

Journal of
PARLIAMENTARY STUDIES

VOLUME 12 • ISSUES (1&2) • JANUARY- DECEMBER 2020

PEER REVIEWED BI-ANNUAL JOURNAL OF
INSTITUTE OF PARLIAMENTARY AFFAIRS, GOVERNMENT OF KERALA

INSTITUTE OF PARLIAMENTARY AFFAIRS
GOVERNMENT OF KERALA

JOURNAL OF PARLIAMENTARY STUDIES
(Peer Reviewed Biannual: Published since 2010)

Editor:

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(Parliamentary Affairs Department)
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Annual Subscription:

Individuals	:	Inland` 200.00	Abroad \$20
Single Copy	:	Inland` 200.00	Abroad \$20
Institution/Library	:	Inland `200.00	Abroad \$20
Life Members of INPA	:	Inland `300.00	Abroad \$15

Bank drafts /Postal orders should be drawn only in favour of
"The Registrar, Institute of Parliamentary Affairs, Government of Kerala"

For subscription to be sent to:

The Editor

Journal of Parliamentary Studies, Institute of Parliamentary Affairs
Building No. 32, TC - 81/1051, Shanthi Nagar
Near Government Press, Thiruvananthapuram - 695001
Email: mail.inpa@gmail.com

Published by Dr. Raju Narayana Swamy, Director General (i/c), INPA	Published from Institute of Parliamentary Affairs
Printed and Owned by Registrar, INPA	Govt. of Kerala, Thiruvananthapuram
Design : Graphic Designing Section, Government Central Press	Tel: 0471 - 2339266/2331080
Printed by the Superintendent of Government Presses	Website: www.ipaffairs.org,
at Government Central Press, Thiruvananthapuram-695 001	E-mail: mail.inpa@gmail.com

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Medha Patkar

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Work at Thanal.



From the
Editor's Desk

As this volume goes to press, it is still the month of February - the border between winter and spring. In a few days from now, daffodils and bluebells, violets and pansies, chrysanthemums and daisies will all be in blossom. These bounties of nature remind us of our solemn duty to preserve them for posterity – our children, grandchildren and great grandchildren. But the reality in the field is aptly summarized in the golden words of Wangari Maathai “I reflect on my childhood experience when I would visit a stream next to our home to fetch water for my mother. I would drink water straight from the stream. Playing among the arrowroot leaves, I tried in vain to pick up the strands of frogs' eggs believing they were beads. But every time I put my little fingers under them, they would break. Later I saw thousands of tadpoles: black, energetic and wriggling through the clear water against the background of the brown earth. This is the world I inherited from my parents. Today, over 50 years later, the stream has dried up, women walk long distances for water, which is not always clean and children will never know what they have lost. The challenge is to restore the home of the tadpoles and give back to our children a world of beauty and wonder.”

That explains why the lead piece in this volume is an invited article penned by Medha Patkar – a torch bearer for the rights and lives of vulnerable people whose approach demonstrates principles of human rights and empowerment, nay commitment to social justice and participatory democracy. I have no more words to describe her social activism than the following poem inspired by the Narmada Bachao Andolan:

आपने कहा देश की समृद्धि की लिए
मेरा गाँव डुबाया गया
मेरे दूबे खेतों के आधार पर
बजिली का उत्पादन किया गया
पर जनिहें वोह बजिली मली
उन्होंने उसके लिए क्या खोया?

आपके वादे के बलबूते पर
आप कहें हम जमीन छोड़ दें
पर तब हम क्या करें
जब आप अपना वादा तोड़ दें?

जिस देश की विकास की आप बात करते हैं
उस देश का अटूट हस्सिा हूँ मैं
बसिरे लोगों और टूटे वादों का
अनकहा कस्सिा हूँ मैं.

For the prosperity of the nation
My village was flooded
My flooded fields provided the basis
For you to generate electricity
But the people using that electricity
What did they lose?

Based on your promises
You say we should give up the land
But what do we do then
when you break your promise?

The country whose development you talk
about
I am an integral part of it
The forgotten people and the broken
promises
I am their untold story.

Another article in this journal dwells on commodification of nature – a very relevant topic in today's era wherein the natural habitat of the poor is again and again targeted by the international resource economy and where from kiwi fruits to king prawns farming systems are put in place to cover the tables of distant consumers.

This volume contains papers from other stalwarts too – in fields as diverse as budget to higher education and space economy to the crisis in Ukraine. I, on behalf of INPA, extend my heartfelt gratitude to all of them for cherishing, nourishing and nurturing the legacy of this journal.

A tree, which has roots in the soil yet reaches to the sky, it is said, is a reminder to all of us that our strength and ability to reach our goals depends on the people – those whose work remains unseen, who are the soil out of which we grow, the shoulders on which we stand. Let me therefore dedicate this volume to my fellow countrymen and women for whom very often the “tryst with destiny” has turned into a tryst with destitution. Let not the locusts of despair destroy their harvest of freedom.

Jai Hind.

Thiruvananthapuram,
22/02/2022.

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We need development, Not Destruction Nor Disasters!

Medha Patkar

Introduction

Environment which includes small and large eco systems and human beings as well, is the womb by which life survives and blooms. Today it is ridden with conflicts between the State and citizens of India and also among the various sections of our population. It is not only pertaining to the outer ozone layer but the critical natural resources including land, water, forest, minerals and air too. The issues vary from displacement to destitution, but the real questions are: who own, who accumulate, who intervene and with what purpose, and what impacts. The communities living on the natural resources and living beings including wild life suffer and lose their livelihood when these resources are snatched over or destroyed. The capitalist mode and paradigm of development make them face vulgar inequalities and injustice that need to be challenged to save nature and people, both. These struggles spread across India and the world, have become critical in the face of not only climate crisis but social and economic crisis too. What matters in attaining the vision of sustainability, intergenerational too, and justice to all through such struggles is the strength of the masses and political will of those who govern. The recent movement by the farmers, unprecedented in pursuit of challenge to the corporatization in the most critical agricultural sector, has exhibited the people's power through people's politics. The battles, short term and long term, need to be raised and continued in the face of the consumerist lifestyle to profit based economy allied with valueless politics at the cost of life and livelihood of toiling masses. The scenario in every state in India today is full of such struggles which need support of all who are concerned about not only this but also the upcoming generations.

Kerala is beautiful and bountiful.....

I had many opportunities to visit the beautiful and bountiful state of Kerala during the last three decades. Those were to support various people's struggles in different parts of the state. When one takes up any of the people's issues related to life and death in any state, what becomes important is, who would support or who would oppose it. I remember that whenever I visited Kerala, there were many organizations and persons-youngsters to the elders- farmers to adivasis, who were always seen

fighting the battle for saving the environment and asserting their rights. Whether it was the struggle against Coca Cola in Plachimada, or the struggles by the adivasis in Wayanad or that for getting justice for the endosulfan victims in Kasaragod, we have received support from politicians and students and youth organizations for the long-term struggles. We also had support from even a small group of legislators that was critical to the struggles. There was a group of 6 MLAs who took up the issue of rivers in Kerala. Such actions with good impact are highly desirable in other states too.

We also notice that in many states when some party comes to power they may make compromises and make our life difficult to hold discussions even with those leaders who were earlier the supporters of the same such people's struggles. I remember during the days just after the Tsunami, we could talk to the then Chief Minister in Kerala and the chief secretary of TN regarding relief and rehabilitation operations even at late night. Such a response makes a great difference and gives hope to the activists as advocate of people's issues. However, if and when such a discourse or dialogue does not reach any conclusive or decisive way out the struggle has to continue. Today in Kerala, the endosulfan issue at Kasaragod is very critical. The life there is at stake and promises in the past need to be kept with any and every ruler who has a humanitarian approach. Same is with the issue of mineral sand mining. Sand as a minor mineral is extracted against all laws and judgements of the Supreme Court & National Green Tribunal and hence causes severe impacts on the coastal ecosystems and communities. Hence they are left with no options but to continue their fight and we have to support them.

We have also witnessed the fact that whenever there is an alliance of people's organizations it makes a great difference. That alliance is also to be supported by intellectuals. In the states like Kerala as in West Bengal, Maharashtra and Bihar, we see large number of progressive intellectuals, writers, artists and others who come forward to support. I remember many eminent personalities like Retd. Justice VR Krishna Iyer who had always stood for social and environmental justice and supported people's righteous demands. The great octogenarian Gandhian, Dr. Sukumar Azheekode in Kerala who fought against many issues like the pig farm project and its impacts was not just an expert in ancient Indian scriptures like Vedas and Upanishads but keenly committed to environmental protection linked with the people's rights over resources. Participation and support by such people, whether Gandhian or Marxist to the people's struggle, makes a great difference - what we all have witnessed.

We have also witnessed in Kerala the organizations like Kerala Sasthra Sahithya Parishath (KSSP), through whom I had visited Kerala for the first time and those leaders of the organizations like Dr RVG Menon, Prof M. K. Prasad and Dr. MP Parameswaran or Bhaskaran whom I think had brought together the ideologies of Gandhi and Marx. They were not only in the education sector but also in environmental sector took position like whether in favor of micro hydel projects or against Coca Cola which are wrong priorities in my opinion that create great risk to the natural resources or the ground water or the flowing rivers causing floods.

Priority is politics

This is very important and necessary in today's time when the corporatized policies and amendments to the laws are towards the same end. We have to save the resources which have become commodities and their destruction leading to destitution of all natural resource based communities. You have to fight with the powers at the Center who are following a neo colonial model where the corporates are considering all the natural resources as their common wealth and looting the large majority of the toiling masses who had saved the natural ecosystems and not allowed climate change. They are the victims of whatever is resulting out of this emission of, not just carbon but consumerism of the elite sections within our country and all over the world.

The primary environment related concerns are based upon the acquisition and accumulation as well as destruction of the natural resources in India and that is happening with regard to land, water, forest, minerals, air, aquatic wealth and our heritage as well. This is absolutely dangerous because these resources are not properties, but are the life supports and sources of livelihood for all the toiling masses and those living on the natural resources. The environment related issues are no doubt serious. And in every state we see that in the name of development, how the wrong priorities, in terms of not just allocation of monetary budget, finances, but also allocation of natural resources are being pushed. And hence, subjects like Central VISTA or SEZs or big mega infrastructural projects are imposed upon people without following the democratic process of decision making or consultation and prior informed consent of even the directly affected population. We know that the communities in the sections of population which get worst affected are also those who live on either natural resources or human power. And they are not on the political agenda, although they have a majority of votes in their hands, whenever the politicians shake hand in gloves with the capitalist investors. The vote banks are managed and manipulated through vote banks!

Electoral politics is promoted through the investment by those very corporates who benefit out of such large schemes the mega projects and undertake funding the parties with no transparency since no information is provided through RTI. We need therefore, to assert not just the duty mandate of the government authorities, but the role and responsibility with rights of the communities at the bottom of the hierarchy. It is necessary that we pressurize the rulers not only through interventions into the electoral politics, but also through people's movements, as the farmers have exhibited with unprecedented martyrdom and which challenged the basic framework of values and rights related to agriculture with food security which needs to be protected. Yet there is a backdoor entry of corporates continued to be promoted by the central government, to the extreme, as displayed by their union budget 2022-2023.

Bill Gates Foundation has made an entry into India; Walmart type of company is collaborating with Adanis. We also know that the land records are going to be handed over to the Microsoft and other two or three corporates. All this is really not only

releasing government of its responsibility towards saving environment, promoting environmental sustainability but it is also bringing in commodification of the natural resources which leads to destructive approach in harnessing and using the natural resource. It is, therefore, necessary that the economy itself undergoes a change. The paradigm has to be of decentralised management of resources with the employment generating and sustainable technologies. A limit to mechanisation and marketization is a must!

Damning a river

For example, consider the issue of large dams. A large dam will be the last nail to be used for building a river. If a cascade of dams is built in a river not leaving any environmental flows or river flows, it is disastrous. This is happening in the Mekadatu dam in Cauvery basin. In general, the river is almost mowed totally and not only the river flow, but the valley with diversity, with land, forest and hills or mountains as well get affected. But it is necessary to really understand that even if we save people through rehabilitation, we may not be able to save any river unless we have a wider vision to understand a river basin as an eco-system, and we cannot impose any dam. Every dam which is pushed without full and fair environmental and social assessment teaches a lesson to the people in the valley but not the rulers and investors. All the vested interests ignore the real costs, including social & environmental and hence we have to take up the battle to save rivers from such large projects in favour of decentralised management of water. While USA has decommissioned more than 1000 dams realising the huge cost-ecological to economic; in India there is ignorance and a wrong paradigm is followed till date. It is absolutely challengeable because Sardar Sarovar dam in Narmada river has taught us that even after 36 years, we have not been able to stop or finish of the large dam building which really takes a toll of the river itself. Kerala and its bountiful nature is facing the same through floods over the last few years. The result in that the already changed climates are to certainly become more frequent.

Water as source of life

Consider the case of the city of Bangalore. The city has had about 80 to 90 lakes and there has been a good judgement from the High Court on the lake management and saving the lakes. But that is not really given a priority by the government in Karnataka. Hence, it is becoming necessary to think of alternative ways to fulfil the need for drinking water and domestic supply for the population in Bangalore. But instead of following the right technology, the cities get the first priority towards bringing the water from a long distance like from Cauvery up to 100 kilometres to Bangalore at huge cost. And when that is done through the large dams, it takes a big toll. The upstream state, Karnataka, also has increasing demands on the water by the cities, townships and industries. The consumerist lifestyle of the city dwellers, especially the elite sections also increase the demand and then the farmers also suffer, since water is drawn away from them to the cities and industries. Take the case of Mekkadatu dam in Cauvery

basin, at the cost of 9,000 crores to begin. They may be in the same state, but they suffer due to the iniquity - inequitable and unjust distribution of water. So, this is at the cost of again the rural and the urban poor. The politics does not consider all these issues. And parties feel that if they don't jump into it, they will lose their vote banks. The full-fledged studies of environmental and social impact have not been done, the clearance is not yet granted, but the interstate conflicts have arisen! The control on the centralised sources of water is generally in the hands of not only the bureaucrats or the technicians, but various investors who influence the distribution, and politicians need their support for electoral benefits and vote banks. It is in many dam projects that we witness interstate conflict. Although we have the Interstate Water Disputes Act of 1956, that does not give any hearing or receive any submissions from the non-state actors. So, only the representatives of the states appear before the Tribunal year after year, and even if the Tribunal Award resolves that conflict temporarily, the conflict between the state and its own people arise or even the interstate conflict takes new turns. The cost paid and time lost also could be avoided through reasonable alternatives which need to be intra river basin and not inter river basin and in the form of mini to micro watershed development.

Bio Diversity Act – Amendments towards what end?

One of the imminent major threats to environment is the amendment to the Biodiversity Act, recently proposed. This is a horrifying decision that is a proposal pending before the standing committee of the parliament. This needs to be taken up as a challenge by all of us. It is because that amendment is going to wipe out the concept of biodiversity and is also suggesting that if any vested interest violates even the amended, diluted rules it can be settled with some monetary fine. This is to permit rich companies and the research organizations to enter into the regions of biodiversity and get easy access with easy sanctions, since the authorities stipulated under the Biodiversity Act are also changed to make the process devoid of local participation and linked to the ministries, ie. the politicians. These politicians are not following even the UN conventions and are changing the basis of such a powerful enactment as Biodiversity Act which was drafted with intensive and extensive inputs during last few decades with community participation across India. The expertise like Madhav Gadgil, Ashish Kothari, Dr Vandana Shiva had contributed a great deal. This is happening because certain corporatized institutions and persons like Baba Ram Dev needs to get an access and persons like him have already contracts with foreign companies which are getting entry even through backdoor, into every sector such as agriculture and in sectors like forest and biodiversity. This is going to create crisis for the humanity, not just the natural ecosystems. Hence we need to really monitor each and every decision whether it is related to EIA 2020 or the amendment to Forest Conservation Act of 1980 or Biodiversity Act. The legal regime for saving environment as a life support and promote its development through regeneration needs to be based on the Articles 48 and 49 of the Indian Constitution. This monitoring cannot be done just through legal battles but need mass struggles as social movements.

Why are the environmental and social activists facing the brunt?

While a large number of known and unknown social activists are committed to such a path to transformation in our ecological, economic and political vision they are facing the brunt. It is because they are the ones who are questioning the processes, plans and the results, when it comes to environmental destructions or displacements. However, we have to assert our democratic rights to criticize, to challenge and also to change the system. Today all such activists are blamed as terrorists or urban naxals since the autocratic government at the centre doesn't want any opposition. This is fascism against the activism, that can't easily be suppressed and oppressed through incarceration. We have continued to play a role in educating people against not only plans and projects supporting corporatization but the distorted paradigm of development with a warning from 1500 global scientists of the likely end of humanity.

We expect from the state governments to the three tier local self-governments not only to permit democratic, nonviolent resistance but to take the lead to represent the people who have protected nature through generations and to save humanity for ever. It is their lifestyle with simplicity and self-reliance that matters and gives all of us hope against the clock ticking with grave danger of irreversible genocide!

Government of India Budget 2022-23-A Snapshot Analysis

Dr. Mary George

Abstract

Indian economy, like any other economy at the global scenario, is an ailing one and is striving to reach back the path of sustainable development. The Budget presented before the Parliament on 1-2-2022 is an attempt to break the vicious cycle of low growth low development. The total size of the Budget 2022-23 is 39,44,909 crore which shows 4.63% growth over the revised budget of 2021-22. Budget estimate of Gross Domestic Product is Rs.2,58,00,000 crore with a projected growth rate of 11.1% over 2021-22 budget target. Deficit targets are higher than the Fiscal Responsibility and Budget Management Act mandate. Budget estimate of total budgetary expenditure is Rs. 39,44,909 crore , the apportioning of which among various expenditure heads show the priority of the government. This budget gives top priority to infrastructure. Massive public investment in infrastructure is expected to give a crowding in effect of private investment. A remarkable fiscal policy challenge taken up in the budget is Rs.1 lakh crore loan each to each state free of interest for a tenure of 50 years. This would improve the fiscal position of each state. Crypto currency threat is wisely tackled by accepting it legally while not making them legal tender. This may help to unearth large hidden transactions with huge tax impact.

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I. Introduction

Amartya Sen(2000), winner of Nobel Prize for economics(1998), asserts that “The success of a society is to be evaluated primarily by the substantive freedoms that the members of the society enjoy. Public policy influenced by the effective use of participatory capabilities by the public would enhance it.”¹. Under democracy the best weapon to fight inequality is the budget, provided it is used towards that end through short, medium and long term measures. Invariably any budget is annual and therefore its short-term focus cannot be overridden. Banerjee et al. observe that “ensuring macroeconomic stability has at least three elements to it: maintaining low and stable inflation, ensuring the consolidated fiscal deficit leaves enough space for private investment and ensuring that the CAD(Current Account Deficit) is sustainable and can be financed largely through stable capital inflows, to help insulate the economy from sudden swings in global sentiment”.² What the Economy Needs Now; 2019; Juggernaut Books). However, in the forward march towards reaching a 5 Trillion Dollar economy by 2025, the focus of the budget is largely shifted from the short-term measures to reduce inequality and poverty to long-term measures of infrastructure development. Finance Minister calls it AmritKal. Of course, among others, Deane (1989) observed that “the best way to promote national strength was to increase the national share of world trade and monetary resources and that the prime movers in the process of increasing the national share of industrial trade were the industrial, commercial and maritime branches of the economy”.³ Budget 2022-23, by fixing focus on world class infrastructure through heavy public investment, performs the role of a catalyst in promoting the prime movers of industrial, commercial and maritime sectors of the economy.

II. Budget Concepts

Budget Defined

A budget is defined as a description of the fiscal policies of the government i.e., taxation and public expenditure policies and the financial plans corresponding to these. Budget is a constitutional obligation. Article 112 of the Constitution insists that a statement of estimated receipts and expenditure of the central government has to be prepared for every financial year (April 1, March 31) This annual financial statement is titled “Budget of the Central Government” and the day of presentation is decided by the President. (Usually the first working day of February, at 11 o’clock, from 2016 (late, finance minister, Jaitley onwards))

Budget Deficits

- Revenue deficit is the difference between revenue receipts (RR) and Revenue Expenditure.

1 (Amartya Sen; Development as Freedom, 2000; p.18, OUP)

2 (Abhijit Banerjee, Gita Gopinath, Raghuram Rajan, Mihir S Sharma)

3 (Deane 1989, 7-8; from Amartya Sen; Development As Freedom)

- Revenue Expenditure is Revenue Expenditure on Revenue accounts + Revenue Expenditure on Capital account.
- Fiscal Deficit means total receipts – total expenditure. Total Receipt = Revenue Receipts + Capital Receipts
- Primary Deficit means fiscal deficit – Interest payments.
- Primary Revenue Deficit means revenue deficit – Interest payments.
- Effective Revenue Deficit = Revenue Deficit – Grants for creation of capital assets.

III. Budget at a GLANCE (Table & Analysis)

Budget at a Glance(2022-23) gives us a good understanding of the budget. It gives a sense of the sources of revenues, various heads of expenditures, total size of the budget, deficit trends, borrowing trends etc. given below is the table which presents the Central Budget (2022-23) at a glance.

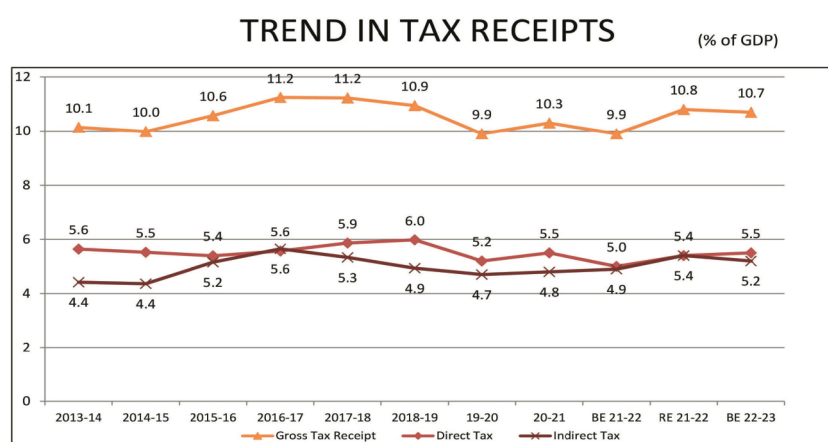
TABLE -1 BUDGET AT A GLANCE

BUDGET AT A GLANCE (2022-23) (Rs. in Crore)								
Item	Year	2020-21 Actuals	2020-21 Budget Estimate	% Change	2021-22 Revised Estimate	% Change	2022-23 Budget Estimate	% Change over RE
1 Revenue Receipts		1633920	1788424	9.49	2078936	16.2	2204422	6.03
2 Tax Revenue (Net to Centre)		1426287	1545396	8.35	1765145	14.22	1934771	9.61
3 Non Tax Revenue		207633	243028	17.0	313791	29.1	269651	-14.1
4 Capital Receipts		1875916	1694812	-9.7	1691064	-0.22	1740487	2.92
5 Recovery of loans		19729	13000	-34.1	21975	69.0	14291	-34.97
6 Other Receipts		37897	175000	361.8	78000	-55.4	65000	-16.66
7 Borrowing and other Liabilities		1818291	1506812	-17.13	1591089	5.59	1661196	4.4
8 Total Receipts (1+4)		3509836	3483236	-0.76	3770000	8.23	3944909	4.63
9 Total Expenditure (10+13)		3509836	3483236	-0.76	3770000	8.23	3944909	4.63
10 On Revenue Account of Which		3083519	2929000	-5.01	3167289	8.1	3194663	0.86
11 Interest payments		679869	809701	19.1	813791	0.5	940651	15.58
12 Grants in aid for creation Capital Assets		230865	219112	-5.1	237685	8.5	317643	33.64
13 On Capital Account		426317	554236	30.0	602711	88.77	750246	24.48
14 Effective Capex (12+13)		657182	773348	17.6	840396	8.7	1067889	27.1
Deficits								
15 Revenue Deficit (10-1)		1449599 (7.1)	1140576	5.1	1088352	4.7	990241	3.8
16 Effective Revenue Deficit (15-12)		1218734 (6.2)	921464	4.1	850667	3.7	672598	2.6
17 Fiscal Deficit 9-(1+5+6)		1818291 (9.2)	1506812	6.8	1591089	6.9	1661196	6.4
18 Primary Deficit (17-1)		1138422 (5.8)	697111	3.1	777298	3.3	720545	2.8
19 Gross Domestic Product		19481975 (RE)	22287379 (BE)	14.4	23214703 (RE)	4.1	25800000 (BE)	11.1% projected gr. over 2021-22

NB: Given in bracket are deficits in percentages to GDP

When we examine the table -1, row-1 revenue receipts show an increase of 6.03 % increase over the Budget Re Estimate of 2021-22. Row-2, tax revenue recorded a growth of 9.61% over the R.E. Both total receipts and total expenditures which show

the size of the budget are as usual, same as Rs.39,44909 crore each. While revenue deficit is 3.8% of GDP, effective revenue deficit is kept at 2.6% of GDP. Fiscal deficit, though 15th Finance Commission mandated it to be pegged at 5.5% of GDP, is 6.4% of GDP which hints at expected high level of borrowing. Row 19 gives a picture of Nominal Gross Domestic Product (GDP) growth which is projected at Rs. 2,5800000 crore and is expected to record a nominal growth rate of 11.1% growth over the budget estimate 2021-22.



IV. Trend in Tax Receipts.

Graph I

According to Shome (2017) “the tax effort of a country is important since, ideally only revenue collected should be spend on government expenditure, whether current or capital expenditure. Tax effort is generally measured by the tax/GDP ratio. The “buoyancy” of a tax reflects its revenue generating capacity. Tax/GDP ratio in India was between 16.55% to 18.79% during 2005-2009. But as graph-1 depicts the tax/ GDP ratio declined to 9.9% to 11.2% of GDP from 2013-14 to 2022-23. India has to be content with lower tax buoyancy until tax evasion is effectively controlled and the tax base is reasonably broadened. In order to improve tax/GDP ratio Shome puts forward suggestions like: 1. Remove uncertainty for tax payers; 2. Make tax administration accountable for its actions and decisions and ensure timeliness; 3. Accountability must be linked to minimizing infructuous demands and tracking recovery; 4. Tax evasion should be appropriately identified and followed; and 5. Move away from a static revenue target principle of revenue collection. Shome further points out that while tax/GDP ratio of developed economies move between 40% to 50% that of developing economies move between 20% to 42%.

4(Parthasarathy Shome; *Development and Taxation 60 Critical Commentaries*; Academic Foundation; New-Delhi; 2017; p. 109)

V. EXPENDITURE ON MAJOR ITEMS

As already noted total budgetary expenditure is Rs. 39,44,909 crore. How this amount is distributed between various items of expenditure is shown through the following table of expenditure on major items.

Table II
Expenditure of Major Items

	2020-2021	2021-2022	2021-2022	2022-2023	% Change
	Actuals	Budget Estimates	Revised Estimates	Budget Estimates	over the Previous Year
Pension	208473	189328	198962	207132	9.40
Defence	340094	347088	368418	385370	11.02
Subsidy -					
Fertiliser	127922	79530	140122	105222	32.30
Food	541330	242836	286469	206831	-14.82
Petroleum	38455	14073	6517	5813	-58.7
Agriculture and Allied Activities	134420	148301	147764	151521	2.17
Commerce and Industry	21554	34623	45833	53116	53.4
Development of North East	1854	2658	2658	2800	5.3
Education	84219	93224	88002	104278	11.85
Energy	32728	41747	48684	49220	17.9
External Affairs	14329	18155	16000	17250	-4.98
Finance	37038	91916	51904	21354	-76.7
Health	80026	74602	85915	86606	16.1
Home Affairs	96652	113521	115550	127020	11.9
Interest	679869	809701	813791	940651	16.2
IT and Telecom	32778	53108	28757	79887	50.4
Others	91998	87528	101864	113301	29.5
Planning and Statistics	3172	2472	4808	5720	131.4
Rural Development	214246	194633	206948	206293	5.99
Scientific Departments	22100	30640	28510	30571	-0.23
Social Welfare	37563	48460	44952	51780	6.85
Tax Administration ¹	146439	131100	195351	171677	30.95
of which Transfer to					
GST Compensation Fund	106317	100000	110795	120000	20.0
Transfer to States	211475	293302	285394	334339	13.99
Transport	216795	233083	325443	351851	50.95
Union Territories	47605	53026	57533	58757	10.81
Urban Development	46701	54581	73850	76549	40.22
Grand Total	3509836	3483236	3770000	3944909	13.25

Table -II reveals the basic trend and pattern of expenditure on various items, which also reveals the priorities of the Government. The budget accorded most important priority to long – term growth and gives a blue print for AmritKal which is futuristic, covering 25 years. Thus instead of focusing first in the short –term, priority is given to long – term.

Basic Focus on infrastructure:

Rangarajanetal points out that “the emphasis on expanding capital expenditure is a welcome directional change, particularly since 45.2% of the fiscal deficit is being devoted to capital expenditure. This should accelerate growth not only in the current year but also in the years to follow.⁵ R. Nagaraj opines that this years’ budget seeks to increase the share of public investment to 2.9 % of GDP from the 2.2% level last year. With grant- in- aid for state investments, the budget hopes to increase public investment

5 (The Hindu,2-2-2022. The editorial page article).

share to over 4% of GDP. The budget hopes to trigger a virtuous investment-led output and employment growth by arguing in favour of the “crowding –in” effect of public investment on private investment.⁶ Thus when we proceed with the analysis of the budget, we see high focus on infrastructure led growth. Budget is both growth oriented and pro-development and it lays down the foundation of the economy for the next 25 years or AmritKal – as Finance Minister calls it. In order to pump prime the economy, budget emphasized on the PM Gati Shakti National Master plan. Gati Shakti emphasizes growth and development driven by its 7 Engines Viz; Mass Transport, Waterways, Railways, Roads, Airports, Ports and Logistics Infrastructure. All this mean World class Infrastructure. The Government believes that when this aim is attained, then ease of doing business would improve and foreign direct investment would flow in and economic growth and development is accelerated.

Budget 2022-23 – Health

Everybody expected top priority to health owing to the pandemic impact on health and the pandemic driven economic slowdown in the economy. But health was side-lined. Finance Minister gave a new definition of health which included water, sanitation, nutrition and air pollution control. This new definition may be introduced to give a magnified view of health expenditure. National Health Policy 2017 demands the Centre to raise Health Expenditure/GDP ratio to 2.5% of GDP by 2022. In the budget, Finance Minister claims that Health Expenditure is 2.1% of GDP that the budget reached nearer to the National Health Policy mandate of 2.5% of GDP.

As per Table II, 16.1% increase is recorded in health expenditure as a percentage of total expenditure. The National Health Mission received only 7.4% increase over the last year’s amount out of the total budgetary expenditure. Health infrastructure is the most demanding sector. Similarly, heavy investment is needed to strengthen both rural and urban primary care. Covid -19 created a huge psychic impact on the mental balance of people across sex and age. Therefore, budget allowed 23 Telehealth centres to provide support for mental health services, which may be considered a welcome approach. Similarly, another laudable point is provision of tax relief to differently abled persons, whose parents, or guardians have crossed the age of 60 years.

Education

Table II-shows 11.85% increase in provision for education as a proportion of total expenditure. But this is only 0.40 percent as a percentage of GDP. Kothari Commission on Education 1986, recommended 6% of GDP on education. Narendra Modi in his maiden Union budget 2014-15, promised that he will initiate and speed up growth and development through “5 t’s-namely technology, training, trade, tourism and tradition”. If he has to accomplish his promise the priority accorded to education is infinitesimally small. World class infrastructure at the cost of health and education, is

⁶ (The Hindu, 2-2-22, article editorial page).

meaningless. Amartya Sen highlights the importance of intrinsic and instrumental qualities of education in empowering an individual to his/her optimum potential. India is known for its poor quality of education. Jean Dreze (2016), observes that low quality of schooling in India is a monumental injustice. Millions of children who have the ability to become doctors or engineers are more likely to end up making bricks or pulling rikshwas for want of decent education⁶. Budget has undermined education with the bombardment of GATI SHAKTI.PM @vidya will be expanded to 12 to 200 TV channels, to enable states in providing supplementary education in regional language for class 1 to 12 to accomplish 'One class One TV 7 channel' project. Another good promise is to strengthen over one lakh Anganvadies with added facilities. One digital University is yet another promise. Skilling of youth to empower them to enhance start-up culture to reach Aatma Nirbhar Bharat is forgotten.

Budget 2022-23 – Agriculture and Allied Activities;

When compared to 2021-22 budget, there is an increase of 2.17 percent in absolute figures, from Rs.148301 to Rs151521. As a proportion of total expenditure it is only 3.8% similarly, as percentage of GDP, it is 0.587% only. Foodgrains production which was mere 50.8 million tons in 1950-51 was raised to 307 million tons in 2022 and made India food self- sufficient by farmers of India. Farm crisis still continues. Farm bills related strikes substantiates that.. Budget 2018-19 made the promise of Doubling of farmers' income by 2022. It was in 2004 that Swaminathan Commission on Agriculture recommended 11/2 times the cost of production as minimum Support Price to farmers. Such promises have become mere rhetoric. A comparison of income data from 2 rounds of National Sample Survey 70th (2012-13) and 77th (2018-19) suggests that nominal income from all sources increased by 29.7% during the 5 year period under study. This shows an annual increase of nominal income by 4.3% per annum. Dalwai Committee had recommended an annual growth of 10% to double the income by 2022 which has not happened. Based on NSSS Survey mentioned above Centre For Budget and Management Accountability tried to find the real income growth during the said period adjusting for inflation and found that farm income of each declined from Rs. 6045.2 in 2012-13 to Rs. 5925 in 2018-19.

The budget seems to bring the three Farm Laws that are already repealed, brought back through the back door. Public private participation, co-investment model, blended capital etc are given prominence. New ventures like Kissan Drones and high tech agri-startups are encouraged. MSMES (micro small and medium enterprises) through public – private partnership are expected to promote high tech agriculture in the future. Chemical free natural farming – 5km wide corridor along the river Ganga, is a new initiative which may be counted as an ornamental change, because the world has moved from food deficient to food sufficient mainly through application of right type of chemicals in the right quantity at the right time, which along with irrigation and high-yielding variety seeds we called Green Revolution.

⁶ (Jean Dreze, 2016; Readings on the Economy, Polity and Society, (2016) Orient Blackswan)

⁷ (Jean Dreze, 2016; Readings on the Economy, Polity and Society, (2016) Orient Blackswan)

Manufacturing Sector

Contribution of manufacturing sector's share in GDP has been stagnating at around 15% of GDP for long. It was 13.1% in 2015-16 to - 7.2% in 2020-21. It was economic slowdown after demonetization which resulted in poor performance of manufacturing sector in 2015-16, whereas it was Covid-19 which accounted for negative growth in 2020-21. Basic reason for poor performance is the vicious cycle of no employment → no income → no demand → no production. "Make in India" initiative in 2014-15 was aimed to raise manufacturing share to 25% of GDP and to create 100 million jobs in the industry by 2022. But pandemic marred the dream. In addition, license raj still prevents the private entry. India tried to improve Ease of Doing Business Index. In 2014-15, it was 142 and improved to 63 by 2019-20 but of no use. In 2021-22 World Bank scrapped the Index commenting that the index was prejudiced politically across the countries.

Budget 2022-23 shows an increase in allocation to the manufacturing sector by 35.4% over the previous year. This is 2.9% of GDP. When grant-in-aid for the states is added this would be over 4% of GDP. When large public investment comes, it will work as a catalyst for private investment to crowd in is the principle behind high level of budgetary allocation even at the expense of health and education. Modi Govt's budget gave priority to 'make in India.' But India became a more import-dependent economy. eg: India's trade deficit with China has gone up from \$57.4 billion in 2018 to \$64.5 billion in 2021. The deficit figure would be bigger if imports from Hong Kong which is part of China is also added. However, according to NASSCOM's (National Association of Software & Services Companies) Strategic Review 2022, the IT industry crossed the \$ 200 Billion revenue mark. Fiscal 2022 has been a breakthrough year for the technology industry. At the same time when the total manufacturing scenario is concerned, picture has been gloomy with a mere 1.34 percent output growth as per revised data from National Statistical Office 2022.

Micro, Small and Medium Enterprises (MSMEs)

MSMEs, according to various rounds of National Sample Survey Organization reports, make the informal sector and provides 94% to 96% of the employment in India. When lock-down was imposed on 24th March at midnight without any prior warnings, all migrant workers got stranded homeless and full starved. IMF reported that in India 40 Crore workers are rendered unemployed during lock-down. Announcement of lock-down without any prior preparation in an informal based economy was proved a cruel tragedy. So far the economy has not recovered from the deadlock. However, with the budget Labour and Employment Ministry's expenditure increased from Rs. 13,306.5 in 2021-22 to Rs. 16,893.68 Crore in 2022-23. For the Rojgar Yojana, the Post Covid Package 2020, the amount increased from Rs. 3,130 to Rs. 6,400 in 2022-23.

Atmanirbhar Bharat Rojgar Yojana (ABRY) aims at (1) encouraging job creation (2) E-Shram Portal ie . creation of a data base for informal sector workers. When E-Shram portal is ready, Govt. has decided to pay the EPF ie, employees share of provident fund for new members with a salary of under Rs. 15,000 a month. E-Shram portal creation is given an increased outlay from Rs. 150 Crore in 2021-22 to Rs. 500 Crore in 2022-23. The Production Linked Incentive Scheme (PIL) is to improve the competitiveness of MSMEs. PIL is expected to create 60 Lakh new jobs, Increased production and exports.

Digital India

Digital India is given top priority to improve efficiency and employment across various sectors of the economy. Budget considers virtual assets as a taxable asset class. Introduction of a Central Bank digital currency, ie. digital rupee, using blockchain technology, issued by RBI in 2022-23, is announced. Though digital rupee would be introduced it would not be given legal tender quality since no country so far has dared to do that. Budget also announced a Digital University.

- E-passports, using embedded chip and futuristic technology to enhance convenience of overseas travel is perhaps the only step to give a comfort zone to NRIs. This is sheer neglect of them. According to IMF Reports out of the total international migrant workers 22% is from India. Out of Indian migrants Kerala stands first with 19% of the NRIs and are contributing between 32 to 35% of the GSDP of Kerala. Therefore, Kerala has an obligation to champion their cause.
- Digital budget gives emphasis on digital banking.
- Land record digitization.
- Facilitating payment platforms.
- Auctioning 5G spectrum.
- Building optical fibre network.

MGNREGS

(Mahatma Gandhi National Rural Employment Guarantee Scheme, 2005)

MGNREGS is a demand driven scheme guaranteeing 100 days of unskilled work to any rural household that wants it and its aims are : (1) to provide a life line and (2) creation of assets. In 2020-21 spending on MGNREGS was Rs.1.11 Lakh Crore. 11.1 crore workers were given jobs. In 2021-22 with Rs. 73,000 Crore, the scheme ran out of funds and additional allocation of 25000 crore was made. Though there was demand for work, because of the poor allocation only around 8 crore works were created .Though an additional Rs.25000 crore was sanctioned Rs 12300 crore worth wage still overdue. The dues Rs. 12,300 crore will be drawn from this years' allocation. In spite of that this Budget provides only Rs.73,000 Crore, 25% less than last year.

Parliamentary Committee on Labour Affairs in 2022, recommended to raise number of days from 100 to 200. Though a genuine demand no mention on that is found in the budget. Social activists demanded a rise in wages and allocation above 2 lakh crore for the programme. Further there was demand to extend this programme to urban sector. Such genuine demands got no recognition in the budget.

Social Justice Neglected

Though allocation of funds of Rs, 13,134.93 crore is 12% higher, a few important areas suffer in amounts.

(1) Scholarships for Higher Education for Young Achievers Scheme (SHREYAS) for SCs' allocation cut from Rs. 450 crore in 2021-22 to Rs. 364 Crore.

(2) Allocation for SHREYAS for OBCs and Economically background classes was reduced from Rs. 130 Crore last year to Rs. 80 Crore in 2022-23.

From 2015 onwards India ranks poorly in global rankings of income inequality. Oxfam's 'Inequality Kills' report, establish that the recovery in economic growth in India is K-Shaped because of the increasing income divide. Examples: India ranks 131 out of 189 countries in HDI in 2019-20; Hunger Index is 101 in 2021 out of 116 countries which was 52 in 2012 against 120 countries. Pew research study 2020 and 2021, PRICE report, RBI'S Periodic Consumer Survey etc. confirm these findings.

Gender Budgeting

For Gender budgeting Rs. 1,71,006 crore, is set apart which is 11.1% higher than that in last budget's contribution in absolute figures. But as percentage of total expenditure, it has declined to 4.3% from 4.4% of last year's budget. Gender budget has Part A and Part B. Part A of Gender Budget considers items where 100% allocation is for gender specific programmes whereas Part B consists of programmes of which, at least 30% of allocation must benefit women and children.

Part-A 'SAMARTHYA' flagship programmes

- 'Beti Bachao Beti Pado' and Pradhan Mantri Mathru Vandano Yojana are provided a hike in allocation from Rs .2432 crore to 2547 crore, ie. 4.7 percent. But criticisms are there that out of the amount earmarked last year 80 % was spent on advertisement.
- 'SABAL' and 'SAMARTHYA' together makes the umbrella scheme 'Mission Sakti' which aims to protect and empower women, attracted Rs. 3,100 crore, a

marginal increase of 100 crore.

Part B – gets Rs. 144,235.58 crore which is 84% of the total GB allocation.

- Pradhan Mantri Awas Yojana (Urban) and Deendayal Antyodaya Yojana (DAY); National Urban Livelihoods Mission (NULM) together gets Rs. 23,405.06 crores.
- Under Part A ‘SAMBAL’ scheme comes one stop centre, Vanitha Police Volunteer, Women’s helpline, Ujjawala, Widow Homes – etc lost their budget share from 587 crore in 2021-22 to Rs. 562 crore this year. On 33% reservation of parliament/Legislature seats for 48% of the population, the women, no mention though the government has absolute majority in Lok Sabha and Rajya Sabha. Then high sounding words on women empowerment is simply rhetoric.

VI. Tax Proposals

30% of tax on crypto-currency of any sort is the highest rate of tax in this budget. No change in income tax slabs is a welcome step when income divide under the pandemic is on the rise. 1% tax on virtual digital asset’s transactions is an innovative step to unearth hidden treasures in the form of digital currency with a tax buoyancy impact. Extension of tax incentives for start-ups for one more year would enthuse start-ups suffering under prolonged pandemic havoc. Extension of the commencement date for concessional tax for new entities by one year up to March 31, 2024 is also a Pandemic Impact and is welcome. Decision to tax Long term Capital gains at 15% is a belated step which accounted for income divide up to a large extend. Measures for improving tax compliance must be in line with what ParthasarathiShome ,the world known tax expert suggested.

VII. Fiscal Consolidation

FRBM Act 2003 mandates fiscal consolidation:1, to achieve Revenue Receipt revenue expenditure balance: and 2, to peg fiscal deficit at 3% GDP (Centre and states)Budget 2022-23 projects narrowing of the Fiscal deficit at 6.4% of GDP in 2022-23 from 6.9% Of RE. Of 2021-22, which is higher than Rs. 5.5% FD recommended by the 15th Finance Commission. Medium-term Fiscal Policy Statement asserts that FD will be kept at 4.5% of GDP by 2025-26. That implies an average rate of reduction of 0.63 percentage points per year in the next 3 years.

VIII. What Kerala Gets

Though Kerala contributes to the foreign exchange reserve of India, through the exports of spices, fisheries tourism and remittances, in the case of devolution of resources, the State does not get a due share because of the faulty and flexible norms adopted by Finance Commissions of various periods. In this budget, this negligence is

more visible than in any other. 1 Lakh crore 50 year no interest loan is perhaps a bonanza that the state gets in this budget since the state is deep in fiscal crisis. But FM could also extend GST Compensation for at least two more years, counting pandemic down turn in revenues. AIIMS (All India Institute of Medical Science) demand is there for long from Kerala. This is undermining the genuine demand of a state where health and education index are always high. Thanks to the priority given by the people, the state and the private sector. It is imperative to remember that “The shift of Indian federalism from co-operative to combative has been one of the major changes in Indian polity since the Narendra Modi government assumed power at the center with a brute majority.⁸

IX. Concluding Remarks:

Shortly after the budget, the economic scenario is not august. “Manufacturing actually shrank in December, with capital goods (reflecting investment activity) contracting by a sharp 4.6% from 2020 levels. Consumer durables found a fourth consecutive month of contraction while even non-durables tanked after a few months of insipid growth. With high commodity costs cramping producers, consumers still in cautious mode and the threat of a steep fuel price hike booming after March 10’s election results, the going is not likely to get smoother any time soon.⁹ In short, “a democracy cannot survive without civic virtues.....The political challenge for people around the world today is not just to replace authoritarian regimes by democratic ones. Beyond this it is to make democracy work for the ordinary people¹⁰ No doubt this budget has a long term perspective and so it could not be undermined. At the same time only through short and medium term paths that long- term goals can be achieved. It is good to remember that “a bird in hand is worth two in the bush”

8 (Mukund P Unni; Advocate, Supreme Court.)

9 (The Hindu Editorial, 14/2/022)

10 (Fiedel Valdez Ramos, 1998; “Democracy and the East Asian Crisis”; inaugural address at the centre for democratic Institutions, Australian National University Canberra November 26, 1998, p.2)

Russia and Ukraine: United by History, Divided by Geo-politics

Prof. Sanjay Kumar Pandey and

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Abstract:

The evolving conflict between Russia and Ukraine, with war looming over the horizon, is the most serious crisis that Europe is witnessing in post-Soviet times. The two countries share a complex relationship of shared history, religion, culture, and language, but have very divergent interpretations of these events. Great power competition and geopolitics have only complicated the situation further. The article seeks to analyse the historical antecedents of the conflict as well as the present geopolitics around it.

Introduction

Russia straddles Europe and Asia and has shared historical and cultural experiences with both. With its vast hydrocarbons and other natural resources (world's largest energy supplier), noteworthy cultural and technological achievements (in military, missile and space) the country played an important role in World politics as a Great Power in the past. In the Post-Soviet times because of economic problems/backwardness, its power and prestige have been undermined. With the expansion of NATO in the former Communist countries (e.g. Poland), and the possibility that Ukraine and Georgia, (which were part of the Russian Empire and the Soviet Union till 1991) might join it, Russian leaders feel their country's security will be compromised.¹

Ukraine, which emerged as an independent country in 1991 after the Soviet disintegration, is the second-largest country in Europe in terms of territory and seventh largest in population (Russia is number one in both respects).² Its fertile lands are naturally suited to grain production, hence the country is, along with the U.S. and Australia, one of the world's top wheat exporters and has often been referred to as the 'Breadbasket of Europe' (Breadbasket of Russia in past).³ During the Soviet period Ukraine witnessed the development of an advanced industrial base, which included ferrous metals, transportation equipment, heavy machinery, chemicals, food products, and other goods. However, the country faced serious economic crises in post-Soviet times. Its economy contracted annually between 9.7 and 22.7 percent in 1991–1996. There was hyperinflation and a steep decline in industrial production.

The GDP shrank by almost half from 1990 to 1994. Positive economic growth resumed only after 2000. The budget deficit was, at 14.4 percent of GDP, exceptionally large. In 1991 Ukraine was one of the poorest Soviet republics.⁴ At present, in nominal GDP terms, it is 23rd in Europe, and in per capita income it is the poorest in the region.⁵

Ukraine had to grapple with issues of national identity and foreign policy after independence. It has been torn between those who favour its integration with the West European security architecture (i.e. NATO) and political economy (i.e. European Union) and those who prefer closer cooperation with the Slavic 'big brother' Russia. In fact some of the problems that we witness today are rooted in history and modern Ukraine's search for identity.

Geo-strategy

Ukraine's strategic importance is due to several factors. First as a NATO-friendly state, despite not being a member, and on the Russian border, its significance for Euro-Atlantic security is acknowledged by NATO (NATO, 2019). Second, as a Black Sea littoral state, it has access to the Mediterranean Sea, which is critical to trade. Incidentally, Black Sea has an important Russian naval base, and access to the Black Sea gives scope for power projection in the entire region. Third, in the Post-Soviet era Ukraine, along with Georgia has had difficult and turbulent ties with Russia, especially

² Makuch, Andrij, Hajda, Lubomyr A., Yerofeyev, Ivan Alekseyevich, Stebelsky, Ihor, Kryzhanivsky, Stepan Andriyovich and Zasenka, Oleksa Eliseyevich. "Ukraine". Encyclopedia Britannica, 29 Jun. 2021, <https://www.britannica.com/place/Ukraine>.

³ Statista, Principal exporting countries of Wheat, flour and wheat products from 2014/2015 to 2021/2022, <https://www.statista.com/statistics/190429/principal-exporting-countries-of-wheat-flour-and-products/>, see also Volodymyr Verbyany and Agnieszka de Sousa (2021), One of the Most fertile Nation want to feed the World, 21 June, 2021, <https://www.bloomberg.com/news/articles/2021-06-20/global-food-supply-ukraine-soviet-union-s-breadbasket-plan-to-feed-the-world>.

⁴ Pekka Sutela (2012), The Underachiever: Ukraine Economy Since 1991, Carnegie Endowment for Peace, <https://carnegieendowment.org/2012/03/09/underachiever-ukraine-s-economy-since-1991-pub-47451>

⁵ Poorest countries in Europe (2022), <https://worldpopulationreview.com/country-rankings/poorest-countries-in-europe>.

since 2014 annexation of Crimea.⁶ During Soviet times and afterward much of Russia's oil and gas has been exported to Europe through pipelines crisscrossing Ukraine.⁷ It is a source of revenue, but also a bone of contention with the great northern neighbor Russia.

Shared Past, Differing Perceptions

Benedict Anderson in his 1983 publication *Imagined Communities: Reflections on the Origin and Spread of Nationalism* described the nation as imagined because it creates a bonding among people who often do not know each other. They imagine belonging to the same collectivity based on common history, traits, beliefs, and attitudes. Though the nation is an imaginary construct, countless people have willingly sacrificed themselves at its alter according to Anderson. Perception plays an important role in this imagination.⁸ It is the divergent understanding of historical events which creates problems between Russia and Ukraine.

Ancient: Ukraine's importance for Moscow is not just strategic, as it is located on Russia's border with Europe, but also civilizational. Vladimir Putin in his article "On the Historical Unity of Russians and Ukrainians"⁹ claims that "Russians and Ukrainians were one people – a single whole" with "essentially the same historical and spiritual space". Students of Russian history know well that the roots of the first eastern Slavic civilization and state (Russia, Ukraine, and Belarus are its offshoots) are traced to Kyivan/ Kievan Rus (882-1240). It adopted Orthodox Christianity in 988 A.D. under Prince Vladimir (Volodymyr) and emerged as a powerful state under the Rurik dynasty in the 10th and 11th centuries.¹⁰

Medieval: The rule of the Rurikid princes was weakened by the Mongol invasion of 1238 - 40. The end of more than two centuries of 'oppressive' 'Tatar yoke' (the popular term for Mongol rule) was followed by the rise of Moscow princes.¹¹ The growth of Moscow grand princes, especially Ivan III and Ivan IV, led to the creation of a centralized and autocratic state on its path towards the conquest of all the Russian lands.¹² According to Russian nationalist historiography, henceforth, Muscovite Rus became the focal point of Eastern Slavic civilization and state/ imperial system. The

⁶ Christopher Kernan Schmidt (2020), Evaluating Russia's Grand Strategy in Ukraine, June 6 2020, <https://www.e-ir.info/2020/07/06/evaluating-russias-grand-strategy-in-ukraine/>.

⁷ Josh Holder, Karl Russell & Stanley Reed (2022), How a Ukraine Conflict Could Reshape Europe's Reliance on Russia, *The New York Times*, Feb. 15, 2022.

⁸ Benedict Anderson (1983), *Imagined Communities*, Verso: London.

⁹ Vladimir Putin (2021), On the Historical Unity of Russians and Ukrainians, 12 July 2021, <http://en.kremlin.ru/events/president/news/66181?fbclid=IwAR1FPurpeKAsfQh76xvh-MuRGwn2NM1q6y--3uYmA9WfHGFZhupSOHtg7No>

¹⁰ BBC (2019), Russia Profile: Time line, BBC, 26 April 2019, <https://www.bbc.com/news/world-europe-17840446>

¹¹ Michael Vogel, The Mongol Connection: Mongol Influences on the Development of Moscow, <http://19799-Article%20Text-43900-1-10-20150825.pdf>

¹² Jeffery Neal (2006), The Rise of Muscovy, <https://wou.edu/history/files/2015/08/Jeffery-Neal.pdf>

Ukrainian nationalist historiography counters that much of present-day Ukraine (northwestern and central) remained outside the Russian state as it became a part of the Grand Duchy of Lithuania and later of the Polish Lithuanian Commonwealth after mid 14th century. Thus it followed a distinct historical-cultural experience, a different trajectory.

Ukraine witnessed multiple political and cultural influences which took it away from Russia. As a result a large number of Poles, Armenians, Germans, and Jews had settled in Ukrainian cities and towns, creating a very mixed culture and way of life. But the Ukrainians, mainly due to their Orthodox faith, had to suffer exploitation and legal disabilities under the Catholic Polish feudal lords.¹³

Ukraine emerged as a modern state with the rise of a new martial community - the Cossacks (from the Turkic *kazak*, meaning “adventurer” or “free man”) - in the 15th century. They included hunter-gatherers, as well as free peasants escaping serfdom. The industrious and warlike Cossacks created a strong democratic military polity in the 16th century. It had a general assembly (*rada*) as the supreme authority and elected officers, including the commander in chief, or ‘hetman’. The nascent Cossack state was drawn into the Poland - Ottoman conflict with fluctuating fortunes.

The most important event was the defeat of Poland in 1648 by the Cossacks under the leadership of Hetman Bohdan Khmelnytsky. It led to the foundation of an independent state with a regular army, taxation, and administrative structure. However, surrounded by the Poland and the Ottoman Empire, Bohdan Khmelnytsky had to seek the protection of the Russian Tsar. The Treaty of Pereaslav in 1654 brought Ukraine into the Russian Empire. Khmelnytsky wanted autonomy for his people but the end result was the devastation of their lands and subjection to Moscow Tsars, who established rule over the territory east of the Dnieper and undermined the autonomy and freedom of the Ukrainians.¹⁴ The Agreement is interpreted differently by the Russians and the Ukrainian nationalists. The former consider it as legitimization of Russian rule, the latter on the other hand interpret it as recognition of Ukraine’s autonomy.

The semi autonomous Cossack state came under increasing Russian political and linguistic-cultural domination during the 18th century. Some of the Ukrainian Hetman resisted, even revolted against the Russian policies, but to no avail. This fact is not appreciated by Putin and other Russian nationalists. The final partition of Poland in 1795 led to the incorporation of the Polish held Ukrainian territories into the Tsarist Empire. Poland ceased to exist as an independent entity on the political map of Europe for more than 120 years¹⁵

¹³ S. K. Pandey (2022), Russia and Ukraine: Shared past, differing perceptions and geopolitics, *The Week*, January 24, 2022.

¹⁴ Britannica (2021), "Bohdan Khmelnytsky". *Encyclopedia Britannica*, 12 Aug. 2021, <https://www.britannica.com/biography/Bohdan-Khmelnytsky>.

¹⁵ Radosław Żurawski vel Grajewski, Poland in the Period of Partitions 1795–1914, https://dspace.uni.lodz.pl/xmlui/bitstream/handle/11089/16589/095_125_grajewski.pdf?sequence=1&isAllowed=y

Soviet Period: The collapse of the Tsarist Empire in 1917 allowed Ukraine two years of independent existence before it was absorbed by the Bolshevik state. Many Ukrainians believe that the Soviet policies led to more than 3 million casualties during Holodomor famines in 1932-33. It is now established that the famine was caused by the Soviet leader Joseph Stalin's policy of 'Collectivization' of agriculture in 1929. The peasants were forced to transfer their land, and personal property to collective farms. The wealthier peasants, so-called kulaks, and others who opposed were deported to Siberia, where many perished. Collectivization led to a decrease in food grain production, and food shortages. It also caused many peasant revolts in Ukraine.¹⁶ The Soviet authorities denied the tragedy of Holodomor for more than half a century. But it created a scar in the collective memory of the Ukrainians, more so after independence.¹⁷ Another grievance of the Ukrainian nationalists is that during the Tsarist and Soviet rule the Ukrainian language and culture was mostly neglected.¹⁸

During the Second World War some Ukrainians initially cooperated with the Nazis in the hope of independence from the Soviet Union and due to memories of maltreatment by Soviet authorities. In the post-independence Ukraine there is discord regarding the legacy of World War II and the actions of these Ukrainian nationalists, who are hailed as heroes by some and condemned as traitors by others.¹⁹ However, the Nazi mistreatment led to a rapid change in their attitude. What is undeniable is that more than 4.5 million Ukrainians had joined the Soviet Red Army to fight Germany and nearly 7 million sacrificed their lives for the Fatherland. The Ukrainian 'collaborators' were harshly dealt with by the Soviet authorities. Many times, the memories of real/perceived discrimination and of persecution become very potent elements leading to alienation and radicalization of communities.

The divergent perception of historical events and personalities is most sharp when it comes to popular perception of Stalin and the Holodomor. According to one survey 60% Ukrainians hold him directly responsible for the death of millions of innocent people. In Russia, on the other hand, 52% see him in positive light while another 9% as a wise and capable leader. 55% of Ukrainians consider the Holodomor as an artificial famine unleashed by the Soviet authorities against Ukrainians, while just 5% percent of Russians feel so. In 2006 the Ukraine parliament passed a resolution characterising the Holodomor as a genocide against the "Ukrainian people". Thus, the famine represents Ukraine's long struggle against Russian/ later Soviet, colonisation and domination.²⁰

¹⁶ Applebaum, Anne. "Holodomor". Encyclopedia Britannica, 12 Nov. 2019, <https://www.britannica.com/event/Holodomor>.

¹⁷ BBC (2022), Ukraine's great famine memories fuel resentment of Kremlin, 12 February 2022, <https://www.bbc.com/news/world-europe-60353677>

¹⁸ G. Shevchuk, Cultural policy in the Ukrainian Soviet I I Socialist Republic, <https://unesdoc.unesco.org/ark:/48223/pf0000047391>.

¹⁹ Maria Danilove (2013), Ukraine divided over legacy of Nazi fighter, <https://www.timesofisrael.com/ukraine-divided-over-legacy-of-nazi-fighters/>

²⁰ Ukraine and Russia: two countries whose memories of a 'shared' past could not be more different, 28 January, 2022, <https://theprint.in/world/ukraine-and-russia-two-countries-whose-memories-of-a-shared-past-could-not-be-more-different/814875/>

In 1954, on the occasion of the three hundredth anniversary of Ukraine's accession to Russia, the then Soviet leader Nikita Khrushchev (who had been the First Secretary of the Ukrainian Communist Party), gifted the region of Crimea, which has been part of Russia since 1783, to Ukraine.²¹

Incidentally, many Russians describe Ukraine as 'Little Russia' (Malo Russia). The Ukrainian nationalists, who emphasize their unique and distinct identity, are outraged by such descriptions. Thus the continuing Russo-Ukrainian conflict, euphemistically referred to as the "Ukraine crisis," has ideological underpinnings, including a long held Russian hegemonic patronizing opinion about the Ukrainians as "younger brothers", needing guidance and fit to be reprimanded for any wrongdoing.²²

Gorbachev Reforms and Ukraine

Soviet leader Mikhail Gorbachev's Perestroika programme included domestic reform as well as a new foreign policy approach.²³ Gorbachev didn't make any effort to stop the collapse of communist regimes in Europe, and even agreed to the reunification of East and West Germany after the 1989 fall of the Berlin Wall. In return he received Western assurance (verbal) that NATO wouldn't expand eastward. Gorbachev faced his toughest challenge from the nationalist reassertion and separatist demand in many of the Soviet republics, Baltics, Chechnya, and Ukraine. It adopted the Declaration of State Sovereignty on 16 July 1990, four days after Russia. In fact the Ukrainian party elites played a decisive role in Soviet dissolution. Their Russian counterparts did not have an alternative which could satisfy the Ukrainian nationalists, which precipitated the fall of the Soviet Union'.²⁴

Geopolitical Contestation

US – West Ambivalence towards Ukraine

Some of the blame for the Ukraine crisis can be attributed to the policy of NATO enlargement, and the US and European attempt to wean away Ukraine from Russia and integrate it into the West. What is also true is that NATO and EU membership is supported by majority of the pro-democracy movements in Ukraine.

Taras Kuzio succinctly describes the ambivalent and complex European – Ukrainian relations. The complex ties have been marked by cycles of Disinterest,

²¹ BBC (2014), Ukraine Crisis: Does Russia have a case?, <https://www.bbc.com/news/world-europe-26415508>, see also Krishnadev Calamur (2014), Crimea: A Gift To Ukraine Becomes a political flash point, February 27, 2014, <https://www.npr.org/sections/parallels/2014/02/27/283481587/crimea-a-gift-to-ukraine-becomes-a-political-flash-point>

²² Riabchuk, Mykola. "Ukrainians as Russia's Negative 'Other': History Comes Full Circle." *Communist and Post-Communist Studies* 49, no. 1 (2016): 75–85.

²³ Mikhail S. Gorbachev (1988), *Perestroika: New thinking for our country and the World*, HarperCollins.

²⁴ Serhii Plokhy, *The Last Empire. The Final Days of the Soviet Union*, New York 2014, 394.

Partnership and Disillusionment. In the initial years after Soviet disintegration, the West was focused on Russia, resulting in Disinterest in Ukraine. The neglect continued until 2007 when the EU started negotiations with Ukraine for an Association Agreement, Ukraine joined the WTO in 2008, and EU launched the Eastern Partnership in 2009. Ukraine enjoyed fruitful Partnership with the US and NATO during the second half of the nineties which turned to Disillusionment during 2000 – 04. With the Orange Revolution in 2004 and Yushchenko's election a new era of positive Partnership started which opened the possibility of Ukraine joining NATO. There again came a period of drift and Disillusionment due to Ukraine's political uncertainty (feuding among Orange leaders) and the return of Yanukovich as the Prime Minister and his subsequent election as President in 2010. In any case the Obama administration was more focused on economy and other pressing foreign policy challenges. US Disinterest was precipitated by Ukraine fatigue and the democratic decline under Yanukovich (2010 - 13), including allegations of fraud in the 2012 parliamentary elections. It further isolated Ukraine from Europe and NATO.²⁵

Putin's Project

In 2005 Vladimir Putin claimed, The breakup of the Soviet Union.”²⁶ In December 2021 a bill was introduced in the Russian Parliament to that effect. Putin also maintains that the collapse of the Soviet Union marked the end of “historical Russia” and is a “tragedy” for “most citizens.”²⁷ Hence his foremost objective has been to reestablish Russia as a great power and to regain primacy in the post-Soviet space. Hence his foremost objective has been to reestablish Russia as a great power and to regain primacy in the post-Soviet space. His pet project, the Eurasian Economic Union to reintegrate the former Soviet states, is aimed at partly negating the Soviet disintegration. That would be incomplete without Ukraine.²⁸ Putin also believes that the United States and Europe are trying to harm Russian interests and minimize its influence in the post-Soviet space, especially Ukraine, and bring them into NATO and perhaps European Union. Hence the tussle between the two over this important country. Putin is particularly hostile to concepts like humanitarian intervention, democracy promotion and regime change (so called colour revolution) in the Post_Soviet countries, e.g. Georgia (2003), Ukraine (2004 and 2013) and Kyrgyzstan (2005 and 2010).²⁹

²⁵ TarasKuzio (2012) Ukraine's relations with the West since the Orange Revolution, *European Security*, 21:3, 395-413,

²⁶ BBC (2005), Putin deplores collapse of USSR, <http://news.bbc.co.uk/2/hi/4480745.stm>, see also Andrew Kuchins (2005), *Europe's Last Geopolitician?*, Carnegie Endowment for International Peace, May 09, 2005.

²⁷ Putin says he drove taxi after Soviet fall to make ends meet, *Aljazeera*, 13 December 2021, <https://www.aljazeera.com/news/2021/12/13/a-ride-with-vladimir-putin-says-he-drove-cab-after-soviet-fall>

²⁸ Malashenko Alexey (2014), The Problem for the Eurasian Economic Union are just starting, *Carnegie MoscowCenter*, 5 June 2014. See also Lapenko, Marina (2014), *The Ukrainian Crisis and its Effect on the Project to Establish a Eurasian Economic Union*, *Connections*, Winter 2014, Volume XIV, Number 1.

²⁹ Vladimir Putin (2007), *Speech and the Following Discussion at the Munich Conference on Security Policy*, <http://en.kremlin.ru/events/president/transcripts/24034>.

Despite Putin's unqualified support for US War on Terror in the wake of 9/11 attacks, Russian sensitivities were repeatedly ignored by US and NATO on multiple issues: the unilateral abrogation of ABM in 2002³⁰ (seen by Moscow the move as a mistake and also a potential threat to its nuclear deterrence capability); the U.S. war in Iraq (an old Russian ally) in 2003 despite strong objection by Russia and China,³¹ and; NATO expansion of 2004 bringing in not just Bulgaria, Romania, Slovakia, Slovenia but the former Soviet republics of Estonia, Latvia and Lithuania.³²

The NATO expansion and Orange Revolution in 2004 were the proverbial last straw. Russian leaders since the mid-1990s have consistently opposed NATO enlargement. The "illegal overthrow" of Ukraine's democratically elected and pro-Russian president rattled Putin. He feared that the Ukraine would now move closer to US – EU and that in future the Russian naval base in Crimea would be replaced by NATO. He responded by taking Crimea and creating disturbance in Eastern Ukraine with an objective of scuttling its prospect to join NATO/EU.³³

Russia under Putin also wants better bargaining positions vis a vis its continental neighbors - the EU to the west and China to the east. With Ukraine as part of the "single economic space," it would have a critical mass of 200 million consumers, with Ukraine supplying almost a quarter. At the same time, Putin continued to reiterate the concept of a "Greater Europe from Lisbon to Vladivostok," which he first outlined in 2010 and has reiterated since.³⁴

However, the Europeans failed to appreciate the Russian sensitivity about its near abroad, the shared neighbourhood. They ignored Russian warning and were smug in their belief that these country's were keen to join Europe. No wonder they don't have a viable strategy to respond to Russian intervention.³⁵

³⁰ Terence Neilan (2001), Bush Pulls Out of ABM Treaty; Putin Calls Move a Mistake, *The New York Times*, December 13, 2001.

³¹ Peter Ferdinand (2013), The Positions Of Russia And China At The Un Security Council In The Light Of Recent Crises, March 2013, [https://www.europarl.europa.eu/RegData/etudes/note/join/2013/433800/EXPO-SEDE_NT\(2013\)433800_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/note/join/2013/433800/EXPO-SEDE_NT(2013)433800_EN.pdf). See also Thomas Ambrosio (2005), The Russo-American Dispute over the Invasion of Iraq: International Status and the Role of Positional Goods, *Europe-Asia Studies*, Dec., 2005, Vol. 57, No. 8 (Dec., 2005), pp. 1189-1210.

³² NATO Update (2004), Seven New Member Join NATO, <https://www.nato.int/docu/update/2004/03-march/e0329a.htm>

³³ John J. Mearsheimer (2014), Why the Ukraine Crisis is the West fault, *Foreign Affairs*, September/October 2014.

³⁴ Dmitri Trenin (2014), The Ukraine Crisis And The Resumption Of Great-Power Rivalry, *Carnegie Moscow Center*, July 2014.

³⁵ Neil MacFarlane & Anand Menon (2014), The EU and Ukraine, *Survival*, 56:3, 95-101.

One reason behind the timing of the present crisis is perhaps the realisation in Russia that the Western alliance is weak and vulnerable after its humiliation last year in Afghanistan, and American foreign policy's preoccupation with countering China, diplomatically and militarily. Putin, faced with charges of corruption and kleptomania, might be aiming to shore up his domestic support with a spectacular foreign policy success.³⁶ As the biggest energy supplier to Europe Moscow wants to control the pipelines which pass through the territory of Ukraine. The pipelines are at the center of the Geopolitical drama.³⁷ The Russian pipeline to Germany is seen by US and others as Moscow's undue leverage and hence is a cause of discord in the Western bloc.³⁸ Thus energy is also a factor in the Russia-Ukraine crisis.³⁹ Russia's Sevastopol Naval Base, located in the Crimean Peninsula, is the main base of its Black Sea Fleet. Sevastopol is the headquarter of Russia's Black Sea fleet and is its only warm water base. Russia is concerned about the future of the base, though, after the Soviet dissolution, Moscow acquired the lease of the base at Sevastopol in 1997 (extended up to 2042).⁴⁰

Ukrainian Response

Despite their alleged Pro-West leanings not many Ukrainians were in favour of membership of European organizations (NATO and EU) prior to 2014. But they wanted their country to have strategic autonomy in choosing its external policy and were keen to emphasize their unique and distinct identity. Hence they are uncomfortable with Vladimir Putin's attempt to reintegrate the former Soviet republics in Eurasian Economic Union. Before the Crimean crisis, nearly 40 percent Ukrainians preferred the EU to Russia's Eurasian Economic Union, which was favoured by around 30 percent (according to the Democratic Initiatives Foundation in Ukraine).⁴¹ The EU, for them, represented prosperity, while the association with Russia would have political cost, i.e., domination by Russia. In November 2013 Yanukovich, seen as pro-Russia, stopped negotiations for an association agreement with the EU and decided to join an economic union with Russia. Considered very corrupt his action led to countrywide

³⁶ Simon Tisdall (2022), The edge of war: what exactly, does Putin wants in Ukraine, 12 February 2022, <https://www.theguardian.com/world/2022/feb/12/russia-ukraine-what-does-putin-want>

³⁷ Jen Kirby (2022), The pipeline at the center of geopolitical drama, 14 January 2022, <https://www.vox.com/22881709/nord-stream-2-russia-ukraine-germany-united-states-cruz>

³⁸ Liz Cookman (2022), Nord Stream 2: Why Russia's pipeline to Europe divides the West, 25 January 2022, <https://www.aljazeera.com/news/2022/1/25/ukraine-russia-what-is-nord-stream-2-and-why-is-it-contentious>

³⁹ Rachel Martin & Jackie Northam (2022), Natural gas is playing a major role in the Russia-Ukraine crisis, <https://www.npr.org/2022/02/10/1079792184/natural-gas-is-playing-a-major-role-in-the-russia-ukraine-crisis>

⁴⁰ Alan Yuhas and Raya Jalabi (2014), Ukraine crisis: why Russia sees Crimea as its naval stronghold, 7 March 2014, <http://www.trainingsnews.com/201718-eurias-fellowship-programme-for-international-researchers/>

⁴¹ Mentioned in S. K. Pandey (2022), Russia and Ukraine: Shared past, differing perceptions and geopolitics, *The Week*, January 24, 2022.

popular protests resulting in Yanukovych's ouster and escape. An enraged Putin annexed Crimea on the pretext of protecting ethnic Russians of the peninsula.⁴² Most Russians consider Crimea as their own - 80 percent of its population is Russian speaking and it was gifted by Russia to Ukraine in 1954. In a Moscow organised referendum in March 2014 overwhelming majority voted in favour of joining Russia. What further alienated Ukrainians was Russia's trade war, banning many Ukrainian exports.

After the Crimea incident, the public opinion changed.⁴³ In June 2017, pro-NATO sentiment stood at record high- 47% (a nationwide polling conducted by the Ilko Kucheriv Democratic Initiatives Foundation (DIF) jointly with the Razumkov Centre testify to this).⁴⁴ According to an opinion survey conducted by International Republican Institute in November 2021, 58 percent of Ukrainians support joining the EU, while only 21 percent prefer Customs Union with Russia, Belarus, and Kazakhstan (54 percent supported joining NATO).⁴⁵ They believe that the European option would be better for their country's security and economic interest.

Conclusion

The current Ukraine crisis has deep historical, cultural, geopolitical, and geoeconomic antecedents. As the origin place of Eastern Orthodox Slavic civilization, Ukraine and Kiev hold special significance for Russia. Putin wants to exclude outside powers and reintegrate the former Soviet States into Russian-sponsored Eurasian Economic Union. He also wants to reassert his country's global status and pre-eminence in the post-Soviet space, and prevent any further NATO expansion in its sphere of interest. Russia has serious grievances against US and the West because of consistent neglect of its key concerns and sensitivities – NATO expansion, support for regime change in Kiev, etc. The U.S. approach toward Russia reflects an old mindset and an inadequate understanding of Russia. Ukraine's geo-strategic location between Russia and Europe, and its desire to assert its distinct identity and pursue an independent foreign policy course has put it in a difficult situation. Identity politics, differing perceptions of the historical past and cultural inheritance, and present-day geopolitics have created a dangerous cocktail. Delicate balancing between the core interest of various stakeholders can lead to an acceptable solution, otherwise, the escalation may lead to the biggest catastrophe of Post-Cold War Europe.

— This research article is based on an earlier publication by Sanjay Kumar Pandey .
"Russia and Ukraine: Shared past, differing perceptions and geopolitics",
The Week, 24 January 2022.

<https://www.theweek.in/news/world/2022/01/24/russia-and-ukraine-shared-past-differing-perceptions-and-geopolitics.html>

⁴² Jacob Lassin And Emily Channell-Justice (2021), Why Putin Wants 'Little Russia', 29 December 2021, <https://www.thestatesman.com/opinion/putin-wants-little-russia-1503034333.html>.

⁴³ Olexiy Haran, Mariia Zolkina (2017), The Demise of Ukraine's "Eurasian Vector" and the Rise of Pro-NATO Sentiment, PONARS Eurasia Policy Memo No.458 February 2017.

⁴⁴ Ruslan Kermach (2017), Attitudes Of Ukrainians Towards NATO, Ilko Kucheriv Democratic Initiatives, No. 30, 2017. <https://dif.org.ua/uploads/pdf/6298611155b8943d2b2c766.09442861.pdf>

⁴⁵ International Republican Institute (2021), IRI Ukraine Poll Shows Support for EU/NATO Membership, Concerns over Economy and Vaccines for COVID-19, 17 December 2021.3.Html.

The Performers' Tragedy in India : The 2012 Amendment and its Aftermath

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Abstract

In the Indian context, the 2012 amendment to the Copyright Act was an honest attempt to protect performers' rights. After the said amendment, producers are no longer allowed to keep all the royalties to songs, lyrics or other works of arts and these rights will have to be shared with the artist who created them. Though the amendment has moved the Act away from the traditional Anglo Saxon moorings to the European style of droit d'auteur based human rights, the fact remains that the legal structure for protection of these rights in India is feeble when compared with laws in many other countries. The artistes in our country are often victims of oral trust and contracts based on the word of mouth, misrepresentation, manipulation and fabrication of documents as well as wrong statement of accounts. The brunt in this regard is largely borne by those in the lower rung of the ladder – accompanists, folk artists and the like. They even have to bear the ignominy of seeing somebody else take credit for the work besides problems like non payment of dues. Even the super success of a song need not bring in financial profits to the singer. Add to these the problems caused by development of technology making it possible to fix a live performance and the picture is complete. The article highlights the crying need for delinking performers' protection from copyright protection and treating it as an independent IPR. Needless to say, performers must only have right over that part to which they alone have uniquely, nay distinctively contributed – their voice and imitation, method of dialogue, delivery etc. They can have no rights over scripts, directions, costumes and music arrangements. The paper concludes with the call to grant this separate category sui generis protection.

The Background

Performers rights were introduced in the Indian Copyright Act under Section 38 by an amendment in 1994. The measure was starkly distinct from attempts made initially in UK by making a separate legislation for the performer. If any of the persons mentioned under Section 2(qq) (including an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance) appears or engages in a performance, certain “ performers

rights” accrue to him. Performance has been defined in Section 2(q) as meaning any visual or acoustic presentation made live by one or more performers. The absence of the use of the word cinematograph or audio visual for any reference to them is noteworthy as it appears to be completely excluded from the coverage of the rights. The definition also limits the protection to presentation of live performances and not to recordings. It also needs to be mentioned here that though an open-ended inclusive definition has been given to the word “performer”, there is no mention of the need to meet any criteria regarding creative quality and originality. Moreover a definition of performers right has not been attempted.

The nature and boundaries of the rights that accrue are explicated by Section 38 which also stipulates the period for which the right shall subsist. Performers rights are completely independent of ownership of “works” and are categorized as a related rights, protecting the interests of those who contribute to making works available to the public as performers act as catalysts to communicate the relevant original content therein. The reason for recognizing such neighbouring rights is to ensure that transmitters are also incentivised to exist. The right governs the protection of non fixed or live performances with the proviso (viz) Section 38(4) that performers are excluded from any rights in a performance which forms a part of any audio-visual fixation or cinematograph.

Section 39 acts as an exception to the provisions of Section 38(3) which mentions acts which constitute infringement of a performers right. Section 52 deals with the fair use provisions. Reading Section 38(3), 39 and its clauses together, the special right accorded to the performer may be deduced to include:

- a) The right to make a sound recording or visual recording of the performance
- b) The right to reproduce a sound recording or visual recording of the performance
- c) The right to broadcast the performance
- d) The right to communicate the performance to the public otherwise than by broadcast

Section 39A was introduced extending the application of Sections 18 & 19 to performances. It needs to be mentioned here that Sections 18 and 19 provide for assignment of copyright and the inalienable equitable right royalty of the authors with the assigning upon exploitation of the work. To put it a bit differently, extension of the same to performances implies a right royalty for performers in the event of exploitation, assignment and broadcasting of their performances. However the performers’ status vis –a-vis employer-employee relationship has gone unexplored – a jarring omission indeed. Moreover even the rights available to authors of cinematograph and sound recorders such as the right of rental have not been made available to performers. This takes away a major segment of exploitation from the purview of statutory protection.

The main reason for bringing in the 1994 amendment was to harmonise the Indian Act with the provisions of the Rome Convention for Performers, Producers of Phonograms and Broadcasting Organizations. Internationally, performance has been connoted to be a transitory activity of a human individual that can be perceived and is intended as a form of communication to others for the purpose of entertainment, education or ritual. International instruments that have led to the formal incorporation of the concept include – apart from the Rome Convention – TRIPS and the WIPO Performances and Phonograms Treaty (WPPT), 1996. It needs special mention here that the shifting of forum from the ILO to intellectual property right treaties is a significant historical moment in the evolution of performers right.

Moral Rights – A Glaring Lacuna in the 1994 Amendment

A glaring omission from the array of rights granted to the performer in the 1994 amendment is moral rights. Though the moral right of integrity and the right of paternity have been granted to the authors u/s 57, there is no mention of the extension of rights to the performer. The Manisha Koirala case wherein the lead actress Manisha Koirala prayed for injunction of the release of the movie “Ek Choti Si Love Story” has brought to public focus this lacuna. In the movie, four shots were being performed by a double, revealing some bodily exposure. Manisha’s work in the movie was distorted in such a way that it could hamper the reputation of the actress. Koirals’s contentions were based on libel and slander under the law of torts, but what needs to be highlighted is the lack of remedy available on the basis of moral rights protection which could very well have been conferred on actors under the Copyright Act. It needs to be clarified here that both the tort based actions of defamation and the right to privacy are deficient in affording an effective remedy as public performers have only a narrow scope for privacy right in their professional exploitation and as defamation depends upon the fall in reputation in the eyes of the public, but the role may very well fetch them accolades and awards despite the distortion. Mention needs to be made here that authors like J.K Rowling once sued Durga Puja Samiti in Kolkata, who prepared the theme of Harry Potter in the panthals, but the same case does not suit the actors who do not have any remedy as such.

No discussion on moral rights of performers would be complete without a reference to the decision in Phoolan Devi Vs Shekhar Kapoor and others. It shows that distortion and depiction impinging on the privacy of the performer would not be condoned unless the authorization of the performer and a proper intimation to the performer was provided. The Court also took into account the fact that the victim was not shown the film after it was made as she could have objected to the same after preview. The Court disapproved the action of the film maker in having deviated from the book on which the screenplay of the film Bandit Queen was to be based. From the performer’s stand point, any depiction beyond the role and script that was intimated to him which impinged on his right to privacy would therefore be actionable.

The 2012 Amendment and Thereafter

The legislature through the 2012 amendment to the Copyright Act furthered a pro- active change towards beneficial protection of performers wherein performers have also been accorded moral rights in the new section 38B. The Amendment has in fact moved the Act away from the traditional Anglo Saxon moorings to the European style of *droit d' auteur* based human rights. As Morgan notes, the performer's economic and moral rights have a dual function:

- i) As a set of rules that protect them against the superior bargaining power of producers and
- ii) As a means of controlling the use of performances by third parties

After the 2012 Amendment, producers are no longer allowed to keep all the royalties to songs, lyrics or other works of arts and these rights will have to be shared with the artist who created them.

Does the Act permit oral agreements?

The Act does not permit oral agreements. In this connection, the following points need special mention:

- a) All agreements concerning performers right have to be written
- b) A written agreement which denies subsequent royalty is invalid
- c) Agreement will necessarily have to mention the duration of use, the amount of royalty, revision/extension/termination terms, territorial extent of use and the medium of use
- d) Agreement will not give the producer any right over new mediums or modes of exploitation which did not exist at the time the agreement was made.

The Vinod Yesudas Controversy and the Independent Performance Question

Controversy erupted in the entertainment industry when Vinod Yesudas asked singers and organizers to pay royalties for the use of songs sung by Yesudas at public performances. The question that arose was whether the performers right does cover the right to stop imitation of a performance. Legal experts are of the opinion that this question demands a two fold answer – first that the right being prospectively applicable from 1994 leads to a scenario wherein the majority of songs sung by Yesudas remain unprotected and second that the word imitation encompasses only a direct or indirect copying from the fixation and not an independent creation. However, the episode exposes not only deficiencies in the statute but also the wrong impressions nurtured by those in the entertainment industry.

Section 39A: Prospective, Retrospective or Retroactive ?

One of the classic debates surrounding Performers Right is whether Section 39A which provides for application of Sections 18 & 19 to performers as well (inalienable right to receive royalty) in case of assignment, use and broadcasting of the qualifying performance for commercial uses is applicable prospectively, retrospectively or retroactively. As is clearly discernable, no retrospective application can be suggested due to the sheer number of claims from prior 2012 which would come up. But the question of unauthorized reproduction of performances recorded prior to 2012 which are reproduced or broadcasted post the amendment points out the need for a retroactive interpretation. The word retroactive, it must be mentioned here, has been defined as “extending in scope or effect (of a statute, ruling etc) to matters that have occurred in the past...” and has been construed by the Apex Court to be a subset of retrospective. The Court has stated that retrospective means looking backward whereas retroactive refers to creation of new obligations and duties upon transactions or considerations already having taken place in the past upon performance of a particular new cause of action. This construction is relevant in the context of performers. There seems to be no reason not to provide royalties to singers whose labour was recorded prior to the amendment, but continues to be exploited for commercial uses. By interpreting a statute, the inhibition against retroactive construction is not unalterable and varies secundum materiam. To put it a bit differently, a beneficial construction of the statute along with the need to conform to the principal policies laid down by WPPT dictates that Section 39A must apply retroactively.

Controversies on the term “Live”

The word “live” in the definition of performance u/s 2(q) has been the subject of major controversies. Though Explanation 3 of Rule 68 in the Copyright Rules provides that the definition of “live” includes performance given in a studio, the Delhi District Court restricted the meaning of live to only those performances made before an audience or in a concerted atmosphere be it in a studio or otherwise. This strict literal rule of construction without any application of mind which goes against the principle of purposive construction of a statute has been fortunately rejected by the Delhi High Court in *Neha Bhasin Vs Anand Raj Anand* as it goes against the purposive nature of performers rights.

The Court held that whether the performance is recorded in the studio or in front of an audience for the first instance, both will be called live performance and if anyone uses such performance without the consent of the performer then performers rights will be infringed. In fact, legal experts are unanimous in the opinion that the definition of live can only be restricted to not include such performances which have parts of a pre recorded song in a new performance (mashes or remixes) or if the performance is totally/effectively computer generated (electronic music). The intention of bringing in the word “live” in the definition of “performance” thus seems to be to avoid acts solely developed by the use of technology without any body-work or labour.

Dubbing Artistes and Performers Rights

The question that is usually raised in this context is “are dubbing artistes performers within the ambit of the Copyright Act 1957?” The answer is in the affirmative as Section 2(qq) of the Act does not place any restriction on the type of performer. Anyone who can satisfy the interpretation of performance u/s 2(q) can be one, the only exception being someone whose performance is considered casual or incidental in nature in the normal course of practice of the industry with respect to cinematograph films as the proviso to Section 2(qq) explains. Thus an extra artiste or junior artiste may well fall outside this sphere, but a dubbing artiste should necessarily be a performer and enjoy performers rights. However, a majority of the Indian dubbing artistes not only suffer monetarily but also do not receive any credit /recognition for their performances. An oft quoted case is the Malayalam film *Manichitrathazhu* which won Shobhana the National Award and wherein the cinephile thought that the dubbing artiste was Bhagyalakshmi, but only to realise much later – 23 years post the film release – that the dubbing was in fact done by Durga Sundarrajan, a Tamil dubbing artiste. Even internationally, there is not much of a difference as even in the Oscars there is no recognition for dubbing artistes. But the situation is different in Italy, Germany etc. Voice actors like Christian Bruckner – the German voice of Robert De Niro – for instance are well known in Germany. In 2019, Italy celebrated the 11th edition of its International Grand Prize of Dubbing or “doppiaggio”. In fact in Italy, dubbing is perceived to be a “little brother” to movie making. Mention also needs to be made of a German example where dubbing artiste Marcus Off took on Walt Disney for payment of unfair remuneration. Marcus had dubbed for Johny Depp’s character Captain Jack Sparrow in *The Pirates of the Caribbean* series. The Berlin High Court awarded subsequent compensation of ten times the original agreed amount. This was upheld by the German Federal Supreme Court in 2017 in line with the equitable remuneration provision under the German Act on Copyright and Related Rights, 1965. According to the Court, “The amount seems reasonable especially since the plaintiff has made a significant contribution to the characterization of the central protagonist of the films through his voice acting.” India can also perhaps take a leaf out of these examples.

Closely connected with dubbing is the concept of voice - over artistes. Both are performance enhancers, but the main difference between the two is that the latter does not replace anything where as the former does. The voices used for commercial advertisements are voice-overs where as the voice used to replace an actor’s voice or a translated version would be dubbing. The death knell for these voice actors is the practice of buyouts which are perpetual assignments that mean sacrificing voice for ever along with slap-ons wherein one voice recording is used in multiple advertisements with multiple edits across multiple mediums – all unauthorised. Add to these the fact that the lack of a meaningful mechanism for royalty computation is making matters worse and the picture is complete. Moreover the ordinary voice actor is in touch only with a middle man and is thus caught in a cobweb of exploitation with often no idea as to when he will receive his payment. Discussions on the formation of a performer’s society dedicated to voice actors – which can decimate opaque nay shady

transactions, better monitor usage, crackdown on unauthorized use and take up matters in Court on behalf of his members – remain at best as premises on paper. The reality is that even today the weak voice actor gets crushed against the might of the producer. Performers are neither well versed with the law nor equipped to wage a legal battle against corporate giants. The voice actor is not able to stand up and say that to ask him to choose between a lumpsum payment or a share of royalty strikes against the very fundamentals of protection accorded by India to its performers.

Performers Rights and Judicial Decisions

Performers Right in India was not a subject of judicial debate as the issue never surfaced directly before the Courts by way of litigation. It needs to be mentioned here that the Dramatic and Musical Performances Act – a pre- independence legislation was never extended to India and that hence the rulings of the Court prior to independence on the question of performers rights in the context of the said Act would not be applicable to the Indian subcontinent. Even if the ambit of Article 372 of the Indian Constitution is extended to pronouncements of the Courts from UK prior to independence, still none of the case laws in UK have discounted the existence of common law property rights in intellectual creations other than those entities specifically enumerated by statute.

The only reported occasion wherein the issue was dealt with by Courts was once in 1977 as a self confessed obiter and then in 1978 in the case filed by film actor Devanand. The call of Justice V.R. Krishna Iyer in the former case was for the extension of copyright protection to performers. The learned Judge pointed out the neglect that the performing artiste in the music industry was suffering in comparison to music composers and lyricists who were protected and benefitted from the statutory provisions. The IPRS case did not categorically decide on the question as to whether performers had a right under the Copyright Act. Justice Iyer only lamented and wished for a legislative enactment. Thus IPRS is not a precedent to be taken into account to decide the question of existence of performers protection within the four corners of the Copyright Act.

As regards the case *Fortune Films Vs Devanand*, the issues revolved around the rights of remuneration and distribution with regard to the film *Darling-Darling* starring Devanand. The cine artiste contended that by reason of an agreement, the copyright in the motion picture was to vest in him subject to the condition of payment. According to him, the performance of the artiste was covered by the words “artistic work” and “dramatic work” in Sections 2(c) & 2(h) of the Copyright Act. The appellant producers on the other hand contended that the copyright in the motion picture was not to vest in the cine artiste. The Court examined the contention of the producers that such a copyright in the work of the performer was not recognized under the Indian law of copyright. The Court discounted the possibility of performance coming within the parameters of the term artistic work as it was exhaustive in the five categories that it included. As far as eligibility within the definition of dramatic work, the Court was obstructed by the fact that there was an express exclusion of the cinematographic film in

the definition of the term “dramatic work”. Thus the Court felt that it could not recognize the performance of an actor as a work that is protected by the Copyright Act. To put it a bit differently, the ratio decidendi of the case was that an actor has no right to control the use of his performance in the film. The actors were given a fee for their performance and after that the producer was free to use their performance in whatever way they wish to use it. This position continued till the 1994 amendment.

One of the intriguing aspects of the Devanand case that needs special mention here could be the decision of the Court to disallow the request for Certificate of Appeal. Though no reason was adduced, it was merely stated that the entire case turned upon the question of interpretation of the contracts and therefore there arose no reason for the Certificate of Appeal. This is astonishing considering the fact that the High Court did explore the possibilities and came upon certain findings that by no yardstick can be considered as obiter.

Various restaurants and music venues gain immense commercial benefits and have a huge customer base because of the kind of music which they play. This results in direct commercial benefits to these venues due to the skill and labour invested by the singers and performers of the musical work used, who are accorded no benefit for the usage. Mention needs to be made here of a recent suit filed by the Indian Singer’s Rights Association against a bar and restaurant operating at the Metropolitan Mall in Pushpa Vihar, New Delhi. The Court came to a conclusion that the exploitation of the performances of the members of the plaintiff society by the defendant (which was playing the plaintiff’s members performances in its bar and restaurant without obtaining the Performer’s Rights Clearance Certificate and without payment of royalties to the plaintiff) is a violation of the Right to Receive Royalty of the performers and thus constitutes an infringement of the aforesaid right of the members of the plaintiff society u/s 38A of the Copyright Act. Thus a decree of permanent injunction was issued.

In the landmark case *Super Cassettes Industry Vs Nirulas Corner House (P) Ltd*, the Court opined that Nirulas being a hotel and the display of songs, videos etc being a manner of “communication to the public”, the balance of convenience prima facie lay in favour of Super Cassettes and hence a case of infringement had been made out. Further the decision of *Indian Performing Rights Society Vs Jayaram Mani* by the Delhi High Court brought an action against the defendant operating an auditorium whose liability arose as the owner of the premises impose a condition on the organizers of events where by a licence be obtained from IPRS. Similarly in the matter of *IPRS Vs Hello FM Radio*, an injunction was granted by restricting Hello FM Radio from playing music without obtaining a licence from IPRS. In *ISRA Vs Nightfever Club and Parlor* open execution of tunes of the individuals at the defendant’s club and lounge without the consent of the plaintiff was held to be infringing upon the performers rights of the plaintiff. The case was unique in that recorded forms of the melody were being played rather than someone playing out the tunes live.

Mention also needs to be made here of the decision of the Delhi High Court in *Super Cassettes Industries Vs Bathla Cassette Industries* in which it was held that copyright and performers rights are two different things and that in case the song is rerecorded then the prior permission of the original singer is required. A debatable decision worth mentioning here is that of the High Court of Madras in *Thiagarajan Kumararaja Vs Capital Film Works* wherein it was held that the dubbing right itself belongs to the producer.

Remedies

A performer may avail himself of civil and criminal remedies in case his rights are infringed upon. Civil remedies may include obtaining a temporary or permanent injunction. Criminal remedies may include imposing a fine on the infringer and jail sentences that may extend up to three years. The Court may also provide the right to search the defendant's premises through an order called the Anton Pillar order.

Conclusion

Performer's right fully fits in to the four corners of the discourse on the philosophy of IP Law. The theories that have substantiated property rights for intellectual creation are logically and harmoniously applicable to performer's creations as well. The Lockean concept of Just Deserts and the labour theory are more relevant in the case of performer's rights rather than copyrights. The discord and debate in this respect have now been laid to rest and almost all jurisdictions and international instruments today acknowledge the legitimacy of performer's aspirations. The uncertainties are now confined to issues of objectivity and the manner of administering these rights. The momentum in this metamorphosis is still a continuing one that can never be negated. However, the customary notion in the film industry is that of personnel rendering a service for the consideration of money.

In the Indian context, the 2012 amendment was an honest attempt to protect performers right, but still the legal structure for protection of these rights in India is feeble and underdeveloped when compared with laws in many other countries. The artistes in India are often victims of oral trust and contracts based on the word of mouth, misrepresentation, manipulation and fabrication of documents as well as wrong statement of accounts. The brunt in this regard is largely borne by those in the lower rung of the ladder – accompanists, folk artists and the like. They even have to bear the ignominy of seeing somebody else take credit for the work besides problems like non payment of dues. Even the super success of a song need not bring in financial profits to the singer. Add to these the problems caused by development of technology making it possible to fix a live performance and use the recording for making more records for commercial use. The task of controlling the uses made of these recorded performances militates against performers and may even lead to a scenario of technological unemployment of performers. The minimum safeguard that the legal system must

afford him in this regard is protection from “bootlegging” by ensuring that his live performance is not fixed in a tangible or material form without the performer’s consent and not broadcast or publicly performed without his consent. But even this hope often remains a dream.

The rise of OTT platforms has created a new need to reinvent performer’s rights. The percentage of revenue received by performers from online streaming in the form of royalties against their performers right is significantly lower when compared to what they receive from sale of hard copies of their albums. Put it a bit differently, online streaming giants are eating into performers rights. The suggested solution, namely bringing changes to the payment mechanisms of streaming services, still remains a premise on paper.

India has to take a leaf out of the German Copyright Act (Urhg) where u/s 32(a) performers (such as actors and dubbing artistes) can be considered as authors provided that their creative contribution to a work amounts to an intellectual creation in its own right. The statute in India should be amended to specify either in the provisions or by delegation to a state appointed authority like the Copyright Board the right to take a decision regarding the uses and the rights for the same depending on the contemporaneous commercial utility and larger public interest. Another lacuna in the Indian context is the absence of the provision of right to publicity. The identification of a performer by some distinctive trait in any subsequent work - be it by name, likeness, voice or mannerism – should ideally result in an infringement of his right of publicity. In this regard, a guiding light is the decision of the US Court in *Hoelan Lab Inc Vs Topps Chewingum Inc* that the right to publicity also protects the “unauthorised commercial use of a public figure’s image”. In *Muller Vs Ford Motor Company* and *Lahr Vs Adell Chem Co*, performers were protected against imitations of their voices as the defendants in both cases were using the imitations to sell particular products. This is in striking contrast to the Indian cases (*RR Gopal* and *Phoolan Devi* in particular) which extensively deal with the right to privacy but do not even in passing extend it to a public figure’s image.

A reform which can perhaps be thought of is delinking performers’ protection from copyright protection and treating performers right as independent IPRs. Performers must only have right over that part of the performance to which they alone have uniquely and distinctively contributed – their voice and imitation, method of dialogue, delivery etc. They can have no rights over scripts, directions, costumes and music arrangements. After so recognizing performer’s rights as a separate category, they have to be granted *sui generis* protection – implying among others that performances in the public domain are protected against free and unrestricted exploitation. Needless to say, this will be a proactive step forward towards giving performers in India their due – a stronger and all encompassing performer protection regime.

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- (a) to claim to be identified as the performer of his performance except where omission is dictated by the manner of the use of the performance; and
- (b) to restrain or claim damage in respect of any distortion, mutilation or other modification of his performance that would be prejudicial to his reputation.

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RTI Acts of India and Sri Lanka: The key for all-inclusive participatory Governance

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Abstract

Keeping in mind the need for promoting enhanced and all inclusive participatory governance, the Government of Sri Lanka has enacted the historic Right to Information Act 2016. The enactments of the RTI Act in India in 2005 and in Sri Lanka in 2016 have several commonalities. The spirit of Right to Information in both countries is that “Transparency leads to Public Accountability”. The Government of Sri Lanka has gone ahead in its firm commitment towards assuring public accountability by making it explicit that public personnel will be heavily penalised. Through this paper, I wish to (1) Present the working of RTI Act 2005 in India in Public systems along with subsequent rules and regulations and (2) highlight the importance of Part III and Part IV of the RTI Act 2016 of Government of Sri Lanka, especially the provisions dealing with proactive disclosure of information, providing information relating to third party and the process of facilitating the smooth functioning of the RTI Act, 2016. The paper also will compare the salient features of both Indian and Sri Lankan version of RTI Acts and suggest possible interventions for the sake of administrative conveniences, including a well-knit record maintenance system. The paper will substantially contribute suggestions from Indian experience towards effective implementation of Part III and Part IV of the RTI Act 2016 of Government of Sri Lanka. Sharing specific cases from India since 2005, the year of implementation of the RTI Act 2005, will substantially augment the effective implementation of the RTI Act 2016 in Sri Lanka.

Key Words: RTI – Inclusive Governance – Proactive disclosures – Third party Information – administrative convenience

Introduction

Citizens participation through specific institutional mechanisms fostering inclusiveness and rejecting exclusiveness from democratic governance is the need of the hour. Literature underscoring the very strong linkage that exists between inclusiveness and accountability, including the strengths and weaknesses of the emerging mechanisms of public accountability, especially social accountability is very much in abundance. It is in this context it becomes imperative that every Constitutional democracy of South Asia remains conscious that every single initiative taken in the domains of Governance passes the test of Inclusiveness.

This paper puts forth an argument that the Freedom of Information Act in both India and Sri Lanka is a very bold step in that direction, factoring Freedom and Equality without clashing against each other. Especially in Sri Lanka, that has recently emerged from decades of conflict, despite the fact that developing a comprehensive RTI legislation, has remained as a complex and very sensitive political issue, the government has made a remarkable progress in making its constitution as a parent document for Freedom of Information with its 19th Constitutional amendment. On the other hand, India identified freedom of information as a sequential development to its Constitutional mandate¹. Hence the debate whether the RTI Act is a legal right or Constitutional Right is completely out of question, especially when this yardstick emerges while factoring sanctity and paramount importance to RTI Act in every day Governance.

Very peculiarly, when it comes to South Asia, the starting point of the laws relating to Freedom of Information and governance could be seen visibly to stem from references from International regimes². This is not the problem of the South Asian States but the product of their political history and colonialism. Hence, conducting any inquiry on issues relating to Governance in the South Asian States, one has to bear in mind that that these states have embraced western political culture after enacting their constitutional democracy after undergoing centuries of socio-political change during colonialism. Whether the postulates of Gunnar Myrdal on soft State, or Hamza Alavi's sanguishes on over developed state are the cascading effect of political development and these countries getting politically liberated post second world war have been experimenting western experiences in governance without any history of evolving such experience. This should explain the hybrid system prevalent in the South Asian States including India and Sri Lanka where the complexity of balancing people placarding different identities, socio economic inequalities and literacy. Thus the compelling situation is that these Governments are under obligation to addressing multiple issues through a single method that involves public participation.

¹ Articles 14, 19(1)(a), 21, 32, 39(1)(b) & (C) and Article 51 of the Indian Constitution.

² Resolution No 59 of the UN General Assembly adopted in 1946. Also Article 19 of the (UDHR) Universal Declaration of Human Rights (1948), envisages that fundamental right of freedom of expression should encompass the freedom to "to seek, receive and impart information and ideas through any media and regardless of frontiers". 3 Preamble of the RTI Act 2005

This paper puts forth an argument that the Freedom of Information Act in both India and Sri Lanka is a very bold step in that direction, factoring Freedom and Equality without clashing against each other. Especially in Sri Lanka, that has recently emerged from decades of conflict, despite the fact that developing a comprehensive RTI legislation, has remained as a complex and very sensitive political issue, the government has made a remarkable progress in making its constitution as a parent document for Freedom of Information with its 19th Constitutional amendment. This paper set forth to explain that the RTI Act is a phenomenal tool for promoting all-inclusive participatory governance, as rightly mentioned in the stated objective of both India³ and Sri Lanka³. Yet this cannot happen just like a strike of a magic wand since there are several structural changes are essentially required before making administrative system fine tunes to meet its specific objectives. In order to appreciate the utility of the Act, the following integral aspect of administrative machinery needs a proper understanding of the bureaucracy so as to make the governing to be completely accountable to the governed.

The Scheme of Discussion

This paper takes stock of the institutional arrangements contained in the RTI legislations of both the countries and posits to make a pioneering understanding of the similarities of the Acts that would pave the way for future discourse and comparison for fixing the comparative advantage and throws light on the pivotal aspect of the RTI Act proactive disclosure of information. The paper also further makes a certain in-depth study of the decade old Indian RTI regime that could convey the dos and don'ts to the Sri Lankan system apart from suggesting interventions to Government of Sri Lanka for a robust RTI establishment leading towards fostering an all-inclusive participatory governance

The five Fundamental Impacts of RTI Acts on the Administrative Culture of India and Sri Lanka leading to Citizen Empowerment and an Assured Participatory Governance

Firstly, the RTI regime has made Public Systems posed to a never before public accountability featuring personal liability. It is obvious the complacent attitude of Public Personnel is deeply rooted in the colonial legacy that is more than three centuries old in India and five centuries old in Sri Lanka that the hitherto accepted administrative behavior that the only action requires justification and inaction needs no justification has been rendered constitutionally obsolete. With the instrumentalities of the executive branch of Government have been completely brought under the scanner of Public Accountability and personal liability of bureaucracy, the scope of concurrent monitoring and improvising RTI regime becomes all the way essential and a top priority.

³ Insertion of Article 14 A through 19th Constitutional Amendments by the Government of Sri Lanka. Also refer the preamble of the RTI Act 2016.

Secondly, the RTI Acts in both India and Sri Lanka have simplified the judicial instruments⁴ and conferring the power of Writ of Certiorari on the citizens as well as the writ of Mandamus making RTI Act a visible tool of empowerment, leading to participatory governance apart from exempting every citizen to pass the test of „Locus Standi“⁵ by mentioning that information seekers need not provide any reason for seeking information, thus making the legislations as the „Magna Carta“ of Transparency and Public Accountability in South Asia.

Thirdly, the personal liability attached of public personnel in any let up in the operationalization of the access of information by the citizens stipulated in Right to Information Acts of both the Government of India⁶ and Sri Lanka⁷ has laid the very strong foundation of public accountability. While the Government of India have stipulated that penalty includes a maximum sum of Rs.25, 000 (Rupees Twenty Five Thousand Only) besides recommending the erred Information Officer for disciplinary proceedings, the Government of Sri Lanka in Part IV of the Act 2016 have gone a step further by imposing a fine up to Rs. 50,000 (rupees fifty thousand Only) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment. Unlike in the Indian case where the deemed to be Public Information Officer⁸ who might assist the Information officer are not brought under the mandate of the penal clause, the Sri Lankan version of the Act has brought the Deemed to be Information Officer into the ambit of punitive proceedings. This is the first of its kind in South Asia where the Act underscores the consequences of administrative apathy and complacency in public office.

Fourthly the emphasis on proactive disclosure in the Right to Information Act lays the foundation of a proactive, citizen centric state. Though the scope of invoking the RTI Act in both the countries have been restricted to only citizens⁹, the Act does not mention any verification mechanism that the requesting person is a Citizen or not, further the very publishing of proactive information in world wide website automatically extends the scope of the spatiality attached to the definition of citizens. It is a fact that territorial restriction gets nullified with the advent internet and this needs to be attributed to the positive effects of the impact of globalization and democratization. Contrary to the Indian position where the Honorable Ministers are per se kept outside the ambit of RTI Act, in the case of Sri Lanka the inclusion of Ministers and making

⁴ Article 140 of Constitution of Sri Lanka stipulates that the Supreme Court of Sri Lanka (Court of Appeal) alone is competent to exercise Writ Jurisdiction such as Writ of Certiorari, meaning calling for records from the Executive branch of Government which is not even vested with the Provincial Courts., whereas in India, the power of Writ vested with both the State High Court under Article 226 and the Supreme Court under Article 32 of the Constitution of India.

⁵ ‘Locus standi’ is a legal term meaning that “the expected demonstration of a party before the Court to establish to the court that he/she has sufficient connection to and harm from the law or action challenged to support that his/her participation in the case.

⁶ Section 20(1) of RTI Act 2005 of Government of India

⁷ Section 39(1)g of RTI Act 2016 of Government of Sri Lanka

⁸ Section 39(1)(2) of RTI Act 2016 of Government of Sri Lanka

⁹ Though the initial discussion in India’s Parliament was to open it to all instead of restricting to only Citizens, the same was settled compared to the jurisdiction of the Constitution of India. Vide (<http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Personnel,%20PublicGrievances,%20Law%20and%20Justice/3rd%20Report%20English.pdf>)

them accountable to the governed for the entire implementation of the RTI regime from the very implementation of proactive disclosure of information¹⁰ such as

1. The responsibility of the very notification of the RTI Act pertaining to a specific Ministry (Section 1(3))
2. Responsibility to create public awareness about the RTI Act Public Accountability (Section 2)
3. Minister is mandated to respond at a Citizen seeking information about a Project and ensure total transparency relating to the implementation of the Project ((Part III, Section 8(1))
4. The Minister is mandated to inform all the stake holders about the Project to the stakeholders where by the confidence of stake holders could be won apart from providing the information to Project Affected People well in advance (Sec.9(1)(a), which is a unique provision of mitigating grievances arising out of denial/lack of information to the stake holders

The importance of Proactive Publication of Information under RTI Act

1. Proactive disclosure of information is quite new to a postcolonial administrative system where by the Act completely binds over the Public authority to provide the information for public consumption except those specifically barred by the Act categorizing them as an exempted category of information. This means that the entire process of decision making relating a specific public policy/project including those affecting the public falls within the ambit of proactive disclosure unless there is a need for withholding if required by the Act as an exempted category. A rational explanation of this aspect if the RTI Act should mean that the confidence and consultation of stake holders are paramount in a decision making process that has a ramification on the citizens.

2. This also means that the spirit of proactive disclosure indicates that for future projects and decision there must be a well-established public consultative mechanism while designing and deciding public policy.

3. Further, the spirit of proactive disclosure of information could also justify the civil servants from engaging media in every form including social media to make their functioning in public office visible to the stake holders. As a healthy practice guarded by the mandate of the provisions of proactive disclosure of public information, the bureaucrats need to come out of their secluded places of functioning and earn the confidence of the stake holders of a deliberative democracy. To a step further and extend the spirit of proactive disclosure logically, it means that the public authority is by law required to proactively keep the public informed about the entire actualities behind these decisions, whenever these decisions become public.

¹⁰ Regulation No.20 Dated 03.02.2017 Published in the Extraordinary Gazette of Government of Sri Lanka (Pp.6A)

4. It is hence imperative that the public authorities in an administrative system need to develop a consensus and strategize on the mode, method and the form of disclosure of public information. In the absence of any legal method of enforcement of proactive disclosure in a specified manner, it becomes the initiative of the executive to decide in the matter in according to the letter and spirit of the Act.

Fifthly the Right to Information Act provides immunity from a whistle blower point of view apart from providing a citizen the right to be heard. The very declaration that the entire proceeding relating to the exercise of the function associated with the implementation of the Act will be at par with a judicial proceeding, the citizen centric Act poses every symbol of empowering the public.

Anticipated recalibration of the Administrative Structures in the wake of RTI Regime

Woodrow Wilson observes that “It is getting to be harder to run a constitution than to frame one: in his seminal article “The Study of Administration”, which holds good for any legislation which reflects political will and initiative that gets realized only when it gets implemented. The observation of Woodrow Wilson holds good in all such instrumentalities of the State in the form of legislation that calls for implementation the Act in its truest spirit, which is the onerous responsibility of the bureaucracy. The issuance of executive instructions by way of delegated legislation stipulating supportive rules and regulations needs to be carefully evaluated in the eyes of both the structure and function of the administrative system.

Since the working of the Federal Polity is almost similar between India and Sri Lanka that share a common cultural history apart from its close bilateral relations that manifests in the training of Public Personnel in the National Academies of India, there are sufficient cases where the systems could mutually benefit by sharing the experience of the implementation of the Act. For instance the existence of more than one language policy is a common issue for both the countries where the information needs to be citizen specific and hence the language training becomes must otherwise an official translation department is installed for every public authority.

Certain Issues for deliberation from Indian Experience

The 1.23 billion populated countries and the biggest democracy in the world have been identified as a fore runner in the successful implementation of the RTI regime which can be found by the robust functioning of India’s Information Commission. However there are certain aspects of course corrections pointed out by members of the Public, Civil Society as well as RTI Activists on the implementation of RTI Act 2005 which can be broadly classified as under, which may also serve as inputs to the RTI regime of Government of Sri Lanka:

1) Understaffed office and lack of capacity building that needs to be periodically conducted reviewed and assessed.

2) The scrupulous implementation of proactive disclosure of Information in the websites of all public authorities and designation of Information Officer and Appellate authority needs to be carefully evaluated.

3) Capacities Building of both the officer and the citizens in a common place simultaneously, which will help them learn the process and procedures and the practical difficulty if any.

4) A careful reading of the both the Indian and Sri Lankan Act would stipulate that invoking third party intimation clause could be done only if the Information officer is explicitly falling under the category of private information without any significance of larger public interest, then alone should be invoked. Casual invocations of seeking remarks of the third party will only delay and hamper the disposal of the request of information which needs to be taken care

5) Appointment of Transparency officer as in India: The Government of Sri Lanka may consider for identifying the second senior most Minister/ Secretary in a Department as the Transparency officer who shall oversee the implementation of the overall functioning of the implementation of the Act as well as for Designating what is to be placed for proactive disclosure in every public authority which will reduce the burden of the Minister who already is adequately engaged as per the Act

Suggestions for effective implementation of RTI Act 2016 towards steering it for participatory Governance

A careful reading of the RTI Act 2016 calls for the necessity to define the following terms

1. What is to be declared as confidential in accordance with Section 29(1) information pertaining to the third party: by whom, on what grounds, policy framework?

2. Definition of „circumstances“ in which information may be provided by an information officer, without the payment of a fee as given in section 25(4).

3. Definition of Life in section 5 (c) whether it means only in the narrower meaning of threat to life or life as in “leading a good life”?

4. Section 12(7) of the Act stipulates that a person (Information Officer or Deemed Information Officer) may be convicted by a Court of magistrate after subjecting to judicial proceedings. But the Act is silent on the authority that will be held responsible for initiating the proceedings as per this section.

Also the following is suggested for the optimal implementation by virtue of structural terms

1. Implementing Online portal for complete RTI request, disposal, appeal, second appeal and even appeal to the Court of Appeal
2. Conducting Social audit biennially on the performance and functioning of RTI Act on every public authority.
3. Including RTI act in the syllabus of the school and in institutions of higher learning

Conclusion

Thomas Jefferson (1743 – 1826), the contributor of the Declaration of Independence of the United States has observed that “an informed citizenry is the bulwark of a democracy”. In all possible permutation and combination an elected, constitutional democracy cannot thrive by alienating its own people from its functioning. The problem of the weakening of states in the developing world is usually identified because of trust deficit at all levels and to bulldoze this trust deficit the nation States invokes its sovereign power to coerce its own people, which ultimately precipitates political apathy and complete alienation of people from the Civic duties thereby increasing the political instability. It is in this exigency the need of legislations such as the RTI Act come handy be serving as an instrument whereby through which citizens can connect themselves effortlessly to the process of governance, which eventually enhances the quality of political culture of that particular system. Realizing this Governments of India and Sri Lanka have come up with their respective legislations on Freedom of Information called the RTI Act.

The RTI act to get implemented in the manner it is expected warrants certain fundamental requirements such as (1) Augmenting Human Resources within the administration (2) Conducting programmes of capacity building of both public personnel and the stake holders (3) complete recalibration of the administrative system to fine tune itself in accordance to the emerging demands of RTI regime which can be supplemented by (4) building an optimal record management regime fostering and reinforcing “Institutional memory” and a building a committed culture for public accountability that could visibly be measured to the extent which a public authority implements its proactive disclosure of information. Above all the functioning of the Information Commission whether it is the Central Information Commission of India or the RTI Commission of Sri Lanka decides the success of the Act. Since delayed justice is denied Justice the Commissions needs to keep their positions filled, sufficiently staffed and the rate of disposal of appeals to be constantly self-monitored for better performance and improvement. Further, having a common culture, colonial experience and proximity the two countries could learn much from each other’s experiences in implementing the right to information. At the national level the countries should demonstrate their political will consistently to open up the administrative process system for public scrutiny and at a regional level these kinds of purposeful conferences/training programmes could be organized and the matter deliberated for meaningful outcomes.

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Indian Space Economy: A key component for the future growth of Indian economy

Dr. Shaijumon C. S.

Abstract

Space economy comprises a long value-added chain, starting with research and development actors and manufacturers of space hardware and ending with the providers of space-enabled products and services to final users. This paper argues that India has greatest potential to become one of the biggest space economy power in the world. Space sector is generating millions of high-tech jobs in India, and it is driving innovation and modernization of India technological leadership, while making a positive contribution to the nation's balance of trade. Linkage effects of space technology in India has helped to create innovation, expanding knowledge, and enhancing information to decision makers, improving governance, spin-offs etc. Reforms in space sector of India is expected to boost the supply and demand side of space economy of India. India has every potential to scale up its space economy with a sizeable share and it can become the important enabler of economic growth of the country.

Introduction

Union Budget 2022-23 has listed Space Economy as an important 'sunrise opportunity' for the Indian economy with immense potential to assist sustainable development at scale and modernize the country. Space economy comprises a long value-added chain, starting with research and development actors and manufacturers of space hardware (e.g., launch vehicles, satellites, ground stations) and ending with the providers of space-enabled products (e.g., navigation equipment, satellite phones) and services (e.g., satellite-based meteorological services or direct-to-home video services) to final users (OECD). In India the Space programme was initiated in the early 1960s with the main objective of utilizing the same for rapid economic development of the Country and the investments are particularly justified based on its socio-economic returns for larger sections of the society through the increased economic activity, cost efficiencies, productivity gains and inclusiveness to different sectors of the economy (Kasturirangan and Shaijumon: 2021). The emphasis of self-sufficiency, self-reliance

and import substitution policies in the initial decades of development process during Nehruvian era has led to the attainment of domestic technological capability in the Indian space program.

Accordingly, a diversified industrial production base was meticulously planned insophisticated capital goods and heavy machinery. This drive towards self-reliance also prompted India to engage in highly complex and resource-intensive activities such as space research and nuclear technology (Amit. S Ray; 2016). Various international political dynamics and policy changes like Missile Technology Control Regime (MTCR), Cold war between USSR and USA, Self-reliance approach of Indian policy makers, new economic policy of 1991 etc has contributed to the indigenization of space economy of India.

Five major scientific agencies viz., DRDO¹, DOS², ICAR³, DAE⁴, and CSIR account for 82.2% of the total R&D expenditure under the central government major scientific agencies with DRDO and DOS alone accounting for a share of 50.6%

Size of Space Economy

Space Foundation's 2020 Q2 Report has estimated that the global space economy is around \$447 billion during the year 2020. Eighty percent of the global space economy is contributing from Commercial space activities, which is of the order of \$357 billion. Morgan Stanley's Space Team estimates that global space economy will be over \$1 trillion by 2040. As one of the very important space faring nations of the world, India must look for capitalizing the emerging space economy of the world. India's share is estimated at \$7 billion (just 2% of the global market) in global space economy, covering broadband and Direct-to-Home television (accounting for two-thirds of the share), satellite imagery and navigation (Sood; 2019).

As shown in the following figure, as a proportion to GDP, India's public spending on space sector is much better than many of the developing and developed countries of the world. In the year 2019, India has spent 0.06% of its GDP for space sector. During the year, USA was the biggest country in terms of space expenditure in the world and spent about 0.24% of its GDP. Russia, France and Japan have spent 0.18%, 0.1% and 0.08% of GDP respectively for space activities in 2019. Even though the actual spending for space activities of China was better than India, in terms of GDP share, India and China spent the same share of 0.06% in the year 2019.

1 Defence Research and Development Organization

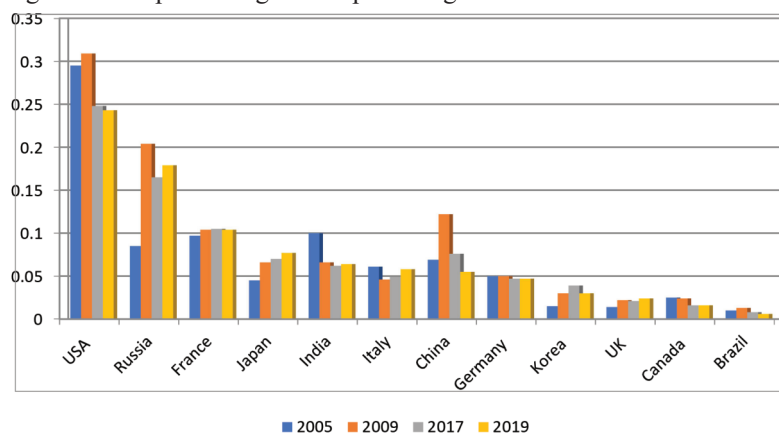
2 Department of Space

3 Indian Council of Agriculture Research

4 Department of Atomic Energy

5 Council of Scientific and Industrial Research

Fig.1 Public Space Budgets as a percentage of GDP for selected countries



Source: "The Space Economy at a Glance" OECD, 2007 page 35

"The Space Economy at a Glance" OECD, 2011 page 53

"Measuring the Economic Impact of Space Sector: Key Indicators and Options to Improve Data", Background Paper for the G20 Space Economy Leaders' Meeting (Space 20), Saudi Arabia, OECD, 7th Oct 2020

Total budget for Indian space program was a meager Rs 16.34 crore in the year 1972-73, and which was 3% of the national budget Rs 545 crores. The budgetary allocation has increased to Rs 422.35 crores in 1988-89. Government spending for the space sector has further increased to Rs 13,450 crore in 2020-21, which is about 0.45% wof the national budget.

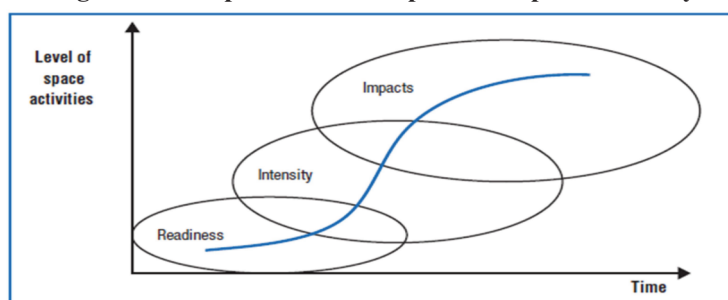
The space economy of India includes many commercial activities, derived over the years from the space sector's research and development (R&D) missions. Several mature downstream activities have reached mass markets. Mapping the entire space economy of India remains a complex process. Estimates vary widely, and many involve some degree of double counting of activities. Telecommunications still represent the main commercial space market through the growing television broadcasting and various telecom services. The overall growth of space applications has impacted the rest of the value chain the economy. Space capabilities have transformed to become a very important economic pillar in modern society. Right from agricultural applications, weather predictions, fishing, DTH, communications etc to stock exchange operations and navigation, space technology and its assets are contributing economic value to all walks of life of people. The sector is generating millions of high-tech jobs in India, and it is driving innovation and modernization of India technological leadership, while making a positive contribution to the nation's balance of trade. The space sector of India has significant role in modernization and economic growth of the country if we have right policies, regulation, funding, and entrepreneurship eco system. India's emerging space economy has every potential to become the key driver of national economic growth.

Components of Space Economy

For understanding and managing the development of space economy, Winzierl (2018) has provided a classical economics analytical framework in the role of government in market economies. It has three components: 1) establishing the market through decentralization of decision making and financing for human space activities; 2) refining the market through policies that address market failures and ensure a healthy market structure; and 3) tempering the market through regulation in pursuit of social objectives. Investments in space technology, applications and space systems in India has enabled to touch almost every corner of the Indian economy, spurring millions of rupees of economic activity and playing a key role in our daily lives. OECD Space Forum defines three space segments in space economy. First is the upstream segment of space economy including research, space manufacturing and ground systems (fundamental and applied research activities, scientific and engineering support activities, material and components supply, manufacturing of space systems, subsystems and equipment, telemetry, tracking and command stations). The second is the downstream segment includes: space operations for terrestrial use, and products and services which rely on satellite technology, signal, data to function (e.g. satellite broadcasting, selected GIS, GNSS-enabled devices). The third segment includes space applications, products and services from spin-offs or technology transfer from the space sector, which use satellite technology but do not depend on it (low incorporated quantities of “space” components). India has developed a well-established ecosystem in all three components of space economy through a large-scale public investment. During the first five decades of Indian space investments since the inception of Indian Space Research Organization (ISRO) in 1969, Indian space economy has been dominated by government expenditure and the private sector component is limited only in space applications and services. This is primarily because of high risk involved in the investment related to establishing early stages of space capacity building.

At micro level, a space program is providing direct benefits to the people of the country and the pursuit of these benefits can be expressed as i) advancement of scientific and technical skills ii) inducement to economic growth and iii) improvement in standard of living (OECD Report)

Fig.2 Different phases of development of Space Economy



Source: The Space Economy at a glance, OECD page 16, 2011

The readiness of the space economy consists of the overall technical, commercial, human capital and financial infrastructures necessary to engage in pertinent space activities. During this stage, countries rely more on public capital for investing in major inputs and infrastructure required for space exploration activities which will essentially set for the base of high risky space endeavors. Even though the linkage effect of space technology development in a country is very high and stimulatory for other industries, high risky nature of its investment attracts very less private investment in the early stages of space capacity building. This has necessitated government investment in the first five decades of space technology development in the country. Out of the total space budget spent from 1969 to 2021, about 38.37% has been earmarked for meeting capital expenditure. This is one of the highest when compared to other departments of government of India.

The intensity factors (outputs) of the space economy describe the use that is made of space activities. Specific space related outputs including products like number of launch vehicles produced, satellites configured etc derived from the inputs established. This also include the association with domestic industries, other countries, financing the production etc. There were 82 launch missions were held by ISRO up to February 28, 2021. Only eight of them were unsuccessful. 111 spacecraft missions were operated which includes three nanosatellites and one micro satellite. 342 satellites of 34 countries and 12 students' satellites were launched by India through its various missions (up to Feb 28, 2021).

The third phase of development of space economy is the impacts of the space economy, which are very difficult to measure, consist of the “societal value-added” created by space activities. This is connected to various aspects of space-based services like cost efficiencies, productivity improvements, value additions, etc in improving the life of people of the country. Mapping the space economy is a complex process, although there are indications that products and services are growing rapidly. Estimates vary widely, and many involve some degree of double counting. Satellite data is used for crop production estimation, crop intensification, agricultural drought assessment, wasteland inventory, identifying ground water prospect zones, inland aquaculture suitability and disaster risk reduction, education, governance, telemedicine, weather forecasting etc. which indirectly benefits the people. Many of the applications have been effectively adopted by stakeholder departments for operational use.

The most commonly identified benefits of space activities include positive impacts on GDP through employment and revenue gains, diverse economic benefits – especially cost avoidances associated with space-based meteorological weather observations – , technological and scientific excellence, improved food safety, and innovation (OECD, 2019). Space technology and its services have touched all walks of life of the people of India. The complex nature of supply chain evolved is very difficult to estimate and evaluate for understanding the exact size of fast-growing space economy of India. This complexity has underestimated the size of Indian space economy.

The Linkage Effects

In Hirschman's *The Strategy of Economic Development* (1958), he proposes an unbalanced growth theory, emphasizing specific industries which have particularly strong linkages with the rest of the economy. The careful unbalancing of Indian investments in space sector due to resource constraints during the initial years of development process have led to the complementarity among industries in the production process and the external economy is the subsequent growth of other industries originating from growth of a space investments. The relationship among domestic industries is known as 'a domestic linkage'. The linkage effects⁶ of space technology in India has helped to create innovation, expanding knowledge, and enhancing information to decision makers, improving governance, spin-offs etc. 'Backward linkage' of public investment in space technology has stimulated the production / use of other upstream industries and 'forward linkage' effects space investments becomes the input for other industries. It stimulates economic activity related to space products and services viz, satellites, launch vehicles, ground systems etc; indirect benefits resulting over time include improved economic prosperity, health, environmental quality, safety, and security, creation of new capabilities, businesses, products and services derived from space technologies, thus enhancing the productivity of various sectors and improving the quality of life in the society. Economic development involves learning to master new ways of doing things and a break away from the circular flow of economic activities. Mastering new ways of doing things implies transition of an economy from low value addition to high value addition activities. Classical economics has argued that the economic competitiveness is to be attained through the increase in the mobilization of capital and the improvement in productivity of factors of production. Later neoclassical economic theory states that the increase in productivity can be achieved through changes in technology. It has provided the rationale for investing in space science and technology right from the starting of development process in the country.

From the inception of its space program in 1962, India has favored an evolutionary technology development process (Mistry D; 1998), which is the creation of domestic space capacity by blending domestic and foreign space technology by adopting Public-Private partnership model and Domestic-Foreign technology model for creating critical space infrastructure in the country. To ensure the smooth supply chain of hardware, components, and sub-systems to the Indian Space Programme, ISRO has been continuously engaged in technology development with the support of foreign countries and hand-holding several industries within the country. This has enabled ISRO to realize most of the manufacturing requirements of the ISRO's launch vehicles and satellites through industry. The industry participation has shown continuing growth both in addressing technological complexity and quantum of work⁷. By scaling up the commercial launch services using the newly incorporated two tonne

6 The concept of 'Linkage effect' is developed for explaining Unbalanced Growth by Albert O Hirschman (1958) in his book *Strategy of Economic Development*.

7 Lok Sabha answers winter session 2017

capacity GSLV-MIII launch vehicle, India can substantially gain from the commercial launch services in the international market. GSLV-M III is India's largest and the fourth generation three stage launch vehicle with three strap-ons. The potential profitability of commercial launches of ISRO will tremendously increase in the coming decades through the rampant changes in space technology and the widespread use nano-satellites by foreign space agencies and private entrepreneurs. Also, the dependency costs can be saved by using indigenous and most robust launch vehicle, which will lead to domestication of space economy of India

The future investments India in Space Technology will focus in thrust areas like high power solar electric propulsion, Space optical communication, Advanced Life support & Resource Utilization, Mars Energy Descent and Landing Systems, Space Robotic Systems, Light weight Space Structures, Deep Space Navigation and Space Observatory. The new frontiers of the space sector are opening like Space based tourism, Space based energy/power, Space based Manufacturing, Asteroid Mining and Deep space missions. Innovative space technologies, services and business models will be game changing to the space⁸. The lion's share of initial investments in launchers, satellites and other space-related infrastructure is made by governments, which increasingly try to measure the impact of space programmes and the application of space technologies on the economy and society. High linkage effects of space technology generate economic benefits in various sectors of the economy. Around 57% of all cost savings and more than three-quarters of cost avoidance are realized beyond the space sector. Benefits in these categories usually derive from the application of space technologies in other fields, resulting in the reduction of operating costs (OECD; 2019).

India's potential to become a space economy power

Among the space faring nations of the world, India has the greatest potential to become an important space economy power of the world during the coming decades. The favorable factors that India could become one of the biggest space economy powers by India@100⁹ are as follows:

- I. End-to-end domestic space capability
Indian space program has achieved end-to-end indigenous domestic capability for all aspects of space science and technology which includes satellite manufacturing, launch vehicle technology, telemetry and tracking, space sciences, interplanetary missions, space applications, etc. Large scale public investments have poured in for establishing diverse infrastructure attune to the requirements of space program. India has achieved 98% indigenization in launch vehicle technology and 60 to 70% in satellite technology (Prasad;

8 Dr. V K Saraswat, Member NITI Aayog, at the Online International Space Conference and Exhibition, CII, Antrix & NSIL, 15-17 Sept 2020

9 100 years after Indian independence by 2047

2013)¹⁰. These heavy public investments and domestication of space technology will help in attracting a large scale 'crowd-in' of private investments during the coming decades of space reforms in India.

II. Cost-effectiveness

India's space program stands out as one of the most cost-effective in the world. India has earned worldwide recognition for launching lunar probes, building satellites, ferrying foreign satellites up and has even succeeded in reaching Mars¹¹. Indian space program is known for its cost-effective approaches when compared to other space exploring countries. India has two operational launch vehicles: Geosynchronous Satellite Launch Vehicle (GSLV) and Polar Satellite Launch Vehicle (PSLV). This has helped India to become a hub of global cost-effective space launches. It is expected that the economic activities related to space program will get intensified in the coming decades due to the introduction of space policy reforms in India.

III. Skilled human resource

ISRO has carefully developed its capacity building as an intense activity closely linked to development of human capabilities to perform functions and processes for realisation of goals, establishment of infrastructure for ensured throughput, strategies for achieving targets and mobilisation of resources¹². This has accumulated skilled and competent human resources for all kinds of scientific explorations in space activities and will help to boost the space economy of India. Comparative cost advantage of skilled human resources in India is another added advantage for attracting private investments and can lead to creation of massive space economy.

IV. Well-developed space ecosystem for entrepreneurship

India has developed a well-defined model for engaging with private industries right from the beginning of its space program. This has helped ISRO to carefully use the capability of private industries for generating critical space components and services for the space program. The Indian space programme's partnership with the Indian industrial sector is organized under four closely linked fronts, viz., technology transfer from the space programme to industry; consultancy by ISRO to industry; utilization of the industries' own technology potential and expertise by ISRO; procurement of goods and services from industry for the space programme (Rajan; 1988). This has helped frugal innovation through the evolution of new business models, redesigns products, reconfigures value chains and tapping the potential market. Such a structure will help the seamless integration of potential private industries to generate more space economy for the country.

10 <https://www.thehindubusinessline.com/news/science/Indian-space-programme-highly-indigenous-SHAR-Director/article20625548.ece>

11 ISRO Annual Report 2019-20

12 ISRO Annual Report 2017-18

- V. **Well-structured institutional set-up and management**
Different centres / units of ISRO became an important factor in ISRO management by their core teams responsible for major management and execution of various projects has been the practiced following on. Another hallmark for space programs of India is the growth and coordination of joint programmes with the users of space applications. The responsibility for the overall programme which is executed through a complex network of centres, projects, industries etc. still vested with a single person who held the positions of Chairman Space Commission/Secretary DOS and Chairman of ISRO. This is effective in combining various decision-making levels-technical, managerial, administrative and policy-making thus cutting down delays (Rajan; 1988). During the current era of space reforms and establishment of agencies like NSIL¹³ & IN-SPACe¹⁴ in India along with the unique institutional structure and management of ISRO will help the country to attract more private investment in space activities and will boost the space economy of the country.
- VI. **Space applications and potential space business market**
With its population is going to get largest in the world by 2025, India is going to become the largest space business market of the world. Space applications for solving socio-economic problems of the country will get greater opportunity to play a major role in generating space economy for India. Space technology along with other new generation technologies like, Artificial Intelligence, Data analytics, quantum computing, robotics etc will help the enthusiastic space businessmen to accelerate space economy operations in India.

Space Economy in the era of reforms

Centralized control of any sector will ultimately lead to weak incentives for the optimum allocation of resources, poor aggregation of dispersed information, potential escalation of cost of production and resistance to innovation due to reduced competition. Anticipating these potential vulnerabilities, Govt of India has brought in reforms in the space sector in 2020 for more decentralization, greater role for the private sector in space and acceleration of diffusion of space technology. This is expected to boost Indian space economy through these public-private partnership programs spurred activity and innovation and thereby 'crowd-in' more private investments and diversifying the various applications of space activities. The shift from public to private priorities in space is especially significant because a widely shared goal among commercial space's leaders is the achievement of a large-scale, largely self-sufficient, developed space economy (Weinzierl; 2018)

The reforms are unlocking the potential of the space sector in the country are expected to attract entrepreneurs to invest in cost-effective & quick turn-around space

13 New Space India Limited incorporated on 6 th March 2019.

14 Indian National Space Promotion and Authorization Centre (IN-SPACe)

transportation systems commensurate with the significant global commercial launch services market being projected for small satellites. Department of Space is aiming to enhance utilization and maximize benefits from the space assets through a change in approach from 'Supply Based Model' to 'Demand Based Model'. New Space Indian Limited (NSIL) was created to act as the aggregator of user requirements for space assets and business opportunities. India has realized end-to-end capability in launch vehicle & satellite manufacturing technology and established necessary critical infrastructure for space exploration. This is expected to attract more private entrepreneurs for capital investment and will boost the space economy of India. Private funding of commercial projects has also grown, with unprecedented private capital flows in the space sector from angel and venture capital investments. Reforms in space sector of India is expected to boost the supply and demand side of space economy of India. Supply-side activities include, production of launch vehicles, satellites, production of various materials and technology, productivity improvement, spin-offs, creation of mid-stream activities, start-ups and innovation, exports etc is expected to get a quantum jump in the space economy of India. Demand-side activities like, industrial linkages, spin-in, boosting of private & public investment, employment generation, creation of economies of scale etc will also have a greater role in enlarging the space economy component of Indian economic growth. Space manufacturing component in the space economy of India expected to exponentially multiply in the era of reforms and will boost the Indian share of world space economy.

The Government on 24th June, 2020 approved far reaching reforms in the Space Sector aimed at boosting private sector participation in the entire range of space activities. Indian National Space Promotion and Authorization Centre (IN-SPACe) is constituted as an autonomous agency in Department of Space (DoS) for enabling space activities, as well as, usage of Department of Space owned facilities by Non-Governmental Private Entities (NGPEs) and to permit, regulate, promote, hand-hold, monitor and supervise Space Activities of NGPEs in India¹⁵.

Along with the tremendous space capacity created by ISRO in critical space infrastructure and facilities, the change in government policy towards opening of space sector for private participation will generate adequate ecosystem for private investments in space sector of the country. Rajeswari Pillai (2019)¹⁶ has identified four major reasons for growing private space industry and start-ups in India; i) more favourable ecosystem for the growth of private sector start-ups ii) starting of Indian Institute of Space Science and Technology for generating trained space scientists and entrepreneurs iii) Demonstration effect of space private investments in other parts of the world and iv) a large number of Indian S&T graduates from abroad, who are keen on employing their talents and experiences to develop a private Indian space sector. Government of India strongly believes that optimal utilization of space technology will revolutionize the delivery of governance services and enhance developmental efforts.

15 Lok Sabha, unstarred QN 1281, 9 th February 2022.

16 Rajeswari Pillai Rajagopalan, "India's Space Program, International Competition and Evolution", *Asie.Visions*, No.111, Ifri, December 2019.

Conclusion

ISRO's vision of "Harnessing space technology for national development" has enabled to work towards a strong set of space systems in several areas, with emphasis on self-reliance in space applications, building satellites, space transportation systems and associated ground segment. Indian space investments have well established structure of upstream, downstream and space application components of space economy. The three major phases of space economy namely: readiness, intensity and impacts phase also started significantly contributing to the growth of Indian economy. This will act as a strong force for scaling up the space economy of India in the era of space reforms. Various policy reforms introduced in the industrial sector and space investments will intensifies the 'forward' and 'backward' linkages of space economy. The drivers of fourth industrial revolution technologies like, Artificial Intelligence, Data Analytics, Big Data, Quantum computing, Block chain, 5G, Robotics etc have created 'New Space' — a disruptive dynamic based on using end-to-end efficiency concepts. Space reforms along with the ongoing digital revolution, reentry vehicle technology, human space mission and small satellite revolution will provide a greater fillip to the generation of space economy in India. As the one of the most important space powers of the world and the country with largest demographic dividend, India can scale up its space economy with a sizeable share and it can become the important enabler of economic growth of the country. With startups and technology innovators, India can now evolve as a space startup hub in the world. Expanding the global space economy, responsibly and sustainably, is a fundamental driver behind efforts to bring the benefits of space to everyone, everywhere.

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The Banking Crisis and the Insolvency and Bankruptcy Framework

Dr. Krishnakumar S

Abstract

This article comes in the background of the institutional apparatus initiated through the Insolvency and Bankruptcy Code 2016 towards addressing the issue of the non-performing assets in the banking system of the country. Needless to say that cronyism has been a phenomenon in the banking system in the country (not much to disagree with Governor Rajan in this regard), but to attribute the the NPAs to be the outcome of the same alone would be inappropriate. As elsewhere, the rise in NPA ratio in the post-2010 period has much to do with the overall decline in macroeconomic performance of the country as well the commodity price slowdown. On the basis of the developments on the resolution front with respect to RBI's Dirty 12, i.e., the ones which accounted for 25% of the NPAs in the banking system, it is noted that the final sales of the firms were at such prices that the banks were forced to take a severe haircut. It seems that while the old regime resulted in the taxpayers' money being used to recapitalise the banking system, this new regime of corporate insolvency resolution is leading to the assets of a number of referred companies changing hands to other buyers at a far lower price.

Keywords: Non-performing assets, Insolvency and Bankruptcy Code, RBI's Dirty 12

Introduction

There has been a rise in the general mistrust of the financial intermediaries in the economy. The cases associated with fraudulence associated with banking has been on the rise. The earlier clamour for deregulation has now given way to the necessity of regulation. It is important to note that not all of the increase in non-performing assets has been due to malafide intent or wilful default of the borrowers. It could also be due to the macroeconomic slowdown or commodity price decline. It could even be, like in the current context due to an exogenous event like the outbreak of the COVID-19 epidemic. The financial intermediaries play an important role in intermediating between the surplus units and the deficit units in any economy. Restoring the trust in the system is of utmost importance. It was with a set of explicit objectives including the social control over resources for the facilitation of developmental efforts that the process of nationalisation was undertaken in 1969. With an unprecedented

accumulation of non-performing assets, it is important to ruminate about the way forward. But, one should think twice before offering such quick-fix solutions like privatisation as a panacea.

This mistrust of the public deposit taking institutions is not a phenomenon confined to India, but has been true across the globe. In fact, in the decade before the eruption of the global financial crisis, there has been a large clamour for deregulation.ⁱ This idea of deregulation received large support from the policy circles, including from Alan Greenspan, the former President of US Federal Reserve, who was a doctrinaire supporter of the idea of self-regulation of the banks.ⁱⁱ In fact, the world was witness even to the abrogation of the Glass-Steagall Act of the inter-war years, which had clearly demarcated investment banking activities from those of the deposit-taking banks. This was done indeed to cater to the demand of the US financial industry, which tried to compare and contrast the unfavourable position of the financial institutions which were tightly regulated in the United States in comparison to their counterparts in Europe. In fact, during the Clinton Presidency, the Glass-Steagall Act was replaced by the Gramm-Bleach-Bliley Act, which removed the restrictions in vogue with respect to the deposit taking institutions also serving roles as investment bankers or insurance providers.ⁱⁱⁱ

Three issues related to banking in contemporary times presume importance. Firstly, the thin capital to assets ratio which banks has in comparison to other sectors. This has facilitated a larger tendency of risk taking also riding high on the notion that in the worst situation government would step in given the consequences of a bank run or bank panic to the larger payments settlements infrastructure of an economy. Two, there has been an increasing share of wholesale liabilities being mobilised, as against the traditional banking which used to largely rely on retail depositor liabilities. This has made transmission of risks in a bank to the rest of the banking system faster. And, most importantly, banking has been witness to large scale securitization making it possible for the banks to move from the “originate and hold” to the “originate and distribute” model. Making things even more riskier has been the exchange rate risks associated with cross-border borrowings, which has had deleterious effects on different economies of the world in the last decade.

Even after the years of slump and recession to which the North Atlantic Financial Crisis^{iv} has pushed the global economy into for the last ten years, there are advocates making a case for deregulation of finance worldwide. The only positive development has been that the forces making an advocacy for controls as well as regulation are also being heard. Even the IMF from its earlier arguments for capital account liberalisation has been arguing about the ill-effects of “too much of finance”. When signs of financial instability are there in the economy, which is referred to by Minsky as the “the rapid and accelerating pace of change of prices of assets and capital in comparison to the price of current output”, shouldn’t the policymakers act? It is here that the disagreement steps in. In fact, it is important that the policy-makers realise the problems associated with finance as fetish.

In this paper, in the first section, we would confine our attention to the banking crisis in our country and its links to the slowdown in the economy. In the second section, we would try to shed light on the institutional developments ever since in the field of insolvency. In the next section, it is argued that unless we get over with our sense of fiscal conservatism in the sphere of public policy, we might end up having the crisis trying to haunt over the financial system irrespective of the institutional efforts undertaken. The declining price level would have significant consequences on the value of real debt. Worst has been the initiative towards making inflation targeting the guidepost of the Central Bank through the legislation in 2015, while the world is distancing from the same during these days of deflation with the monetary policy establishment struggling with the problem of zero lower bound. It ends with some concluding observations.

Banking Crisis, NPAs and the Downturn in the Economy

Irrespective of the nature of organisation, whether public, private or co-operative, the financial system is rampantly characterised by cronyism as well as growing tendencies of fraud, as the recent Financial Stability Report of the RBI reveals.^v The hapless depositors in the Punjab and Maharashtra Co-operative (PMC) Bank was a fallout of the advances of 6500 crores of the total 9000 crores being extended to promoters of the realty group HDIL and its dummies. The ability of Nirav Modi and Mehul Choksi and their business groups to work in collusion with employees in the bank facilitating a fraudulent LoU of \$1.4 bn issued by the Brady House branch of PNB making the bank liable. The case of loans to related parties, that of ICICI Bank to Videocon Industries, in which the spouse of the banker was involved, is another instance. It is important here to note that this is not a phenomenon specific to the public sector, it is true across the board. So, the sort of argument favouring the case the privatisation of the nationalised banks, as suggested by Arvind Subramanian is far-fetched.^{vi}

In fact, Governor Rajan, in one of his interventions has drawn attention to the phenomenon of riskless capitalism in India. Way back in 2014, he was drawing attention to the transfers from the exchequer to the banks to the tune of 1.4% of the GDP.^{vii} It would be pertinent here to note that ever since the recapitalization of the commercial banking system in the country has been over three lakh crores and the non-performing assets as a share of the advances has increased to 11% of the gross advances. There have been number of empirical studies which have drawn attention and adduced evidences ratifying the contention of Governor Rajan. He was at his satirical best when he was speaking about the perennial presence of the sick units with the promoters who have given personal guarantee not suffering from such sort of 'sickness.' Azad, Bose and Dasgupta (2017) have adduced empirical evidence arguing that the state through the public sector banks have been instrumental in the boom of the 2003-08 sustaining the same with large extension of credit in particular to the infrastructure and power sectors in which the government has gone for public-private partnerships. The period was witness to the investment ratios striking a very steep increase to over 38.1% in 2007 from 24.1% in 2001.

But, it would be grossly inappropriate to see the NPA crisis in isolation from the larger macroeconomic slowdown in the economy. Various empirical studies have drawn attention to the increase in the share of firms with a debt-equity ratio of more than 5 in the post 2010 period. So too, there has been an increase in the share of companies with $ICR < 1$ (which implies that the EBIDTA is even lower than the interest payments). It should be noted that on both these fronts there was a decline in the share of companies in the 2003-08 period.^{viii} The gross NPAs of the scheduled commercial banks have increased from Rs. 70,000 crores in 2009 to Rs. 10.39 lakh crores in 2018. In comparison to the total advances, the gross NPAs have increased from 2.3% to 11.2% (Figure). As per the December 2019 Financial Stability Report of the RBI, the GNPA ratio is at 9.3% between March 2019 and September 2019. But it is projected to increase to 9.9% by September 2020.

Gross NPAs (Rs crores) of the scheduled commercial banks

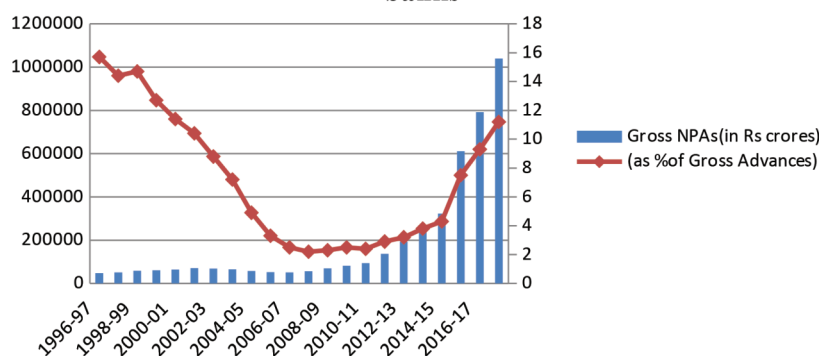


Figure 1

Given that during the period of the great credit offtake during the 2003-08 period, wherein India registered high rates of growth, the levels of NPAs both in absolute terms as well as a share of total advances were at reasonable levels, one cannot afford to ignore the inextricable links between the growing NPAs in the system and the unfavourable tide with respect to economic growth in the country post 2009. The period from 2003-08 which was witness to steep increases in investment ratios in the country, abundant inflows of capital from abroad, high compound annual rate of growth of exports has been witness to a great credit offtake. In fact, the debt driven boom, particularly supported by the public sector banks, could not be sustained due to the unfavourable impact of the reversal on the asset and commodity prices.^{ix}

The steep increase in the NPAs in the banking system had to do with the sudden reversal in the trends of favourable growth and the high volatility of growth in the period after global financial crisis, as is reflected in Figure. The steep increase in the rates of growth in constant prices in the 2002 to 2008 period is followed by high levels of volatility. Even as the growth in the Indian economy did not decline in the years in the

immediate aftermath of the crisis, there were arguments which gave an impression that India had decoupled from the rest of the world. By then, the growth of the Indian economy has been inextricably linked to the global economic performance, be it with respect to the rising trade openness ratio, increasing exports of services or the rate of growth of exports as well as capital flows in the pre-2008 period which had a perceptible impact on the Indian economy that the domestic economy could not afford to escape from the costs of coupling. (Ghosh & Chandrasekhar, 2009)

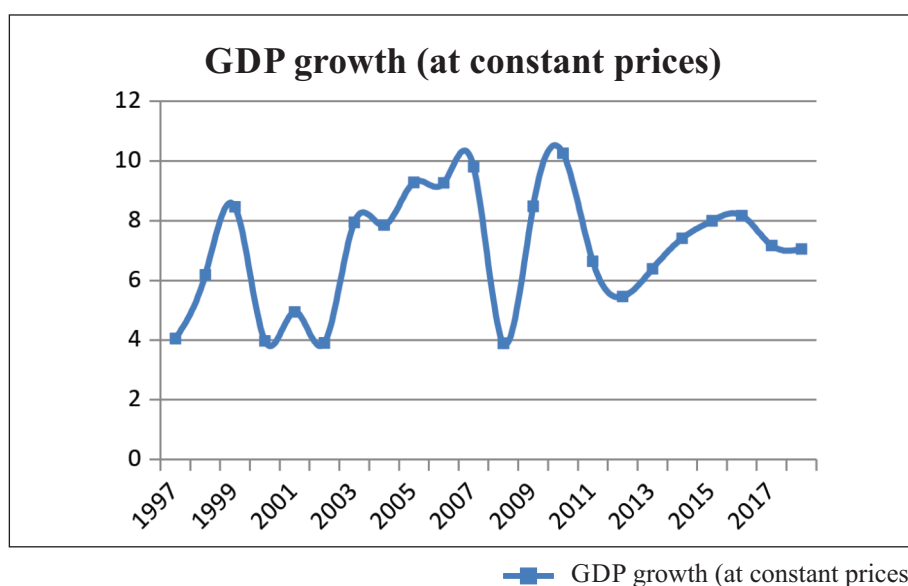


Figure 2

. Even as the pundits of government failure (which includes Arvind Subramanian) with their typical neoclassical political economy logic, have been making a case of the privatisation of the public sector banks as a panacea, it would only be pertinent to note that the share of the loans extended to the priority sector which has contributed to the NPAs in the system has been witness to a steady decline. The NPAs of commercial banks due from the non-priority sector has increased more than ten times from Rs. 36000 crores (2010) to Rs. 381000 crores (2017). In fact, it has been the corporate borrowers who account for large share of the NPAs in the system, whereas the share of the priority sector in the NPAs has come down from 55.6% (2010) to 24.1%(2017). As per the Financial Stability Report of December 2019, though the share of the larger borrowers (with an exposure of 5 crore and above) has decreased, it is at 51.8% and their share in GNPA's was 79.3%, and continues to pose risks. Even when there were institutions in the system towards taking care of the NPAs in the system, the preponderant nature of NPAs necessitated institutional innovation in the lines of insolvency legislations in other parts of the world.

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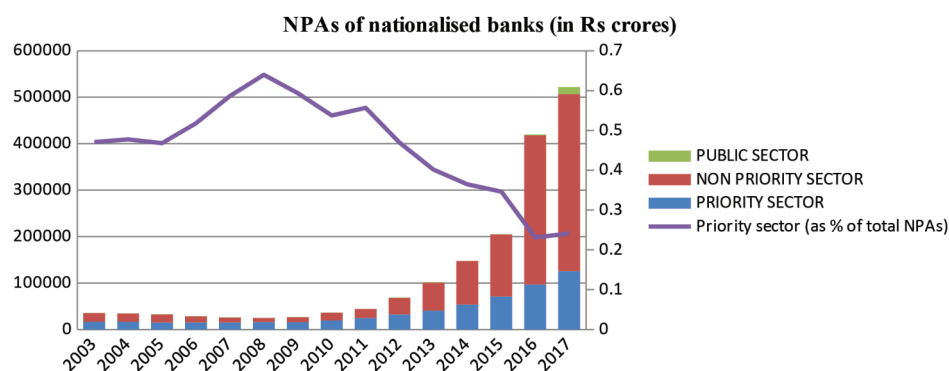


Figure 3

Corporate Insolvency Resolution and the IBBI-NCLT Framework

Though there have been institutions like the Debt Recovery Tribunal and the SARFAESI in place, it is pertinent to note that there has been certain institutional innovations in the form of the Insolvency and Bankruptcy Code of 2016. The associated institutional framework which has come into being has become another apparatus of debt resolution and restructuring, through the creditors getting the window of opportunity of referring cases through the due process. Even in these cases, the time taken has been considered to be long and the court intervention has also been pertinent in certain cases.

The process of resolution received a fillip with the direction of the Reserve Bank of India to the banks to take the twelve leading firms accounting for 25% of total non-performing assets of the scheduled commercial banks for corporate insolvency resolution (CIRP) to the NCLAT. These firms are referred to as the Dirty 12, and the level of NPAs as referred to in the IBBI sources are as follows (Error: Reference source not found). The table illustrates the data relating to the recoveries being made possible in the cases referred by the RBI. The maximum received by the creditors is on the resolution related to the purchase of Essar by Arcelor Mittal by paying Rs 42000 crores, i.e., 77% of the admitted debt. In certain cases, the share of the NPAs which has been realized from the buyers with resolution proposal has been far low, resulting in the creditors suffering a severe haircut. In certain others, it has been referred to for liquidation, with creditors suffering a severe haircut. For instance, the amount paid by RIL towards the acquisition of Alok Industries has been merely of 17% of the admitted amount.

Table 1

THE TOP 12 NPA ACCOUNTS REFERRED TO BY THE RBI FOR RESOLUTION					
Firm	Debt adm	Amount realised	Recovery	Acquirer	Any particular information
Electrosteel	13958	5320	38.10%	Vedanta	
Bhushan Steel	57505	35571	61.90%	Tata	2015 Company VP arrested for a cash for loan scam, overleverage for expansion and downturn in commodity prices
Monnet Ispat	11478	2892	25.20%	JSW	steel imports from China and commodity price downturn
Jyoti Structure	8179	3691	45.10%	HNI's	power sector worries. Failure of an international venture.
Alok industries	30200	5052	16.70%	RIL and others	
Essar	54550	42000	77.00%	Arcelor Mittal	downturn in steel prices, troubles expansion plan
Bhushan Powe	47887			NCLAT/ contes	same as Bhushan Steel , Kolkata based.
Amtek Auto	12819			Failed resolution	
Era infra	15050			CIRP	CDR scheme in 2013.Prideco Commercial Projects, a corporate debtor files a case referred to NCLT
JP Infra	24131			NBCC bid almost at the final stage	
Lanco Infra	53158			Marked for liquidation	slowdown in the economy, commo price downturn, environmental
ABG Shipyard	19316			Marked for liquidation	
	348231		Source: IBBI. Information collated from various newspapers		

In most of the cases, whereas it has been important private sector players in related sectors who have taken over the companies for resolution , with Vedanta, Tatas and RIL taking over the distressed assets at far lower an amount resulting in the banks too suffering a haircut. It is important also to realize the cyclical macroeconomic downturn which had an impact on the commodity price slowdown was also pertinent with respect to the inability of the some of the firms to honour their dues. See with respect the price changes of iron ore. (And, the ultimate outcome has been that the larger corporations in the sector have been able to take possession of the assets of these firms. Would the process ultimate lead to an indirect consolidation of assets in hands of few players furthering the process of consolidation? In this instance, on the one hand,

the NPAs are being taken care of by the tax-payers' money through the recapitalisation route, and, on the other hand, the large corporations are able to attach assets at lower prices and garner more return.

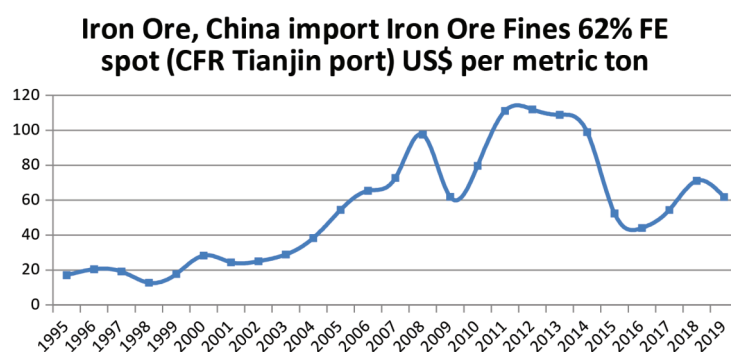


Figure 4

In the case of the Jaypee Infra referred to the NCLT, there was a protracted litigation with respect to whether the home buyers could be considered to be financial creditors. In fact, there has been amendments to the Code taking cognizance of the fact that the amount owed by the firm to various homebuyers have been far more in certain cases compared to their indebtedness of the banks. It was only in this case that a public sector unit NBCC has been the bidder for resolution. The case was also witness to litigation to ascertain as to whether home-buyers could be treated as financial creditors, particularly given that the amount due to the homebuyers was even more than that of some of the banks and financial institutions.

Institutional Innovation, Fiscal Policies and NPAs

Institutional innovation would go a long way in rectifying wilful default and fraud in the financial system. It is of utmost urgency that trust in the process of financial intermediation should be restored. It should be over and above the routes of insurance of the deposits upto a particular limit. But the revival of the whole of the economy is of utmost importance towards restoring the health of the financial system. The reluctance to spend has become a doctrine in itself. The austerity doctrine would result in the problems associated with demand constraint continuing to haunt the economy. In fact, in line with the Minskyian framework, the last decade has been witness to firms moving from hedge to speculative to Ponzi sort of finance.

When the corporates are on a deleveraging mode, and, the banks saddled with the non-performing assets are reluctant to add to their loan books, it is only appropriate for the government to spend. Lest it would result in the period of falling prices which would enhance the real value of debt. In fact, Keynes once observed "Thus inflation is unjust and deflation is inexpedient. Of the two, perhaps deflation is, if we rule out

exaggerated inflations such as that of Germany, the worse, because it is worse, in an impoverished world to provoke unemployment than to disappoint the rentier.” (Keynes, 1972)

The deficiency in demand in the system, though its impact on the aggregate price level pushes up the real value of the debt which is of utmost importance to the producer. In this specific context, the legislations brought out based on inflation targeting has also a detrimental impact on the overall macroeconomic environment. Irrespective of the institutional innovations, it would be difficult to address the issue of non-performing assets, if we fail to address the issue of demand.

Conclusion

It is high time that attempts should be made towards mobilising opinion on issues related to finance and regulation with public interest in mind. There have been number of instances when even in the recent past, people working in the field of banking and finance have taken the issues they have worked on in universities and elsewhere to the public domain. They have tried to build strong opinion through writings in newspapers, media presence as well as through being part of strong advocacy groups and organisations. This is the only way lobbies could be challenged. It is important to underline the importance of the creation of a responsible financial system for which institutional innovation is required. In the world as well in our own country there has been number of initiatives in this regard. Anat Admati, who wrote *The Bankers New Clothes*, made a strong case for financial regulation, She collaborated with Martin Hellwig to expose the bankers and their practices.^x She makes a forceful plea for increasing capital to assets ratios of banks. Sherron Watkins, who did the Enron expose, Cynthia Cooper, who exposed the world's largest corporate scandal at WorldCom, Elizabeth Warren in the forefront for rules for consumer financial protection and Ela R Bhatt for being a great organiser towards inculcating savings habits and enhancing access to credit amidst urban women are other major contributors in the field of responsible finance. Institutional innovation is must, but we require more agents in the society who would serve as a countervailing power (in the Galbraithian sense) to the dominant doctrine of deregulation for an era of responsible banking.

1 This article is the revised version of the lecture delivered at the Department of Economics, Kamala Nehru College on the 30th of September 2020.

Influenced by the ideas of Ayn Rand, Greenspan has been an advocate of libertarian ideas.

2 “Those of us who have looked to the self-interest of lending institutions to protect shareholders’ equity, myself included, are in a state of shocked disbelief,” Greenspan told the House Committee on Oversight and Government Reform. Dr. Krishnakumar. S teaches in the Department of Economics, Sri Venkateswara College, University of Delhi. He can be contacted at skkumar@svc.ac.in. This is a revised version of the lecture delivered at the Department of Economics, Kamala Nehru College on the 30th of September 2020

3 In the course of the discussions on the Bill in the House of Representatives, John Dingell had observed then that the Bill would result in the banks being too big to fail. This would necessitate a bailout by the federal government. In any case, over the years, he was proven correct.

4 The Global Financial Crisis is referred to so by Adam Tooze in his recent work (Tooze, 2018). He credits Rakesh Mohan to have coined this usage.

5 In the section on the credit quality of the large borrowers, it is observed that the share of the large borrowers in the loan portfolios of scheduled commercial banks was at 53.2%, its corresponding share in the GNPA's was at 82.2 % in March 2019. Further the top 100 borrowers accounted for 16.5% of the gross advances of the scheduled commercial banks and 18.6% of the gross non-performing assets. (RBI, 2019)

6 (Subramanian & Felman, 2019)

7 Making his observations on the riskless capitalism in India, he observed, "What I am warning against is the uneven sharing of risk and returns in enterprise, against all contractual norms established the world over – where promoters have a class of "super" equity which retains all the upside in good times and very little of the downside in bad times, while creditors, typically public sector banks, hold "junior" debt and get none of the fat returns in good times while absorbing much of the losses in bad times." (Rajan, 2014) This was a part of the lecture done in honour of Verghese Kurien.

8 (Azad, Bose, & Dasgupta, 2017), (Chandrasekhar & Ghosh, 2018) and (Das & Rawat, 2018)

9 For more details to the growth of this period which has been referred to as India's Dream Run, and the after-effects of such a credit driven growth with the reversal of the tide, see (Nagaraj, 2013)

10 (Admati & Hellwig, 2014)

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LEGAL PROTECTION OF HEALTH OF THE ELDERLY: A RIGHTS-BASED APPROACH

Dr. Mini. S

Abstract

Life expectancy has increased all across the globe resulting in demographic change. But in many countries, governments are not addressing the issues of elderly effectively, so also in India. In the state of Kerala, protection of health is a priority, still the protection of the right to health of the elderly is not dealt with properly. This paper advocates that measures like establishing old age homes may not be sufficient, but a legislative intervention casting responsibility on the children and relatives to take care and allowing the elderly to live their life with dignity is needed. In case of any kind of inability, no one to take care or financial inability, the Government should step in. As a progressive society, we need a rights based approach towards elderly by creating a support system for ensuring proper care, protection and a legitimate position in the society.

Key words: health care, health rights, elderly

Introduction

Healthⁱ is one of the most important fundamental rights of every human beingⁱⁱ, and a healthy population is a significant indicator of human development in any country. It is a stated objective of utmost priority of governments all across the globe, and is demonstrated through primary or secondary interventions in health care at the individual, community, and national levels.ⁱⁱⁱ Being an indispensable human right, every individual should have equal opportunity to access quality health care.^{iv} A rights-based approach to health creates a legal obligation on states, to ensure access to timely and affordable health care without any discrimination.^v

A substantial increase in life expectancy coupled with falling fertility rates over the last several decades, though a success story has brought humanity face to face with a demographic shift with an increasing distribution of world's population towards older ages, referred to as population ageing. "With longevity and declining fertility rates, the population of older persons (60 years and above) is growing faster than the general population globally"^{vi}. This transformative social phenomenon is now being recognized as one of the four global demographic 'megatrends'.^{vii} Population ageing, usually reflected in an increase in the population's mean and median ages, has been a prominent trend in developed countries, but the pattern is now increasingly prevalent in less developed countries also.^{viii} As per report on World Population Aging 2017, by 2030, two third of older persons would live in developing areas.^{ix}

A recent study by the United Nations (2019) projects that 1 in 6 people in the world will be over the age of 65 by 2050, a proportion almost double of that in 2019.^x According to the Report published by the Government of India on elderly, “[A]s per the Report of the Technical Group on Population Projections for India and States 2011-2036, an increase of nearly 3.4 crore aged persons was seen in the year 2021 during the Nation-wide census in 2011 and is projected to increase by around 5.6 crore by 2031.”^{xi} This is one of the most significant transformations of 21st Century. Addressing the impact of this shift is imperative to attain the transformative promise of the 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs) “Leave no one behind” (Principle 2- LNOB).^{xii}

Older people, with the gift of a longer life span can also pursue new activities touching almost every aspect of human endeavour and contribute in many ways to their families and communities. But, whether these opportunities would lead to positive contribution is critically dependent on one factor: health. Ageing is often accompanied by multiple physical ailments and mental health issues.^{xiii}

The Covid-19 pandemic poses an unprecedented health crisis to humanity and fully exposes its fragility.^{xiv} Large sections of population across all geographies are affected by diminishing income, lack of food, inability to access to health care facilities—a major consequence of the devastating disruptions caused by prolonged lockdowns. The impacts are particularly severe for weaker segments of the social system, exacerbating the state of existing inequalities further. “The older populace is susceptible to both infectious and non-infectious diseases just like any other age group. However, the possibility of exacerbation among the aged is quite likely.”^{xv} Research enquiring into the cost of the treatments for the acute diseases showed that cost of treatment was highest among the elderly aged sixty five years and above than any other age bracket.^{xvi}

Healthcare of the elderly should be a major concern of every society^{xvii}, as they are one of the most susceptible, marginalised or neglected group, especially during the times of a pandemic.^{xviii, xix} The elderly who had contributed to the society in innumerable ways in their youth, are one among those disadvantaged groups who needs adequate support and care. Hence, we need to rethink about the protection of their rights, especially right to health and care, with more compassion. “To a great extent, socioeconomic disparities underlie other bases of health disparities, but they do not account for them fully. Because socioeconomic factors are major, modifiable contributors to disparities, addressing them is a logical way to reduce disparities in multiple dimensions”^{xx} The United Nations proclaims 2021–2030 as the Decade of Healthy Ageing in alignment with the development goals for a global action addressing the issues surfaced during Covid-19 pandemic. The year nineteen hundred and ninety nine was marked as the ‘International Year’ for the elderly by the UNGA.^{xxi} The same year, the Indian government introduced the ‘National Policy on Older Persons’, the primary objective thereto was overall well-being of the elderly, ensuring them a legitimate position in the society.^{xxii}

The human rights of the elderly^{xxiii} have become a major topic of attention internationally,^{xxiv} and many international organisations have taken initiatives to provide platforms for deliberating on how to address this issue. The UN has urged all nations to ensure progress towards the achievement of the Sustainable Development Goals (SDGs) included in the 2030 Agenda for Sustainable Development, while dealing with the economic and social shifts associated with an ageing population.^{xxv} Initiatives for identifying the gaps in the policies and programs have commenced only in a few countries so far. Elderly people do not form a homogenous group, generally and hence the requirements also vary.^{xxvi} It has been observed that the age-related discriminations are extensions of existing discriminations^{xxvii} such as access to basic rights i.e., food, shelter, and health.^{xxviii} United Nations Commission on Human Rights (UNCHR) has defined these discriminations in terms of human rights and identified the challenges as “discrimination, poverty, violence and abuse and lack of specific measures and services”.^{xxix}

If viewed through the lens of social justice, the trepidations of the elderly are a justice issue which needs special attention, especially in the present situation. Care of the older people is closely related to the value system of a society, the traditions and its culture. India has been following a tradition of joint family system for centuries, with multiple generations living under the same roof with strong inter-personal bonding amongst members. In case of disputes, if any, personal laws are applicable. For example, Section 20 of Hindu Adoption and Maintenance Act, similar provisions in Muslim, Christian Laws also exist. But the trend is now gradually changing, mainly on account of rising levels of urbanization and globalization. Extended families with their inherent supportive systems are giving way to nuclear families, consisting of father, mother and the children only. The migration of children to other places or countries for the sake of a better living, and an erosion of faith in traditional values, is leaving a large number of elderly at home without anybody to take care, and exposing them to emotional and physical vulnerabilities.

In the times of an extraordinary crisis like the outbreak of a pandemic, the elderly people as a group are susceptible to multiple risks. This is particularly true for those suffering from co-morbidities, and have an on-going requirement of medication and assistance. Discrimination, economic dependence, social isolation and the restrictions on movement are also factors which may have a negative impact on the lives of the elderly in such circumstances.

Health as a Right

Right to health is a human right. Everybody has equal right to access this right. But elderly are neglected due to various reasons and hence right to health needs to be addressed at the earliest. Through ensuring the right, in a way, it addresses right to dignity and this right to dignity includes rights against exploitation, abuse, neglect, discrimination, social exclusion etc.

Old age is associated with psychological, social, and environmental vulnerabilities, universally. The elderly are the people need special attention mainly due to their vulnerability. The health requirements include treatment and health care for diseases and wellbeing. Treatment and health care includes medication and other treatment methods including diagnosis and surgery, physical therapy and nursing care. Wellbeing emphasises on periodical check-ups and counselling, income and livelihood, measures to deal with ailment disability, old age, isolation (widowhood), etc. Ensuring food, nutrition and potable water, shelter and measures of transportation also come under the framework of wellbeing.

In order to ensure mental wellbeing, initiatives may be taken to involve them in fields like education, training of children and youth according to their health condition. This type of engagement in society will help them to avoid social inclusion.

The two areas, among others, identified by UNCHR are- Health and Long-term Care. UNCHR report states^{xxx}

- Health: *Older persons suffer discrimination in health care and tend to be overlooked in health policies, programs and resource allocation. There are only a few comprehensive health policies which include prevention, rehabilitation and care of the terminally ill.*
- Long-term Care: *Much remains to be developed in this area. Long-term care is often inadequate, affected by the shortages of trained personnel and low quality services. The situation is worsened by the lack of legal frameworks to monitor the human rights violations in long-term care facilities.*

From a human rights perspective, governmental intervention is necessary to ensure the indispensable human right to health of the elderly by providing availability and accessibility to quality health care.^{xxx} The capacity of the state to implement welfare measures depends on the availability of resources, social policy and budget planning, above all the extent to which societies agree on the values of redistribution and inter-generational equity. In the last few various voluntary organisations, both at national and state level, have been established for taking care of the welfare of the aged people, for giving a voice for the drafting of a comprehensive law and policy to address their problems and needs and for providing them necessary basic services.^{xxxii} These are mostly NGOs and are registered under the Societies Registration Act, 1960.^{xxxiii} They maintain or sponsor of old age homes in India. These homes cater to the needs of those elderly who are unable to live by themselves and for those who have been abandoned by the family or are neglected and uncared for by their children.^{xxxiv}

More effective actions are essential “for ensuring the appropriate health care decisions affecting older persons, respecting their dignity and upholding their human

rights”.^{xxxv} This may safeguard their right to enjoyment of the highest attainable standards of physical and mental health”.^{xxxvi}

The national public health agency of the United States^{xxxvii}-the Centre for Disease Control and Prevention- funds to improve quality health care to older person to improve the health of older adults by “assessment and diagnosis, risk reduction, and prevention and management”.^{xxxviii} United Kingdom focuses on health and well being of old persons with supporting public services to work together to support people.^{xxxix} They are in the process making new health care models with the support of vanguards to deal with frailty.^{xl} Countries such as Denmark have evolved greatly with respect to the elderly care catering to the health and the social needs. Round about 5.6% of Denmark's GDP is spent on health and medicare. The state ensures the welfare of the senior citizens.^{xli} The state works through the local and community leaders who make policy decisions and programmes as per the special requirements of the community.^{xlii} In India, the health care system is fragmented. The health care system is working at the local level especially in case of elderly.^{xliii} For example, schemes for palliative care for elderly like Viomithram project implemented through local self-government.

Elderly Care: It begins from home

The family, which is the most important primary group in the society, is one of the prime pillars on which the whole Indian social edifice is built. It is the bedrock on which the Indian values and attitudes are structured. No social institution, however, is immune to change over a long period. And these changes are eating away at our traditional norms and values. They face many issues connected with seclusion including negligence from the younger generation.^{xliv} The elderly require constant supervision and the apathy to realize the needs and insecurities of the seniors make them appear intolerable to the young populace, who kind of regard them as burdensome.^{xlv}

Many of them are too scared to express themselves or fear being humiliated by their loved ones. “The aged populace reeling from physical and mental conditions undergo some serious transformation; they at this juncture require constant supervision and safe keeping. And when they are not taken care of, majority of them are affected with an immense feeling of sadness, uselessness; and some of them even resort to violence”.

The Indian society, for as long as one can look back, has been tied together with the fabric of family ties, the caste system, the village system, and rich cultural ethics. Various disintegrating forces in the likes of mechanisation, industrialization, urbanization, modern education are at work to destroy the very fabric on which our societal values stand. Also with the disintegration of the joint family system and the evolution of the nuclear families, the primary caregivers, the daughter-in-laws^{xlviii}, have only drifted away leading to a vacuum in the traditional ethos of the Indian society. Thank the Gods, Senior Care services, especially senior living facilities, assisted care

services, and old age homes are yet to find popular adoption in India. Staying in these centres might do some good for their immediate wellbeing but on a wider landscape the stays in these centres would only affect the mental health of the elderly. Old age is a delicate phase; old people need safekeeping and comfort to lead a happy life without distress and botheration and this is possible if they are staying with their loved ones at their homes and not with strangers at some facility.

Sweden is quite famous for its social welfare programs, especially healthcare, which are primarily funded by the taxes paid by its citizenry. Sweden allots a massive 3.6% of its Gross Domestic Product on prolonged care of the elderly and also provides the highest number of doctors and nurses for its senior citizens whereas India spends mere 0.032 per cent of GDP on senior citizens.^{xlix} “The State of Sweden gives a choice to the older populace to either reside at their residence or in accessible-assisted housing facilities. The pioneering initiative (or like initiatives) taken by the Assam Government should be adopted by other states as well for raising the awareness and promotion of geriatric care. The young populace could be incentivised with some gratia for taking care of their old parents or senior citizens.

As an additional relief, India's new bill^l on welfare of parents, senior citizens will now motivate youths to care for elderly. The proposed amendment makes the offence of abandoning any senior citizen or a parent punishable with imprisonment between three and six months, or a fine of up to Rs 10,000, or both.^{li} The amendment also makes abuse of the elderly punishable with imprisonment between three and six months, or a fine of up to Rs 10,000, or both.^{lii} The proposed amendment provides for police protection of the elderly which was earlier missing from the mother act. The Bill ensures that every police station must have at least one officer (not below the rank of Assistant Sub-Inspector) to deal with issues related to parents and senior citizens and directs the state governments to create a special police unit for senior citizens in every district and which is to be headed by a police officer not below the rank of Deputy Superintendent of Police.^{liii}

Judicial Approach

In *Sunny Paul & Anr. v. State NCT of Delhi & Ors.*^{liv}, the Delhi High Court ruled that the parents who are abused mentally and physically by their children can evict them from their property while they are living with them in their house.^{lv} In the similar lines, the Kerala High Court has held that maintenance tribunals presided over by district magistrates under the Kerala Maintenance and Welfare of Parents and Senior Citizens Rule, 2009 have the power to order eviction of son/daughter from senior citizen's residential building to ensure his/her normal living with security and dignity.^{lvi}

In *Kirtikant D. Vadodaria v. State of Gujarat*^{lvii}, the Supreme Court opined old and infirm parents are entitled to maintenance under Maintenance And Welfare Of Parents And Senior Citizens Act, 2007 from their daughter same way as from son. The High Court of Karnataka recently has said that there is an utter failure from the side of

the State government to abide with its statutory duty of establishing old age homes as per the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Therefore the supervisory role has to be taken over by the respective state governments to ensure that the old age homes are functioning as per the prescribed guidelines and the funds are being utilized in full for the welfare of the elderly in the institutions.

The Nagpur bench of the Bombay High Court recently observed that ageing has become a major social problem for senior citizens as these are the years when their children fail to take their proper care.^{lviii} The Bench said, “[D]ue to the degradation of the joint family structure, a good number of older populace is not being looked after by their kin. Consequently, many older persons especially widowed women are now left without choice but to spend their slog years all by themselves and are experiencing emotional neglect and lack of physical and financial support...”^{lix} The Bench also acknowledged that, “Though the parents can claim maintenance under the Cr.P.C., the procedure is frustrating, complicated as well as costly. Hence, there is a need to have simple, inexpensive, and speedy provisions to claim maintenance for parents.”^{lx}

What is the ideal age friendly health care system?

A movement initiated by Institute for Healthcare Improvement recently synthesized that becoming an Age-Friendly Health System entails reliably providing a set of four evidence-based elements of high-quality care, known as the ‘4Ms,’ to all elderly in your system: what Matters, Medication, Mentation, and Mobility.^{lxi} The John A. Hartford Foundation and the Institute for Healthcare Improvement (IHI), in partnership with the American Hospital Association (AHA) and the Catholic Health Association of the United States (CHA), designed and developed Age-Friendly Health Systems as a social movement for the welfare of the elderly.^{lxii}

Age friendly health systems utilize a person-centred approach to maintain the health of older adults based on evidence-based care that improves health outcomes and prevents avoidable harm.^{lxiii} Focusing on what matters means to prioritize the older adult’s specific health outcome goals and care preferences across all settings of care.^{lxiv} The second of the 4Ms, medication, means using age-friendly medication or dose adjusting if medication is needed, and avoiding or de-prescribing high-risk medications that may interfere with what matters, mentation, or mobility. The third of the 4Ms, mentation, also referred to as mood and memory, focuses on the prevention, identification, treatment, and management of dementia, depression, and delirium. The final of the 4Ms, mobility, ensures the appropriate approach to assisting or encouraging older adults to move safely every day in order to maintain functional ability and do what matters.^{lxv} The simultaneous integration of all aspects of this framework into care in every setting improves health outcomes for older adults, reduces waste from low-quality services, and increases the utilization of cost effective services.^{lxvi}

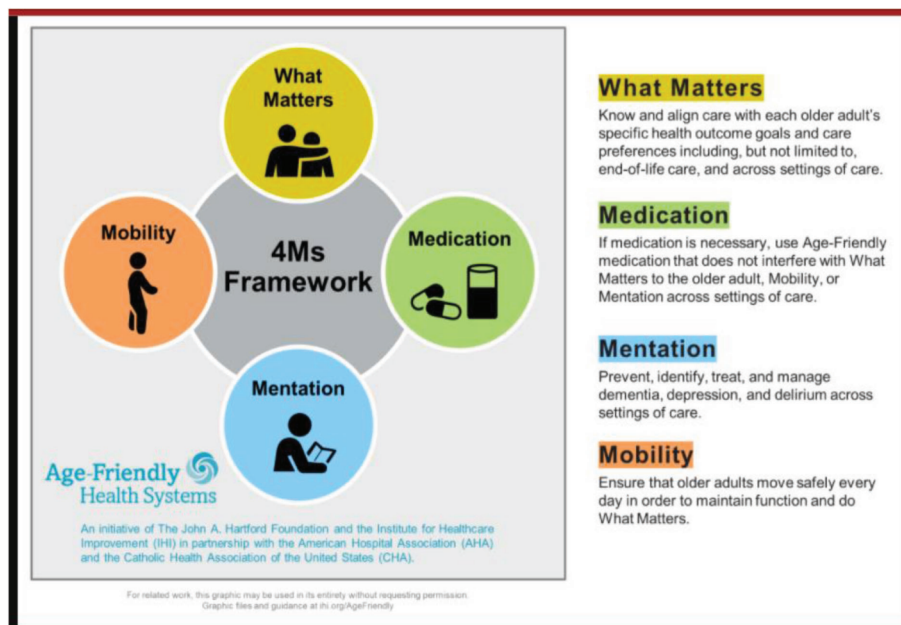


Figure 1: 4Ms interaction; Source: The Institute of Healthcare Improvement. (Institute for Healthcare Improvement, 2020)^{lxvii}

In the early days of Geriatrics, teams focused on common geriatric syndromes such as falling, delirium, incontinence, failure to thrive, and dementia, but each was addressed in parallel.^{lxviii} Given the array of geriatric care models available both the United States of America and globally, the researchers at the Institute admitted that key constructs may have been overlooked during the course of the expert panel assessment of the Age friendly healthcare system and more work needs to be done to truly understand the cultural, racial, and ethnic specificity that are needed to ensure that this approach is appropriate across populations.^{lxix}

Legislative framework in India

India has initiated a legislative intervention for the protection of 'senior citizens'. The preamble, fundamental rights and directive principles of state policy are the pillars which forms the "rights" framework under Indian constitution. The health rights of elderly are read with right to life and thus brought under the purview of Article 21 Right to life through judicial interpretation. In Francis Coralie Mullin v. Union Territory of Delhi^{lxx}, Justice P.N. Bhagavathi stated that the "right to life includes the right to live with human dignity". Further in Consumer Education and Research Centre v. Union of India,^{lxxi} the Supreme Court expanded further and held that the right to health and medical care is a fundamental right under Article 21 of the Constitution.

Articles 39 (e) and Article 41 in Part IV of the Directive Principles of State Policy are direct provisions in the Constitution that vests responsibility on the state expressly for security measures for the elderly while taking affirmative actions. Hon'ble Justice D.A. Desai has categorically explained the constitutional objective of Article 41 as,

“[T]hen comes the old age in the life of everyone, be he a monarch or a mahatma, a worker or a pariah. The old age overtakes each one, death being the fulfilment of life providing freedom from bondage. But then socialism aims at providing an economic security to those who have rendered unto society what they are capable of doing when they are fully equipped with their mental and physical prowess. In the fall of life, the state shall ensure to the citizens a reasonably decent standard of life, medical aid, freedom from want, freedom from fear and the enjoyable leisure relieving the boredom and the humility of dependents in old age. This is what Article 41 aims when it enjoins the state to secure public assistance in old age, sickness and disablement.”

Whenever any issue relating to interests of elderly is brought before judiciary, the judiciary takes a lenient view. In *Ashwani Kumar v. Union of India*^{lxxii} the petitioner approached the Supreme Court for enforcement of rights of elderly persons under Article 21 of the Constitution. The Supreme Court opined that rights of elderly are an emerging situation that was not fully foreseen by the framers of the Constitution. As quoted by the Supreme Court: “[E]ven so, the 21st century has brought new challenges. No doubt the concept of justice - political, economic and social – has a resilient core but it needs to be thought of in innovative ways. It requires to be applied afresh to emerging situations- situations that may not have existed or been foreseen when our Constitution framers were at work.”

The rights of elderly persons are one such emerging situation that was perhaps not fully foreseen by our Constitution framers. Therefore, while there is a reference to the health and strength of workers, men and women, and the tender age of children in Article 39 of the Constitution and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want in Article 41 of the Constitution, there is no specific reference to the health of the elderly or to their shelter in times of want and indeed to their dignity and sustenance due to their age”^{lxxiii}

Through challenging the pension amount under the Indira Gandhi National Old Age Pension Scheme, i.e., persons between the age of 60-79 years at ₹ 200 per month and ₹ 500 per month was fixed by the Union of India for persons above 80 years of age. The Court held that “there cannot now be any doubt that the right to live with dignity is, in effect, a part of the right to life as postulated in Article 21 of the Constitution. Such a right would be rendered meaningless if an aged person does not have the financial means to take care of his basic necessities...” and Central and State governments should provide adequate pension “to sustain with dignity”

Apart from this, Articles 46^{lxxiv}, 47^{lxxv}, Entry 24 of the Concurrent List of Schedule seven of the Indian Constitution deals with the “welfare of labour, including

conditions of work, PPFs, liability for workmen's compensation, invalidity and old age pension and maternity benefits".^{Ixxvi} Further, Entry 9 of the List II and Entry 20, 23 and 24 of Concurrent List relates to old age pension, social security and social insurance, and economic and social planning.^{Ixxvii}

There are other legal provisions also touching rights of the elderly. Section 125 (1) (d) of the Code of Criminal Procedure 1973 provides the parents' entitlement to be supported by their children- son, daughters/married daughters, step sons- having sufficient means. The Protection of Women from Domestic Violence Act, 2005, can be used in case of any kind of abuse –which may affect the mental health of the elderly- at home and thus protects their right to dignity. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007^{Ixxviii} was enacted in the year 2007, in order to give legal teeth to the allied provisions in the Constitution and for the maintenance and welfare of parents and senior citizens secured the Indian Constitution. Medical attendance and treatment is made part of maintenance in the Act and obligation is casted on children and relatives to maintain the senior citizen or parent so that they can lead a 'normal life'. This Act a moral obligation of the children to look after their parents and provide a speedy remedy to aggrieved Senior Citizens. Section 20 of the act deals with medical support for senior citizens. It provides that the State Government shall make sure that, (i) the government nursing wards or hospitals financed fully or somewhat by the state or federal government should provide beds for all senior individuals as long as possible; (ii) separate dedicated lines are to be arranged for senior citizens;(iii) centres for treatment of chronic, terminal and degenerative diseases is expanded for aged people;(iv) research activities for chronic aging population diseases and effects of getting older is expanded;(v) There are reserved facilities for geriatric patients in every district hospital appropriately headed by the medical officer with high experience in elderly care. But the institutional set up under the act is not effective as it requires. Moreover, improper implementation, inadequate understanding and the awareness among the general public about the remedies under the Act raises the effectiveness of the Act are matters of concern.

The personal law also recognises the rights of the elderly to be looked after by their children. Section 20 (1 & 3) of the Hindu Adoption and Maintenance Act, 1956 also casts duty on children to look after their parents if parents are unable to maintain themselves out of their own earnings or other property. According to codified Muslim law, children are required to maintain parents and paternal and maternal grandparents, if they are poor and cannot take care of themselves.^{Ixxix}

A Central Sector Scheme of Integrated Programme for Older Persons (IPOP) was implemented since 1992 with the objective of "improving the quality of life of senior citizens by offering basic essential requirements like food, shelter, healthcare and amusement opportunities and by stimulating productive and active ageing".^{Ixxx} Under the above mentioned program, financial help upto ninety percent of the project cost is provided to NGOs for the efficient functioning and care of old age homes, day care centres, and mobile medicine units.^{Ixxxi}

The National Policy on Older Persons was announced by the Central Government of India in the year, 1999 to reaffirm the commitment to ensure the well-being of the older persons. It was a step to promote the health, safety, social security and well-being of elderly in India. The policy recognizes a person aged 60 years and above as elderly.^{lxxxii}

A National Council for Older Persons (NCOP) was constituted in 1999 which was followed by National Policy on Senior Citizens 2011 focusing more on care giving considering the special needs of senior citizens. . The NCOP^{lxxxiii} is the highest body to advise the Government in the formulation and implementation of policy and programmes for the elderly.^{lxxxiv} The key objectives of the council were to advise the Government on policies and programmes for older persons; Represent the collective opinion of elderly persons to the government; Suggest steps to make old age productive and interesting; provide feedback to the government on the implementation of the NPOP as well as on specific programme initiatives for elderly; Suggest measures to enhance the quality of inter-generational relationships, etc. The National Policy on Older Persons 1999 has not been implemented effectively. A draft National Policy on Senior Citizens was published in 2011 but has not been finalised and implemented either.

Keeping in view the recommendations made in the “National Policy on Older Persons” as well as the State’s obligation under the “Maintenance & Welfare of Parents & Senior Citizens Act 2007”, the Ministry of Health & Family Welfare has taken appropriate steps in this regard by launching the National Programme for Health Care of Elderly (NPHCE)^{lxxxv} as a centrally sponsored scheme during the year 2010, in the 11th Plan period, to address various health related problems of elderly people^{lxxxvi} with the following objectives:

- To dispense attainable, inexpensive, and high-quality long-term, all-inclusive and dedicated care services to the elderly populace^{lxxxvii};
- To associate the health problems in the elderly policies and programs for welfare of the older people in India and provide appropriate health interventions in the community with a robust referral backup support.^{lxxxviii}
- To provide an easy ingress to “promotional, preventive, curative and rehabilitative services to the elderly through community based primary health care approach.”^{lxxxix}
- To build capacity of the medical and paramedical professional as well as the caretakers within the family for giving health care to the elderly.^{xc}
- To provide referral services to the elderly patients through district hospitals, regional medical institutions.^{xc}

- Creating a new ‘architecture’ for aging India; to build a substructure to create a warranting environment for ‘a Society for all Ages’;
- To promote the concept of active and healthy ageing;
- Convergence with ‘National Rural Health Mission’, ‘AYUSH’ and other line departments like Ministry of Social Justice and Empowerment.^{xcii}

The Program Strategies are based on Community based primary health care approach including domiciliary visits by trained medical workers, earmarked services at PHC/CHC level including the facility of machinery, gadgets, equipment, training, additional human resources (CHC), Information, Education & Communication, etc. earmarked facilities at District Nursing Homes and Hospital with 10 bedded wards, additional human resources, medical machinery & equipment, consumables & medicines, training and IEC., Strengthening of RGC^{xciii} to arrange proper tertiary level healthcare facilities for the elderly, Info., Edu., & Comm. using multimedia, folk media and various other forms of communication channels to reach the target community and continuous monitoring and independent evaluation of the Programme and research in Geriatrics and implementation of NPHCE.^{xciv}

Parallel to these efforts, State governments also introduced certain initiatives. Himachal Pradesh^{xcv} for ensuring maintenance of parents and Assam^{xcvi} for ensuring accountability of employees of the State Government in taking care of their dependant parents, enacted legislations.

The Kerala State Old Age Policy 2006 and the Kerala State Revised Old Age Policy of 2013 mandate necessary action to ensure that the elderly can live with dignity in society by catering to their health and financial security.

Insurance Regulatory Development Authority (IRDA) has issued some guidelines on medicare insurance for aged populace to Chief Executive Officers of all General Health Insurance Companies (GHIC) in India which, among other things, includes: permitting entry into health insurance scheme till sixty five years of age; Provision of openness and transparency in the rate of premium charged; justifications to be recorded for refusal of any proposals on all health insurance products pertaining to the requirements of the elderly. IRDA declares and makes public announcement that “Insurance Regulatory and Development Authority of India (IRDAI) is sensitive to the special needs of Senior Citizen Policyholders. It has been intervening proactively with regulatory actions such as: In 2006/2007 when some insurers drastically raised hospitalisation policy premiums, it laid down a cap for such revision. A Committee on Health insurance for Senior Citizens was constituted to go in to special requirements. A large number of recommendations of this committee were implemented. IRDAI has also issued the following instructions about health insurance for senior citizens to insurers: *Individuals should be allowed to buy a new health insurance policy up to the age of 65. Any rejection of a proposal for health insurance of a senior citizen should be*

in writing with reasons. A senior citizen policyholder should be given an option to change his TPA wherever practicable. At least 50% of the cost for pre-insurance medical examination may be reimbursed where the risk is accepted by the insurer. No insurer can refuse the renewal of a health insurance policy except on grounds of fraud, moral hazard, or misrepresentation."^{xcvii}

And the most recent policy, Draft National Policy for Senior Citizens 2020, seeks to address the concerns^{xcviii} with regard the elderly and promises to promote affordable and accessible healthcare for seniors with a focus on public health services, health insurance, tax incentives, and subsidies. "In Improved access to Medicare facilities, India secured seventy first rank on the 'Age Watch Index' published in 2015. The index covered 91 percent of the world's elderly population from ninety six nations. One of the four aspects that the index took into account was the healthcare status in the country. Majority of the healthcare services in India are not planned considering the evolving requirements of the elderly population. As a result, provision to inexpensive and aged specific medicare continues to remain a major throttle even till date."^{xcix} Moreover, facilities such as preventive protection, rehabilitative homes, and elderly care facilities will be highlighted to support healthy ageing for all elders and to direct age linked issues.^c

Creating an Elder Justice system

On analysis it can be inferred that all the above said legislations, schemes and programs, there is a huge gap between the legal framework and its implementation in case of medical support. More over these are following a need based approach, may be appropriate as a problem solving method. But the problems will remain and may rise up with new set of people and new set of circumstances. Hence we need a solution for addressing the demographic change which is going to be more crucial in coming years.

A proper definition of elderly is very essential to change from need based approach to right based approach. Some enactments the age is 60, in some other it is 65 and in case of entitlements, as in case of pension, there are two slabs 60 to 79 years and above 80.

India is following "out of pocket" health care model^{ci} where in people pay for the medical services due to scarcity of resources of the state. If you have money you survive, otherwise...and there arises the importance of governmental intervention.

India has a strong base with culture and values. The value system should be strengthened initially by casting responsibility of children and family members. Government should step in if there are no family members or if the family members do not have sufficient means. A social action at local level with participation of people (volunteers), local governments, NGOs, school and college children should initiated for a tangible support to ensure the health and wellbeing of the elderly. Proper training should be given to the family members, care givers, nursing assistants and volunteers.

Intergenerational bonding could be strengthened with the participation of senior citizens in family decisions, volunteerism or income generating opportunities. NGOs, CSO, and faith-based organizations could play a significant role in inculcating values in the younger generations of respect, regard and love for the elderly. Old-age pensions or tax breaks for children taking care of old parents could provide the right incentives for an ecosystem of increased awareness and practice of active ageing. While its application still remains to be observed but there little apprehension that the resolve to connect elderly care to their employer's pay will manifest to be a master stroke.

Geriatric care and medical facilities for the elderly must be 'rights based'. The present situation needs state interference as a social institution through affirmative actions, in order to protect the social rights of elderly. What we need is Elder Justice System with strong base at local level providing easy assistance- in all its meaning- to the elderly people.

In India, Article 41 and 46 of the Constitution mandate the government to make provisions relating to the wellbeing of the elderly. During Covid-19 pandemic, the older people have been facing stratified discriminations^{cii} and hence this is a very important issue to be addressed seriously. The Senior Citizens Act, 2007 and the National Policy on Senior Citizens 2011 need to be revisited, in order to ensure the rights and entitlements of the elderly. We need a right based better health care model. Hence a detailed study and preparation of a comprehensive plan with legislative intervention, addressing the issues relating to protection of right to health and allied aspects in the light of the experience during pandemic, is the need of the hour. Let our parents and grandparents live their life with dignity (with a hope that we may also get the same) and there is no system better than love and compassion!

ⁱ The World Health Organization (WHO) has defined 'health' as a state of complete physical and mental well-being and not merely the absence of disease.

ⁱⁱ WHO constitution states: The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.

ⁱⁱⁱ <https://www.who.int/news-room/fact-sheets/detail/ageing-and-health>.

^{iv} Gabrielle Martins Van Jaarsveld: The Effects of COVID-19 Among the Elderly Population: A Case for Closing the Digital Divide Front Psychiatry, 12 November 2020

^v Robert D. Trug et al., The Toughest Triangle- Allocating Ventilators in a Pandemic The New England Journal of Medicine 23 March 2020.

^{vi} "Elderly in India 2021" Report published by Government of India accessible at <https://mospi.gov.in/web/mospi/reports-publications>.

^{vii} Report of the Secretary-General on the review and appraisal of the Programme of Action of the International Conference on Population and Development and its contribution to the follow-up and review of the 2030 Agenda for Sustainable Development (E/CN.9/2019/2).

^{viii} United Nations, "World Population Ageing 2013" <https://www.un.org/en/development/desa/population/publications/pdf/ageing/WorldPopulationAgeing2013.pdf>

^{ix} https://www.un.org/en/development/desa/population/publications/pdf/ageing/WPA2017_Highlights.pdf

^x United Nations, "World Population Prospects 2019".

^{xi} Table 3.1 See Supra N. 6 India's elderly population (aged 60 and above) is projected to touch 194 million in 2031 from 138 million in 2021, a 41 per cent increase over a decade.

^{xii} <https://unsdg.un.org/2030-agenda/universal-values/leave-no-one-behind>.

^{xiii} Arunika Agarwal et al, Population Change and Impacts in Asia and the Pacific (pp.289-311) IZA Discussion Paper No. 10162 August 2016 (Department of Global Health and Population Harvard T. H. Chan School of Public Health).

^{xiv} Inference based on two projects conducted during Covid-19 pandemic (i) Study on the Impact of Covid-19 Pandemic on the Socio-Economic Life of people in Kerala Villages with special reference to Strategies Adopted to Combat Challenges Posed (ii) Not Safe at Home? A Study on Increasing Domestic Violence during Covid-19 Pandemic.

^{xv} Paul, N Sherin Susan, and Mathew Asirvatham. "Geriatric health policy in India: The need for scaling-up implementation." *Journal of family medicine and primary care*, 5(2) (2016): 242-247. doi:10.4103/2249-4863.192333.

^{xvi} Peasah SK, Purakayastha DR, Koul PA, Dawood FS, Saha S, Amarchand R, et al. The cost of acute respiratory infections in Northern India: A multi-site study 15 *BMC Public Health* 330 (2015).

^{xvii} Chetanya Malik et al., Geriatric population in India: Demography, vulnerabilities, and healthcare challenges, *J Family Med Prim Care* 2021, 10:72-6. <http://www.jfmpe.com>.

^{xviii} Carmelle Peisah et al., Advocacy for the human rights of older people in the covid pandemic and beyond: a call to mental health professional, *Int. Psychogeriatr* 1-6 (3 June 2020).

^{xix} Shachi Joshi, Covid-19 and Elderly in India, *Manpower Journal* Vol LIV No. 3&4, July -December 2020

^{xx} Marmot M. Social justice, epidemiology and health inequalities. *Eur J Epidemiol*. 2017 Jul, 32(7): 537- 546.

^{xxi} Paul, N Sherin Susan, and Mathew Asirvatham. "Geriatric health policy in India: The need for scaling-up implementation." *Journal of family medicine and primary care*, 5(2) (2016): 242-247. doi:10.4103/2249-4863.192333.

^{xxii} *Ibid*.

^{xxiii} There is no uniformity as to the definition of old person/elderly/senior citizen/aged person. WHO says more than 60 years, in some countries age of retirement. In India, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 defines 'senior citizen' means any person being a citizen of India, who has attained the age of sixty years or above.

^{xxiv} <https://www.ohchr.org/en/issues/olderpersons/pages/olderpersonsindex.aspx>.

^{xxv} "Transforming our world: the 2030 Agenda for Sustainable Development" (A/RES/70/1) <https://sdgs.un.org>

^{xxvi} Ravi Duggal. Challenges in Financing Healthcare Economic Political Weekly, Vol. 47, Issue No. 35, 01 Sep, 2012.

^{xxvii} Observation based on own study report on domestic violence during pandemic- "Not Safe at Home? A Study on Increasing Domestic Violence during Covid-19 Pandemic".

^{xxviii} *Ibid*.

- ^{xxix} The report (A/66/173) is submitted pursuant to the General Assembly resolution 65/182 of December 2010. This is the first Report of the Secretary-General to the General Assembly that focus on the human rights
- ^{xxx} Human Rights of Elderly Persons, Summary of the Report of Secretary General to the General Assembly 2010, Office of the High Commission for Human Rights (OHCHR).
- ^{xxxi} Rodríguez-Pinzón, Diego and Claudia Martin. "The International Human Rights Status of Elderly Persons." *American University International Law Review* 18, no. 4 (2003): 915-1008.
- ^{xxxii} J Balamurugan, Policies and Programmes for Welfare of the Elderly in India, 2(12) RFP Journal of Gerontology and Geriatric Nursing, 2130 (2019).
- ^{xxxiii} *Id.*
- ^{xxxiv} *Id.*
- ^{xxxv} Resolution adopted by the General Assembly on 14 December 2020 <https://undocs.org/en/A/RES/75/131>
- ^{xxxvi} *Ibid.*
- ^{xxxvii} 16% of the population are above 65 years old. See also, www.cdc.gov. By 2040, the number of older adults is expected to reach 80.8 million
- ^{xxxviii} <https://www.cdc.gov/chronicdisease/resources/publications/factsheets/promoting-health-for-older-adults.htm>
- ^{xxxix} <https://www.england.nhs.uk/ourwork/clinical-policy/older-people/improving-care-for-older-people/>
- ^{xl} *Ibid.*
- ^{xli} *Supra* Note XV.
- ^{xlii} *Ibid.*
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Internationalization of Higher Education A Theoretical Analysis

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Abstract

Universities in the world over have been undergoing rapid transformation in recent times. This is in response to the increase in flow of population, technologies, knowledge, capital etc. across national barriers. As the most visible and significant sites of knowledge creation, Universities can no longer remain islands amidst a rapidly changing society. Internationalization of higher education is seen as one of the ways of a country responds to the impact of globalization, yet respects the multicultural identity of nations. The paper tries to give a conceptual clarity to the idea of internationalisation. For this, the author draws the theoretical and conceptual idea of various thinkers in the field across the world.

Key Words: Higher Education, Internationalization, Globalisation, Research

Introduction

In today's world of globalization of research and graduate studies, mobility of personnel is essential to sustain international networks. Though modern communication systems facilitate exchange of information, it is the personal interaction and experience gained through working at international institutions having complementary expertise results in innovative research and educational system. Institutions having diverse cultural, economic and geographic backgrounds bring unique perspective to existing research problems and education. For an international network to succeed, it is essential to have co-workers/team members who support and complement each other, provide positive competitive environment where they pursue a common goal as a team and serve a cause or solve problems that could otherwise take years in making or happening (EU/US Research and Education Workshop 2008).

Knight (1993) describes internationalization of higher education as the process of integrating an international/intercultural dimension into teaching, research and service functions of the institution. There are several key concepts in this definition, eg. The idea of internationalization being a dynamic process and not to a set of isolated

activities, integration or infusion that contributes to the sustainability of the international dimension. In a broader sense internationalization is an aim itself, while in several countries and settings it is rather seen as a means to achieve a wider goal, eg. quality improvement, restructuring and upgrading of higher education systems and services (Vander Wende 1997). The forces that drive HEIs to internationalization have been classified in the literature (Knight, 2004; Stier, 2004) as academic (driven by a belief that education and research have a world-wide scope) or economic (driven ultimately by a need to find new sources of revenues and growth). Other motives could be political (driven by a desire to influence potential and actual opinion leaders to ultimately enhance the political standing of the institution's country of origin) or religious (driven by a desire to spread the faith of a particular religious organization). Political and religious motives rarely originate at the institution's level. These two motives are usually driven by policy makers and funded by private or government programs. For this reason we exclude them from consideration and focus only on the academic and economic motives.

Theoretical Analysis

Internationalization is a concept in constant development and many different definitions have been proposed during the course of the past three decades or more. Discussion about the differences and similarities with globalization has raged for years. Internationalization of higher education refers to the process of integrating an international, intercultural and global dimension into the purpose, functions and delivery of education and research of the concerned university (Chan and Dimmock 2008). According to Ellingboe (1998), internationalization is defined as an ongoing, future-oriented, multidimensional, interdisciplinary, leadership-driven vision that involves many stakeholders working to change the internal dynamics of an institution to respond and adapt appropriately to an increasingly diverse, globally focused, ever-changing external environment. International collaboration in scientific research involving extremely large- megascience-projects has also grown substantially, reflecting scientific and budgetary realities. The internationalization of higher education mainly embraces mobile faculty and students, educational aids and international cooperation, and curriculum internationalization. In other words, internationalization of higher education includes faculty and student exchange, joint teaching and research programs as well as curriculum internationalization (Yunlai and Zhehua 2008).

According to Jane Knight, Internationalization at the national, sector, and institutional levels is defined as the process of integrating an international, intercultural, or global dimension into the purpose, functions or delivery of (post-secondary) education. (Knight, Jane., *Updating the Definition of Internationalization*, International Higher Education, Issue 33, Fall 2003. Boston).

Knight's definition is intentionally neutral and does not specify the rationales, the positive or negative consequences, or type of activities and actors associated with internationalization. It highlights another important dimension of the concept of internationalization that it is an ongoing process rather than a static state of being. Similarly, OECD emphasizes the process of internationalization as the complex of processes whose combined effect, whether planned or not, is to enhance the international dimension of the experience of higher education in universities and similar educational institutions. (OECD, 1994).

Another useful term which, in many ways simply expands on the Knight definition is related to „Comprehensive Internationalization“. Comprehensive Internationalization is a commitment, confirmed through action, to infuse international and comparative perspectives throughout the teaching, research, and service missions of higher education. It shapes institutional ethos and values and touches the entire higher education enterprise. It is essential that it is embraced by institutional leadership, governance, faculty, students, and all academic service and support units. It is an institutional imperative, not just a desirable possibility. Comprehensive internationalization not only impacts all of campus life but the institution's external frames of reference, partnerships, and relations. The global reconfiguration of economies, systems of trade, research, and communication, and the impact of global forces on local life, dramatically expand the need for comprehensive internationalization and the motivations and purposes driving it. (John K. Hudzik, 2011).

In April 2015 Hans De Wit proposed a new definition of internationalization: The intentional process of integrating an international, intercultural or global dimension into the purpose, functions and delivery of post-secondary education, in order to enhance the quality of education and research for all students and staff, and to make a meaningful contribution to society. (De Wit, 2015).

People are considered as carriers of knowledge and exchange of researchers at early stage in their career (graduate and post-doctoral level) between institutions and industries results in sustained networks. For an individual to pursue international collaborations it is essential to have motivation whether it is personal or professional, a role model to look towards to seek advice and gain strength in difficult times (as international initiatives demands intensive efforts), an opportunity to collaborate and most of all an individual must have passion to pursue his/her goals and dreams, otherwise collaborations may not be sustainable over extended periods (EU/US Research and Education Workshop 2008).

Internationalization in higher education is multifaceted; its meanings and interpretations shift according to the various rationales, incentives, and political and economic circumstances within which it takes place (Callan, 2000). Forces both within and outside the university usually influence the direction and extent of

internationalization (Cuthbert, 2002). Internationalization of university depends on institutionalizing a strategic planning process that is representative in that it recognizes and utilizes the power of the culture within which it occurs (Chan and Dimmock, 2008). Ellingboe (1998) specifically states five components which are integral to complete understanding of the process applied in internationalizing the university. These components are as follows: 1) College leadership; 2) Faculty members' international involvement in activities with colleagues, research sites, and institutions worldwide; 3) The availability, affordability, accessibility, and transferability of study abroad programs for students; 4) The presence and integration of international students, scholars and visiting faculty into campus life; and 5) International co-curricular units (residence halls, conference planning centers, student unions, career centers, cultural immersion and language houses, student activities and student organizations).

A report by American Council on Education (Green, 2005) has established six key activities describing the internationalization of Research at a University. They are: articulated commitment, academic offerings, organizational infrastructure, external funding, institutional investment in faculty, and international students and student programs.

Articulated commitment: an institution must articulate its commitment for internationalization through mission statements, strategic plans, international education offices, and campus-wide international education committees. Any institution actively pursuing international research should establish guidelines to enable students to study abroad without delaying their graduation and their international participation. The institution must have internationalization as one of the top-five priorities in their strategic plan. In addition, most of the research intensive internationalized institutions will consider international work while evaluating faculty promotions and tenure decisions (Green, 2005). The university could also establish special awards to recognize exceptional researchers for their participation and sustainable internationalization of university (University of Calgary 2008). Organizational as well as unnecessary economic barriers to faculty members spending periods of time working abroad shall be reduced (Linköping University (LiU), 2005).

Academic offerings: One of the prevalent strategies for a research intensive university is to offer study abroad program for credit. In addition, research intensive universities would require students to take a general education course with an international focus (Green, 2005). In an increasingly globalized economy, science and technology careers extend beyond national boundaries. Universities and research institutes worldwide are addressing these developments by setting up exchange programs, double and/or joint degrees, and foreign campuses (Embassy of France 2008; LiU 2005).

Organizational infrastructure: The communication of international opportunities to the university faculty and student body is critical in internationalization efforts; which

could be achieved through efficient and comprehensive university web site, group e-mail system, and newsletters. Universities with international focus will have human resources and facilities dedicated to international education and would have a campus-wide internationalization task force. In addition, these universities will have an international administration office to follow-up on activities and disburse relevant information to university community (Green 2005).

External funding: Availability of funding is critical to internationalization of university research. However, it has been reported that for most of the universities, the primary source of funding is from private sources/foundations. Only highly internationalized universities are successful in attracting external funding from all available/possible sources (Green, 2005). Therefore, it is essential to have a source of internal (university based) seed funding or an investment that could complement faculty efforts in attracting additional funds from private foundations and international granting agencies.

Institutional investment in faculty: Institutions aggressively pursuing internationalization must have mechanisms to financially support their faculty and student travel abroad programs for meetings and conferences, and study or establish research collaborations and teach abroad. In addition, universities should offer on-campus facilities and organize workshops to help faculty use technology to internationalize their courses (Green, 2005). In addition, universities should provide incentives to junior faculty who are not tenured and would like to pursue international collaborations early in their careers.

International students and student programs: The universities focused on internationalization should have internal funds to support on-campus international student research and extracurricular activities. In addition, these universities should provide scholarships to international students, a meeting place or medium to discuss international topics, and fund international recruitment officers to travel abroad (Green, 2005).

The Association of Universities and Colleges of Canada (AUCC) in 2000 published a study on internationalization at Canadian Universities and summarized that it might be easier to centralize internationalization activities; that a champion is needed and an organizational structure to support that person. The study also indicated that credibility comes from faculty participation in the process (if not the international office itself), particularly with respect to curriculum development and supervising students. However, faculty members must get credit for this work, have their teaching load reduced and have a committed and motivated dean/leader. It was generally agreed that internationalization is a priority for smaller institutions but that the key problem is one of resources and how to get faculty interested (AUCC, 2000).

Internationalization and Globalisation

Internationalization and globalisation are complementary to each other. De Wit (2002: 14) stated that “as the international dimension of higher education gains more attention and recognition, people tend to use it in the way that best suits their purpose.” This is even more the case now in view of its further proliferation of activities and terms. “Internationalization is changing the world of higher education, and globalization is changing the world of internationalization,” remarks Jane Knight (2008). The debate on globalisation and internationalisation and the recent, rapid evolution of cross-border activities in higher education have strengthened the tendency to explain and define the internationalisation of higher education in relation to a specific rationale or purpose. Peter Scott (2006) observes that both internationalization and globalisation are complex phenomena with many strands, and concludes that “the distinction between internationalisation and globalisation, although suggestive, cannot be regarded as categorical. They overlap, and are intertwined, in all kinds of ways.” Ulrich Teichler (2004) notes that “globalisation initially seemed to be defined as the totality of substantial changes in the context and inner life of higher education, related to growing interrelationships between different parts of the world whereby national borders are blurred or even seem to vanish.” But, according to him, in recent years the term „globalisation“ has been replaced by „internationalisation“ in the public debate on higher education, resulting at the same time in a shift of meanings: “the term tends to be used for any supra-regional phenomenon related to higher education and/or anything on a global scale related to higher education characterised by market and competition.”

Philip Altbach, Liz Reisberg and Laura Rumbley (2009, 7) state: “Globalization, a key reality in the 21st century, has already profoundly influenced higher education. We define globalization as the reality shaped by an increasingly integrated world economy, new information and communications technology, the emergence of an international knowledge network, the role of the English language, and other forces beyond the control of academic institutions. Internationalization is defined as the variety of policies and programs that universities and governments implement to respond to globalization.”

Ulrich Teichler (2004), Peter Scott (2005), Philip Altbach (2006), Jane Knight (2008), Felix Maringe and Nick Foskett (2010) and others have written extensively about the complex relationship between internationalization and globalisation. “In terms of both practice and perceptions, internationalization is closer to the well-established tradition of international cooperation and mobility and to the core values of quality and excellence, whereas globalization refers more to competition, pushing the concept of higher education as a tradable commodity and challenging the concept of higher education as a public good.”

The literature (De Wit, 2002) identifies four broad categories of rationales for internationalisation: political, economic, social and cultural, and academic. These

rationales are not mutually exclusive, they may vary in importance by country and region, and their dominance may change over time. At the present time, economic rationales are considered to be more dominant than the other three. In relation to these, academic rationales such as strategic alliances, status and profile are also becoming more dominant. Jane Knight (2008) speaks of emerging rationales at the national level (e.g. human resource development, strategic alliances, income generation/commercial trade, nation building, social/cultural development and mutual understanding) and at the institutional level (e.g. international branding and profile, quality enhancement/international standards, income generation, student and staff development, strategic alliances and knowledge production).

Internationalization: Benefits

Key benefits of internationalization include (University of Waterloo (UW), 1999) diversifying and enhancing the learning environment for the benefit of domestic students, the university, and the nation; 2) diversifying and enhancing the student population by attracting excellent international undergraduate and graduate students; 3) ensuring that research and scholarship are informed by international, as well as national, provincial and local, considerations and issues; 4) producing graduates who are internationally knowledgeable and cross-culturally sensitive; 5) addressing through scholarship the increasingly interdependent nature of the world, thereby contributing to improved understanding among nations; 6) generating resources to enhance other international activities; 7) helping to maintain the economic, scientific and technological competitiveness of Canada, and promoting the export of Canadian educational products and services abroad; and, 8) raising the international profile of the University.

Generally, international education engenders the “international characteristics” fostered in students that are desirable in a global economy: international-mindedness and open- mindedness, second language competence, flexibility of thinking, tolerance and respect for others (*Hayden et al. 2003; Chan and Dimmock, 2008*).

Challenges to Internationalization

Bartell (2003) stated that universities are loosely-coupled systems, or more colorfully, “organized anarchies” (Cohen and March, 1986). The collegial process and executive authority are both required in managing the university. Bureaucracy, well-suited to a stable or slowly changing environment, is a component in the internal environment as is political (unit) behavior, in the attempt to justify and obtain resources from the central administration. The complexity, high degree of differentiation, multiplicity of units and standards, autonomy of professors, control and management philosophies and mechanisms, which increasingly do not operate effectively even in business organizations, are likely to be complicating and inhibiting factors vis-à-vis pressures for institutional change, particularly, for internationalization of the university

as an identified strategic high priority. Under these circumstances, the culture of the university assumes greater prominence in mediating and regulating the university environment. An understanding of the university via its culture can facilitate the analysis of managing structure and processes (Dill 1982; Masland, 1985) in order to implement strategies for internationalization in an integrated approach at a level broader than the single, specialized unit or sub-unit.

Student mobility is mostly restricted by financial and curriculum related constraints. Participating institutions should provide incentives to students and researchers interested in international careers by offering them common supervision and joint degree programs. It is crucial to have on-going faculty collaborations that will lead to student exchanges and joint programs. It is vital to educate undergraduate and graduate students about benefits of having an international experience and instill globalization concepts early in their educational program (EU/US Research and Education Workshop 2008).

It is important to provide incentives to junior faculty who are not tenured and would like to pursue international collaborations early in their careers. In addition, a faculty could have appointments at two universities (e.g. 50-50%) to allow them flexibility to conduct teaching and research (EU/US Research and Education Workshop 2008).

Family commitments were considered as one of the top factors to effect international collaborations and mobility of researchers. In most of the scenarios, a comfortable and balanced family life results in successful international careers. Therefore, it is essential for an institution to provide additional resources to promote family values and flexibility to researchers that could allow them to integrate personal commitments in their international professional career without compromising their research and educational goals and objectives.

Initiatives to Increase Internationalization

Internationalization of research and graduate studies is not a new concept for most of the research intensive universities. Usually, a few dispersed groups or individual researchers pursue international collaborations as their passion; however, it is essential for an institution to recognize these existing international linkages and initiate program that could provide institutional support (including seed funding) to potential researchers interested in pursuing international careers.

Though, it is relatively easy to establish targets and state vision/mission statements in strategic plans for an institution; it is a difficult and iterative learning process to implement strategies and specific programs that could truly attract, retain and sustain collaborations that are of mutual benefit to parent and participating institutions. It is usually a lengthy process and the feedback period is often in number of years.

Therefore, strategic support from university central administration as well as constituent colleges plays a major role in developing a successful international program. In addition, support from central administration complements faculty and student plans to further extend their horizon and prepare a long-term plan for establishing international collaborations. Some of the specific activities or plans for internationalization of university research are (UW, 1999).

1. Attract international conferences and events to university that could showcase research and scholarly strength to international community;
2. Support and encourage faculty and student participation in international conference and events;
3. Advertise strengths of university in major journals and research/scholarly publications;
4. Establish seed funding to support and promote new international initiatives;
5. Identify financial support required for new priority international initiatives, and incorporate those needs into the next fund raising initiative;
6. Establish a reporting system to identify and track international research and development study projects and funding;
7. Establish a target in overhead funds generated from new international projects to help support international initiatives;
8. Change policies or guidelines related to faculty annual performance reviews, as well as promotion and tenure, to encourage faculty participation and excellence in research, teaching, training and administration with an international focus, with particular regard to the significant lead-times often required before measurable outputs occur from such activity;
9. Establish guidelines to distribute overhead funds from international projects and tuition income from international students among the university/faculties and groups or individuals who take a lead role in generating them, as an incentive to generate new revenue;
10. Complete an overall marketing strategy to promote internationalization, including education and training, for international clientele for delivery both in Canada and abroad, initiatives with possible donors, alumni, research sponsors, etc.;
11. For recruitment and promotion, finalize design of and produce an integrated set of promotional material which will service educational fairs, educational publications, funding agencies etc. The purpose is to have sets of promotional material custom-prepared for various international markets and funding agencies. Also develop a new process and application form designed for international students;

12. Establish seed funding to enhance internationalization of curriculum design, to support development of proposals for international consortia research projects, to facilitate mobility of younger faculty both abroad and to the university to enhance educational upgrading and to develop collaborative research opportunities, and to allow regular visits to major donor organizations. Consortia- oriented research projects also will enhance the capacity for interdisciplinary research at the university; and
13. Develop objectives, activities, expenditures, outputs, outcomes and impacts related to internationalization initiatives, to determine which activities should be continued, enhanced, reduced or ended.

The role of international higher education in international relations has traditionally been seen through the lens of cultural diplomacy. Student and faculty mobility, language learning, and cultural exchange have been the dominant modes. Yet, in the last two decades international higher education has changed dramatically and has introduced important new dimensions. It is not just students and scholars who are moving across borders, so are programs, providers, projects and policies. The landscape of higher education is characterized by international collaborative research projects, bi-national universities, multi- national expert networks, global mobility programs, regional centres of excellence, international education hubs, and worldwide circulation of higher education reform policies. Positioning higher education as an instrument of cultural and public diplomacy is important but falls short of a more comprehensive view of higher education's international engagement through such areas as science, technology and knowledge (Jane Knight 2014). These areas have increasing relevance and leverage in a world more oriented to knowledge, social justice, innovation and the economy.

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Commodification of Nature and Knowledge The TBGRI – Kani Deal in Kerala

Usha S. Sridhar R and Karsten Wolff

1) The Corporate Paradigm

The paradigm of private property is increasingly dominating not only the economic, but also the political discourse and practice. Turning everything into commodities is repressing the space for common ownership. “The ideology of greed has become the unquestioned driver of the economy” (Kneen: 2004).

The Convention on Biological Diversity (CBD) reflects this paradigm with regards to nature and knowledge. It was developed in the context of the biotechnology industries demanding a regulated access to the biological diversity as a kind of ‘raw material’ for their research. Bioprospecting is the search for active components in plants, which could become valuable ingredients for new agricultural or pharmaceutical commodities. “The driving force behind international biodiversity policy is not so much the conservation of biodiversity, but rather the various interests invested in the commercialisation of biological diversity.” (Brand: 2008)

The CBD promises the custodians of biodiversity, mainly the indigenous communities a “fair and equitable sharing of the benefits arising out of the utilisation of genetic resources.” However, in reality most approaches to benefit-sharing are dominated by the commercial bottom-line: ‘no patents, no benefits’. Benefit sharing is increasingly becoming a tool for pushing IPRs, promoting ‘biotrade’ and turning biodiversity into another commodity for sale. A positive benefit sharing would mean an end to all monopolisation of genetic materials through IPRs and would require genetic resources to be managed as a heritage to nurture rather than as a market commodity to sell.

One of the well published model of benefit sharing is the TBGRI-Kani deal from Kerala, India. However, a lot of apprehensions raised in the beginning of this deal, later became true. It was reported by many in the subsequent years of the deal that this model was not a successful example to be show cased.

2) The Indian Scenario

When India became party to the Convention on Biological Diversity (CBD), the two underlying concerns that guided India's legal enactments were the conservation and protection of biodiversity and the sustainable utilisation of it with “equitable” benefits to those communities that shared their biodiversity based traditional knowledge. India with more than 45,000 species of flora and 75,000 known species of fauna to protect and conserve was also becoming one of the

most vulnerable countries among the 12 world's megacentres of biodiversity. India is home to highly revered and effective systems of indigenous medicine, both documented like Ayurveda, Sidha and Unani and based on folklore such as tribal medicine. Both folklore and tribal medicine are known to be using more varieties of plants and the knowledge is known to be much more diverse and localised than the documented systems of indigenous medicine. Indian rural women are considered one of the richest possessors of knowledge needed for sustainable use of many of the natural life forms for food, medicine and for special care and nutritional needs. The documentation and transfer of the knowledge as well as the rights to the knowledge, from person to person or through generations, is also as diverse as the knowledge itself and often discretionary. It is also widely recognised that such knowledge has been well protected, and that the availability of the necessary biodiversity components is conserved by these communities or families that own this knowledge. But these traditions are under increasing threat from the onslaught of modernisation and industrialisation, especially after the liberalisation process in India that started in the early 1990s. These factors are leading to the undervaluing of the traditions of these communities or families. It is this knowledge and related lifeforms that are being increasingly sought after for “rediscovering” various medicines (or medicinal properties) that are finding increasing commercial value in domestic as well as global markets. The big question that India needs to ask itself is whether biodiversity and the related knowledge lying embedded within individuals, families and communities can actually be protected and a continuum of this through coming generations be ensured with the help of the legal mechanism that India has established consequent to the CBD.

Legal Framework

India enacted the Biological Diversity Act (BDA) in 2002 as the national implementation of the CBD. This Act was intended to provide for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge and related matters. In 2004, India also promulgated the Biological Diversity Rules (BDR) to provide the necessary statutory and administrative mechanism to implement the BDA. Following the Act and Rules, a National Biodiversity Authority (NBA) has been established. Each state is to have a State Biodiversity Board (SBB) and as of 2008 most states have established them. At the Panchayath (village) level, Biodiversity Management Committees (BMC) are to be established, although this step is not yet

implemented in most villages. But neither at the national nor at the state level these administrative bodies have any representation from indigenous community, forest dwelling communities or even from traditional knowledge holders and the users of traditional knowledge and biodiversity. This is the most fundamental flaw in the implementation of the BDA and cannot be considered as an oversight. The only space where the local consultation comes is when decisions are taken by NBA or SBB regarding utilisation of biodiversity of some locality – in this case the BMCs would be consulted. Here again it is widely critiqued that this consultative process does not ensure the consent of the community in such cases. In the BDR 2004, the role of the BMC has been relegated just to the preparation and maintenance of People's Biodiversity Registers (PBR), one of its main objectives. PBRs, which are supposed to be comprehensive documentation of the biodiversity in the village and the local knowledge including traditional practices, are to be prepared by the BMC specifically using the guidelines prepared by the NBA. These PBRs are then to be digitised and stored in a centralised location – called the Traditional Knowledge Digital Library (TKDL).

Hence, this supposedly land mark Indian law that implements the commitments to the CBD has in fact turned out to be a law that facilitates alienation of indigenous people from their resources and decision making processes. It uses them to collect and centralise their knowledge pool and facilitates biopiracy. While the BDA does not have any strictures on patenting, it rather facilitates patenting. The very fact that it facilitates IPR on indigenous knowledge itself is seen as a threat to the biodiversity and raises the very question of the rights of the knowledge providers and people who have been conserving these for centuries. The only structure with local people's participation – the BMCs - also need not to have any members from the holders of such traditional knowledge. Moreover, the BDA undermines the 73rd and 74th amendment of the Indian constitution, whereby local governments through Panchayath Raj institutions (village level governments) have been made the most powerful bodies in decision making. Here the BDA is retrogressive and re-establishes centralised management of natural resources and knowledge. Yet, this continues to be speedily implemented as the instrument for the protection of indigenous knowledge systems.

It is with this understanding that one needs to look at the question of Access and Benefit Sharing as an approach for “equitable and just” sharing of benefits. As earlier discussed the BDA does not ensure any bearing of the owners of the knowledge, in fact it considers them as mere providers of knowledge for the preparation of the PBR, and it holds the BMC as the agency maintaining these PBR for them. Therefore, the owners of the knowledge are not encouraged to continue in their own traditional methods, but are confronted with a complex set of questionnaires and forms prepared by scientists and facilitated by them. The process of PBR preparation is also complicated with modern approaches in data collection and has least respect for local systems of knowledge repositing and management. This is the first step of alienation of the knowledge providers and the protectors of biodiversity from their own traditional domains and roles. The second step of alienation is that BDA has no provisions

whereby ownership rights of the communities or families are ensured. The paradigm is quite blatant: “If you have knowledge, give it to us for documentation, and if you want benefits, allow trade interests to prospect, research and develop an IPR out of it. If they are able to patent it, then you can negotiate for a benefit.”

3) The TBGRI-Kani Deal

The story of Kani Access and Benefit Sharing model started in 1987 in the Agasthyamalai Hills of Trivandrum district in Kerala, India. Kanis or Kanikkar (in the local language Malayalam) are one of the 33 odd tribes in Kerala who reside in the Agasthyamalai Hills of the Southern Western Ghats. After India’s independence, when states were reorganised, this region got divided between two states, Kerala and Tamil Nadu, and thus the Kani community also got divided.

Kanikkar are very good and gentle people and they make a living out of agriculture and non-timber forest produce collection. They have their own traditional health care systems using the plants from the forest and following certain cultural practices.

The Deal...

In 1987 two scientists from “Tropical Botanical Garden Research Institute” (TBGRI) visited the Kani chief and asked to help them in their research work on medicinal plants. This was part of their work under the “All India Coordinated Research Project on Ethnobiology” (AICRPE). The chief immediately agreed and allocated 3 people to assist the scientists. These were Mallan Kani, Kutti Mathan and Eachan Kani. They were from the same hamlet and related to each other.

During their survey in the forest the scientists saw the kani guides eating some fruits from a small plant. When asked about it they said that they do this when ever they go to the forest without food, and that it keeps them energetic during the walk. They called the plant ‘Arogyapacha’, although its traditional name is ‘chathan kizhangu’. Naturally, the scientists got interested in the plant. They had collected some other medicinal plants already. Dr. Pushpangadan, the coordinator of the project, told the Kanikkar that if they could develop some new product which is economically profitable they will share a part of the profit with the Kani. The scientists took some plant samples for further study. They discovered the presence of some glycolipids and non-steroidal polysaccharides with immuno-enhancing and anti fatigue properties (Umesh Anand, 1998). In 1990, Dr. Pushpangadan was transferred to TBGRI and this led to the work on arogyapacha at TBGRI. By this time the plant was scientifically identified as “*Trichopus zeylanicus*, *travancorensis*”.

TBGRI started working on the drug, arogyapacha, independently and also in combination with 3 other commonly used ayurvedic herbs. This led to the development of “Jeevani” (name given by TBGRI), a combination drug, in which Arogyapacha has a significant role. It took almost 10 years to develop the drug Jeevani.

Once the drug was developed, standardised and a (process) patent taken in 1996, TBGRI went for a tender inviting interested parties with facility for large scale production of the drug. Just before finalising the tender with Arya Vaidya Pharmacy, Coimbatore, Tamilnadu a well known traditional ayurveda company in India, the scientists went back to Chonampara, the village of Kanikkar who shared their knowledge. The scientists explained to them the development of Jeevani and the deal with the company and told them that they have to form a society, since TBGRI was planning to give them 50% of the license fee and half of the royalty they would receive from the company. This money should be used for the welfare of their community. The Kanikkar did not have the money to start a bank account, which was in the end provided by one of the scientist personally!

The Kanikkar received Rs. 519,062 (ca. 14,300 USD at that time) as their share of the license fee and the scientist advised them to put this money in a fixed deposit and they did exactly like that. Later they got some additional Rs.31,000 and Rs.19,000 as royalty. This is the total amount the Kanikkar received in the last 10 years. They accepted the money, but even now they are not aware of the total sales by the company and their profits. What ever they know about the product and its international significance they learned from the two scientists from TBGRI. The scientific coordinator, Dr. Pushpangadan, got transferred later.

Apart from this the two Kani men – Mallan and Kuttimathan - were appointed as consultants in the institute from 1994-2000. Their main job was to help in the processing of raw materials for preparation of medicines. They were happy getting the salary from the institute, but their role in a main stream institute like TBGRI was not clear to them. They were sad when the new director came in 2000 and told them that they cannot continue to work in the institute. They did not understand the reason.

...and the Conflict

One of the important features of arogyapacha (subspecies: travancorensis) is that it is endemic to Southern Western Ghats and it grows in the rainforest, in the shade near the banks of streams in a slightly higher elevation which provide the plant a congenial climate. It is a small perennial herb with many slender stems arising from a rhizome. Once the value of it became known to the outside world as Jeevani, the demand for it increased instantly. The fact that arogyapacha is a forest plant restricts its availability. One of the said advantages to the entire Kani community was that they could sell the leaves of the plant to the ayurveda company at a good price, apart from the royalty they would receive. The revenues go directly to the families and not to the Kani welfare society. Many kani people got interested in that scheme, subsequently leading to a shortage of the plant material.

Arogyapacha is not in the list of minor forest produce which is allowed to be collected by the forest department. Even inside the forest the population of arogyapacha

is not very high so that people cannot harvest as they wish. Arogyapacha is also a slow grower. Many animals like rabbits feed on this plant. TBGRI had to resolve the issue with forest department, tribal development department and the Kerala Institute for Research, Training and Development of Scheduled Castes and Tribes (KIRTADS), which work with tribals. Each of these agencies had their own interests and attitudes towards biodiversity and the lives and culture of tribals. KIRTADS was the most vocal critic of the deal from the very beginning and it suggested that the government should facilitate the production of the drug by the tribal community members themselves. KIRTADS had even drafted a bill for protection of the intellectual property of Kanikkar.

Finally it was decided to encourage the cultivation of arogyapacha in the kani hamlets and a programme was started. Kanis who are the holders of the knowledge were given training on how to cultivate arogyapacha under the integrated tribal development programme. This programme provided support to 50 kani families. Seedlings were taken from the forest and given to the kanis and the cultivation was started in Chonampara village. But 'illegal' collection from the forest continued since there was no sufficient quantity available for sale and also other villages were not under the programme. This created conflicts again with forest department, which tried to confiscate the plant materials. Kanis found it difficult to handle the situation, to prove that the leaves were from their field. But they could sell their produce twice (300 kg and 700 kg each, latest in 2005). Not many hamlets were aware of this scheme, although the society tried to bring them all together (25,000 nos). They have not done any cultivation or collection of arogyapacha so far and hence have not benefited.

The kani benefit sharing deal was a voluntary initiative by a few scientists. However, they did not work in isolation, but under the AICRPE project, and the head of this project was closely linked with the national and global discussions on the protection of the indigenous knowledge system (Sachin Chaturvedi, 2007). The kani benefit sharing deal was a natural consequence of this. In the initial phase of the deal, kanis were just onlookers and did not actively participate in the process except the two 'consultants' who remained involved. In the executive committee meeting of the TBGRI in 1995, it was decided that the proceeds would be shared on a 50:50 basis. By this time India had signed CBD, what actually helped the director strengthen his position. After this decision was made, the scientists approached the kani community and discussed the plan with a 10 member team of kanis.

One of the most important and tragic impacts of this whole exercise is the conflict of interest which arose between closely related kanis, leading to a breakup of their relationship which was nurtured and flourished through generations. This happened between Mallan and Kuttimathan. Mallan even went against Kuttimathan and the two scientists to court. This happened after the TBGRI director Dr. Pushpangadan and Kuttimathan received the 'Equator Prize' of 30,000 USD during the Earth Summit in Johannesburg in 2002. Out of this award money the Kani Samudaya Kshema Trust received an amount of Rs. 70,000 (ca. 1,450 USD) in seven instalments.

Conflicts within the community are increasing day by day. 10 years have passed after they signed the deal with Arya Vaidya Pharmacy. There are many kani villages which are far away and who have not benefited from this deal, although Jeevani is sold well in the national and international markets. Even the families who are closely associated with the trust have not benefited much. It only added to their burden. With the meagre income from agriculture and minor forest produce collection, there is an added job for them – to resolve these conflicts.

There are 5 patents which arose from the research work at the Regional Research Laboratory, Jammu and at TBGRI. After the research moved to TBGRI four patents were applied for. Among them one was for the process of producing Jeevani and this was received in 1996.

The conflict is exacerbated by the fact that patent period of TBGRI has come to an end. The license was given for 7 years and it is not renewed so far and both TBGRI and Kani Trust have lost the license fee for the second term. When this was made public, two companies came forward for bidding with double the amount (2 million rupees). However, a license was not granted by TBGRI, although Jeevani is still marketed in India. In 2000, the American company Nutri Science Innovations LLC acquired a trademark on Jeevani. The company was importing the drug from AVP and they sold it at a higher price without the knowledge of TBGRI or AVP. When this news came out they changed the name of Jeevani to Jeevani Jolt.

Lots of scientific work on arogyapacha is going on in many private institutes and labs and more and more new properties of this plant are dug out. The latest in this list are the anti oxidant and DNA protecting properties of this plant, which were discovered by scientists working in A&M University, Texas. Kanikkar are unaware of all these developments.

The Kani trust recently wrote a letter to the government of Kerala asking for ensuring their rights over their knowledge and biodiversity. It is very unclear who owns this plant and the knowledge attached to it. Is it the Kanikkar, TBGRI or some other institute?

4) Lessons learned

Kanikkar did not ask for a share of profit when they shared their knowledge. But they were given a share in the beginning and it created a series of problems for them. And now it has become doubtful whether they will continue to get this share or not. Although scientists who were involved in the deal support them in their personal capacity, in the larger paradigm of commercial interests it is an open question how this benevolent approach will really help a marginalised community. The fact is that Kanikkar have been pushed in to deep waters.

Not that Kanikkar or for that matter any other indigenous community do not need money. But their welfare and happiness is still not equated to money alone. That is

the reason why they innocently share whatever they have even to those who come to exploit them. It is also true that monetary benefits realised under this agreement are not an adequate compensation for their knowledge.

As a matter of fact the knowledge which the kanikkar shared belongs to a family in a particular village. But they were ready to share the benefits with their community. It shows the large heartedness of the tribal people, but this is not acknowledged by anyone. When this issue was discussed in one of the trust meetings, other members resolved to give an honorarium to the 3 kanis who shared their knowledge to the scientists initially and were following the deal.

Another ethical issue raised by many authors (Reddy, 2006; Gupta, 2004) is that TBGRI did not include the tribal informants as co-inventors in the patent application. Even after the trust was formed, till 1999 many villages were unaware of the whole process. All the initial discussions took place with few individuals in the community who were closely associated with the scientists.

It is also documented by many that conflicting institutional interests make the tribal community more vulnerable and this is exactly what happened in this case. While various institutions try to make their role felt, all in the name of Kanikkar, nobody took an effort to ask them what they really want for the improvement of their lives. The problem of Kanikkar is almost getting equated to arogyapacha, a plant which Kanikkar never considered as the backbone of their existence.

In the main text of the benefit sharing agreement, the conservation of raw material was not included (Sachin Chaturvedi, 2007). This led to a further conflict between the forest department and the Kanikkar.

The paradigm of the Kanikkar is not of gross domestic product or intellectual property. Their strength lies in the 'common good' and 'collective rights' attitude and philosophy. However, much dilution has happened on this approach over the years. This is just opposite to the 'individual right' approach and private property approach of the mainstream. But Kanikkar are one of the marginalised communities making a living out of forest and biodiversity. The current commercialisation process is largely dependent on these same resources and hence the interests are conflicting. So whatever is said in the debate on benefit sharing, the ultimate goal is to commodify the biodiversity and the knowledge of these vulnerable societies.

Knowledge is sacred - every tribe knows this. That is why they do not share it with everybody. The knowledge is not for sale. This is the eastern thought and it is particularly true for tribals of India. But the same community who still stores this knowledge about plants and natural elements now go to the allopathic hospitals even for small ailments. Is it not ironical and tragic that there is no genuine interest taken to protect and nurture this knowledge, based on biodiversity and culture? Instead through the paradigm of Access and Benefit Sharing (ABS) the same knowledge is exploited

and put to commercial use. Tribal people do not demand much. They are not violent, nor are they scheming. Governments and companies know this. They know they can satisfy them by providing some charity. The new name for this scheme is ABS. People who control the resources have always done this to please communities and to suppress any resistance.

Considering the legal framework India has set for the protection of biodiversity and knowledge, the question is: Is this the way Indian systems of conserving, preserving and propagating knowledge were known to be? If not, then why is the BDA facilitating a system that is totally alien to the Indian systems that communities have developed and preserved over centuries? Is it wise to wipe out such indigenous systems of knowledge and biodiversity protection even as India commits itself to the protection of them? Would the BDA with the mandate provided to the NBA and SBBs or with its expertise be able to preserve the complex web of social systems that have preserved these knowledges for centuries? Can they guarantee it, or are they actually destroying this fabric to facilitate commercial interests? Are they not actually destroying the very mindset and attitude of “community rights and good” for the sake of the “private interests”, but in the name of making knowledge available for the good of everyone and anyone? So many bothering questions are left unanswered, and addressing these belatedly would prove irreversibly damaging on the very traditional systems that the people wish to protect.

The reason behind the existence of community knowledge systems is that it evolved to use bio-resources as raw materials to make useful products for local community needs, while also conserving biodiversity as they were so dependent on it. Many communities in fact even recognised that human beings were not the only consumers of these resources and it was needed as an ecological good. The present paradigm of the law, triggered by global demands, is unfortunately in stark contrast and actually promotes bioprospecting and biotrading, aiming towards commodification, and that too (if at all) only for the human good.

In an era where legal protection of traditional knowledge is not harmonised globally and the aim is to appropriate, in whatever name it be (even if for global good), a country like India with its unbelievable diverse systems - varying even from village to village and family to family - cannot afford to destroy its systems for a monolithic IPR led – ABS regime that is so alien that communities with whatever help and support may not be able to cope and benefit from it, without serious impacts on their rights, attitudes and social fabric.

5) The Way ahead

Within the prevailing paradigm of privatisation and commodification of nature and knowledge a fair and equitable sharing of benefits is impossible. But also the concept of biodiversity as a “common heritage of humankind” did not protect the rights of indigenous communities and their way of looking at knowledge and resources.

What is necessary now is to develop new prospects that transcend the corporate paradigm. Reclaiming the commons (property and space that is 'owned' communally) will ultimately lead in the right direction. In this paradigm, patenting of life should not be allowed anywhere in the world.

Any alternative framework should be based on indigenous customary laws, such as mutuality and balance. One of the fundamental pillars of such an alternative framework has to be the continuation of traditional knowledge systems. When a traditional healer cannot find a successor for his practices, this is an alarming signal. When today's children do not even carry half the traditional knowledge that their parents have, we are seeing the extinction of knowledge happening.

What is needed is a paradigm that guarantees the continuum of knowledge within the communities. This means the transfer of knowledge and its practice from generation to generation, the evolutionary improvement to it, the culture, the methods and practices of sharing and transferring such knowledge all have to be ensured. Wild species, the knowledge to use them, the traditional ways of conserving and transferring the knowledge as well as the checks on misuse or over-exploitation leading to the extinction of the species and the ecosystems are all part of biodiversity conservation. This age-old ecological prudence and wisdom should be re-introduced in policy and education systems if ecosystems, species diversity and indigenous knowledge systems and practices have to survive and flourish. The new paradigm should primarily provide the confidence and security to the traditional holders and practitioners of knowledge to continue their practices in their communities and over the generations. It is this continuum which can eventually ensure the conservation of the biodiversity by the local communities themselves and ultimately benefit them as well as the larger human race.

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Plastic Waste Management – Law and Policy in India

Dr. Anil R. Nair

Abstract

Plastic waste has become a global menace. With its huge population seemingly illiterate about the adverse consequences of plastic waste, development of an indiscriminate use and throw away culture, limited organized efforts at recycling of waste plastic and with inadequate civic resources to reduce plastic pollution, India is one of the worst hit economies of the world in terms of plastic waste production. On one side it is cause for an unmitigable environmental degradation and on the other, it is a drain on resources, since most of the plastic used in India has a fossil fuel origin. This paper attempts to highlight the adverse effects of plastic pollution, especially of the single use kind, looks into the legal framework to understand the enormity of the situation and tries to offer solutions to tackle the issue.

Keywords

Plastic waste management, micro-plastics, plastic pollution, reduce-reuse-recycle

Text of the Article

Introduction

One of the ubiquitous products of modern civilization is plastic which has now found its way into the environment resulting in pollution of the most pristine areas of our planet's eco-system. Micro-plastics has been found in the deepest parts of the oceans¹, the highest reaches of our land bodies² and even up above the earth in the atmosphere³, driven everywhere by the ocean currents and the wind. It has entered the bodies of most marine and other life forms and is often the cause of their death.⁴

Plastic pollution occurs due to indiscriminate use of plastics and the development of a use and throw away culture. It spreads across the world through the practice of dumping plastic and other waste into the water bodies⁵ where it breaks down into micro plastics which forms the most treacherous form of plastic pollution since it is so tiny that it has become impossible to collect it or remove them from the environment.

The most intense adverse environmental effects of plastic pollution are visible in the Asian and African countries with their almost non-existent segregated plastic waste collection and recycling policies and industrial practices.⁶

Uniqueness of Plastics – What makes it so Pervasive?

Plastics are polymeric material that can be molded or/and shaped easily using heat and pressure. With its low density, low electrical conductivity, transparency and toughness, plastics find its way into the making of a great variety of products.⁷ Industrially, plastics are classified as commodity resins and specialty resins. Commodity resins like polyethylene, polypropylene, polyvinyl chloride, and polystyrene are mostly used in the low cost and high-volume manufacture of disposable items and consumer durables. Specialty resins like polyacetal, polyamide (particularly those known by the trade name nylon), polytetrafluoroethylene (trademark Teflon), polycarbonate, polyphenylene sulfide, epoxy, and polyetheretherketone have relatively higher cost and hence are manufactured in lower volumes. Engineered plastics that compete with die-cast metals and alloys in plumbing, hardware, and automotive applications are specialty resins. Another type of specialty resins is thermo plastic elastomers that are elastic like natural rubber but can be molded with heating. Hence, it can be seen that plastics have certain unique features that allow it to replace other naturally occurring substances on an industrial scale and at much cheaper cost of production.

The popularity of plastics and the quantum of waste plastics being generated makes it very obvious that it does not make much economic sense to find alternatives to plastics unless we factor in the actual cost to the environment caused due to plastic pollution and this ecological cost is also loaded on to the production/manufacturing cost of plastic.

The Plastic Menace

Plastic products that are single-use or “disposable” have become so addictive to human race that scientists have even suggested that the geological indicator for the Anthropocene era is the plastic pollution that we have caused.⁸ We produce around 300 million tonnes of plastic waste every year (which is equivalent to the weight of the entire human population) since half the plastic produced is designed for only a single use.⁹

Plastics damage the environment in a variety of ways.¹⁰ Additives added to make plastic stronger and last longer in fact contribute towards the retention of plastics in the environment for an extended period of time after they become litter.¹¹ Studies show that terrestrial microplastic pollution has caused a decrease in the number of sub-surface species which degrades organic matter and work towards maintaining the fertility of land.¹² Chlorinated plastics leach harmful chemicals into the eco system and

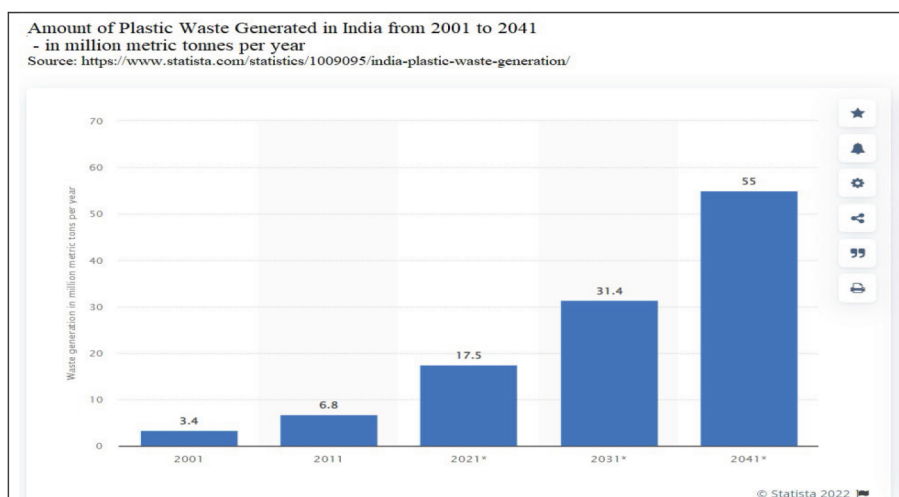
to the water bodies with potential adverse effects on all living species dependent on such water as a source for life.¹³

Studies¹⁴ indicate that coastal India¹⁵ has a high incidence of micro plastic pollution induced by the fishing industry¹⁶, tourism, etc., with the seas around Mumbai, Kerala and the Andaman and Nicobar Islands being ranked among the worst polluted in the world.¹⁷

Societal and Economic Cost of Plastics

The plastic industry is an employment generator¹⁸ – whether it be in the context of employment generation in the manufacture or in the recycling¹⁹ of plastic waste. Hence, there is a political cost that disincentivizes legislative measures against the use of plastics as such. Politicians would rather focus on eliminating the ill-effects of plastic waste rather than tackle the plastic problem at its source by discouraging the use of plastics. The immediate possible loss of employment trumps the long-term cause of saving the environment and it is a reality that is seen not just in poverty stricken, resource deficient India but also in other so called rich, developed countries of the world.

The WorldWide Fund for Nature, in a report published in September 2021, estimates the societal cost of plastics produced just in the year 2019 to be US\$3.7 trillion, which is more than the GDP of India.²⁰ Dependency on plastics is a double whammy for India's economy since apart from the pollution caused by plastics, it is a net foreign exchange drainer for India since the overwhelming majority of plastics are produced from chemicals traceable to non-renewable fossil fuels, which it imports.²¹ To make matters worse, India's plastic waste production has more than doubled in the last five years and is projected to increase enormously in the coming years.



Plastic Waste Collection and Recycling in India

Most of India's plastics recycling happens in the unorganized sector since the grassroots collection is often handled by rag pickers from streets, garbage dumps and land-fills. It implies that data of the quantum and quality of recycling is sketchy or simply unavailable. The adverse implication for the health and safety of persons involved in the recycling of waste, which often is of a hazardous nature given the fact most work without any equipment to ensure their well-being, is enormous.²²

Unclean and mixed plastic waste requires huge costs by way of manpower, clean water and energy to enable effective recycling. This drives up the cost of recycling making recycling unviable. Further, single use plastics discarded by households and the food packaging industry is mixed with food waste causing serious health concerns for animals that raid the garbage bins for food. Wet waste plastics fetch a lower price in the recycling market and reduces the incentive for rag pickers to take the trouble to collect it. The only way to reduce cost of recycling is to ensure the segregation of plastics at the source of plastic waste production, i.e., at the level of the consumer. Consumer awareness and incentives will play a big role in this.

PlastIndia Foundation, which is the collective of associations, organisations and institutions connected with plastics and the plastic industry, estimated in 2018 that around 5.5 million metric tonnes (MMT) of plastic gets annually recycled in India.²³ It is estimated that only around sixty percent of the plastic generated in India gets recycled and the remaining forty percent ends up polluting the environment.²⁴

The recycling industry faces adverse policy consideration including an illogical and recycling unfriendly²⁵ GST regime that applies uniform rates²⁶ without differentiating between virgin and recycled plastics.²⁷ As has been observed, "The litter that we see around and India's policy focus on plastic waste are indicators of the fact that this resource is at the bottom of the chart in recycling rates."

If properly recycled, one kilogram of plastic waste can generate the energy equivalent of around 750 grammes of fossil fuel.²⁸ This ought to provide an added incentive to India to encourage the plastic waste recycling industry.

The Legal Policy in India

The UN Conference on the Human Environment (Stockholm, 1972) with its declaration influenced³⁰ India to set up, in 1972, the National Council for Environmental Policy and Planning within the Department of Science and Technology. The Constitution of India was amended to mandate the protection of the environment as a part of its directive principles³¹ of state policy and as a fundamental duty³² of its citizens. The Environment (Protection) Act, 1986 is the main specialized legislation for the protection of the environment in India.³³ The Plastic Waste Management Rules,

2016³⁴ (hereinafter referred to as “the Rules”) with its subsequent amendments reflects the government policy and provides the details on the issue of plastic waste management.³⁵

As stated in second paragraph to its preamble, the Rules are intended to give “thrust on plastic waste minimization, source segregation, recycling, involving waste pickers, recyclers and waste processors in collection of plastic waste fraction either from households or any other source of its generation or intermediate material recovery facility and adopt polluter’s pay principle for the sustainability of the waste management system.”

Recognising the challenge posed by single-use plastic products, India had piloted a resolution on addressing it in the Fourth United Nations Environment Assembly held in 2019.³⁶

A clarion call was given by the Prime Minister Shri Narendra Modi to phase out single use plastic by 2022, and consequently in August 2021, the Plastic Waste Management Amendment Rules, 2021,³⁸ which prohibits identified single use plastic items from 1st July, 2022, were notified. Further, Guidelines for Extended Producer Responsibility to provide for collection and management in an environmentally sustainable way of plastic packaging waste not covered under the phase out of identified single use plastic items has been given a legal force through this amendment. On 6th October, 2021, the Regulations on Extended Producer Responsibility for Plastic Packaging was notified.

Further, new Draft Plastic Waste Management Rules, 2022 has been notified on 18th of January, 2022 by the Ministry of Environment, Forest and Climate Change.³⁹ The new Rules seek to widen the scope of the definitions and provides for biodegradable plastics⁴⁰, pre⁴¹ and post-consumer plastic packaging waste⁴², recyclers⁴³, waste to energy⁴⁴, etc.

“Directions under Section 5 of Environment (Protection) Act, 1986, have been issued by the Central Government to all States/Union Territories inter alia for setting up for institutional mechanism for strengthening enforcement of Plastic Waste Management (PWM) Rules, 2016.⁴⁵” “To encourage innovation in development of alternatives to identified single use plastic items and digital solutions to plastic waste management, the India Plastic Challenge – Hackathon 2021, has been organized for students of Higher Educational Institutions and startups recognized under Startup India Initiative.”⁴⁶

Role of NGOs as Harbingers of Change

Though the role of the government is significant, no change can happen unless the people adopt a changed lifestyle which makes them less dependent on plastics. The role of the numerous NGOs functioning in the field of education, human rights,

environment, etc are of utmost importance in fighting the menace of plastic pollution. NGOs help by increasing awareness among the people about the adverse effects of plastics. They promote the adoption of environmentally friendly and ecologically sustainable lifestyle practices. They act as lobbying groups to bring in positive legislative and judicial interventions. Rather than take an adverse position vis-à-vis the possibility of hidden agenda behind the functioning of every domestic and foreign NGO, India needs to work in tandem with the non-governmental sector for synergy in achieving the policy goal of an environmentally sustainable habitat for its people.

Conclusions and Suggestions

Prolific use of single use plastics and the near absence of an organized functional mechanism to recycle single use plastic waste has brought India's plastic waste problem to catastrophic dimensions. Inability to reduce dependency on plastics, increasing popularity of a consumer culture that does not encourage reuse coupled with the increased percentage of single use plastic in the total quantum of plastics being used and our inability to effectively recycle a very high proportion of plastic waste is a huge drain on our economic resources which the country can ill afford. Other countries have experimented with tax incentives for promoting the recycling of plastics by increasing tax rates on virgin plastic products and reducing tax on recycled plastics.⁴⁷ This is a measure that India can also adopt.

The easy availability and cheap prices for single use plastics disincentivizes industrial production and adoption of alternatives. Hence, as a matter of policy there has to be strong governmental intervention, if there is any serious commitment on the part of the government for the protection of the environment and for reduction of the ecological cost of plastic waste, to discourage the manufacture of plastic products, especially single use plastic products as a first step. As a corollary, active intervention on the part of the government is also necessary to encourage the adoption of alternatives by promoting academic research into the field, boosting innovation and prioritizing transfer of technology to the domestic industry, so that meaningful solutions become immediately available without causing any disruptions in the market. This is a measure that India must adopt.

Use of plastics or its alternatives is also a matter of choice in terms of conscious consumer behaviour. A positive consumer culture can be inculcated right from the school level by including projects and course content that makes the younger generation aware of the menace of plastic waste. Such curricular indoctrination can make the future generation conscious about the manufacturers and industries that do not exercise the required social responsibility to reduce their plastic footprint. Proper schooling can inspire the coming generations to make meaningful choices and avoid plastics as a matter of their personal principles and life philosophy.

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waste generated during the packaging of product including reject, discard, before the plastic packaging reaches the end-use consumer of the product.”

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**Statement about ownership and other particulars about
JOURNAL OF PARLIAMENTARY STUDIES**

FORM-VI (See Rule 8)

1. Place of publication
and Address of place of publication : Thiruvananthapuram
Institute of Parliamentary Affairs
Building No. 32, TC - 81/1051
Shanthi Nagar, Near Government Press
Thiruvananthapuram - 695001
2. Periodicity of Publication : Bi-annual
3. Printer's Name
Address : The Registrar
Institute of Parliamentary Affairs
Building No. 32, TC - 81/1051
Shanthi Nagar, Near Government Press
Thiruvananthapuram - 695001
4. Publisher's Name
Nationality : Dr. Raju Narayana Swamy IAS
Indian
Address : Director General(I/C)
Institute of Parliamentary Affairs
Building No. 32, TC - 81/1051
Shanthi Nagar, Near Government Press
Thiruvananthapuram - 695001
5. Editor's Name
Nationality : Dr. Raju Narayana Swamy IAS
Indian
Address : Director General (I/C)
Institute of Parliamentary Affairs
Building No. 32, TC - 81/1051
Shanthi Nagar. Near Government Press
Thiruvananthapuram - 695001
6. Name and Addresses of individuals
who own the news paper and partners
or share holders holding more than
one per cent of the total capital : The Registrar
Institute of Parliamentary Affairs
Building No. 32, TC - 81/1051
Shanthi Nagar. Near Government Press
Thiruvananthapuram - 695001
7. Printing Press Address : Superintendent of Government Presses
Government Central Press,
Thiruvananthapuram-695 001

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