfere with these powers of the Provinces or States.”\textsuperscript{20}

In the Constitution of India "Inter-State Trade and commerce" became a topic of legislation in the Union List (Entry List 1, Seventh Schedule). When it came to the freedom of trade and commerce, section 297 could have been easily adapted with necessary alterations. Instead the framers of the Constitution turned to section 92 of the Australian Constitution and used words which appeared to language; or rather the emotional appeal of the slogan embodied it. This desire to retain the emotional appeal of section 92 hand in hand with a desire to alter the substance of section 92 beyond recognition, with the result that articles 301 to 306 have given rise to problems as intractable as those under section 92 to a similar diversity of judicial opinion.

\textit{Interference of Parliament in Trade and Commerce}

Although Article 301 guaranteeing the freedom of trade, commerce and intercourse, it is obvious that most of the legislative powers conferred on Parliament by Articles 245 and 246, and set out in

\begin{itemize}
\item Article 305 read with Article 366(10) of the Constitution.
\item Constitution (seventh amendment) Act 1956.
\item Draft Article 245 corresponds to Art 307 of the Constitution which confers a power to appoint an authority to carry out the purpose of the Part.
\item Constituent Assembly Debate Vol. IX, pp. 1125, 1128, 1138, 1143 (amendment rejected). That the amendment was moved and rejected is important because “... while it is not proper to take into consideration the individual opinion of Members of Parliament or Convention to construe the meaning of a particular clause, when a question is raised whether a certain phrase or expression was up for consideration at all or not, a reference to the debates may be permitted”
\end{itemize}
Lists I and III of the Seventh Schedule to the Constitution, could be exercised so as to interfere with trade, commerce or intercourse. Certainly those powers contained in the following Entries of List I: 5, 6, 7, 9, 22, 23, 24, 25, 27, 28, 29, 30, 31, 36, 42, 43, 44, 45, 46, 47, 48, 49, 53, 56, 58, 81, 82, 84, 85, 89, 90, 91, 92, 92A, 21 could be so

21 List I (Union List)– 5. Arms, firearms, ammunitions and explosives. 6. Atomic energy and mineral resources necessary for its production. 7. Industries declared by Parliament by law to be necessary for the purpose of defense or for the prosecution of war. 9. Preventive detention for reasons connected with Defense, Foreign Affairs or the security of India; persons subjected to such detention. 22. Railways. 23. Highways declared by or under law made by Parliament to be national highways. 24. Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels; the rule of the road on such waterways. 25. Maritime shipping and navigation, including shipping and navigation on tidal waters; provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies. 27. Ports declared by or under law made by Parliament or existing law to be major ports, including their delimitation, and the constitution and powers of port authorities therein. 28. Port quarantine, including hospital connected therewith, seamen’s and marine hospitals. 29. Airway’s aircraft and air navigation; provision of aerodromes, regulations and organizations of air traffic and of aerodromes; provisions of aeronautical education and training and regulation of such education and training provided by States and other agencies. 29. Airways; aircraft and air navigation; provision of aerodromes; regulation and organization of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies. 31. Carriage of passengers and goods by railway, sea or air, or by national water-ways in mechanically propelled vessels. 36. Currency, coinage and legal tender; foreign exchange. 42. Inter-State trade and commerce. 42. Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporation’s but not including co-operative societies. 43. Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporation’s but not including co-operative societies. 44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities. 45. Banking. 46. Bills of exchange, cheques, promissory notes and other like instruments. 47. Insurance. 48. Stock Exchanges and Future Markets. 53. Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable. 56. Regulation and used and there may well be others. Similarly, the powers in the following Entries in List III could also be used: 7, 15, 18, 20, 21, 29, 31, 32, 33, 34, 35, and no doubt there are others. This interference can only be imposed so long as these restrictions are “required in the public interest”. With regard to this interference Sir Ivor Jennings asked “Who is going to decide whether it is required in the public interest?” The answer to this he said can be that “Though the matter is not free from doubt, it would seem that the task must fall upon the courts.” If the answer given by Jennings is accepted, then the impact for the scope of judicial review under this Article is much less to the Parliament’s powers. There will be a strong presumption regarding Parliament’s legislation to be of public interest. This presumption will force the person challenging the validity of a law of Parliament under Article 301 to show the court why it is not “required in the public interest”

development of Inter-State River and river valleys to the extent to which such regulation and development under the control of the Union are declared by Parliament by law to be expedient in the public interest. 81. Inter-State migration, Inter-state Quarantine. 82. Taxes on income other than agricultural income. 84. Duties on excise on tobacco and other goods manufactured or produced in India except- a) alcoholic liquors other than human consumption; b) opium, Indian hemp and other narcotics drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry; 85. Corporation tax. 89. Terminal taxes on goods and passengers, carried by railway fares and freights. 90. Taxes other than stamp duties on transactions in stock exchanges and future markets. 91. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, and policies of insurance, transfer of share, debentures, proxies and receipts. 92. Taxes on the sale or purchase of newspaper and on advertisement published therein. 92A. taxes on the sale or purchase of goods other than newspaper, where such sale or purchase takes place in the course of inter-State trade or commerce.
irrespective of the constitutional validity of the laws in issue.\textsuperscript{22}

Although Article 303 provides a further qualification of Parliament's powers but two things limit the importance of that qualification. Firstly, if Parliament enacts a law which makes a declaration satisfying the terms of Article 303 Clause (2), then the qualification is removed altogether. Secondly, the qualification itself is a restricted one and is framed in such a way as to have limited practical effect if Parliament wishes to ignore the spirit which inspired it. This is for two reasons: firstly, because the qualification affects only those laws made “by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule,” and, secondly, because of the interpretation likely to be given to the words “preference to one State over another” and “discrimination between one State and another” in Article 303. Prohibition against preference and discrimination is not a major restriction upon Parliament’s power. Therefore if the Parliament with its legislative power wishes anything to do by law can be done either by invoking Article 303(2) if the circumstances so required or by drafting the law in such a way as to avoid Article 303(1)\textsuperscript{23}.

Thus despite Articles 301 and 303, the powers are wide enough to permit almost any interference with trade, commerce or intercourse whether by regulation, monopoly control or prohibition. That is not only with respect to inter-State trade, commerce and intercourse but also with respect to intra-State trade, commerce and intercourse in many of their aspects.

\textbf{State’s Power of interference in trade and commerce}

Again the freedom of trade, commerce and intercourse guaranteed under Article 301, legislative powers conferred upon the state by the Constitution could be exercised to interfere with trade, commerce and intercourse. The powers conferred to the following Entries in List II of the Seventh Schedule could be so used and there may well be others: 1, 2, 5, 6, 7, 8, 13, 14, 15, 26, 27, 28, 30, 31, 32, 52, 53, 54, 55, 56, 57, 58, 59, 60, and 62.\textsuperscript{24}

The following Entries in List III are also

\begin{itemize}
    \item \textbf{List II (State List)} -- 1. Public order (but not including the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power). 2. Police, including railway and village police. 5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration. 6. Public health and sanitation; hospitals and dispensaries. 7. Pilgrimages, other than pilgrimages to places outside India. 8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors. 13. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles. 14. Agriculture, including agricultural education and research protection against pests and prevention of plant diseases. 15. Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice. 26. Trade and commerce within the State subject to the provisions of entry 33 of List III. 27. Production, supply and distribution of goods subject to the provisions of entry 33 of List III. 28. Markets and fairs. 30. Money-lending and money-lenders; relief of agricultural indebtedness. 31. Inns and inn-keepers. 32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies. 52. Taxes on the entry of goods into a local area for consumption, use or sale therein. 53. Taxes on the
\end{itemize}

\begin{itemize}
    \item \textsuperscript{23}Constitution (Fourth Amendment) Act, 1955
    \item \textsuperscript{24}Constitution (Fourth Amendment) Act, 1955
\end{itemize}
relevant: 7, 15, 18, 20, 21, 29, 31, 32, 33, 34, and 35.

Article 303(1) applies to State Legislatures as well as to Parliament. Regarding this Sir Ivor Jennings asked that when the State has no power to make law at all, then how it can discriminate is one of those mysteries which seem to take us into the realm of the supernatural? Certainly it goes too far as it is possible to imagine preferences and discriminations which could not be said to diminish the freedom of trade, commerce or consumption or sale of electricity. 54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I. 55. Taxes on advertisements other than advertisements published in the newspapers. 56. Taxes on goods and passengers carried by road or on inland waterways. 57. Taxes on vehicles, whether mechanically propelled or not, suitable for the use on roads, including tramscars subject to the provisions of entry 35 of List III. 58. Taxes on animals and boats. 59. Tolls. 60. Taxes on professions, trades, callings and employments.

List III (Concurrent list) – 7. Contract, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land. 15. Vagrancy; nomadic and migratory tribes. 18. Adulteration of foodstuffs and other goods. 20. Economic and social planning. 21. Commercial and industrial monopolies, combines and trusts. 29. Prevention of the extension from one State to another of infectious or contagious disease or pests affecting men animals or plants. 31. Ports other than declared by or under law made by Parliament or existing law to be major ports. 32. Shipping and navigation on inland waterways as regard mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passenger and goods on inland waterways subject to the provision of List I with respect to national waterways. 33. Trade and commerce in, and the production, supply and distribution of, -

(a) The products of any industry where the control of any industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;
(b) Foodstuffs, including edible oilseeds and oils;
(c) Cattle fodder, including oil cakes and other concentrates;
(d) Raw cotton, whether ginned or un-ginned, and cotton seeds; and
(e) Raw jute.

34. Price Control. 35. Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied.

The limited operation of the clause as explained, is apparent that most State laws made by virtue of “any entry relating to trade and commerce” which gave preferences or worked discriminations among the States would offend Article 301 and that there is little room for the operation of Article 303 (1) where the States are concerned. In any case the exceptions to Article 301 contained in Article 304 permitting the States to interfere with the freedom of trade, commerce and intercourse are expressed to operate “Notwithstanding anything in—Article 303,” and this makes this particular prohibition of preferences and discrimination virtually inoperative so far as the States are concerned.

The Article permitting the States to interfere with the freedom of trade, commerce and intercourse in spite of Article 301 is Article 304. This may be seen as the States equivalent of Parliament’s Article 302. Article 304, as has been noted, falls into two clauses; and a procedural proviso is attached to the second clause. For the time being it is to be noted that ordinary and unambiguous meaning of Clause (a) of article 304 is that, if the States have taxed or do tax goods of local origin then they are not barred by Article 301 or Article 303 from imposing the same tax, non-discriminatory, on similar goods imported from other States. But Article 304(b) clearly permits “reasonable restrictions” notwithstanding Article 301 that is to say notwithstanding that trade,
commerce or intercourse are by them made unfree.

**Learning from other jurisdictions - Australian positions and Americans position**

**Scheme of Allocation of Power in the Trade and Commerce Field**

The Indian draftsmen had two important considerations in their mind while drafting the provision on the allocation of legislative power between the Centre and the State from the working experience of American and Australian commerce clause. The first consideration that the draftsman had instead of general clause as mentioned the Commerce clause of the American Constitution, incorporated specific heads of power dealing with many of these component parts in three legislative lists. The second consideration which the makers kept in view is to minimize problems of divided jurisdiction which the federations like United States, Australia and Canada faced under the distribution of power made in their Constitution. The makers allotting important heads of power completely to the Union in India instead of restricting the reach of the Union legislative power to the foreign and inter-state phases of the topic sought to be regulated. The allocation of separate heads of power under three lists is made on the basis that while subject of national and local importance should be mentioned in the Union and State legislative lists other subjects which are primarily of local importance but which at future date may become matters of national importance should be enumerated in the concurrent lists so that Union have the requisite over riding power to legislate exclusively on these subjects if the situation demands it.

The more important of the topics coming either directly within the field of trade, commerce and intercourse or are indirectly connected by having close links with it specifically included in the Indian Union legislative list.

**Role of American Commerce clause in the Constitution**

The Indian Provisions on the commerce clause owe their inspiration to American models. The commerce clause contained in Article I, Section 8, Clause 3 of the American Constitution which

<table>
<thead>
<tr>
<th>List III of the Seventh Schedule.</th>
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| 1. Railways. 2. Highways declared by or under law made by Parliament to be national highways. 3. Shipping and navigation on inland waterways, as regards mechanically propelled vessels; the rule of the road on such waterways. 4. Maritime shipping and navigation, including shipping and navigation on tidal water. 5. Ports declared by or under law made by Parliament or existing law to be major ports. 6. Port quarantine including hospitals connected therewith. 7. Airways; aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes. 8. Carriage of passenger and goods by railway, sea or air, or by national waterways in mechanically propelled vessels. 9. Posts and telegraphs, telephones, wireless, broadcasting and other forms of communication. 10. Inter-State trade and commerce. 11. Banking. 12. Bills of exchange, cheques. 14. Stock Exchange and future markets. 15. Regulation and development of Inter-State River and river valleys to the extent to which such regulation and development under the control of the Union are declared by the Parliament by the law to be expedient in the public interest. 16. Inter-State migration and inter-state quarantine. 17. Duties of excise on tobacco and other goods manufactured or produced in India except a) alcoholic liquors for human consumption b) opium, Indian Hemp and other narcotic drugs and narcotics; but not including medicinal and toilet preparation containing alcohol or any substance included in sub paragraph (b) aforesaid. 18. Corporation Tax. 19. Terminal taxes on goods or passenger carried by air or sea; taxes on railway fares and freights. 20. Taxes on sale or purchase of goods other than newspaper, where such sale or purchase takes place in the course of inter-state trade and commerce.

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26 List I and II of the Seventh Schedule
vests in Congress the power "to regulate commerce with foreign nations and among the several States ...." has functioned in two ways. Firstly, as a great workshop for the federal centre to fashion a wide range of powerful instruments for regulating in the country's larger interests the countless activities which are comprehended in foreign and inter-state commerce. Secondly as a brake upon the action of the constituent states of the federation which in any wise obstructed, burdened or discriminated against the free operations of foreign and inter-state commerce. Not like the American commerce clause, the Indian commerce clause plays a relatively minor role in the economic life of India. The Constitution-makers have thought of it only as a residuary grant to strengthen a wide and impressive category of specific powers given to the Union legislature under lists I and III of the seventh schedule for that legislature to regulate trade and commerce topics of national import.

**Article 301 reverberating the language of Section 92 of the Australian Constitution**

Section 297 of government of India Act 1935 was available at hand. Instead the Constituent Assembly incorporated Article 301 with the emotional appeal of Section 92 of the Australian Constitution. As a result, the provision was altered beyond its recognition. This shows that makers of our constitution wanted “to enrich and widen the content of freedom guaranteed by section 297”. The freedom guaranteed by Part XIII as originally enacted, and as subsequently amended, because such a statement will show unmistakably that the freedom of trade and commerce secured section 297 has not been enlarged but has been substantially, if not drastically, curtailed. No doubt the freedom of trade was extended to intra-State trade and to that extent freedom of trade was enlarged, but the content of that freedom was also limited in comparison with the freedom of trade secured for inter-State trade by section 297.

**Comparison of Section 297 and Article (301-305)**

Parliament has the power to put restriction on the freedom of trade and commerce provided under Article 301 by the virtue of Article 302 as may be required in the public interest. Provided that it cannot give preference or make any discrimination by virtue of any entries in the legislative lists relating to trade and commerce unless it is necessary to do so to meet a situation created by the scarcity of goods in any part of the territory of India. The restrictions are not qualified by the word ‘reasonable’ though an amendment to insert that word was defeated. Discrimination or preference by virtue of other entries is not forbidden. As to the State they cannot give preference or make any discrimination by virtue of any entry relating to trade and commerce, but even discriminatory restrictions, can be imposed on the freedom of trade and commerce provided that they are reasonable restrictions in the public interest and the President assents to a bill being introduced for that purpose or subsequently

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29 Article 303(1) of the Constitution of India  
30 Article 303(2) of the Constitution of India  
31 Article 303(1) of the Constitution of India  
32 Article 304(b) of the Constitution of India
The States can impose non-discriminatory taxes on goods imported from other States. Existing laws violating Article 301 and 303 are saved, unless the President otherwise directs. Again, Parliament and state legislature can enact laws providing for carrying on by the State or by a corporation owned or controlled by the State of any trade, business, industry or service to the exclusion, complete or partial, of citizen or otherwise notwithstanding Article 301 (amended Article 305). Thus freedom of trade guaranteed by Article 301 bears no resemblance to the absolute freedom of trade secured by Section 92 of the Australian Constitution. Further, the complete freedom of internal trade secured by section 297 is curtailed because the import or export of goods can be prohibited, since restrictions include prohibitions, and preference can be given and discriminations made as provided in Article 303(2) and 304(b).

**The relation of Article 19(1) (f) and (g) to the freedom of trade guaranteed by Article 301 by the Supreme Court**

Several High Courts and even Supreme Court have dealt with the relation of Article 19(1) (f) and (g) to Article 301 in their judgments. Justice Das in a case said that Article 301 considered trade as involving movement and this article comes into play only when that movement is interfered. Art. 19(1)(g) guarantees the right in favor of citizens, whereas no such distinction is made in article 301.

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33 Article 255 of the Constitution of India  
34 Article 304(a) of the Constitution of India  
35 Article 305 of the Constitution of India  
36 Chamaraabaugwala v. Union of India, 1957 SCR 930  
was for the development of individual personality. While article 301 deals with freedom of interstate trade and commerce generally. This freedom is necessary so that the state may not restrict the free flow of trade and commerce. The free flow of trade is the basic need of economic unity of the country against disruption by local interest. Thus both the articles provide two different things and not one and the same thing.

**Conclusion**

India today stands on the threshold of an economic and commercial revolution. The expansion of government activity involved makes an increase in the revenue needs of the State inevitable. On the one hand state needs more revenue, whereas, on the other hand the development require freedom from tariff barriers. Freedom of Inter-State Trade is a fundamental necessity in any federal system so as to avoid economic isolation and trade barriers within the federation. Part XIII of the Indian Constitution provides for this freedom. This part of the Constitution has been criticized as the most badly drafted part. The states try to erect trade barriers for their selfish purposes and this has posed problems for the said freedom not only in India but also in other federal countries. The provisions for interstate trade and commerce maintains a balance between the freedom and the public interest. If the State Legislature wishes to upset the balance, it finds itself under the control of two supervisors, firstly, the President, and secondly the Court. The free trade clause provides for the freedom of trade but if the freedom clashes with the public interest, then the interest of the interest of the public will prevail.

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38 CAD (1948) Vol. vii page 950- Per Dr. Ambedkar. T. K. Tope uses the words dignity of individual for Art. 19(1)(g). Whereas for Art. 301 national unity in sphere of trade.
INTERNATIONAL LAW AND THE ISRAELI-PALESTINIAN CONFLICT - A RIGHT BASED APPROACH TO MIDDLE EAST PEACE


Souvik Mukherjee

Palestine-Israel conflict has puzzled the whole world by its unique features, which one can find nowhere other. Since the inception of the issue, the international organizations, jurist, political leaders, social scientists have been wondering on how to bring peace to the Middle East Asia. Multiple agreements, conventions, resolution has been passed to bring a durable solution to the Palestine-Israel conflict however none have been lasting enough.

This collection of essays by the prominent academicians and social scientists have been focusing on one particular way through which they hope that by application of ‘right based approach’ a durable solution can be achieved, subsequently, peace and harmony can be at power for a change.

The edited collection consists of eleven essays divided into four different parts namely Core Issues: Refugees & Jerusalem, Security, Legal & Political Frameworks for a Durable Peace and finally Debating the future.

In the first three essays of the book the authors gives a detailed conditions of the Palestine refugees. The authors make critical notes on the complex and unique characteristic of the Palestine Refugees and attributing specific definition to them. The role and scrutiny of the functioning of UNRWA, UNCCP also feature within the first three essays of the book. The authors reflect upon the intentional misconstruction of UNGAR181, followed but series of unfortunate events and failed negotiations and mediations. However, at this juncture one is left to wonder that if UNSC have not been taking actions to make UNGAR181 binding then what would be the reason for such reluctant behaviour on part of the UNSC. Furthermore, if the author of first essay intended to dispel the myths through the essay, then why one could not find a narrative on the myth, which the author intended to dispel. One also is left to wonder that exactly whom the authors referred to as ‘donor’ or ‘interested party’. In the third essay while comparing with other regions in conflict and refugee in respect to compensation and restitution, the authors expresses that how the Israel-Palestine
status have been constantly snubbed and ignored by UNSC specifically, but if one is looking for a theory or an explanation for such ignore from these essays then he/she is going to be disappointed.

The book strategically and correctly places ‘Jerusalem’ the fourth essay within the ‘Core Issues’. The religious sentiment attached to the city has made it the bone of contention for not two but three different religions. The closest city which offers similar controversial status is Ayodhya. Both Jerusalem and Ayodhya are contested sacred centers, between Jews and Muslims in the first case, Hindus and Muslims in the second. In Jerusalem, the same sixty-square-acre platform to which Jews refer to as har ha-bayit or the Temple Mount and Muslims/Palestinians refer to as al-haram al-sharif or the Noble Sanctuary.\(^{39}\) The author notes that the nature of conflict between Israel-Palestine puts Jerusalem in such unique state that to the city those traditional methods may not be very useful. Amongst the various solutions to the author makes a special reference Professor Walid Khalidi’s peace proposal ‘Joint Inter-State Great Municipal Council’ for Jerusalem being a well-known and balanced peace proposal for Jerusalem amongst others.

Under the second heading “Security”, the authors talk about legal strategies at the United Nations while comparing, the UNSC’s position which with the Namibian - South African crisis, not being oblivious to the fact that UNGA did have special status of being the supervisory authority in Namibia case and the author in fifth essay rightly points it out, but, the essay misses out providing the key information that under what motivation the UNSC thought it’s ‘better’ for the world peace to block the self-determination scope of Palestine. Further, in the following essay the author aptly discusses & examines the varied approaches of the parties towards the promotion of security in details, before dwelling into identification of rights & interest of the parties while keeping the international norms in loop, so that a right based approach to security issue can be implemented and remain hopeful for a possible solution someday. However, that would be subject to the trust and binding international norm over the whole region including the neighbouring nations and mutual negotiations.

In the next part the edited collection plunges into the critical question of what possible would be the Legal and Political framework for durable peace? Three primary essays formed the tripod to provide answer to the critical question first related to the issue of self-determination followed by Natural Resources & Belligerent Occupation and Building Rule of Law.

While beginning with issue of self-determination the author talks about the competing claims to sovereignty of the Fatahs, Hamas and Israel. Fatahs would have never imagined that their intention of establishing Gaza and West Bank as Palestine state in order to end 60 year’s dispute

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would meet with such resistance and be termed as ‘historical compromise’, of course Fatah’s did expect certain resistance, but, uprise of Hamas and completely romping over the Fatah’s wasn’t expected. Hamas came to power primarily questioning the ‘historical compromise’ were to be made while effectuating the self –determination and two state theory. The author provides an account on how the Hamas came to power with their radical and single state claim made a note that in the wake of two states as proposed by Fatahs. Further, what would be the effect on repatriation claim as Israel definitely would be inclined to deny the repatriation claims.

In Chapter 20 of Deuteronomy, some Mosaic rules for the conducts of war are set out. One says: ‘When in the course of war you lay siege to a town for a long time in order to take it, do not destroy its trees by taking an axe to them, for they provide you with food; you must not cut them down’\(^\text{40}\). Eventually after centuries the Hague Regulations on the Laws and Customs of War on Land annexed to 1907 Hague Convention No. IV wherein under Article 55 a provision on the similar lines was incorporated. The world today needs to integrate Human Rights and Humanitarian Rights; can we actually serve one by not serving others? As it is rightly noted by the author that, it may seem bizarre to speak of natural resources right in the same breath with economic, social and cultural right, but on a closer it might not remain that bizarre when once takes cognizance of General Comment No.15 (2002) on the right of Water as adopted by the Committee on Economic, Social and Cultural Rights. The water crisis as per the statistics shows that the level of disparity between the Palestine and Israel reflects that at the occupied territory the Palestinians are facing heavy discrimination with the most basic requirement of Life to exist on this Planet – ‘Water’. While Israel was out to manipulate and misinterpret Article 55 of Hague Regulation, one would wonder why the International Community did not stand up against it? why UNSC appears to be toothless wherein a settled jurisprudence is violated? Ironically the article violated would find its roots in Deuteronomy- the fifth book of Hebrew Bible and of Jewish Torah; one would wonder that if such interpretation stays in sync with the developed and super –powers hidden agenda, hence, the silence? The author in eighth essay, remains silent certain questions of which answers are pertinent to the Solution the Israel Palestine issue.

In the final essay of the third part limits itself to the question of establishing rule of law. The author says that Palestine Administration, which serves as the current political system and self-governing entity in the West Bank and Gaza Strip came on the face of the earth primarily due to Oslo Accord, however it falls short on numerous counts to qualify as Statehood under International law. A Constitutional Framework established under Palestine Administration well might have laws and judicial set up established but the whole arrangement was conditioned by the Israeli Government as it is absurd to expect rule of Law when the basic law of Palestine is subject to Israel’s whims and fancies. The primary sources

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\(^{40}\)International Law, Vaughn Lowe, OUP Page 266.
of law used by the Palestinian administration are International Laws and Laws of such other countries which had witnessed political and legal transition. However, Palestine Administration has also not given much to cheer about in terms of law and order, as various NGO and others have maintained that rights and freedom of Palestinians have been compromised by the Palestinian Authority themselves. With such challenges of conflicting laws coupled with limited law making power, it would be a Himalayan task to establish rule of law indeed. A strong legal system can’t be established without the most elementary pre – requisite-‘Sovereignty’. One State or two State what the future is? Theorists, political scientists, international lawyers, international bodies and ‘interested states’ all are perplexed with the question of which would bring peace and harmony in the Middle East. Given the divide among the people the Jews and the Palestinians, the history of more than last 60 odd years it is obvious that two states theory is what would come the mind of anyone, especially the people who are living in those areas. The author notes that what each side desires is to greatly reduce its need to encounter ‘others’ in ‘its land.’ One –State Solution is virtually impossible to many. But imagination of theorists can do wonders; in this case the author like a mathematician excluded the possibility practical realization of two-state theory in totality, and then verifies and strategized the one-state theory if it is possible. While strategizing numerous arguments and road blocks were considered while coming to the conclusion that he fails to generate enough support for one state solution even if it is running alone in the race. However, the counter argument in favor of ‘single-state solution’ as the future of Israelis presented in the final essay of the edited collection. He expresses that how International Law can act as a catalyst to guide negotiations towards resolution recognizing rights for both parties. A rigorous right based solution could bring eventual end to the conflict and for that the author suggested possible invocation of pressure from International Community even though it comes in conflict with the consent of the Palestinian & Jews. However, the whole idea remains legally untenable in addition to the self-contained antithesis provided within the argument by the author and somewhere between the arguments we lost essential rights of the individuals and rather the argument advocating against self–determination in true sense was realized.

The book identifies aptly the critical issues with respect to Palestine-Israel Conflict with plausible arguments and possible solutions. However, it must be noted that the book is not for non-specialist, even though the language is lucid but the issues dealt with are not of common knowledge and warrants basic understanding of United Nations, World Affair and legal jargon and of course the historical events leading to the Conflict and subsequent events.

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Mumbai Aarey colony uprising

Vijoy Kumar Sinha

In recent Mumbai’s Aarey colony case, trees were cut for metro-shed which was planned two years ago. In Aarey colony more than two thousand trees were chopped off between 4th - 6th October before the freeze was announced by the top court. In this case it was seen that in order to construct the metro shed, the Maharashtra government ordered to cut down the trees which was spread over 33 hectares. The environmentalist seek petition to the Bombay High Court to declare that area as which Bombay High Court cancelled their petitions.

In order to save the trees a group of students wrote letter to CJI regarding the matter. The Supreme Court took suo moto cognizance of the matter on the basis of the letter addressed to the CJI. Despite, the Dusshera holidays, the court held an emergency hearing on 7th October and passed an order that no more trees be cut till further order and status quo to be maintained.

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Son of the soil wins Nobel

Abhijeet Nandy

Abhijeet Vinayak Banerjee, a Professor of MIT is an Indian American economist who has won the 2019 Nobel Prize in Economics, along with Michael Kremer of Harvard University and Esther Duflo of Massachusetts Institute of Technology (M.I.T.) ‘for their experimental approach to alleviating global poverty’.

Global poverty is one of the most serious issues in today’s world and tops the UNSDGs. The number of people who are living under extreme poverty is estimated over 700 million. Each year the number of children, under the age of five, who die from curable diseases is around five million. And half of world’s school dropouts don’t have any basic literacy or numeracy skills.

The three Nobel Laureates of 2019 (in economics) have presented a new way to obtain reliable answers regarding finest methods to tackle global poverty. In brief it mainly focuses on dividing the issue into smaller and feasible questions which are then best answered through carefully designed experiments among the most affected people. Their approach and findings have enhanced our ability to fight poverty. Due to their studies more than five million students are getting the benefits of remedial tutoring in schools. Another example is that various countries have introduced heavy

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subsidies for preventive healthcare. Above all their approach has far greater strength to improve the lives of poverty stricken people and show us the way to achieve a better world.

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