



**SVKM's
Pravin Gandhi College of Law
Mumbai**

Dimensions of Democracy

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PREFACE

Democracy as a preferred form of governance has been mushrooming across the globe. This burgeoning concept is finding its roots strengthening and has its existence more pronounced than ever before. With the rapidly-developing and constantly-debated notions of what makes good governance, it is imperative that discourses on the defining constituents of democracy are made more informed, especially by the members of the legal fraternity, as the key to true democratic ideals lies with the nature of justice offered to the citizens of a democratic society.

With this, the purpose of the conference was to facilitate a debate to explore the conceptual foundations and practical ramifications of the varied aspects of democracy. Through a thematically-designed and richly-curated series of lectures, we made an attempt to probe deeper into the nuances of democracy; the procedural shell, the cultural pith, the human empowerment and the deeper core of the concept. Some of the key areas deliberated over by the speakers included the following: The need of a just law in a democratic country and the need for greater participation of citizens in the electoral process; the role of grassroots democracy through the contribution of the gram panchayats; the need for making justice accessible; the importance of maintaining a balance by giving equal importance to both unitary and federal features; and the need to create the awareness of the fact that the fundamental duties enshrined in our Constitution are analogous and in congruence with the functions of defense forces.

In the aftermath of the onslaught of the pandemic and its unprecedented consequences, the conference served effectively to address some of the most urgent issues that the country had to grapple with: the need to provide respite to the aggrieved laborers combined with the severe need of protection which needs to be given to the unorganized sector; and the essential role of journalist in our society, i.e. to render balanced, fair and objective journalism.

Through this conference, we have endeavored to present a wide-ranging discourse on democracy that incorporates a multidimensional exploration of the concept of democracy imbued with valuable insights from the field of law and its allied areas.

No claims for comprehensive studies of the areas of research undertaken are being made, though an exploration of the same has been more than attempted.

FOREWORD

Democracy, as a founding philosophy of governance draws its strength from a stratum of guiding principles that include people's participation, rule of law, equality, justice, and inclusivity. It has to its credit the devolution of power, consensus in law-making, right before might, diversity, and the liberty of an individual to change and challenge its instrumentalities. The onset of the Covid-19 pandemic brought forth more relevant issues: State power and individual liberty; free speech and fake news; right to livelihood and State capacity to direct private enterprises in matters of wage payment; role of courts and access to justice. The concept of democracy is central to our contemporary political lexicon, yet any consensus on how to conceptualize democracy is far from widespread. Not limited to the spectacle of elections, the idea of democracy has more at stake than party agendas and manifestos. Though in its nascent stage, democracy, as a founding philosophy of governance and people's participation, has been changing the dynamics of power, politics and all that lies in-between. Today, we need deliberations on the various theories and models of democracy. We need to engage in a discourse on the defining the varied constituents of democracy.

In our commitment to ideals of excellence aimed at inculcating in our students the habit of critical inquiry to enable them to become participants in global discourses with academic maturity and research ability, through this conference, we sought to create opportunities for our students – future lawyers – to immerse themselves in reflections on the very foundation of democracy. The purpose of the conference was to facilitate a dialogue to explore the conceptual foundations and practical ramifications of the several aspects of democracy. Meanwhile, notwithstanding the setback of the pandemic-driven communication breakdowns, as the world of academic was still grappling with the unprecedented challenges, we succeeded in having on board some of India's leading voices on democracy, connecting with the world through effective platforms for a seamless gathering of legal luminaries from across the nation. We wish to thank and appreciate the willingness of our participants, guests, and all the august speakers for their cooperation to adapt to the new, unforeseen modes of connecting and conferencing.

I would like to take this opportunity to laud the unmatched efforts of the institution, the organizing faculty, and the student-editorial body for the success and extend my heartiest wishes for all future endeavors at the institution.

Shri Sunandan R. Divatia
Hon. Secretary
Shri Vile Parle Kelavani Mandal

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IDEA OF DEMOCRACY

SUCCESS STORY OF DEMOCRACY: CITIZENS AS CUSTODIANS

-Dr. Navasikha Duara¹

The premise of the paper is set upon the question of whether a democracy can successfully function without citizens' vigilance. The primary stakeholders of a democracy are the citizens that make it, which makes it imperative that they take an active role in its functioning. The task of maintaining a successful democracy does not end with the casting of vote, in fact, it begins with it. A democratic governments' most effective check are vigilant citizens.

Much has been discussed and debated, since the time, democracy originated as a form of Government in ancient Greek City states. The Greek philosophers were not supportive of democracy. Plato, in his celebrated work, Republic, suggested that the ideal state is to be ruled by philosopher kings. Aristotle, another famous ancient Greek philosopher, regarded democracy as a corrupt form of government. He feared that the rule of many will ultimately fail to protect the interest of all. Though, his thinking was influenced by the socio-political condition prevailing in the Greek city states during his time, his observation is very much relevant, as even today most of the criticism against democracy centres around majoritarian rule. There are apprehensions of minority identity increasingly getting sacrificed at the altar of preserving the so-called "national identity" in multinational states. The nation building and creating national identity exercise often, if not always, revolves around the notion of homogeneity, giving preferences to the identity of the majority group.

Democracy as a form of government, finally received some amount of approval in the writings of the advocates of Social Contract theory. The contract / consent theory legitimizing state sovereignty on people's consent paved the way for the development of democracy². Rather than Divine Consent, people's consent was advanced as the sanction behind state authority and sovereignty.

Particularly, through the writings of Jean Jacques Rousseau - his concept of General Will resulted in the development of the concept of Popular Sovereignty, on which the foundation of modern representative democracy is laid. The Preamble to the written constitution of all modern democratic states, whether the constitution of the USA, the world's oldest democracy or the constitution of the Republic of India, the world's largest democracy begin with the words, "We, the people..." This explicitly reveals the most important aspect of modern democratic system of government, that, the People, are the source of all authority, whether the government is a Parliamentary democracy with a quasi-federal structure like India or a Presidential democracy with a pure federal structure like USA or a Parliamentary democracy like UK, with a unitary structure.

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² Thompson, Norma. *The Ship of State: Statecraft and Politics from Ancient Greece to Democratic America*, Yale University Press, 2001 Available at <https://ezproxy.svkm.ac.in:2087/lib/nmimsebooks/detail.action?docID=3420138&query=western+political+thinkers>

This element of People's consent has given the citizens in a modern democracy the Right to Resistance, to question the ruling authority in the event of its inability or unwillingness to protect, preserve or promote the life, liberty, property of the people.

Whereas, the citizens, the king makers in Democracy, tend to believe and accept that their task in political engagement is over, once they elect their representatives in a free and fair election, conducted periodically. In modern representative democracy, voters elect a legitimate government and expect the elected government to govern, keeping the popular expectations in mind. The fact that the "popular expectations" might not be always, all-inclusive creates a whole set of questions on the legitimacy of democratic governance itself. Disregarding institutional safeguards, the voice of dissent and critics, in pursuit of populist agenda, sadly then becomes a norm. This is called the ethical decay of democracy³.

The fact that all democracies, whether Republic or Constitutional Monarchy, Presidential or Parliamentary, are systems in which citizens freely make political decisions by majority rule adds to the complexities of the system. In the words of the famous American essayist E.B. White, "Democracy is the recurrent suspicion that more than half the people are right more than half the time"⁴.

In a democracy the authority of the majority is supposedly to be limited by legal and institutional means so that the rights of individuals and minorities are respected. In fact, one of the fundamental principles in a democracy is the equal consideration of the preferences and interests of all citizens. All citizens, rather than favoured individuals or groups, have the right and opportunity to participate in all democracies. The ability to inform the government of one's needs and preferences and to pressure the government to pay attention -- is the key to that equal consideration, the institutional aspect of political equality. One-person/One-vote, equality before the law, and equal rights of free speech are some of the universally accepted principles by all democratic system. Despite the available institutional safeguard, the existence of political inequality, the ability of certain individuals or groups, to influence the political decision-making process more than the rest of society threatens democratic ideals.

We need to remember that Democracy is only a form of government. The government is the body that exercises the sovereignty of the state, establishes the relation between the sovereign, the political superior and the inferior. Only the quantitative or the numerical basis distinguishes democracy from other forms of government. Unlike monarchy or aristocracy, where the sovereign power is exercised by one and few respectively, in democracy, the power is in the hands of many⁵. As a government based on the consent of the governed, here, the elected government, the apparent ruler, the body exercising political authority, derives legitimacy from popular consent, expressed in the form of votes. Karl Marx, the Father of Communism, had once famously proclaimed, the transfer of power, in the hands of the proletariat, the "haves not", after the

³Levitsky, David & Ziblatt, Daniel. "How Democracies Die", Penguin Books, 2018, New York, PP 1-7. Available at <https://www.eui.eu/Documents/DepartmentsCentres/SPS/ResearchAndTeaching/How-Democracies-Die.pdf>

⁴White, Elwyn, Brooks, "The Meaning of Democracy" *The New Yorker*, originally published in the notes and comments section of the July 3, 1943 issue. Available at <https://www.newyorker.com/books/double-take/e-b-white-on-the-meaning-of-democracy>

⁵Sidgwick, H., Aristotle's Classification of Forms of Government, *The Classical Review*, vol.6, no.4, April, 1892, PP141-144 Available at https://ezproxy.svkm.ac.in:2113/stable/693542?Search=yes&resultItemClick=true&searchText=aristotle+classification+of+government&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3Daristotle%2B%2Bclassification%2Bof%2Bgovernment%26acc%3Don%26wc%3Don%26fc%3Doff%26group%3Dnone%26refreqid%3Dsearch%253Aab57b2d0aa2f9619db6316db3e033a25&ab_segments=0%2FSYC-5910%2Ftest&refreqid=fastly-default%3A5d9371e97acf88b43eedd7dba87f0c77&seq=1#references_tab_contents

proletarian revolution. The Dictatorship of the Proletariat, the Marxian principle, however, was ultimately translated into Party Dictatorship, in the former USSR or in the present-day Russia and in the so-called communist China. Similarly, the Citizens, the ultimate source of political authority, in a modern representative democracy, appear to be nothing but mere cogs in the wheel of political power.

Theoretically, in democracy as the holder of ultimate power, the people can make the democratic government be responsive to the people. This part, however, appears to be missing in the actual functioning. Very often, citizens of modern democracy seem to have viewed democracy, more as a form of government for the people. The characteristic behaviour of an ordinary citizen, is to hold on to his guaranteed rights, be it Free Speech or so on but turn a blind eye to his duties, to be performed to make democracy a real success. In the process, the citizens, conveniently forget that democracy is actually a government of the people, by the people and for the people. Therefore, active and meaningful participation of the people is a must for the successful working of democracy.

There has been a lot of debate regarding the knowledge and competence of the citizens in active political participation. Studies conducted show that many a time, while casting a vote, a citizen is driven not necessarily only by policy considerations, but by other factors also. Social identity is one of the most important considerations in today's context⁶. This gives an opportunity for the political parties, contesting democratic elections on party lines, to exploit identity related issues, for electoral gains.

In recent days, a referendum has been conducted at various places, to decide complicated issues like Brexit. The adoption of this type of a direct democracy method, enabling citizens to decide directly rather than through their elected representatives, has brought to the forefront, the issue of, how qualified an ordinary citizen is, to participate meaningfully, in such complicated matters. Very often the average citizen is ill-informed. The 2016 Referendum result on Britain's EU membership threw light on how unqualified the British voters were. Though several initiatives were taken by citizen groups to engage in detailed, reflective and informed discussions about what the UK's post-Brexit relations with the European Union should be⁷.

Reports about anxious Britons regretting their "leave" vote, or Googling what is the EU, the morning after the referendum, cannot be ignored. A debate, regarding the wisdom of the leave voter or the remain voter, still continues. This ironically reminds us of the "ship of the state" metaphor used by Plato in Book VI of *The Republic*⁸. Here, Plato compares the Athenian state to a ship. The citizen population of Athens are the owners of the ship. In Plato's assessment, they are politically powerful but lacking in administrative acumen, and political wisdom. Plato's observation was in context of direct democracy prevailing during his time in Athens. Yet the analogy has its relevance in modern times too. In the final analysis, the successful working of modern representative democracy depends upon a knowledgeable, informed and a forever vigilant citizenry. Sadly, the role of the citizens, either as an informed voter or as a responsible participant in the

⁶ Dam. Srimayee, *The Myth of Identity Politics in India: Identity Constructs and Political Realities*, *The Indian Journal of Political Science*, vol.LXXII. no.4.Oct-Dec,2011, pp-913-926 Available at https://ezproxy.svkm.ac.in:2113/stable/41856527?Search=yes&resultItemClick=true&searchText=identity+politics+and+election+in+india&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3Didentity%2Bpolitics%2Band%2Belection%2Bin%2Bindia&ab_segments=0%2F5910%2Ftest&refreqid=fastly-default%3A8cf1dba65e537d6aac1ed3551d619306&seq=1#metadata_info_tab_contents

⁷ *The Citizens Assembly on Brexit*, <https://citizensassembly.co.uk/brexit/about/>

⁸ Thompson, Norma. *The Ship of State: Statecraft and Politics from Ancient Greece to Democratic America*, Yale University Press, 2001 Available at <https://ezproxy.svkm.ac.in:2087/lib/nmimsebooks/detail.action?docID=3420138&query=western+political+thinkers>

democratic process, to keep the democratically elected government accountable, ensuring social mobility and social inclusivity, is far from the desired level.

THE SYMBIOTIC RELATION BETWEEN DEMOCRACY AND LAW: AN OVERVIEW

-Hufrish Lacca; Mansi Rathod¹

ABSTRACT

Democracy is a philosophy for good governance and recognizing the dignity of an individual. There is no doubt to say that the highest form of a political organization under which human societies have evolved over the years is democracy. Despite its inherent weaknesses and acquired organizational distortions, the democratic form of government continues to appeal to popular minds everywhere. This paper is an endeavour to understand what the components of a good democracy are. The democratic form of government empowers and enriches people's personalities. There is a relationship between law of a given society and the policies governing that society. Thus, democracy aims to empower the people in order to ensure that they, rather than some other group in society, rule. In this paper, the authors also try to understand and analyse the relationship that exists between democracy and law.

In a democratic system, members of a particular community are involved in the decision-making process and issues of governance. Therefore, it is important to study this symbiotic relationship that exists between democracy and law. Democracy and human rights are two sides of the same coin. The legitimacy of a state, from a human rights perspective, is based on the extent to which it respects, protects, and realizes the "natural" or human rights of its citizens. These inalienable rights are observable only in a democratic state. Another important aspect of a democracy is its law-making process. When a democracy is based on the principle of people's sovereignty, law making, and the activity of legislative bodies are legitimate. The legislative body as a representative body of the people corresponds with the demands of a democracy. The executive and legislature participate in the making of the law whereas the judiciary keeps a check on its constitutional validity. If a law is in force, it means that all state powers agree with its enforcement. The separation of powers of a government ensures that each organ of the government plays a very crucial role in the functioning of the state. They all need to keep a check on the working of their respective branches and make sure neither of them oversteps their power in order to avoid conflict and maintain balance.

The intent of separation of powers is to prevent the concentration of power by providing for checks and balances. Law prohibits governmental bodies from arbitrary action. A 'rule of law' state regulates the activity of the governmental bodies by securing human rights and justice. Rule of law means that there is a stable and self-sustaining body of law based on universally accepted principles and precepts. When rule of law is weak, participation of the poor is suppressed and marginalised, civil groups may be unable to organise and advocate whereas the resourceful and well-connected have more access to justice, corruption and abuse of power also runs rampant.

In addition to these is the presence of an accountability mechanism whereby public officials are held liable by, and answerable to, the public for both their actions and decisions. The judiciary, as the organ empowered to interpret and apply the law, can determine whether the legislature and executive are

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performing their duties as spelt out in the Constitution. In democratic societies, this power is used as an enforcement mechanism of the peoples' rights because the courts can be called upon at any time, by any individual, to adjudicate on the legality of an act.

This paper also throws some light on the working of the world's largest democracy which is India. Democracy and law go hand in hand. Few of the most important elements that make a successful democracy are recognising and upholding human rights, a 'Rule of Law' state, separation of powers, an unbiased justice system and a dynamic legislative body. As Abraham Lincoln rightly said – "Democracy is a government of the people, by the people, and for the people".

INTRODUCTION

"Democracy is a charming form of government, full of variety and disorder, and dispensing a sort of equality to equals and unequal alike." – Plato.

This paper is an endeavour to understand what the components of a good democracy are, as a government does not have a right to be called a democracy unless it brings out the best qualities of a man. The democratic form of government empowers and enriches people's personalities. Government's responsiveness to the interest and needs of their citizens is related with their capacity to supplement the dimensions of rights, equality and accountability.

The main ideals of a democracy revolve around the fact that the people are the real strength and brain behind the working of the government. They are what the future of a country depends on. Hence, it is important to understand what makes a democracy successful and the relation between democracy, human rights, rule of law and the justice system. There always exists a relationship between law of a given society and the policies that govern such a society. Thus, democracy promotes the system where the people of the state rule rather than an outsider not acquainted with the wishes and workings of the state. As opposed to its popularity, the democratic form of government may not be ideal as there are many negative aspects that also come with it. Further, we seek to understand and provide an insight into the Indian democracy. Therefore, it is important to study this symbiotic relationship that exists between democracy and law.

WHAT IS DEMOCRACY?

The Greek word '*demokratia*' literally means rule or power (kratos) of the people (demos). David Held begins *Models of Democracy* by defining democracy as "A form of government in which, in contradistinction to monarchies and aristocracies, the people rule."² Merriam Webster has defined democracy as a form of government where the supreme power is with the people and is further implemented by them directly or indirectly through a system of representation as facilitated by holding free elections.³ Therefore, democracy is that political ideology that allows the members of the community the chance and power to govern themselves.

Law of a given society and the policies governing that society always are found in co-existence with one another. Public policies have to be integrated into the law for them to be implemented. Law provides the opportunity to convert a society's norms and values into actual laws that can be implemented, making the connection between democracy and law-making stronger. Democratic principles promote for an accountable administration while maintaining the faith of the people. Over the years, democracy has evolved to be the

² David Held, *Models Of Democracy 2*, (1987).

³ "Democracy" Merriam-Webster.com Dictionary, Merriam-Webster, (Jul. 2020).
<https://www.merriam-webster.com/dictionary/democracy>

highest and most favoured form of political organisation. Democracy intrigues common minds all over the world in spite of having flaws in the system and deep – rooted weaknesses.⁴

INTERDEPENDENCE BETWEEN DEMOCRACY AND LAW

To determine the relationship between democracy and law, we need to establish their meaning. Law is understood to be the mode through which decisions related to public policies befall and are put to action in a community.

Two views are taken to understand this interdependence:

Democratic view

In a democratic system, members of a particular community are involved in the decision-making process and are responsible to govern and lead. Therefore, in democratic states, law is defined as implementation of policies and decision making, which represents the best interest of the public at large. Law helps in recognising and amalgamating the interest of society. Members of a community often elect a representative that corresponds to their own interests and would be able to present their interests in this law-making process. This is referred to as a representative democracy.⁵ As stated in the Vienna Declaration, people are the real strength and when they are sovereign, they are free to influence, control and contribute to their own political, economic, social and cultural systems.⁶

Totalitarian View

In most communities, there is a centre that makes these laws. In authoritarian or totalitarian regimes, there is often one person who is the centre of this power, making it a dictatorial regime. Even in a totalitarian regime like North Korea, law does exist, but its legitimacy and rules are not derived from the postulate of a sovereign, autonomous citizen. It is derived from supreme values which go beyond individual freedom and preferences.⁷

On paper, a totalitarian regime like China will have a constitution and a reliable legal system just like a democratic state, but it does not necessarily mean that these rights and freedoms are practiced in reality. In a democratic state, citizens can stand up for themselves if their rights are infringed upon, but the same does not happen in a totalitarian regime as virtually every aspect of their life is under the tight scrutiny of the regime.

In Cuba, the government controls nearly all media channels and access to information is extremely limited and constricted. The government routinely blocks and limits access to independent websites and blogs and only in July 2019 did the Government issue new regulations, allowing the creation of private wired and Wi-Fi internet network in homes and businesses. The Cuban government still refuses to recognise human rights monitoring as a legitimate activity and still denies legal status to local human rights groups.⁸

⁴ *The Hindu, Newspaper, 7th December 2013.*

⁵ *Jan Wouters, Bart De Meester and Cedric Ryngaert, Democracy and International Law, 34 Cambridge University Press, pp. 139-197(2003).*

⁶ *Vienna Declaration and Programme of Action, 25 June 1993, A/CONF.157/23, available on: <https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>*

⁷ *Peter Bernholz, The Constitution of Totalitarianism, Vol. 147, JITE, pp 425-440, (1991).*

⁸ *Cuba Events of 2019, Human Rights Watch, <https://www.hrw.org/world-report/2020/country-chapters/cuba>*

TWO SIDES OF THE SAME COIN - HUMAN RIGHTS AND DEMOCRACY

Meaning and History of Human Rights

Human rights are an integral element of a democratic system. Rights one has as a privilege of being human are known as human rights. Apart from being subjected to numerous political and social obligations, human rights are those inalienable set of rights that the state and society are required to respect or provide. Thus, human rights are natural rights that we as human beings are entitled to enjoy.

The legitimacy of a state, from a human rights perspective, is determined by the extent to which it respects, protects, and realizes the “natural rights” of its citizens. Natural rights based on natural law have evolved into the recognition of human rights which find their foundation in international charters and conventions. The Universal Declaration sets a common standard of achievement, for all people and all nations.⁹ The Vienna Declaration is straight-forward and claims that human rights and fundamental freedoms are the birth right of all human beings; their protection and promotion should be the first responsibility of Governments.¹⁰

Democracy and human rights share a mutually inclusive relationship as the existence of one without the other is not possible. The Universal Declaration of Human Rights (UDHR) provides that - Everyone has rights that allow them to take part in the workings of his government either directly or through selected representatives.¹¹ Civil and political rights such as free expression, free association, freedom of movement, and equality before the law, are defining elements of democracy.

In Singapore, the ruling People’s Action Party (PAP) secured its fifteenth consecutive terms since 1959. Lee Kuan Yew and his administration have remained in power and have controlled Singapore as a dominant party state dubbing Singapore as a benevolent dictatorship.¹² The citizens of Singapore enjoy a ‘rule of law’ state with an independent judiciary, commercial proprietary and a stable economy. But it continues to impose certain restrictions on freedom of expression, assembly and association.

In a fundamentalist regime, denying freedom and equality, advocating orthodoxy and religious dogmas and demanding unquestionable obedience to them makes a frontal assault on human rights.

Differences between Human Rights and Democracy

There are a few points of differences between democracy and human rights. Human rights are international legal norms whereas democracy is a political ideology. A government could put pressure on another government to improve its human rights behaviour, but not put pressure on it to be democratic, as it is not a binding obligation. Another point of difference is the parallel necessity between human rights and democracy.

Some members of the democratic community believe that there have been reductions in the abuse of human rights not because of changes in human rights, but because of transitions to a democratic form of government. The human rights situation, although still flawed has greatly improved since the 70’s particularly with respect to gross human rights abuse. Efforts by different governments to promote

⁹ *Universal Declaration of Human Rights, adopted 10 Dec. 1948, G.A. Res. 217A (III), U.N. GAOR, 3d Sess. (Resolutions, part 1), at 71, U.N. Doc. A/810 (1948), reprinted in 43 AM. J. INT’L L. 127 (Supp. 1949).*

¹⁰ *Vienna Declaration and Programme of Action, 25 June 1993, A/CONF.157/23, available on: <https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>*

¹¹ *Tony Evans, If Democracy, then Human Rights?, Vol. 22, Third World Quarterly, pp 623-642, (2001).*

¹² *Singapore’s ruling party calls an election, The Economist, June 25 2020, <https://www.economist.com/asia/2020/06/25/singapores-ruling-party-calls-an-election>.*

democracy has a better long run impact as it may have a much more wide- reaching and profound impact. The two sets of people i.e.; human rights advocates and democracy promotion proponents should not ignore the contribution of one another for both the advancement of human rights and the process of democratisation.¹³

This research paper highlights how democracy without human rights or vice versa is futile. In any democratic form of government, human rights play a very significant role. The promotion of either one of them leads to actualisation of the other. However, democracy and human rights are of limited interest when social unrest threatens the smooth functioning of the practices of globalisation.

THE DRIVING FORCE BEHIND DEMOCRACY: LAW-MAKING

Meaning and Sources

Stability in a society's legal system is of utmost importance while keeping a check on their wants and wishes. The concept of law-making process is not only based on the ideals of democracy but also has a scientific aspect so as to guarantee the development and implementation of people's ideas in the society.¹⁴

Law-making is the transformation of an idea of a law to an actual law. Law has different sources which include statutes, bills, acts, orders, legal customs and judicial precedents. It is well known that some aspects of law-making are influenced by political factors and cannot be controlled by law. Legal scholars may succeed in formulating and laying down the basics of this process¹⁵, but it is important that such principles are enforced.

As a social group, individuals form the entity that would be in power, and dictate their working procedures. It is made sure that the law-making process and functions of the legislative organ must be justified and supported by people. Democracy demands that the legislative body act as a representation of the people.

Democracy enables even an individual to participate in the law-making process. To be an active participant in the law-making process, an individual must gather all relevant information and to analyse it to convey one's opinion. Democracy means that an individual actively contributes and is supplementary in taking decisions concerning the state power. Individuals (or a group of individuals) need to be persistent in order for that bill to become a law. According to the rules, they need to convince a government organ with suggestions so as to sanctioning of the act. Individuals may come together in associations or political parties for united assertion of their opinions. In a democratic government it is imperative that opinions of the citizens are expressed as they have political and legal links.

'Rule of Law' State

Law making is also aimed preventing arbitrary governmental actions while maintaining transparency. The 'Rule of law' state is important as it helps in the law-making process. The basis on which the above-mentioned ideology depends on are the rights of a human being and their inherent freedom. This principle does not keep a check on governmental actions but also helps in securing human rights and justice. Social groups taking part in the law-making process must be wary of the results of their activities as they can be nullified by constitutional review body's. The due process of decision making is derived from the doctrine of

¹³ Thomas Carothers, *Democracy and Human Rights: Policy Allies or Rivals?*, *The Washington Quarterly*, pp 109-120, (1994).

¹⁴ I. Bogdanovskaia, *The legislative bodies in the law-making process*, North Atlantic Treaty Organisation, <https://www.nato.int/acad/fellow/97-99/bogdanovskaia.pdf>.

¹⁵ Bennion, *Statute law Obscurity and the Drafting Parameters*. 5 *British Journal of Law and Society*, (1978)

'rule-of-law'. The law-making process is supposed to be free from arbitrary activity of individuals and social groups.

Stages of Law-Making

The law-making acts of governmental bodies are more organized, and not as spontaneous as the valid traditions. This process entails precisely four stages - As a rule, there is preparation of an act, an investigation takes place, then the act is enacted and finally publication is started.

The process usually begins with preparing of the first draft of a bill, where an idea of law is recognised and a similar outline is put on paper. The first stage is usually carried out by a governmental body. Governments take the executive decisions concerning the detailed aspects of the project, and give the task to its internal committees/departments to draft a bill, where eventually an analysis of the people's input is considered and whether or not there is a need to fill in such a lacuna in the law has to be decided. The relation of the subsequent act to the current legislation and to the Constitution is scrutinized and of essential importance. The text is changed as and when requires based on a discussion among interested groups, working committees and experts on the issue.

In the next stage, the project is under tight inspection by the appropriate authorities. This process of testing differs according to different state organs. Executive bodies are more flexible and the process is not strictly supervised whereas legislative bodies are more thorough making this process rigid as it is partly regulated by the Constitution itself. Acts may either be adopted by a collective body, a legislative body, the Government or by an individual in their official capacity.

The last stage of the law-making process consists making the act accessible to the public by its official publication, and creating awareness through mass media tools like newspapers, television and radio.

Separation of Powers

The principle of 'separation of powers' adopted by modern constitutional states ascertains the procedure of the law-making process and the role of the legislative bodies in it. This principle distributes the powers of the state into three different bifurcations - the legislative, executive and judiciary. Representative bodies are authorised to adopt laws through this principle. Separation of powers has specific features in specific countries. It could be firm or flexible, and the law-making process depends on this character of the principle.

Powers are divided between the governmental bodies where legislative power is vested in the legislative bodies and the executive bodies may adopt these laws. Acts of the executive bodies are usually taken upon quickly to keep up the pace with the present day, tangled and erratic society. Delegation of powers from the legislation to the executives is also permitted by the Constitution through the parliaments, making sure that authorization of laws shall be definite and with a duly defined duration of authorization.

THE ROLE OF THE JUSTICE SYSTEM IN A DEMOCRACY

One of the branches in a democracy is the judicial system. In many democracies, the judiciary is protected, to one extent or another, from the voters and is kept individual. There are certain specific attributes that must be found in a democratic society. One of the most important attributes is the presence of a system of liability and answering technique. Where public officials are held liable and answerable to, the public for both their acts as well as the decisions they arrive at. It is important to ensure that public officials are kept in check and

are held accountable so that bad governance is avoided and power is not abused.¹⁶ The judiciary, is the organ that interprets and applies the law to the necessary situations, and also keeps a check on the duties carried out by the other branches in compliance with the constitution. In a democratic state, the courts can be called upon at any time to decide the legality of an issue. In fact, judicial power can also be utilised by people to determine whether an executive or legislative act is compatible with the Constitution.

The judiciary is one of the most important branches of the government. The legislature plays a role of forming a law which is then enforced by the executive. On the other hand, after the work of the other two branches is over the judiciary acts as a guiding light in interpreting the law and also plays an active role in judicial activism. The judiciary also has the power to change the pre-existing laws of the land and direct the legislature and executive to amend and update the laws along with changing times.

AN INSIGHT INTO THE INDIAN DEMOCRACY – HUMAN RIGHTS AND THE WORKING OF THE JUDICIAL SYSTEM IN INDIA

India is one of the biggest democracies in the world. After gaining independence in 1947, India adopted its constitution on 26th January 1950. The state being a sovereign, democratic and republic are the main ideals which the constitution incorporates and adopts. These ideals encouraged the people to choose their own representatives and lay the foundations for democracy.

The Preamble of the Indian Constitution reflects the inspiring ideals with the specific mention of "dignity of the individual". Thus, the essential role played by Human rights in a democracy is well portrayed in the preamble and constitution of our country. India has parliamentary form of democracy, where every section of society is involved in policy and decision making so that there shall be a fair representation of every section of people.

The impact of the UDHR on drafting part III of the Constitution is apparent. India has succeeded to the UDHR as well as to the subsequent universal treaties of Economic, Social and Cultural rights and Civil & Political Rights undertaken by the Central Assembly of the United Nations. Fundamental Rights are enshrined in Part III of the Constitution were founded on the doctrine of natural rights. These natural rights transformed into fundamental rights and they operate as a constitutional limitation and restrictions on the arbitrary actions of the government. As freedoms cannot be absolute, imposing limitations on government's arbitrary actions is a must in order to secure justice for all. Directive Principles enshrined in Part IV of the Constitution epitomise the ideals, aspirations, sentiments, precepts and goals of our entire freedom movement.

To lead a respectable, honourable and comfortable life the state has to protect the well-being of its citizens and for this purpose the citizen's right to life and personal liberty, right to a clean environment, right to equality, freedom of religion and freedom of movement are of utmost importance.

FUNDAMENTAL RIGHTS AND CASE LAWS AS UNDER THE INDIAN CONSTITUTION

Right to Life and Personal Liberty

Art. 21 of our Constitution guarantees right to life and personal liberty. The Article runs as follows "No person shall be deprived of his life or personal liberty except according to procedure established by law."¹⁷

¹⁶AvitusAgbor, *The Role of The Judiciary in the Promotion of Democracy And Human Rights In Cameroon, Volume 8, African Journal of Legal Studies, 145, 173 (2015).*

¹⁷ INDIA CONST. art. 21.

'Life' in this article does not mean mere existence. The Supreme Court has now widened the scope of Art. 21, though earlier in *A.K.Gopalan vs. State of Madras*¹⁸, the Court had taken very narrow view of Art. 21. Life in all its form and function does not stop at just life, it extends to all that gives meaning to a man's life, including his customs, traditions and respect for ancestral values in its full capacity would be encompassed by the expanded concept of Article 21 of the Constitution.

Right to Privacy as a part of Art. 21

Initially the Supreme Court refused to allow the right to privacy as a part of Art. 21 in *Kharak Singh vs. State of U.P.*¹⁹. In this case, Ayyangar J. had pointed out that the right of privacy is not a right guaranteed under our Constitution and any venture to keep tabs on the activities of the public is not merely a manner in which privacy is invaded and thus does not amount to infringement under part III of the Constitution. The Supreme Court has eventually updated its opinions & has now accepted 'right to privacy' as a part of Art. 21.

In *State of Maharashtra and another vs. Madhukar Narayan Mardikar*²⁰, an offending police officer was banished from duty on the basis of the fact that he had approached the hut of the victim, Banubi on the night of 13th November, 1965 all by himself in his police attire and had tried to violate her. Although Banubi was said to be a woman of questionable character, Ahmadi J., speaking for the Bench of the Hon'ble Supreme Court observed that even though she was a woman of easy virtue, this would not deprive her the entitlement to privacy and no one can invade her privacy as and when he like. She is equally entitled to the protection of law. Therefore, character does not play a part in determining entitlement of privacy.

A nine judge bench took a unanimous decision in *Justice K.S. Puttaswamy (Rtd.) Vs Union of India and others*²¹ declared that Right to privacy falls within the ambit of Article 21. The Supreme Court clarified its stand by stating that right to privacy is not unadulterated and can change according to changing circumstances. Private interests of a person cannot supersede the interest of the state at large. Justice Chandrachud held that the right to privacy not to be seen in isolation from the other rights guaranteed by Part III of the constitution. It is an element of human dignity and is an inalienable natural right. He focused on the informational aspect, connection with human dignity and autonomy and rejected the argument that privacy is an elitist construct. The courts broad interpretation of this right has paved the way for a broad spectrum of claims.

Right to a clean environment as a right to life

In the Doon Valley Case²², Article 21 came into force as the hills in the present case were under depleting conditions due to the harmful mining practices. The Court came to the conclusion that Art. 21 included in its purview a right to a clean environment and that the non-renewable assets could not be mindlessly drained by our generation.

In *M. C. Mehta vs. Union of India*²³ the Court held that a pollution treatment plant is a pre-requisite for any industry to continue or exist. It also dwelled upon the fact that a right to a clean environment is indeed a right to life. It observed that certain pre conditions that were laid down had to be followed to ensure responsible and sustainable continuance of industries.

¹⁸ *A.K.Gopalan vs. State of Madras*, AIR 1950 SC 27 (India)

¹⁹ *Kharak Singh vs. State of U.P.*, AIR 1963 SC 1295 (India).

²⁰ *State of Maharashtra and another vs. Madhukar Narayan Mardikar*, AIR 1991 SC 207 (India).

²¹ *Justice K.S. Puttaswamy (Rtd.) Vs Union of India and others*, (2017) 10 SCC 1 (India).

²² *Rural Litigation And Entitlement Kendra Dehradun &Ors. vs. State Of U.P. &Ors.*, Air 1985 SC 652 (India).

²³ *M. C. Mehta Vs. Union of India*, AIR 1988 SC 1037 (India).

In the Oleum Gas Leak Case²⁴ the rule of strict liability was applied. C.J Bhagwati, held that in a country like India there was a need to evolve a new principle of liability as opposed to the doctrine of absolute liability as put forth in the case of *Ryland Vs. Fletcher*²⁵ and thus, strict liability was adopted after recognising the limitations and exceptions of absolute liability.

Part III of the Indian constitution gives certain political and civil rights as termed as fundamental rights. Articles 14, 15 and 16 give the right to equality. Article 19 guarantees the six freedoms which includes freedom to/of (a) Speech and expression (b) Assemble peacefully without arms (c) to form association or unions (d) to move freely throughout the territory of India (e) To reside or settle in any part of the territory of India and (f) Freedom to practice any profession or carry on any occupation, trade or business. Article 20, 21 and 22 gives us the right to life and personal liberty. Freedom of religion is covered by Articles 25, 26, 27 and 28. Articles 29 and 30 gives us cultural and educational rights whereas Articles 23 and 24 guarantees rights against exploitation and Article 32 gives us the right to constitutional remedies. Fundamental rights lose their effectiveness unless they are backed by constructive machinery focused on the enforcement of such rights. If there is no remedy there is no right at all. This remedy takes form as Article 32 of the constitution. Article 32 enables to move the Supreme Court by “appropriate proceedings” and gives power to the Supreme Court to issue appropriate directions or orders or writs.

To meet the growing needs of civilization and to make changes in the social background; a Constitution is an organic instrument for the governance of the country as it does not debar a liberal or progressive interpretation of the provisions of the Constitution.

THE INDIAN JUSTICE SYSTEM

The constitution of India which was drafted by the Constituent Assembly and which came in to force on 26th January, 1950 contains number of provisions that deal with structure, function and powers of the judiciary. It introduced a unified system in all the states and Union Territories and virtually introduced a three-tier judicial system viz. The Supreme Court of India (the highest court of the land) the High Courts, and a subordinate judiciary in every state and Union Territory, consisting of many hierarchies.

In India, the judiciary has come to exercise vast powers of judicial review in respect to the legislative and executive functions of the state and also the duty of judicial activism. In the case of *Vishaka & Ors. V/S State of Rajasthan*²⁶, the court observed that under the fundamental rights of Article 14[2], 19 [3](1)(g) and 21[4] of Constitution of India - every profession, trade or occupation should provide a safe working environment to the employees so that they feel safe and in turn work better for the organisation. It provided guidelines as there was an immediate need to increase awareness and furnish protection to women with a special emphasis on gender justice.

Similarly, in the case of *MurliS. Deora v. Union of India*²⁷, the court held that smoking in public places is injurious to the health of people who don't engage in smoking themselves and that this practice violates their right to life and liberty. The Union of India, State Government, and the Union Territories were directed to implement this ban in all the public places. This shows that the judicial system has an enormous potential to effect change in society when they so desire. Given the separation of powers between the three organs of the

²⁴ *M.C. Mehta And Anr Vs Union Of India &Ors, 1987 AIR 1086, (India).*

²⁵ *Ryland Vs Fletcher, (1868) LR 3 HL 330.*

²⁶ *Vishaka&Ors. VS State of Rajasthan AIR 1997 SC 3011 (India).*

²⁷ *Murli S. Deora v. Union of India, AIR 2002 SC 40 (India).*

government, the Supreme Court in reality does not have the right to make laws or direct the legislature but they do so in order to keep up with the changing times and cater to the evolving society.

The Courts decide disputes that arise between the centre and states. They ensure that the authorities are not acting arbitrarily. Their duty is to safeguard and implement the fundamental rights of the citizens. They also interpret the laws made by the legislature and it has the final say in the credibility of any legislative or executive action which could contravene or abridge the fundamental rights of citizens. Interpretations by the judiciary have a broader scope of our fundamental rights as enshrined in the Constitution for public welfare. Supreme Court has also been a guardian and protector of our democracy and rule of law through public interest litigation.

The Supreme Court has accepted public interest litigation petitions where judicial intervention was of utmost importance. These changes can be found in laws regulating child labour, bonded labour, right to clean and healthy environment, and women's rights. Judicial interventions regarding human rights have been somewhat successful in maintaining rule of law. Enforcing the rule of law in itself is a tedious task and it further burdens the obstacles as faced by the Indian legal system. Due to lack of implementation of laws in our country, there are many rules that are more violated than followed by the people of our country.

DRAWBACKS OF DEMOCRACY

Though democracy seems to be an ideal form of government, there are certain negative aspects to it. Since people are allowed to give their opinions and views on every aspect that governs them, they retaliate against most laws that are passed which leads to havoc and chaos and delayed decision making. Every decision made by the government is up for debate, leading to decreased efficiency and in return becomes a loss for the country itself.

Since is it not a totalitarian regime, there cannot be rigid laws for population control such as those imposed by China and hence the population of the country rises an alarming rate leading to its mismanagement. Due to the increasing population, it becomes more difficult to manage the country in emergency situations like a pandemic. People feel, since it's a democracy they are allowed to disobey the law and create a nuisance for the public at large. Democracy also leads to vote bank politics and the ignorance of voters goes against the basic feature of democracy that is people's representation.

Nation building is very slow in a pure democracy as efficiency of the organs is lost. Due to the absence of deterrent punishment and delayed justice to victims, crime rates are at an all-time high. There is a need for certain stringent measures to curb the ill effects that plague a democracy.

CONCLUSION

In all kinds of political ideologies, a democratic form of government is the only one which is people oriented and where the source of law is its citizens. This paper highlights the fundamental elements of a democracy and how each element plays its own crucial part in order to sustain a healthy symbiotic relationship between democracy and law. In spite of it being a popular form of government, there are still some downsides and is far from being the perfect governing institution.

The systematic distribution of powers among the organs of the government and the existence of a "rule-of-law" state makes it a desired form of theory. Since democracy promotes separation of powers, it is essential that each branch maintains 'checks and balances.' There is no ambiguity about each wings power, privilege and duties and there is supposed to be no overstepping and overlapping.

For a democracy to function smoothly it is essential that elected representatives of the people do not undermine their citizen's ideas and opinions over a period of time as that will cause dismay and chaos leading to a failed democracy and the rise of a dictatorial regime.

A democracy is only as successful as the citizens of the country- constant scrutiny, active participation and constructive criticism all help in delivering good governance.

ANALYSING THE MEDIA DISCOURSE OF WOMEN POLITICAL LEADERS

- Usha Nair; Divya Subramaniam¹

ABSTRACT

“As has been long observed, men are people, but women are women.”

- Cordelia Fine²

Media is, undoubtedly, one of the most influential forces in society today. Mass and social media across print, television and the internet influence and sometimes even dictate our discourse and attitudes towards all issues, including gender. It is natural; therefore, that political discourse in the media takes up a significant portion of our mental and social landscape. Political discourse can be defined as ‘a type of discourse which is a political production – a speech, debate, political interview, policy document, and so on, or we could be referring to any talk or textual output that is either about a political subject or which is politically motivated’³. Thus, any talk about a political issue can be called political discourse. In a democratic society, the media plays a crucial role in the production and consumption of these political discourses. Among the many issues that may be studied through the frame of media coverage is gender. It is important for the women leaders to be visible, not just in the extent of coverage, but also the nature of the coverage. This paper will analyse the media reporting of the discourse of women political leaders, to identify if there are any stereotypical gender identities of a woman leader highlighted as normative behaviour. The current media coverage during the past three months in the regional, national and international media, of the handling of the COVID 19 by Kerala’s health minister Ms K.K. Shailaja becomes a model for the study. While the national and international media were unconcerned with the gender of the minister, the Malayalam media wanted their viewers to not forget that it is a woman who has achieved success.

INTRODUCTION

Political discourse can be defined as ‘a type of discourse which is a political production – a speech, debate, political interview, policy document, and so on, or we could be referring to any talk or textual output that is either about a political subject or which is politically motivated’.⁴ Political discourses are the means through which the governments transfer information to the public and politicians and spokespersons become the agents of this discourse. In a democratic society, the media plays a crucial role in the production and consumption of these political discourses. Media influences as well as is influenced by social attitudes, trends and prejudices. A free, unbiased media can become the strength of a democratic society and conversely a biased, caged media, can be dangerous. With the social media engulfing the entire communication arena, besides print and visual media, social media has also become a big space for political discourses. Governments have dedicated social media handles; the PM is just a tweet away and media

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²*Delusions of Gender: How Our Minds, Society, and Neurosexism Create Difference*’

³Wilson, John. “Political Discourse.” *Handbook of Discourse Analysis*, edited by Deborah Tannen et al, USA, Wiley Blackwell, 2015. Pg 775

⁴*Ibid*

management of elections is a big business. Among the many issues that may be studied through the frame of media coverage is gender.

With the number of women aspiring to and holding public office increasing, it becomes imperative to examine how the media frames issues regarding gender and its possible impact on society. This is particularly pertinent for women in the political arena who are accessible to the general people through the media. In India, women's representation has steadily increased in the Lok Sabha. Of the 542 Members of Parliament in the 17th Lok Sabha, 78 are women; from only 5% in the first election to 14% now. This means they are visible extensively in the media. "One of the most discussed issues concerning media coverage of women politicians' concerns 'visibility', that is to say the degree of attention the media give them. In a more extended sense, visibility implies not only the quantity of coverage but also how the press frames that coverage. ..."⁵ It is important for women leaders to be visible; also, it is important to see how they are being portrayed in the media. Therefore, an extensive coverage is desirable, but if it is to compare her with a male politician, or if it is to evaluate her gender and performance, visibility can be counterproductive. Media can be responsible for dismantling the gender image of a woman, or it can perpetuate a stereotype which is no longer needed in society. For instance: the media talking about a rape victim as a rape survivor or the #metoo movement.

One such politician who got extensive media coverage in the past few months is Kerala's Minister for Health and Social Justice, Ms. K.K. Shailaja. Kerala was one of the few states in India which, through proper planning, preparation and execution, reduced the number of people affected by COVID-19. The Health Minister was credited with this 'success' and the media interviewed her during the entire period from March to May 2020. The media, especially the regional Malayalam media, along with questions about the minister's comments on the policies and procedures, also introduced a perspective of a woman leader who is a 'teacher' and a 'mother'—both deemed acceptable for women as per prevailing patriarchal stereotypes. This labelling of a woman leader working in a male-dominated field was to enhance the acceptability among the viewers, entrenched in the ideology of how a woman should behave in a public space. A woman's public image is perceived as an extension of her image as a dutiful wife and mother and the media only reiterates this. This can be harmful for someone looking for a role model in a leader as well as an unwelcome advance for the individual concerned, here, the Minister. This paper analyses the media discourse of women political leaders, as responsible for entrenching deep patriarchal gender images of women, with special reference to the Health Minister of Kerala Ms. K.K. Shailaja. The scope of an unbiased discourse in a media interview of political leaders will be the key lens through which we will be analysing the interviews given to various channels.

Televised political interviews which are circulated widely in the social media are now tools that create and sustain public opinion. The FICCI M&E 2019 report says that 43 percent of the 885 private TV channels in India are 'news channels' and Malayalam news had the highest per capita news consumption. (This is sourced from indiantelevision.com). In order to examine a possible bias towards stereotyping, interviews given by the minister to selected Malayalam and English news channels will be evaluated. Also under study, will be the speeches of the minister in the State Assembly where the media is only a third-party observer and not in a position to steer the discourse. This will allow for a comparison. The Critical Discourse Analysis⁶ approach will be followed for analysing the spoken and non-verbal interactions.

⁵ Campus, D. *Women Political Leaders and the Media. Palgrave Studies in Political Leadership. London, Palgrave Macmillan, 2016. Pg 39*

⁶ Fairclough Norman. *Language and Power. Longman, 1989*

The COVID-19 crisis in Kerala became a challenge for the state which has a huge NRI population, majority of them waiting to return to their home when the pandemic broke out all over the world. Therefore, unlike other Indian states, Kerala faced a direct threat of potential COVID-19 carriers coming into the state in large numbers. What would have become a catastrophe, became a success story for the ruling Communist party and the affable Health Minister K.K. Shailaja became a sought-after guest on state, national and international TV. In interview after interview, she spoke at length the strategy followed by the state, to bring the pandemic under control. She became a familiar face on all the channels during the peak of the COVID-19 crisis; so much that the opposition party in the Kerala assembly accused her of 'media mania'. Ms Shailaja continued her media interaction, ignoring the opposition's criticism.

However, the media added a sobriquet 'teacher' to her name thus conjuring up the image of a caring, nurturing and at the same time 'simple' person, whose ambit of influence is limited. The media also drew a picture of a caring mother (amma), staying away from her family serving the people tirelessly. This paper asserts that this biased approach did not do justice to the minister and veteran politician and implied a limited influence as a leader. This also reflects the changing image of a woman political leader as 'communal' that is caring for the community altruistically, unlike the earlier women leaders, who were trained in political activism, before entering state politics.

HISTORY OF WOMEN IN POLITICS IN KERALA

Tracing the history of women in Kerala politics since the first general elections, Anita et. al., discusses the shift in the participation of women that has happened from activism to altruism. Earlier, women politicians who took part in Gandhian freedom struggle, continued the participation in the state politics, which was an opportunity to have a public presence in a gender-neutral way. Prominent among these pioneering women leaders were Akkamma Cherian, Leela Damodara Menon, K.R. Gauri Amma, who acted like male politicians. All political aspirants, irrespective of the gender, had to follow the same route of mass mobilization, dedicated political activism and shrewd administrative skills. Therefore, women who entered politics had to shed their 'femininity' and act like a male, ruthless power players. This was not an option for many women, who had no way to shed their roles as a woman even for a short duration. This accounted for so few women in politics and those who survived could not be role models as they resembled the male ideals of a politician. The 60s saw the rise of naxalism, which addressed the issues of class divide and though active women like Mandakini Narayanan and Ajitha continued their work to include feminist perspective, Naxalism failed to address women's issues above class divide. Women who continued to be in politics, found the competitive political arena too stifling and moved to spaces where there was more scope for 'altruistic' work like Kerala Shastra Sahitya Parishad. This was more like social activism, more suitable for women who wanted to be away from political activism. This was also the time when women from elite backgrounds took up employment outside their homes, mainly to ensure better economic standards of living. However, they were careful to retain their femininity, and not go against the societal norms of a dutiful wife and mother. The desire to carry on both employment and housewifery is evident when 95% of female college students in a survey wanted to take up paid employment as well as an overwhelming desire to get married, 63% preferring arranged marriage.⁷ Addressing the issue of poor participation of women in politics, the government of India as per the provisions of the Article 243D of the constitution, reserved 33% of the seats in the local self-governing institutions for women. Kerala introduced this reservation in the elections of 1995 and after the 2015 election the percentage of women members of local self-government is 54%. This is more than the reserved 33% since women contest even in the unreserved seats.⁸ Did this 'enforced'

⁷Devika, J and Binitha V Thampi. "Mobility Towards Work and Politics for Women in Kerala State, India: A View from the Histories of Gender and Space". *Modern Asian Studies* 45(05)1147-1175 September 2011. Pg 8

⁸<https://lsgkerala.gov.in/en/lbelection/lbelection/2015>

involvement of women increase the number of women at the state level? Apparently, the answer is - No. The women occupying positions in the panchayats and wards consider their role as an extension of the 'feminine' skills of gentle persuasion to see that the governmental welfare schemes reach the poor, similar to the supportive woman in a family. There was no radical critique of gender, nor any aggressive feminism. Those women who manage to get higher positions in the state politics 'are projected as the combination of excellent managerial skills and public adherence to bourgeois norms of respectability and femininity – an ideal particularly preferred and advocated by the AIDWA Kerala, the women's front of the CPI-M' with patronage of a senior male politician.⁹

ANALYTICAL APPROACH OF THE STUDY

The analytical framework of the study will be based on three aspects of leadership discourse—matching of the social role with the leadership role (social role theory); traits of leadership discourse; critical discourse analysis, where the use of discourse for 'doing' power is studied.

A woman doing leadership discourse will have predominantly two concerns:

- The impact her leadership style has among people of various hierarchies within the organisation (avoiding direct confrontation, being more collaborative, etc.),
- The perception she has about self and others perception about her as a leader (able to 'be herself' and not fit into any stereotypical role expectations).

The leadership impact of a woman will be different from that of a man, whose traditional role expectations and workplace roles are similar. A woman has to struggle to replace her gender specific role to fit into a male dominated work environment, where the rules of the game are drawn by men. What are these social roles versus workplace roles?

1. The Social Role Theory

The Social Role Theory¹⁰ explains two dimensions of behaviour for men and women as expressing their social roles- 'agentic' and 'communal'. Agentic traits are of dominance and assertiveness, typical of the male gender and communal traits such as concern for others and closeness, typical of female gender. These gender roles are reflected apparently in gender specific social roles. However, in a workplace where there ought not to be any gender specific tasks, where men and women are supposed to be performing as equals, some professions have a preference for females over males. So, we have more women in occupations such as teaching, nursing since they are more caring, nurturing and communal. Addressing someone as a 'teacher' slot them as caring, altruistic, and noble. Since leader roles are defined more in masculine terms and are agentic, 'role congruity'¹¹ is expectations of the merging of the social role and the public role. Therefore, in a patriarchal society, a woman leader is more acceptable if she displays more nurturing and softer personality traits, than an aggressive "manly" behaviour. There is also a self-image that every person tries to protect which is termed as 'face'.¹² This, when endorsed by others, creates a positive effect, and when distorted or misrepresented leads to discomfort to both.

⁹Anita, et al. "Gendering Governance or Governing Women? Politics, Patriarchy, and Democratic Decentralisation in Kerala State, India" Centre for Development Studies. Report. 2011. Pg 63

¹⁰Eagly, Alice H., and Wendy Wood. "Social Role Theory." *Handbook of Theories of Social Psychology*, edited by Paul AM Van Lange et al., Sage, 2012.

¹¹Eagly, Alice H., and Steven J. Karau. "Role Congruity Theory of Prejudice toward Female Leaders". *Psychological Review*, vol. 109, no. 3, 2002, pp. 573–598, 10.1037/0033-295x.109.3.573. Accessed 15 Mar. 2019.

¹²Goffman, Erwing. *Interaction Ritual*. Doubleday, 1967.

2. Leadership Talk

Judith Baxter has listed some linguistic features of leadership discourse, without categorizing them as 'female' or 'male'. They are—consulting; seeking help and advice from others; establishing status, position; being confrontational; listening; dialogue and debate; self-promotion: reminding/informing others of your experience, achievements, contacts etc; being assertive: making assertions, holding to your opinion; being polite and courteous; Expressing support and solidarity with other people, their views and actions; giving praise: complimenting people; Being open: expressing uncertainty, admitting mistakes, problems, weaknesses; expressing feelings; arguing and developing a case; persuading others to your point of view.¹³

3. Critical Discourse Analysis (CDA)

Critical Discourse Analysis is discourse analytical research that primarily studies the way social-power abuse and inequality are enacted, reproduced, legitimated, and resisted by text and talk in the social and political context.¹⁴ The central notion of critical discourse analysis is that of power- power in terms of control of one group of another through discourse. If we were to consider the media as the powerful group, the analysis of the media discourse will show how public opinions, views and attitudes are being influenced. Media discourses happen through text (written and spoken). The discourse analytical method followed will be the Fairclough's model of three stages analysis—descriptive, interpretation, explanation.

1. DESCRIPTIVE

Research Method:

The discourses for study were selected interviews, accessed on YouTube, given by the Minister in both regional as well as national media during the period of March to June 2020, when the pandemic wave was sweeping through the country. We reviewed the content, primarily through the lens of media and gender discourse. Since the minister was giving interviews extensively, we selected a few which had a perceptible gender bias in reporting. However, we also used the research to study the media interaction of a popular woman politician as a representation of leadership talk. Transcripts were made of the selected interviews.

The initial observations we made was that the interviewers were following a format of investigative journalism, seeking information about how Kerala was handling the crisis. The role of the interviewer was of fact finding and of the Minister of providing the information. The Minister being an invited participant in the interviews, the context for the interaction was generally set by the interviewer, in the question answer format. The subject position of the guest was, defined by the media was:

- A. As a politician from a CPI-M ruling party in the State, which has BJP and Congress party as the opposition, the interviewers' constant attempt was to 'bait' the minister to challenge the opposition.
- B. As a woman politician, who is a mother figure, the interviewers' concerns were more on discussing this side of the minister.

Biographical Sketch <https://kerala.gov.in/web/guest/k-k-shailaja-teacher>

K.K. Shailaja teacher [CPI(M) – Kuthuparamba] Minister for Health & Social Justice Daughter of Shri K Kundan and Smt KK Shantha; born at Mattannoor, Kannur on 20th November 1956; B.Sc., B.Ed.; Teacher. Entered politics through SFI; was State Secretary of Democratic Women's Association. Now Member,

¹³Baxter, J. *Language of Female Leadership*. Palgrave Macmillan, 2014. Pg 177

¹⁴Dijk, Van Taeun A. *Critical Discourse Analysis*. In Tannen, D, Heidi Hamilton, Deborah Schiffrin (eds) *Handbook of Discourse Analysis*. Vol 2. Blackwell, 2015. Pg 466

Central Committee, CPI(M); National Joint Secretary, All India Democratic Women's Association and Chief Editor, 'SthreeShabdham' monthly.

Selected Discourses

1. Video Title– Arogya Stree – Women Pride
Manorama News – March 2, 2020,
Interviewer –Justina Thomas
2. Video Title –JB Junction with John Britas
Title of the show – When Malayalees’ Teacheramma opened her heart
3. Video Title –Media one panel discussion
Title of the show – Shailaja Teacher replies to allegations.
4. Video Title –Manorama News Online. NereChovve
Title of the show – Should I say not to address me as ‘teacheramma’?
Interviewer – Johnny Lukkose.
5. Video Title –NDTV
Headline: Kerala Started Preparing Against Coronavirus Before It Came to India: KK Shailaja
6. Video Title –CNN NEWS 18
Headline: Kerala Health Minister KK Shailaja Speaks on How the State Successfully Tackled COVID19
7. Video Title –The Print
Headline: Off the Cuff with KK Shailaja
8. Video Title –Times Now
Headline: WATCH: Health Minister KK Shailaja explains how Kerala is flattening the COVID19 curve | EXCLUSIVE
9. Video Title –British Asian Trust
Headline: How Kerala Dealt with COVID 19. Conversation w/Health Minister Shailaja &British MP Lord Gadhia
10. Video Title – India Today
Headline: KK Shailaja Exclusive on Kerala Model of Fighting COVID19, Lockdown Exit | News Today with Rajdeep
11. Video Title –BBC
Headline: KK Shailaja Speaks to BBC On How Kerala Is Containing COVID19 Cases
12. Video Title –BarkhaDutt: MOJO Story
Headline: Meet Kerala's Shailaja Teacher—from a Family that Faced Untouchability to a Global Headline

2. INTERPRETATIONS

Some general observation about the participation of the minister in the interviews and her interviewers is as follows:

Minister K.K. Shailaja has a speaking style that is slow, elaborate and organized. However, regardless of the format, she is never at a loss for answers. She is always in control, calm and well prepared with the information that she is required to give. She is also very forthcoming with facts and opinions and never seems evasive or vague. She does not speak in a short and snappy ‘quick quotes’ style. She seems more relaxed in longer formats that allow her reply to questions without interruptions, than in short one- or two-minutes snap interviews. Her lack of savviness in delivering what is usually called a quick ‘news byte’ may make Minister K.K. Shailaja look unsuitable for the glitzy and fast-paced world that news channels today project, but at no point is there any doubt about the fact that she is an astute politician. Like any good politician, she never loses an opportunity to highlight the work that her party (the current ruling party, Communist Party of India -Marxist) has accomplished over the years.

The interviewers showed deference, no aggression while asking questions, which were focused on the topic of COVID-19.

HEADLINES

The headlines of any programme, encapsulates the ‘why’ ‘what’ and ‘who’. All the channels were running interviews with the Minister, media visibility, maybe as a PR strategy, was at its peak during the months of March to May. The most common words on every caption were -Kerala model, Kerala’s health minister and Minister K.K. Shailaja. Regional channels also took the additional responsibility that the minister had a more appealing public image. She was a ‘teacher’ ‘teacheramma’ and had an ‘ammamanassu’ (heart of a mother) and when the opposition tried to create a dent in this image, the media hurried to ‘set things right’ by recording the Minister’s hurt and disappointment with the opposition for their ‘insensitive’ remarks.

The Minister too obliged, expressed anguish and repeatedly reiterated her appreciation of the teamwork and not her sole effort. The entire media coverage took on this confrontation, and the media took care to see the public saw the ‘all-forgiving mother’ embodied in the Minister. Let us look at some of the captions of the interviews.

On Malayalam news channels

MEDIA ONE: Shailaja Teacher replies to allegations.

KAIRALI TV – JB JUNCTION: Teacheramma tears up remembering Lini (a nurse who died fighting the Nipa Virus in 2018)

ASIANET NEWS: Has not gone home for months, teacher is busy working even on Mother’s Day (followed by an interview with her family)

MANORAMA NEWS – NERE CHOVVE: Should I tell them not to call me teacheramma?

Headlines on national/ international media

NDTV: Kerala Started Preparing Against Coronavirus Before It Came to India: KK Shailaja

CNN NEWS 18: Kerala Started Preparing Against Coronavirus Before It Came to India: KK Shailaja

THE PRINT: Off the Cuff with K.K. Shailaja

BBC: KK Shailaja Speaks to BBC On How Kerala Is Containing COVID 19 Cases

A different political agenda was there in this headline

BARKHA DUTT – MOJO STORY: Meet Kerala's Shailaja Teacher – from a Family that faced Untouchability to a Global Headline

The contrast is clearly visible, for the national media, regional politics was not an issue, the only thing that mattered was how a government responded to a crisis, and as a Health Minister she was answerable. Though, one media person did bring about a caste angle to the issue, which no other media outlet, neither regional nor national was apparently interested in.

SUBJECT POSITION AS TEACHER AND MOTHER

“Historically, the teacher’s position has been taken as specifying ‘respectable’ public femininity in Kerala.”¹⁵ So we have even ministers addressed as Sreemathy Teacher, Shailaja Teacher, the term ‘teacher’ becoming a metaphor. It creates a subjective position for women identifying them with their social role as a guide, mentor, and a nurturer. Amma is the tag attached to any senior woman and is considered to be a mark of respect. However, in the patriarchal society of Kerala, motherhood is worshipped at an unreasonably noble level, which women find uncomfortable to embody. This ‘sacrificing’ image of the mother is what the media has always portrayed in films, music, etc which has gotten entrenched in society.

The Minister was asked for her reactions to being called a ‘teacher’ or ‘amma’. Here are some of her responses:

“Compassion is not a prerogative of a woman, there can be male politicians also who are compassionate. Why is a male minister not addressed as father? Yes, I am a mother and a grandmother. So, if someone sees a mother in me, I have no problems. But if the word is being used as a negative symbol, I do not subscribe to it.” (Arogya Stree 19:15 -21:16)

“I don’t enjoy being addressed as a teacher, but when someone, my students, youngsters, request to address me as teacher, I don’t want to hurt their feelings by saying don’t address me so.” (Manorama News Online. Nere Chovve.8:29)

“I am not so ignorant as to read out from a script, after all I am a teacher. Your party (BJP) taunted me saying I am a craft teacher, why, isn’t a craft teacher a teacher? I do not underestimate my capabilities...” (Media One panel discussion 4:08-5:18, replying to the opposition’s accusation that the minister, during press briefings, reads out from a script. This reply was used by the media as a positive assertion of a ‘passive’ teacher)

“I am not a scholar, not a scientist but I am only a school teacher... I am the health minister, so must know. I have a very good team, my policies and decision making add to their actions.” (BarkhaDutt: Mojo Story 41:07-41-30)

We conclude that though the Minister was not comfortable being portrayed as a teacher or a mother, apparently, the two roles the Minister has to play of a tough politician in the private space and a soft public figure, were not difficult for a seasoned politician like K.K. Shailaja. There was no role incongruity that was overtly expressed. She went along with the media’s effort of personalising her image as a person who is like your family. Where the media intervention in steering the responses is not present, for example, the assembly floor, the minister’s discourse is sharp and cutting. However, in media interviews she came across as polite and genial, the public ‘face’.

AGENCY OF THE NATIONAL AND INTERNATIONAL MEDIA AS AGAINST THE REGIONAL MEDIA

Compared to the regional media, the English news media asked her fewer questions focusing on her gender. Rather, the emphasis was more on her as a politician from a particular party (CPI-M) and a particular state (Kerala). She was repeatedly asked to comment on the efforts taken by other states as well as on the efforts of the Central Government (where CPI-M is in opposition).

¹⁵Anita, et al. “Gendering Governance or Governing Women? Politics, Patriarchy, and Democratic Decentralisation in Kerala State, India” Centre for Development Studies. Report. 2011. Pg 75

In almost all the interviews, there seemed to be an attempt to ‘bait’ her to say something derogatory about the Central Government or other states. Every time such a question came up, Minister K.K. Shailaja displayed a studied caution in her answers. Covertly refusing to be drawn into mudslinging, she focused, once again, on the work of her department and her party as well as on Kerala’s unique people efforts. In almost all the interviews, she was asked to give advice or share lessons to other states and even to other countries on how to cope with the pandemic. Each time, she refrained from giving any advice that might come across as a ‘lecture’, she offered general tips pointing out that circumstances in each state were different and that “everyone is trying”.

LEADERSHIP DISCOURSE

Every interview we observed had one thing in common, the minister’s insistence—verging almost on anxiety—to share the credit for success with her team and the Chief Minister Pinarayi Vijayan; repeatedly emphasising that she has a “very good team”. The pronoun she used is ‘we’ and the vocabulary is also about ‘collective effort’, ‘co-operation from all quarters, even opposition, ‘collective victory’, etc. This gives the impression of someone who openly displays humility and grace—qualities that the viewers recognize and appreciate as that of a nurturing parent. Her leadership discourse is avoiding confrontation, is of a polite and courteous listener, rarely interrupting. In the course of her job as a health minister, she claims that she listens and takes note of the opinions of a variety of people ranging from government officials, health officials, other experts and also the citizens.

In the arena of self-promotion, again, the ‘I’ is subsumed by ‘we’, sometimes even self-deprecating, at the same time, glorifying the party and the leader.

“We are able to do this here (Kerala) because we have a system here. 1957 onwards we are trying to have some decentralized planning and individualized attention.” from The Print – Off the Cuff with KK Shailaja

Giving praise and complimenting people comes easily and she is eager to share the credit. She also tends to underplay her capabilities, knowledge and apologize when some error occurs. For example, when she mistakenly mentioned Goa (instead of Mahe) as a union territory adjoining Kerala as lacking facility for treatment, she personally called up the Goa Chief Minister and apologized, as the remark showed Goa in a poor light. In almost every interview, the Minister admits to not knowing how things will pan out for her state. She has no problem expressing her worry and the fact that there is uncertainty ahead. The public persona of the minister is of a leader with feminine traits. However, in the assembly, while tackling the aggressive opposition, she is assertive.¹⁶

EXPLANATION

The 33% reservation for women in local self-government will be treated as a success if more women are able to climb up the political ladder. Currently there are only two women ministers in the Kerala state assembly. The major block for women rising up is the ever-present Malayalee fixation of women as submissive, to be protected and weak. Women in the local government prefer the ‘feminine’ style of functioning which involves keeping away from aggressive politics. “Women in local governance seem to be located within an emergent, hyper moralised space of the ‘community’, as distinct from the space of local politics, which continues to be dominated by male politicians and marked by masculinist values and styles of

¹⁶<https://www.youtube.com/watch?v=wQl7I6CvcBw>

functioning.”¹⁷ Even the women in the upper echelons of politics, who possessed prior experience of political activism speak the language of liberal feminist, yet are expected to conform to the dominant norms of femineity. This became obvious from the above study, that women are not comfortable fitting into the role expectations, perpetuated by the media, yet, hold on to positions on terms set by society.

This examination of the media treatment of Minister K.K. Shailaja across regional, national and international media has exposed the fault lines present in the medium. As compared to the regional media which focussed on her image as a teacher and mother, the national media displayed a broader gender-neutral acknowledgement of her capabilities as the health minister. The national media, however, did make it a point to highlight her past role as a teacher, thus perpetrating a gender stereotype amongst the viewers.

The international media appeared to be more responsible by focussing on her role and accomplishments as a minister with no mention of anything about her except her current role in tackling the COVID-19 crisis successfully.

Media’s role in the political discourse should be to look beyond factors such as class, caste, gender, etc. The emphasis should be the quality of the public service offered by the minister.

Every person deserves to be recognised for the value that they bring to their role. However, this is a courtesy that women have long been denied. Instead, their contribution gets lost in a quagmire of perception, expectation and judgement. To this end, we need to recognise and call out discrimination where ever we come across it in private and public life. We must envision and then work towards a world where men and women have the same opportunities and can expect work-based recognition regardless of their gender. Towards that utopia we march!

Selected Discourses

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Manorama News – March 2, 2020,
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Title of the show – When Malayalees’ Teacheramma opened her heart
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3. Video Title –Media one panel discussion
Title of the show – Shailaja Teacher replies to allegations.
<https://www.youtube.com/watch?v=X4NbjkpELiI>
4. Video Title –Manorama News Online. NereChovve
Title of the show – Should I say not to address me as ‘teacheramma’?
Interviewer – Johnny Lukkose.
<https://www.youtube.com/watch?v=eV71wKyE7XU>

¹⁷Anita, et al. “Gendering Governance or Governing Women? Politics, Patriarchy, and Democratic Decentralisation in Kerala State, India” Centre for Development Studies. Report. 2011. Pg 83

5. Video Title –NDTV

Headline: Kerala Started Preparing Against Coronavirus Before It Came to India: KK Shailaja
<https://www.youtube.com/watch?v=q9xQljHg21c>

6. Video Title –CNN NEWS 18

Headline: Kerala Health Minister KK Shailaja Speaks on How the State Successfully Tackled COVID19
<https://www.youtube.com/watch?v=C4irETv42RU>

7. Video Title –The Print

Headline: Off the Cuff with KK Shailaja
<https://www.youtube.com/watch?v=Tc0uA6LdIcA>

8. Video Title –Times Now

Headline: WATCH: Health Minister KK Shailaja explains how Kerala is flattening the COVID19 curve | EXCLUSIVE
<https://www.timesnownews.com/videos/mirror-now/specials/watch-health-minister-k-k-shailaja-explains-how-kerala-is-flattening-the-covid-19-curb-exclusive/59379>

9. Video Title –British Asian Trust

Headline: How Kerala Dealt with COVID 19. Conversation w/Health Minister Shailaja &British MP Lord Gadhia
<https://www.youtube.com/watch?v=BzLNXS1xXvI>

10. Video Title – India Today

Headline: KK Shailaja Exclusive on Kerala Model of Fighting COVID19, Lockdown Exit | News Today with Rajdeep
<https://www.youtube.com/watch?v=t6RG4i7JJgg>

11. Video Title –BBC

Headline: KK Shailaja Speaks to BBC On How Kerala Is Containing COVID19 Cases
<https://www.shethepeople.tv/top-stories/kk-shailaja-bbc-kerala-containing-covid-19-cases/>

12. Video Title –Barkha Dutt: MOJO Story

Headline: Meet Kerala's Shailaja Teacher—from a Family that Faced Untouchability to a Global Headline
<https://www.youtube.com/watch?v=07aLwuUO5Y8>

PERCEPTION OF DEMOCRACY

-Ayaan Hafiz¹

“Many forms of Government have been tried and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of Government except for all those other forms that have been tried from time to time...”

-Winston Churchill

ABSTRACT

As part of modern society, we have shifted our focus to the relative perceptions of the elements of democracy; and are more fixated on the idea that democracy is relatable to the will of the people. This paper intends to broadly shadow the idea of democracy and how it came about from its history to its present state. The intention of this paper is to establish a connection between and journey the myriad forms of democracy around the world, from China to Vietnam to North Korea to Russia and finally the state of democracy in India. Additionally, it will also touch upon the effects of past events, perception of world leaders, growth of journalism, connectivity and technology on the growth of democracy.

Democracy has evolved. In its infancy it existed in the old Roman Empire in the form of elections. A res publica, the Roman philosopher Cicero claims, is a legitimate form of commonwealth if, and only if, the people are the sovereign power, and they entrust their sovereignty into the capable hands of the elite. The idea of democracy stems from the public; individuals electing individuals to represent them, and the shared values of people who understand and would on a large scale emote each other's desires and ideologies. The influence of media and journalism on modern-day democracy is highly evident. Consider the recent elections in India, and in the United States of America. A heavy influence on swing politics can be attributed to the media's creations. Whether it was creaming up certain topics like the 'Make in India' project that promised to bring new jobs into the country, or the idea of anti-immigration laws that helped stem the root of American politics, media and the use of connectivity have shown considerable influence on the common man's perception of democracy.

Relativity is a key component of our lives and how we observe and perceive things and situations is an intrinsic experience for every individual. Being a social animal, an individual is constantly surrounded by other individuals, who, when facing a similar situation may perceive it in an entirely different manner. Hence the idea of perception comes into the picture. Governments and democracies are not privately owned machines, they are an entire apparatus of shared experiences and are hence subjective for each individual. For instance, let us consider an event such as the fall of the Berlin wall. For some, the fall of the Berlin wall symbolized the end of communism and the failure of a mechanism that once existed in a glorified state with tens of thousands sold on the idea of its benefits. However, with the growth of modern western society, the idea of socialism grew, and democracy prevailed over a wall and an entire war. Believing in a different perception of democracy has shown immense growth. The fall of the UPA government in India, with the

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simultaneous rise of Bhartiya Janata Party is a prime example of the change in the democratic ideologies of the public. What was once a debate about public spending completely transformed into a debate about the growth of religious endeavours in the Indian society and uprooting the dead weed of corruption Democratic alliances are usually influenced and the image of democracy grows and changes with time and with the rise of different leaders. Democracy is the will of the people, it is the belief of the people, it is, in a true sense, a citizen in its own right. In conclusion this paper will journey the depths of democracy and its and the growth of the influences that have shaped its current structure.

INTRODUCTION

‘A system of government by the whole population or all the eligible members of a state typically through, elected representatives.’² This is the first definition that comes up when the word ‘democracy’ is searched on the internet. Although it covers a great deal about the idea of democracy, it fails to show the vast overgrowth and the journey of democracy being a struggle for maturity and improvement over previous forms of government. Democracy in itself is a struggle for a peaceful coexistence monitored closely by individuals who have been entrusted with responsibility of being the thoughtful ones in the society.

Democracy is ever changing; it changes with time, from the west to the east, corner to corner, from one individual to another and from browser to browser. The experience of democracy is a very intrinsic experience, very much relative to each individual’s beliefs, skin colour, religion, gender and social position. But in order to understand any concept, much like understanding an individual we need to understand the journey and the ideas that came about and changed the path of this concept. How a society which had seen such tremendous growth and steps taken, in form of science, astrology, philosophy in the age of oligarchy and dictatorship, came to choose a form of government that belonged to elected representation. Such a society also came about to learn the idea of deciding for themselves in a more civilized manner than a barbaric rule that previously existed and was the reason for downfall of a few of the Babylonian civilizations.

DEMOCRACY IN ANCIENT TIMES

Ancient Greece has been such a wonderful part of human history; the growth of great political thinkers such as Socrates, Aristotle, Thales, and Democritus has enriched the world with great depth and philosophical understanding. Ancient Greece is the beginning of democracy; it is the most adaptable form of democracy which has led to the modern form of democracy as we observe now. In the year 507 B.C., the Athenian leader Cleisthenes introduced a system of political reforms that he called demokratia, or “rule by the people” (from demos, “the people,” and kratos, or “power”).³ The system was very similar, the highest body being the sovereign governing body called ‘ekklesia’, a council called ‘boule’ and the courts called ‘dikasteria’. Prior to the hink of Cleisthenes becoming popular and adopted in society, the aristocratic society, the rich and powerful would control almost every aspect of governance in ancient Athenia. Athenian democracy was a form of direct democracy, the ekklesia encouraged citizen participation from the men of the society to be actively engaged in discussion in regards to governance. Decisions were made on war and foreign policy using a simple majority technique, which is highly prevalent even in the modern form of election. Such an example being election for Minister of Parliament is based on simple majority in a particular region for the candidate of a certain party. The boule used a method of lottery system which became the solution to disallow the influence of any form of money and status during elections, allowing free election where choice is left solely to fate. Interestingly, the dikasteria was a form of jury system. Compared to the modern system

²Democracy Definition, LEXICO.COM, <https://www.lexico.com/definition/democracy> (last visited July 21, 2020).

³ History.com Editors, Ancient Greek Democracy, HISTORY-A&E TELEVISION NETWORK (Aug. 19, 2019), <https://www.history.com/topics/ancient-greece/ancient-greece-democracy>.

of courts, they utilized mass gatherings of men above age 30 years as there was no formal system of policing the citizens policed themselves and judgments were passed by majority.

The Romans established a form of government more widely known as the ‘Republic’. In a republic, the majority consensus was to allow for individual representation, hence, the concept of elected representation was immensely popular. The aristocracy (wealthy class) dominated the early Roman Republic. In the Roman society, the aristocrats were known as patricians. The highest positions in the government were held by two consuls, or leaders, who ruled the Roman Republic. A senate is composed of patricians who elect these consuls for positions in the government. At this time, lower-class citizens, or plebeians, had virtually no say in the government. Both men and women were citizens in the Roman Republic, but only men could vote⁴. The existence of a Roman senate is a concept well adapted over time- the senate was a group of almost a hundred men who held the job of advising the King. A similar adaptation can be seen in the Mughal Empire with King Akbar famously having the council of the ‘Nav Ratna’⁵. To draw a parallel to the concept of a senate, the modern-day Indian Parliament has a separate body of council of ministers that not only hold key profiles such as energy and transport, but a crucial part of their job is to advise the Prime Minister who is responsible for leading the entire nation. In his book *Mortal Republic: How Rome Fell into Tyranny*, author Edward Watts states that “Roman history could not more clearly show that, when citizens look away as their leaders engage in these corrosive behaviours, their republic is in mortal danger.”⁶ Learning from the failure of the Roman democracy, modern democratic societies were able to understand and appreciate the concept of separation of powers and the need for a check and balance system.

DEMOCRACY FROM WEST TO EAST

Democracy in the west stems from one of modern world’s most powerful western countries, the United States of America, the land of Abraham Lincoln and Martin Luther King Jr. The United States got independence in 1776, on the 4th of July⁷. A few years later, the delegates of the independent colonies were able to sign a document entitled as the Constitution⁸ of the United States of America. From those founding days to the civil war and now in 2020, the country is struggling to deal with mass protests and social disturbances, from the protest against police brutality and the march for Black Lives Matter, democracy has truly taken shape in America⁹. One of the essential characteristics of democracy is the voice of the people, and in America at this moment, the voice has been able to take shape in the form of protests, peaceful or otherwise. People have taken steps to fight against the government and police activities, to fight prejudice to

⁴*The Roman Republic*, USHISTORY.ORG,

<https://www.ushistory.org/civ/6a.asp#:~:text=6a.,The%20Roman%20Republic&text=Once%20free%2C%20the%20Romans%20established,role%20in%20governing%20the%20state>.

⁵Jovita Aranha, *The Fascinating History Behind the Nine Gems of Mughal Emperor Akbar’s Court*, THE BETTER INDIA, (Oct. 27, 2017), <https://www.thebetterindia.com/119423/akbar-nine-gems-mughal/>.

⁶Jason Daley, *Lessons in the Decline of Democracy From the Ruined Roman Republic*, SMITHSONIAN MAGAZINE, (Nov. 6, 2018), <https://www.smithsonianmag.com/history/lessons-decline-democracy-from-ruined-roman-republic-180970711/>.

⁷History.com Editors, *Fourth of July – Independence Day*, HISTORY-A&E TELEVISION NETWORK (Dec. 16, 2009, last updated Jan.8, 2021), <https://www.history.com/topics/holidays/july-4th>.

⁸Tom Garner, *The US Constitution: Facts about the Country’s Founding Document*, LIVE SCIENCE, (July 3, 2020), <https://www.livescience.com/US-Constitution.html>.

⁹Jeffrey Smith, *To Save Its Democracy, the United States Needs a Dose of Its Own Medicine*, FOREIGN POLICY, (June 14, 2020, 08:40 AM) <https://foreignpolicy.com/2020/06/14/to-save-its-democracy-the-united-states-needs-a-dose-of-its-own-medicine/>.

be treated equally in the new decade¹⁰. Protests and questioning are key to keep a check on the democratic values of a country. Representatives are elected by the people, and they hold responsibilities towards those people. This struggle to bring justice and equality is exactly what democracy intends to be. Without these values, and unless people stand up for each other, to protect the minorities and the oppressed, the hope of a babylonian democratic system, a civilized society cannot be expected in the near future. The transformation of America from a land of hopes and dreams for immigrants to a beacon of democratic fire and unity of the people is an engraved stone to what democracy is able to empower when enforced by the people it intends to protect.

Looking more towards the European nations, we take our learning from Germany, a country of many wars and industrial revolution, which has seen the rise of democracy during the turmoil periods of separatist power regimes. Let us bring our attention to historic moments such as the fall of the Berlin wall. When the Berlin Wall fell, political scientists were wildly optimistic about the global spread of democracy¹¹. The fall of the Berlin wall¹² in Germany became a stand-alone symbol of people's unity and willingness to bring a change in the structure and beliefs of the government. The choices made by the sides on that fateful night led to a libertarian approach to society and governance, giving rise to a more liberal economic and political system. The complex liberalization process and a transition into a global democratic society has allowed for mass inclusion and expansion of freedom of expression. What large countries with economic backing are unable to see is the struggle of the smaller nations, like Vietnam, ravaged by a war not of its own making, and civil disturbances? Vietnam in recent times has seen a development. Democracy is taking a different shape in the country. Vietnam has been known to hold strict nationalism laws and has been known to make arrests¹³ in order to control political opinion in the country. Vietnamese people collectively opposed Chinese taking over economic zones¹⁴ and were on the frontline protesting to protect their freedom of free and fair trade when the government named special economic zones.

Moving towards the eastern superpower People's Republic of China- the hugely populated country with strict borders is not only secretive of its policies but is also tyrannical in nature of its control on its own citizens. China's trust with democracy has been more fateful one than hopeful. With an authoritarian government regime that tends to control public opinion and does not believe in the liberty and principles of freedom provided by democracy, the People's Republic of China is a special global power. With one of the largest populations in the world, China has followed an aggressive policy to control democracy, for instance, the recent struggles of Hong Kong to safeguard their democracy¹⁵. The encroaching regime of China¹⁶ has exposed a truth of China's way of dealing with internal aggression. Even with condemnation from around

¹⁰ Evan Osnos, *Why Democracy Is on the Decline in the United States*, *The NEW YORKER* (March 10, 2020) <https://www.newyorker.com/news/daily-comment/why-democracy-is-on-the-decline-in-the-united-states>.

¹¹ Martin Dimitrov, *The Resilient Authoritarians*, *Current History*, Vol 107 (Issue 705), 24-29 (2008).

¹² Michael Svetlik, *Two Decades Later: Democratic Progress and the Fall of the Berlin Wall*, *ACE ELECTORAL KNOWLEDGE NETWORK*, <http://aceproject.org/today/feature-articles/two-decades-later-democratic-progress-and-the-fall>.

¹³ Shawn W. Crispin, *The Truth About 'Democracy' in Vietnam Today*, *THE DIPLOMAT* (March 25, 2016), <https://thediplomat.com/2016/03/the-truth-about-democracy-in-vietnam-today/>.

¹⁴ Khai Nguyen, *A democratic revolution has just begun in Vietnam*, *ASIA TIMES* (July 8, 2018), <https://asiatimes.com/2018/07/a-democratic-revolution-has-just-begun-in-vietnam/>.

¹⁵ Eleanor Albert and Lindsay Maizland, *Democracy in Hong Kong*, *COUNCIL ON FOREIGN RELATIONS*, (last updated: Feb. 17, 2021, 12:00 PM), <https://www.cfr.org/background/hong-kong-freedoms-democracy-protests-china-crackdown>.

¹⁶ *Hong Kong's democracy debate*, *BRITISH BROADCASTING CORPORATION* (June 18, 2015), <https://www.bbc.com/news/world-asia-china-27921954>.

the globe, the superpower has continued aggression¹⁷ and hence displays the failure of democracy in one of the most critical super powers on earth. The race to beat the United States of America and to curb the influence of the dollar economy has flooded the market with capital to take back control of public opinion by tapping into the necessity of cash and business in the modern world.

For the outside world, North Korea or officially known as the Democratic People's Republic of Korea is under an authoritarian government and is under multiple united nation sanctions for human rights violation¹⁸, but in all, it is a country that has prevented western influence and forcefully controlled any communication and any evidence of the growth of democracy. It has successfully curbed public power and prevented any loss of government oversight on the lives of the public by recently, going as far as forcing citizens who travel to sign waivers against defection to China or any other region, they decide to trade with¹⁹. The region continues to be in turmoil and shows absolute failure of the essence of a democratic set up even existing in the country.

Taking a step into the cold and vast land of Russia, we see a different form of elected representation, one almost oligarchic in nature but democratic in setup. The Russian approach to democracy is unique-cultivation of nationalism among the civilian population, building a population that falls in a trance of love for the country to maintain civil order, it is truly a madman's dream of control. For most recent years, President Vladimir Putin has been able to not only control this population but also the activities, opinions-from education to competitive markets²⁰. Control of the President and his party is vast reaching, in his article in the New York Times Isaac Chotiner says, "Putin rarely consults with anyone, and, even if he does, it is done in a totally opaque way. He's rarely explicit. Even if he consults with some people in his circle, people leave without having a clear idea of what his goal is and have to guess. Sometimes they guess right. Sometimes they guess wrong. Sometimes they try to curry favor and succeed, sometimes not. At the end of the day, he is the ultimate decision-maker. And the strategy and the grand plans that he has for Russia, in their entirety, exist only in his mind."²¹ But the recent protest in the country and the rise of a new younger population has been an interesting change in the political climate of the country. The country is seemingly seeing a transition, more commonality with the global democratic outlook, and protestors have spoken widely about the secretive government and the regimes power over certain companies and involvement in the killing of journalists and truth seekers.²² Only time will tell the shape of the new-age democracy in Russia.

¹⁷ Hong Kong bars 12 opposition candidates from election, *BRITISH BROADCASTING CORPORATION* (July 30, 2020), <https://www.bbc.com/news/world-asia-china-53593187>.

¹⁸ Eleanor Albert, What to Know About Sanctions on North Korea, *COUNCIL ON FOREIGN RELATIONS*, (July 16, 2019, 08:00 AM) <https://www.cfr.org/backgrounder/what-know-about-sanctions-north-korea>.

¹⁹ Simone Osborne, North Korea horror: Kim Jong-un introduces incredibly cruel new law for residents, *EXPRESS NEWSPAPERS* (Aug. 1, 2020) <https://www.express.co.uk/news/world/1316506/north-korea-news-kim-jong-un-crackdown-defectors-china-border>

²⁰ Isaac Chotiner, How Putin Controls Russia, *THE NEW YORKER* (Jan. 23, 2020), <https://www.newyorker.com/news/q-and-a/how-putin-controls-russia>.

²¹ OSBORNE, *supra* note 18.

²² Will Englund, Seeking democracy on the streets of Russia, *THE WASHINGTON POST* (Aug. 17, 2019), https://www.washingtonpost.com/world/europe/seeking-democracy-on-the-streets-of-russia/2019/08/16/a61fc16e-bdd4-11e9-a5c6-1e74f7ec4a93_story.html.

In India, the land of the Vedas, the multicultural land of god's democracy is young like its own people. India is a special form of democracy- one of the largest in the world²³. With such diverse cultures and social and economic differences among the people, democracy over time has taken a very different shape than envisioned from the time of independence. In the Supreme Court case of *Indira Nehru Gandhi vs. Shri Raj Narain&Anr.*, on 7th November, 1975²⁴, the majority ruled that 'democracy' as an essential feature of the Constitution is unassailable. There is no shadow of a doubt that democracy in India is a product of the rule of law and aspires to establish an egalitarian social order. It is not only a political philosophy but also an embodiment of constitutional philosophy.²⁵ India has approached democracy with a liberal mind-set. It may be stated that the health of democracy, a cherished constitutional value, has to be protected, preserved and sustained, and for that purpose, and the instillation of certain norms in the marrows of the collective is necessary.²⁶ In the current scenario, India does not have any requirement for educational qualifications required for legislators to be elected. We have collectively taken a liberal eye towards criminals and leaders with criminal cases and parties with a criminal background. As political parties in India do not come under the Right to Information Act, parties are easily able to push the agenda for leaders who in an ideal world would be disqualified due to their criminal record or suspicion.²⁷ India's political culture has been vitiated by unprecedented waves of populism, jingoism, sectarianism and confrontational politics. Much has been written about the wounded spirit of democracy in India. State power, the ruling party activists, mobs, and social and traditional media have been used to curb dissenters and inflame passions designed to assert majoritarianism²⁸. Although India's journey towards democracy has not always been smooth sailing, we have proven to hold strong the idea of democracy to be freedom. In recent years, that freedom has shown to dwindle in its shine. The current government's influential ideology had the effect of recycling the philosophy of divide and rule²⁹ among its people. Freedom now has been curbed, with so much influence of the government in public life, from the cases under Unlawful Activities (Prevention) Act³⁰ to withholding internet connection in Kashmir region,³¹ the government has been able to force the issue of what democracy is. It is a struggle. From the Mughal rule to the British regime, India has fought foreign power to grow as a democracy but this seems to be an entirely different fight for unity where the people who ought to be the upholders of democracy threaten the same democracy.

What we learn from these current regimes of government and the mass struggle and protest is invaluable. The struggle is never-ending, the journey is incomplete and in every step of the way democracy is

²³ Badri Raina, *The World's Largest Democracy: Beyond Question*, THE WIRE.IN, (Nov. 19, 2019), <https://thewire.in/rights/india-democracy-freedom>.

²⁴ *Indira Nehru Gandhi v. Shri Raj Narain&Anr.*, A.I.R. 1975 S.C. 2299.

²⁵ *Manoj Narula v. Union Of India*, (2014) 9 S.C.C 1.

²⁶ *Id.*

²⁷ Madhav Khosla, *The law of Indian Democracy*, THE HINDU: BUSINESS LINE (July 29, 2013) <https://www.thehindubusinessline.com/todays-paper/tp-encampus/The-law-of-Indian-democracy/article20642397.ece>.

²⁸ L.K. Sharma, *Indian democracy, then and now*, OPEN DEMOCRACY (April 3, 2019), <https://www.opendemocracy.net/en/openindia/indian-democracy-then-and-now/>.

²⁹ Ruhi Tewari, *Modi-Shah aping divide and rule of Congress. Same fate awaits BJP*, THE PRINT (July 7, 2020, 09:34 AM), <https://theprint.in/opinion/modi-shah-aping-divide-and-rule-of-congress-same-fate-awaits-bjp/455717/>.

³⁰ *Counterview Desk, There is robust evidence: BJP govt is using UAPA to silence India's dissent*, COUNTERVIEW BLOG (Oct 29, 2018), <https://www.counterview.net/2018/10/there-is-robust-evidence-bjp-govt-is.html>.

³¹ Hannah Ellis-Petersen, *'Many lives have been lost': five-month internet blackout plunges Kashmir into crisis*, THE GUARDIAN (Jan 5, 2020) <https://www.theguardian.com/world/2020/jan/05/the-personal-and-economic-cost-of-kashmirs-internet-ban#:~:text=Kashmir->

, 'Many%20lives%20have%20been%20lost'%3A%20five%20month%20internet,blackout%20plunges%20Kashmir%20into%20crisis&text=The%20internet%20blackout%20which%20was,the%20economy%20in%20tattered%20ruins.

shouldered by politics, military, and economic constraints. Learning from the past and adapting to the present is the only way to flourish in the future.

JOURNALISM'S INFLUENCE ON DEMOCRACY

“What is really needed to make a democracy function is not the knowledge of facts, but right education. And the true function of journalism is to educate the public mind, not to stock the public mind with wanted and unwanted impressions. A journalist has, therefore, to use his discretion, as to what to report and when. As it is, the journalists are not content to stick to the facts alone. Journalism has become the art of ‘intelligent anticipation of events.’”³² News and information are in cross paths at this very moment. Journalism is taking such a key position in the rule of the government with some outlets functioning in favour of the government narrative and some trying to become the vigilantes the world needs right now. Journalism has been at the forefront of a war that is being fought in the shadows. With eyeballs and common people reading a simple news article to understand a situation which is far divided from them, it helps develop opinions and support. Hence a journalistic article could be the make-or-break point for any social issue. In his interview with the Stanford News, Jon Krosnick, a professor of communication and political science said, “Democracy cannot function without communication. In order for voters to make informed choices among candidates, the voters must learn about the candidates’ policy positions, track records, personalities, past experience and much more. This happens with the exchange of information from informants to voters.”³³ It is essential to note the change in trend, that news media is not just about information anymore, it’s about cultivating an opinion—from the United States of America President Donald Trump using channels such as Fox News³⁴ to further his agenda and philosophy and Prime Minister Narendra Modi using channels such as Republic TV³⁵ to reach the masses and communicate his will and ideologies, journalism has become a tool of politics.

What journalism ought to be is a force of democracy, a weapon that serves society, to complete the check and balance cycle. Individuals alone cannot monitor every activity taken up by the representative, but an organization dedicated to learning and commenting on these activities can make society more vigilant against threats possessed by their representatives. Journalism has the power and the reach to be critical of the government and society itself, their duty towards democracy has always been that of a protector and of a treasure of information to create mass awareness.

THE INTERNET DEMOCRACY

In this day and age, democracy has the power to become polarising in itself. The opinions of different individuals are so easily accessible to everyone, thereby creating a wide highway for conflict. While debates happen over the internet, democracy’s true power and honest failures are widely exposed. It’s power of being able to liberate an individual, every single being having access to an internet connection now has a voice, a voice that can at times be enough to throttle the representatives elected by the majority. Majority backing the minority is something that is now a reality, something we can experience now due to the existence of the internet. A mundane concept which one would be forgiven for not believing in, even the possibility of such an existence would be considered a myth, is one where the majority is able to clearly listen to the minority opinions, back those opinions and also enforce certain ideas that would help the

³² D.G. Tendulkar, *Mahatma*, page 247 (1953).

³³ Sandra Feder, *Stanford researchers discuss journalism and democracy in lead up to Super Tuesday*, STANFORD/NEWS, (Feb 27, 2020), <https://news.stanford.edu/2020/02/27/journalism-and-democracy/>.

³⁴ Emily Czachor, *The Rise and Fall of the Relationship Between Donald Trump and Fox News*, NEWSWEEK, (July 13, 2020, 01:52 PM), <https://www.newsweek.com/rise-fall-relationship-between-donald-trump-fox-news-1517420>.

³⁵ NL Team, *The love story that is Republic TV and BJP*, NEWSLAUNDRY.COM, (May 10, 2017), <https://www.newslaundry.com/2017/05/10/the-love-story-that-is-republic-tv-and-bjp>.

majority. The internet is an entire world of its own, containing such minorities who are now able to generate such a huge amount of traction, in simpler words, they can gain the support of the majority for a minority agenda. And that is exactly how minorities try to find representation in a majority representative government. One such example is the fight of the LGBTQ community for equal status and rights in the country, which had been a civil struggle for years was able to get the required internet majority with internet influencers recognizing the demand of a minority population and aiding the struggle and finally being able to get certain laws changed. The struggle of the LGBTQ community, especially in India during the recent times of the 'battle' against Section 377 became an international spectacle and the minority was able to garner influence and help from various international organizations³⁶. Such is the power of democracy in the world of the internet.

The flip side of the coin that is the internet is the existence of trolls, counter trolls and political bots who garner a huge influence and are able to spread unverified news or political agenda to a class of individuals who believe that everything read on the internet is authentic. The accessibility of the internet to such a vast majority allows for internet trolls whose only job is to spread hate, from mass political agendas to smear campaigns and false medicine and beliefs: The failure to control the internet in a moderate way, which would not only protect freedom of speech, but also is able to protect the common vulnerable public from any false information. If only there would be a way to authenticate all information available on the internet.

Political Parties have been able to use the internet to their benefit³⁷ just like the rise of internet influencers selling their brand over the internet, cultivating a deep mass following, reducing space for critical thinking and decision making by reviewing and favouring choices. Political parties have been able to use the same influence for their own purposes. Such an example in the west has been the rise of American President Donald Trump, who has been able to actively spread his message through Twitter³⁸. The idea is extremely basic, actively communicating with a mass public, keeping eyeballs attracted and being first to any topic via a two-hundred-and-eighty-character tweet coming from the President himself allows for authenticity and lightning-fast communication. When a message is able to reach your followers within seconds, gone are the days of newspaper interviews being the main source of questioning to a representative. Towards the east, China has followed a deep-control based³⁹ use of the internet, where the government actively collects and controls information. From websites to markets, newspapers to games, China is able to hold on to information dissemination and access to the public, which allows them to control public opinion on any topic. This to the western-influenced world may be a human right violation, as information is being limited, but it is a strategy which is very deeply rooted in the democracy of China since the dawn of the internet.

Information is king. Democracy is of the elected representative. If the representative controls the narrative of the story via the most accessible form of information, it allows democracy to be controlled. It blocks adverse opinions from forming that may damage the governments or try to curtail their use of powers. In India, the internet only a few years ago was not as easily accessible as it is today with low-cost internet reaching parts and corners of India. Any form of a message by the government is easily reachable to the most remote

³⁶ *Impact of social media on LGBT Community*, HEALTH MANAGER, <https://www.healthmanager.ie/2017/07/impact-of-social-media-on-lgbt-community/>.

³⁷ *Next social media and Democracy*, DRISHTI, (June 16, 2020), <https://www.drishtias.com/daily-updates/daily-news-editorials/social-media-and-democracy>.

³⁸ *Michael Shear, Maggie Haberman, Nicholas Confessore, Karen Yourish, Larry Buchanan, and Keith Collins, How Trump Reshaped the Presidency in Over 11,000 Tweets*, THE NEWYORK TIMES (Nov. 2, 2019) <https://www.nytimes.com/interactive/2019/11/02/us/politics/trump-twitter-presidency.html>.

³⁹ *Elizabeth C. Economy, The great firewall of China: Xi Jinping's internet shutdown*, THE GUARDIAN, (June 29, 2018), <https://www.theguardian.com/news/2018/jun/29/the-great-firewall-of-china-xi-jinpings-internet-shutdown>.

places. The current government has actively used social media and troll bots⁴⁰ during elections and campaigns thereafter, to gain an advantage over the public. Using multiple verified accounts of the political party itself and being readily available with comparisons and internet trolls, the creation of an image under the public eye has been the key to the Bharatiya Janata Party regime to reach the heights it has today⁴¹.

Internet Democracy has turned up to be a fascinating place for representation and for the voice of the few now being so accessible to the mass public. It has shaped how democracy is viewed in modern times. Not just being an elected representation but it is now also responsible to a collective consciousness where every idea and opinion, positive or negative, towards any form of initiative or government policy is available for mass public condemnation. It allows the people of the democracy to question the democratic and non-democratic activities of the government.

MEANING OF DEMOCRACY

In his writings Robert Dahl⁴², provided a benchmark for defining the essential elements of democracy. In Polyarchy, Dahl identified eight criteria in defining democracy: the right to vote, the right to be elected, the right of political leaders to compete for support and votes, elections that are free and fair, freedom of association, freedom of expression, alternative sources of information, and institutions that depend on votes and other expressions of preference. Like many other democratic theorists, Dahl is largely equating democracy with the institutions and processes of democratic government. If citizens can participate equally in free and fair elections, and if elections direct the actions of the government, then this is the essence of democracy.”

In recent times we have been able to clearly understand the criteria of democracy. Right to vote has been a defining factor in this debate. Right to vote has been questioned as who should be allowed to vote and what qualifications are required. In the pre-Civil War era, in the United States of America, the coloured minorities were not given the right to vote⁴³ as they were believed not to be equal to their white counterparts who considered them more as slaves and subdued their right to decide for themselves. In India, women suffrage and their involvement in Indian political shape was a key factor in how India oversaw a transition from the British regime to an independent India⁴⁴. Women in ‘purdah’⁴⁵ were believed to have the least knowledge of Indian politics and hence were not believed to be qualified to vote. By the inclusion of women into the democratic setup, empowering women to take control, from Late Prime Minister Indira Gandhi to current finance Nirmala Sitharaman, we have seen a shift from the purdah to the forefront. Inclusion of women into a representative status and them taking over important portfolios has the potential to shape the bright future of this country.

⁴⁰ David Gilbert, *Modi's trolls are ready to wreak havoc on India's marathon election*, *THE VICE*, (Nov. 4, 2019), https://www.vice.com/en_us/article/597mwk/modis-trolls-are-ready-to-wreak-havoc-on-indias-marathon-election.

⁴¹ Swati Chaturvedi, *BJP's troll army bullies, abuses and fights dirty with Narendra Modi as the general*, *GULF NEWS*, (Nov 12, 2018, 10:15 AM), <https://gulfnnews.com/world/asia/india/bjps-troll-army-bullies-abuses-and-fights-dirty-with-narendra-modi-as-the-general-1.1541941374832>.

⁴² Robert A. Dahl, *Polyarchy*; (Yale University Press, 3rd ed., 1972).

⁴³ *History.com Editors, Voting Rights Act of 1965*, *HISTORY- A&E TELEVISION NETWORKS*, (Nov. 9, 2009, last updated: Jan. 26, 2021), <https://www.history.com/topics/black-history/voting-rights-act>.

⁴⁴ Vikram Doctor, *On the centenary of women's suffrage, a look at how India achieved electoral equality*, *THE ECONOMIC TIMES*, (March 3, 2018, 11:46 PM), <https://economictimes.indiatimes.com/news/politics-and-nation/on-the-centenary-of-womens-suffrage-a-look-at-how-india-achieved-electoral-equality/articleshow/63150595.cms?from=mdr>.

⁴⁵ *Id.*

CONCLUSION

We only learn from our past and our mistakes. Ancient civilizations were able to teach us about how democracy came to be about, especially an understanding of the need for a check and balance system and creating an atmosphere for debate and responsibility. Going through various countries on how democracy is progressing in various countries gives a deeper meaning to the on-going struggle in understanding and adapting to the thought process of the modern generation and how democracy attempts to be a part of this process. The protest in America, or the government suppression in Russia and China or the growing influence of religion and ideology on Indian democracy, really sets into perspective the need for a new definition of democracy, one that allows more freedom but also a form of protection and responsibility to the citizens. The role of journalists in this day and age is unprecedented; their jobs have changed from distributors of news to truth seekers and exposing the flaws of the government and representatives, making society aware of the flaws to enable a solution.

In his paper ‘Philosophical Enquiry Into Current Ideological Conflicts;⁴⁶ The Meaning of Democracy’ presented in the March of 1949, Dr. Quincy Wright very aptly wrote to the United Nations on what democracy meant: “Thus, in a struggle against an unpopular rule of a monarch or oligarchy, democracy has referred to government by the many, rather than the few; in a struggle against social privilege, class or race discrimination, and economic inequality, democracy has referred to equality in social position and economic welfare; in a struggle against government monopoly of economic initiative, public opinion and political association, democracy has referred to freedom of enterprise, communication, opinion and association; in a struggle against corrupt and arbitrary manipulations of opinion, democracy has referred to procedures for regulating elections and party action in order to assure freedom of opinion, wide participation and fair representation; in a struggle against excesses of majorities and oppression of minorities, democracy has referred to the rule of law and protection of fundamental human rights; in a struggle for freedom of dependent or oppressed peoples, democracy has referred to home rule, self-government, and self-determination of distinctive groups; in a struggle for influence of suppressed groups or classes, democracy has referred to consent of the governed, non-discrimination and procedures for consultation among all interested groups in policy formation.”

Much of the time has been spent in learning democracy to be a way forward for a civilized society. But democracy had grown through the ashes of a struggle, from fallen empires, through broken walls, from desolate opinions, from the ideologies of great leaders and thinkers of each generation. Democracy is very basic; it is not more than one individual and it is never less than a person's desire for a brighter future. The perception and the hope of democracy is an ability to create a much more civilized future. But the journey has been absolutely brutal and continues to be a long struggle in understanding. The best way to understand perspectives are the people it affects, just because democratic principles are a failure in countries like China and Russia, or they were flourishing in ancient Greece, it does not make democracy imperfect or completely mature. India as a nation is young and old at the same time, we have one of the youngest populations in the globe⁴⁷, but as an independent nation, we are getting rather old not in comparison to the west or Europe, but in the ideologies as a country we have come to understand. The prejudices and failures are clearly marked in the direction the current government is moving, towards a more majority dominant politics, the space for dissent and disagreement is shrinking. The need for utilizing democracy's ultimate power, to question, to

⁴⁶Vikas Shah MBE, *Understanding Democracy, THOUGH ECONOMICS* (Nov. 20, 2018), <https://thoughteconomics.com/understanding-democracy/>.

⁴⁷Central Statistics Office, Ministry of Statistics and Programme Implementation, Government of India (Social Statistics Division), *Youth in India- 2017, THE HINDU CENTRE*, (March, 2017), https://www.thehinducentre.com/multimedia/archive/03188/Youth_in_India-201_3188240a.pdf.

hold responsible elected representatives, is now, and we need to embrace the journey democracy has taken us on to help us reach this critical point in time.

DIMENSIONS OF DEMOCRACY: THE TRIANGULAR NEXUS

-Aravind Prakash; Amal Thilak¹

ABSTRACT

“Democracy begins when obtrusion ends.”

-Anonymous

Power and possibility are the strongest facets of democracy, and this is the reason why it has stood against all odds even when other forms of government have failed. Living in the world’s largest democratic country, Indians appear to be quite satisfied with the nation’s present democratic anatomy. In a democracy, citizens are conscious about their rights of freedom, obligations and have free will to choose their representatives. The consummate theory of Governance comprises three fundamental principles: - (i) ascendancy of power, (ii) political equality and (iii) rule of law that is just and fair. Robert A Dahl, an admired political theorist, favoured polyarchies over democracies, since he strongly believed that no country can be truly democratic.

Thus, this paper analyses the Swiss democratic model, a form of direct democracy which was envisioned by eminent philosophers like Jean Jacques Rousseau, G.D.H Cole and John Stuart Mill. Switzerland’s diverse multi-party system is a strong component of direct participation. John Locke favoured the proposition that men are, by nature, free and equal against claims. He also argued that people are endowed with certain inalienable rights: the most significant among these are life, liberty and the pursuit of happiness. It is the function of the State to recognise and acknowledge these rights so that human liberty can be preserved, human personality can be developed, and an effective cultural, social and democratic life can be promoted. According to Locke’s social contract theory, people in the State of Nature conditionally transfer some of their rights to the government in order to better ensure the stable, comfortable enjoyment of their rights. Such a government exists only because of the consent of the people and it must take steps in order to safeguard their rights and promote public good. Governments that fail to do so can be resisted and replaced with newer and better ones. Additionally, States’ constraint to accede the incompatible triangular relationship between rule of law, democracy and human rights, challenges the supposed universality of natural justice.

This paper also attempts to find a correlation between human rights in democracies. Modern day society is overwhelmed with ingenious statements and views on inconsistent identities and the task of finding out the evolution of democracy’s bond with human rights. In fact, a balance of democratic institutions, human rights and rule of law remains shaky, even in these progressive times. The negotiation of tensions between these three cornerstones can only be made possible with bifurcated mutual dependency and type of feasible politics.

INTRODUCTION

Living in the largest democratic country, Indians are quite happy and appeased about the nation’s democratic

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anatomy. Democracy is not a cul-de-sac; here citizens are well conscious about their rights and freedoms, obligations, and have the free will to choose their representatives. The consummate theory of Governance is found in three fundamental principles: - the ascendancy of power, political equality, and rule of law that is just and fair. Robert A. Dahl, an admired political theorist, favoured polyarchy over democracy since he strongly believed that no country can be truly democratic. What this paper proposes is to put the prevailing definitions and relationships among the three concepts; namely: democracy, human rights, and rule of law, into the spotlight.

So, if we think of democracy as embodying popular sovereignty and competition in a way, let us bring in the thoughts of the famed political scientist Robert A. Dahl. He defined democracy as what is known as polyarchy i.e., comprising contention or that uncertain peaceful competition that takes place between democracies, interested parties and inclusion or participation of popular sovereignty. The heading contestation, which includes the legitimacy of the opposition, the basic right to freedom and expression, the holding of free and fair elections, and freedom of associations that can be constructed and represented by different interests in the society. From the participation point of view, a democracy or polyarchy expects universal suffrage and the right to ballot.

During the early days of the twenty-first century, relationships between human rights, democracy, and rule of law were interpreted as interchangeable. From this, there was the furtherance of democracy as an admissible and legitimate form of ruling, which automatically supports the universal human rights to the citizens and proper rule of law in society.

DEFINITION OF DEMOCRACY

Democracy in a simple sense means the right to elect one's government and to have the rule of law to lead a manageable society. The definition of democracy as given by Abraham Lincoln at Gettysburg, in 1863 is: "government of the people, by the people and for the people". But in the present-day definition, it includes universal suffrage, free elections, and governance with the consent of the governed. To have a successful democratic state, Robert Dahl presented a comprehensive list of criteria of institutional guarantees for the sustenance of democracy, effective participation of people, voting equality, an enlightened electorate, and inclusion of all adults. If the government complies with these criteria, it will ensure the development of stable democracy, responsible stakeholders who are well aware of their spheres, free, fair and frequent elections, freedom of expression, and access for the citizens to substitute sources of details and inclusive citizenship. Although democracy has a definite and set method of its own, it has such a strong appeal that every person and every institution tries to go by its name. Additionally, the full participation of citizens requires that they understand public matters. This can be promoted by an effective schooling system, open debates and discussions, and although this is not a part of the explanation of democracy, it will certainly act as a catalyst for the reasonable functioning of democracy.

EVOLUTION OF DEMOCRACY

The evolution of democracy was a natural process; in the ancient period, the dominant livelihood of humans was agriculture. The advancement in agriculture paved the way for surplus production. Eventually, the surplus product was sold in the market and with that, the people began to live together near the marketplace where the products were sold. So, humans started to live in a society. As we know that, if there is a society there should be rituals and customs which are thereafter the rules and law of that community. So, the people started to select a leader to maintain the law and order among the group, and they followed his order. Then the world was merged into a new political condition where people were divided into different castes, races, religions, etc., and they set about to live together according to the jobs they performed. The people who maintained law and order became the leaders of the society. Then they sought advice from the people who were eminent in

knowledge for a better administration. The members who advised the ruler together called the council. This council was responsible for the maintenance of the law and order of society.

It is believed that democracy took birth in Greece. Hence, Greece is known as the home of democracy. Athens took democracy in the form of direct democracy. The people (excluding the women, slaves, and foreigners) were free to speak and cast their vote in assembly which set the rules and regulations in the society. Additionally, there was a random selection of ordinary citizens to the administrative and judicial service.

Athens used ballot paper, while the Spartans selected their leader through range voting and shouting. This is the reason why Aristotle called it childish. The assembly of Spartans was known as Apella. Sparta adopted it because of its simplicity, and to prevent any bias voting, buying, or cheating that was predominant in the early democratic elections. In India also we have our contribution to the growth of democracy. Vishalli, the capital city of the Viji Confederacy (of Viji MahaJanapada) was known for being one of the first examples of a Republic province in the early 6th century BCE. Overthrowing the power of the Roman kingdom led the way for the republic of the western world. Although the Roman republic has a notable subscription to the world of democracy, the minority citizens only had the right to vote in the assembly and the value of the vote was based on individuals. Only people from clergy families and powerful individuals had the vote. In the modern era, the people who were dominant in the society started to exploit the common people. That is why the breakout came during the Renaissance period. After that, the world witnessed a lot of revolutions and movements which lead to a fair-minded democracy. Some of the new dawn movements are the American freedom fight, the Russian revolution, and the Indian independence struggle. These all were against the monarchy and oligarchy to establish a democratic form of government where the power was decentralized.

ELEMENTS OF DEMOCRACY

1. **Legitimizing government:** According to political science, legitimacy is the right and acceptance of authority. Usually, it denotes governing law or a regime, whereas authority indicates a specific position in an established government. The term legitimacy denotes a system of government. That is, there should be a government that has the authority to maintain the law and order and justification to exercise power. All democracies claim popular sovereignty by providing government legitimacy.
2. **Majority rule:** According to the democratic theory, the majority will rule the state. They may conduct the election and the party with the majority may rule. There are some drawbacks of these kinds of elections, such as defining a majority. For example, no political party in Britain has won the majority of the turnout in a general election since 1935, although the ruling party has the majority seats in the house commons. The votes are cast for a party and as a result, votes for a specific policy can be opposed by one. The best way for judging a democracy is to see how it treats the minority. Today's view of the minority may be the view of the majority tomorrow. But there has to be some appeal in majorities' views and interests in order to overrule the majority.
3. **Equality in rights of people:** This theory argues that all citizens have an equal political right (unless disqualified on legal grounds, such as bankruptcy or imprisonment). All citizens have one vote of equal value in the constituency and they cannot be discriminated against on the ground of property, caste, race, sex, educational attainment, etc. Such rights have been achieved recently. For example, in the U.K., there were multiple voting rights based on property and educational qualifications until 1948. In the recent decade, there have been challenges to this individual basis of citizen rights in a democracy by the advocates of group rights, who demanded that the recognition of the women, the disabled, ethnic minorities, LGBT communities, and others were disadvantaged by the vigour on individual rights.

4. **Public opinion in democracy:** There are three kinds of public opinion viz., the expert opinion, the informed general opinion, and the mass impression. The expert opinion includes the opinion of the politicians, civil servants, and other professionals in politics. The general opinion includes the opinion of the well-read persons in society, etc. Finally, the mass opinion is what the uninformed masses hold, with their view on an issue which the media has moulded.
5. **Rule of law:** The expression 'rule of law' has been derived from the French phrase 'La principle de legalite', i.e. government based on the principles of law. In simple words, the term, rule of law indicates the state of affairs in a country where, mainly, the law rules. Law may be taken to mean mainly a rule or principle which governs the external actions of human beings which is comprehended and applied by the state in the administration of justice.
6. **Popular Consent:** In countries like Switzerland where direct democracy is practiced, the consent of the people is mandatory. In the state where the representative democracy prevails, the people give their consent through adult suffrage or plebiscite. In universal suffrage, there are no barriers to participation in the electoral process except perhaps the age (eighteen years of minimum age to vote), and in a few countries mental capacity as well. Beyond these said restrictions, there are no discriminations with respect to gender, sexual orientation, ethnic grouping, or religious affiliations and any other classifications.

DEMOCRACY AND HUMAN RIGHTS

We might think that after this long historical development and advent of democracy, there is less need to talk about human rights within a democratic society. But the potential tyranny of the majority in a democratic house leads to suppressing human rights to the citizens. Majorities and minorities are the two sides of a coin, given the propensity of human beings to oppress one another; the minority needs to be protected even within a democratic community. So human rights in some way are even more important than democracy. In non-democratic countries especially in the Middle East, they have a proper rule of law that fully recognizes human rights beyond the coliseum.

Nowadays the world is turning into a terribly wild place and the role of democracy is declining. Human rights are being compromised and violated on a daily basis. So essentially, human beings need to be protected against the despotism of government. The great human rights movement which took place in 1948 was to protect human beings against the government. To mention a brilliant phrase by Ronald Dworkin where he describes human rights as political trumps: "Individual rights are political trumps held by individuals where they have rights when for some reason a collective good is no sufficient justification for denying them what they wish as individuals to have or to do or not a sufficient justification for imposing some loss or injury upon them."²

In order to have a faultless democracy, the citizens have to have respect for a range of rights. It is hard to conceive or to implement democracy without respect for basic rights. After the impact of globalization, central features of democracy and human rights tend to bend in favour of rich people.

AN INSIGHT INTO THE EVOLUTION OF HUMAN RIGHTS

The Universal Declaration of Human Rights (UDHR) has been invoked as a standard by which to judge competing philosophical theories about human rights. It can be said that it is the enlightening conscience of mankind. In only thirty articles, the UDHR comes to a grip with a theory of classical eighteenth-century civil

² Ronald Dworkin, *In Praise of Theory*, *ARIZ. St. L.J.*, 29(2), 353, (1997).

and political rights as well as the newer social and economic liberties.

To quote Woodrow Wilson, “there can be no equality of opportunity, the first essential of justice in the body politic, if men and women children be not shielded in their lives, their very vitality, from the consequences of great industrial and social processes which they cannot alter, control or singly cope with.”

The initial presumption is that the UDHR reflects some sort of natural rights view of human rights. For example, the preamble speaks of “inherent dignity” and of “equal and inalienable rights”. The ideas of elaboration and protection of the rights of human beings have been gradually transformed into written scripts. Many important landmarks have been mentioned, such as the Magna Carta (1215) in England and the Bill of Rights (1689). From the eighteenth century onwards, the early ideas of natural rights have been acknowledged as legal rights, and these rights for the first time were written into national constitutions, reflecting an almost contractual relationship between the state and individual. Despite the recognition accorded to human rights in national constitutions, these rights were often violated by the states themselves. The first international treaties concerning human rights were linked with the acceptance of freedom of religion (for instance, the Treaty of Westphalia of 1698) and the abolition of slavery.

The success and failure of human rights has been analyzed deeply by scholars, political scientists, and historians. It is fair to say that the development of human rights principles has its roots in human nature itself. Whether or not humans are born free and equal is not an unquestionable proposition. They all have aspirations one way or another depending on their own predicament. Thus, it is only the question of how to respond to that aspiration that gives meaning to, and the measure of, a political system and its structure of authority. It also showed insight into what was taking place outside the citadel of power. Nevertheless, its conservatism was typical enough, and this gave rise to all kinds of squabbles and entanglements on the issue of human rights and freedoms provided by the democratic agents. There is an insurrection of the rising reckoning among victims of violations, coining with a divulgence of decreasing the capacity of governments to deal effectively and fairly with them. The problem is now quite acute in the less developed countries. In these countries, the cavity between rich and poor, powerful and powerless, is growing. A relationship exists between economic and political oppression that poses fundamental questions, such as this one: can we, given the underlying nature of the human rights problems and the increasing interdependence among nations, expect to achieve sustained global economic growth?

Without a major and still unforeseen shift of direction by the leaders of these less developed countries, current failures to fulfil human rights could have fed upon themselves- with a devastating consequence for those inside and outside the immediate realm of repression. The most likely outcome is a growing difficulty within the developed nations, to maintain an accustomed quality of life. One worst-case scenario for several developing nations could be the range of danger and implicit poor performance of human rights. As the poor find it impossible to satisfy their basic human needs in the countryside and villages, more and more rural poor or, more likely, with little inclination to reform, are apt to tighten the screws. They may, in the near future, turn to new technology to maintain control. The repertoire of repression may expand to include such new techniques as the use of chemicals to modify behaviour and to facilitate even greater control of the citizenry. For their part, the citizens could also invoke the technological advancements, with a twist to terrorism that includes nuclear blackmail.

“I believe in the equality of man; and I believe that religious duties consist in doing justice, loving mercy, and endeavouring to make our fellow-creatures happy.”³ The best-accepted rudiments of Asian and Indian bequest are humanism. The diplomacy of human rights can be private or public, multilateral or bilateral,

³ 3 Thomas Paine, *The Age of Reason* (1793)

punitive or positive. It can be one, several or all of the above at the same time. The challenge is to find the means that can help victims of violations most, at the least cost to all concerned.

CAPITALISM AND HUMAN RIGHTS

The present-day human rights governance values an economy of free competition, the paramount consideration of interests of the individual, admissible government control, and removal of restrictions and regulations to encourage private participation. These foundational values are sustained by civil and political rights. There is no limit to capitalism; anything can be a commodity for profit. The ultimate goal has to be an end to the capitalist system, whilst we maintain this system, anything can and will be used as a commodity and as a source for capitalists to profit. Healthcare is a prime example of this. In India, we can see hospitals having too many waiting times which can lead to many people waiting around for hours for things that ought to have been seen immediately. We are seeing how dilapidated our government hospitals are; meanwhile the growing sharks of the private industry are getting rich. In our country, poor people are restricted from basic human rights i.e., the right to basic healthcare because they cannot afford it. On the other hand, so much wealth exists in the power of the wealthy. These wealthy people could come forward in helping poor communities but that isn't being done. This is a disgrace, but ultimately endemic to capitalism, inherent to a system designed for commodification. It is flawed by the fact that India is favouring capitalism which is actually not helping people but actively restricting them from their rights due to the need to make profit. The potential for threat or danger and erosion of human rights is always there in a capitalist society. The organizational front and the government should together act against capitalism if they are truly tempered to the problem of human rights not being met.

RULE OF LAW AND DEMOCRACY

Rule of law is stated to be one of the most important elements of democracy. Modern governance is constructed on the ground of the rule of law principles. Liberal democracy should be understood by unravelling the logical series of covers in the rule of law. As we look further into the natural law thinkers' ideas, we find that humans derived their natural rights from the natural law (*jus naturale*). Hence, the foundations of law, which are ubiquitous moral principles, are best suited for the rational applications of these legal principles to a community with the consent of the citizens. Also, the acceptance of the rule of law is mandatory for having a stable and coherent government. When consolidating the rule of law, it should be nigh with its fundamental role in fencing the citizens' rights, bordering the inclusiveness, and also with the precise application of morals and methodology. Government sensitivity towards the engrossments and needs of the totality of citizens is closely connected with the capability of democratic organizations and procedures to strengthen the dimensions of rights, parity, and responsibility.

Rule of law serves as a supporting pillar in accelerating the growth of democracy. An acute rule of law in a democratic society should accentuate its fundamental cadre and also highlight its fundamental role in protecting rights and advancing inclusiveness, in this way framing the protection of rights within the broader discourse on human development.⁴

The rule of law and democracy together provide guidelines that regulate behaviour, reward those who operate within those guidelines and punish those who step beyond the boundaries. The rule of law provides consistency in the interpretation of what is right and wrong but offers latitude in that interpretation so that all may benefit equally under its mantle. In an imperfect world governed by imperfect men, the rule of law offers those who seek justice, an avenue by which they can make their behalf by letting precedence become the arbiter, which then decides their fate.

⁴ Brian Beedham, *Full Democracy*, *THE ECONOMIST* (Dec. 21, 1996), <http://www.npsnet.com/cdd/econom-1.htm>.

DEMOCRACY - THE WILL-O'-WASP

There should be these five attributes in order to have a healthy democracy. They are:-

1. **Representative governments** - The idea of representative government or responsible government is one of the hallmarks of Indian constitutional law. Many would argue that the idea of representative government is important because it underscores the fact that the government actually represents the people. The main reason behind the power of the government to govern society is that they have got the mandate of the people. As far as the mandate to govern is concerned, it directly emanates from a constitution especially in relation to the Indian Government. The idea of representation or the mandate ultimately arises from an electorate exercising the right of suffrage⁵. In a representative democracy, the legislative and executive powers are essentially exercised by elected representatives. Also, these forms of government have got rights and duties to conduct free and fair elections and the freedom of political parties to compete for power.
2. **Social rights**– Social rights and social justice are essential in building and nurturing a genuine and substantive democracy in everyday life.⁶ Article 19 of the Indian Constitution talks about the mandatory fundamental right which cannot be avoided in a democracy. The right to speech and expression includes the right to make a good or bad speech and even the right to not speak. One may express oneself even by signs. Also, other fundamental rights illuminate the extrinsic value of human rights as a social representation. A citizen should not be deprived or suppressed by any social rights that are vested in him, if so happened; it will lead to depression or obsession with the individual and will eventually distort society.
3. **Checks on the government**- The amount of control which the Parliament enforces with its three arms: executive, legislature, and judiciary is known as checks on the government. Checks include general directions, guidelines and even advice in certain areas.
4. **Impartial administration**- The rudimentary cause that degrades impartial administration and good governance is corruption. Corruption has a lot of variations; most people would admit that corruption is the private appropriation of public resources. There are also other forms of behaviour that are closely related to corruption like patronage. In India, it is done when a politician puts his own supporters in a public bureaucracy, simply because they showed up for a rally to get the person elected. There are both economic and political consequences of corruption. It also distorts public properties. Democratic regimes are delegitimized with corruption and they disappoint people with the performance of democracy when the government fails to provide basic government services.
5. **Citizen participation**- Democratic participation means that people should have a say in public matters and they need to have a strong political life. Elections are one way of participating-in an election, citizens can vote for those candidates who have convinced them that they have the best ideas, plans and they would do the best job of representing citizens after the elections. Other than this, there are many ways for people to get involved like, discussions and debate. A public discussion

⁵ *In ancient Greece the Hellenic world of democracy was a democracy in action.*

⁶ *Social Rights and Social Justice are Essential in building and nurturing genuine and substantive Democracy in Everyday Life, says ECSR President Palmisano before the GR-SOC, COUNCIL OF EUROPE (Jan. 17, 2019), https://www.coe.int/en/web/european-social-charter/other-meetings/-/asset_publisher/SFr7wgmsdRRR/content/social-rights-and-social-justice-are-essential-in-building-and-nurturing-genuine-and-substantive-democracy-in-everyday-life-says-ecsr-president-palmis?_101_INSTANCE_SFr7wgmsdRRR_viewMode=view.*

could influence policy and bring about changes to the system.

Human rights and rule of law are two main attributes that a healthy democracy should have. India as a commonwealth country is founded on values such as democracy, rule of law, and human rights. But many of us, the citizens of the largest democratic country in the world, do not think about the question: what happens when these values are threatened? How well resourced is India to deal with such threats?

The aforesaid principles are deeply enshrined in the Indian Constitution and are abided by the union and state governments of the country. But in the past years where it appears to have brought violence towards the minority communities proves that adherence to foundational values of the country is taken for granted. These events create a perplexity to answer on India's ability to combat democratic backsliding. Normally, what the government needs to do is overlook the scenarios where there is a serious breach of rule of law and other cherished Indian moral values. Usually, many countries fail to counterbalance their democratic backsliding and often slip to despotism.

Kofi Annan once said, "People have a right to decide who governs and how they are governed and by whom. Then governments and leaders believe that they are gods sent to protect their people to run a country they want to stay there forever and in the process ignore the rise of population, lock them up, and mistreat them. This is against human nature and they will react. We have seen reactions to that kind of rule all around the world. And it will continue. When you consider the universal declaration of human rights, which is a wonderful document. Then the question is do we implement them, live by them and the answer is not entirely. But I'm not the solution. It would take time to fully embrace and implement so we have to be prepared to wake up every morning every day ready to fight for human rights."⁷

The above said words are a very deep and honest statement from a clever and experienced man who is eminent in discussing governance and integrity and the consequences of disruption shown by the respective governments on human rights. In India, we have a formal, institutional, and representative government. But the fact is that the representative government does not work very well mainly because the electoral system is dominated by wealth. We have quite a long way to go as a form of ideal democracy and obviously a long way to economic democracy⁸.

It remains a hard truth that the will of the people is no guarantee for a good law or policy. Winston Churchill is reputed for this quote: "that the biggest argument against democracy is a five-minute discussion with the average voter".

In the late 1940s, the Constitutional Assembly debates contained ideas in those documents and in speeches of people like Jawaharlal Nehru and Dr. B.R. Ambedkar. Going over them is to return to the inspiring vision of the founding ancestors of the Indian nation. During the decolonization period, the Indian model of democracy was overlooked and inspired across the world, especially in Africa and Asia. But now when people look across at the Indian political system, they only see people who are often criminal, corrupt, and the products of nepotism. Elections are not just a one-time deal every five years. The decision on how your next five years should be should not be influenced by others' words. Citizens, though liberal, must have a

⁷ Kofi Annan Foundation, *Kofi Annan on democracy and human rights*, YOUTUBE (Nov. 9, 2015), <https://www.youtube.com/watch?v=ZLZSaf8sYKs&t=4s>.

⁸ Karl Dahlquist, *The Young Macpherson on the Transition into Socialism and the Rise of Fascism*, *Canadian Journal of Political Science*, 51(2), 405-424, (2018).

sense of contemplating the scenarios that have happened and been done by each political party to the country.

CONCLUSION

This paper has cast about the triangular bond between democracy, human rights, and the rule of law. In a democracy, rule of law and human rights are the foundation that give us the freedom to live not as subjects on our knees or as slaves, but on our feet, free to chart the course of our destiny. We state that the constraint to accede to the incompatible triangular relationship between rule of law, democracy, and human rights, challenges the supposed universality of natural justice. This paper also adheres to focusing on creating a correlation between human rights in democracies, justice systems, and lawmaking. Modern society goes round the clock with ingenious statements and views on inconsistent identities and finding answers to the question such as, whether latter-day democracy bonds with human rights? In fact, a complete balancing and upholding of democratic institutions, human rights, and rule of law remains leaky, even in the present times. The negotiation of tensions between the three corners can only be made possible with a bifurcated mutual dependency and type of feasible politics. We tend to associate ideas like civil rights and social exploitations when the economy shifts to capitalism and other ideals with the rule of law. In fact, the triangular nexus does not have anything to do with the prevailing political turmoil. It is simply a principle that allows a stable, functioning society by establishing that a country live by the agreed-upon standards. But as stated, a representative democracy cannot stand without human rights and rule of law.

THE NEED FOR RECONCILIATION BETWEEN PLURALISM AND HUMAN RIGHTS

-Afrin Khan¹

ABSTRACT

Legal pluralism is not simply an historical anachronism found in former colonies or a phenomenon associated with theocratic states. In its various forms it can be found in most of the states claiming to be democratic. The concept of legal pluralism entails the existence of various legal frameworks in one state despite the existence of diversity. Pluralism is regarded as one of the core tenets of democracy since it creates space for legal systems which range from those governing indigenous persons to the recognition of religious practices and customs. Examples of this can be witnessed in the Indian normative framework, for instance the law on freedom of religion under Article 25 of the Constitution of India. Apart from domestic laws, pluralism is reflected in the robust international framework on human rights starting for the Universal Declaration of Human Rights (UDHR) to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and has trickled into regional conventions such as the European Convention on Human Rights.

In this paper, the author attempts to trace the debates during the drafting of UDHR and the struggle to incorporate the aspects of pluralism and cultural relativism. Further, the paper shall trace the European Court of Human Rights jurisprudence on the point of pluralism from the perspective of freedom of religion. Lastly, the author examines whether legal pluralism has remained compatible with the principles of human rights and if there is any need for reconciliation between the two.

INTRODUCTION:

Pluralism is undoubtedly regarded as one of the most important tenets of democracy in any society as of today. The reason being, that pluralism is a system that recognises the need for multiple systems to coexist in harmony in the same society and thus gives recognition to varied cultures, traditions and legal systems of dispute settlement. As an example, in India, the legal system for an indigenous or a tribal community co-exists with that of the civilian population and thereby recognises the cultural rights and practices of such communities. The Sentinelese have a different way of governing their life and the India Penal Code (IPC) did not apply to them in a case where a mercenary was murdered by them. There is an immense dispute whether IPC should apply or not in this case in the international community but everyone can agree on one proposition that in the same state multiple communities have their own set of laws that should be respected. This could range from religious to cultural rights.

Most certainly, India is not the only country that recognises the need for a pluralistic society; it is given importance in Europe as well. Pluralism is given foundational significance because it helps create an ecosystem for liberal goods such as tolerance and space for diversity. Pluralism is thus not only a good itself but that which nourishes the health of democratic life widely.²

Pluralism in the context of religious freedom has been the most difficult and contested attribute to freedom of religion in the international human rights framework and many regional mechanisms such as the European Court of Human Rights (ECtHR). The ECtHR has mainly interpreted Article 9 Freedom of Religion of the European Convention on Human Rights (ECHR) based on the principle of pluralism. It has been the main guiding factor for deciding the scope

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²Ellen Messer, *Pluralist Approaches to Human Rights*, *Journal of Anthropological Research* Vol. 53 3, *Universal Human Rights versus Cultural Relativity*, pp. 293-317.

of religious freedom. This is evident from the case of *Kokkinakis v. Greece*³, where a Jehovah's Witness was arrested and prosecuted for violating Greece's laws on the prohibition against conversion practise (proselytism). The court while upholding that the Petitioners' right of practising religion were violated by Greece's domestic law stated that as per Article 9, the freedom of thought and religion are paramount to a democratic society. This right is vital as it shapes the identity of the believers and at the same time important to atheists, agnostics and others. Pluralism cannot be dissociated from the democratic society. Thus, the domestic law of Greece was considered to be against the principle of religious freedom under Article 9 when examined from the lens of pluralism. The most interesting contribution of the *Kokkinakis* case is that religious freedom was employed as a tool to maintain pluralism and create a space for everyone to practise their method of religion in the same society. Thus, there can be respect for diversity and tolerance. Many cases concerning the interpretation of freedom of religion have applied the jurisprudence of pluralism. However, as mentioned in the paragraph, it has not always been easy to uphold a pluralistic approach in the interpretation of religious freedom. There has been a serious disagreement among countries on the extent to which pluralism can be applied and what constitutes reasonable restrictions.

This struggle can be observed in a case involving France regarding the ban on veils in public.⁴ In 2010, France passed a domestic law Act No. 2010-1192, which prohibited people from wearing veils in public places. In 2011, two women were prosecuted and fined for breaching this law. The matter was taken up before the Human Rights Committee for the violation of articles 18 and 26 of the ICCPR. It was argued that Article 18 which is on the freedom of religion includes the right to manifest one's religion in public or private space. This freedom can be curtailed only on the grounds of public safety, order, health or morals or for the rights of others. Further, Article 26 provided for equal protection of laws that are arbitrary and have no justified objective. While France argued the ban was on the grounds of public safety this was rejected by the committee on the ground of being a narrow approach to freedom of religion and further discrimination of rights under Article 26. In a nutshell, the committee emphasised the need for respect for everyone's religious practices and the importance of having a liberal interpretation of religious freedom. The underlying principle here is of having a pluralistic approach in a country where people of other backgrounds can follow their religion in public and private. The case of *Kokkinakis* and France are both pieces of evidence of the struggles we face in upholding the principle of pluralism in the domain of religious freedom.

This article explains the challenges faced in applying pluralism to religious freedom by answering the following research questions: 1) Is freedom of religion universal in nature? 2) In the treaty body complaint mechanism, specifically in the regional instruments have the courts applied pluralism in the interpretation of religious freedom consistently? The article tries to explain that while pluralism is a core foundation of human rights and a democratic state, it cannot be fully achieved in the sphere of normative religious pluralism as that leads to the undermining of human rights.

I. Religious Pluralism and The Universal Declaration of Human Rights (UDHR)

In this part of the paper, the author shall highlight the debates that took place during the drafting of the UDHR. The declaration is proclaimed to be universal and widely accepted as a document that provides basic moral standards for human rights. Yet, the universality of the document is questioned since the debates show that many nation-states did not accept the drafting language of certain rights. Freedom of religion and equality are two such rights that are stated to lack a relativist approach and have been drafted with a western notion by those who were former colonisers.

The UDHR went through seven stages of drafting during which the western countries had proposed most of the human rights and most of them were opposed by African and Middle Eastern states. It was difficult for the Middle Eastern states to accept that former colonisers were now the vanguards of human rights. Thus, during the debates, Saudi Arabia raised objections to the following aspect of UDHR: 1) Equality of men and women 2) Marriage and Divorce related rights 3) Freedom of Religion 4) Right of self-determination. The paper will focus on religion-based rights only.⁵

³*Kokkinakis v Greece (1993) ECHR 20*

⁴*Communication No. 2747/2016 (H.R Comm.)*

⁵*Anver M. Emon, The Oxford Handbook of Islamic Law, 822, (Oxford University Press, 2018).*

Jamaal Baroodi, who was Saudi Arabia's delegate to the United Nations (UN), stated that the article on freedom of religion was too wide and did not match with the Sharia based interpretation. His main point was that freedom of religion under Article 18 of UDHR permitted anyone to accept or renounce religion and thereby permit apostasy. However, Saudi Arabia being a majority Muslim country cannot permit religious freedom to the extent of including apostasy. Therefore, he wanted the article to be redrafted and exclude the permission to renounce religion. However, all the other countries had accepted this notion of UDHR and did not support Saudi Arabia in this proposal. Saudi Arabia, in the end, abstained from voting on the declaration.

Later, in 1979, the Islamic Countries post the Israel-Palestine war that destroyed Egypt, set up an Islamic organisation of states and set up the Cairo Declaration of Human Rights (CHRD). There is limited literature on the significance of CDHR and its comparative analysis between the UDHR. The CDHR was set up to affirm moral standards of human rights but from the perspective of Islamic countries taking the Quran and Sharia as a source. It reiterates the same rights as that of UDHR, but the change is that religious freedom does not permit apostasy which is in alignment with what Saudi Arabia wanted. Further, marriage and dissolution are exactly according to the principles of Shariat along with equality being a human right but depending on the role of each gender. This discourse speaks a lot about the universalistic attribute of freedom of religion. It is popularly claimed that freedom of religion is a universal human right but the Cairo declaration is proof that the interpretation of this right is not universal but is subject to each country's moral and ethical principles. Freedom of religion cannot have a universalistic approach but must be examined and interpreted based on cultural relativism as much as possible. This means that its interpretation must fit in as many ways of practice as possible, from wearing a veil in public to apostasy. However, countries adopt neither a universalistic approach nor a pluralistic one. Freedom of religion is rather interpreted to suit the political needs of the country.

II. A pluralistic approach to religious freedom by the European Court of Human Rights

After the Kokinakkis case in which the ECtHR applied the principle of pluralism, the courts' outlook towards the interpretation of religious freedom became devoid of this very principle. The following cases discussed below explain how this deviation took place in the courts' approach:

Immediately, post the Kokinakkiscase came up the judgment of *Dahlab v. Switzerland*⁶: In this case, a primary school teacher had converted to Islam and started wearing a headscarf to school. After a few years, the administration put restrictions on her wearing a scarf. In the ECtHR, the court held that the teacher's right to wear the scarf was outweighed by the states right to protect public order and safety. This case is in sharp contrast to the first case of the court where it has openly stated the need to have a pluralistic approach to religious freedom. In addition to the first case, there are strings of cases where the court has mentioned the link between pluralism and the concept of a democratic society⁷ and that the latter is devoid of any meaning without pluralism.⁸ The court has time and again stated that there is no democracy in the absence of pluralism. It is, therefore, a shocking failure on part of the court where it has selectively chosen to apply pluralism to certain cases of freedom of religion and in the headscarf, debate chosen to uphold a state's interest which is arbitrary and devoid of any justification.

Thus, on one side the ECHR has given a good number of judgments on promoting normative religious pluralism, on the other hand it has failed to uphold the same in recent times. Post Dahlab's case, the court went on to hold in a similar judgment that there was no violation of freedom of religion when a university in Turkey prohibited its students from wearing a niqab in its premises. Taking a cue from the Kokkinakis case, the court said that while religious pluralism is needed it is also important to have reasonable restrictions on the same. The court opined those restrictions on religious freedom are needed to respect the beliefs of other groups. Pluralism has to be based on a compromise to maintain a democratic society. According to this explanation by the court, though pluralism is needed for democracy, it must also be curtailed to maintain democracy for all. In this headscarf case, the students had to let go of their freedom of religion

⁶*App. No. 42393/98, Eur. Ct. H.R.*

⁷*Ellen Messer, Pluralist Approaches to Human Rights, Journal of Anthropological Research Vol. 53 3, Universal Human Rights versus Cultural Relativity, pp. 293-317.*

⁸*Zachary R. Calo, Pluralism, Secularism And The European Court of Human Rights, Journal of Law and Religion, Vol. 26 1, pp. 261-280.*

to maintain the democratic values of others who may be affected by their attire. It seems that freedom of religion is the opposite of democracy by this logic of the European Court.

The headscarf debate in 2008 further got devoid of rationality when in the case of *Dogru v. France*, an individual was removed from school for wearing a scarf. Following the same logic of the Dahlab and Sahin case, the court stated that no right was violated of the student and that the religious freedom of one can be restricted if it is meant to protect the public order and safety rights of a larger number of individuals. Not once did the court try to understand, what is the rationality behind banning this headscarf? And how by wearing a headscarf the safety of others is compromised? Thus, one can see a change of jurisprudence from the Kokkinakis norm. The court believes that to protect the democratic rights of others the freedom of religion of one must be compromised.

The court's dedication to upholding pluralism is questionable again in the case of *Lautsi v. Italy*.⁹ Here the mother of a school-going child objected to the presence of a crucifix in the classroom stating that it is against the school's principles of secularism. Again, the court held that the protection of minorities is important, that is those who do not follow Christianity and therefore, a school cannot display such symbols. While Lautsi is different from the headscarf debate cases, the underlying logic between the two is that pluralism cannot be upheld at the cost of democracy. Certain restrictions are needed on the right to manifest religion where it can interfere with the rights of others. Thus, practising religion in public is viewed as a right that interferes with the rights of others and therefore, must be restricted to private spaces only. It can be seen that the freedom to practise religion has slowly been interpreted as the right to do so in private and not in public. In sharp contrast from the Kokkinakis case, in *Bayatan v. Armenia*, the court held that Article 9 was not violated when a Jehovah's witness was imprisoned for refusing to perform a military service which was in contravention to his faith.¹⁰ Under this type of strict interpretation, pluralism completely collapses. Thus, pluralism being an indispensable tenet of democracy has been undermined by the court in these cases.

CONCLUSION

Why has there been a failure in upholding pluralism? Perhaps the answer lies in the courts' commitment to creating a secular society. The ECtHR has cut off from all religious and cultural practices which have left it as a proponent of secularism. This is evident from a parliamentary assembly recommendation of 2007 where it stated that over the years there has been a stark decline of religious practices in Europe, less number of people attend religious service while two decades ago the numbers were higher than this. With this Europe has decided to be a vanguard of secularism and is undergoing a process of detraditionalization. In a similar case of headscarf that came before the ECtHR, *S.A.S. v. France* (2014). In this case, the court ruled that a veil ban by France does not violate the freedom of religion of French Nationals. The Court stated that even though the law violated freedom of religion, France is justified in doing so because it enhances the ability of people "living together". The face veil was considered as a breach of the rights of others who want to live in a space where they can socialise. Therefore, the ban is justified as it protects the rights of others. This was further supported with the doctrine of Margin of Appreciation wherein a state while applying a certain right can provide dimensions to it based on its domestic requirements. France has a special need of bringing people of various cultures together and thus going by this doctrine France can twist the application of freedom of religion to suit its needs.

In conclusion, internationally there is no consensus on the interpretation of freedom of religion but in the European region especially there is a serious misconception about this right. In the name of democracy, this right has been deprived of being interpreted with a pluralistic approach.

⁹*App. No. 27058/05, 49 Eur. H.R. Rep. 8 (2009)*

¹⁰*App. No. 23459/03, Eur. Ct. H.R. (2009).*

THE MANIFESTATION OF MAJORITARIAN DEMOCRACY

-Anindya Srivastava¹

ABSTRACT:

There is a peculiarity between the philosophy of democracy and majoritarian ideology. Majoritarian rule can prevail under a democratic structure but it raises several questions such as: does democracy lose its essence under a majoritarian regime? And will there be a persecution of minority under the majoritarian rule? It all depends upon the democratic structure of a nation, and the scale at which it is liberal and equal. However, majoritarianism is never a threat to democracy. According to Democritus, a Greek philosopher, "the majority among the politically equal citizens, either in person or through their representatives makes up a democracy." Therefore, the two fundamental principles of democracy are equality and majority rule. Thus, the actual threat to democracy is tyranny of the majority. It means arbitrary and despotic form of government which is unrestrained and untrammelled by law. Tyranny of the majority arises when the freedom of the majority destroys the freedom of the minority, the concept of liberty becomes vague when sovereignty resides in the hand of few and equality diminishes as one group vigorously dominates over the other, as witnessed in the French Revolution of 1789, The Bolshevik Revolution of 1917 and the rise of Nazi Germany. Historically, these are some examples of tyrants who came into power because of the democratic structure of government. In the first section of this paper, the author shall evaluate the historical genesis of the rise of tyrants through a democratic structure. The second portion of the paper shall discuss the impact of majoritarian rule over the minorities and the last section shall discuss why Indian democratic structure is essential to the protection of minorities against the tyranny of majority.

INTRODUCTION

Democracy, there are many forms of government in the world but the most celebrated one is democracy. There is no unanimity about the origin of democracy; it has been a subject of much discussion and debate. Greeks were the very first to give a democratic element to the subject of organized political institutions². Many regard democracy as the best political invention by men; as it promotes and propagates the idea of liberty, equality and freedom; However, Tocqueville observed a danger to the democracy as he emphasized that public opinion would become an all-powerful force and that the majority could tyrannize unpopular minorities and marginal individuals, this what J.S Mill call the Tyranny of Majority. The majority rule is an inherent feature of democracy and a threat to the democratic institution. But it can't be curtailed from democratic structure; However, it can be regulated by an efficient constitutional machinery.

DEMOCRACY

The term democracy has numerous connotations; one segment of thinkers defines it is a political theory while; for others, it is considered as a way of life. Everyone is familiar with the term 'democracy', but no one can implicate a well versed and comprehensive definition of democracy, as it is not easy to depict a clear picture of democracy in a single frame basically because of the fact that democracy is a multithreaded

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² Lata Suman, Tenth Lok Sabha Election a critical analysis, Shodhgana, <https://shodhganga.inflibnet.ac.in/handle/10603/113781>

concept and a compound of several elements viz political ideals, economics and social forces, ethical principles, a form of government and a way of life³.

Meaning

The philosophy of democracy traces its origin from the city-state of Athens of Ancient Greece where the people of Athens really did hold and exercises power over the governance of the Athenian state by the process of plebiscitary referendum. Hence, the term "Democracy" derives from Greek word Demos (people) and Kratos (power) which means power or government of the people. The core characteristic of democracy is defined compellingly as “a form of government in which the rulers are elected by the people”.

This definition can be termed as a starting point to understand the basis democracy; it is a simple connotation of the idea of democracy, as it merely defines democracy as people’s rule. However, this definition is not adequate to describe the entire fabric of democracy. If we start referring to democracy merely as a government of people than we end up calling almost every government that conducts election a democratic setup. Whether it’s a capitalist government or communist, regime every nation-state of the contemporary world wants to call itself as a democracy, even if they are not. Further, Communist defines democracy as a socialist state, where there is an “association in which the free development of each is the condition for the free development of all”⁴, Communist leaders such as Lenin, Stalin and Mao claimed that they succeeded in establishing "New Democracy" in their respective countries; however, in reality, the working of the communist government shows the true nature of communism. The totalitarian control and regimentation of life in communist countries lay down an inevitable hell on the life of people. True democracy is the one where the idea of freedom and liberty flourish like a flower, it crafts a humanitarian approach of governance to curtail the violent practices of governance and respects human dignity while communism advocates the use of violence and does not value human dignity; therefore, communism is anti-democratic in nature.

That is why it is important to understand the essential features of democracy; then only we can distinguish between a true democracy and a pretending one. Democracy is more than just a set of definite government institutions; it rests upon a well - understood group of attitudes, practices and values of all of which may take diverse forms and expressions among society and traditions around the world. Democracies rest upon fundamental principles, not on standardized practices⁵. It connotes that democratic structure may vary from countries to countries but the core of democracy remains the same. In his great address, President Lincoln hailed his own state’s political system as a form of democracy: “Government of the people, by the people, for the people”⁶. this definition efficiently expresses that the decision-making authority of a democratic nation must reside in the hands of those who are elected by the people fairly and freely, and most importantly that the entire paradigm of the elected government must respect and follows its constitutional framework.

³ B.K GOKHALE , *POLITICAL SCIENCE (THEORY AND GOVERNMENTAL MACHINERY)*, 581 (3d Ed. 1970)

⁴ B.K GOKHALE , *POLITICAL SCIENCE (THEORY AND GOVERNMENTAL MACHINERY)*, 582 (3d Ed. 1970)

⁵ Lata Suman, *Tenth Lok Sabha Election a critical analysis*, Shodhgana, <https://shodhganga.inflibnet.ac.in/handle/10603/113781>

⁶ Paul Cartledge, *A brief history of democracy: Does it still convey the 'will of the people'?* *DEPENDENT*, (May. 26, 2018, 5:00) , https://www.independent.co.uk/news/long_reads/democracy-history-athens-greece-politics-people-society-a8345136.html

In a lecture titled "What is Democracy"? Larry Diamond (2004) gave an impression of what in his opinion is the meaning of democracy. The lecture portrays democracy as a system of government with four key elements:

- i. A system for choosing and replacing the government through free and fair elections;
- ii. Active contribution of the people, as citizens, in politics and civic life;
- iii. Protection of the human rights of all citizens; and
- iv. A rule of law in which the laws and procedures apply equally to all citizens⁷.

To conclude, democracy is a system of government in which the citizens exercise power directly or elect representatives from among themselves to form a governing body, such as a parliament⁸.

Types of Democracy

Democracy mainly has two branches: direct democracy and representative democracy. Direct democracy, also known as pure democracy, is a form of government where the citizens without intermediary elected or appointed officials can directly participate in the decision making. Such kind of structure is adequate for small countries with less population. However, In the modern world due to large population, such system of governance cannot subsist; somehow many nation-states still practices some elements of direct democracy such as "referenda" and "propositions" for important decisions.

Representative democracy, also known as indirect democracy, nearly all the modern democracies are types of representative democracy. In a representative democracy, peoples elect a representative to vote on laws, policies, and other matters of government on their behalf in a parliament. The indirect or representative democracy is the one in which the people participate in the law-making process and in the control of government policies through their elected representatives⁹.

However, representative democracy faces criticism as it has a basis on the principle of majority rule. In the words of American essayist E.B. White: "Democracy is the recurrent suspicion that more than half the people are right more than half the time"¹⁰. It is a fact that majority rule seems to be the correct thing in a democratic structure; but it is not always the correct thing; for example, there was a time when most of the people did not believe in equal rights to women and did not recognize LGBT rights; but now most people recognise the same. No one would call a system of government fair and just; merely because 51% of the majority population is permitted to dominate the remaining 49 % of the minority. To cease such anarchy, majority rule must be coupled with the guarantees of equality, freedom and liberty; and there should be strong constitutional machinery to restrict the despotic nature of a majority based democratic government and when such constitutional machinery fails, then democratic structure gave rise to what J.S.Mill called the "Tyranny of Majority".

⁷<http://www.legalserviceindia.com/legal/article-71-death-of-democracy-how-democracy-devolves-into-dictatorship.html>. by Gvathvidh, *Howdemocary devolves over dictatorship*.

⁸Indede, Florence &Lassen, Inger & Okumu, Charles. . *Unpacking the concepts of stability, democracy and rights*. 4-18.

⁹ <http://www.jcdavdasuya.com/images/form/ms.pdf>- *The Concept of Representative Democracy and constitutional provisions of elections*.

¹⁰ Melissa Block ,Author E.B. White on 'The Meaning of Democracy', ,(Nov.7,2012,3:00 PM),<https://www.npr.org/2012/11/07/164631081/author-e-b-white-on-the-meaning-of-democracy,npr>

Tyranny and Democracy

Plato, one of the earliest thinkers and writers about democracy, predicted that letting people govern themselves would eventually lead the masses to support the rule of tyrants¹¹. In a democracy, power resides in the hand of the majority party; It can command vast resources of government to seize power, technically it is a democratic government but without democratic spirit. Historically there are many instances where the lacuna in democratic structure gave rise to “tyranny of majority”.

Fall of Athens

In the year 507 B.C., A system of political reform; “demokratia” had been introduced in Athens by their leader Cleisthenes, he called demokratia as "rule by the people". It was regarded as the first known democracy in the world. Further, around 407 BC, under a democratically elected official Pericles Athenian democracy lost its democratic spirit and evolve into an entirely different dictatorial order. Further, around 407 BC, under a democratically elected official Pericles was an eminent firebrand leader and through his numerous misleading speeches, he successfully gained the support of the public. Greek Historian Thucydides in his book "History of the Peloponnesian War" provides an example that how Pericles manipulated the Athenian Citizenry, *“Whenever he sensed that arrogance was making them more confident than the situation merited, he would say something to strike fear into their hearts; and when on the other hand he saw them fearful without good reason, he restored their confidence again. So it came about that what was in name a democracy was in practice government by the foremost man.”*¹²

To summarize, “Misleading speeches” can be termed as an essential element of despots, to overthrow the democratic government by peoples support, late Thucydides describes that Pericles era brings a series of instability, bloodshed and genocidal warfare in Athens.

Red October of 1917

The Bolshevik Revolution of 1917 is a classic example of how the Revolutionary movement, overthrow democracy by force and leads to the establishment of tyrannical rule in Russia. The Bolshevik wing of the Russian Social Democratic Workers’ Party under Vladimir Lenin fails to win the election against Alexander Kerensky’s democratic Russian Republic; therefore, staged a coup with the help of a defeated, marauding army and navy, to establish a firm socialistic tyranny.

The stage for such violent revolution is set when democracies are enfeebled by party rivalry to such an extent that revolutionary organizations can easily seize power, and sometimes the citizenry, for a time, seems happy that chaos has come to an end.¹³ In reality, such revolution never ends chaos instead it leads to a horror of bloodshed and warfare sacrificing the lives of millions in the name of equality. After hundred years of the Bolshevik Revolution, it is seen as a scourge that entailed the violent expropriation of private property and the trampling of individual liberties. And throughout the twentieth century, Soviet socialism continued to be seen as an existential threat to liberal democracy and capitalism¹⁴.

¹¹ Lawrence Torcello, *Why tyranny could be the inevitable outcome of democracy*, *THE CONVERSATION*(Nov. 12,2019,1:11AM), <https://theconversation.com/why-tyranny-could-be-the-inevitable-outcome-of-democracy-126158>.

¹² Lawrence Torcello, *Why tyranny could be the inevitable outcome of democracy*, *THE CONVERSATION*(Nov. 12,2019,1:11AM), <https://theconversation.com/why-tyranny-could-be-the-inevitable-outcome-of-democracy-126158>.

¹³Erik Kuehnelt-Leddihn, *Democracy's Road to Tyranny*, *Foundation for Economic Education*, <https://fee.org/articles/democracys-road-to-tyranny/>.

¹⁴By David L. Hoffmann, *November 2017 : The October Revolution in Russia, Origins current events in historical perspective*, <http://origins.osu.edu/milestones/november-2017-october-revolution-russia>

Nazi Germany

The most clinical example of the rise of tyrant through the democratic structure is the rise of Hitler during 1926. The loss of Germany in World War I leads to the collapse of the monarchy and transformation of Germany into a democratic republic known as the Weimer republic. The economic crisis of mid 1920's hit Germany hard and it is not in a position to pay the war debts stipulated in the Versailles Peace Treaty. The economic crisis leads to political instability; as governments were falling and new elections held every time; It seemed impossible to form a stable government.

This was the time when NSDP (German Nationalist Social Workers Party) under the leadership of Adolf Hitler came into prominence. By the year 1932, the Nazis become the largest political party in the Reichstag election. In January President Paul Von Hindenburg appointed Hitler chancellor of Germany. Later, a fire broke out in the Reichstag building in Berlin, by a young Dutch communist. Then upon the request of Hitler German President Hindenburg declares Emergency in the country; consequently, many civil liberties throughout Germany got suspended, which includes freedom of the press, freedom of expression, and the right to hold public assemblies. This is the time when Hitler started transforming Democracy into a dictatorial regime; to do so the police were given the authorization to detain citizens without cause, and all regional authority becomes subject to Hitler's national regime. To suppress opposition, he either imprisoned his critics or murdered them. After the demise of Hindenburg; Hitler proclaims himself as the führer and chancellor of Germany and commander in chief of the army. Yet within the democratic and constitutional framework, Hitler successfully establishes a totalitarian rule in Germany and gained public support and soon he starts expanding his territory, suppressed minorities and disowned the treaty of Versailles and this is how a tyrant arose from a democratic matrix.

MAJORITARIAN RULE AND MINORITY RIGHTS

In practice, democracy is governed by the principle of majority rule. Namely, "Vote decides the winner" it means when something is voted on, the side which receives the greatest number of votes is declared as the winner, whether it is an election or any other issue. It is evident that democracies across the world guarantee the expression of "peoples will" but does it provide the same to protect "minority interest"? There are many examples where the interest of minorities has been sacrificed to protect the privilege of majority. Throughout history, the tyrant rulers have targeted minority religious and ethnic groups to gain the majoritarian support such as the holocaust; a systematic state-sponsored killing of six million Jewish by Nazi Germany during World war II; or the "Jim Crow" segregation laws where the white majority dominates over the black minority in the U.S.A.

One of the widespread myths that have evolved in the development of democracy in the modern world is the belief that the essence of democracy is majority or party rule, rather than the free and open society which prizes the sanctity and worth of individuals¹⁵. In democracy, the interest of minorities is as vital as of the majority otherwise it will lead to tyranny; hence in almost all the modern democracies the rule of the majority is endorsed and limited by the supreme law of the constitution. If majority rule is unlimited and unchecked probably it would be used to oppress the rights of minority, the case of *Plessy v. Ferguson* and *Brown v. Board* demonstrates how the concept of majority rule and minority rights has played a significant factor in a democracy like U.S.A. In the case of *Plessy v. Ferguson*, 1896; A Creole man named Homer Plessy got arrested in Louisiana because he was sitting in the railroad car for whites and refused to go back to railroad car for blacks. According to the Louisiana's law, a person will be considered as black; if he had a black bloodline and no matter how small it is. Such a person should be segregated from the whites. Even the

¹⁵ *JEW, Minority rightv.Majority might, Volume 5, Issue 1,Jornal of Church and State 5, <https://doi.org/10.1093/jcs/5.1.5>*

U.S Supreme Court affirmed that there should be a segregation of equal standards; The verdict approves the discrimination of minority blacks by the majority whites and depict how the will of majority dominates over the right to equality of blacks.

After 60 years, the judgment of *Plessy v. Ferguson* was challenged in the historic case of *Brown v. Board of Education Topeka, 1954*; In this case, the segregation laws were challenged by 13 minority parents, as their children could not be admitted to nearby schools because of segregation laws. Consequently, the segregation laws were dismantled and even considered as a violation of equal protection clause. This case demonstrates that; there can be a democratic structure where "majority rules" and respects the right and interest of minorities.

INDIAN DEMOCRATIC STRUCTURE

Mohamad Ali Jinnah in his speech to Muslim League in Central Legislative Assembly said: - ".....But when it is planted here, you see, that it is a failure. What is the result – the permanent Hindu majority and the minority that is Hindu." After almost 73 years of Independence does India become a majoritarian dominated Nation? The answer is a clear no. Today India stands as the world's largest democratic nation and probably most diversified country this is possible because of the "binding power of the constitution of India".

Importance of Constitution

Constitution can be defined as the country's supreme law and defines the framework of the basic political principles, it also establishes what the different government institution should do in terms of procedure, power and duties and it contains the fundamental rights, directive principles and duties of citizen¹⁶.

The distribution of power; is regarded as the major problem for any country, because if there is a lacuna in the structure of power distribution among the authorities then it will lead to the political, social and economic downfall of the country, later it brings the tyranny of the majority. Therefore, the Indian Constitution distributes the power horizontally throughout the three major institutional bodies of the Indian Jurisdiction. They are, The Parliament, The executive, and The Judiciary¹⁷. The Parliament acts as the law-making body, The executive acts as the administrative head of the nation and implements law which passed by the legislature and judiciary interprets the law and deals with the law-breakers. However, despite this The Emergency of 1970's, was the only time when, the Indian democratic structure came under the threat of tyranny. However, the constitutional dictatorship failed to destroy the core democratic structure and as a result, it ended up making it tougher to manipulate.

Constitution and the Minority

The Constitution of India doesn't define the term "minority", but the framers of the Constitution use the term minority to connote numerically vulnerable group. It mainly includes dalits and other religious minorities. The suppression of dalits and fear of religious minorities were the two challenges that constituent assembly faced, The solution comes in the form of two sets of provisions; Article 14 to 18 which deals with preventing suppression of dalits and Article 25 to 28, which deals with protection of religious diversity.

The Constitution of India under article 14 to 18 guarantees the right to equality to every citizen of India. Article 14 embodies the general principles of equality before the law and prohibits unreasonable

¹⁶R.Krithika, Celebrate the supreme law, *The Hindu* (Sep 23 2016 2:07)

<https://www.thehindu.com/features/kids/Celebrate-the-supreme-law/article14011992.ece>

¹⁷PayalWaqif, Why is constitution important 7 reasons, *Airtract* (Dec 3, 2018), <https://www.airtract.com/article/why-is-the-constitution-important--7-reas>

discrimination between persons, The succeeding articles 15, 16,17 and 18 lay down specific application of the general rule laid down in Article 14. Article 15 relates to the prohibition of discrimination on grounds of religion, race, caste, sex, or birth and article 16 guarantees equality of opportunities in matters of public employment. Article 17 abolishes “untouchability” and Article 18 abolishes title. It all leads to the introduction of “Reservation policy” which helps the dalits to join the mainstream society.

The foremost thing that constitution protects is the right to religion; historically it is evident that majority eliminates minority in the name of religion. Therefore, under Article 25 of the Constitution gives the freedom of religion. This Article provides every person with the right to the freedom of conscience and the right freely to profess, practice and propagate religion. Freedom of conscience connotes a person’s right to entertain beliefs and doctrines concerning matters, which are regarded by him to be favourable to his spiritual good¹⁸. The right is not limited to follow such religious beliefs as may be accepted by his judgment or conscience but also to exhibit his sentiments in overt acts as are enjoined by his religion. To profess or to follow a particular religion means that a person has a right to declare freely and openly his faith¹⁹. According to Article 26 of the constitution: - Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

1. To establish and uphold institutions for religious and benevolent purposes;
2. To manage its own affairs in matters of religion;
3. To own and acquire movable and immovable property; and
4. To administer such property in accordance with law²⁰.

The Supreme Court in *Brahmachari Siddeshwa*²¹, ruled that religious denominations could establish institutions for charitable use subject to limitations prescribed under Article 26(1). But it did not decide whether it provided protection to educational institutions established and maintained by religious denomination in favor of general education. The judgment of *TMA Pai Foundation* made a momentous contribution in this sphere by holding, “The right to establish and uphold educational establishment may also be sourced to Article 26(a), which grants, in positive terms, the right to every religious denomination of any section thereof to establish and maintain such establishment which can be used for religious and charitable purposes, subject to public order, morality, and health. Education is often acknowledged as the head of charity. Therefore, religious denominations or sections thereof, which do not come under the special categories carved out in Article 29(1) and 30(1) of the constitution of India, have the right to establish and maintain religious and educational institutions”. This enables the religious denominations of majority religious community also to set up any educational institution in the country²².

Through these Articles of the Constitution of India , the religious diversity is sustained in India. As it gives a secular nature to the Government of India and it diminishes the threat of religion-based tyranny.

CONCLUSION

A democratic structure without the tyranny of majority can only be possible; when there is a respect to minority rights and most importantly a strong constitutional framework should exist which can uplift the

¹⁸*RatilalPanachand Gandhi v. State of Bombay, AIR 1954 SC 388: 1954 SCR 1055.*

¹⁹*Punjabrao v. D.P. Meshram, AIR 1965 SC 1179: (1965) 1 SCR 849.*

²⁰*J.N Pandey, Constitutional law of India,pg.418(56th ed.2019)*

²¹*Brahmachari Siddeshwar v. State of West Bengal, AIR 1994 SC 13: (1993) 4 SCC 286.*

²²*RubecaFurtado,How does Indian Constitution protects minority rights,Ipleaders (Feb 15, 2017), https://blog.iplayers.in/indian-constitution-protect-minority-rights/#_ftn17*

spirit of democracy by protecting the individual liberty of citizens and allows elected government to make changes in law and order as per the requirement of society and time.

RATIONAL EMPIRICISM ON COMPARISON OF DEMOCRACIES

-Abhuday Gupta; Jyotirmoy Chatterjee¹

ABSTRACT

“Democracy is when the indigent and not the men of the property are rulers.”

-Aristotle

Aristotle asserted that the word “democracy” had excogitated its origin in demoskratia which means “rule of the people”. The archetypical meaning of the expression has been metamorphosed from direct rule of the people to the indirect and representative one. Thus, in the au courant era, the term “democratic” signifies a responsible and parliamentary form of government which is accountable to an elected legislature. Therefore, the locution of democracy has been supplanted with constitutional democracies as the majority decisions are subject to constitutional limitations in the contemporary times.

The Indian Constitution also acknowledges democracy as its basic feature. The idea of democracy which had been adopted by India encompasses within its ambit a system of governance, social philosophy and an art of living. The intellection of this form of democracy is based upon the principles of trinity namely liberty, equality and fraternity. The union of this trinity is inexorable in the gumption that to divorce one from another is to defeat the very purpose of democracy.

Nevertheless, the certitudes of recent times bespeak that the Indian democracy is debilitating with the protraction of suppression and control over thoughts and criticism of the demos. As opposed to dissent, which is the essence of democracy, the criticism, differences and value-based opinion in the modern India is taken with contempt, defying the triumph of the world’s most populous democracy. The spurn of forbearance, mutual respect and tolerance has been accentuating in the tutored lest democracy.

Therefore, the research that we are undertaking is an endeavour to examine the contrast which exists between the constitutional democracies of the world in appositeness with the Indian democracy. It will also pore over oscillating abstraction of democracy in propinquity of participation, representation and associational autonomy of plebeians in the policy-making of the government which is systematized for their welfare and common good.

INTRODUCTION

Aristotle asserted, “Democracy is when the indigent and not the men of the property are rulers” and thus the word had excogitated its origin in ‘demoskratia’ which meant “rule of the people”. The archetypical meaning of the expression had been metamorphosed from direct rule of the people to the indirect and representative one. Thus, in the au courant era, the term democratic signifies a responsible and parliamentary form of government which is accountable to an elected legislature. Therefore, the locution of democracy has been supplanted with constitutional democracies as the majority decisions are subject to constitutional limitations in the contemporary times.

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The Indian Constitution also acknowledges 'democracy' as its basic feature. The idea of democracy which had been adopted by India encompasses within its ambit a system of governance, social philosophy and an art of living. The intellection of this form of democracy is based upon the principles of trinity among liberty, equality and fraternity. The union of trinity is inexorable in the gumption that to divorce one from another is to defeat the very purpose of democracy.

Nevertheless, the certitudes of recent times bespeaks that the Indian democracy is debilitating with the protraction of suppression and control over thoughts and criticism of the demos. As opposed to the essence of democracy, the criticism, differences and value-based opinion is the modern India is taken with contempt defying the triumph of the world's most populous democracy. The spurn off or bearance, mutual respect and tolerance has been accentuating in the tutored lest democracy.

Therefore, the research that we are undertaking is an endeavor to examine the contrast which exists between the constitutional democracies of the world in apposition with the Indian democracy. It will also pore over oscillating abstraction of democracy in propinquity of participation, representation and association a autonomy of plebeians in the policy-making of the government which is systematized for their welfare and common good.

MEANING AND DEFINITION OF DEMOCRACY

Democracy is an ever-developing term. To some, democracy 'is a form of government'; to others, it is 'a way of social life'. The essence of democracy as a form of government lies in its nature of franchise, the character of the electoral system and the relation between the government and the people existing in a particular nation. Democracy as a way of life has a different connotation; as for example to the communist, it means economic equality amongst citizens, to a humanist, it implies the absence of disparities in rights on the basis of caste, creed or birth. Thus, democracy comes out to be a complex term and the only way to come out of this complexity owing to its diversity is to analyze each of the meanings attached to it and to trace its development and growth according to time, situation and mental progressive innovations for human betterment.

RISE AND GROWTH OF DEMOCRACY

Growth of Democracy in West: Democracy in the ancient times in the Western soil was not so mature and effective form of government or public, political or social groups. In the West, there has been a gradual development of democracy from the time of Homer to its present form referred to as 'Liberal Democracy'. In Homer's time, a king needed the support of general body of freemen to make any important decision. Also, in Athens in age of Pericles a form of pure democracy prevailed where assemblies called Ecclesia played an important role in administration. In Rome, democracy came into existence after the downfall of the kings and after a struggle between Patrician and Plebian in which power came in the hands of Patrician. The constitution being democratic in nature gave equal rights to the Plebs to participate in the working of government. With the fall of Roman democracy, democracy in ancient times came to an end.

Many great philosophers contributed in the rise and growth of democracy in ancient Greek city-states. Though at that time, the appearance of democracy was by no means considered as an ideal rule. Plato vehemently opposed democracy because, according to him people were not appropriately equipped with education 'to select the best rulers and the wisest courses. He added that democracy made men excellent orators to seek votes but their selfishness ruined the state and left people help less as their basic needs were not fulfilled with this form of government. Aristotle believed that democracy should be 'the rule of many' that is it should not be the rule of mediocre fulfilling their vested interests but should be equally the rule of poor. He agreed with his teacher's (Plato) conception of democracy that it failed to judge and select people

or leaders on merits or sound education and mental level. Aristotle observed that all the forms of democracy of his time were perverted within one stable and ideal. He pointed out the merits and demerits of democracy and approved of a mixed Constitution which is a combination of aristocracy and democracy.

Democracy in India: India today in its twenty first century celebrates eventy years of its sovereign democracy which came into existence on twenty sixth January 1950. Like many other countries in the East, in some respects democracy in India is an outcome of colonization and Western influences. Numerous examples from early Vedic period point out at the old nature of the idea of democracy. The Indo-Aryans carried on their tribal administration through Sabha and Samity which were governed roughly on democratic principles. Other notable example is Santi parva of Mahabharata where democracies are referred to as 'Ganas'. Lord Buddha too preached the need of democracy for proper administration, and Kautilya's Arthashastra gives vivid references to democracy that prevailed in various parts of ancient India.

Democracy has a philosophical connotation too. In this sense, democracy becomes a way of life and today it is being interpreted in terms of a kind of faith on human is ti can dphilanthropic aspects. In this direction the Indian culture from time immemorial is at par with the democratic philosophy and thus acts as a source of strength to its foundations. The world today with its numerous diversions, socio-economic problems or scientific, technological and industrial advancement and various other complexities; needs faith in certain essential values for survival of democracy to prevent and misuse of power. Indian culture believes in the existence of the supreme power which supports the democratic theory of limitation of political authority. Democracy is a deliberate attempt to curb the growth of power in hands of few thereby minimizes domination and misuse of power. Thus, democratic belief of limitation of power gets reinforced by the spiritual dimension.² However, Indians are still lacking the spiritual or ethical element in their general democratic political system.

Thus, with this analysis we come to the conclusion that the notion of democracy in India has been partially inherited from the scriptures and partially borrowed from the West. However, the Indian culture has been responsible for its true development, strength and success in India. Today we are the largest democracy in the world and though there exist some drawbacks as mentioned but they are taken as challenges rather than leading to desolation or pessimism. Generally, Indians love democracy and appreciate this system of government in spite of its limitations or draw backs.

FORMS OF DEMOCRACY

A government is an organization of the state and it is through the medium of the government that the state makes, executes and realizes its purpose of the well-being of its people. Various forms of government exist in accordance to the vesting of power and authority in the hands of the organs employed to meet the purpose and the rules and procedures it follows in performing its functions.

Monarchy: Monarchy is the earliest form of government, run by a single individual who rules without any restrictions and, 'who does everything according to his own will'. Two forms of monarchy do exist namely absolute and limited. In absolute monarchy the monarch is the sole ruler and in limited monarchy his rule is limited by laws. Limited monarchy is found in Britain but it remains a matter of discussion whether it can be considered a form of monarchy since in this the power resides in the hands of the people making it more near to a democratic government.

Aristocracy: Aristocracy is a form of government in which a relatively small proportion of the citizens

²Basu D.D., 2015, *Introduction to the constitution of India, 22nd edition, LexisNexis*

participate in making decision for the government. 'Aristos' in Greek means 'the best' and 'Kratos' means 'power'. The Greek philosophers therefore considered aristocracy form of government run by the best or par excellence. The best here may apply either to a more intellectually sound person or a person superior in education or experience or in wealth.

Democracy: Democracy is considered as 'better form of government' by many thinkers from the past to modern times. The Greeks meant by democracy a rule by many and Aristotle considered it as a perverted form of government. In literal sense democracy is formed of two Greek words 'Demos' meaning people and 'Kratia' meaning power. Thus, 'Democracy' means 'power of the people'. Philosophers like Aristotle and Plato in ancient times, Cicero in medieval age and Sir Henry Maine, James Russell Lowell, Lord James Bryce in modern period regard democracy merely as a form of government. According to James Russell Lowell, democracy "is nothing more than an experiment in government"³. Democracy is a rule by will of majority of the people. Lord James Bryce considers that democracy the ruling powers rest in the hands of the community as a whole.

FOCAL POINT OF RESEARCH

Democracy as discussed is not merely a form of government but it is also a social philosophy, an art of living or in other words, a way of life. The basic tenets of democracy comprise of Liberty, Equality, and Fraternity. These are the central ideals of social philosophy of democracy and intrinsic values of democratic faith.⁴

Liberty: The concept of liberty like equality found its full expression in the American and French declaration. They gave the argument that man being created free and equal by God should not be controlled by laws that he does not give consent to whether directly or indirectly. The concept of 'liberty' grew out differently for different people in accordance with the hardships and restrictions they were subjected to indifferent ages. People sought for 'social liberty' which aimed to give freedom from encroachment by despotic authority on life and property of people. The struggle for social liberty was seen as early as in sixth century B.C. by Greeks who were subjected to unjust laws and arbitrary powers.

Equality: The urge for 'Equality' has been a driving force for the struggle by men to replace other forms of government by democracy. The example of this can be seen in course of history where we find that the Greeks demanded that the poor should share equal political power as those of the rich. They considered that the lack of political representation by the poor as the hindrance to their self-development and denial of their basic rights.

Fraternity: Fraternity has its own significant contribution to the world human civilization. Its very spirit is to unite the hearts of people and work out the ways for maximum progress of human being across the globe. It is aspirit among the members of a community who share common culture and common values, to work in association to achieve common welfare. It was described by Wright in following words:⁵ "By a community is meant the participation of all members of a society in a good which cannot be divided into parts that fall to the exclusive possession of their individual owners, but which, since it is by nature a common good, can only be realize by a group of communicating individuals."

³Appadorai, A., *The Substance of Politics*, (OxfordUniversityPress, 11thed., Madras, 1975), p131.

⁴ Ray, A., *Political Theory Ideas and Institutions*, (The World Press Private Ltd, Calcutta, 1979), p.176.

⁵Suda, J.P., *op.cit.*, p.448.

DEMOCRACY IN ISLAMIC WORLD

The concept of democracy evolved, changed and developed in hands of various Islamic philosophers and intellectuals also. Most of them, who were preoccupied with politics followed Aristotle and Plato's idea that man is a political animal and cannot live in isolation and society serves as their natural environment. Another thinker of Islamic philosophy whose one of the most important contribution in Islamic political thought is his Commentary on Plato's Republic⁶. Here, he discusses about state, Imam, constitution and other important related topics. In the third part of his commentary, he describes six forms of constitution namely monarchy, aristocracy, timocracy, oligarchy, democracy and tyranny. Out of the she reconsiders 'monarchy' and 'aristocracy' as the perfect forms and the rest as degenerate ones. Expressing his views on democracy, he says that this system bestows a lot of freedom to the public making them inclined towards pleasures and desires. He feels that in democracy, majority does not follow the laws leading to violence or wars.

He believed that the philosopher-king cannot do anything without taking in to account the psychological aspect of his masses and in this way, the ruled people gain happiness in such a state that is wisely governed. This concept is also found in works of Abu Nasr Mohammad Ibn al-Farakh al Farabi. The questions regarding the power and position of a khalifah have remained urgent in Islamic political philosophy. Al-Marwardi in his work considers Caliphate as a supreme form of Islamic authority and a legitimate owner of all powers, who according to him was above the sultans or the military leaders.⁷ The need for a coherent doctrine with regard to Caliphate became more necessary as the institution began to decline. At this point of time Al-Ghazzali's doctrine appeared.⁸ He believed that the khalifah and the sultans are like two sides of the same coin there by complementary to each other.

Democracy during the period of nineteenth century becomes a prime importance in context with the development in the West and the changes that were witnessed in the Arab countries. With the coming of Industrial Revolution, the West became economically prosperous and in search of new raw materials started its process of colonization. The West in comparison to the East had an upper hand owing to its military and economic developments and social and political thoughts. It was during this period that the need of reform became urgent in the Arab World and democracy became a topic of debate.

CONCLUSION

When the clock struck midnight to announce the new day of 15th of August in 1947, India achieved independence from British Raj and chose to become a 'Democratic Republic'. Later, after the enforcement of Constitution, the pre amble envisioned India as a democratic country, not only from a political perspective but from a social stand point too. In other words, it is not only a form of government butal so a purview of society in fused with the spirit of 'Justice, Liberty, Equality and Fraternity'.

Many laws were taken from the colonial rule and were rehashed into new statutes, barring those provisions which were samples of colonial thinking rather than a democratic one. Fast forward to 2020 and our country is still burdened with archaic laws which do not conform to the dynamic requirement of a progressive democracy. 2014 brought in to the spotlight the antique nature of such laws with 'Obsolete Laws:

⁶ *Press trust of India*2020, *India falls to 51st position in EIU's Democracy Index, viewed 21st February 2020*, m.economictimes.com/news/politics-and-nation/india-falls-to51st-position-in-eius-democracy-index/amp_articles/73519661.cms

⁷ *LAW COMMISSION OF INDIA Report No.2482014, "Obsolete Laws: Warranting Immediate Repeal"*

⁸ *Campanini M., An Introduction to Islamic Philosophy, (translated by Caroline Higgitt, Edinburgh University Press, Edinburgh, 2008), p.155.*

Warranting Immediate Repeal' which was an Interim Report of the 20th Law Commission of India. This Commission enlisted 72 such laws which were not only redundant in nature but also is criminatory and arbitrary.

These antiquated laws play a major role in India being branded a 'Flawed Democracy' by the Democracy Index, 2019, published by The Economic Times Intelligence Unit. Many of these dated laws contribute to the 'erosion of civil liberties', which is a prime suspect for the country to be given such a mantle.⁹

Contradictory to the above fact, multiple modern and progressive laws have been enforced which provide hope for the future of our democracy. With the introduction of Information & Technology Act (2000), Right to Information Act (2005), Protection of Women from Domestic Violence Act (2005) etc., many laws have been introduced to ameliorate the decaying civil liberties which are fundamental to a democratic state. Recently, Judiciary has also played a major role in development of our law through context ual interpretation of statutes, which lay the ground work for the legislature to introduce new laws or modify existing ones.

⁹Basu D.D., 2017, *Shorter constitution of India vol.1, 14th edition, LexisNexis.*

**DEMOCRACY,
LAW &
GOVERNANCE**

RELEVANCE OF EFFECTIVE LISTENING IN STRENGTHENING DEMOCRACY

-Mrs. Aparna R. Jadhav¹

ABSTRACT

The surge in problems such as social exclusion, class inequality, poverty, terrorism, proliferating authoritarianism and fundamentalism, are posing a threat to the state of democracy in the contemporary world. Ineffective 'listening' is a contributing factor to this. 'Listening' plays a crucial role in strengthening the democratic set up of a country. It does not connote just plainly listening to the other person; instead, it is an art which, if developed with the right perspective, would help achieve many democratic objectives. It would help end prolonged disagreements, improve the understanding between conflicting parties, foster better dialogue, promote cooperation, increase participation and also provide legitimacy to the various policies of the decision-making authorities. Listening is often understood as the process of hearing and trying to comprehend what the other person is speaking. Unfortunately, today, the focus has shifted from effective 'listening' to effective speaking. This could lead us to completely overlook some crucial points that the other person has made. Effective listening is a skill which needs to be developed and has been recognised today as being 'deficit' and hence people becoming vulnerable to propaganda today. It is also argued that when people are marginalised and not heard, it alienates them further and may sow the seeds of discontent and also fuel the threats to democracy. Effective listening plays an important role in politics as it enables the leaders to represent the views of their constituencies in a better way, by becoming aware of their problems, preferences, goals and interests. Studies have shown that decisions of legislators who 'listen' are more strongly influenced by district preferences. It is therefore rightly said that 'to listen is an investment in the other, since every dialogue carries the promise of a new understanding, hope and feeling of worth.' There are various problems which could hamper effective listening. For instance, sometimes it is argued that it is the privilege of the powerful to speak and the powerless to listen. The culture specific behaviour of people, prejudices, misunderstandings, different beliefs and value systems, the interests served by not listening etc. are also obstacles to effective listening

INTRODUCTION

"If You're Not Listening, You're Not Learning."

- Lyndon Baines Johnson

The growing crises in the world today such as social exclusion, inequalities, poverty, terrorism, the rise of authoritarianism, fundamentalism, and decline in democracy etc., are posing threats to democracy and the lack of effective listening is a contributing factor to it. Listening is thus crucial for strengthening and the success of democracy. It is an art which, if developed with the right perspective would help achieve democratic objectives. It would help to deal with disagreements, conflicts, changes in the society, increase the faith and participation of the people in the democratic processes, promote equality and also provide legitimacy to the decisions of the government. There is thus, a need for free exchange of ideas between citizens and their elected representatives which is unmediated and unfiltered.

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With legitimacy being derived from people, one of the main aims and purposes of a democratic form of government is to promote the rights, development and to achieve the full potential of its citizens within the society. Similarly, as public policy in a democracy is said to reflect the will of the people, effective participation of citizens in the democratic processes is necessary. It involves communication, speaking as well as listening. However, with the increasing apathy of individuals and lack of faith in democratic processes, it brings us to the pertinent discussion on how to overcome the flaws of democracy and what needs to be done to make it successful and true representative of its people. Since ‘participation of citizens,’ is at the crux of democracy, effective participation requires along with independence of mind, the cooperative use of fact and opinion.² The depth of participation largely depends upon the interaction of men and minds. It requires along with communication skills, emphasis on ‘listening skills’ too.

According to Oxford Living dictionaries, to ‘listen’ is to give attention to sound or action. It involves hearing what others are saying and trying to understand what it means. It also involves complex affective, cognitive and behavioural processes. Active listening which is important for democracy involves the listener to be attentive, non-judgmental, and non-interrupting. It is also defined as ‘to give attention to someone or something in order to hear him, her or it.’³ Though listening seems to be a simple natural activity, it is not learnt by everyone and is different from ‘hearing.’ Hearing is said to be natural and reflexive, it is a physiological process. Listening is a deliberate effort to hear and understand what is being heard. It involves hearing, understanding, remembering, evaluating, and responding.⁴ Therefore, along with certain social, economic, and political conditions, certain intellectual foundations are also required for the strengthening of democracy- such as the application of citizen’s rational capacities to their common problems. ‘Listening’ is thus a skill which needs to be developed.

IMPORTANCE OF LISTENING

As in a democratic form of government, the majority view matters, according to John Dewey, “...the means by which a majority comes to be majority is an important thing: antecedent debates, the modification of views to meet the opinion of the minorities ...The essential need, in other words, is the improvement of the methods and conditions of debate, discussions and persuasion.”⁵ Effective Listening thus, plays an important role in politics as it would enable the leaders to represent the views of their constituencies in a better way, sensitise them to their problems, to know their preferences, goals and interests. Studies have shown that decisions of legislators who ‘listen’ are more strongly influenced by the requirements and needs of their districts. Listening thus becomes important as listening is an investment in the other, since it involves understanding, giving hope and increasing the feeling of worth.

For coming to successful agreements ‘listening’ becomes necessary. According to Barber (1984), in a democracy good listening requires the capacity to consider the perspective of others: “I will put myself in his place, I will try to understand, I will strain to hear what makes us alike, I will be listening for a common rhetoric evocative of a common purpose or a common good.”⁶ Similarly, according to Bickford (1996),

² Carl Cohen, *Democracy*, New York: The Free Press, *American Political Science Review* 239–240 (1975).

³ *Listening Definition*, MERRIAM-WEBSTER.COM, CAMBRIDGE DICTIONARY- www.dictionary.cambridge.org/

⁴ Babita Tyagi, *Listening: An Important Skill and Its Various Aspects*, *The Criterion : An International Journal in English*, Issue 12, February 2013, p. 1, www.the-criterion.com/

⁵ Adela Cortina, *Communicative Democracy: A Version of Deliberative Democracy*, *Archives for Philosophy of Law and Social Philosophy*, 2010, Vol. 96, No. 2, p.1

⁶ Carolyn M. Hendrik & Selen A. Ercan & Sonya Duus, *Everyday Listening: How Citizens Listen to each other in Polarised Debates*, *Annual Meeting of American Political Science Association, San Francisco, 2017*, www.crawford.anu.edu.au/, pp. 6-7

listening “enables political actors to decide democratically how to act in the face of conflict and to clarify the nature of conflict at hand.”⁷

Listening attentively and critically thus enables a legislator to properly understand, interpret and analyse the information. In circumstances of disagreement, when legislators listen, it may serve as a mechanism for facilitating understanding between themselves and their constituents. It is viewed that even if decisions or actions are not taken according to the desires of the constituencies, it provides legitimacy to a political process as the citizens would have a feeling of satisfaction than those who were ignored. Listening, thus, is said to not only promote respect of the individual but also reinforces an individual’s sense of belonging in a political community.

It is also argued that change can be brought about and resistance to change can also be dealt with by listening effectively. Similarly, as knowledge is important to produce informed policy, understanding of people’s affective as well as cognitive responses, their deepest concerns, fears and hopes requires listening to all sections of society. Findings of a research project highlight that in a variety of political, government, corporate, and non-governmental organisations, 80% to 95% of communication resources are devoted to disseminating messages especially about themselves and only around 5% of investment is devoted to ‘listening.’⁸

Listening effectively, would thus help to deal with lasting disagreements, improve understanding between conflicting parties, increase dialogues, promote co-operation, increase participation and also help to provide legitimacy to the various policies of the decision making authorities. John Forester rightly said, “Failing to listen, we fail to learn, and we also damage our working relationships with others. If they do not listen carefully to members of the public, planners will lose any reputation for responsiveness or fairness, any public trust they might have had.”⁹

However, though understanding all the benefits of ‘listening’ for democracy, it is observed that the skill of listening is not being practised adequately. According to Andrew Dobson, “...good listening has been almost completely ignored in that form of political conversation we know as democracy.”¹⁰ Similarly, decline in democracy is being seen in the world. There are signs that democracy is breaking down or being broken in a number of Western democratic countries. The level of trust in government, politicians, political processes as well as institutions which are important for democracy is declining.

According to Freedom House Report (2020), democracy is under assault around the globe. Not only are its effects seen in countries like China, Russia and Iran but even in democratic countries. The report highlights that there is an alarming global erosion in governments committed to pluralism. The minority groups based on ethnicity, religion etc. have suffered abuses not only in authoritarian countries but in democratic countries too. Further, the report also highlights that most established democracies have experienced a decline over the past fourteen years and people in 64 countries experienced deterioration of their political rights and civil

⁷ Susan Bickford, *The Dissonance of Democracy: Listening, Conflict, and Citizenship*, CORNELL UNIVERSITY PRESS, Ithaca and London, 1996, p. 2

⁸ Jim Macnamara, *Politicians need to listen up before they speak up – and listen in the right places*, THE CONVERSATION, (April 9, 2019), <https://theconversation.com/politicians-need-to-listen-up-before-they-speak-up-and-listen-in-the-right-places-114821>

⁹ Andrew Dobson, *Listening – The New Democratic Deficit*, p. 2, www.ecpr.eu/

¹⁰ *Ibid.*, p. 1

liberties in the year 2019. Abramowitz expressed: “The report shows clearly once again, democracy is in decline....”¹¹

The growing crisis in the world today thus, calls for the governments to listen and act. There is an urgent need to understand and delve into the roots of the increasing problems which definitely requires effective listening. As democracy is a form of government which is based on the will of the people, discussions, deliberation on issues forms an important component of it. Its success would depend upon how openly and fearlessly views and opinions are expressed and exchanged. It would also involve acknowledgement of facts and the acceptance of change. The entire process thus would not be possible without proper ‘listening’.

MAJOR OBSTACLES/HINDRANCES TO LISTENING

Various hindrances or obstacles have therefore been identified which hamper effective listening. Identified as an important aspect of democracy which is being neglected, listening is said to be a democratic ideal which is coming under increasing strain in modern politics as popular distrust and cynicism towards political elites grow. (Dalton, 2007; Stoker, 2006) The increasing polarisation of contemporary politics has also created conditions where decision makers are listening less to citizens and to each other. (Barber and McCarty, 2016; Mansbridge and Latura, 2016)¹² It is also argued according to Barber (1984) that, far more attention has been given to the speaking capacity of democratic systems, which is reinforced, by the predominance of representative systems of government wherein “...it is far easier for representatives to speak for us than to listen for us.”¹³ Speaking has been given a huge share and importance in the democratic process.

It is also argued that absolute listening is very difficult as most people have never learnt the art of listening which requires listening to the words, to understand the meaning and significance of the words and thereby have an insight into what is being said. According to Professor Andrew Dobson, “honourable expectations aside, virtually no attention has been paid to listening in mainstream political science.” Further, he viewed that efforts to improve democracy have mainly focussed on “getting more people to speak” “much less attention has been paid to the way in which speech is received and processed.”¹⁴

The culture specific behaviour of people, prejudices, misunderstandings, different belief and value systems, the interests served by not listening etc. are also obstacles to effective listening. Similarly, the hierarchy which exists in society does have its influence on the listening process. Many people find it difficult to approach the wealthy and those in positions of power as they may keep themselves shielded because of the fear that a change in their position may take place if they listen. Further, it is also viewed that one of the reasons why there is decline of democracy is because it is the powerless who are listening and the powerful who are speaking.

According to Susan Bickford, a hierarchy in the society inhibits listening and calls for a more active and creative form of listening in the public sphere. According to her “people can undermine hierarchies of

¹¹*New Report: Freedom in the World 2020 Finds Established democracies are in the Decline, FREEDOM HOUSE (March 4, 2020), <https://freedomhouse.org/article/new-report-freedom-world-2020-finds-established-democracies-are-decline>*

¹² Carolyn M. Hendrik, Selen A. Ercan, Sonya Duus, *Op. Cit.*, p. 3

¹³ *Ibid*, p. 6

¹⁴ Jim Macnamara, *Creating a ‘Democracy for Everyone,’ Strategies for increasing listening and engagement by government, Independent Report, The London School of Economics and Political Science, London & University of Technology, Sydney, Australia, 2017, p. 17*

language and voice.”¹⁵ Often, it is argued that if the majority runs the risk of losing a lot because of change, they tend to ignore the minority people or listen to them only half way through. Similarly, the voices of the minority people often fall on deaf ears or their issues are silenced even if they rise in position. The voice of the minority is generally heard in the environment which is either dominated by the minority only or if it would result in limited effect only. It is said that across the world the minority has to struggle to make their voice heard and it is not just their ‘voice’ but their ‘silence’ too which has to be understood.¹⁶

According to Professor Rajiv Bhargava, often legislators in a democracy are said to not listen to their electors but as soon as their legitimacy dips below a certain threshold and threatens their survival, they seem instinctively to know that is absolutely crucial to start listening.¹⁷

On the other hand, individuals who choose and make efforts to participate in democratic processes many times become disillusioned as the satisfaction with public discussion is low. The feeling which many citizens feel is that these public discussions are a waste of time as there is not enough listening, and response given to their concerns. The lack of participation can therefore be partially attributed to the frustrations faced by individuals resulting from ineffective public discussion structures and processes which do not encourage exchange of dialogues and the communication process remains incomplete. It therefore, makes the citizens feel that their voices are not being heard.

Asserting that structural constraints are often to blame for the lack of participation, distortion of communication and listening can happen if it would prove to be beneficial to certain privileged sections over others. Forester (1989) argues that such structural constraints result in marginalizing the minorities or prevent equal representation. He puts forward certain questions which need to be deliberated upon, such as: are certain groups based on race, economic status, gender systematically excluded from decision making which affect their lives? Are the processes of political participation, arguments, and mobilizations being systematically restricted as it would disturb the existing patterns of ownership, wealth and power?¹⁸

It is also argued that the listener might ‘hear’ something other than what the speaker intends to communicate, because of biases and filters. Similarly, people may also speak in a voice which they believe will be heard but which may not be their ‘authentic’ voice. Susan Bickford (1996), views that who we are will determine to a degree how we are listened to: “What tends to get heard in public settings is a way of speaking associated with those who control social, political, and economic institutions.”¹⁹

Similarly, it is viewed that it is the experts and the professional politicians who control the political agendas and policies, and communication can be systematically distorted to exclude the general public from participating in decision making processes. Yankelovich expressed: “beneath the surface of formal arrangements to ensure citizen participation, the political reality is that an intangible something separates the general public from the thin layer of elites---officials, experts, and leaders who hold the real power and make the important decisions.”²⁰ Habermas, also claims that one of the ways in the political process by which

¹⁵Carolyn M. Hendrik, Selen A. Ercan, Sonya Duus, *Op. Cit.*, p. 7

¹⁶Jenny R. Lawy, *Theorizing Voice: Performativity, Politics and Listening*, SAGE PUBLICATION, (June 23rd, 2017), www.journals.sagepub.com/

¹⁷Rajeev Bhargava, *The Importance of listening well*, THE HINDU, (Sept. 24, 2019, 12:15 AM), www.thehindu.com/

¹⁸Lisa Irvin, *Challenges and Strategies for Democratic Participation*, BEYOND INTRACTABILITY, (July 2006), www.beyondintractability.org/

¹⁹Andrew Dobson, *Op. Cit.*, p. 10

²⁰Lisa Irvin, *Op. Cit.*

communication can be distorted systematically is by relying on experts and technological knowledge that pre-empts other epistemologies and often excludes the inputs given by everyday people. Similarly, another example of distorting communication to improve the status quo of the haves, is by the ability of the political system to control the topics of communication.²¹

In the age of globalisation when territorial boundaries between nations are said to have virtually disappeared, the role of multinational corporations as well as corporate organisations in a state's policy decisions cannot be ignored. According to Deetz, in the United States corporate organisations are making most of the decisions regarding the use of resources, the development of technologies, the availability of products, and the working relations among people. Deetz also viewed that the U.S. corporate model has its impacts on all cultural groups in the world and is a principal player in the development of a world political or economic order.²²

Further, the system on which the society is based can also prove to be a hindrance in effective listening, such as the caste system in India. Exclusion of people based on social inequalities not only hampers effective listening but also creates obstacles for many to participate in the democratic processes. Social exclusion understood as the denial of equal opportunities imposed by certain groups of society on others which leads to the inability of an individual to participate in the basic political, economic and social functioning of the society is a major obstacle in the effective functioning of the democratic process in India. Exclusion based on the caste system in India, has resulted in the unequal access to opportunities in the social, political and economic spheres of life and has proved to be a major hindrance in the successful working of democracy.²³

Thus, due to various reasons, effective listening seems to be missing. Professor Andrew Dobson rightly expressed: "...there is no guarantee that my 'will' will be represented by my representative, but for there to be any chance of this happening, my representative needs to know what my will is. This implies listening, in its broadest sense."²⁴

SUGGESTIVE MEASURES

For democracy thus to be realised and to be effective, certain aspects need to be emphasized, such as –

- Opportunities need to be provided for citizens to express their voice, which should not only be heard but to be 'listened' effectively:

Accepting the other person, even if their ideas feel offensive, may open the door to a constructive dialogue. According to David Broockman, it is not easy to change people's minds. Even when we talk about persuasion, too much emphasis is placed on effective arguments, the most effective talking points and not much importance is given to good listening.²⁵

- Developing / Learning the skills of listening:

²¹*Ibid.*

²²Stanley A. Deetz, *Democracy in the Age of Corporate Colonization : Developments in Communication and the Politics of Everyday Life*, State University of New York Press, Albany, 1992, p. 3

²³SukhadeoThorat, *Caste, Social Exclusion and Poverty Linkages – Concept, Measurement and Empirical Evidence*, <http://www.pacsindia.org/assets/uploads/files/CastePovertyPaper.pdf>

²⁴Andrew Dobson, *Listening for Democracy: Recognition, Representation, Reconciliation*, OXFORD UNIVERSITY PRESS, 2014, p. 3

²⁵Edward Lempinen, *Want to Persuade an Opponent? Try Listening*, Berkeley Scholar says, June 20, 2020, www.news.berkeley.edu/

Living in a world where exploitation, corruption, violence, conflicts are being witnessed, communication with emphasis on ‘listening’ becomes very important. The art of listening needs to be practised. According to J. Krishnamurti, “the art of listening is to listen to what is said without comparing it with what already you know. If you compare what you listen to, you distort it. In the art of listening, there is freedom which implies freedom to observe and listen without prejudice, without argumentation, without any emotional, romantic responses. Then you will have an actual relationship with another, and therefore never have conflict.”²⁶

- **Creation of Public Spaces – ‘Architecture of Listening’:**
Professor Jim Macnamara emphasises on the creation of spaces to engage the public and create ‘architecture of listening.’²⁷ It is said that elections are not held frequently enough to know public opinion on issues. There is a need to create more opportunities for leaders and citizens to listen to one another and engage in policy discussions. There is a need to develop a democratic culture which will attend even to the voices of silence.
- **Sustained efforts need to be taken to remove the hindrances to listening:**
There is a need for vertical communication and listening to grow which is hampered due to listening blockages in a democracy. Sustained efforts need to be taken which would include not only creating awareness of the benefits of effective listening, but also overcoming social and economic barriers such as those arising due to caste, class, race, religion, region, etc., in our country.

Listening for democracy thus, would require all individuals not to be passive but to take ‘listening’ as an active process. Efforts must be made to hear silenced voices, listening to competing views, listening that would make one seek further information to understand better. For the success of democracy it would also require its citizens as well as those in authority and power to practise the value of tolerance, to understand others, speak to others and to become good listeners. The need to give voice and be heard is thus central to the functioning and strengthening of democracy.

As Dick Gephardt rightly said, “Democracy is interactive...It’s a constant job of information, education, explanation, listening, and interactive communication”.

²⁶J. Krishnamurti, *The Art of looking, listening, learning*, KRISHNAMURTI FOUNDATION TRUST, <https://kfoundation.org/the-art-of-looking-listening-learning/>

²⁷Lesley A. Denardis, *We Must Listen – Civility Essential in Democracy*, (March 06, 2018, 6:00 am), www.courant.com

THE BASIC STRUCTURE DOCTRINE: IMPLICATIONS ON THE LOCATION OF SOVEREIGNTY IN INDIA

Shardool Kulkarni¹

ABSTRACT

*Sovereignty, a concept that has historically occupied centre stage in legal and political discourse, continues to arouse confusion, controversy, and debate in an era where democratic constitutionalism has rendered absolutist versions of the doctrine nugatory. The location of sovereignty, once firmly affixed upon an infallible monarch, is now the subject-matter of constitutional law. Varying academic approaches as well as constitutional texts and traditions now seek to locate sovereignty in the people, the parliament, or the judiciary whereas others seek to espouse divisible and shared models of sovereignty. The question becomes even more pertinent in the Indian context as the Constitution of India represents a text that is a unique amalgamation of pre-existing constitutional traditions. As such, an inquiry into who has the proverbial last word on amending the supreme law of the land, the Constitution of India, and thereby effecting constitutional change, can serve as a useful indicator of the location of sovereignty in the Indian democratic setup. The Constitution does not contain any textual provisions whereby certain principles or provisions are insulated from the amending power under Article 368. However, the judicial formulation of the basic structure doctrine in *Kesavananda Bharati v. State of Kerala* has resulted in the recognition of the limited nature of this amending power. The doctrine provides for judicial scrutiny of constitutional amendments and allows the Court to strike down constitutional amendments that damage or destroy the basic features of the Constitution; in other words, it allows for judicial review of constitutional amendments. The nature and scope of review contemplated under the basic structure doctrine, the legal basis underlying it and the manner in which it has been employed by the Supreme Court of India provide interesting clues as to the location of sovereignty in the Indian democracy. This paper attempts to examine several issues that punctuate the relationship between the basic structure doctrine and sovereignty in India and thereby, in part, unravel the conceptions of popular, judicial, parliamentary, constitutional, and shared sovereignty.*

INTRODUCTION: OF SOVEREIGNTY & ITS LOCATION

Sovereignty, as a concept, first gained mainstream traction in the sixteenth century through the writings of French political theorist Jean Bodin.² Born in an era when French society was in turmoil as a result of decades of religious and civil war, Bodin “sought to restrain every faction, whether Catholic or Huguenot, whether Guise or Bourbon, and to centre authority in the monarch”.³ In his seminal work, *Les Six Livres de la République*, Bodin postulated that sovereignty was unlimited, indivisible and permanent.⁴ In the seventeenth century, Thomas Hobbes, too, buttressed the indivisible and unlimited nature of sovereignty, thereby, putting forth an absolutist conception of sovereignty.⁵ In the eighteenth century, Rousseau sought to

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² C. E. Merriam, Jr., *History of the Theory of Sovereignty since Rousseau*; 7 (Batoche Books 2001) (1900)

³ Wm. A. Dunning, *Jean Bodin on Sovereignty*, *POL. SCI. Q.*, 11 (1), 82, 85-86 (1896)

⁴Tommi Lindfors, *Jean Bodin (c. 1529—1596)*, *INTERNET ENCYCLOPEDIA OF PHILOSOPHY*, <https://www.iep.utm.edu/bodin/>.

⁵ M. M. Goldsmith, *Hobbes's 'Mortall God': Is There a Fallacy in Hobbes's Theory of Sovereignty*, *HIST. POL. THOUGHT*, 1 (1), 33, 39-40 (1980).

identify the people as a whole as sovereign, promulgating laws by exercising general will.⁶ Meanwhile, John Austin rooted his definition of sovereignty in obedience; the sovereign, thus, was a person or body of persons to whom the bulk of the polity rendered habitual obedience and who himself obeyed none others.⁷ Today, more than four and a half centuries after the term first gained currency, sovereignty continues to arouse impassioned scholarly debate. For instance, it has been suggested that sovereignty is the affirmation of absolutism and, thereby, incompatible with constitutionalism and the rule of law.⁸ On the other hand, others have stated that sovereignty is “the language of constitutions” and the conceptual device facilitating the entry of “the people” in the constitution.⁹ Regardless of the normative evaluation of the concept, it remains undeniable that sovereignty continues to inform contemporary legal and political discourse.¹⁰ In fact, it has been argued that the presence of sovereignty, to some extent, is essential for the state itself to exist.¹¹ Therefore, despite its detractors, the concept of sovereignty remains one of consequence to legal and political philosophy.

W. J. Rees identifies four traditional questions that relate to the concept of sovereignty: (i) whether it is essential that there be a sovereign or ultimate source of power or authority in every state, (ii) whether it is necessary that the authority or power of such sovereign be indivisible, (iii) whether it is necessary that the authority or power of the sovereign be unlimited, and (iv) where sovereignty is located.¹² It is with the lattermost question, in the Indian context, that this paper concerns itself. At this juncture, it may be of relevance to point out that the term “sovereignty” has two connotations – legal and political. According to A. V. Dicey, sovereignty as a legal conception meant “the power of law-making unrestricted by any legal limit”, whereas political sovereignty is vested in the person or body “the will of which is ultimately obeyed by the citizens of the state”.¹³ This paper concerns itself with the legal notion of sovereignty, i.e., it conceptualises the sovereign as the “supreme legal authority”.¹⁴ Thus, when we burden ourselves with the question of the location of sovereignty in this sense, what we are truly asking is – ‘who is the supreme legal authority in India?’ This question, in turn, brings us to the factum of India being a constitutional democracy. A constitution, when referred to in the normative and prescriptive sense, “establishes the rules by which political rule should be exercised under law”.¹⁵ Thus, constitutions are “documents that codify legal rules that are supreme and, to a large extent, entrenched”; not only are constitutional rules “supreme” because they regulate the enactment of ordinary legislation but also their supremacy is preserved by virtue of

⁶ Christopher Bertram, *Jean Jacques Rousseau* (Edward N. Zalta ed., Summer 2020), *THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY ARCHIVE* (Sept. 27, 2010, last updated May 26, 2010), <https://plato.stanford.edu/archives/sum2020/entries/rousseau/>.

⁷ P. J. Fitzgerald, *Salmond on Jurisprudence*; 32 (12th ed., 1970).

⁸ Pavlos Eleftheriadis, *Law and Sovereignty*, *L. & PHIL.*, 29 (5), 535, 538-539 (2010)

⁹ Denis J. Galligan, *The Sovereignty Deficit of Modern Constitutions*, *OXFORD J. LEGAL STUD.*, 33 (4), 703, 704 (2013)

¹⁰ See, e.g., Martin Loughlin, *The Erosion of Sovereignty*, *NETH. J. L. PHIL.*, 45 (2), 57 (2016); Atul Mishra, *Theorising State Sovereignty in South Asia*, *ECON. & POL. WKLY.*, 43 (40), 65 (2008); Nancy Armstrong, *Hawthorne on the Paradox of Popular Sovereignty*, *NOVEL*, 47 (1), (2014); Kurt T. Lash, *Originalism, Popular Sovereignty and Reverse Stare Decisis*, *VA. L. REV.*, 93 (6), 1437 (2007); Mark Elliot, *Sovereignty, Primacy and the Common Law Constitution: What has EU Membership Taught Us?* (U. Cambridge Fac. L. Legal Stud. Res. Paper Series, Paper No. 24, 2018); Joseph Raz, *The Future of State Sovereignty* (King’s C. London Dickson Poon Sch. L. Legal Stud. Res. Paper Series, Paper No. 42, 2017).

¹¹ N.W. Barber, *The Principles of Constitutionalism*; 49 (2018).

¹² W. J. Rees, *The Theory of Sovereignty Restated*, *MIND*, 59 (236), 495 (1950)

¹³ A. V. Dicey, *Introduction to the Study of the Law of the Constitution*; 27 (8th ed., 1915)

¹⁴ Rees, *supra* note 11, at 496.

¹⁵ Dieter Grimm, *Constitutionalism: Past, Present, Future*; 3 (2016)

“entrenchment” as the process of constitutional amendment is far more complex than ordinary law-making.¹⁶ The process of constitutional amendment, therefore, essentially modifies the said “supreme” constitutional rules. It is pertinent to note that this paper does not seek to equate the power of amending a constitution to constituent power. Constituent power, which has been referred to by Yaniv Roznai as “the power to establish the constitutional order of a nation”,¹⁷ is essentially the power to make and unmake constitutions. In the contemporary world, it is “the people” who are regarded as both the subject and holder of constituent power.¹⁸ Therefore, the people may be regarded as the political sovereign, as they exercise the power to establish the state and its constitution. However, this paper is concerned with sovereignty in the legal sense. According to Roznai, the juristic conception of sovereignty deals with supreme power within institutional arrangements that have been constituted at the time of or after the formation of the state.¹⁹ In other words, legal sovereignty concerns itself with the supreme power within the existing constitutional framework. Thus, whilst evaluating the locus of legal sovereignty, it is necessary to evaluate who has the power to amend the constitution and not who had the power to make it or who has the power to potentially unmake it. Therefore, this paper will concern itself with amending power, which ought not to be confounded with constituent power. Taken in this sense, identifying the person or body of persons who has the proverbial last word on amending the constitution may provide interesting clues as to the locus of sovereignty in a state. A. V. Dicey’s remarks in this regard are worth reproducing:

To know how the constitution of a given State is amended is almost equivalent to knowing who the person is, or who are the body of persons, in whom, under the laws of that State, sovereignty is vested... The plain truth is that a thinker who explains how constitutions are amended inevitably touches upon one of the central points of constitutional law²⁰

Having established the significance of the stewardship of the amending process to the location of sovereignty, it is now pertinent to examine the Indian position in this regard. In the Indian context, the basic structure doctrine, as laid down in the case of *Kesavananda Bharati v. State of Kerala*,²¹ “postulates that although Parliament may amend any part of the Constitution, a constitutional amendment that destroys, alters or abrogates its basic structure can be struck down as an unconstitutional constitutional amendment”.²² The basic structure doctrine represents a marked shift from the conception of parliamentary sovereignty pre-eminent in the United Kingdom.²³ As such, the evolution of the basic structure doctrine has significantly complicated the issue of determining the location of sovereignty in India’s democratic polity. It is to the analysis of the same that this paper is dedicated. Chapter II of this paper briefly elucidates upon the genesis of the basic structure doctrine. Chapter III then builds upon the conception of the basic structure doctrine presented in the previous chapter to examine the location of sovereignty in India’s democratic polity. The basic structure doctrine is contextualised against the background of four different concepts: (i) popular sovereignty, (ii) parliamentary sovereignty, (iii) judicial sovereignty, and (iv) shared sovereignty. Finally, Chapter IV examines the implications of the findings of Chapter III on the location of sovereignty in India.

¹⁶Hanna Lerner, *Making Constitutions in Deeply Divided Societies*; 16-17 (2011)

¹⁷Yaniv Roznai, *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*; 105 (2017).

¹⁸*Id.* at 106 (2017).

¹⁹*Id.*

²⁰A. V. Dicey, *Constitutional Revision*, *L.Q. REV.*, 11, 387, 388 (1895)

²¹*Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225 (India).

²²Chintan Chandrachud, *Balanced Constitutionalism: Courts and Legislatures in India and the United Kingdom*; 46 (2017).

²³See generally, Shivprasad Swaminathan, *The Long Slumber of Dicey’s Indian Monarch*, *Commonwealth L. Bull.*, 42 (2), 212 (2016).

I. The Basic Structure Doctrine: Why Does It Matter to the Discourse on the Location of Sovereignty?

A bare reading of the Constitution of India would indicate that it has no unamendable provisions.²⁴ At first blush, it would appear that the power to amend the Constitution, vested in Parliament vide Article 368, is unlimited; a view that was espoused in 1951 by the Supreme Court of India in *Shankari Prasad Singh Deo v. Union of India*, wherein the Court, whilst rejecting the contentions that constitutional amendments were “law” under Article 13 of the Constitution and that fundamental rights were immune from amendment, unanimously held that Article 368 permitted Parliament to amend the Constitution “without any exception”.²⁵ In 1965, this judgement was affirmed in *Sajjan Singh v. State of Rajasthan*, albeit with two judges dissenting.²⁶ The position of law underwent a paradigm shift in *Golak Nath v. State of Punjab*, wherein a majority of six judges from an eleven-judge-bench held that Parliament has no power to amend Part III of the Constitution so as to take away or abrogate fundamental rights.²⁷

The *Golak Nath* verdict resulted in Parliament enacting the Twenty-fourth Amendment, which empowered Parliament to repeal any provision of the Constitution including Part III, and the Twenty-fifth Amendment, which diluted the right to property.²⁸ These Amendments became the subject-matter of challenge in *Kesavananda Bharati v. State of Kerala*, wherein a narrow majority of 7:6 judges held that the power to amend the constitution was not unlimited and did not include the power to alter the basic structure of the Constitution of India.²⁹ Thus, *Kesavananda Bharati* recognised substantive limits on Parliament’s power to amend the Constitution and allowed amendments that transgressed these limits; i.e., that destroyed or damaged the basic structure of the constitution, to be struck down as unconstitutional. This basic structure doctrine that emerged from the *Kesavananda Bharati* case has been referred to as the “bedrock of constitutional interpretation in India”.³⁰ It is pertinent to note, however, that *Kesavananda Bharati* bred the basic structure doctrine but did not exhaustively enumerate or identify what the basic or essential features of the Constitution were.³¹ Instead, the Courts have identified various principles as being basic or essential features of the Constitution on a case-to-case basis. The doctrine has been subsequently wielded by the apex court to invalidate constitutional amendments or parts thereof that abrogate one or more of the essential features constituting the basic structure of the Constitution.³²

²⁴ *Roznai, supra note 16, at 42.*

²⁵ *Shankari Prasad Singh Deo v. Union of India, 1952 S.C.R. 89, 106 (India).*

²⁶ *Sajjan Singh v. State of Rajasthan, A.I.R. 1965 S.C. 845 (India).*

²⁷ *Golak Nath v. State of Punjab, (1967) 2 S.C.R. 762 (India).*

²⁸ *Madhav Khosla, Constitutional Amendment, in The Oxford Handbook of the Indian Constitution; 232, 239 (Sujit Choudhry et al. eds., 2016).*

²⁹ *Kesavananda Bharati v. State of Kerala, (1973) 4 S.C.C. 225 (India).*

³⁰ *Granville Austin, Working a Democratic Constitution: A History of the Indian Experience; 258 (1999)*

³¹ *Minerva Mills v. Union of India A.I.R. 1980 S.C. 1789, 1820.*

³² *E.g. Indira Nehru Gandhi v. Raj Narain, (1975) Supp.S.C.C. 1 (India) (holding that the Thirty-ninth Amendment was invalid as it violated the essential features of free & fair democratic elections, equality and separation of powers); Minerva Mills v. Union of India A.I.R. 1980 S.C. 1789 (invalidating § 55 of the Forty-second Amendment as it expanded the limited amending power of Parliament into an unlimited one allowing it to destroy the basic and essential features of the Constitution); P. Sambamurthy v. Union of India, A.I.R. 1987 S.C. 663 (invalidating the Thirty-second Amendment, which impinged upon the basic feature of rule of law by granting state governments the power to annul orders of administrative tribunals); L. Chandra Kumar v. Union of India, (1997) 3 S.C.C. 261 (holding certain portions of the provisions inserted by § 46 of the Forty-second Amendment to be unconstitutional as they excluded the jurisdiction of High Courts and Supreme Court and thereby violated the basic feature of judicial review); Supreme Court Advocates-on-Record Association v. Union of India, (2016) 5 S.C.C. 1 (holding the Ninety-ninth Amendment establishing the National Judicial Appointments Commission to be unconstitutional for violating the basic feature of judicial independence)*

Whilst the evolution of the basic structure doctrine in *Kesavananda Bharati* undoubtedly represents a watershed moment in Indian constitutional history, it assumes significance in relation to our discussion because the judgement “challenged the idea that Parliament was sovereign in its exercise of the amendment power”.³³ This is because the application of the basic structure doctrine entails the judicial review of constitutional amendments. It has been argued that the review of constitutional amendments is tantamount to a review of expressions of sovereignty.³⁴ Taken in this sense, the verdict in *Kesavananda Bharati* struck a blow to the notion of parliamentary sovereignty by providing for judicial review of constitutional amendments.³⁵ It raised broader questions about the location of legal sovereignty in the Indian context as Parliament no longer had the proverbial last word on the question of amending the Constitution. The basic structure doctrine, through its repeated invocation in subsequent decades, has become entrenched in Indian constitutional jurisprudence. As such, the basic structure doctrine becomes a factor of consequence whilst determining the location of sovereignty in India. Examining how it impacts the same shall be the endeavour of the next chapter of this paper.

II. Parliamentary, Judicial, Popular & Constitutional Sovereignty: The Basic Structure Doctrine as the Last Piece of the Puzzle

The location of sovereignty is not universal across constitutional democracies but is contingent upon the specific constitutional framework of each nation-state. For instance, the principle of parliamentary sovereignty, described by A. V. Dicey as the dominant characteristic of British political institutions from a legal standpoint,³⁶ is one that has “remained ensconced in the collective psyche of common law lawyers for centuries now”.³⁷ Originating in Great Britain, it has exerted significant influence on constitutional doctrine in Australia and New Zealand as well.³⁸ The principle of parliamentary sovereignty views Parliament as an illimitable, omnipotent sovereign, having not only the power to make or unmake any law but also immunity from having the laws made by it set aside by any person or body of persons.³⁹ Although the notion that parliamentary sovereignty may not be absolute has gained traction in the United Kingdom,⁴⁰ the same shall be outside the scope of the present paper. Be that as it may, it is undeniable that the principle of parliamentary sovereignty has long dominated constitutional thought in the United Kingdom, whose constitution is unwritten. In sharp contrast, constitutional traditions that have written, codified constitutions, such as the United States of America, display the presence of judicial supremacy whereby the exercise of legislative power is subjected to constitutional limits that are policed by the courts of law.⁴¹ It is pertinent to note, at this juncture, that constitutional democracies do not simply elect between the aforementioned binary choices. It has been argued, for instance, that the Constitution of the United States relocated sovereignty from the government to “the people”, thereby espousing the model of popular sovereignty.⁴²

In the Indian context, the question of location of sovereignty is significantly complicated owing to the nature and genesis of the Constitution of India. The Constitution of India is “largely derivate”, consisting of numerous provisions borrowed and modified from pre-existing constitutional traditions, with the Constituent

³³ *Khosla, supra note 27 at 240.*

³⁴ *Id. at 233.*

³⁵ *See generally, Swaminathan, supra note 22.*

³⁶ *DICEY, supra note 12, at 3*

³⁷ *Swaminathan, supra note 22.*

³⁸ *CHANDRACHUD, supra note 21, at 2 (2017).*

³⁹ *PavlosEleftheriadis, Parliamentary Sovereignty and the Constitution, CAN. J. L. JURIS., 22, 267, 268 (2009).*

⁴⁰ *See, e.g., John McGarry, The Principle of Parliamentary Sovereignty, LEGAL STUD., 32, 577 (2012)*

⁴¹ *CHANDRACHUD, supra note 21, at 2.*

⁴² *Michael D. Sant'Ambrogio, Standing in the Shadow of Popular Sovereignty, B.U. L. REV., 95, 1869, 1890 (2015).*

Assembly having “played the alchemist, turning foreign metals into Indian coin”.⁴³ The Constitution of India borrows the British model of parliamentary democracy,⁴⁴ as well as the “strong-form judicial review” characteristic of the American model.⁴⁵ This significantly muddles the clarity with which one can locate sovereignty in either the judiciary or Parliament. Furthermore, the Preamble to the Constitution of India states that it has been adopted and enacted by “We, the people of India”,⁴⁶ thereby, building a case for popular sovereignty. Subsequent judicial decisions served to further complicate the discourse on the location of sovereignty in India. *In Re: Powers, Privileges and Immunities of State Legislatures*, Gajendragadkar, CJ emphatically rejected the notion of parliamentary sovereignty and stated that it was the Constitution itself that was sovereign in the following words:

In a democratic country governed by a written Constitution, it is the Constitution which is supreme and sovereign. It is no doubt true that the Constitution itself can be amended by the Parliament, but that is possible because Article 368 of the Constitution itself makes a provision in that behalf, and the amendment of the Constitution can be validly made only by following the procedure prescribed by the said article. That shows that even when the Parliament purports to amend the Constitution, it has to comply with the relevant mandate of the Constitution itself...there can be no doubt that the sovereignty which can be claimed by the Parliament in England cannot be claimed by any legislature in India in the literal absolute sense.⁴⁷

In *Indira Nehru Gandhi v. Raj Narain*,⁴⁸ the apex court made a shift towards the concept of shared sovereignty.⁴⁹ Beg, J, in his concurring judgement, put forth a conception of sovereignty that constituted a departure from its traditional connotations: viewing it as divisible, he stressed that the sovereign will of the people must express itself through each of the organs of government and not just through one of them.⁵⁰ It is pertinent to note, however, that he went on to state that “the concept of the supremacy of the Constitution is, undoubtedly, more suited to the needs of our country than any other so far put forward”.⁵¹ Shared sovereignty is sought to be reconciled with the notion of the Constitution itself being sovereign by virtue of the Constitution being the instrument regulating the distribution between and exercise of sovereign power by the legislative, executive and judiciary as well as by being the governing document in cases of conflict or confusion.⁵² Taken in this sense, constitutional and shared sovereignty may be seen as two sides of the same coin with the relevant organ of the government exercising “immediate” sovereignty and the Constitution being the “ultimate” sovereign.⁵³

The foregoing discussion reveals four possibilities inasmuch as the location of sovereignty in India is concerned: (i) parliament is sovereign, (ii) the judiciary is sovereign, (iii) “the people” are sovereign, (iv) the Constitution itself is sovereign, i.e., sovereignty is shared. Therefore, the basic structure doctrine must be

⁴³ Granville Austin, *The Indian Constitution: Cornerstone of a Nation*; 400 (1972).

⁴⁴ *Id.*

⁴⁵ See Mark V. Tushnet, *New Forms of Judicial Review and the Persistence of Rights - and Democracy-Based Worries*, *WAKE FOREST L. REV.*, 38, 813 (2003)

⁴⁶ *Constitution of India; Preamble.*

⁴⁷ *In Re Powers, Privileges and Immunities of State Legislatures*, (1965) 1 S.C.R. 413, ¶ 40 (India)

⁴⁸ *Indira Nehru Gandhi v. Raj Narain*, (1975) Supp S.C.C. 1 (India).

⁴⁹ Sudhir Krishnaswamy, *Democracy and Constitutionalism in India: A Study of the Basic Structure Doctrine*; 217 (2009).

⁵⁰ *Indira Nehru Gandhi v. Raj Narain*, (1975) Supp S.C.C. 1, 210 (India).

⁵¹ *Id.* at 216.

⁵² *Id.* at 210.

⁵³ *Id.*

analysed in the next chapter against the threshold of four concepts: (i) parliamentary sovereignty, (ii) judicial supremacy, (iii) popular sovereignty, and (iv) constitutional or shared sovereignty.

1. The Basic Structure Doctrine: Replacing Parliamentary Sovereignty with Judicial Supremacy?

Parliamentary sovereignty, at the very least, suggests that the laws enacted by the legislature ought not to be overturned by the judiciary unless the legislature itself has empowered the judiciary to do so.⁵⁴ The Diceyan notion of parliamentary sovereignty viewed parliamentary sovereignty as “an undoubted legal fact”, with Parliament having the authority to legislate on any subject and there being no rival to its legislative sovereignty under the constitution.⁵⁵ Dicey viewed “judicial legislation” as “subordinate legislation, carried on with the assent and subject to the supervision of Parliament”; he stressed that English judges did not claim or exercise any power to repeal a Statute, whilst Acts of Parliament constantly override the law evolved by the judges.⁵⁶ As discussed earlier, the basic structure doctrine essentially allows the Court to strike down amendments that abrogate the basic structure of the Constitution of India. It recognises substantive limits on the amendment of the Constitution; limits that go above and beyond the procedural limitations under Article 368 that are prescribed by the text of the Constitution. Therefore, it has been suggested that the basic structure doctrine essentially supplants parliamentary sovereignty with judicial supremacy.⁵⁷ Examining the veracity of this claim will enable us to gauge whether parliamentary sovereignty is a legal fact in the Indian context, at least from the limited perspective of amending power. Prior to embarking on this exercise, it is pertinent to note that the doctrine of parliamentary sovereignty has long been considered incompatible with Indian constitutional law.⁵⁸ Nonetheless, assuming that such a notion did exist prior to the evolution of the basic structure doctrine, one may analyse the impact of the doctrine on parliamentary sovereignty, if any.

The Diceyan notion of sovereignty views the body possessing amending power as the “repository of sovereignty in the system”.⁵⁹ It has been argued that the “judicial enforcement of an amend ability shifts the locus of constitutional change from those authorities entrusted with the amending power towards the courts, allegedly granting them the last word on constitutional issues...the judiciary has sweeping power to determine the ‘spirit’, ‘basic at structure’, or ‘basic principles of the constitution’”.⁶⁰ It is undeniable that the finality attached to an exercise of sovereign power has been considerably eroded inasmuch as Parliament’s amending power under Article 368 is concerned. Per contra, it is the judiciary that appears to have acquired the final say on issues of constitutional amendment, thereby casting significant doubt on the proposition that it is Parliament that is sovereign in India. It may well be that Parliament was sovereign until the verdict in *Golak Nath*, with the judgements in *Shankari Prasad Singh Deo* and *Sajjan Singh* espousing the unlimited nature of its power to amend the Constitution. However, the basic structure doctrine, which came to replace the law laid down in *Golak Nath*, has significantly altered this position. Any arguments made in favour of

⁵⁴ *BARBER*, *supra* note 10 at 24.

⁵⁵ *DICEY*, *supra* note 12, at 24.

⁵⁶ *Id.* at 18.

⁵⁷ *KRISHNASWAMY*, *supra* note 48 at 209.

⁵⁸ *See, e.g., In Re Delhi Laws Act 1912*, A.I.R. 1951 S.C. 332, ¶ 170 (*India*) (*Mahajan, J*) (holding that the notion of parliamentary sovereignty was fundamentally inconsistent with the notions governing inflexible, rigid constitutions in countries having representative government); *Sub-Committee on Judicial Accountability v. Union of India*, (1991) 4 S.C.C. 699, 738 (*Ray, J*) (stating that the usual incidents of parliamentary sovereignty are not obtained in India, where the concept is one of “limited government”);

⁵⁹ *Swaminathan*, *supra* note 22, at 213.

⁶⁰ *ROZNAI*, *supra* note 16, at 193.

parliamentary sovereignty, particularly in the context of the amending process, thereafter would be strenuous at best.

2. The Judiciary as Sovereign: Judicial Supremacy and the “Last Word”

The logical corollary of the arguments made in the foregoing paragraphs against parliamentary sovereignty is that it is, in fact, the judiciary that enjoys the last word insofar as the issue of amending the constitution is concerned. This would imply that it is the judiciary that is sovereign in India. In this regard, Shivprasad Swaminathan’s observations are worth noting.⁶¹ He posits that the Indian judiciary controls all three of H.L.A. Hart’s secondary rules, i.e. the rules of change, adjudication, and recognition,⁶² thereby resulting in the Supreme Court being “ultimately sovereign”.⁶³ The invocation of the basic structure doctrine to facilitate judicial review of constitutional amendments, therefore, implies “a coup d’état” whereby the judiciary itself is the sovereign.⁶⁴ Sudhir Krishnaswamy, who disagrees with the characterisation of the basic structure doctrine as ushering in an era of judicial supremacy, bases much of his arguments on the “nature and standard of basic structure review and the low level of judicial intervention under the doctrine”.⁶⁵ However, it is questionable whether the same holds true in light of the recent verdict of the Supreme Court in *Supreme Court Advocates-on-Record Association v. Union of India*, wherein the Court struck down the Ninety-ninth Amendment, which provided for the establishment of the National Judicial Appointments Commission, on the basis that it abrogated the essential feature of judicial independence.⁶⁶ Be that as it may, even Krishnaswamy notes that “the effect of the basic structure doctrine is to dislodge Parliament’s pre-eminent role in the constitution amending process and circumscribe its powers”⁶⁷ and that judicial supremacy, in the sense that the apex court is supreme as it cannot be overruled by the legislature or executive, is embedded in the Indian constitutional system.⁶⁸ As such, it is difficult to find a convincing argument against judicial supremacy being a legal fact in our constitutional scheme of things.

3. Popular Sovereignty: Locating Sovereignty in “the People”

Whilst considering the arguments in favour of popular sovereignty, it is necessary, once again, to consider the conceptual distinction between constituent power and amending power. Although it is constituent power that births the constitution, which, in turn, regulates constituted powers, it is necessary to note that after the constituent power “has fulfilled its extraordinary constituting task, it ‘becomes dormant’ and, from that moment, public authority is exercised under the constitution”.⁶⁹ True it is that the power exercised under the constitution is constituted power and, as such, is subordinate to constituent power.⁷⁰ In this sense, “the people”, who are the fountainhead of constituent power, are the true or absolute sovereign. Taken in this sense, the concept of popular sovereignty is compatible with the notion of political sovereignty. However, this paper concerns itself with the juristic or legal conception of sovereignty, i.e. with sovereignty in the existing constitutional framework. It would be incorrect to categorise the people as the legal sovereign because the locus of legal sovereignty must be found within the institutional arrangements created by the

⁶¹ See Shivprasad Swaminathan, *The Philosophical Foundations of the Basic Structure Doctrine*, in *Basic Structure Constitutionalism: Revisiting Kesavananda Bharati*; 257 (Sanjay S. Jain & Sathya Narayan eds., 2011)

⁶² *Id.* at 270.

⁶³ *Id.* at 271.

⁶⁴ Khosla, *supra* note 27 at 233.

⁶⁵ KRISHNASWAMY, *supra* note 48 at 215.

⁶⁶ *Supreme Court Advocates-on-Record Association v. Union of India*, (2016) 5 S.C.C. 1

⁶⁷ KRISHNASWAMY, *supra* note 48 at 211.

⁶⁸ Sudhir Krishnaswamy, *Democracy and Constitutionalism in India: A Study of the Basic Structure Doctrine*; 213 (2009).

⁶⁹ ROZNAI, *supra* note 16, at 108.

⁷⁰ *Id.* at 109.

Constitution, and not in those who established it. Sovereignty, in its legal sense, is thus “the product of the establishment of an institutionalised form of rule”.⁷¹

An alternate argument that can be advanced is that amending power is, in fact, constituent power and, therefore, subject to the will of the people. In this regard, though the Constitution of India refers to the amending power as “constituent power”,⁷² it appears, in fact, to be a constituted power, exercised in accordance with the limits imposed by the Constitution itself, unlike constituent power, which is unlimited and unfettered by positive law created by the constitution.⁷³ At best, it may be stated that amending power is *sui generis*; refusing to be compartmentalised as either constituent or constituted power.⁷⁴ However, even authors espousing this view, such as Roznai, acknowledge that “[f]or the reason that it is a legally defined power originating in the constitution, it cannot ipso facto be a genuine constituent power”.⁷⁵ Thus, it is the institutional actors, exercising power within constitutionally ordained limits, who may exercise control over this *sui generis* or constituted power, and not the people themselves. It is then that the shift in the locus of sovereignty, effected by the basic structure doctrine, comes into the picture.

4. Shared or Constitutional Sovereignty

As mentioned earlier, the concept of constitutional sovereignty was first stressed by Gajendragadkar, CJ in *In re: Powers, Privileges and Immunities of State Legislatures*. Subsequently, the concept was dealt with in greater detail and treated interchangeably with shared sovereignty by Beg, J in *Indira Nehru Gandhi*. He viewed the Constitution as a document that recorded the act of entrustment or conveyance of legal authority to act on its behalf by the people, the political sovereign, to the newly formed “Sovereign, Democratic Republic”.⁷⁶ Beg, J then went on to conceptualise constitutional sovereignty as shared sovereignty in the following terms:

“This Constitution” has a basic structure comprising the three organs of the Republic: the Executive, the Legislature, and the Judiciary. It is through each of these organs that the Sovereign Will of the People has to operate and manifest itself and not through only one of them. None of these three separate organs of the Republic can take over the function assigned to the other. This is the basic structure or scheme of the system of Government of the Republic laid down in this Constitution whose identity cannot, according to the majority view in *Kesavananda Bharati* case be changed even by resorting to Article 368. It necessarily follows, from such a view, that sovereignty, as the power of taking ultimate or final decisions on broad politico-legal issues involved in any proposed changes in the law, becomes divisible...The Republic is controlled and directed by the Constitution to proceed towards certain destinations and for certain purposes only. The power to change even the direction and purposes is itself divided in the sense that a proposed change, if challenged, must be shown to have the sanction of all the three organs of the Republic, each applying its own methods and principles and procedure for testing the correctness or validity of measure.⁷⁷

In a nutshell, the view taken by Beg, J is that the Constitution is supreme or sovereign and that any proposal for constitutional change in the form of amendment must receive the approval of all three branches of

⁷¹ Martin Loughlin, *Foundations of Public Law*; 80 (2010)

⁷² *Constitution of India*; art. 368.

⁷³ ROZNAI, *supra* note 16, at 106.

⁷⁴ *Id.* at 112.

⁷⁵ *Id.*

⁷⁶ *Indira Nehru Gandhi v. Raj Narain*, (1975) *Supp S.C.C. 1*, 210 (India).

⁷⁷ *Id.*

government.⁷⁸ However, the model of constitutional or shared sovereignty fails to take into consideration that by invoking the basic structure doctrine to strike down constitutional amendments, the apex court effectively exercises a veto power by reserving the last word unto itself. Whilst postulating that the Constitution is supreme, it cannot be forgotten that the Constitution is what the courts say it is.⁷⁹ The Court's conception of constitutional or shared sovereignty views the amendment process as a dialogic, consensus-based mode of constitutional change. However, the very genesis of the basic structure doctrine is rooted in a head-on conflict between the legislature and the judiciary. In fact, Swaminathan argues that the basic structure doctrine incorporates the concept of defeasibility, i.e. whilst there are no unamendable provisions in the Constitution the judiciary overrules the decisions of the legislature in the manner of exercising a veto power by virtue of the basic structure doctrine.⁸⁰ Thus, it becomes apparent that whilst espousing a doctrine of constitutional supremacy and shared sovereignty, the judiciary has, by virtue of the basic structure doctrine and its interpretive role, assumed the position of the sovereign. Raju Ramachandran has succinctly described this position as under:

In *Kesavananda*, the Court assured for itself, a new and impregnable role in the constitutional politics of India. In enunciating the 'basic structure' doctrine and placing judicially created impediments on the plenary power to amend the Constitution, the Court made it clear that whatever the intention of the Constitution makers to evolve a democratic system of checks and balances, the final say belonged to the judges. The Court seemed to think that it was elementary that the Constitution was supreme, knowing all along that the Constitution is what the judges say it is.⁸¹

CONCLUSION

Sovereignty continues to occupy a contested position in contemporary politico-legal philosophy. One of the questions that have been frequently posed by theorists is the locus of sovereignty. This paper attempts to answer this question in the Indian context, insofar as legal sovereignty is concerned, against the backdrop of the basic structure doctrine. The basic structure doctrine emerged as the culmination of "contestation and confrontation"⁸² between Parliament and the Supreme Court of India. It is but logical that the emergence of the doctrine has effected a shift in the locus of sovereignty in India. The discussion in the foregoing chapters reveals that whilst the courts have sought to endorse a doctrine of constitutional supremacy, whereby the three organs of the government grant their approval to any proposed amendment, the reality is that the basic structure doctrine represents nothing but a tussle between the executive and legislature for control over the constitution; a struggle where the judiciary appears to have managed to get the last word. This final say is indicative of the fact that the scales of legal sovereignty now weigh heavily in the judiciary's favour. It would not be out of place to mention that this analysis is limited to the basic structure doctrine and the question of amending power. Other factors undoubtedly have an influential effect on the locus of legal sovereignty. However, for the purposes of this analysis, judicial supremacy is the undeniable effect of the emergence and entrenchment of the basic structure doctrine in the Indian constitutional schema.

⁷⁸ KRISHNASWAMY, *supra* note 48 at 211.

⁷⁹ Swaminathan, *supra* note 60 at 270.

⁸⁰ *Id.* at 268.

⁸¹ Raju Ramachandran, *The Supreme Court and the Basic Structure Doctrine*, in *Supreme but not Infallible: Essays in Honour of the Supreme Court of India*; 107, 108 (B. N. Kirpal et al. eds., 2000).

⁸² Manoj Mate, *Judicial Supremacy in Comparative Constitutional Law*, *TUL. L. REV.*, 92, 393 (2017)

DEMOCRATIC GOVERNANCE AND INFORMATION SOCIETY: A BRIEF OVERVIEW

-Abhinav Goswami; Divya Srivastava¹

ABSTRACT

Democracy as a system of governance has been the subject of intense debate and discussion for ages, and because of the neutrality and stability that it tends to bring in the society, it has become the most sought-after form of government in the modern era. Despite this, there is a lack of clarity as to what democracy imbibes. Broadly there are four features that are common to all modern democracies, these include principles of free and fair elections, equal rights of participation in politics, protection of human rights, and rule of law. These four principles are considered to be the very basis of a democratic setup and the absence of any of these can seriously dispute the claim of being truly democratic. However, there is one aspect that is often ignored and yet constitutes the life and blood of all these basic principles of democracy i.e., the free flow of information. No democracy can survive in the absence of a well-informed citizenry.

With this background, this paper makes a case for free access of citizens to the required means of communication establishing a link with the ruling elite. In the absence of feedback mechanisms and other means of effective communication which ensure a two-way flow of the information between the government and the governed, the contribution of the general public in the governance of the country remains negligible. In such a scenario, the use of prefix 'democratic' or 'participative democracy' by modern nations is unjustified as it wrongly presents unilateral and, in some cases, arbitrary rule of the government as the collective rule of the society.

This paper has been divided under eight broad headings. Under the first heading, the concept of democracy is introduced and its journey from self-rule by direct participation to indirect representation by a minuscule group of the political elite has been briefly discussed. The second heading presents a unique interaction between the essential attributes of democracy and the right to information and explains how the survival of democratic principles has come under threat in the absence of a well-informed citizenry. It also discusses the fallouts of partial or excessive information in a democracy and how they are used as tools to misguide the public.

Under the third heading, the role of mass media in present-day democracies has been critically analyzed. From being a mere intermediary between the government and people, how the mass media became the main focal point which an incumbent government needs to persuade or control, and how people who were supposed to hold a central place in the original design of democracy, are presented with nothing but political fodder and hate speech. The fourth heading discusses the impact of the internet on established political regimes. World-wide-web can be said to be one of the biggest technological achievements of the modern age. More importantly, it transformed the position of a common individual from being a passive recipient to an active generator of information. Hence, due consideration has been given to it.

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Under the fifth heading, a very interesting paradox concerning an individual's right to privacy and society's right to information is presented. These two rights are generally considered to be antithetical to each other as the presence of one threatens the other. It becomes very essential to balance out these equally important interests. The most efficient ways which have been adopted by the countries where both of these rights coexist have been examined.

The sixth heading brings under the scanner the role of policy making in upholding democratic values in the society and how deception is being played on the general public by referring to these self-serving decisions as 'public policies. Finally, the last (seventh) heading highlights three areas where the modern democratic system needs to work. The areas under concern include-

- (i) Development of communication capabilities,*
- (ii) Grievance Redressal mechanism ensuring responsiveness, and*
- (iii) Accountability in public discourse.*

INTRODUCTION

"A government which functions in secrecy, not only acts against democratic decency but also buries itself with its own burial"²
-Krishna Iyer, J.

'Demos' means people and 'kratos' refers to rule. So, the term 'democracy' can roughly be translated into 'people's rule' or 'rule of the masses'.³ Democracy is not just one of the forms of government, which any country could simply adopt by making a few changes in its political structure. It is a philosophy, a culture that comes from within the conscience of society. Until and unless the population reaches a certain level of maturity and common understanding, no amount of revolutionary changes in the law of the land and politico-legal structure will turn an otherwise non-democratic polity into a democracy.

The question that needs to be addressed at the beginning is - what is it about democracy that garners so much attention worldwide? It is not that the acceptance of democracy as a suitable form of government is based on some universal or divine truth. Democracy had to come a long way in establishing itself as the most sought-after form of government in present times. There have been many well-known political thinkers who could not see the efficacy of a democratic setup. One such example is the great philosopher and esteemed political thinker, Aristotle. Aristotle was suspicious of the complexities that democratic rule brings in society. Catering to the demands and addressing the concerns of the innumerable masses and reaching a common ground will not be easy or feasible, he believed.⁴

DEMOCRACY AND PRINCIPLE OF SELF-RULE

Democracy promotes the principle of self-rule. However, the concept of self-rule has been diluted over time. In the initial periods of history, self-rule in its literal sense was possible, considering the limited geographical distribution and size of the population. With an ever-growing population and wide geographical reach of humans around the globe, the direct participation of every individual in the government was no longer possible and hence arose the need for direct or indirect representation by a minuscule group from the political elite. Soon with the rise of dynastic politics in most of the newly

²*Maneka Gandhi v. Union of India (1978) 1 S.C.C. 248.*

³*Democracy* Definition, *MERRIAM-WEBSTER.COM*, <https://www.merriam-webster.com/dictionary/democracy#:~:text=1a%20%3A%20government%20by%20the,involving%20periodically%20held%20free%20elections> (last visited July 24, 2020, 09:28 AM).

⁴ *Andrew Lintott, Aristotle and Democracy, The Classical Quarterly, 42(1), 116, 124 (1992).*

independent democratic countries such as India, the distinctions between representative democracies and authoritarian polities further blurred, as both involved the centralization of political power in a few hands.⁵ Now, the only remaining criteria which could draw a line between democratic and non-democratic systems required inquiry into the essential nature of the rule and means or tools adopted to regulate the society.

TESTS OF DEMOCRACY

There are two possible tests to determine the nature of a particular polity. The first and the most explicit way is to simply look at the organizational set up of political institutions and the rights of citizenry vis-à-vis the state. With this, a clear demarcation can be made between a democratic system of governance on the one hand and dictatorships, tyrannies, and despotism on the other. However, these notional imputations and mechanical differentiations do not satisfy the needs of a true investigation. A more appropriate manner requires going beyond the web of socio-legal terminologies and see how far democratic values and principles have been ingrained into society's consciousness.⁶ It becomes necessary because a large number of present-day nation-states, who claim to be the ardent believers of democracy, adopt policies that subvert its very basis. The only difference in other regimes that are popularly said to be autocratic and such shell democracies is that in the case of the latter, the exploitation and suppression of will is done in the name of people themselves and is represented as sub-serving their interests.

Today, a majority of the so-called democratic polities have more resemblance to an oligarchy in which a small group of people divided under the names of different political parties exchange de jure power between them every four or five years depending on the legally ordained term of a government while sharing absolute de facto control over the socio-economic and political life of the subjects at all times.⁷

DEMOCRACY AND RELIGION

Why democracy became so popular in ancient times and continues to be so, is the fact that it greatly undermined the role of religion in politics. A democratically elected government found its source of power in the collective will of the people, not in Gods of this or that religion.⁸ However, the present scenario especially in countries like India, Pakistan, Bangladesh, and a few middle-eastern countries tells an entirely different story. In fact, in recent years, religion has become a dominant factor in contesting and winning elections. Division of society on religious lines and tossing minorities out of any true representation is a common spectacle in this post-modern world.⁹ Therefore, the very essence of the philosophy of democracy has been squandered away.

A. DEMOCRACY AND THE RIGHT TO INFORMATION

Democracy as a system of governance has been the subject of intense debate and discussion for ages, and because of the neutrality and stability that it tends to bring into society, it has become the most sought-after form of government in the modern era. Despite all this, there is a lack of clarity as to what democracy imbibes. Broadly, four features that are common to all modern democracies include- principles of free and fair elections, equal rights of participation in politics, protection of human rights, and most importantly, rule

⁵ Pritam Baruah and Nicolas M. Rouleau, *Democracy, Representation, and Self-Rule in The Indian Constitution, Law and Politics in Africa, Asia and Latin America*, 44(2), 177, 179-182 (2011).

⁶ James Roland Pennock, *Democratic Political Theory*; 7-15 (Princeton University Press 1979).

⁷ Stephen Dougherty, *The Dangerous Rays of the Future: Democracy, Media, Science Fiction, Science Fiction Studies*, 40(3), 510, 518 (2013).

⁸ *Id.* at 520.

⁹ Laurel E. Miller, et al., *Democratization in the Arab World: Prospects and Lessons from Around the Globe*; 217-221 (RAND Corporation 2012).

of law.¹⁰ All four principles are considered to be the very basis of a democratic setup and the absence of any of these seriously disputes the claim of a country being truly democratic.

However, there is one aspect that is often ignored and yet constitutes the life and blood of all these four essential principles of democracy, i.e., the free flow of information. No democracy can survive in the absence of a well-informed citizenry.¹¹ Democracy does not place people in the position of a mere passive recipient of the unilateral policy-making of the government. People's participation not only in deciding the future policies but also in their administration and implementation in day to day life is an indispensable part of a democratic polity.

What is Information?

Before championing the cause of the free flow of information in a democratic society as being indispensable, it becomes very necessary that there is a clear understanding of the term information in the present context. Webster's Law Dictionary defines 'information' as 'knowledge obtained from investigation, study or instruction'.¹² The first part of the definition which defines information as knowledge obtained from 'investigation' and 'study' emphasizes facts as being the main component of information. But the last part which includes 'instruction' as a source of information depicts the limitations of the terminology itself. Instruction is generally understood as a set of directions that may or may not contain facts. So the question that needs to be posed is- will it be right to call a population well informed if people are in complete ignorance of the essential facts? No individual in his right mind will answer in the affirmative. Facts are the very essence of the information in a democracy. No amount of political preaching can transform a generally ignorant citizenry into an informed one if they do not know about the required facts. Therefore, it becomes very essential at this point to understand that when this article emphasizes the importance of information in a democracy, it is essentially referring to the accessibility of citizens to the bare stand-alone meaningful facts.

A Constitutional Right

Today, every nation which lays a claim of being democratic secures in some form the right to information to its citizenry. In few countries such as the United States, United Kingdom, and India, the right to know has achieved the status of a constitutionally protected right, while in others it remains protected under specific statutes. Article 19(1)(a) of the Indian Constitution secures to all citizens, the freedom of speech and expression. To exercise this right, the most essential prerequisite is that the citizens must be able to generate views and opinions, only then they will be able to express them. But in the absence of necessary means of information, what will be the basis of these views or opinions? Hence, this entire argument becomes circular. There can be no expression without information and if there is no freedom of expression, possession of information is of no use. The Supreme Court of India in *Bennet Coleman*¹³, *SP Gupta*¹⁴, and *Cricket Association of Bengal*¹⁵, among others, has repeatedly held the right to information to be a well-established part of the freedom of expression. The reasoning behind these decisions was not to include the right to information as a separate right under article 19(1)(a) along with freedom of speech and expression. It

¹⁰ Stephen Elstub, et al., *Political Concepts: A Reader and Guide*; 157-160 (Iain MacKenzie, Edinburgh University Press 2005).

¹¹ Dipankar Sinha, *The Information Game in Democracy*; 1-4 (Routledge India 2018).

¹² Information Definition, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/information> (last visited July 26, 2020, 11:34 AM).

¹³ *Bennett Coleman & Co. and Ors. v. Union of India and Ors.*, (1972) 2 S.C.C. 788.

¹⁴ *S.P. Gupta v. Union of India*, (1981) Supp S.C.C. 87.

¹⁵ *The Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal and Anr.*, (1995) 2 S.C.C. 161.

was understood to be a thread going through the entire scheme of 19(1)(a) without which freedom of speech and expression would be of no consequence.

One-Way Flow

A healthy democracy requires direct means of communication between the government and the governed. State-controlled radio and television broadcasts have been performing this essential function since the early twentieth century. Recently, social media handles of politicians and other public functionaries have also started contributing. However, these apparatus, considering the present state of technology, can only ensure a one-way flow of information i.e., from the government to the public. Comments on Facebook posts and replies on tweets hardly garner attention due to their huge numbers. The result is that people do not have sufficient means of raising their voice and sharing their concerns.¹⁶

Dharnas and strikes are not very feasible options today considering the busy schedules and difficulty in generating collective willingness, and in most cases, they are politically motivated and organized under the aegis of opposition parties. People are also fearful of the repressive power of the state, which is not unjustified considering the current state of affairs the world over. Moreover, the standard of digital media debates is dwindling every day and individuals are shying away from being a part of such a chaotic war of lies and slander. Therefore, the only option that remains is removing the unpopular government by the election process. There are a few difficulties with this option also. Firstly, four/five years, the constitutionally ordained tenure of office of an incumbent government, is a long period of time to wait and suffer the consequences of unpopular policies. Secondly, in the absence of proper feedback, the incumbent government does not get a fair chance of improving and responding to the needs of society. Hence, despite all the recent developments in information and communication technology, the general public remains excluded and ignored.

Partial or Excessive

When information is understood in a democracy as a bundle of facts, it becomes very essential that it must be complete. Access to partial or a part of the information is no better than no information at all. Partial knowledge of facts provides leeway to people to fill in the gaps and reach their conclusions which may not be just in the true sense of the term. The experience has time and again proved that an ignorant population is any day better than a misguided one, as the former at least realizes its unawareness.¹⁷

Excess information, on the other hand, is also counter-productive. It has become a very useful tactic to frustrate the citizenry. All means of communication between the government and the population are flooded with information, which in most cases is unnecessary. The result is that the relevant facts related to the essential issues of the society do not find the required attention as not all citizens are equally trained to demarcate between the required and political propaganda. Smooth reception by the citizenry requires a balance between quantity and quality of information, where the latter is given the upper hand in cases of conflict. The term quality broadly refers to three essential attributes i.e., the information must be clear, succinct, and meaningful.¹⁸

B. MASS MEDIA AND INFORMED DEMOCRACY

¹⁶ Christian Fuchs, et al., *Communication and Capitalism: A Critical Theory*; 208-213 (University of Westminster Press 2020).

¹⁷ Alan Wolfe, *Does American Democracy Still Work?*; 24-26 (Yale University Press 2006).

¹⁸ Peter Suedfeld, *Cognitive Managers and Their Critics*, *Political Psychology*, 13(3), 435, 435-439 (1992).

In present times, the role of mass media is no longer limited to providing the population with necessary facts about the day-to-day functioning of the government. It has claimed for itself the role of being the highest authority to interpret the government policies and generate a public opinion. The democratic principle of people's participation in debate and discussions on government policies has been replaced with more efficient ready-made public opinions freely sold on different news channels and newspapers. An individual can just pick and choose the one he prefers. From being the mere intermediary between the government and people, mass media has become the main focal point which an incumbent government either needs to persuade or control. The people or the general public who were supposed to hold a central place in a democracy, are being presented with nothing but political fodder and hate speech.¹⁹

Mass media, print or digital, has the essential responsibility of making the masses aware of everyday developments in socio-political and economic spheres of public life. It can by no stretch of imagination be said to include the dissemination of political propaganda of a specific political party. It must not be choosing sides in this never-ending political warfare. It is supposed to be neutral and works only as a means of carrying forward the as-it-is information to the population. The *raison d'être* of mass media is not to impose its own opinions or point of view on the public but to enable and assist the masses in reaching their conclusions and forming their own opinion based on the information they receive.²⁰ Until people sitting in the air-conditioned rooms of big media houses do not realize this, no meaningful changes can be expected to put in an appearance.

C. THE RISE OF INTERNET: A RAY OF HOPE

Technological advancements especially in the field of communication can sometimes be very unsettling for a democracy. The technological shift from telegraph to telephone to world-wide-web and social media now has been swift enough to leave society to catch up and adjust to the new world. The world-wide-web can be said to be one of the biggest technological achievements of the modern age. It made the differences of time and space inconsequential and brought the world community into close interaction. More importantly, it transformed the position of a common individual from being a passive recipient to an active generator of information.²¹

Today, social media has become the primary means of expressing and sharing views and opinions. Its influence on government-citizen relationships also cannot be denied. People are more vocal and active in responding to new government policies and actions. However, a closer look at the state of things soon takes away the sense of relief. Few challenges have sprung up with the rise of social media-

- (i) Fake News- Although social media cannot be said to be the progenitor of fake news as that credit must go to mass media, it has provided a ground for its growth and expansion. All social media websites are flooded with fake news and efforts at both the international and national levels have failed to contain it. Fake news inflicts great harm on society as it misguides the citizenry. The problem is augmented by the fact that the general public does not have the time or the proper means to verify the truthfulness of what they read or see over social media. This is a very fruitful position for the politically motivated elements in society as they can easily

¹⁹StefaanWalgrave and Peter Van Aeist, *The Contingency of the Mass Media's Political Agenda Setting Power: Toward a Preliminary Theory*, *Journal of Communication* 56, 88, 92-95 (2006).

²⁰ Marianne Kneuer, *E-democracy: A new challenge for measuring democracy*, *International Political Science Review*, 37(5), 666, 667 (2016).

²¹ Dougherty, *supra* note 6, at 512.

manipulate or engineer facts and diffuse the same via social media platforms.²² Moreover, hate speech, which is discussed under the following heading, is nothing but a moppet of fake news.

- (ii) Hate Speech- Social media handles have become a useful means of generating and spreading hate speech in society. Social media posts, audio/video messages, and photoshopped or truncated pictures expressing prejudice against a particular racial or religious community are not uncommon. This is something every internet user witnesses each day. However, how each individual receives or interprets it may vary depending on the level of education and previous dispositions and associations. In countries like India where a large segment of the population is still uneducated and religious fanaticism is holding good ground, it becomes an issue of national concern. A feeling of hate and despise spreads like fire in a dense forest, it just needs to start somewhere. Social media has become the lighting point where the trail of hate starts before it reaches every household of the country.²³

Though it cannot be denied that the general public is never the initiator or creator of such prejudicial speech, in most cases it is nothing more than a tool to spread and further propagate the same. Hate Speech has now become a well-established part of political campaigning. This can be verified by the fact that instances of hate speech multiply enormously just before or during elections. Until and unless baseless allegations and slander are thrown at specific sections of the community and people do not get it in the neck of each other, political campaigning is not considered effective and successful.²⁴

- (iii) Censorship- From time immemorial, states have been suppressing unpopular views and opinions of the public by tools of censorship. In cases of films, books, and other traditional means of expression, it was easier to control and regulate the content of information disseminated in society. The state employed strict pre-censorship and review measures serve this purpose. However, the abstract nature of the internet with its worldwide reach presented new challenges. Control of information over the internet is a very troublesome task. It requires specialized knowledge and all necessary technical means at disposal. This realization on the part of states has forced them to take an alternative path of creating a sense of fear among internet users. This has been achieved by making suitable changes to existing penal codes and adopting strict laws prohibiting statements or other activities over the internet which may threaten the 'sovereignty and integrity of the nation' or go against 'public interest'.²⁵
- (iv) The Digital Divide- The world has not yet reached the zenith of modernity. The fruits of digitalization have not come equally to all. A large part of the world geographically as well as socially does not have access to basic infrastructure and technological know-how. Therefore, a clear digital divide can be witnessed not only among the nation-states but also within the population of a particular country. The result is that people living in metropolitan cities have

²² Hunt Allcott and Matthew Gentzkow, *Social Media and Fake News in the 2016 Election*, *The Journal of Economic Perspectives*, Spring 2017, at 211, 213-219.

²³ Bharat Ganesh, *The Ungovernability of Digital Hate Culture*, *Journal of International Affairs*, Spring-Summer 2018, at 30, 30-33.

²⁴ Sunil Wattal et al., *Web 2.0 and Politics: The 2008 U.S. Presidential Election and an E-Politics Research Agenda*, *MIS Quarterly*, 34(4), 669, 678-683 (2010).

²⁵ Naveen K. Mishra, *Governmental Threats for Media Freedom: Comparative Study of Asian Countries*, *The Indian Journal of Political Science*, Jan-Mar 2008, at 149, 150-155.

attained much more relevance for the governments as this is the segment, they need to take care of, and the population living in remote areas, in the absence of required knowledge and information are easily swayed by false promises.²⁶

Moreover, the present-day governments make their best efforts to get rid of the responsibility of keeping the masses informed by simply providing notifications or alerts over their official websites. The question to be posed is- in a country like India, or for that matter any other country, how many people do have the means or understanding or accessing these websites? This is nothing but another step in entrenching this divide.

However, while understanding these criticisms, it must be kept in mind that no responsibility for the present scenario can be imputed to the advancements in technology. Technology is not good or bad, it is neutral. How it is utilized determines the extent of its consequences, good or bad, for the public.²⁷

D. PRIVACY AND RIGHT TO INFORMATION

At this point, it is appropriate to refer to a very interesting paradox concerning an individual's right to privacy and society's right to information. These two rights are generally considered to be antithetical to each other as the presence of one threatens the existence of the other. In India, as we have already discussed, Article 19(1)(a) secures to all citizens individually and collectively the right to information. Moreover, the Supreme Court of India in *Puttaswamy*²⁸ recently held the right to privacy to be an essential component of the right to life protected under Article 21. Therefore, both the rights, though by means of liberal interpretation by the Supreme Court, have achieved the status of constitutionally protected rights.

In such a scenario, it becomes very essential to balance out these equally important interests of the citizens of India. One of the most efficient ways, which has been adopted by the countries where both of these rights coexist, is to categorize the information into public and personal. As far as the question relates to information which is of a public nature (that means it has consequences for other members of the society) the right of information takes precedence over the right to privacy. On the other hand, those categories of information that are essentially personal in which the society must have no concern or interest, the privacy interest of the holder prevails.²⁹

Though moderately successful, this approach could not ward off all the issues. Cases arose where it became very hard to put particular information into either of these categories of public or personal.³⁰ This provided leeway to the governments and courts to interfere in the private sphere of citizens. Therefore, while supporting the cause of free access to information, the importance of self-restraint must clearly be understood. The right to information of the society must not become an undue burden or unnecessary trespass in the privacy of particular members or members of the same group.

E. PUBLIC POLICY IN A DELIBERATIVE DEMOCRACY

²⁶ William Mazzarella, *Beautiful balloon: The digital divide and the charisma of new media in India*, *American Ethnologist*, 37(4), 783, 783-789 (2010).

²⁷ Marianne, *supra* note 19, at 667.

²⁸ *K.S. Puttaswamy and Anr. v. Union of India and Ors.* (2017) 10 S.C.C. 1.

²⁹ Gautam Bhatia, *State Surveillance and the Right to Privacy in India: A Constitutional Biography*, *NLSI Review*, 26(2), 127, 153-158 (2014).

³⁰ *Id.*

All governments, whether authoritarian or democratic, are supposed to plan out their future actions. This is called the framing of policies. But the prefix public before the term policy has been widely used especially in democratic regimes. To understand this development a few questions, need to be posted here- what is the relevance of this prefix public? How do public policy and a non-public policy differ? Or rather, can there be anything called non-public policy in a democracy? And most importantly, what is it that converts a policy into public policy or what is the essential ingredient?

The prefix public is generally used before a term to indicate either or both of two things. Firstly, it indicates that it has been created or provided for the benefit of society. Secondly, it gives the impression that members of society had a role to play in its creation and design. As far as the first meaning is concerned, there is no doubt that each government makes its best efforts to portray that the policy it is creating or following is intended for the welfare of the general public and prefix public is adopted as an instrument to serve this purpose. However, the scope for contention arises on the analysis of the second meaning which requires public participation in framing policies of the government. It forces an inquiry into the questions as to what means do the modern democracies adopt to ensure public participation. Moreover, what means does the general public have to make its contribution?³¹

The role of the public in a democracy is not limited to casting votes or contesting elections. People not only have the right to choose their rulers but also how they rule. The second aspect makes it necessary for all to have an equal opportunity to contribute to the day-to-day functioning of the government. This requires a continuous flow of information not only from the government to the governed but also the other way around. There are already sufficient means at the government's disposal to reach the public, such as public notifications, political advertisements, mass media, and social media. How effectively they are used is a different matter. But the public, as discussed earlier, does not have any true means to share their concerns with the government except for public protests, dharnas, or hunger strikes, which are generally adopted when the damage has already occurred by the adoption of unfavourable policies. The lack of a feedback mechanism and responsiveness from the government make the participation of the public a distant reality. In such a scenario, the use of the prefix public seems completely unjustified, as it wrongly presents unilateral and in some cases, arbitrary decisions of the government as the collective will of the society.³²

F. POLITICAL PARTIES AND THE MISGUIDED POPULACE

Over the last century, political parties have attained a central place in the governance of countries. They rose to prominence because they provided a platform to different groups of the society for representing their distinctive and special interests, and in fact, this is the reason that most of the dominant political parties in the world's history arose out of specific social or ethnic movements. However, with time these things have changed drastically. At present, there will hardly be any political party that has a specific set of objectives/aims and a fixed support base. Diplomacy and opportunism have become the new tool of attaining and wielding political power.³³

In such a state of affairs, political parties find great utility in mass media for creating a false sense of association towards a specific set of population, either on religious or socio-economic lines. The parties who

³¹ Amy Gutmann and Dennis Thompson, *Disagreeing about Deliberative Democracy, The Good Society*, 7(3), 11, 11-15 (1997).

³² Archon Fung, *Deliberation before the Revolution: Toward an Ethics of Deliberative Democracy in an unjust world, Political Theory*, 33(3), 397, 414-416 (2005).

³³ Brigitte Geissel et al., *Measuring the quality of democracy: Introduction, International Political Science Review*, 37(5), 571, 573 (2016).

had never shown any concern towards a particular group or public in general, or in many cases were the dominant cause of their suppression, are represented as their messiah. The result is that the politics of ideology and principles has lost its relevance and the party or parties who are successful in creating a favourable environment with the help of sensational and biased reporting, and falsified stories, sweep the polls. Therefore, the election process, the only true remedy in the hands of the public to get rid of an oppressing government, is also influenced and manipulated. Far from getting informed or educated, the general public is being misguided intentionally and in a planned manner by the media channels for political and other pecuniary gains.³⁴

G. THE GLOBAL DEMOCRACY

New challenges for already struggling modern democracies have arisen in the form of overarching globalization and internationalization. In the present times, the role of democratic governments is no longer limited to regulating and managing the affairs of their citizenry within their territorial boundaries. Nation-states of the twenty-first century do not signify isolated groups of people dispersed in different geographical locations around the globe. The world has become much more proximate and connected with far-reaching consequences, good or bad.

The one area where these developments can easily be witnessed is the economic sector. The control over finances which has always been the dominion of the ruling elite has slipped out to the hands of multinational global players. The result is that even the most well-intentioned governments fail to satisfy the yearnings and needs of their citizenry. Moreover, this new globalized world has set a stage for world politics and diplomacy having influence not only on the relations among sovereign states but also on the internal administration of a particular country.³⁵

In the wake of this new global game which has its own rules and regulations which are far away from principles of equity and justice, and economic domination and forced regression are the principal attributes, access to free and reliable information becomes all the more necessary.³⁶ People around the globe must be able to reach and understand the root cause of their repression because until they do so, they will continue to change their respective governments mindlessly without achieving any significant change in their position.

H. THE NEED FOR STATUTORY RECOGNITION

By the second half of the twentieth century, there was a growing realization on the part of the international community that the general protection granted to freedom of information by constitutional provisions either explicitly or implicitly, will no longer be sufficient. The need was to create separate statutory provisions delineating the extent of the right of the general public to seek information from the government or semi-government authorities and also designing procedural safeguards for its effective exercise.³⁷ The United States adopted the Freedom of Information Act in 1967³⁸, Canada in 1983³⁹, Japan in 2001⁴⁰ so on and so forth.

³⁴ Benjamin I. Page, *The Mass Media as Political Actors*, *PS: Political Science and Politics*, 29(1), 20, 20-24 (1996).

³⁵ Jan Aart Scholte, *Civil Society and Democracy in Global Governance*, *Global Governance*, Jul-Sep 2002, at 281, 285-287.

³⁶ Brigitte, *supra note 32*, at 572.

³⁷ Nancy Roberts, *A Great and Revolutionary Law? The First Four Years of India's Right to Information Act*, *Public Administration Review*, Nov-Dec 2010, at 925, 928.

³⁸ *The Freedom of Information Act*, 5 U.S.C. § 552 (1967) (US).

³⁹ *Access to Information Act (R.S., 1985, c A-1)* (Canada).

⁴⁰ *Law Concerning Access to Information Held by Administrative Organs, 2001* (Japan).

India adopted its Right to Information (RTI) Act⁴¹ in 2005 which came into force on 12th October of the same year. It was considered to be a big leap of Indian democracy towards transparency and accountability as it did away with the Official Secrets Act of 1923. However, the RTI Act could not withstand the test of time and soon its weaknesses came to fore. Some of the major setbacks of the Act are as follows-

- (i) A broad exemption from disclosure of the information is provided in the name of 'Information of strategic concern'. Information will be said to be a piece of information falling within this exemption if it has the potential to prejudicially affect the sovereignty and integrity of India, relations with foreign states, etc. Though the utility of such an exemption cannot be denied especially to protect information having far-reaching consequences for the country, the ground on which it can be claimed allows it to be a tool in the hands of the government officials to ward off bona fide information seekers and hence, violating their constitutionally protected rights. There is no guidance as to what should be the nature of the information considered to be against sovereignty and integrity of the country or prejudicial to good relations with foreign states. Both of the grounds along with others provided in the act largely depend on the sensitivity of the government in power towards dissent.⁴²
- (ii) The second schedule contains a long list of authorities which are explicitly excluded from the purview of RTI under Section 24 of the Act. The list includes authorities such as the Intelligence Bureau, Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, etc. These authorities exercise functions that have a direct influence on the life of the citizenry and all the information that these authorities produce or deal with is not strategic. In such a scenario granting blank protection was not warranted.⁴³ The Act could have provided for the categorization of information within the control of such authorities into accessible and non-accessible groups and only that information which has strategic relevance as determined by an independent committee must have been protected.

This is not an exhaustive list of issues or weaknesses of the Act; however, the points discussed are of prime relevance which requires immediate consideration of the Government.

CONCLUDING REMARKS AND SUGGESTIONS

The ruling elite makes its best efforts to control and censor information. Demands for better access to information and participation in decision making are met by a usual argument that some crucial areas such as foreign policy and defence strategy require expertise and deep understanding which the general public lacks and it works as a quick justification for behind the curtain bargains.⁴⁴ Lack of information on the part of citizens serves two crucial interests of the ruling elites. Firstly, an unaware population poses no threat to their hegemony over political power and secondly, they can easily manipulate and misguide the citizenry as to the truthfulness of certain facts and ensure their blind support for their exploitative rule. The result is that people in complete ignorance, adjust their opinion and demands following government policies to remain within the lines of the law, not the other way around.

If by God's grace, there is a realization of political exclusion in the society and demands for better participation in the governance of the country starts to mount up, the political elites take recourse to divisive

⁴¹ *The Right to Information Act, 2005, No. 22, Acts of Parliament, 2005 (India).*

⁴² *Anshu Jain, Good Governance and Right to Information: A Perspective, JILL, Oct-Dec 2012, at 505, 513.*

⁴³ *Varsha Khanwalker, The Right to Information in India: Its Connotations and Implementation, The Indian Journal of Political Science, Apr-Jun 2011, at 387, 389.*

⁴⁴ *Marianne, supra note 19, at 669.*

politics. To maintain the status quo and evade any serious challenge to the hegemony over political power, some voices and interests are provided preference over the others. People or groups are selected after consideration of their social and sentimental value in society. This is done to create an impression in the society that the government cares about its citizenry. However, in this entire process what is generally ignored is the collective conscience of the society.

In this entire game, the spread of misinformation through mass media and social media plays a big part. Raising questions against such steps or opposition to such tactics of the government is represented as objections against the benefited individuals and groups, giving birth to a sense of hatred among the members of the society. The result is that the government suddenly becomes a messiah and champion of the interests of the chosen few, who are in reality nothing but a scapegoat for it.

SUGGESTIONS:

There are three broad areas where every polity that proudly claims to be truly democratic, need to improve-

- (i) Development of communication capabilities- This will be the easiest of all three steps as it can be achieved by simply investing in communication apparatuses. However, the government needs to take care that there is an equally effective two-way flow of information between its functionaries and the public, and the reach of these new means of communication is not limited to a few developed areas of the country. Every government must ensure that a citizen sitting at the last corner of the country must have an equal opportunity of communicating his/her views and concerns.
- (ii) Ensuring Responsiveness- Mere listening to the grievances and other suggestions of the public are not sufficient for an effective democracy. Redressal of concerns is an important factor. This will not be easy for countries with a huge population such as India. An elaborate strategy needs to be devised and a proper structure needs to be created to compartmentalize the flow of information from the public in a few broad categories and present the same to policymakers briefly and succinctly.
- (iii) Promoting Accountability- Accountability is something that cannot be imposed by artificial means such as strict rules or regulations, and all efforts in this direction without ensuring a proper environment are bound to go in vain. It must come from within. The people's representatives and other public functionaries must take it as their primary duty to show accountability not only towards their support base or vote bank but towards the society at large. It must be established as a part of the culture.

HUMAN RIGHTS - DISSEMINATION OF JUSTICE IN A DEMOCRATIC COMPOSITION

-Dr. Tejaswini Malegaonkar¹

ABSTRACT:

Every person is entitled to certain rights – simply because they are human beings, so the concept of human rights is not novice. These are rights because they are allowed to be, to do or to have. These rights which are available to all are for protection against people who might want to cause harm. Though human rights have been alive for decades, they have not been very effective in safeguarding individuals. However, they have been perceptible since the last two decades because of various reforms. These rights are the rudimentary rights of an individual connected with their dignity. Human rights are the product of a certain “bond” between individuals. An underpinning of rights as a concept, not only theoretical but philosophical, has different dimensions which have acquired different colours due to the changing scenario. These “conditions” are nothing but the connotations of right, which every individual being possesses by virtue of their birth.

The concern for human rights has been established after the General Assembly of United Nations adopted the Universal Declaration of Human Rights. The preamble makes an appeal to the governments to commit themselves and their people to take progressive measures that will secure the universal and effective recognition and observance of human rights. Democracy has awarded great opportunities and prospects to the people. It is a significant aspect of political legality. Democracy and entrepreneurship appear to have moved along self-governing, parallel paths. Democracy has gained strength and has created an interface. The outcome of it is the notion of a welfare state. This tends to define the role of the state in a dominant way. There is the saying that “Democracy is the political system which is from the people to the people”. People elect their government on the basis of free and fair elections. The idea of human rights is engrained under the Indian Constitution.

This paper will focus on proper propagation of justice, as the denial of justice is denial of human rights. It will throw light on democratic values and human rights in India as well as democratic rights of the people of India. Further it will focus on the relationship between globalized democracy and human rights and democracy as one of the salient features of human rights.

INTRODUCTION

Even though human rights have been in existence for the last eight decades or so, they gained the recognition they deserved only in the last two decades.² These fundamental rights granted to human beings are connected with safeguarding one's dignity. These rights can also be perceived as the by-product of a bond shared between different individuals. The idea of human rights might sound like a theoretical concept. Still, it has philosophical overtones and comes with a variety of paradigms each of which lends it a unique view.

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²Human Rights Handbook for Parliamentarians N°26, Inter-Parliamentary Union; United Nations (Office of the High Commissioner for Human Rights) <https://www.ohchr.org/Documents/Publications/HandbookParliamentarians.pdf>

On 10th December 1948, the Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly.³This proved to be a pivotal movement because it identified the need for human rights to be established and protected across the globe. The preamble of this historic document appeals to various governments to commit the resources and people to work on implementing progressive measures to secure the universal recognition of human rights. The idea of democracy, which is not only popular across the globe and has been adopted by different nations, but has also created life-altering prospects and opportunities for individuals across the world. This is also an essential element of political legality. The two self-governing concepts of entrepreneurship and democracy are moving in synergy, albeit parallel to each other. This created the notion of a welfare state, which explicitly defines a dominant role played by the state in governance. Democracy is a form of governance believed to be "from the people, to the people, and by the people." In a democracy, there are free and fair elections conducted, which gives the citizens of a country the chance to choose their government.⁴ The primary idea of human rights is deeply embedded within all the provisions of the Indian Constitution because it provides the ethical foundation for this important concept.

The premise of this paper is to establish the propagation of justice because its denial is an abhorrent denial of human rights. It tries to shed some light on the link between democratic values and human rights within India, the democratic rights available to those residing in India as well as the global connection between democracy and human rights. It also tries to understand why democracy is believed to be a salient feature of human rights.

HUMAN CIVILISATION AND THE PERPLEXING CONDITION

For the entirety of human civilisation, it has been quite essential to determine the extent to which human rights are respected and protected. This idea is seldom disputed. However, it certainly is one of those perplexing statements that lead to several unanswered questions. What is the meaning of human rights? Why should these rights be protected, and to what extent should they be protected? If they should be protected, what interests of society are served by protecting them?⁵

There is an inherent and on-going conflict between the interest of the individuals and that of the society in general. When the protection of one right is overemphasised, it creates a butterfly fact that leads to another right being compromised. Therefore, maintaining a balance between all rights isn't easy. This seemingly complicated process of regulating and protecting basic human rights is governed by the rule of law in a democracy.⁶ The judiciary is entrusted with this duty, and it has to carefully tread the line between harmonising the need for different rights without overemphasizing a single right. Judiciary's attempt to do this hasn't been easy and consistent.. There have been numerous instances when the courts had to tread slowly and in some situations even retreat before making any progress. The entire nation has managed to enlarge the purview of these rights to protect the interests of various individuals in society through their steadily progressive and altruistic interpretation.

³*Universal Declaration of Human Rights, 1948*

⁴*Jordon Kroll and Juliet Swann, We, The People - Constitutional Decision Making Through Citizen LED Deliberative Processes, ERS Scotland (July 2015) <https://www.electoral-reform.org.uk/wp-content/uploads/2017/06/We-the-people-citizen-led-constitutional-conventions.pdf>*

⁵*P.N. Bhagwati, Human Rights In The Criminal Justice System, Indian Law Institute, Vol. 271, pp. 1-22*

⁶*ibid*

INTIMATE LINKING OF HUMAN RIGHTS

The concept of human rights and justice is interconnected and inseparable.⁷ One cannot exist without the other. Human rights not only encompass the necessities for protecting human dignity and value of life but are also a legal affirmation of the worth of individual lives. Human life becomes meaningless when it is devoid of dignity. Any explanation of human rights provided by the dominant forces in the society is tinged with injustice and selfish agenda. Proper structuring of human rights and their utilisation is critical for the dissemination of justice. After all, the denial of justice is an explicit denial of human rights.⁸

Human rights have been successfully incorporated into the different rules governing the International Society of States and are used as a yardstick of moral legitimacy. However, it is saddening that any concerns associated with human rights are often treated as secondary to those associated with sovereignty and power. Therefore, the future of international human rights activism can be seen as a tussle between several claims of international human rights and sovereignty and their implied legitimacy.

In International relations, three primary models are used to define the position of the State vis-à-vis human rights. Each of these concepts has its own role to play in shaping up the course of international human rights and the global community in general.⁹

The Statist Model proposes the philosophy that human rights are viewed as a matter dealt between two sovereign national jurisdictions and is viewed as the peripheral concern in interstate or international relationships. There isn't a specific international body that can take action on behalf of human rights according to this model.

Unlike the Statist Model, the Cosmopolitan Model is concerned with individuals instead of states that are often viewed as a problem for cosmopolitans.¹⁰ Any challenges faced by a state and its powers from above (global community) and below (individuals and NGOs) is the primary focus of cosmopolitans, and it doesn't simply rely on international organisations or any other grouping of states. International organisations and certain transnational NGOs are viewed as the representatives of global communities of human rights taking precedence over the society of states. There is a lot of scope available for international action on behalf of human rights in this model.

Apart from these two, there exists another model-the Internationalist Model, which emphasises the growing consensus between states and non-state participants when it comes to norms associated with international human rights. According to this model, the attention is finally shifted towards the International Society of states instead of denying the existence of centrality of the state that sanctions only certain restrictions on states. The basic society of states supported by NGOs and individuals is termed as the international community, according to the Internationalist Model. The formal and the informal norms of the International Society of states determine the extent to which international human rights activities can be deemed permissible.

Upon closer examination, it is observed that each of these models relies on either the descriptive claims about the position that human rights have in the existing international relations or the perspective claims

⁷*Compass-Manual for Human Rights Education with Young People, Council of EU*
<https://www.coe.int/en/web/compass/what-are-human-rights-rope>.

⁸*ibid*

⁹*Vijay K. Gupta, Perspective on Human Rights, Vikas Publishing House Pvt. Ltd., p.789 (1996)*

¹⁰*Lea L. Ypi, Statist Cosmopolitanism*, Journal of Political Philosophy 16(1) pp. 48 - 71*

about the place they should hold. According to the statist philosophy, human rights are believed to be a passive role in international relations. However, the Cosmopolitan model primarily revolves around concerns of human rights. Until World War II, the Statist Model held true, but after that, it started to look rudimentary and even misleading upon closer approximation. Perhaps the most accurate description of human rights in contemporary international relations is shown by the Internationalist Model.¹¹

The primary concentration of most of the state's activities is about power and security, instead of human rights when it comes to realpolitik. Unfortunately, the concern of human rights or cultural relativism is a topic that is thoroughly exploited by various states in realpolitik. Several non-Western states, and even groups of states such as the African and Latin American nations, ASEAN, have successfully adopted various conventions of human rights according to their local situations and conditions, which takes into consideration the conventional value setups based on the principles of cultural relativism. The story of cultural relativism is frowned upon by the West because it's often used by countries to do away with necessary and genuine scrutiny by the international community and is rightfully termed as open court the last refuge of repression.¹²

The hegemonic model proposed by the West, which is primarily designed to dictate terms that helps safeguard these nations refuse the primary interests of the Western capital forces. The GATT agreement includes certain "social causes" that provide restrictions on the free flow of trade to certain countries wherein the Labour products or the products and processes involved were not up to the prescribed international norms. The inclusion of such causes is not designed to promote human rights but instead, it tries to prevent non-Western competitors from holding or growing into a dominant position in the international market, which is currently held by the western nations. All this is done by using human rights as a facade.¹³

Rajni Kothari believes human rights are being used as a means to legitimise the ever-changing corporate philosophy about globalisation.¹⁴ Western powers are thoroughly exploiting the issues and concerns associated with human rights and using it as a shield while bullying and interfering with actions taken by non-western nations. The American-led "war against terrorism," is one such initiative. Human Rights Watch, a U.S.-based organisation, suggests several governments across the world are using the idea of U.S.-led war on terrorism to justify their highly repressive policies and for suppressing opposition and any existing internal dissent against these notions.

CONSTITUTION OF INDIA AND ITS IMPACT

According to the provisions laid down in the Constitution of India, there exists a parliamentary form of government that guarantees the establishment of a sovereign, socialist, and a democratic republic within the nation. All Indian citizens are guaranteed certain fundamental rights by the Constitution. It is believed that the Indian Constitution is amongst the most righteous constitutions that exist in the world. The Preamble to the Constitution itself lays down an ethical foundation for human rights and there exist legal provisions for

¹¹Richard Bellamy, *A Republican Europe of States: Cosmopolitanism, Intergovernmentalism and Democracy in the EU*; (Cambridge University Press, 2019)

¹²Anthea Roberts, *Traditional and Modern Approaches to Customary International Law: A Reconciliation*; pp. 49-76 (Viva Books Pvt. Ltd., 2010).

¹³*ibid*

¹⁴ Rajni Kothari, *First to Discover The Pulse of Indian Political System*, *THE ECONOMIC TIMES* (January 20, 2015) <https://economictimes.indiatimes.com/blogs/et-commentary/rajni-kothari-first-to-discover-the-pulse-of-indian-political-system/>

this foundation of human rights in Part III and IV of the Constitution, which includes topics associated with fundamental rights and the directive principles of state policy.

The preamble of the Indian Constitution strives to secure and dispense justice-social, economic, and political to all its citizens.¹⁵ It also promotes freedom of thought, expression, belief, faith and worship, and grants equal status and opportunity to all its citizens and promotes a sense of fraternity and dignity amongst every individual. Part III of the Indian Constitution deals with civil and political rights, which are granted to all its citizens without any discrimination. Part IV of the Constitution lays down a set of directive principles of State policy that act as a beacon or the guiding principle for the government to administer the country. India has a representative democracy formed under the parliamentary form of government, wherein the citizens of the country based on the adult franchise are entitled to exercise their sovereign authority via the legislature through their elected representatives.

There is an intricate and interdependent relationship between global democracy and human rights. In fact, the right to participate in a democracy is a human right too. The provisions for the same are evident within Article 21 of the Universal Declaration of Human Rights or Article 25 of the International Covenant on Civil and Political Rights. Although, it's regrettable to note that neither of these articles make any mention of the word democracy itself even though they are about democratic participation.

The concepts of fundamental rights are embedded within Part III of the Indian Constitution by its framers. These provisions need to be read in accordance with Part IV. Part IVA was inserted into the Indian Constitution by the 42nd Constitutional Amendment Act, and it deals with fundamental duties. The title of this concept is self-explanatory.¹⁶ The primary or core duties of utmost importance are fundamental duties, and if they are discharged in accordance with the letter and spirit of the law, it helps with the fulfilment of certain fundamental rights. The duties in the governance of the country envisaged by article 51-A are as important as fundamental rights these days.

These duties were not originally included as a part of the constitutional machinery or philosophy proposed by the framers of the Constitution. Instead, the inclusion of these duties acts as an example of the constituent power granted to the Parliament to amend the Constitution, according to the provisions of Article 368 of the Indian Constitution. Prior to the 42nd amendment, the Preamble didn't include the words socialist and secular. These two terms were also made a part of the Preamble via this 42nd Constitutional Amendment. Therefore, whenever the Preamble is read today, it should include these two words. Likewise, similar logic is applicable vis-à-vis fundamental duties envisaged in Part IV-A¹⁷ of the Constitution.

If any notion or concept about the fundamental rights needs to be considered, the Indian Constitution should not only be read based on Part III or IV, but it needs to take into consideration the Preamble, Part III, IV, and IV-A of the Indian Constitution. Unless and until all these different portions of the Constitution are taken into consideration, the full meaning of the fundamental rights cannot be understood. All these connotations about fundamental rights truly reflect the welfare-oriented goals of the constitutional framers. When all these

¹⁵Dr. Pradeep Kumar Singh, *Social Justice in Indian Democracy: A Progressive Concept under Indian Constitution*, <https://madhavuniversity.edu.in/social-justice.html>

¹⁶Jean Louis-Halpern and Amit Prakash, *Fundamental Rights, Meaning, Content and Discrimination. A Franco-Indian Comparison*, *Revue Internationale de droit comparé*, Année 2011, sem-link Jean-LouisHalpérinsem-linkAmit Prakash *Revue internationale de droit comparé* Année 2011 63-2 pp. 385-402 https://www.persee.fr/doc/ridc_0035-3337_2011_num_63_2_20001

¹⁷ibid

four aspects of the Indian Constitution are put together, they become the embodiment of three essential values available to every Indian citizen, and they are justice, equality, and liberty. The significance of all this is not just included in the text of the Constitution but is also regularly visualised and upheld by the judiciary's decisions about the notion of fundamental rights, which is further discussed in the subsequent sections of this paper.

The notion of democracy is based on the idea of free debates¹⁸ and open discussions. If democracy is defined as a government of the people, by the people, and for the people, it includes an obvious right, which entitles every citizen to participate in the democratic process. The true purpose of a democracy is lost in the absence of mass participation. If the citizens in a democracy are not entitled to or allowed to exercise their basic civil rights and liberties, it does away with the notion of a democratic regime. In the absence of all this, the form of the government can be defined to be authoritarian and not democratic.

VALUES AND HUMAN RIGHTS

The term values might conjure images about notions or ideas. We normally associate with or follow in our daily lives. These values are quite subjective and change from one individual to another based on their life experiences and circumstances. However, there are some common and certain values that are shared with all individuals.

The common values are freedom, life, liberty, and security. Based on an individual's circumstances, environment, and so on, the said individual can consider which of these values are dearest to him. If the society in general, adheres to certain values which are common to everyone, it becomes easier to establish peace and create an environment conducive to all-round development and progress for everyone in the longer run. It, in turn, teaches the basic philosophy of living in unity with diversity.¹⁹

All beliefs that are subjective to how an individual will exercise them are known as values according to several scholars. Values are an inherent motivation that pushes people to work towards their goals. Values are not limited by the concepts of time and players, and they help individuals develop relationships with others and regulate their own behavioural patterns. Scholars have managed to identify about ten primary values that help motivate and regulate behaviours of humans and enable them to achieve their goals. The ten primary values are stimulation, hedonism, self-direction, achievement, power, security, tradition, benevolence, universalism, and conformity.²⁰ Each of these values helps shape individuals and influence their goals. For instance, stimulation helps create excitement, innovation, and different challenges in life. Self-direction, on the other hand, promotes independent thought patterns that influence one's decision-making process. Self-satisfaction or hedonism is all about finding a great vacation for ones' self. An individual's competence in relation to the standards set by society is determined by their achievements.

Control over others and resources, social status, and prestige are guaranteed by power while security provides a safety net that helps an individual discover his freedoms and passions without worrying about other things. An individual's behaviour was often regulated by conformity to social standards, and it acts as a guardian that prevents any wrongdoings while promoting respectful practices. Universalism is the ability to understand, appreciate, tolerate, and protect the welfare of society and nature in general. Tradition brings

¹⁸Peter J. Boettke and M. Scott King, *Democracy by Discussion, Not Debate: James Buchanan on Freedom of Inquiry as a Methodological, Not Ideological, Necessity*, De Gruyter, 2019.

¹⁹Equality and Human Rights Commission, 2007; Article 5.

²⁰Gregg Henriques, *A Theory of Ten Universal Values Matching*, *PSYCHOLOGY TODAY* (October 19, 2014) <https://www.psychologytoday.com/us/blog/theory-knowledge/201410/theory-ten-universal-values>

with it a sense of acceptance and commitment to respecting one's customs and religions. Benevolence is a value that helps preserve and enhance the well-being and welfare of others we are in frequent contact with. The primary philosophy of human rights shares several similarities with the values mentioned earlier. Therefore, it is safe to concur that values are an inherent part of human rights. By strictly adhering to human rights, values can be restored and maintained at an individual level, and it also promotes harmony, peace, and security between individuals and nation-states. Another extremely important value that influences one's behaviour is dignity. Dignity is quite subjective, and it essentially refers to certain norms or ethical standards that must be followed and adopted by all individuals in a civilised society. In a civilised society, human beings are expected to behave in a manner that's dignified and honest in all our day-to-day relationships. This concept essentially states one should exercise caution and care when it comes to relationships without undermining the abilities of those around us. It also installs a notion that creating a situation that could harm others emotionally, physically, or psychologically is undesirable. Therefore, dignity plays a crucial role when it comes to the furtherance of human rights and human relationships, especially, rights such as the right to liberty, freedom, and equality.

The Universal Declaration of Human Rights (UDHR) declares that all individuals are equal in the eyes of the law and they should be treated with dignity and respect at all times. If everyone were to follow the simple norms of dignity and basic ethics without unnecessary deviations, observing and implementing human rights would become easier.²¹ In fact, in the modern era, several conventions, declarations, and covenants have been adopted at the international level to promote human rights with special attention being given to dignity. The non-adherence to this basic right has brought upon unaccountable instances of misery and sorrow to the human race.

Another important concept that plays an incredibly important role when it comes to the promotion of human rights is liberty. The concept of liberty can be traced back to ancient times, and it's deeply rooted in theories of political philosophy. Several popular philosophers throughout the ages, such as Rousseau, Hobbes, and Locke have articulated liberty in various contexts.²² Simply put, liberty essentially states, all humans are free to establish and govern their relationships, behave on their own free will, and are liable to be held responsible for all their acts and behaviours. Responsibility or duty forms the basic notions of liberty. According to the actual behaviour of an individual, liberty can either be achieved or enjoyed.

If any of the acts performed intentionally harms others or deprives them of their legal claims or are ill-natured, it not only harms the rights of others but also one's rights in the long run. Such behaviour also has a direct effect on the realisation of their personal rights. Hobbes believed that every human being is entitled to enjoy all the freedoms without any interference of another person. According to the social contract theory, the formerly accepted notion of the divine will of Kings, which helped them regulate and restrict relations and freedoms of individuals is in direct contradiction to the idea of liberty of individuals. Throughout history, he has championed political revolutions based on the notions of liberty. It, in turn, created the concept of democracy wherein individuals have the liberty to select their leaders. Excessive arguments made for liberty and its indiscriminate use without any strict adherence to duties that are conferred upon individuals during the modern era is once again, becoming the cause of misery. Liberty without any regulations and lack of liberty with too many restrictions are both equally damaging to human welfare. To resolve this deceptively simple problem, the United Nations came up with several legal notions to protect and promote human rights. By following these acts, it becomes easier to restore liberty in the true sense of

²¹ *Casebook on Human Dignity and Human Rights, (UNESCO, 2011)*

²² Jason Neideman, *The Social Contract Theory in a Global Context, E-INTERNATIONAL RELATIONS (October 9, 2012)*, <https://www.e-ir.info/2012/10/09/the-social-contract-theory-in-a-global-context/>

the word and spirit. Even nation-states have an inherent duty to respect and abide by the principles of international law and human rights when interacting with one another and their citizens.

Another important concept upon which human rights are based is equality. Irrespective of whether it's ancient or modern times, people across the globe are still fighting to attain the value guaranteed by this term in its true sense. According to the basic understanding of equality, all individuals are grouped in a single category, and the same principles of law and justice apply to everyone without any distinctions, biases or prejudices. The concept of equality is subjective, but it simply suggests the notion that all individuals are entitled to enjoy their rights on an equal footing.²³ Treating human beings on an equal footing without any form of discrimination is the primary idea of the Universal Declaration of Human Rights, and the Constitutions of several countries across the globe, including India. It essentially states that everyone is equal in the eyes of the law.

Though the theory suggests everyone is equal in the eyes of the law, the reality is quite different and rather saddening. There are several socio-economic, political, and cultural biases that prevent the equal treatment of individuals on the abovementioned grounds. The principles or laws related to international laws of human rights state that certain concessions must be extended to individuals at a national level by states to attain equality and bridge any gaps in the social, economic or cultural sphere. It's not just the nation-states that need to ensure all their citizens are treated with quality, but the same principle applies to the nation-states at an international level, too. According to the principles of the simple concept, developed states should extend certain provisions and concessions to the developing nations and help them along the way. Unless there is true equality, discrimination cannot be prevented.

Another important concept upon which the idea of human rights is based is justice. This concept has been of great fascination to philosophers and thinkers alike. Taking into consideration the relevant factors in a given society and the desire to bridge the gap between the haves and the have-nots, several scholars from time immemorial have been coming up with various theories to achieve the concept of justice truly.²⁴ There are different tools required to measure justice. Equality, ethics, and morality are the three basic ideas that need to be emphasised to attain justice. Human rights help create stable conditions for all individuals by nation-states that ensure they can achieve and exercise their rights justifiably. Plato believed justice is one of the highest values, anyone could abide by, and for an individual to attain it, he should be provided with all the required conditions for realising this right and discharging his duties.

ETHICS AND MORALS IN HUMAN RIGHTS

The concepts of ethics and morals might sound synonymous, but there is a slight difference between them. Morals are associated with the personal character of a human being while ethics lay down certain societal norms or codes of conduct. Based on the values which are believed to be acceptable in society, morals should be applied accordingly. From the paradigms of human rights, the idea of freedom and liberty are the primary principles based on the idea of morals. Equality, justice, and the right to participate in various social, cultural aspects of the community are ethical concerns. Similarly, every human being in a society is responsible to always abide by his duties and exercise the fundamental rights made available to him.

Ethics is not a science, in the true sense of the word, but it's a normative science, which regulates human conduct in society. It essentially states the difference between proper and improper behaviours, right and

²³ Evadné Grant, *Dignity and Equality*, *Human Rights Law Review*, Vol. 7 2, pp. 299–329

²⁴ *Human Rights and Access to Justice*. American Bar Association. https://www.americanbar.org/advocacy/rule_of_law/what-we-do/human-rights-access-to-justice/

wrong, or good or bad.²⁵The standards used by an individual to differentiate between a right from wrong is known as a value. In reference to human rights, ethics presupposes that freedom is a precondition for exercising human rights.

The primary concepts of ethics or morals are freedom, right, duty, responsibility, goodness, and happiness. All values are based on social consensus, and they are shared by all those who reside in society. When all these points are put together, it highlights the relationship between human rights and the discharge of responsibilities. Unless all the individuals living on this earth come together and discharge responsibilities with sincerity, human rights cannot be achieved in toto. Universalisation of human rights becomes easier when everyone learns to live in a diversified world where we respect not only each other's rights but also do our duties.

CONCLUSION

For the development of human beings in life, human rights are quintessential. These basic, fundamental rights are inherent to all human beings, and one cannot live a life with dignity sans these rights. The Constitution of India safeguards the basic fundamental rights of the human rights granted to the citizens of India. The provisions are included in the articles stipulated within the Constitution, as well as in the basic foundation for the same as laid out by the Preamble. The preamble mentions fundamental freedoms and protecting the dignity of individuals.

The rules of locus standi were also relaxed by the Indian judiciary to protect human rights, which pioneered the idea of public interest litigation. The courts took it upon themselves to safeguard the rights of women, workers, children, and so on. Therefore, the judiciary plays a significant role when it comes to safeguarding human rights. In fact, it dawned on the mantle of the role of a saviour to safeguard the rights of all individuals to live their lives with the dignity they deserve.

Observing and protecting human rights is not just an issue of national concern, but it concerns the entirety of the world. Different international instruments were incorporated to protect human rights, and these instruments became provisions upon which all national endeavours have been enacted to further this idea. For instance: the Protection of Human Rights Act 1993 is one such Act. According to the provisions laid down by this Act, a National Human Rights Commission, a State Human Rights Commission, and the Human Rights Court at the district level have to be incorporated at the Centre, State and District level respectively, to ensure the issue of any violation of human rights is tackled at every single level. Since its inception, the National Human Rights Commission has been playing a significant and commendable role in protecting and safeguarding the human rights of Indian citizens. It often provides monetary relief to the victims and their families in case of infringement of their basic human rights. This is the need for a democracy to flourish.

²⁵*Sofia Gruskin and Bernard Dickens, Human Rights and Ethics in Public Health, Am J Public Health, 96 11, pp. 1903-1905*

RIGHT TO INFORMATION: A CUSTODIAN OF DEMOCRACY

Sarbani Sarkar¹

ABSTRACT

The concept of democracy is best understood in the light of ideals of transparency and accountability of the government to its people, because 'Democracy' is a form of government in which people have the authority to choose their ruler. It is an institutional arrangement which ensures free participation of the people in the process of controlling the political power. The successful functioning of democracy depends on the fulfilment of certain conditions, of which informed citizens and transparency of information in the administration are very important. This helps to prevent corruption in the government instrumentalities and accelerate good governance.

The right to information is one of the most essential human rights in the modern society especially in a democracy. Right to information facilitates the achievement of transparency, accountability, openness and participation, which are essential for growth of a democracy. To achieve this goal, the Right to Information Act (The Act), 2005 was passed. The Preamble of the Act specifically states that this is "an Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority". The Act provides for the constitution of a Central Information Commission and State Information Commissions. An informed community of people and transparency of information – both are vital elements to the functioning of democracy which can be secured only if there is an effective measure of prevention of corruption and to hold Governments and their authorities accountable to the citizens. However, the Act preserves the confidentiality of some sensitive information. This Act is closely related to the Constitution of India. The Preamble of the Constitution of India declares that the constitution seeks to secure to all citizens: "... liberty of thought, expression, belief, faith and worship..." In compliance with "liberty of thought, expression", Article 19(1) (a) of the Constitution of India guarantees the fundamental right to freedom of speech and expression to all the citizens, however with some restrictions as enumerated in clause (2) of Article 19. Right to information actually implies right to know. This right to know is the facet of this right of speech and expression. In a society with a democratic setup a citizen has a fundamental right to access to information and the state is duty bound to protect this fundamental right and provide for the opportunities under which this right can be enjoyed. Thus, the right to information is a codification of one of the important fundamental rights as enumerated under Article 19 and under Article 21 which not only enumerates the right to life and personal liberty but also implies right to know. From the year 2005 to 2020 – almost fifteen years have passed since the Act was enacted. Time has come to evaluate the Act on the basis of its success, failure and its impact upon the citizens.

Within this short period of time, social, economic and political image of India has changed rapidly due to technological advancement. Therefore, it is of utmost important to examine this Act in the light of the current situation. This paper mentions some of the important provisions of RTI Act along with its recent amendment. But the main aim of this paper is to critically analyse its impact on the people at large and also

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on the democratic form of government as existing in India, by critically analysing the success and failures, challenges and loopholes of this Act. This paper enquires into the matter to what extent the Act is successful in ensuring transparency, accountability, openness and preventing corruption in the government instrumentalities. Some case laws have been included for better understanding the Act. Is it correct to say that “Right to Information is like oxygen to democracy”? The paper tries to find out the answer.

INTRODUCTION

‘Democracy’ is a form of government in which the people have the authority to choose their head of state. The term ‘Democracy’ originated from two Greek words: ‘Demos’ and ‘Kratos’. ‘Demos’ means whole citizen living within a ‘city-state’ and ‘Kratos’ means ‘power’ or ‘rule’. So, democracy in its simplest sense means a system of society where the people control the government. ‘Democracy’ as MacIver observes: “is not a way of governing, whether by majority or otherwise, but primarily a way of determining, who shall govern and broadly to what ends²”. It is an institutional arrangement which ensures free participation of the people in the process of controlling the political power. The successful functioning of democracy depends on the fulfillment of certain conditions, of which active participation of the people in the functions of government is necessary. Autonomous local bodies all over the country can ensure such popular participation. Thus, it is evident that the combination of ‘popular rule with skilled administration’ is an important condition of democracy. The administrative machinery in democracy must be prompt and smooth-working. It must start taking immediate action whenever public opinion demands the implementation of a particular measure³. Here lies the necessity and importance of the right to information. The right to information is one of the most essential human rights in the modern society especially in the democracy. It encourages in accomplishing the aspirations of transparency, accountability, openness and participation, which are essential for growth of democracy.

RIGHT TO INFORMATION: DEFINITION, MEANING & NATURE

Right to information is granted to the citizens to “secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto⁴. The law relating to the right to information is governed by the Right to Information Act, 2005 (RTI Act), which received the assent of the President on the 15th June, 2005 and came into force on 12th October, 2005, repealing the “The Freedom of Information Act, 2002”⁵. Under this Act, it is the obligations upon public authorities to provide information maintain records⁶. The main objectives and purposes of this Act⁷ are as follows:

- To follow the Constitutional ideals declared in the Preamble that our Constitution of India i.e., ‘Democratic’, ‘Republic’⁸;
- To form an informed citizenry and transparency of information, control corruption and hold Governments and their instrumentalities accountable to the governed⁹;

²R.M. MacIver, *The Web of Government*, (Jul. 21, 2020, 07:37 PM), <https://archive.org/details/in.ernet.dli.2015.274488/page/n209/mode/2up>.

³Amal Ray Mohit Bhattacharya, *Political Theory Ideas and Institutions*, 251-263 (The World Press Private Limited, 13th Revised ed. 2003, Reprinted 2005).

⁴Right to Information, (Jul. 15, 2020, 07:26 PM), <https://rti.gov.in/rti-act.pdf>.

⁵Section 30, Right to Information, (Jul. 15, 2020, 07:26 PM), <https://rti.gov.in/rti-act.pdf>.

⁶J. N. Pandey, *Constitutional Law of India*, 184-185 (Central Law Agency, 47th ed. 2010).

⁷Right to Information, (Jul. 15, 2020, 07:26 PM), <https://rti.gov.in/rti-act.pdf>.

⁸*Ibid.*

⁹*Ibid.*

- That “revelation of information in actual practice”, may, in some times be “in conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information”¹⁰;
- To harmonize conflicting interests while preserving the paramountcy of the democratic ideal”¹¹;
- “It is expedient to provide for furnishing certain information to citizens who desire to have it”¹².

INFORMATION, RIGHT TO INFORMATION, PUBLIC AUTHORITY & RECORD: DEFINITIONS UNDER RTI ACT, 2005:

Under Section 2(f) of the RTI Act, 2005, the term ‘information’ has been defined as: “any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force”. According to Section 2(j) of the Act ‘right to information’ means the “right to information accessible under this Act which is held by or under the control of any public authority and includes the right to – (i) inspection of work, documents, records; (ii) taking notes, extracts or certified copies of documents or records; (iii) taking certified samples of material; (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device”. Section 2(h) defines the term ‘public authority’ as “any authority or body or institution of self-government established or constituted – “(a) by or under the Constitution; (b) by any other law made by Parliament; (c) by any other law made by State Legislature; (d) by notification issued or order made by the appropriate Government”. As per section 2(i) of this Act the term ‘record’ includes – “(a) any document, manuscript and file; (b) any microfilm, microfiche and facsimile copy of a document; (c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and (d) any other material produced by a computer or any other device”.

CONSTITUTIONAL PROVISIONS REGARDING RIGHT TO INFORMATION: ARTICLE 19(1)(A) AND ARTICLE 21

Right to information is a facet of “right to freedom of speech and expression” as provided in Article 19(1)(a) of the Constitution of India. Right to freedom of speech and expression is considered to be the basic and indivisible for a democratic polity, the most cherished and “sacred right of the citizens”. It is the very ‘foundation’ of a democratic society. The democratic form of Government demands its citizens, to be active and participate intelligently in the affairs of the government. This right to information is the species of the right to freedom of speech and expression¹³. This is one of the important requirements for a democratic form of government because a true democracy cannot exist unless all citizens have a right to participate in the public functioning. The concept of an open government is said to be the direct emanation from the right to know which seems to be implicit in the right of speech and expression under Article 19(1)(a). The citizens are entitled to call on those who govern on their behalf, to account for their conduct so that a citizen, prepared to pay requisite fee is entitled to ask for copies of public documents, to the inspection of such documents¹⁴.

¹⁰*Ibid.*

¹¹*Ibid.*

¹²*Ibid.*

¹³ *Indian Express Newspaper vs. Union of India, (1985) 1 SCC 641.*

¹⁴ *Amandeepkauradvocate, Research Scholar at Dept. of Laws, Guru Nanak Dev University, Amritsar, Right to Know – Constitutional Prospective, (Jul. 16, 2020, 07:37 PM), <http://www.legalservicesindia.com/article/1743/Right-to-Know-Constitutional-Prospective.html>.*

However, this right to freedom of speech and expression is not an absolute right. It is subject to certain limitations or restrictions contained in clause (2) of Article 19 of the Indian Constitution. It provides that reasonable restriction¹⁵ may be imposed “in the interest of sovereignty and integrity of India, the security of state¹⁶, friendly relations with foreign state, public order, decency and morality or in relation to contempt of court, defamation or incitement to an offence”¹⁷.

Article 21 of the Indian Constitution guarantees the “Right to life and personal liberty” which also implies right to know. The right to know laws promotes a democratic decision-making system and grants some power to the common people¹⁸. In various judgments the Supreme Court has reiterated that the right to life and personal liberty also implies the right to know¹⁹. In *R.P. Limited v. Indian Express Newspaper*²⁰, the Supreme Court observed that people in general have a right to know in order to be able to take part in a participatory development of the industrial life and democracy. It also observed that the ‘right to know’ is a basic right, to which citizens of a free country aspire, in the broad ambit of the right to life under article 21 of the Constitution. In *People’s Union for Civil Liberties v. Union of India*²¹, the right to information was further elevated to the status of a human right which is necessary for making governance transparent and accountable. It was also emphasized that governance must be participatory. In *K. Ravi Kumar v. Bangalore University*²², the Apex Court held that the public authorities cannot flatly deny any document on the ground of confidentiality.

VARIOUS INTERNATIONAL CONVENTIONS REGARDING RIGHT TO INFORMATION²³:

There are various international conventions where right to information has been given an important position. Some of them are as follows:

1. **United Nations:** The United Nations Charter, 1945 is a very important document to protect and respect basic human rights. It was established to save the succeeding generations of humanity from the scourge of war. In the year 1946 at its first session, the UN General Assembly adopted resolution 59(1), which stated that ‘freedom of information’ is a ‘fundamental human right’ and ‘touchstone’ of all the freedoms. In 1992, “Rio Declaration on Environment and Development” recognized that ‘access to information on the environment, including information held by public authorities’, is the ‘key to sustainable development and effective public participation in environmental governance’²⁴.
2. **Universal Declaration on Human Rights, 1948:** In order to remove the shortcomings of the UN Charter, a Commission on Human Rights in 1946 was established. It was adopted on December 10,

¹⁵*Sakal Papers Ltd. vs. Union of India*, AIR 1962 SC 305.

¹⁶*Romesh Thapper vs. State of Madras*, AIR 1950 SC 124.

¹⁷Article 19(2) of the Constitution of India.

¹⁸*Vikas Kumar and Shashank Manish – Gujarat National Law University, Right to Know and Right to Information*, (Jul. 16, 2020, 07:30 PM), <http://www.legalserviceindia.com/article/188-Right-To-Information.html>.

¹⁹**Constitutional Perspective on the Right to Know**, (Jul. 26, 2020, 01:23 PM), [https://www.lawteacher.net/free-law-essays/constitutional-law/constitutional-perspective-on-the-right-to-know-constitutional-law-essay.php#:~:text=Article%2019\(1\)%20\(a,to%20free%20speech%20and%20expression.&text=Therefore%2C%20the%20Right%20to%20Information,to%20receive%20and%20collect%20information.](https://www.lawteacher.net/free-law-essays/constitutional-law/constitutional-perspective-on-the-right-to-know-constitutional-law-essay.php#:~:text=Article%2019(1)%20(a,to%20free%20speech%20and%20expression.&text=Therefore%2C%20the%20Right%20to%20Information,to%20receive%20and%20collect%20information.)

²⁰AIR 1989 SC 190.

²¹AIR 2004 SC 1442: (2004) 2 SCC 476.

²²AIR 2005 Kant 21.

²³Chapter two, *International and Constitutional Perspective of the Right to Information*, (Jul. 26, 2020, 01:23 PM), https://shodhganga.inflibnet.ac.in/bitstream/10603/147275/6/06_%20chapter-2.pdf.

²⁴*Ibid.*

1948. Article 19 of the Declaration states that everyone has the right to freedom of opinion and expression and this right includes freedom to hold opinions without interference and of association²⁵.

3. **International Covenant on Civil & Political Rights (1966):** Article 19(1) of the International Covenant on Civil and Political Rights in 1966 provides that “everyone shall have right to hold opinions without interference”, whereas sub-clause (2) states that: “everyone shall have right to freedom of expression which includes freedom to seek, receive, and impart information and ideas of all kinds regardless of frontiers, either orally or in writing, or in print, or in the form of art or through any other media.” Sub-clause (3) provides certain restrictions on rights specified in sub-clause (2)²⁶.
4. **Bangkok Declaration, 1967:** In 1967, the Association of South East Asian Nations in Asia Pacific adopted “Bangkok Declaration” and accepted to grant people the right to official information. All information held by public bodies is open and disclosable and exceptions should be defined and specified in the law itself. It laid more importance on obligation of maximum disclosure of information by the public bodies and every citizen has a corresponding right to receive information available in records, from the public bodies²⁷.
5. **American Convention on Human Rights, 1969:** The Organisation of American States (OAS) adopted an internationally binding treaty known as the “American Convention on Human Rights”, in the year 1969, which, among various other rights, conferred right to information and exchange of ideas, thoughts etc. regardless of frontiers²⁸.
6. **African Charter on Human and Peoples’ Rights, 1981:** Article 9 of this Charter provides for right to information²⁹. It says that: “Every individual shall have the right to receive information”³⁰ and “every individual shall have the right to express and disseminate his opinions within the law”³¹.
7. **Commonwealth Principles and Guidelines on Right to Information, 1999:** The Commonwealth Principles and Guidelines on Right to Information, was adopted in 1999³². It allowed every individual access to records and information held by the executive, legislative and judicial organs of the State, as well as any government owned body or corporation carrying out public functions. However, ‘reasonable restrictions’ such as national defence and security, law enforcement,

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ Article 13(1), *Freedom of Thought and Expression: AMERICAN CONVENTION ON HUMAN RIGHTS*, (Jul. 29, 2020, 08:40 PM), <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>.

²⁹ *African Charter on Human and Peoples’ Rights*, (Nov. 09, 2020, 08:40 PM), <https://www.achpr.org/legalinstruments/detail?id=49>.

³⁰ Article 9(1), *African Charter on Human and Peoples’ Rights*, (Nov. 09, 2020, 08:40 PM), <https://www.achpr.org/legalinstruments/detail?id=49>.

³¹ Article 9(2), *African Charter on Human and Peoples’ Rights*, (Nov. 09, 2020, 08:40 PM), <https://www.achpr.org/legalinstruments/detail?id=49>.

³² *PROMOTING OPEN GOVERNMENT COMMONWEALTH PRINCIPLES AND GUIDELINES ON THE RIGHT TO KNOW*, (Nov. 09, 2020, 09:40 PM), https://www.humanrightsinitiative.org/programs/ai/rti/international/cw_standards/commonwealth_expert_grp_on_the_rti_99-03-00.pdf.

commercial confidentiality, personal privacy etc. were imposed on disclosure of some information. The guidelines were inserted for the purposes of inter alia to promote a “culture of openness, publicly disseminating information related to the exercise of their functions and the information held by them”³³.

8. UN Principles on Freedom of Information, 2000: The United Nations General Assembly laid down certain principles³⁴ on freedom of information, which the member States were expected to incorporate in their law relating to freedom of information. The principles were originally adopted in 1999 but later on updated in 2015. There are 9 principles which are as follows:

- Maximum Disclosure³⁵
- Obligation to Publish³⁶
- Promotion of open Government³⁷
- Limited Scope for Exceptions³⁸
- Processes to facilitate access³⁹
- Individuals should not be deterred from obtaining public information by costs⁴⁰
- Meetings of public bodies to be open to public⁴¹
- The law relating to RTI to take precedence over other Legislation⁴²
- Protection for whistleblowers⁴³

HISTORY AND DEVELOPMENT OF RIGHT TO INFORMATION ACT, 2005

Suppression of information, press censorship and abuse of authority during the Internal Emergency of 1975-77 resulted into public resentment which paved the way of right to information for the first time as a political commitment to the citizens during the time of Lok Sabha Elections in 1977 when Morarji Desai, the leader of the Janata Party promised to the citizens “an open government”. A working group was constituted to modify the Official Secrets Act, 1923, to facilitate the greater flow of information to the public⁴⁴.

In 1989, the National Front Government also committed to “open government”, and declared that people’s right to information shall be guaranteed through Constitutional provisions. But there was no arrangement for transparency and openness in governmental functioning due to the fall of the National Front Government⁴⁵.

Subsequently, the National Agenda for Governance of the coalition government called National Democratic Alliance (NDA) also announced to the people to give a “stable, honest, transparent, and efficient government capable of accomplishing all-round development”. In pursuance with this commitment, the

³³ *Ibid.*

³⁴ *Article 19: The Public’s Right to Know: Principles on Right to Information Legislation, (Nov. 09, 2020, 09:00 PM), https://www.article19.org/data/files/RTI_Principles_Updated_EN.pdf.*

³⁵ *Ibid. (Principle 1)*

³⁶ *Ibid. (Principle 2)*

³⁷ *Ibid. (Principle 3)*

³⁸ *Ibid. (Principle 4)*

³⁹ *Ibid. (Principle 5)*

⁴⁰ *Ibid. (Principle 6)*

⁴¹ *Ibid. (Principle 7)*

⁴² *Ibid. (Principle 8)*

⁴³ *Ibid. (Principle 9)*

⁴⁴ *Chapter-I Right to Information: Historical Background and Perspective, (Jul. 29, 2020, 08:40 PM), https://shodhganga.inflibnet.ac.in/bitstream/10603/32397/7/07_chapter%201.pdf.*

⁴⁵ *Ibid.*

Freedom of Information Act, 2000 was passed by the then NDA Government. Meanwhile, some states in India started enacting their own laws relating to right to information (RTI), i.e., Goa (1997), Tamil Nadu (1997), Rajasthan (2000), Maharashtra (2000), Karnataka (2000) and Delhi (2001). Madhya Pradesh also issued wide-ranging administrative directives on dissemination of information upto the level of Gram Panchayats. The Freedom of Information Act, 2002 evoked a lot of controversy on various issues, for example, (a) exemption from disclosure “information exchanged in confidence between the Central and State governments or any of their authorities or agencies,” (b) no provision for penalties against the officials for violation of law, refusal to provide information or give false, misleading or incomplete information, (c) non-applicability of the Act to the private sector.

There are already many Indian laws which provide for the right to information. For example, Section 76 of the Indian Evidence Act, 1872, requires public officials to provide copies of public documents to anyone who has a right to inspect them. The Factories Act, 1948 provides for compulsory disclosure of information to factory workers “regarding dangers including health hazards and the measures to overcome such hazards”, arising from their exposure to dangerous materials. But the system of governance in India has always been obscure, because of the continuation of Official Secrets Act (OSA) of 1923 at the administrative level. But illiteracy, absence of effective communication tools, poor standard of record-keeping – obstruct the flow of information. Besides this, government offices refuse access to records by giving the general public an excuse that the records/ information are ‘misplaced’. Technological advancements demand an improved flow of information⁴⁶. So, these were the situations before the RTI Act, 2005.

In the early-1990s, in Rajasthan, the Mazdoor Kisaan Shakti Sangathan (MKSS) started demonstrating the importance of information through public hearings or ‘Jan Sunwais’. It demanded transparency of official records and a social audit of government spending. The National Campaign for People’s Right to Information (NCPRI) formed in the late 1990s gathered momentum. The Press Council of India drew up the first major draft legislation on the right to information in 1996. This affirmed the right of every citizen to information from any public body. Next the Consumer Education Research Council (CERC) draft came, which is regarded as the most detailed proposed freedom of information legislation in India. In 1997, a conference of chief ministers resolved that the central and state governments would work together on transparency and the right to information⁴⁷.

Lastly, the RTI was drafted by the UPA Government but was subject to heavy criticism. It was finally passed in the year 2005 after 150 amendments⁴⁸.

IMPORTANT PROVISIONS OF THE RIGHT TO INFORMATION ACT, 2005

Section 2 (b), (c) & (d) of the Act defines the terms ‘Central Information Commission’, ‘Central Public Information Officer’ which includes a ‘Central Assistant Public Information Officer’ and also ‘Chief Information Commissioner’ and ‘Information Commissioner’ for the purpose of filing RTI application. Section 3 of the Act provides that this right is available to all the citizens of India. Section 4 of the Act mandates every public authority to take steps to provide as much information as possible by maintaining and publishing records, to the general public at regular intervals through various modes of communication including using internet, so that the public gets benefit from the Act to obtain information. Section 6

⁴⁶*Ibid.*

⁴⁷*Ibid.*

⁴⁸*Lovina B Thakker, Right To Information Act, 2005, All You Need To Know, (Jul. 29, 2020, 10:17 PM), <https://www.livelaw.in/know-the-law/right-to-information-act-2005-all-you-need-to-know-159485>.*

provides for the procedure of making a request for obtaining information. Section 8 (1)(a)-(j) of the Act exempts some information from disclosure to the public, for example, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence, which is expressly forbidden to be published by any court of law or tribunal or which may constitute contempt of court; or which would cause a breach of privilege of Parliament or the State Legislature; etc. Section 9 specifies the grounds for rejection to access information in certain cases. Chapters III & IV deal with constitution of the 'Central Information Commission' and the 'State Information Commission' respectively. Section 18 deals with the power and function of the Information Commissions. Section 19 deals with appeal and section 20 provides for penalty for non-disclosure of disclosable information within time. Section 22 states that "the provisions of this Act shall have effect notwithstanding anything inconsistent there with contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act". Section 24 states that this Act shall not apply to the intelligence and security organisations specified in the Second Schedule of this Act, (e.g. Intelligence Bureau, BSF, Research and Analysis Wing of the Cabinet Secretariat, Directorate of Revenue Intelligence, Assam Rifles and other organisations mentioned in that Schedule), being organisations established by the Central Government, or any information furnished by such organisations, to that Government, unless such information concerns corruption and violation of human rights. Section 31 repeals the Freedom of Information Act, 2002.

AMENDMENT OF RTI ACT, 2005 IN THE YEAR 2019:

Recently the Right to Information (Amendment) Bill, 2019 amended 3 sections, i.e., Sections 13, 16 & 27. It changes the terms and conditions and salaries and allowances of service of the CIC and Information Commissioners at the Centre and in states. The RTI (Amendment) Bill, 2019 empowers the Union Government to decide and notify the terms of these offices and their salaries, allowances and other terms and conditions of service of the central and state CIC and ICs shall be determined by the Union government. Another important change is regarding pensions, or other retirement benefits etc. Under this condition, as per the original Act if CIC and ICs (at Union and state level) are the recipient of pension or any other retirement benefits on account to their services to the previous government (such as service under Union government, state government and Union or state level Corporation or Company) their salaries will be reduced by an amount equal to that pension. The proposed amendment bill removes these provisions.⁴⁹

PROCEDURE OF FILING RTI APPLICATION

The Act has established a 3-tier structure for enforcing the right to information. Public Authorities appoint some of their officers as Public Information Officers. The first step is to request/ application for information to be sent to the Central/State Assistant Public Information Officer and Central/State Public Information Officer, designated by the Public Authorities. Then, appeals from their (CAPIO/SAPIO and CPIO/SPIO) decisions are to be sent to the Appellate Authority. Thereafter, appeals against the order of the Appellate Authority go to the State Information Commission (SIC) or the Central Information Commission (CIC). These Information Commissions consists of a Chief Information Commissioner, and up to 10 Information Commissioners.⁵⁰

⁴⁹ *Changes in Right to Information, 2005, Explained*, (Jul. 29, 2020, 11:40 PM),

<https://www.timesnownews.com/india/article/changes-in-right-to-information-rti-act-2005-explained/457834>.

⁵⁰ *Explainer: The Right to Information (Amendment) Bill, 2019*, (Jul. 29, 2020, 11:40 PM),

<https://www.prsindia.org/theprsblog/migration-india-and-impact-lockdown-migrants>.

A citizen of India who is desirous to obtain information has to file an RTI application (online/ offline) under this Act which can be either online or offline.

Online filing of RTI⁵¹: One has to open RTI Online website⁵² and after following the guidelines and reading the instructions one has to fill-up the form and after completing the form, has to pay Rs. 10/- online. If the applicant is below poverty line (BPL), the application fee may be waived off by uploading a scanned copy of his/her BPL card/certificate. After successful payment a registration number will be generated, which can be used in future for checking the status of the application. After successful completion of procedure, the applicant will receive an e-mail and SMS on submission of the application.

Offline filing of RTI⁵³: It is worthy to be mentioned here that an RTI application can be filed either in handwritten format or may be typed in English, Hindi or in the official language of the applicant's area. There is no specific format for RTI application but some states have a pro-forma which needs to be followed while writing / typing an RTI application. All the details, e.g., full name, address, contact details etc. of the applicant and date should be mentioned. The application should be addressed to the concerned State or Central Public Information Officer and 'Seeking information under the RTI Act - 2005' should be mentioned in the subject line⁵⁴. The application should contain a detailed and specific question mentioning the year or period. If anyone requires a document or its excerpt, he/she has to pay a nominal charge of Rs. 2/- Rs. 10/- in cash or through bank draft or money order or court fee stamp has to be paid. On producing proof, BPL candidates are exempted from paying the fee. The application may be sent by mail or handed it over at the office personally. The applicant should keep a photocopy of the request and receive an acknowledgement from the office. The concerned office must respond to the request within 30 days if the application is filed with the PIO. Information has to be made available within 35 days if application is filed with the Assistant PIO and has to be made available in 48 hours if the information sought affects the life and liberty of an individual⁵⁵. The applicant may also file an appeal to the 'The Appellate Authority' which must also respond within 30 days.

RIGHT TO INFORMATION AND RIGHT TO PRIVACY

The relationship between right to privacy and right to information is a matter of considerable debate around world. Right to privacy and RTI are described as "two sides of the same coin", because both mainly act as 'complementary rights' that promote "individuals' rights to protect themselves" and to promote "government accountability"⁵⁶. The right to privacy is inherent in all human beings which is implicit under Article 21 of the Indian Constitution. In *Kharak Singh vs. State of U.P.*⁵⁷, the petitioner was charged and tried by the police to domiciliary visits and surveillance. While determining the validity of such visits and surveillance by the police, the Apex Court examined whether the right to privacy is a part of personal liberty and held that right to privacy is in the right to life in Article 21 of our constitution. In *People's Union for Civil Liberties vs. Union of India*⁵⁸, the Supreme Court observed that right to life and personal liberty

⁵¹Shubham Aparajita, *File RTI Application: Complete Guide for Online and Offline Process*, (Jul. 29, 2020, 11:20 PM), <https://techwelkin.com/file-rti-application-complete-guide>.

⁵²RTI Online, (Jul. 15, 2020, 07:35 PM), <https://rtionline.gov.in/>.

⁵³BI India Bureau, *how to file RTI online and offline*, (Jul. 29, 2020, 11:20 PM)

https://www.businessinsider.in/india/article/how-to-file-rti-application-step-by-step/amp_articles/72054100.cms.

⁵⁴*Ibid.*

⁵⁵Shubham Aparajita, *Supra note 24*.

⁵⁶VratikaPhogat, *Right to Information in Consonance with Right to Privacy*, (Jul. 14, 2020, 11:40 PM),

<https://cic.gov.in/sites/default/files/Internship%20Research%20Paper-%20Vratika%20Phogat.pdf>.

⁵⁷AIR 1963 SC 1295.

⁵⁸(2004) 1 SCC 712.

includes the right to privacy which includes telephone conversation in the privacy at home or office and thus telephone tapping violates Article 21 of Constitution. *In R. Rajagopal vs. State of T.N.*⁵⁹ popularly known as “Auto shanker case”, the Supreme Court held the “right to privacy” or the “right to be let alone” is guaranteed by Article 21 of the Constitution. A citizen has a right to safeguard the privacy of his own his family, marriage, procreation, motherhood and child-bearing among other matters.

Right to privacy in conflict with right to information: In spite of being in complementary position, RTI and the right to privacy both are in conflict. While RTI increases access to information, the right to privacy veils it instead. At the same time, they both function as citizen-rights safeguarding liberty against state overreach⁶⁰. If there is a clash between the right to privacy and the right to live a healthy life – the right which advances the public interest, alone be enforced⁶¹. The chief ambition of the Indian Constitution is based upon “Balance of Rights” but there is no yardstick to gauge which right should prevail over other in case of clash or conflict⁶². Section 8(1)(j) of the RTI Act explicitly exempts disclosure of personal information, but for the sake of public interest which warrants disclosure of such information to an applicant by the public authority the right to privacy may be dismissed. In case of collision between the two fundamental rights, it is necessary to resolve the conflicts between these two rights and maintain balance between them to protect and promote the interest of human rights. In the case of the *Institute of Chartered Accountants of India vs. Shaunak H. Satya and Ors.*⁶³, the Apex court observed that “Authorities shall maintain proper balance so that while achieving transparency, demand for information does not reach unmanageable proportions affecting other public interests.”⁶⁴

RTI VS. NON-DISCLOSURE

Non-disclosure permissible under various Acts:⁶⁵

- The Indian Evidence Act (Sections 123, 124, and 162) provides to hold the disclosure of documents.
- The Atomic Energy Act, 1912 provides that it shall be an offence to disclose information restricted by the Central Government.
- The Central Civil Services Act provides a government servant not to communicate or part with any official documents except in accordance with a general or special order of government.
- The Official Secrets Act, 1923 provides that any government official can mark a document as confidential so as to prevent its publication.

ANALYSIS:

After the RTI Act, 2005 came into force, 15 years have passed. Time has come to evaluate the working of the Act – its success, failure and recent amendment of some of its provision. Has the Act proved itself as a

⁵⁹ (1994) 6 SCC 632.

⁶⁰ Opinion| *The right to privacy and right to information*, (Jul. 28, 2020, 08:13 PM), <https://www.livemint.com/Opinion/6tqMxfqtGJyCqTyuKT6PhK/Opinion--The-right-to-privacy-vs-right-to-information.html>.

⁶¹ Vratika Phogat, *Right to Information in Consonance with Right to Privacy*, (Jul. 14, 2020, 11:40 PM), <https://cic.gov.in/sites/default/files/Internship%20Research%20Paper-%20Vratika%20Phogat.pdf>.

⁶² Ms. Gauri Suri & Ms. Ruhi, *RTI & Right to Privacy; Congruence or Conflict*, Vol. II, Issue II, ISSN: 2581 6713, (Jul. 28, 2020, 11.05 PM), <https://fastforwardjustice.com/rti-and-right-to-privacy-congruence-or-conflict/>.

⁶³ (2011) 8 SCC 781.

⁶⁴ Ms. Gauri Suri & Ms. Ruhi, *RTI & Right to Privacy; Congruence or Conflict*, Vol. II, Issue II, ISSN: 2581 6713, (Jul. 28, 2020, 11.05 PM), <https://fastforwardjustice.com/rti-and-right-to-privacy-congruence-or-conflict/>.

⁶⁵ *Right to Information*, (Jul. 28, 2020, 11.05 PM), <https://www.drishtiiias.com/to-the-points/paper4/right-to-information-1>.

strong legislation for attaining the ambitions of transparency of public authorities, accountability of officers, openness of administration and participation of public?

Long before the Act of 2005, the Supreme Court of India in its various judgments has reiterated that right to freedom of speech and expression includes right to information which acts as a safeguard against oppression and corruption and is necessary for a transparent and accountable government.

In *Bennett Coleman vs. Union of India*⁶⁶, the right to information was held to be included within the right to freedom of speech and expression guaranteed by Article 19 (1)(a) of the Constitution of India.

In the *State of U.P vs. Raj Narain*⁶⁷, Mr. Justice Mathew stated that it is not in the interest of the public to 'cover with a veil of secrecy' the common routine business. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.

It was held in *S.P. Gupta vs. Union of India*⁶⁸, that the citizens' right to know the true facts, about the administration of the country is 'one of the pillars of a democratic State'. And that is why the "demand for openness in the government is increasingly growing in different parts of the world."

The Supreme Court held in *Life Insurance Corporation of India vs. Manubhai D. Shah*⁶⁹, that LIC must function in the best interest of the community and the community is entitled to know as to whether LIC is functioning as per statute or not.

In *Secretary, Ministry of I & B, Government of India vs. Cricket Association of Bengal*⁷⁰, the Supreme Court held that the right to impart and receive information from electronic media was included in the freedom of speech.

In *People's Union for Civil Liberties vs. Union of India*⁷¹, the right to information was elevated to the status of a human right, necessary for making governance transparent and accountable.

After the enforcement of the RTI Act, 2005, has played a vital role in increasing transparency and accountability for citizens, like, Adarsh scam⁷², the 2G Spectrum sale⁷³, the 2008 Commonwealth Games⁷⁴,

⁶⁶ AIR 1973 SC 60.

⁶⁷ (1975) 4 SCC 428.

⁶⁸ AIR 1975 SC 685.

⁶⁹ AIR 1993 SC 171.

⁷⁰ (1995) 2 SCC 161.

⁷¹ 2004 (2) SCC 476.

⁷² RTI activists Simpreet Singh and Yogacharya Anandji exposed how politicians, bureaucrats and military officials had disobeyed rules to acquire flats below market rates and also revealed that land did not belong to the government of Maharashtra, but to the Ministry of Defence under the Central Government.

⁷³ RTI filed by activist Subhash Chandra Agarwal revealed that in telecom sector at the time of auctioning the 2G spectrum, top ministers colluded to undercharge certain mobile phone companies, allocating the frequencies in exchange for bribes. Lovina B Thakker, *Supra* note 21.

⁷⁴ RTI filed by a non-profit organization revealed that the Delhi Government had diverted Rs. 744 Crore from funds for the welfare of the Dalit community to the Commonwealth Games. The funds were used in a way of money-laundering and corruption. Suresh Kalmadi, the chief organizer of Commonwealth Games was arrested. Lovina B Thakker, *Supra* note 21.

Anil Agarwal's university⁷⁵ and Demonetization without approval of Reserve Bank of India⁷⁶, etc⁷⁷. Before this Act, 'secrecy' was a pillar of government functioning⁷⁸. All information used to be kept in secret unless there was dire need to release the same. All information used to be given at the discretion of the Govt. officials. There was no weapon to the citizens against non-disclosure of information. But now transparency is a "precondition to good governance"⁷⁹. Right to information is now a legally enforceable right. Now there is provision for penalty for nondisclosure. All info is available to the citizens, unless there are strong reasons for denying it. Thus, the outlook has changed after enactment of RTI.

In *Bhagat Singh vs. CIC*⁸⁰, the Court took a serious note on two-year delay in releasing information, lack of adequate reasoning of Public Information Officer and the Appellate Authority and lack of applying mind regarding the nature of information sought by the petitioner. The claim for exemption for disclosure of information was held untenable in this case.

In *Adesh Kumar vs. Union of India*⁸¹, the CPIO denied the information as sought for by the petitioner claiming that the same was exempt from disclosure under Section 8(1)(h) of the Act. But the Delhi High Court held that a citizen has a right to information by virtue of Section 3 of the Act and the same is not conditional on the information being relevant.

In *CBSE vs. Aditya Bandopadhyay*⁸², the issue before the Supreme Court was whether a student-examinee's right to information includes his right to inspect his evaluated answer-scripts and taking certified copies thereof which were denied on the ground of exemption from disclosure due to fiduciary relations. But the Court held that corrected answer sheets are information which should be provided to students who seek them under RTI.

In *Girish Ramchandra Deshpande vs. Central Information Commission &ors.*⁸³, the issue was whether information about a Public Servant in respect of his service career, details of his assets and liabilities, properties, can be denied on the ground of exemption in clause (j) of Section 8(1) of the RTI Act. The Court held that these are personal information of a Public Servant and hence are exempted from disclosure⁸⁴.

However, the recent amendment (in 2019) has become controversial as the ICs might be cautious of their master under whom they function because the Act is no longer the boss, but the Government. Independence, in these circumstances, may be at risk because ICs in the country will now be under the risk of removal for

⁷⁵ Land acquisition was challenged. The land-owners obtained a document under the RTI which showed that they were not given them an opportunity to be heard before land-acquisition. The Orissa High Court held the acquisition "violated the human rights and fundamental rights" of the land owners and land to be returned to them.

⁷⁶ RTI filed by activist Venkatesh Nayak revealed that RBI did not agree with De-monetization policy declared by P.M Narendra Modi. Lovina B Thakker, *Supra* note 21.

⁷⁷ Right to Information: The Promise of Participatory Democracy and Accountability, (Jul. 16, 2020, 08:23 PM), <https://www.epw.in/engage/article/right-information-promise-participatory-democracy>.

⁷⁸ Prof. A Subrahmanyam, *EVOLUTION OF RIGHT TO INFORMATION IN INDIA*, (Jul. 26, 2020, 01:23 PM), http://www.aphrdi.ap.gov.in/documents/Trainings@APHRDI/2017/1_jan/RTI/Subramanyam.pdf.

⁷⁹ *Ibid.*

⁸⁰ W.P (C) No. 3114/2007

⁸¹ W.P (C) No. 3543/2014 (High Court of Delhi).

⁸² (2011) 8 SCC 497.

⁸³ (2013) 1 SCC 212.

⁸⁴ Shailesh Gandhi, *Supreme Court Judgments On Right To Information Act 2005: An Analysis By Former CIC Chairman*, (Jul. 14, 2020, 11:38 PM), <https://thelogicalindian.com/legal/supreme-court-judgements-rti/>.

recalcitrance. This may not necessarily happen but there would always be a possibility that the Government would feel that an IC has overstepped the boundary and deserves to be removed. This may have negative effect in the delivery of information⁸⁵.

DRAWBACKS:

- **Attacks on RTI activists:** Many incidents of attacks on RTI activists have proved how vulnerable they are. Many RTI activists are killed, many are missing. Media has reported that 84 activists are killed and many are missing⁸⁶. If their lives are not secured, question arises how the rights of general public will be secured? Why they have to sacrifice their own lives for obtaining information from the government administration?
- **Misuse of RTI:** Misuse of RTI may be a reason for threats to RTI activists⁸⁷. For example, there are number of applicants who demand irrelevant or frivolous information. Such a selfish and unintelligent use of the Act will defeat the purpose and objectives of the Act. The Act may be misused by people interested in gathering evidence in their litigation cases.
- **Lack of awareness and education:** Though the Act has proved to be a powerful weapon in the hands of the citizen but there is still lack of awareness and lack of education which are the hindrances between the citizens and the exercise of this right. For example, most of the people have no idea what to do if after submitting an application for voter ID card or Aadhar card, they don't get it after waiting so long and visiting the office for several times and what the procedure is. Now, in this situation the Govt. officials may demand bribe from innocent people for accelerating the process of the application. So, there should be more awareness-programmes, seminars, workshops and any other means to increase the awareness for RTI. Moreover, there is a lack of sincerity on the part of government officials in disclosing information, who often threaten the applicant or refuse to provide information⁸⁸. Additionally, there is lack of manpower required to comply with all the provisions of the Act.

CONCLUSION

The RTI Act, 2005 is a path-making legislation to bring into light the secrecy of administration and fight against corruption⁸⁹. Over the past few years, the Act has gained increasing prominence in protecting the human rights and the democratic discourse⁹⁰. Right to information is helpful for the growth of good governance and inclusive democracy. In practical terms, governance is strengthened by the existence of a right to information. Democracy is founded on the notion of an informed public that is able to participate thoughtfully in its own governance. It is also a key mechanism for ensuring transparency and is a proven

⁸⁵Ramanath Jha, *Right to Information: Transparency, governance and democracy*, (Jul. 16, 2020, 08:19 PM), <https://www.orfonline.org/expert-speak/right-to-information-transparency-governance-and-democracy-54142/>.

⁸⁶Maninder Dabas, *84 Activists Killed, Many More Are Missing Or Threatened; Now The RTI Itself Is Under Threat*, (Jul. 30, 2020, 11:15 PM), <https://www.indiatimes.com/news/india/84-activists-killed-many-more-are-missing-or-threatened-now-the-rti-itself-is-under-threat-372277.html>.

⁸⁷Prakhyat Prakash Mishra, *DEATH FOR DATA: ANALYSING ADVERSITY OF RTI ACTIVISTS*, (Jul. 31, 2020, 08:15 PM), <https://cic.gov.in/sites/default/files/cic%20paper%20prakhyat%20mishra.pdf>.

⁸⁸Deeksha, Prince, and Sanya, *Right to Information*, (Jul. 14, 2020, 11:42 PM), <https://www.lawctopus.com/academike/right-information/>.

⁸⁹Dipali Singh, B.A.LL.B., *IVth Semester, School of Law, FIMT*, (Jul. 15, 2020, 08:26 PM), <https://cic.gov.in/sites/default/files/Impact%20of%20the%20Right%20to%20Information%20Act.pdf>.

⁹⁰*Right to Information: Strengthening Democracy and Development*, (Jul. 16, 2020, 08:13 PM), <https://humanrightsinitiative.org/programs/ai/rti/articles/RTI%20Paper%20-%202005%20Ombuds%20Conf.pdf>.

anti-corruption equipping parliamentarians, anti-corruption bodies (such as Ombudsmen)⁹¹. Information is said to be the “oxygen of democracy.”⁹² The purpose of achieving the aspirations of transparency, accountability, openness and participation, which are essential for democracy, is served to a great extent by the Right to Information Act, 2005. This Act is very helpful in promoting transparency and accountability. Citizens feel honored when they get to exercise their right to obtain the source of data. Not only that, they also know about their right to privacy. Thus, citizens get benefit in two ways: they get information through the RTI and protect their personal information under the privacy law⁹³. However, the lives of RTI activists should be protected so that they don't have to lose right to lives for securing right to information, because as stated earlier, the lives of RTI activists are at risk. Also misuse of the Act should be prohibited strictly. If this much is not secured then the RTI will become a toothless demon.

So, after careful examination of the Right to Information Act, 2005, it can be concluded here that, it will not be any exaggeration if we say that the right to information is indeed the custodian of democracy in India.

⁹¹ *Ibid.*

⁹² *Information is oxygen of democracy*, (Jul. 15, 2020, 07:35 PM), <https://www.dnaindia.com/india/interview-information-is-oxygen-of-democracy-1240101>.

⁹³ *Krishna Hari Baskota, Right to Information: A tool to strengthen democracy*, (Jul. 16, 2020, 08:15 PM), <https://thehimalayantimes.com/opinion/right-information-tool-strengthen-democracy/>.

**DEMOCRACY
AND
THE PANDEMIC**

PROSPECTS AND REALITIES OF DIGITAL DEMOCRACY IN INDIA: AN ANALYSIS WITH REFERENCE TO THE COVID-19 PANDEMIC

-Anushka Madhukar; Ishan Singh¹

ABSTRACT

Democracies entail a broad spectrum of situations and ideals, rather than a mere amalgamation of rigid structures and institutions. They encompass a set of values like equality, freedom and individualism on the one hand as well as power, constraints and responsibilities on the other. The adoption of these values is highly contingent upon the circumstances surrounding them. In light of the COVID-19 pandemic, democracies around the world have seen unprecedented changes in their core structures and functioning. One of the major changes that they have witnessed is the mass digitization of nearly all essential activities. In India, this transition was forced, and its haphazard execution strained an already over-burdened and insufficient infrastructure. However, digitization has also broadened avenues that can renew the relevance of the Indian democracy and, if implemented properly, can increase its longevity. The aim of this research paper is to highlight the indispensability of digital democracies as the next logical step in the evolution process. Through this, the paper also seeks to establish a consequential relationship between the pandemic and inception of a digital democracy. This paper is divided into different segments; the first segment comprises a comparative analysis between the existing forms of digital democracies in the developed and developing countries. Since the extent of existence of these digital democracies varies with social, economic and political conditions within a State, the aim of this segment is to effectively cull out and highlight particular elements of digitization that will be suitable for the Indian scenario.

The second segment focuses on domains such as citizen participation, migrant and women livelihood, green movements, education and social activism, all of which will heavily benefit with the advent of digital democracies. The paper will review the transitions that have taken place within these domains, the role that the pandemic has played in this transitory process and the problems posed by an unanticipated digitization. Further, it will analyse the scope of a wholesome implementation of digital processes to alleviate the said problems. The last segment of the paper deals with opportunities within the aforementioned domains that can effectively provide a strong foundation for the establishment of a newer form of democracy. For this purpose, the research paper has utilized secondary data from reputed sources. Lastly, the paper will also touch upon one of the major challenges to the implementation of digital democracies, which is the lag in institutional response. The pandemic has already nudged this system into motion, and it is onto itself to utilize it for the better or worse.

COMPARISON BETWEEN THE DEVELOPED AND DEVELOPING

This section seeks to trace the path of digitisation across various developed countries and explore the avenues that developing countries can, in this regard. Owing to constraints in terms of GDP, lack of

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advanced technology, low level of awareness, and lack of response and trust in institutional mechanisms, developing countries like ours face different uncertainties in the legislation and implementation of areas that might drastically change workflow.

Developed countries have widely utilised capital and investment from the market to facilitate the creation of a digital- friendly environment. From privatisation, to increased investment and incentives for private parties, the network and digital industry is one of the most intricately linked markets to governments and central establishments. In its suggestions to increase internet connectivity, the World Bank has sought to partner regions with private investors through the International Finance Corporation and Multilateral Investment Guarantee Agency mobilisations. However, as much as it seems like a successful multi-sector venture, it is simply too expensive and loss-making for its developing counterparts, where the COVID-19 pandemic has further intensified loss in our existing deficit budgets.²

Developing countries are also affected because the current pandemic has forced several sectors, including key government ones, to look towards digitisation. Without the proper facilities and knowledge, operating in a digital environment has negatively impacted overall functioning. This has brought to the forefront one outlook: digitisation is currently a necessary inconvenience that has to be harnessed to minimise any future inconveniences that might occur in a highly complex and linked environment.

One of the major accomplishments of digital democracy in developed countries that can be utilised by the developing world is the proactive role that digital media plays in opinion formation³. The increased polarisation within the developing society is an outcome of the overload of information that does not have any factual basis. In this regard, digital media with a subscription-based revenue model can rise as an alternative to mainstream media hence, becoming a source of credible information. This transformation is required as an informed citizen is one of the key foundations of any successful democratic setup.

EXPLORING VIABLE SECTORS FOR IMPLEMENTATION

This section explores the different opportunities that digitisation holds for various sectors of the Indian society. It also expands on the problems that the pandemic has caused, that can be successfully dealt with increased focus on digital expansion.

1. Citizen Participation

Citizens make up the backbone of a democracy. But in a country like ours, they also pose a severe disadvantage, owing to overpopulation and lack of education. Awareness about population control, education schemes and practices and dispensation of rights (to life, livelihood, food, etc.,) are all long-term processes that are undeniably and intricately linked. These processes can be accelerated by increasing citizen participation. The more engaged the demos, the easier it is for them to educate themselves, make demands and highlight grievances. This will consequently give rise to higher accountability on the part of the representatives since there is a direct relationship between the extent of digitisation and nature of direct, more accountable democracy. Digitisation becomes a key factor to the introduction of these changes and movements.⁴ Its sub themes include-

²M. L. Singla, *E-Governance – Transforming the National Bone Marrow*, 2 *Journal of Management Research* 65, 66-69 (2002)

³J. Anderson & L. Rainie, *Concerns about democracy in the digital age*, PEW RESEARCH CENTER (Jul. 18, 2020, 11:10PM), <https://www.pewresearch.org/internet/2020/02/21/concerns-about-democracy-in-the-digital-age/>

⁴Julie Simon et al., *Digital Democracy: the tools transforming political engagement*, NESTA (Jul. 15, 2020, 9:45PM), <https://www.nesta.org.uk/report/digital-democracy-the-tools-transforming-political-engagement/>

- forming a wide- ranging digital network
- increasing digital access
- creating a safe digital database

While India is one of the slowest among different post-colonial countries in terms of institutional digital adoption, there have been tremendous efforts to bring about a revolution in this aspect, particularly in the past decade. Starting with the digitising of various services like e-tendering and application and editing of government documents, it has brought in digital processes to a legal mainstream.

While these efforts have spread across various sections, there are some central spheres that continue to be neglected and hence, remain isolated and under- represented. Urban Local Bodies, women, rural and semi-urban minorities are some of the worst affected and the most neglected groups of people.⁵

In addition to this, the COVID-19 pandemic has further alienated them either through forced displacement to rural areas (with poor digital connectivity), disenfranchising ULBs while placing high degrees of responsibility on them and refusal to acknowledge or satisfactorily compensate the problems of women and minorities who have either been on the forefront of relief measures and/or have been severely affected by the lockdown. The pandemic has unequally affected a section of the population and it is of utmost importance to regain lost ground and to deliver on basic necessities and rights. Along with these efforts, digitisation as a continuous process must also remain uncompromised.

Some of the suggested measures that authorities can take to enhance citizen participation and help them overcome socio- economic obstacles include enhancing connectivity of Gram Panchayats and other ULBs. An effort to increase connectivity had been established under the ‘National Optical Fibre Network’, in October 2011 (later renamed the ‘Bharat Net Project’ and allocated under the Ministry of Electronics and Information Technology). This project was to be implemented in three phases. However, due to lack of funds, bureaucratic delays and a non- existent labour force, the project that had already been delayed by 90 months lays in limbo now. This project must be prioritised, to ensure safety under unforeseeable situations in the future and to promote wider outreach, while fully utilising the abilities of the 2.5 lakh local bodies present.

Another method is through increased sources for activism, suggestions and grievances. The Government website has pro-actively created a holistic environment and tried to open channels through polls, contests, webinars, etc. However, it can further expand its feedback mechanisms by incorporating various forms of virtual activism such as e-petitions. Incorporating these into the mainstream judicial system will benefit a large majority of under- represented population.

Lastly, there needs to be increased transparency and streamlining of digital services offered by the Government. This will not only help in transitioning to a paperless economy but also have wider access and outreach. If drafts, mandates, amendments, etc., are made available in a designated sphere and for a designated time, it will encourage participation and support. It will invariably also increase trust in the institutional mechanisms.

⁵*Public Administration in the Information Age: Revisited 123-140 (Ig Snellen et al. eds., 1st ed. 2012)*

2. Women participation

As mentioned, women, particularly those in rural and semi-urban areas are the most deprived of digital access, leaving them either at the behest of their domestic partners and/or other external parties. This, not only cripples, but it also regresses the movement to grant them equal rights and opportunities. Education and awareness about digital usage barely reaches them and under circumstances like the current pandemic, they remain the most financially and socially isolated. On one hand, while globally, women make up 69 per cent of health professionals and 88 per cent of personal care workers,⁶ on the other they are the most affected by uncertain circumstances and are left without remuneration. Digitisation can help by broadening their outreach and bringing their concerns to the forefront. It will also lead to steps towards improving their conditions by making them aware of their rights. In addition, they will find the support that is missing, particularly during times like these.

One of the important ways by which digitisation can be implemented is by increasing connectivity to rural areas, since most micro financing, co-operatives, and SHGs are based in rural and semi-urban areas. In addition, most women who seek financial stability benefit heavily from these micro-economies. Small and indigenous industries are often the only source of support for women-run households.

Health workers are a key factor and one of the most important links while dealing with the pandemic. They are not only certified but have cultivated trust with local residents and authorities that grant them more ready access and help the other parties trust them. However, in India, ASHA workers have faced intense struggles to acquire basic health kits for their field duties. This is despite their repeated pleas to authorities. ASHA workers, instead, should have been equipped with these supplies otherwise as well. In villages, and other areas with lack of access to proper medical facilities, ASHA workers act as the midwives, nurses and nutritionists, mostly at a paltry pay. So, it is of utmost importance to empower and support these bodies and to help establish this network even further, digitally.

Lastly, there must be increased representation in terms of civil society, activists, and other women-centric groups- particularly in the field of policy making. Here as well, digitisation can help bring them to the mainstream and highlight their problems, since they provide the ground-level analysis that even women representatives at the highest level fail to address.

3. Green Movement

India has been a hotbed for movements related to the environment. Dating back to the Bishnoi Movement in the 1700s, a spree of influential initiatives continued well into the latter part of the 20th century which included popular events like the Chipko Movement and Narmada Bachao Andolan. Further, in recent years, the Indian State has taken many bold steps towards a cleaner future. For example, there has been a 137% rise in the contribution of renewable energy sources in terms of installed capacities during the period of FY 2013-2014 to FY 2018-2019.⁷ The one unifying strand in all these initiatives is the enmass mobilisation of common people along with responsive governmental machinery. These components form the building blocks on which a functioning democracy thrives upon.

The present pandemic has radically shifted our perception of tools available for combating climate change. With an unprecedented volume of human activities such as financial, educational, recreational, etc., being

⁶Phumzile Mlambo Ngcuka, *How COVID-19 can bring gender justice*, UN WOMEN (Jul. 10, 2020, 10:12AM), <https://eca.unwomen.org/en/news/stories/2020/7/op-ed-joint-how-covid-19-can-bring-gender-justice>

⁷Sakshi Goyal, *India has the largest renewable energy expansion plan globally*, INVESTINDIA (Jul. 14, 2020, 4:57PM), <https://www.investindia.gov.in/sector/renewable-energy>

diverted to the digital space, environmental quality indexes have showcased a positive trend. Given the positives, this improvement has come at the cost of skyrocketing unemployment numbers, especially in the lower-income group. Further, the chance of abnormally high levels of carbon-related emission looms when the effect of the pandemic dwindles and the need for boosting the economy arises. The current pandemic has highlighted key areas where attention needs to be focused in order to make an effective plan of action in combating climate change given the questionable outcomes of the existing policy regime.

Digital democracy provides a three-fold solution in combating this problem by a dispensation of effective channels of communication for different stakeholders. Firstly, the citizen-government communication channel, bringing forth the problems faced by the masses due to various effects caused by environmental degradation will provide citizens with more incentives to take part in the decision-making process. Second, the influence of NGOs and activist groups working in the field will rise due to their broadened reach. Hence, these organisations will be able to bring forth a more effective form of civil society by acting as an additional instrument of checks and balances to the governmental machinery. Lastly, digitisation will provide the government with a comprehensive ability to monitor the effects of its policy by creating large databases of various parameters explaining the conditions of the environment across time periods. This will, in turn, form a nearly instantaneous feedback loop increasing responsiveness and accountability.

4. Migrants⁸

COVID-19 has been the most turbulent for the migrants in India. Since the announcement of the first lockdown in the month of March, the lives of migrant labourers have been in constant flux. The loss of jobs accompanied by a shutdown of basic services such as ration shops put the population under immense stress. This stress and a feeling of uncertainty manifested itself into a mass exodus of a scale never seen before.⁹ In response, the government's policy to tackle this issue was based totally on a digital platform causing chaos among the migrant population which lacked relevant digital competency. The result was a lack of faith in government's initiatives producing sights where thousands of people were seen travelling on highways and railway tracks.

Digitisation of social services was not the problem that caused immense suffering to the lives of migrants, rather, the pattern of implementation was faulty. It is important to understand that the current situation is an emergency during which restricting people's option for availing of basic services is a road to disaster. In such scenarios, contingencies are required rather than a restricted method of identity authentication as well as complicated information forms. A wide range of methods for identity authentication provision and a basic simple information form could have eased the trouble for many people. One of the philosophies for incorporating digital infrastructure in policy enforcement is to ease the whole process, hence, making it easier for the intended recipient to reap the benefits.

Going forward, a digital democracy will require to be tailored keeping in mind every citizen's access to digital equipment and their level of operational understanding of it. In a country like India where the demography is not homogenous in the attainment of digital skills and equality is a fundamental right, a framework will be required to ensure that digital dispensation of basic social services to the underprivileged

⁸*Migration and Remittance Team, COVID-19 Crisis Through a Migration Lens: Migration and Development Brief 32 25-27 (World Bank, 2020)*

⁹*R. Mukhra et al., COVID-19 Sets off Mass Migration in India, SCIENCE DIRECT (Jul.27, 2020, 8:23AM), <https://www.sciencedirect.com/science/article/pii/S0188440920309401#bib5>*

remains friendly to the intended beneficiaries. Further, large scale awareness programs on digital literacy will be required to be initiated. This will provide employment opportunities for people to be trained as an instructor closely resembling the structure of an ASHA program.

5. Education

The education sector received one of the biggest shocks forcing it to implement drastic changes under this pandemic. Nearly all the people involved in this sector were affected by the lockdown. Uncertainty caused by the novelty of the situation led to immense mental stress. Eventually, teaching moved from a classroom to a digital space, but this transition was not smooth. Inadequate digital infrastructure was observed both on colleges' as well on the students' side. With no signs of relief, unreasonable expectations were placed on the pupils as well on the instructors for accommodating the new norm. This new form of education has been harsh on the students of lower economic strata, as for them, access to a separate digital device and a stable internet connection, are rare.

Tracing a path towards the future, e-learning can be envisioned as a horizon broadening endeavour. It should enhance the scope by providing an opportunity to learn from some of the best education material available while at the same time being easy to access, flexible in its course layout and affordable even for the weakest section of the society. Failing to achieve even one of these objectives might lead to the conversion of e-learning as an exclusionary structure responsible for repressing the underprivileged. Hence, a careful formulation of an action plan is required that will make sure that problems seen with e-learning during this pandemic are mitigated.

Lastly, with the implementation of the National Education Policy, 2020, opportunities for digital learning have increased exponentially. The core ideals of flexible and research-oriented education prescribed under the new regime will be benefitted by focusing our attention on online learning. The unparalleled ability of the internet to act as a medium of communication will unravel possibilities for students to explore research in vast groups consisting of people from various backgrounds. In terms of flexible education, it is important that the digital infrastructure is taken to its maximum potential by allowing students to enrol in degrees with floating course timelines.

On the side of administration, the admission process can be made more transparent and standardised by increasing the scope of institutions like the National Testing Agency (NTA). This can be carried out by including more institutions under its testing ambit. For the next phase after testing i.e., enrolment, student academic profiles can be retrieved by linking databases like the National Securities Depository Limited (NSDL) for making the process streamlined.

OPPORTUNITIES AND SUGGESTIONS

The previous section highlighted various situations under which digitisation and increased network connectivity will undeniably benefit the concerned parties,¹⁰ while also helping authorities streamline their services. Additionally, it is the most viable route towards a direct, more people-oriented democracy. This section further highlights opportunities that authorities can particularly explore, in the long run.

¹⁰World Bank Team, *Connecting for Inclusion: Broadband Access for All*, WORLD BANK (Jul. 29, 2020, 7:05PM), <https://www.worldbank.org/en/topic/digitaldevelopment/brief/connecting-for-inclusion-broadband-access-for-all>

- **Increase in IT Spending**

Owing to the pandemic, organisations including Gartner¹¹ have predicted that even though the overall expenditure on development of information technology will increase, (particularly in education, health, and service sectors), these will particularly be carried out by private industries and be primarily targeted towards AI, machine learning and virtual sales initiatives, rather than re-engineering and modernisation. This will provide an advantage to the existing base and further alienate the disadvantaged population. The government must increase its Information Technology expenditure to capture a larger base, and to advance its scope. This is intricately linked with the increased connection that will enable semi-urban and rural households to connect to a wider network and educate themselves in a rapidly digitising era.

- **Awareness about Cyber Laws**

In India, between 2012 and 2018, over ninety thousand cybercrimes were reported. In 2018 alone, twenty-seven thousand cases were reported¹², making it an exponential increase, despite India facing the problem of abysmal reporting numbers. Further, in 2019, there were 1161.81 million wireless mobile subscriptions in India¹³ and this number is expected to rise exponentially in the coming decades. Without instantaneous action, the number and complexity of cybercrimes can get out of control. Given the situation, the need to spread awareness about cyber laws is of paramount importance.

- **Preventing Internet Blackouts**

Since 2017, there have been 374 cases of internet shutdowns imposed by the government in India.¹⁴ Voices of the people should never be curbed through tools under the control of the government. Given the numbers, shutdowns have been a worrying trend and the prospects of increased reliance of democratic processes and institutions on digital infrastructure leave the system even more susceptible to authoritarianism. On the other hand, increased digitisation provides a solution to strengthen the democratic structure in our country as it will make it even more glaring when the basic services to the people are restricted. Hence, it is important that digital options are provided even to the farthest corner of the country.

- **Reducing last-mile costs**

Along with suitable infrastructure, there is a need to decrease the last mile cost of network services provided in addition to increased connectivity. This is important because mere availability will not ensure usage, it has to be accessible enough to be considered and used as a need, in place of a privilege. This can further be expanded into one of the SDGs of increasing ICT access to increase equality and promote inclusivity.

Some of the biggest challenges involved will be political in nature. With rise in online propaganda, declining reliability on the media and archaic data protection laws, exposing the Indian populace to digital modes of democratic participation may not only be harmful for them but also for the state of our democracy. Researches have highlighted those problems relating to data laws governing India are lagging in

¹¹Tanmay Tiwary, *IT spending in India to decline by 8% in 2020 due to Covid-19: Gartner, TECHCIRCLE (Jul. 06, 2020, 3:25 PM)*,

¹²Sandhya Keelery, *Number of cybercrimes reported in India 2012-2019, STATISTA (Jul. 07, 2020, 11:34 AM)*, <https://www.statista.com/statistics/309435/india-cyber-crime-it-act/>

¹³Telecom Regulatory Authority of India, *Annual Report (2018-2019)*, TRAI (Nov. 2019)

¹⁴INTERNETSHUTDOWNS (Jul. 07, 2020, 8:12 PM), <https://internetshutdowns.in/>

administrative and not technical areas. These need to be dealt with, and updated, before institutional and structural changes are put forward in the form of budgetary allocations to reduce inefficient utilisation of resources. Further, it is of utmost importance to improve digital literacy among legislators in order to explore the full potential of digital governance.

In addition, according to Telecom Regulatory Authority of India (TRAI), there are more than 30 million users of the internet in India. However, less than 10% of them have an internet connection that is stable enough to access the online Government Portal MyGov. This proves that even though digitisation is widespread, the quality of connection is strictly narrowband and insufficient.¹⁵

Lastly, there has been a sudden but exponential rise in online propaganda. This phenomenon has taken the world, not just our country, by shock and has made information extremely unreliable. Such tools of propaganda are becoming easier to make and more difficult to disprove, and hence, there needs to be an international multi-party collaborative effort which includes the governments as well as private players like Google, Facebook, etc. that frame stringent laws and regulate the online space. In this sense, information overload in tandem with lack of accountability is one of the biggest inhibitors of citizen trust.

CONCLUSION

In conclusion, along with the bright prospects of adoption of digital democracy in India there will exist various challenges during its implementation. It is of utmost importance that these challenges are recognised and dealt with. This is because the spread of digitisation is rapid and particularly important in populous countries like India where the only solution to the administrative challenges is digitisation. India, in particular, has a wide disparity when it comes to digital connect with a large population having access to the internet and being connected digitally but have lack of knowledge or sources of digital understanding to verify claims. This also translates to the lack of demand from the side of the citizens and consequently lack of accountability on the part of the legislators. Further, through increased digitisation, we have highlighted that the sectors that have most to gain are also the most vulnerable sectors of the economy. Digitisation has the power to accelerate the redistribution of income and welfare. However, as mentioned, some of the biggest problems and inhibitors to this policy will be administrative in nature and lack of political will.¹⁶ One of the significant problems that will arise will be the tendency of institutions to resist any drastic change in the pattern of functioning. Further, red-tapism will be required to be kept in check. The expansion of digital democracy will also lead to the exclusion of people during its developmental phase. Hence, a gradual transition is required for ensuring that digital infrastructure reaches every corner of our nation before any major digital policy reform. Finally, online propaganda is another problem that nations worldwide have faced and will be forced to deal with sooner or later. This can be dealt with faster and more comprehensively through multilateral international collaboration between nation-states and private parties.¹⁷

¹⁵M. L. Singla, *E-Governance – Transforming the National Bone Marrow*, 2 *Journal of Management Research* 65, 66-69 (2002)

¹⁶Phil Noble & Associates, *E-Democracy around the World 7-15* (Bertelsmann Foundation, 2001)

¹⁷Flavio Grazian & Hendrik Nahr, *Next Level Participation: Citizen-Driven E-Democracy Tools 38-44* (IvayloTsonev ed., *European Liberal Forum*, 2020)

RESTRUCTURATION OF LABOUR LAWS-AN EMPLOYEE CENTRIC APPROACH

-Neha Das¹

ABSTRACT

“Human rights are not privileges conferred by the Government. They are every human being’s entitlement by virtue of his entitlement.”

-Mother Teresa

At a time when a worker centric reform of labour laws is the need of the hour, several Indian states have rolled out ordinances providing exemptions to industries from complying with the labour laws that govern them. This was aimed at boosting the shaky economy which was a consequence of the Covid-19 mandated lockdown. While these measures will go a long way in reviving both existing and upcoming industrial establishments, the outcome of such a move is the absolute violation of fundamental rights of the workers. This, therefore, raises the question of constitutional validity of such laws.

The notifications issued by the State Governments to bring about market reforms by incentivizing investment post Covid-19 have transformed the basic framework of the labour welfare statutes in their entirety. The exemptions which have been unilaterally made valid for a period of three years, focus only on short term goals. Most labour laws have been suspended barring a few, consequentially paving way for unfair labour practices. In the absence of adequate and alternate mechanisms for industrial dispute resolution, the States do not have the authority to exempt industries from the only governing law. A liberal interpretation of social welfare statutes is the general rule and misuse of Section 5 of the Factories Act defeats the purpose as working hours have been extended to 12 hours, instead of eight, and weekly duty up to 72 hours; these regulations are to take effect for more than 90 days which is the rule laid down for exemption to the provision. Further, such an exemption can be given only during a ‘public emergency’ limited to situations of breach of security due to war or external aggression.

Uttar Pradesh has approved an ordinance vide which all labour laws except a few pertaining to the abolition of child and bonded labour, women employees, construction workers and payment of wages, besides compensation to workmen for accidents while on duty, would be suspended.

This is a gross misuse of legislative power and an example of overreach as the limits of law-making function have not been maintained nor any considerations have been made for the upliftment of the disadvantaged.

There is still assent that is required from the Centre on these ordinances and laws which go completely against the public interest and are repugnant to the Central law on the same subject. There is little possibility that the Centre would readily overshadow the legal safeguards available to the workers at the cost of the economy. After having failed the underprivileged section of the society and the migrant workers who were the worst affected during the lockdown, it is all the more essential to not turn a blind eye to their miserable condition.

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Withdrawal of the minimum safeguards by increasing daily working hours without due payment, puts the employees in a difficult position. This paper aims at analysing the amended state labour laws and providing suggestive measures to deal with the crisis without having to shift to a pure capitalistic model. Further, an attempt will be made to focus on a comparative analysis of the measures adopted by various countries to overcome the challenges posed to the labour industry post Covid-19.

INTRODUCTION

The COVID-19 situation forced the Indian government to declare a complete lockdown to contain the crisis and curb the furtherance of the spread of the deadly virus. The lockdown worsened the otherwise shaking economy in India. Industries and establishments were adversely impacted as there was a massive disruption in the demand-supply chain. This in turn affected the workforce as the shops and factories came to a standstill. In the current phases of Unlock (Post-lockdown), there is little or no incentive for foreign investors to utilize their resources at a time when the economy is at its worst.

REFORMS IN LABOUR LAWS

In light of the COVID-19 crisis, the Ministry of Finance announced reforms in various sectors.² In line with these reforms, several State governments brought about structural changes to ease the working of business entities and thereby giving an incentive to the investors within the State.³

The Uttar Pradesh Government proposed for a complete upliftment of the existing labour reforms barring a few exceptions. The vague ordinance worded "All factories and establishments engaged in the manufacturing process exempted from the operation of all Labour Laws for a period of three years".⁴ A similar trend was followed by the Gujarat government. There were major amendments to the existing laws by the Madhya Pradesh State government which were largely statute specific.⁵

A. Industrial Disputes Act

New factories will be exempt from all provisions of the Act, except:⁶

1. Chapter VA (lay-off, retrenchment, factory closures with not more than than 300 workmen);
2. Provisions of Chapter VB: Section 25N and 25O (permission for retrenchment and closure), 25P (Government's power to order commencement of factories), 25Q (penalty for lay off/retrenchment without permission) and 25R (penalty for closure), provided adequate provisions are made by such industries for the investigation and settlement of industrial disputes of the workmen employed by them. This exemption is for a period of 1,000 days.

B. Madhya Pradesh Industrial Relations Act, 1960

The provisions of the Industrial Relations Act have been relaxed till further orders for industries like textile, iron and steel, cement, leather, etc. This law deals with dispute resolution mechanisms, trade union recognition, notice of change, etc. for certain industries.

²Bibek Debroy, *The Covid-19 Crisis Provides The Opportunity to Initiate Land, Labour and Liquidity Reforms*, *THE ECONOMIC TIMES* (May 17, 2020, 11:24 PM IST) https://economictimes.indiatimes.com/news/economy/policy/view-the-covid-19-crisis-provides-the-opportunity-to-initiate-land-labour-and-liquidity-reforms/articleshow/75794289.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

³Press Release on Cabinet Decisions, Government of Uttar Pradesh, May 6, 2020.

⁴Notification No. 13/2020/502/36-03-2020-30(Sa.)/2020TC, Labour Department, Government of Uttar Pradesh, May 8, 2020.

⁵Notification No. 957-02-2020-A-16, Labour Department, Government of Madhya Pradesh, May 5, 2020.

⁶The Madhya Pradesh Labour Laws (Amendment) Ordinance, 2020, Madhya Pradesh Gazette, May 6, 2020.

C. The Indian Factories Act, 1948

Daily maximum working hour limits have been increased from 8 hours a day to 12 hours a day, to help make up for lost productivity. Overtime is allowed up to 72 hours a week. License renewals can be after ten years instead of one. All factories have also been exempted for three months from all provisions of the Factories Act other than relating to safety, leave with wages, overtime.

Likewise, similar changes were emulated by the State Governments of Maharashtra, Rajasthan, Haryana, Himachal Pradesh, Goa and Tamil Nadu to name a few, who aimed at restructuring the economy and gaining momentum. The rationale being if there are minimalistic pre-requisites and procedural compliances with a greater amount of discretion at the hands of the employer, it would in turn benefit and boost the economy manifold.

Section 65(2) of the Factories Act provides for the amending power to state governments to bring about changes under Sections 51, 52, 54 and 56 provided the number of working hours in a day should not exceed 12 hours and the total number of working hours in a week (includes overtime hours) should not exceed 60 hours. Most states have extended the total number of working hours in a week to 72 hours which is in direct contradiction to Section 65.

Further, a paradox exists in these amendments where the exemptions in a way vest the workers with a right, without a remedy. This essentially fails the golden rule of 'No right without a remedy'. The Uttar Pradesh State Government has not revoked the provision pertaining to the timely payment of wages; however, ironically it has exempted the remedy under the Payment of Wages Act. Gujarat has not rolled back the Industrial Safety Rules but it is unclear as to how the dispute resolution upon breach of such rules would function.

CONSTITUTIONAL ANALYSIS OF THE AMENDMENTS

With regard to the law-making power on matters relating to labour which are provided in Items 22, 24, 25 and 26 of the Concurrent List under the Seventh Schedule of the Indian Constitution, a combined reading of the same with Article 246(2)⁷ confers power on both the Central Government and the State Government to legislate on matters pertaining to labour. Further, any inconsistency that might arise between Central and State laws, Article 254(1)⁸ of the Constitution provides that the law made by the State, to the extent of the repugnancy, shall be void.

In *Deep Chand v. State of UP*⁹ and *M. Karunanidhi v. Union of India*¹⁰, the legal test required to determine repugnancy of a State law was laid down which is whether there is a direct conflict between the two provisions in such a manner that such inconsistency is absolutely irreconcilable and the inconsistency is of such a nature that it is impossible to obey one without disobeying the other?¹¹

The strategic move of coming out with ordinances that are in direct conflict with the existing Central laws, at a time when the Parliament is not in session is to exempt the application of the said Union laws in the

⁷Constitution of India; art. 246, cl. 2.

⁸Constitution of India. art. 254, cl. 1.

⁹*Deepchand v. The State of U.P (1959) 20Supp S.C.R. 8.*

¹⁰*M. Karunanidhi v. Union of India(1979) A.I.R. 898*

¹¹*Shreya Choudhury, Labour Reforms during Covid-19: A Critical Analysis, THE DAILY GUARDIAN (July 18, 2020, 6.27 A.M IST) <https://theguardian.com/labour-reforms-during-covid-19-a-critical-analysis/>.*

respective states and immediately implement the State notifications.¹² The Supreme Court and numerous High Courts have emphasized that the existing labour law framework is exhaustive in nature and the respective state governments should merely further the objectives enshrined in such laws while implementing the same, thus, giving a liberal interpretation.¹³

However, another rider with respect to the law-making power provided for under the Constitution is the limited discretion available to the President to give assent to such state law even if it is repugnant to a certain Central law. However, the Parliament can at any point of time in the future, subsequently enact a law amending the law so made by the respective State Government.¹⁴ In the present context, being aware of the repugnancy of the said ordinances, the state legislatures of Uttar Pradesh and Madhya Pradesh have sent it for Presidential assent. Ideally, it is highly unlikely for the President to approve, however in a situation where such assent is received by the state government on the ordinances, the same can be declared void by a subsequent repeal or amendment by the Central government.¹⁵ It is extremely agonizing that the labourers have been made a victim of the political power play which just adds on to their miseries.

The Code of Wages Act of 2019¹⁶ (which subsumed the Equal Remuneration Act, Payment of Wages Act, Payment of Bonus Act and the Minimum Wages Act) is yet to be operative and the same shall be possible after required notification of the Rules made thereunder and on implementation of the same, the recent ordinances passed by the State government to supposedly boost economic growth in COVID-19 scenario, will be declared void to the effect of that repugnancy. Furthermore, the proposed legislations with respect to occupational safety and health, industrial relations and social security will in effect render the State notifications void, in totality after coming into effect.

It is pertinent to note that the notifications and ordinances issued by the various State governments have been issued under section 5 of the Factories Act, which gives the power to State Governments to provide an exemption to industrial units from compliance with certain provision of the Factories Act during a situation of 'public emergency' for a period of 3 months.¹⁷ 'Public emergency' has been defined as 'grave emergency whereby the security of India or any part of the territory is threatened either by war or external aggression or internal disturbance'.¹⁸ The State governments constructed the provision liberally since the labor laws are beneficial legislation. However, the changes brought about are in benefit to the employers and not the employees per se who have been worst hit in the Covid-19 situation as the exemptions are arbitrarily extended for a prolonged period of 3 years which is in contrast to the conditions provided under Section 5 of the Act.

¹²*Suggested Labour Policy Reforms, Federation of Indian Chambers of Commerce & Industry, 2014.*

¹³Atul Gupta, *Labour Reforms In The Age Of Covid-19: What's The Right Balance?*, THE BLOOMBERG QUINT (May 13 2020, 3:45 PM) <https://www.bloomberquint.com/coronavirus-outbreak/labour-reforms-in-the-age-of-covid-19-whats-the-right-balance>.

¹⁴*Constitution of India; art. 254, cl. 2.*

¹⁵*Zaverbhai v. State of Bombay (1954) A.I.R. 752*

¹⁶*Report of the Second National Commission on Labour, Ministry of Labour and Employment, 2002.*

¹⁷M.R Madhavan, *Legal But Not Appropriate*, THE HINDU (May 12, 2020, 12:15 A.M), <https://www.thehindu.com/opinion/op-ed/legal-but-not-appropriate/article31560223.ece>.

¹⁸*Constitution of India; art. 19, cl. 1.*

The amendments brought about to the labour laws have far-reaching consequences and the short-term goal of removing an impediment to the growth of the economy will definitely backfire.¹⁹ Such unilateral suspensions of the labour laws vide State ordinances reinforce a degree of paternalistic behaviour of the Government. There have been recommendations from the employer's union to do away with major laws governing the labour sector in India.²⁰ Suggestions like waiver of wages during the period of lockdown by interpreting it as a period of lay off and a 4-hour increase of the working hours stipulated for workers bring to light the pitiable scenario that the labour force has become victims of.

Furthermore, to deal with a situation of shortage of manpower, states are proactively ensuring that the helpless migrant workers do not migrate back to their hometown as a reduction in the workforce would directly hamper the smooth functioning and resumption of construction activities. This is in direct contract with Article 19(1)(d) of the Constitution²¹ which guarantees to every individual the right to free movement throughout India. In these unprecedented times, there is an urgent need for some benefit to be meted out in favour of the employees and workers and this can be made possible through the MGNREGA scheme by catering to the employment of the migrant workforce.²²

There must be a beneficial construction of the ordinance since in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. v. The Management and Ors*²³, it was established that in construing the provisions of welfare legislation, courts should adopt what is described as a beneficent rule of construction. If two constructions are reasonably possible to be placed on the section, it follows that the construction which furthers the policy and object of the Act and is more beneficial to the employees, has to be preferred.

JUDICIAL PRONOUNCEMENTS

In *Bandhua Mukti Morcha v. Union of India*²⁴, Hon'ble J. Bhagwati was of a liberal opinion and interpreted Article 21 of the Constitution in the following words:

“It is the fundamental right of everyone in this country... to live with human dignity free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief.”

¹⁹Justice V Gopal Gowda, *Dilution of Labour Laws in Unconstitutional*, *THE NEW INDIAN EXPRESS*, (20 June 2020 04:00 AM) <https://www.newindianexpress.com/opinions/2020/jun/20/dilution-of-labour-laws-is-unconstitutional-2158931.html>

²⁰Special Correspondent, *Suspend Labour Laws for 2-3 Years, Employers' Associations Urge Government*, *THE HINDU* (May 09, 2020, 02:15 PM), <https://www.thehindu.com/news/national/coronavirus-lockdown-suspend-labour-laws-for-2-3-yearsemployers-associations-urgegovernment/article31537997.ece>.

²¹Constitution of India; art. 19, cl. 1.

²²Sitakanta Panda, *Why Some Labour Reforms May Lead to Slave-like Conditions in Workplaces*, *THE FINANCIAL TIMES* (May 13, 2020, 5:20 AM), <https://www.financialexpress.com/opinion/why-some-labour-reforms-may-lead-to-slave-like-conditions-in-workplaces/1957008/>

²³*The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. v. The Management and Ors.* (1973) A.I.R. S.C. 1227.

²⁴*Bandhua Mukti Morcha v. Union Of India & Others*, (1984) A.I.R. 802

In *Krishna Kumar Singh v. State of Bihar*²⁵, Supreme Court deliberated on the misuse of the ordinance making power of the State Legislature and brought it under judicial scrutiny and can be declared constitutionally void. The unilateral suspension of the Equal Remuneration Act, the Minimum Wages Act, the Contract Labour Act and the Minimum Wages Act pose serious threats to the rights vested under the Constitution as held in *PUDR v. Union of India*²⁶.

In *Maneka Gandhi v. Union of India*²⁷, it was held that the fundamental right to Life and Personal Liberty provided under Article 21 of the Indian Constitution should be inclusive. In *Raja Kulkarni And Ors. v. State of Bombay*²⁸, it was held that the right of forming associations or trade provided under Article 19(1)(c) of the Constitution is a fundamental right and such a right is grossly violated by way of such ordinances issued by the various state governments. The phrase ‘associations’ includes the right to form trade unions. Suspension of the Trade Unions Act infringes such a fundamental right.

The fundamental principle that entails the formation of trade unions is collective bargaining which aims at addressing the issues and challenges faced by the workers and provide a speedy resolution with an appropriate mechanism for the same. There needs to be a balance that has to be struck between the two conflicting rights of the employee and the employer. Article 19(4) empowers the state to impose reasonable restrictions on the right of freedom of association on grounds of “morality” and “public order” or the “sovereignty and integrity” of India, however, such restrictions should be reasonable and justified at the least and cannot be biased towards the authorities placing the workers at a disadvantaged position in the spectrum.

This would result in over exploitation of the workers and this, in turn, violates the fundamental right to live a dignified life with a right to sufficient livelihood. Earlier, there was a steady income in the hands of the workers by way of daily wage, which is now bleak as there are no standards of fixed or minimum wage that will be guaranteed to the workers against any unfair treatment by way of lay off or retrenchment meted out to them.

Further, with the suspension of the Industrial Disputes Act which provides for a systematic dispute and grievance resolution mechanism, the right to legal aid and constitutional right of timely access to justice of the worker is heavily impaired. The statutory duty of the employer to ensure proper and minimum standards of safety and care to the employees also remains suspended.²⁹ In *Sanjit Roy v. State of Rajasthan*³⁰, it was reiterated that Article 23 is violated in a situation when wages lower than the prescribed minimum wage is paid to an individual employed for relief work.

In *Francis Coralie v. Union Territory of India*³¹, Article 21 of the Constitution does not merely mean an animalistic existence but includes the right to live with dignity. The Supreme Court in *Occupational Health and Safety Association of India v. Union of India*³² and *Consumer Education and Research Centre v. Union of India* held that right to health and medical care while in service, just and humane conditions of work are encompassed under Article 21 read with Article 39(e), 41-43 and 48-A of the Constitution. In the case of

²⁵ *Krishna Kumar Singh v. State of Bihar* (1977) 3 S.C.C. 592.

²⁶ *People's Union for Democratic Rights v. Union of India* (1982) 3 S.C.C. 235.

²⁷ *Maneka Gandhi v. Union of India* (1978) A.I.R. 597.

²⁸ *Raja Kulkarni And Ors. v. State of Bombay* (1954) A.I.R. 73.

²⁹ *Anita Kushwaha v. PushapSadan* (2016) 8 S.C.C. 509.

³⁰ *Sanjit Roy v. State of Rajasthan* (1983) A.I.R. 328.

³¹ *Francis Coralie Mullin v. The Administrator, Union Territory of India* (1981) A.I.R. 746.

³² *Occupational Health and Safety Association v. Union of India and Others* (2014) 3 S.C.C. 547.

*Olga Tellis v. Bombay Municipal Corporation*³³, Court held that the right to life also includes the right to livelihood.

The primary objective of including the Directive Principle of State Policy in the Constitution was to promote the welfare of people by securing economic, political and social justice. With a suspension of the vital labour laws of the country, there is no guarantee of social and economic fairness to the workers or their safety ultimately resulting in inequality in the payment of income. In the case of *Daily Rated Casual Labour v. Union of India*³⁴ socio-economic benefits extending from the rights of the employees should be read harmoniously and 'Security in job' is a fundamental aspect in the labour sector.

Therefore, the state notifications and ordinances are subject to judicial review and it is imperative to declare them unconstitutional for violating the fundamental rights of the workers under the Constitution and the international norms.

ADVENT OF EMPLOYEE-CENTRIC REFORMS IN INDIA-SOCIAL AND WELFARE MEASURES

According to a study by the Centre for Monitoring of the Indian Economy for India³⁵, 24% of India's workforce is unemployed. Between 2014-15, various state governments had come out with employer centric reforms with restrictions eased under the Industrial Disputes Act, 1950, the Contract Labour Act, 1970 and the Factories Act, 1948, however, the outcome of such amendments was not positive as there was minimalistic incentive for the investment of capital in the labour sector. On the contrary, data³⁶ revealed that employment in establishments within the purview of labour laws grew rapidly.

A fundamental bifurcation that exists in a democratic setup is that: One is the industrial democratic approach in which the law recognizes the contribution and role of the employee in the process of decision-making. The German model of "co-determination" is a successful example of this approach.³⁷ A second model adopted is in line with the social contract theory in which the state uplifts the workforce by providing social protection and a systematic industrial dispute resolution mechanism. The Indian model is a brainchild of both the structures where on one hand there are rights vested to the workers and legal recognition given to trade unions and on the other, there has been increasing flexibility provided to the employers with a higher degree of relaxation on the statutory restrictions in certain situations.

THE NECESSITY OF EMPLOYEE CENTRIC REFORMS IN INDIAN DEMOCRACY (SOCIAL AND WELFARE MEASURES)

Social policy is an attitude to address the disputes, imbalances, and conflict of interests between employers and employees and to ensure harmony between classes in capitalist systems.³⁸ It is representative of the policy which aims at striking a balance between labour and capital comprising the labour class and forms an integral element of social justice. Political policy deals with issues such as wages, working conditions, trade

³³ *Olga Tellis & Ors v. Bombay Municipal Corporation & Ors* (1986) A.I.R. 180.

³⁴ *Daily Rated Casual Labour Employed Under P & T Department & Ors v. Union of India & Ors* (1987) A.I.R. 2342.

³⁵ Saurabh Bhattacharjee, *Reckless Waiver of Labour Laws Will Be Counter-productive for the Indian Economy*, QUARTZ INDIA (May 14, 2020 12:45 AM IST) <https://qz.com/india/1855914/waiver-of-labour-laws-wont-revive-covid-19-hit-indian-economy/>.

³⁶ Anamitra Roychowdhury, *A Reality Check on the Labour Market Flexibility Argument in India*, VIKALP-PEOPLE'S PERSPECTIVES FOR CHANGE (January 2014), http://www.macrosan.org/fet/feb14/pdf/Labour_Market.pdf.

³⁷ Sundar, K. R. Shyam (2005), 'Labour Flexibility Debate in India: A Comprehensive Review and Some Suggestions', *ECONOMIC AND POLITICAL WEEKLY*, May 28: 2274-2285.

³⁸ Esra Dundar Aravacik, *Social Policy and the Welfare State*, *PUBLIC ECONOMICS AND FINANCE*, (November 28, 2018) <https://www.intechopen.com/books/public-economics-and-finance/social-policy-and-the-welfare-state>.

unions, and collective bargaining. To eliminate or reduce a crisis-like situation arising out of a deadlock between the key players would require ensuring active social participation of the employees in a welfare democracy. The best way forward is a sound public policy in this regard taking into consideration all the stakeholders in the sector. There still exists a fear among the labour force regarding the excessive intervention of the government which is counterproductive for the growth of the economy. There is bound to be a fall in the working class and a conflict if there is no proper working condition guaranteed to the employees, or inadequate remuneration. Equal opportunity as envisioned under Articles 14, 15 and 16 of the Indian Constitution read with the Directive principle of state policy become all the more relevant in this regard.

GLOBAL PERSPECTIVE

The right to form trade unions and social security is an important aspect of international human rights recognized by the Universal Declaration on Human Rights, 1948 and the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1976, to which India is a party. Further, India has ratified the Hours of Work (Industry) Convention, 1919 in 1921 which prescribes a maximum of 48 working hours in a week, and the present extension to 72 hours violates the international norms.³⁹ The International Labour Organization⁴⁰ has condemned the move of the State governments and pressed for a consultative stakeholder deliberation involving workers and the employers.

Across the globe, several governments of both developing and developed countries have partnered with industries and allocated 3% to 5% of the GDP towards sharing the wage burden and ensuring the health of the labourers.⁴¹ There is an urgent need to protect and secure the labour force due to a lack of skilled labour and improper drafting, vetting and execution of contracts.⁴²

CONCLUSION

The overall impact of such exemptions carved out in the State issued notification is that it will act as leeway for the employers to reduce the wages of the workers and the timely payment. There would be a tendency to adopt unfair labour practices by implementing a hire and fire approach and stretching working hours beyond permissible and human limits. There is a possibility of the employees being deprived of the proper facilities of safety, health and sanitation and subjected to inhuman work conditions at the workplace without any recourse or access to a proper dispute resolution mechanism. Labour laws are social welfare legislations intended to ensure basic human dignity to the workers, and any deprivation of the same is a clear violation of Article 21 of the Constitution. There is a need for better political discourse with the stakeholders at both ends of the spectrum and a fine balance in the competing interests of both the interest groups has to be struck so as to arrive at a reasonable and mutual compromise.

³⁹*Hours of Work (Industry) Convention, 1919, International Labour Organisation*

⁴⁰*ILO Declaration on Fundamental Principles and Rights at Work, International Labour Organisation, June 1998.*

⁴¹*Coronavirus disease 2019 (COVID-19) Situation Report, https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200308-sitrep-48-covid-19.pdf?sfvrsn=16f7ccef_4.*

⁴² *Bibek Debroy and P.D. Kaushik, Reforming the Labour Market (Academic Foundation, 2005)*

MIGRANT MOVEMENT AND COVID-19 : A HUMANITARIAN CRISIS

-Mohd. Aqib; Ameer Hamza¹

ABSTRACT:

The Covid-19 pandemic has affected the health, social and economic structure of the entire world. Governments across the globe have imposed several measures to control the spread of the pandemic. In India, the extended lockdown has had a harsh impact on the lives of daily wage earners and migrant labourers. With closure of factories and markets, these migrant labourers have fallen short of necessities. Their inability to maintain themselves due to scarcity of resources has forced them to migrate back to their respective hometowns.

For the underprivileged, hunger and starvation is proving to be an even bigger crisis than the pandemic. The outbreak has led to a huge migration of workers from various cities of India. Fearing that they may spread infections in the rural areas, authorities prevented their movement by shutting down the transport and closing of state borders, however, many undertook the perilous journey to their destinations on foot. Due to this, many deaths were reported, caused from starvation, suicides, exhaustion, road and rail accidents, police brutality and denial of timely medical care. But their problems do not end here, these migrants are also vulnerable to the COVID infections and can ultimately become the reservoirs for the spread of the disease. Handling the compromised mental health of the migrating workers is another challenge. Depressed by the miseries of unemployment and loss of financial support is likely to result in suicidal tendencies.

INTRODUCTION

Article 19(1) (d) of the Indian Constitution guarantees every citizen the right to move freely throughout the Indian territory, however, restrictions may be imposed stating the interest of the general public under Article 19(5). Restrictions cannot be unjust and unfair; it is the role of the state to justify the restrictions imposed on migrant movement. Otherwise, restrictions can lead to the violation of the basic rights guaranteed by the Constitution. Indian Democracy demands the supremacy of “Rule of law” and welfare of its citizens but in reality, several latent inefficiencies and defects have been witnessed in the present times.

The state gave a mixed response to the people's problems during the pandemic. On one hand, many initiatives were announced to help migrants, which eventually never reached them whereas, on the other hand, migrants were treated cruelly and inhumanly. In certain cases, politics hindered the welfare of people. The government should have ensured that the distressed migrants get back to their homes safely. At the same time, quarantine strategies need to be devised to prevent the spread of infection to the interiors of India. The migrants should be assured of safety and financial security and motivated to get back to work at the earliest possible time. SARS-CoV-2 is here to stay, and hence, it is recommended to follow due safety

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measures to combat its threat, at least till the time a vaccine is developed. But unfortunately, the government and the legal system has failed these voiceless citizens by ignoring their plight in these demanding times. It is, in fact, a collective failure of our society. The government, law enforcement agencies, businesses and civil society have all let down this particular section of Indians who are often referred to as the “builders of our growing economy.”

MIGRANT WORKERS:

“Shoot us if infected with coronavirus but let us go.”

“We'll Die of Hunger before the Virus Can Kill Us.”²

The working class constitutes the backbone of the Indian economy and migration from rural areas to urban areas is a livelihood strategy of millions in India for better job opportunities. These migrant workers play an important role in the labour market and India's growth, yet their existence is hardly acknowledged. They are excluded from most of the policy initiatives. Data from the National Sample Survey (NSS) in 2007–2008 revealed that about 28.3% of the workforces in India were migrants.³ According to the 2011 census, there were 454 million migrants in India; this figure showed a hike of 139 million from 315 million in the 2001 census. The figure was 220 million in the 1991 census. Thus, the figures doubled in 20 years.⁴ According to the NSS 64th round, about 43% of Delhi's and Mumbai's population are migrants⁵

At the state level, in-migration rates are higher in high-income states such as Delhi, Goa, Haryana, Punjab, Maharashtra, Gujarat and Karnataka. Among the migrant workers, about 30% of them are working as casual workers, and therefore they are quite vulnerable to the vagaries of the labour market and lack social protection. Only 35% of migrant workers are employed as regular/salaried workers and the rest are self-employed (NSSO, 2010).

These migrants who are mostly recruited through unfair channels are often underpaid and over burned with the work. They were already engaged in an environment comprising occupational safety and health hazards, with no proper access to adequate food and nutrition, quality healthcare, housing, or water and sanitation facilities, the recent outbreak of Covid-19 and the lockdown imposed has further added to their problems.

Most of the migrants and their families depend upon the remittance they send home, but presently with factories shut down and most of the markets closed during this nationwide lockdown, these migrant labours fell short of the money, food and other necessities to sustain themselves. With the passing of days and growing uncertainty about how long this crisis will last, the only option left to them is to either depend on the aid provided by the government or leave for their hometowns and villages. Following this, many labourers, in their attempt to leave large urban centres to reach their homes in rural India, have been compelled to undertake perilous journeys on foot along with their families including infants, pregnant women. This journey was not easy for them as most of the state's borders were sealed due to the imposed lockdown. Many of them also died due to the lockdown, with reasons ranging from starvation, suicides, exhaustion, road and rail accidents, police brutality and denial of timely medical care.

²Rishika Baruah, We'll die of hunger before the virus can kill us, NDTV INDIA, (April, 14, 2020), <https://www.ndtv.com/india-news/coronavirus-india-lockdown-migrant-workers-well-die-of-hunger-before-virus-can-kill-us-2211539>

³National Sample Survey Office, Migration in India 2007-08, Ministry of Statistics and Programme Implementation.

⁴Government of India, Census of India 2011, Registrar General and Census Commissioner of India. New Delhi, India-Ministry of Home Affairs.

⁵Report of the Working Group on Migration, Ministry of Housing and Urban Poverty Alleviation, New Delhi, India; June, 2020.

LAWS DEALING WITH MIGRANT LABOURERS IN INDIA:**1. Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979**

Looking at the plight of these migrant workers, activists have called for the proper implementation of laws that protect migrant workers.

Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, was enacted in 1979 to regulate the condition of service of interstate labourers in Indian labour law. The main objective of the legislation was to protect workers whose services are requisitioned outside their native states in India. Whenever an employer faces a shortage of skills among the locally available workers, the Act creates provisions and guidelines as to the employment of better-skilled workers available outside the state.

Section 2(e) of the Act defines the term “inter-state migrant workmen” as a person who is from a particular state but is employed by a contractor in some other state. These workers leave their homes, move to another place, and get themselves registered there with employees for daily work.

Main features of this regulation are:

- 1) The Act provides for the registration of the establishments deploying the migrant labourers, which helps in creating a system of accountability and acts as the first layer of formalising the utilization of their labour.
- 2) It also helps the government to keep a track of the number of workers employed by the establishments and provide a legal basis for improving the conditions of the migrant workers.
- 3) The Act also requires the contractors deploying the migrant workers to specifically provide terms and conditions of the recruitment to the workers. These terms must include-
 - the remuneration payable
 - hours of work
 - fixation of wages
 - other essential amenities
- 4) The wage rates, number of holidays, working hours and other conditions of recruitment of a migrant worker must be the same as those extended to other local workmen in the same establishment provided that the nature of their work is the same.
- 5) The wages of the migrant workers must not be lower than the wages as provided in the Minimum Wages Act.

Other provisions of the Act deal with —

- appointment of an inspector to visit the establishments where workers are employed
- an explicit provision regarding the due date by which wages are to be paid
- a migrant’s entitlement to a displacement allowance
- suitable residential accommodation
- adequate medical facilities, and protective clothing

The Act calls for proper and strict adherence to the above rules and the punishment for non-compliance is stringent and includes a jail term. Despite these regulations, the State has failed these migrant labourers. It

was the responsibility of the Central and State government to protect the rights of the migrant workers as enshrined in the ISMW Act.

If all the States had implemented the ISMW Act, 1979, they would have had complete data on migrant workers regarding their home State and other particulars. If the government and authorities had accurate data about the number of migrant workers, their average monthly income, their family size and their cost of living, they would have had a better idea as to the number of days migrant workers can survive with no job opportunities during the lockdown.

2. Unorganised Workers Social Security Act, 2008

The legislation dealing with the social security of workers was enacted in 2008. The act also dealt with the issues of the migrant labourers and provided schemes for workers who fall under the below poverty line category. The legislation covered every aspect of social security but still has not proven helpful to migrant labourers. There was no specific legislation either for agricultural migrant workers or for women. It has no provision for action against the employee who does not register the unorganized sector's labour and these migrant labourers remaining unregistered could not get the benefit of schemes.

Apart from these acts, some of the other legislations dealing with issues of the labourers and workers are:

- The provisions listed under Workmen's Compensation Act 1923; The Payment of Wages Act 1936;
- The Employees' State Insurance Act 1948;
- The Employees' Provident Funds and Misc. Provision Act, 1952;
- The Maternity Benefit Act 1961.

But the fact is that in reality, none of these acts/legislations directly addresses the issues and problems of migrant workers and hence lay useless during the pandemic.

PANDEMIC, MIGRATION AND STATE'S RESPONSIBILITY

In India, inter-state migration is an important way to generate income for low-income households. Despite the importance of migration between States, migrants faced many barriers while reaching their destinations. It is the role of the State to remove these barriers with the help of different policies and initiatives. Labour is the key factor in migration and it falls in the Concurrent List in Schedule Seven of the Constitution and both State and Central governments have the power to regulate it.

However, during the pandemic, the States gave a mixed response to the people's problems. On one hand, many initiatives were taken to help migrant workers whereas, on the other hand, they were treated cruelly and inhumanly. In certain cases, politics neglected the welfare of the people. Several Indians stranded abroad before the lockdown were brought back to India by special flights and chartered planes scheduled by the government. In contrast, the State failed to provide transportation facilities to migrant workers who were left with no option but to cover the perilous journey back home by walking thousands of kilometres barefoot. Even, the Shramik train facility provided later on was made available at huge costs and complex procedures.

Instances of inhuman treatment of the migrant workers such as police brutality, spraying them with disinfectants, failure to provide accommodation and necessities amid the excruciating and distressing journeys made a mockery of the fundamental rights guaranteed by the Constitution. Moreover, various states stigmatized them as 'virus carriers' and were reluctant to let them cross borders. Various State governments provided relief packages and schemes to the workers; however, they could not avail them because they don't have domicile documents.

Also, the way the lockdown was imposed in four hours' notice without any prior consultation with the opposition or state government is a - we the people - presidential style of governance and decision-making and not a democratic style. Federalism means decentralization of power in simple meaning and it is essential for India's democracy but Centre's responses during the pandemic threatened the federal character of India. We witnessed the tussle between the Centre and the States on many issues. The Central government imposed its policies on the subject matters that are strictly in the State List like withholding of GST compensation and ban on the sale of liquor.

DEMOCRATIC VALUES IN TIMES OF MIGRATION

India is a democratic country with certain basic features like sovereignty, socialism, and secularism that also are mentioned in the Preamble of the Constitution. Democracy in India calls for the supremacy of people and their welfare. A democratic setup can't sustain in situations where people feel unsafe and inferior, even the Preamble of the Constitution starts with 'We the People'. Democracy isn't a showpiece and a luxury that is to be adhered to in times of peace and prosperity. Government, which is formed by the mandate of the people, should not act arbitrarily and whimsically.

The problems, which arose during the pandemic, demand urgent measures to be taken to soothe the people. But, when a country is democratic, then this urgency can't undermine the democratic decision-making, and it becomes essential to comply with the principles of democracy.

Migrants' right to life and liberty was severely violated, in *ADM Jabalpur v. ShivKant Shukla*⁶ Justice HR Khanna in his dissenting opinion had said that "Life and liberty are not conferred by any Constitution. They are there in men and women as human beings."

The pandemic exposed India's social inequalities. The government and the leaders promised care and testing for all regardless of their income and social background but public hospitals were crowded with the patients while private hospitals were dealing with some special cases only. Poor people are dependent on the government hospitals for their treatment but public hospitals were overburdened and patients faced long delays for even basic treatment. Inequalities between rich and poor were exposed even at the time of testing. Private hospitals were costly and everyone could not afford to get treated there, whereas public hospitals were full of infected people which made others vulnerable to the infection. Delhi's health minister, Satyendar Jain, went into a government hospital for his treatment but his condition deteriorated and he was transferred to a private hospital. The pandemic affected India's poor the most. Lockdowns imposed by the government primarily protected the rich because they could afford to stay home even without any work.

SUGGESTIONS AND RECOMMENDATIONS

- Direct transfer of money by the government in the accounts of daily wage earners and migrant workers could prevent the migration and migrant workers problems to a large extent.
- There is a need to maintain proper accounts and records as to migration and migrant households through Census, National Sample Survey (NSS) and NFHS and Migration Surveys. The available data is not updated. Official statistics will help formulate robust and inclusive policies and programmes in the country.
- Health assistance and medical camps should be arranged for migrant workers with special attention being paid to pregnant women and minors.

⁶ADM Jabalpur v. ShivKant Shukla, (1976) 2 SCC 521

- The government must consult the opposition before imposing a lockdown so as not to undermine the tenets of democracy. A clear plan must be framed as to the aftermath of lockdown and economic development thereof.
- Public Distribution System (PDS) infrastructure and distribution of the food grain lying as buffer stock with the Food Corporation of India must be used to provide relief to the poor and needy.

CONCLUSION

The pandemic has affected not only India's health sector and economy but it also cast major amplifications on the working class. The sudden loss of life and livelihoods has left the world in disarray. With no proper solution available for the virus, the only possible method of tackling this situation seems to be social distancing and proper sanitization. In pursuance of this, the Indian government also enforced a nationwide lockdown as a preventive measure to combat the transmission of the virus. But unfortunately, lack of proper planning and ineffective implementation has engendered a reverse exodus of migrant labourers.

Though the States announced various relief programs but due to large numbers of migrant workers, these schemes fell short. It is time that we realize that the working class and the migrants are not mere labour factories but are equal citizens and thereby should not be denied their fundamental rights. The government must take every possible measure to mitigate the disastrous effects of the pandemic on the life and livelihood of these migrant workers. Easy and equal access to ration, safe shelters with proper food and health care facilities, etc. must be made available to them. Also, strict orders and actions must be taken to prevent the harassment and discrimination faced by the migrant workers. Basic conveyance facilities including the Shramik special trains must be run free of cost for them so that those migrating to their hometowns do not face any hardship.

Thus, a proper mechanism and effective implementation is the most crucial point to be kept in mind to deal with the prevailing uncertain situations. This is the time to keep all the differences aside and unite for domestic solidarity towards these migrant workers.

PANDEMIC: AN UNPRECEDENTED CHALLENGE TO DEMOCRACY

Rina S. Kumar¹

ABSTRACT

The word 'democracy' comes from the Greek word demos meaning 'people' and kratos meaning 'power'. Thus, democracy is synonymous with the 'power of the people'. It is a system of governance which involves all the eligible members of a state, represented through elected individuals. The present Coronavirus outbreak presents a range of novel challenges to democracy and human rights. Repressive regimes have responded to the pandemic in ways that serve their political interests, often at the expense of public health and basic freedoms. Even more liberal societies face the pressure to accept restrictions that may outlive the crisis and prioritising public health in a democracy such as India. The Covid-19 pandemic in its relation to democracy will not be annihilated, but the alleged presence of democracy with undemocratic functioning of the governmental system may be the order of things in a post-Covid-19 world.

The ill-fated situation of migrant workers, slum dwellers, industrial workers and marginalised workers can never remain unseen in this pandemic. History tells us that epidemics have caused the fall of empires and have brought about unprecedented social, economic and political changes. The advent of the pandemic witnessed the declaration of a sudden lockdown, leaving lakhs of migrant workers stranded and out of jobs. The problems of the workers, who are the strength of Indian Constitutional democracy, have been dealt in a blatantly obvious manner, which is a glaring violation of human rights. Workers have built up our nation through their labour. Yet, these large sections of our demographic were subjected to inhumane brutality during lockdown. The welfare government envisioned in our Constitution failed in their task to protect the basic fundamental rights of these workers. It is the duty of the government to ensure that social and economic justice is achieved. As was rightly pointed out by Justice Bhagwati, –a pioneer in human rights, the present century has indeed become a unique century of new consciousness and rising expectations of poor ignorant masses. Post lockdown 2.0, state authorities began preparations to help lakhs of migrant workers reach their homes, but it was not easy for them. By lockdown 4.0, restrictions imposed to prevent the spread of Coronavirus eased, but despite relaxing the rules on inter-state travel, several state governments seemed unwilling to allow the entry of migrant workers. Many states failed to provide necessary assistance to these migrant workers. The number of Shramik trains provided for migrants was far lower than the requirement, leaving migrants struck in horrific conditions while they waited for their chance to return home. There was no forum that would address the agonies of these stranded migrant workers. Suffice to say, the states failed in their duty towards the migrant workers.

However, they played a major role in preventing the pandemic by issuing advisories on management and containment of Covid-19 by and by invoking the provisions of Epidemic Diseases Act 1897. They advised all hospitals to have separate corners for screening of suspected cases for Covid-19. The use of the AarogyaSetu application - an open-source Covid-19 "contact tracing, syndrome mapping and self-assessment digital service - was made mandatory for the public to ensure their health and safety. Additionally, due to the lockdown, many industries were gravely affected. The representatives of twelve

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employers' associations and industry bodies asked the government to suspend labour laws for the forthcoming years to help the industries deal with the challenges posed by the pandemic. The Uttar Pradesh government made the boldest change by suspending the application of all labour laws in the State for next three years. Many other states like Madhya Pradesh, Gujarat, Odisha, Punjab, and Rajasthan too made some changes in labour laws. Thus, we witnessed some State governments making significant changes in labour laws.

PANDEMICS & DEMOCRACY

We all know that democracy is a system of government by the whole population or all the eligible members of a state, typically through elected representatives. The COVID-19 pandemic in its relation to democracy will have a calamitous impact on the democratic system. When news about the virus began to flood social media in late December and early January there was a belief that democratic governments around the world will soon find a solution to the problem. In India too there was hope that all departments of the Government would work in tandem like we had seen in the past during terror attacks. The COVID-19 outbreak presented a range of new challenges to democracy and human rights. Repressive regimes have responded to the pandemic in ways that serve their political interests, often at the expense of public health and basic freedoms. Even open societies face pressure to accept restrictions that may outlive the crisis and have a lasting effect on liberty. It is a global crisis that presents particularly unique challenges for democracies. Epidemics do not have timetables of action or any national, cultural or religious sensitivity. All are equal before it theoretically and practically. The rich and the poor, the healthy and the weak all proved equally incapable of resistance, all alike being swept away. The World Health Organization declared COVID-19 as a pandemic on March 11, 2020. A pandemic raises questions about the process of decision making and prioritizing in a democracy, such as India. The COVID-19 pandemic in its relation to democracy will not be annihilated, but the alleged presence of democracy with undemocratic functioning of the governmental system may be the order of things post COVID-19. The pandemic in effect has sanctioned inevitable governmental powers as a social necessity. The government and its officials act like compassionate authorities respected by all. No doubt we as citizens of India must acknowledge the farsightedness and sagacious guidance of our leaders. But the evolving social psychology of hero-worship of political leaders appears to be a threat to rational and democratic ethos. "Death is not the worst end of life" but it is the death of freedom. The inevitable powers entrusted in the government during a pandemic may become an inevitable burden on the shoulders of the people. Then some politicians try to take maximum advantage of the crisis by testing their ability to influence the masses and carve out an unquestionable paternalistic image of themselves. While some leaders are more concerned about their power and wealth some others stand good for nothing. But the street dwellers, slum inhabitants, sex workers, agricultural and industrial workers, migrant workers, indigenous folks and a host of other marginalized human beings suffer the worst. They are the most vulnerable victims neglected. It shows that the pandemic is a testing time for democratic systems all over the world. Even at this hour, politicians have tried to take advantage of this situation by influencing the masses. The pandemic has only made matters worse. The virus undeniably presented the government with an urgent challenge, but it also provided an opportunity to unify a divided nation against a common foe. Instead, the pandemic has led to further erosion of India's pluralism and democratic credentials. Some Indian states have also seen spikes in caste-based discrimination and violence during the pandemic. There was hatred between the masses, greed, narrow-mindedness, mala administration, corruption and most importantly harassment of women and weaker sections of the society. The problem got so out-of-hand that the Prime Minister had to deliver an explicit call for unity in April, stating "COVID-19 does not see race, religion, colour, caste, creed, language or border before striking." History tells us that epidemics and pandemics have caused the fall of empires and brought about unprecedented social, economic and political changes.

PANDEMICS, MIGRANT WORKERS & ROLE OF STATE

This pandemic saw a sudden lockdown declared by our Prime Minister leaving lakhs of migrant workers stranded and out of jobs. Complete lockdown in the country was an unprecedented move, one that even China had not undertaken. Yet, in a country with such a large population, it was seen as an essential and unavoidable step. Forcible closure and suspension of all movement appear incompatible with the very idea of democracy but this was seen as an extraordinary situation – of war against the pandemic. But as in any other situation of war, it led to panic buying of essential goods and food supplies. While fighting the virus required social distancing, for those who could afford it, securing one's needs for the next few days was more urgent. From the start, response to the pandemic was pitted against human needs. The government repeatedly assured the people that essential items of food and daily existence will be available throughout, but this met the needs of the middle class, the residents of the city, preferably employed and those who had a place to live. The directive to stay at home, indoors not outdoors, addressed them. The boundaries were drawn to secure them. The extremely poor and migrant workers stood on the other side of the wall. No movement outside meant no income and means of survival.

There are an estimated 139 million migrants in the country. Most migrants in India originate from Uttar Pradesh & Bihar followed by Rajasthan and Madhya Pradesh. The cities of Mumbai and Delhi attract the highest number of migrants. What followed the lockdown was complete chaos. Factories and workshops were shut down leaving the labourers unemployed. They faced acute shortages in terms of money, clothes and shelter. The labourers undertook the journey to reach their hometowns, which led to the transmission of the virus. In utter helplessness, a large number of migrants gathered near bus and railway stations and some even walked to their homes. Rumours about travel facilities being arranged by the government without any prior notice fuelled their migration. Migrant workers majorly comprise daily wage labourers working in the manufacturing and construction industries. They are mostly from rural areas but live-in cities for work. Many have no savings and live in factory dormitories that were closed due to lockdown. Workers, who are the working strength of Indian democracy and our Republic, have been dealt with in a manner which is violative of human rights. Workers build up a nation in exchange for their labour. With no work and any money and lockdown restrictions putting a stop to public transport, thousands of migrant workers were seen walking or bicycling hundreds of kilometres to go back to their native villages, some with their families. According to some migrant workers, they would rather die from the virus in their village than starve because of no job in the city. It was not at all easy for these large sections of humanity to face this brutality during the lockdown. The welfare government in terms of our Indian Constitution failed in their task to protect the basic fundamental rights of these workers. Lack of coordination between the Centre and the states was evident during this crisis. On March 27, a directive was issued by the Home Ministry ordering the states to contain the migration. It also gave the states the authority to use the National Disaster Response Fund to provide necessities (such as food and shelter) to the labourers. Still, regional friction remained a problem.

To mitigate the economic difficulties the government has created an economic package through which money could be transferred directly to the account of registered workers. This will certainly help some, but in a context where so many are engaged in informal work and do not have the necessary documentation, the benefits may not reach all sections of the vulnerable people. While some states chose to use a region-specific approach rather than a uniform national one, there were others too that followed the Central order to such an extent that it led to severe police brutality. Although financial assistance was promised, over 90% of labourers who reached in April reported that they have not been provided with any financial assistance from the government. In some states, like Delhi, the government created new shelters for migrant workers, and with the help of NGOs and local communities, were running free kitchens.

Social ostracism of migrants remained a problem as they were considered sources of transmission of infection. No one wanted to be near them. Diminishing income and societal discrimination took a huge psychological toll on the migrants and thus deprived them of their equal status in society. As was rightly pointed out by Justice Bhagwati –the pioneer in establishing human rights in India, that the present century has indeed become a unique century of new consciousness and rising expectations of poor ignorant masses. The basic consideration for any state should be to take care of new consciousness, to look after the benefit of poor and ignorant masses. The Constitution of India has given them basic fundamental rights and they have the right to raise their voice for implementation, execution and derivation of these basic fundamental rights. Justice Bhagwati had rightly pointed out that there should be equal opportunity for advancement, for equal gain, equal opportunity for intellectual society, no exploitation of the weak by the strong, of the rich by the poor, of the weak by the powerful. But the scenario is quite different in these cases. Some migrants died of exhaustion, others died in road accidents after walking or hiding in the vehicle. 16 migrant workers were killed in Aurangabad when a freight train ran over them while they were sleeping on the tracks exhausted from walking. More than 300 migrant workers died during the lockdown with reasons ranging from starvation, suicides, exhaustion, road and rail accidents, police brutality and denial of timely remedial care. Then post lockdown 2.0 state authorities began preparations to help lakhs of migrant workers to reach their homes, but it was not easy for them. Although the Indian Government has flown back citizens who were stranded abroad, it did not provide similar travel support for internal migrants until much later. This unequal treatment of equal citizens is questionable. State policies that impose curbs and restrictions make administrative structures more bureaucratic, with less space for compassion and empathy. Yet, as more and more migrants gathered their families and decided to walk back to their village, some 100-250 kilometres away, the spectacle of human suffering became all too evident. Some collapsed on the way, others suffered acute exhaustion and hunger. Neighbouring states, from which these migrants came, took responsibility and sent buses to ferry them back. But the thousands who assembled at pick-up points, cheek-by-jowl, stood on the wrong side of the border – one where social distancing had little relevance. The hardships did not end here for the migrant returnees. As India moved to lockdown 4.0 on 18th May, restrictions imposed to prevent the spread of coronavirus eased, but despite relaxing the rules on interstate travel, several state governments seemed unwilling to allow the entry of migrant workers. In some places, they were welcomed back, but in others, they were now seen as carriers of the virus, whom the community did not want to accommodate immediately. Eventually, states created makeshift quarantine places in school buildings and other such available spaces for the returning migrants. In one district the local administration decided to ‘disinfect’ the returnees by hosing them down with bleach and chlorine water. In another place, they were simply isolated and locked in, while they pleaded to be released and given food. Many states failed to provide necessary assistance to these migrant workers and proved inefficient in performing their duties. The Shramik trains being provided for migrants were lower in number than the requirement, leaving migrants stuck in horrific conditions while they were waiting for their chance to return home. There was no forum for these masses to speak of their agonies. The Indian Government’s actions disproportionately affected the vulnerable. Migrants attempting to reach home have been subjected to inhuman beating, disinfection, and quarantine conditions that violate the Constitutional right to dignity. Lockdown measures also violate their rights to life and health, insofar as they confine migrants to their rented accommodation without access to food or water for an indefinite period. The disproportionate impact of state policy also breaches the right to equality under Article 14 of the Constitution and imposes a corresponding duty on the Government to mitigate negative effects. As stories and pictures of such treatment flooded the social media, the central and state governments attempted to address the situation.

SURVEILLANCE STATES DURING PANDEMICS

The states had another major role to play in preventing the spread of the virus by issuing advisories on management and containment of COVID-19, invoking the provisions of Epidemic Disease Act, 1897. In

India, containing the pandemic, tracking carriers of the virus was and continues to be the priority. As the number of people affected by COVID-19 is slowly rising, the effort is to increase quarantine spaces. In Delhi, existing stadiums and school buildings, and now, railway coaches are being converted into spaces that can be used to isolate the affected persons. In major government hospitals, more room is being created to treat the patients. This yielded additional difficulties for those who had come a long distance for treatment for other illnesses. The public health system was already under strain and it remains to be seen if India can construct temporary hospital-like spaces to treat patients affected by corona virus. The government response has included a prolonged 8-week lockdown, public awareness campaign, and a series of innovations including a novel smartphone application called Aarogya Setu for contact tracing and aiding in quarantine and related containment measures. AarogyaSetu is an Indian open-source COVID-19 “Contact tracing, syndromic mapping and self-assessment” digital service, a mobile application developed by the National Informatics Centre, was made a compulsion to be used by the public to ensure their safety of health. Special quarantine measures were provided under COVID-19 regulations, such as mandatory 14-day quarantine. Several states had different quarantine procedures. Maharashtra, the worst affected state, used drones, especially, in those areas where the outbreak was at its peak. States declared containment zones where COVID-19 cases were the highest to stop further spread of infections. Door-to-door sanitization facilities were undertaken. The pandemic necessitated government interventions imperative to save lives. A strict control on everyday activities has been applied with lockdowns. A wide network of surveillance has been established to identify the infected and to follow their movements, social contacts and activities.

The government aims to develop a vaccine through a public-private partnership, the National Institute of Virology. The Translational Health Science and Technology Institute, an autonomous institution of the Government of India, has announced that six companies are working towards developing a vaccine. India has proved its capability in terms of polio eradication and is emerging as a leader in helping other countries in managing a COVID-19 response. However, the greatest emphasis now is on gearing up the surveillance systems in India to prevent, address, and mitigate the effects related to any pandemic-related diseases in the future. While the pandemic has widened the gap between the rich and poor in India, health inequities can worsen in the immediate term. While Uttar Pradesh carried out over one lakh novel COVID-19 tests in a single day, there are many states which are still to step up their testing rate. Several of these states, including those who have caseloads of more than 20,000, are testing less than 15,000 samples every day. Among states with bigger caseloads that are lagging include Telangana, Bihar, Haryana, West Bengal, Odisha and Madhya Pradesh. Gujarat has not been doing very well either. Of these, Telangana has carried out less than four lakh tests right now, while Bihar and Odisha both have less than five lakh tests. Haryana has tested less than six lakh, while Gujarat has done less than seven lakh tests. Madhya Pradesh, Assam and West Bengal have about eight lakh tests each. There are other states, like Chhattisgarh or Jharkhand, which have an even lesser number of tests, but most of these have lower caseloads as well. On the other hand, Tamil Nadu has carried out almost 25 lakh tests, while Uttar Pradesh and Maharashtra are near 20 lakh each. Andhra Pradesh and Rajasthan have done more than 15 lakh tests each. Most of the states are now deploying rapid antigen tests to quickly check the status of a person these have not been used as effectively as in the case of Uttar Pradesh which is conducting around 50,000 rapid tests every day. The testing strategy has been revised many times, and tests have increased manyfold. The total number of people who have till now been infected with the virus crossed 15 lakh. With the addition of over 48,000 new cases, this number reached 15.31 lakh. The journey from 10 lakh to 15 lakh took just 12 days in July. The Indian Council of Medical Research has now recommended that all the hospitals initiating testing through rapid antigen tests should ensure that symptomatic patients who have tested negative in the rapid testing should be referred for real-time RT-PCR testing also. The Council has written to all States/UTs directing all private labs undertaking True Nat/CBNAAT based testing for COVID-19 to apply for NABL accreditation to ensure quality testing.

The Health Ministry is now advocating widespread testing and has also informed the states that increased focus has to be on 'Test, Trace and Treat Strategy'. Meanwhile, the results of another serological survey in Mumbai were released. Out of the nearly 7,000 people tested in this survey, about 40 percent were found to have developed antibodies for the novel Coronavirus, indicating that they had been infected with the disease at some point, irrespective of whether they knew about it. There are around 1105 labs across the country offering COVID-19 tests. The Health Ministry has also released guidelines for dealing with mental health issues during the pandemic. 'Given the likely magnitude of the pandemic and the patchy availability of mental health care across the country it has become necessary for all non-psychiatric health care professionals who often form the frontline of the health care response to provide 'whatever is possible,' the guidelines said. The extraordinary powers assumed by the government to fight the virus should not become a burden on the people after the outbreak recedes.

Looking to the future, India must invest in public health, building a strong public health system, and promoting public access to the underlying determinants of health, such as clean water, sanitation, nutritious food, affordable medication, and adequate staffing of trained medical personnel and healthcare workers. It must also invest in creating a comprehensive legal framework: (a) delineating the rights and duties of the people and the State in the context of public health emergencies, (b) defining the powers and functions of government, (c) empowering the state and local governments to undertake preparedness and response efforts suited to the requirements of each state/locality, (d) establishing a clear PHE (Public health emergency) communication and command structure between the different government agencies and departments, and (e) building reserves of healthcare capacity and trained healthcare workers for deployment during a PHE. Such a framework would empower the government at all levels to manage a public health emergency effectively while safeguarding human rights and reducing friction between the various organs and levels of state machinery.

PANDEMICS& LABOUR LAWS

During lockdown, the industries were badly affected because of the migration of labourers. The representatives of 12 employers association and industry bodies asked the government to suspend labour laws for the next two to three years to help the industry to come out from the present crisis. The suggestions given were relaxation of Industrial Dispute Act, 1947 to treat the lockdown period as lay-off, treating wages period during this period as corporate social responsibility funding. In the wake of the global pandemic and the nation-wide lockdown, a heavy constraint has been put on individuals as well as the economy. To minimize the impact of the pandemic on the general public as well as business establishments and ensure minimum disruption in the supply chain, many amendments, advisories and announcements have been introduced which would ideally subsist during the containment period but could have long-term implications. Understanding the ramifications of these developments is essential for the smooth operation of enterprises. One such amendment was the suspension of 35 out of the 38 labour laws for three years by the State of Uttar Pradesh which was approved by the Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020. This move was followed by other states as well like Madhya Pradesh, Gujarat and Odisha, among others, though to a smaller extent. Reports suggest that with the exceptions of the Workmen Compensation Act, 1923, the Bonded Labour System (Abolition) Act, 1976 and the Building and Other Construction Workers Act, 1996, all other labour-related laws have been suspended by the aforesaid ordinance. However, Section 5 of the Payment of Wages Act, 1936 which relates to the timely payment of wages, will continue to be in force. Though the Ordinance has been approved by the UP Government, it has not received Presidential Assent yet, which is required as per Article 213 of the Indian Constitution. The rationale that has been put forward for such actions is to encourage investment and employment. The idea behind the suspension and dilution is that in the present circumstances, there is a requirement for a certain

amount of flexibility for business and industry to cater to the needs of employing the workers who have migrated back to the state and to protect the existing employment of workers.

Labour laws can be broadly sorted into four categories based on the objectives that they regulate: conditions of work, wages, social security and industrial relations. The sudden suspension of labour laws would leave the labour force at the mercy of employers on various fronts. Establishments are required to be compliant by providing minimum wages and basic safety standards under some legislation. If an establishment employs more than a certain number of workers, it would require prior approval for closure. There are other statutory requirements such as notice, retrenchment compensation and dues to be paid such as gratuity. There would be several employers who would take advantage of the situation and get rid of the employees without the hassle of complying with the formalities. Further, to make matters worse, the suspension itself means that trade unions cannot raise a dispute under the Industrial Disputes Act, 1947, thereby leaving the hapless workers without a grievance redressal mechanism.

The Constitution of India confers innumerable rights for protecting and safeguarding the interests of labourers under Part III as well as Part IV pertaining to Fundamental Rights and Directive Principles of State Policy, respectively. The freedom of citizens to form associations and unions which is enshrined under Article 19(1)(c) has been curbed by the aforesaid action. It is pertinent to note that the associations presupposes organization and includes the right to form trade unions within its purview as held in *Raja Kulkarni v. State of Bombay*² When all labour laws are suspended, including the Trade Unions Act, 1926, this fundamental right is also affected. Moreover, such trade unions voice and represent other employees in case of any dispute before the authorities, which is, in fact, essential in any collective bargaining structure. The very reason for the existence of a trade union is to balance the bargaining power against the employer. Even if it is argued that suspension would be valid under Article 19(4) which provides for various reasonable restrictions which can be imposed on the grounds of public order or morality or the sovereignty and integrity of India, there is a need to strike a balance between the rights and the restrictions to maintain the balance of bargaining power.

The scope of the right to life conferred by Article 21 has been expanded to be far and wide-reaching as given in *Maneka Gandhi v. Union of India*.³ It's a Pandora's box with its various facets and interpretations. The right to life does not imply a mere animal existence but a right to live with dignity. Moreover, this right also holds within its ambit the right to livelihood, as reiterated in the case of *Olga Tellis v. Bombay Municipal Corporation*.⁴ In furtherance of the aforesaid action, social security statutes like the Minimum Wages Act, 1948, Factories Act, 1948 and even the Industrial Disputes Act, 1947 have been suspended. This leads to a violation of the right to live a dignified life as well as the right to livelihood of labourers and employees as they do not have a guarantee of a fixed minimum income, and the protection against retrenchment or layoffs anymore. The employers are also no more obligated to provide basic standards of safety and care, as enshrined in the Factories Act, 1948 for them. Ironically, even the grievance redressal mechanism for them, as provided in the Industrial Disputes Act, 1947, is not available due to the suspension of the laws despite the Supreme Court of India recognizing the right of access to justice as a fundamental right in the case of *Anita Kushwaha vs Pushap Sudan*.⁵ The State cannot take advantage of their helplessness. Parallels can be drawn from this case in the current situation also.

² *Raja Kulkarni v. State of Bombay* (1951) AIR Bom 105

³ *Maneka Gandhi v. Union of India* (1978) SCR (2) 621

⁴ *Olga Tellis v. Bombay Municipal Corporation* (1985) SCR Supl. (2) 51

⁵ *Anita Kushwaha vs Pushap Sudan* (2016) 8 SCC 509

The suspension of the Minimum Wages Act would lead to an exploitative situation by the private as well as public sector employers. This would lead the workers to a situation of forced labour that the Constitution specifically seeks to avoid. Part IV of the Indian Constitution deals with the aspect of Directive Principles of State Policy (DPSP), which are non-justiciable. They are ideals that must be kept in mind while the State seeks to formulate policies or enact laws. The basis for many pieces of labour welfare legislation, including social security laws is found in the DPSPs. Article 38 seeks to promote the welfare of the people by securing social, economic and political justice and minimizing inequalities in income, status and opportunities. Article 39 seeks to secure, inter alia the right to adequate means of livelihood for all citizens, equitable distribution of material resources of the community for the common good and prevention of the concentration of wealth and means of production. Article 41 states that in cases of unemployment and disablement, the state shall secure to its citizens the right to work. As per Article 43, the states are required to secure a living wage, a decent standard of living and social and cultural opportunities for all workers. Article 51 bestows a duty to foster respect for international treaties and obligations.

Through the suspension of labour laws, the welfare of the employees is not promoted; rather they are deprived of the means to secure social and economic justice. This would indeed increase the inequalities in the income of employees. Moreover, the means of livelihood of the employees can be disrupted by the whims and fancies of the employer with no legal recourse available to them. In the case of *Daily Rated Casual Labour v. Union of India*,⁶ it was held that “job security” is an essential ingredient of the right to work and must be read in the light of the socio-economic philosophy of the right. By suspending labour laws, there would also be an absence of security of employment and living wage, along with a decent standard of living. Moreover, the aforesaid suspension would also be against the international obligations of India drawn by the ratification of various international labour conventions. Therefore, the instant suspension and dilution would lead to a violation of the DPSP’s as well, which ought to be protected by the State. The objective to increase investment and employment by relaxing the labour laws is optimistic of the government. India had already been experiencing an economic slowdown which was essentially a problem of demand in the economy.

CONCLUSION

The relaxation of labour laws is a reform towards the increase of supply and would intensify the demand problem due to the unavailability of disposable income among a large class of people, i.e., the labour force. The Central Government agrees that major reforms in the field of labour laws are required due to the presence of multifarious legislations dealing with different aspects of labour law. The Central Government sought to consolidate the existing laws into labour codes which could be said to be a step in the right direction to ease compliance with the laws. The complete suspension of the laws to attract investment and reduce the compliance burden is patently illegal from a Constitutional perspective. Even the situation of a global pandemic due to COVID-19 does not justify the deliberate neglect of the labour force. It is particularly in these times that the State must take steps to protect its interests. Paradoxically, the response of other countries such as the UK, Canada, etc. has been positive to support the employees and the employers in the time of crisis. This suspension could lead to a wanton “hire and fire” policy by employers. The lesson that should have been learned is that India was unable to cope with the pandemic because of the adverse living conditions of the majority of our people. And now, labour laws are being diluted which will ensure a worsening of living conditions. This will ensure that when the next pandemic comes in due course the country will flounder. The tragedy is that India is headed towards a societal breakdown for short-term gains of some. But a basic rethink of any current ruling ideology is always at a heavy cost. Be it any part of the

⁶*Daily Rated Casual Labour v. Union of India* (1987) AIR 2342

world, and regardless of the situation, you cannot let go of your democratic rights. Life is not only about surviving a pandemic; it is much more than that. It is people and from every stratum. Laughing, crying, and struggling to make a life for their families. For them and us, democracy is a necessity.

EVOLUTION OF INDIAN POLITY IN LIGHT OF COVID-19: A GROWING NEED FOR DEMOCRATIC VIGILANCE

Aarooha Kulkarni¹

ABSTRACT:

The advent of Covid-19 is ravaging the entire world, right from public health to the economy. This pandemic has had a large impact on the way in which sovereign nations with democratic setup function. The first half of the paper talks about the aspects in which the Covid-19 crisis has indoctrinated the prevailing democracy in our country and the second half provides an insight on the way our democracy ought to mould itself in the post Covid-19 world.

At the outset, the author discusses the various fundamental rights which have been compromised due to the pandemic. Inter alia, the right to free movement, right to peaceful assembly without arms, right to freedom of speech and expression etc. are some of the abridged rights. Despite such curtailment being reasonable and necessary, it is pertinent to note that such curtailment is not subjected to social or economic abuse.

Along with fundamental rights, a citizen in a democracy is endowed with great might. It is the will of the people which ultimately reflects in every policy decision that the executive takes and therefore, in the period of strict nation-wide lockdown, it is the common man who wields the ultimate power. This paper discusses the successes and failures of policy decisions as a direct consequence of the willingness and cooperation extended by the people.

Thirdly, there is a need among the citizens of our country to abide by certain moral standards which are beyond the law. Inculcation of qualities like self-discipline, decency and integrity cannot be enforced by any statute, and hence are to be instilled and fostered. This paper discusses how it is not only crucial that citizens obey the law, but it is of utmost importance that citizens obey the high standards of morality which are not enforced by the law. This obedience to the unenforceable forms the hallmark of a truly civilized and mature democracy.

Further, the members of the government have undergone detailed public scrutiny with regards to their executive decisions to help neutralise the consequences of the pandemic. In these difficult times, the moral calibre of every leader in our country is being tested. This paper also talks about how men of knowledge, vision and character have proved to be better equipped to handle the pandemic instead of those who rely on divisive tendencies and political ideologies to garner public approval. Taking undue advantage of this situation, the politicians entrenched in their power positions have victimized the vulnerable class, thus exposing their hidden agendas and trivializing democracy.

Lastly, the paper talks about the necessity of keeping a check on the growing authoritative tendency of the executive in this pandemic. The central government has assumed a large amount of power and hence has

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considerably restricted state autonomy on many fronts. This has also resulted in the erosion of accountability mechanisms of the State. Among other examples the paper discusses how the crisis is also accelerating the government's use of new surveillance technologies, which poses a threat of turning India into an Orwellian state.

The paper further explores the different ways in which democracy may go through a paradigm shift in the post-lockdown world. History testifies that the advent of an epidemic brings unprecedented alterations in the functioning of a State.

One of the major changes that we are likely to see in the near future is the change in the dynamics of the electoral process. The upcoming state elections are likely to get rescheduled and with the subsisting threat of transmission of the virus, politicians may no longer be able to carry out campaign rallies and other outreach events. The government may come up with voting-by-mail or remote voting technologies to carry out election processes. Second, the paper talks about how the dynamics of the relationship between the Centre and State might be reshaped. Due to the centralization of power, inter alia, the states have been stripped of their decision-making powers and are only left with the task of implementing orders given by the Centre. This results in friction between the state and the centre, ultimately perpetrating fear and uncertainty. Thirdly, after gauging the performance of politicians during the Covid-19 crisis, the electorate may demand a new class of political leaders who have stood the test of time. These men shall not be professional politicians of political parties but men of knowledge, vision and character. These men shall have expertise in some different fields and should have joined public life only with an interest to provide national service.

The paper concludes on the note that as the pandemic subsides, the democratic functions of our country are going to undergo a radical change in which we need a government which is strong without being authoritarian and humane without being weak.

INTRODUCTION

The entire world is suffering from the depredations of the global pandemic of Covid-19. Apart from public health and global economy, this virus has caused a considerable impact on the governance structure and democratic power of sovereign nations. History bears testimony that the epidemic of the Great Plague of Athens, not only took several thousands of Klives but also planted seeds that weakened and subsequently destroyed Athenian democracy. The epidemic is said to have pushed the morally weak people of the government into an inevitable path of lawlessness and sacrilege.² Today, at the prevailing risk of repeating this inglorious eventuality, it is important that Indian citizens identify the ways in which the current democratic setup has been conditioned since the advent of Covid-19 and exercise extreme vigilance with regards to the assumption of extraordinary powers by the executive. To counter this abnormal situation, the government assumes such extraordinary power is not only necessary and reasonable but also inevitable. However, it is of prime importance that a check is kept on these plenipotentiary powers vested in it through law and ensured that they are not subjected to social abuse, wrongful economic gains or political vendetta.

The first half of the paper talks about the aspects in which the Covid-19 crisis has indoctrinated the prevailing democracy in our country - like abridgment of fundamental rights, the enormous potency of the power of the common man, and the dire need to obey strict moral standards. The paper further investigates the growing authoritative tendency of the executive by centralizing powers and using intrusive surveillance technologies, the paper provides an insight into the repercussions that the lockdown has caused on our polity and the way in which our democracy ought to mould itself in the post-Covid world.

² 19 THUCYDIDES & REX WARNER, *HISTORY OF THE PELOPONNESIAN WAR* 19 7 1968.

ABRIDGMENT OF FUNDAMENTAL RIGHTS

To control the transmission of the deadly Covid-19 virus, the Indian government imposed a strict nation-wide lockdown on 22nd March, 2020. As a consequence of this, several fundamental rights enshrined under Part III of our Constitution were curtailed. These fundamental rights, which include the Right to Freedom, are considered to be guarantors of civil liberty, and it has been time and again reiterated that the liberty of an individual is the very essence of the democratic way of life adopted by the Constitution.³ This curtailment of fundamental rights is constitutionally valid since it is under the purview of 'reasonable restrictions' imposed by the State in the wider 'interests of the general public.'⁴

At the outset, the right to freedom of speech and expression has considerably been compromised. The Mumbai police, with the object of protecting people from fake news, issued an order making the administrators of WhatsApp Groups criminally liable if any person in the group sends false and incorrect information about the virus which may cause confusion or panic.⁵ While this gag order was issued to deal with the animosity created in the state due to the Covid-19 pandemic and was subsequently upheld by the High Court of Bombay,⁶ it also prohibited 'inciting mistrust towards the government'. The inclusion of this phrase has proved to be wide enough to include in its ambit, any critical perspectives or opposing remarks against the Maharashtra government,⁷ which is highly intrusive and incongruous in a democratic system. This interpretation also stands antithetical to the stance of the apex court of our country which has stressed the exigent need to balance proportionality and reasonable restrictions with regards to curtailing free speech and expression.⁸

To curb the transmission of the virus, the right to assemble peacefully without arms was also reasonably curtailed. There is likelihood that the executive may use this need to restrict public gatherings as a pretext to stifle anti-government protests and rallies. Opposing voices which provide resisting predicaments on government policies are essential in a democratic setup. Moreover, the right to assemble and demonstrate by holding dharnas and peaceful agitation are the basic features of a democratic system. The Supreme Court considers the right to protest as a fundamental right and affirms that the people of our country have a right to raise their voice or express resentment against the decisions and actions of the government on any subject of social or national importance.⁹ The author affirms that this curtailment is necessary to maintain public health and order, and also enforce measures of social distancing. However, it is the duty of citizens to ensure that the executive does not use this emergency provision for suppressing the anti-government voices and constructive criticisms, thus, encroaching on the fundamental right to protest.

Another major consequence of the country-wide lockdown was the curtailment of the right to move freely throughout the territory of India. After the declaration of the country-wide lockdown, the National Disaster

³ *Daryao v State of Uttar Pradesh* (1961) A.I.R. SC 1457.

⁴ *Constitution of India*; art. 19, cl. 2. read with art. 19 cl. 5.

⁵ Jaideep Giridhar, *Mumbai Police Warns Against Coronavirus-related Fake News on Social Media*, *FIRSTPOST* (May 25, 2020, 01:56 PM), <https://www.firstpost.com/india/mumbai-police-warns-coronavirus-related-fake-news-social-media-heres-prohibited-section-144-section-188-8405201.html>.

⁶ *Press Trust of India, HC Backs Mumbai Police's Order Against Fake Social Media Posts on Covid-19*, *THE NEW INDIAN EXPRESS* (Apr. 15, 07:10 PM), <https://www.newindianexpress.com/nation/2020/apr/15/hc-backs-mumbai-polices-order-against-fake-social-media-posts-on-covid-19-2130537.html>.

⁷ *Sukanya Shantha, Mumbai Police Issues Gag Order, Declares Criticising Government a Crime*, *THE WIRE* (May 27, 2020), <https://thewire.in/rights/mumbai-police-gag-order-section-144>.

⁸ *Anuradha Bhasin v Union of India*, (2020) 2 SCC 637.

⁹ *In Re: Ramlila Maidan Incident Dt. 4/5.06.2011 v. Home Secretary, Union of India &Ors.*, (2012) 5 SCC 1.

Management Authority of India (NDMA), in exercise of the powers under the Disaster Management Act, 2005 directed the state governments to take all measures to ‘prevent the spread of Covid-19 in the country.’¹⁰ This directive resulted in the Uttar Pradesh government filing 500 FIRs and arresting more than 688 migrant workers for ‘jay-walking’ on roads and highways in violation of lockdown guidelines.¹¹ While restricting interstate travel became necessary as the entire country was under lockdown, there was a severe lack of logistical assistance for those who were locked out of their homes.

Governments’ emergency responses to combat the spread of the virus also puts the recently recognized right to privacy under threat. There have been instances where the government has blatantly released the names of Covid-19 patients along with their residential addresses and passport numbers.¹² The government came up with the AarogyaSetu application which is an open-source Covid-19 contact tracing and syndromic mapping mobile application. While this app helps the executive monitor individuals’ health and provides real-time updates when a Covid patient is in the vicinity of the user, there is a lack of transparency and algorithmic accountability on the government’s part.¹³ The dilemma between - more privacy and less security, or more security and less privacy is an age-old tug-of-war, and; considering the extraordinary nature of the prevailing circumstances, perhaps the individuals and the government is willing to turn a blind eye to the privacy concerns, for the time being, to trace victims of the virus and ensure immediate containment. However, taking into account the absence of data protection laws in India and the sensitive nature of the acquired health data, it is imperative that the citizens stay vigilant and ensure that their data is not misused for wrongful economic or political gains.

POWER OF THE COMMON MAN

Along with fundamental rights, citizens of a democracy are endowed with great might. This formidable class of citizens is considered to be far more dominant and influential than even the cabinet ministers of the country. Active participation of this class of citizens, in politics and civic life, forms one of the key elements of democracy¹⁴ and focuses more on providing opportunities, for the people to control their leaders and to oust them without the need for a revolution. According to Montesquieu who was a severe critic of democracy, believed that ‘The tyranny of a Prince in an oligarchy is not so dangerous to the public welfare as the apathy of a citizen in a democracy.’¹⁵ Hence, a free nation can be stifled by indigenous autocrats only through its apathy and folly. It is to be noted that effective democracy does not arise merely by protecting the rights of the people and keeping checks and balances on different organs of the government; it arises when ordinary people come forward and willingly utilize their resources to put effective pressure on the elite executives.

¹⁰ National Disaster Management Authority, Government of India., Order No. 1-29/2020PP (Pt.II), <https://ndma.gov.in/images/covid/ndmaorder240320.pdf>.

¹¹ The Wire Staff, *With Temporary Shelters, Haryana and UP Try to Stop Migrant Labourers from Walking to Villages*, THE WIRE (Mar. 30, 2020), <https://thewire.in/rights/with-temporary-shelters-haryana-and-up-try-to-stop-migrant-labourers-from-walking-to-villages>.

¹² Pooja Jaiswal, *Privacy Of Covid-19 Suspects Violated; Names, Addresses, Made Public*, THE WEEK (Mar. 22, 2020, 11.30 PM), <https://www.theweek.in/news/india/2020/03/22/privacy-of-covid-19-suspects-violated-names-addresses-made-public.html>.

¹³ Mandira Narain & Prabhat Mishra, *AarogyaSetu: Privacy in The Time of a Pandemic*, THE TELEGRAPH ONLINE (Jul. 8, 2020, 02:40 AM), <https://www.telegraphindia.com/opinion/coronavirus-the-government-aarogya-setu-app-and-data-privacy/cid/1785658>.

¹⁴ Diamond Larry, *In Search of Democracy* 58 (1 Routledge 2015).

¹⁵ Montesquieu et al., *Spirit of Laws* (7 Colonial Press 1899).

It is evident that the will of the people reflects in every administrative decision that the locally elected representative takes, and ultimately reflects in all the policy decisions of the executive. During the period of strict nation-wide lockdown, it has been the common man who wielded the ultimate power of ensuring implementation of any executive decision. Therefore, the successes and failures of policy decisions were seen to be a direct consequence of the willingness and cooperation extended by the people.

The following week after the declaration of Janata Curfew, the entire country was under a very strict lockdown. The Indian populace largely cooperated with this self-imposed curfew and showed tremendous control and self-restraint. More than sixty thousand markets across India were shut down and over seven crore traders along with their forty crore employees refrained from going for work.¹⁶ Cutting across party lines, millions of people exercised self-discipline and followed norms of social distancing in an attempt to break the chain of transmission of the virus. This resolve shown by the common man proves to be a prime example of the strength of a united populace which is highly laudable.

Along with instances of successful implementation of these policies, there were certain cases where the majority populace refused to cooperate with the executive and acted in a way that proved to be detrimental in nature. According to Will Durant, 'Democracy is the most difficult of all forms of government, since it requires the widest spread of intelligence, and we forgot to make ourselves intelligent when we made ourselves sovereign.'¹⁷

In the first week of May 2020, to combat the rapidly declining economy of the country, the government allowed partial operation of wine shops and liquor stores. This move resulted in absolute chaos as citizens stood in long queues and flouted norms of social distancing, which ultimately ended in the police resorting to lathi-charge.¹⁸ While this was largely seen as a failure of the authorities for not being able to take adequate preventive measures, the reason for this blunder was the lack of cooperation shown by certain citizens who refused to understand the seriousness of the prevailing circumstances. Hence, the democratic matrix does not solely depend on a privileged subject of decision-making, but rather gains shape in the experience of human beings who share the consequences of their common practice towards a common life.¹⁹

OBEDIENCE TO THE UNENFORCEABLE

Plato thought poorly of democracy because he believed that it always degenerated into a state of tyranny and mobocracy.²⁰ On the other hand, Mahatma Gandhi had great faith in the masses and believed that given the right leadership, they were capable of exercising the morality of self-restraint and self-discipline.²¹ The duty of proving Gandhiji right and Plato wrong, rests on the citizen class of our country by abiding to certain

¹⁶ Swati Bhasin, *Janata Curfew Highlights*, NDTV (Mar. 23, 2020, 12:21 AM), <https://www.ndtv.com/india-news/janata-curfew-live-updates-india-observes-curfew-on-march-22-from-7-am-after-prime-minister-narendra-2198648>.

¹⁷ Will Durant et. al., *The Lessons of History*, 77-78 (Simon and Schuster, 1968).

¹⁸ Press Trust of India, *Lathicharge outside Delhi Liquor Store for Flouting Social Distancing Norms*, LIVE MINT (May 5, 2020 11:59 AM), <https://www.livemint.com/news/india/lathicharge-outside-delhi-liquor-store-for-flouting-social-distancing-norms-11588658923086.html>.

¹⁹ Thamy Pogrebinschi, *The Democracy of the Common Man: Revisiting Dewey's Political Thought*, Midwest Political Science Association, https://www.researchgate.net/publication/269274568_The_Democracy_of_the_Common_Man_Revisiting_Dewey's_Political_Thought.

²⁰ Plato, *The Republic* 46-98 (New York ed., Basic Books 1968).

²¹ Uday S. Mehta, *Gandhi On Democracy, Politics and the Ethics of Everyday Life* 88-100 (Cambridge University Press 2014).

moral standards. It is important that citizens must obey the law. However, it is more important that citizens must obey the high standards of decency which are not enforced by the law, but are the hallmark of a truly civilized and mature democracy.²²

Broadly, there exist two spheres of duty – firstly, the one which is legally enforceable and stands binding on every citizen, e.g., duty of care towards a private party, duty to uphold dignity, etc. Secondly, beyond the sphere of duty which is legally enforceable, there is a vast range of significant behaviour in which the law does not and ought not to intervene. This feeling of ‘obedience to the unenforceable’ is only possible through the inculcation of qualities like self-discipline, decency and integrity. This cannot be enforced by any statute, but are to be instilled and fostered. There were long periods in our country’s history when there existed very few laws and for generations, people lived without a centralised union government or even an effective regional government. But life continued, based on ethics, morality and obedience to the unenforceable.²³

In an age characterized by growing violence, escalating thirst for power, division on the basis of communal and caste lines, in conjunction with the economic and social consequences of the pandemic; this obedience is seen to be intermittent. However, there have been multiple instances where the resilience shown by the citizens is highly creditable. While the government was finding ways to curb the transmission of the virus, active cases were rapidly being recorded. Hence, it was imperative for the authorities to find a safe haven to quarantine and isolate the affected persons. To aid the municipal authorities in finding quarantine centres, a group of residents in Kerala offered to hand over their premises to accommodate Covid-19 patients. While some of the residents moved to their ancestral homes, others were non-resident Keralites whose houses were vacant.²⁴ This selfless determination shown by the citizens to assist the government in combating the virus and taking care of the affected victims, proves to be a classic example of the way ahead for the Indian democracy if people actively participate in affirmative action and polity.

Another example is that several non-governmental organizations (NGOs) were seen to collaborate and come forward to help the Indian Railways in preparing and distributing food to the migrant workers travelling by Shramik Special Trains.²⁵ Another foundation was reported to have distributed more than 4,000 kg of grains and 2,000 kg of potatoes along with 800 soaps to underprivileged families.²⁶ Moreover, the people chose to rise above the divisive tendencies of their communities, ideologies and faith; and expressed solidarity towards providing aid to the society. Nearly 400 packets of food were distributed by Swami Shantatmananda of Ramkrishna Mission,²⁷ temporary accommodation was provided to stranded students by the members of Students Islamic Organization of India (SIO),²⁸ food and water were provided to around 1,000 passengers of

²² N.A. Palkhiwala, *We, The People* 28 (Strand Book Stall 1, 1984).

²³ *Id.* at 29.

²⁴ Reethu Ravi, *Coronavirus Outbreak: Kerala Residents Offer Homes as Quarantine Centres*, *THE LOGICAL INDIAN* (Mar. 28, 2020, 09:24 AM), <https://thelogicalindian.com/story-feed/get-inspired/coronavirus-kerala-residents-offer-homes-20350>.

²⁵ *Asian News International (ANI), NGOs Join Hands with Railways to Provide Food to Migrants Travelling by Shramik Special Trains*, *NDTV* (May 20, 05:46 PM), <https://swachhindia.ndtv.com/ngos-join-hands-with-railways-to-provide-food-to-migrants-travelling-by-shramik-special-trains-44971/>.

²⁶ *Think Change India, This Delhi based NGO is Providing Food to 450 Families in Times of Coronavirus Lockdown*, *YOUR STORY* (Apr. 17, 2020), <https://yourstory.com/socialstory/2020/04/sunaayy-foundation-migrant-workers-groceries-coronavirus>.

²⁷ *Ibid.*

²⁸ *ShuriahNiazi, Muslim Charities Aid Needy in India amid Covid-19*, *ANADOLU AGENCY* (Mar. 16, 2020), <https://www.aa.com.tr/en/asia-pacific/muslim-charities-aid-needy-in-india-amid-covid-19/1806934>.

the Shramik Special Trains by the Jain Samaj Organisation,²⁹ hot and cooked meals were served twice a day through 17 community kitchens to around 1.2 lakh people from 24 wards of the BMC by the Rashtriya Swayamsevak Sangh (RSS), etc.³⁰

Lord Moulton describes such actions by the varied classes of citizens in a democracy as ‘manners’, which broadly signifies any doing that one should do, although he is not obliged to do it. He considers that these unenforceable manners lie between the domains of law, which is enforceable; and free choice, which is conclusively non-enforceable.³¹

AUTHORITARIAN TENDENCY

Liberal democracies have given to themselves the possibility, in the case of emergencies, to partly suspend the legal order or the procedure established by law. Several legal instruments have previously been suspended due to external aggression or internal rebellion, and now it is happening in the fight against the novel coronavirus. It is essential that advocates of democratic governance stay vigilant and identify interventions that can pre-empt long-term political damage. While this partial suspension of the legal order is justified and temporary, a matter of concern is to keep a check on the growing power of the Centre.³²

As illustrated above, the mechanisms of rendering dissent have been compromised due to the abridgment of fundamental rights. The pandemic has also caused erosion of state autonomy causing severe centralization of powers. Due to this, there is an inability on the part of the state governments to access funds and structure their welfare policies. Therefore, the States are prevented from making swift payments for the purchase of health-care apparatus such as ventilators and personal protective equipment (PPE).³³ Functionally, the state governments do not have a secondary position in our democracy; they are tasked with maintaining an equal partnership with the centre and handling important portfolios like public health, sanitation, public order, etc.³⁴ The Supreme Court has also affirmed that States are not ‘appendages of the Centre’ and are ‘supreme within the sphere allotted to them’.³⁵ However, as much as the state governments have taken up assertive decisions, they have repeatedly found themselves throttled by the limitations of our federal structure.

The pandemic crisis has also accelerated governments’ use of intrusive surveillance technologies. This usage includes identifying Covid hot spots, keeping tabs on infected persons and tracking the movements of individuals to enforce quarantine, etc. There is no assurance that the data mined through the AarogyaSetu application, as illustrated above, will only be used for public health purposes and not for general surveillance.³⁶ While enhanced surveillance is not anti-democratic per se, there exists a high risk of political abuse, particularly if the data is used without transparency. It is indisputable that the government’s primary

²⁹ ANI, *supra* note 24.

³⁰ *Special Correspondent, Bharati Seva Sangam Provides Food to Needy Sections in Chennai, THE HINDU* (Apr. 14, 2020, 10:24 PM), <https://www.thehindu.com/news/cities/chennai/rss-joins-chennai-corporation-to-distribute-food-donates-sanitisers-masks/article31323171.ece>.

³¹ Lord Moulton, *Laws and Manners, THE ATLANTIC MONTHLY* (Jul. 1924), <http://www2.econ.iastate.edu/classes/econ362/hallam/NewspaperArticles/LawAndManners.pdf>.

³² Francesco Luise, *Pandemic and Democracy, A Troubled Relationship, IMPAKTER* (Mar.18, 2020), <https://impakter.com/pandemic-and-democracy-a-troubled-relationship/>.

³³ Suhrith Parthasarathy, *Needed, Greater Decentralisation of Power, THE HINDU* (Apr. 9, 2020, 01:04 PM), <https://www.thehindu.com/opinion/lead/needed-greater-decentralisation-of-power/article31293086.ece>.

³⁴ *Constitution of India; schedule. 7.*

³⁵ *S.R. Bommai v Union of India, (1994) 2 SCR 644.*

³⁶ *Narain and Mishra, supra* note 12.

role is that of a welfare-state; and to effectively save lives amidst the pandemic, states at times must exercise slight encroachment on individual liberties in order to safeguard the public well-being. However, Yuval Noah Harari argues that surveillance measures enacted during this global emergency are likely to become permanent and that the techniques used to monitor people during the pandemic could later be employed more broadly to regulate other aspects of daily life.³⁷ Others have claimed that such intrusive practices may become the ‘default option’ for addressing any public crisis in the future.³⁸ Therefore, the challenge lies before us to ensure that this technologically-enabled medical surveillance does not amalgamate into a general all-inclusive infiltration, thereby permanently threatening the privacy of an individual and the democracy of our country.

THE WAY AHEAD

“It is a funny thing about life, if you refuse to accept anything but the best, you often get it”

– Somerset Maugham³⁹

This is equally true of democracy. If citizens refuse to accept any but the best citizens as their political representatives, it would usher in the golden age of our republic. Democracy gives, as life gives, what you ask for it. The members of the government and the opposition have undergone detailed public scrutiny with regards to their executive decisions to help neutralise the consequences of the pandemic situation. The calibre of every politician has been tested and examined through his performance in administering the impact of this virus. In the post-lockdown age, the Indian electorate shall be better informed in taking electoral decisions as the pandemic would have given an equal opportunity to all the incumbent and aspiring politicians to prove their competence.

One of the major paradigms shifts that is going to take place is in the way the electorate views and chooses their ‘professional’ politicians as Members of Parliament (MPs) and Members of Legislative Assembly (MLAs). ‘Professional’ politicians are those people who have the sole occupation and sustenance of participating in politics and carrying out allied functions. As we enter the new decade, the time has come that the citizens of our country will insist upon men of knowledge, vision and character being chosen as their elected representatives. They will repudiate ‘professional’ politicians who are mere power-seekers and power-brokers. Issues of poverty can be resolved only by experts in finance, production and economics; and issues of unemployment can be rectified by specialists in human resources, social engineering and labour laws. Similarly, the electorate has realized that experts in - medicine, emergency governance, and public health who have high moral standards of integrity, can effectively combat the pandemic situation. Therefore, our republic would have a new lease of life when young and visionary citizens, with well-equipped minds and with the ability to have a bright career outside politics, take to public life as a matter of national service.

Secondly, the post-lockdown age will also experience electoral disruptions and the executive will be forced to come up with innovations in election administration. The Election Commission of India (ECI) has already deferred constituency by-elections of eight states including Bihar, Assam, Tamil Nadu, and Uttar Pradesh

³⁷ Yuval Noah Harari, *The World after Coronavirus*, *FINANCIAL TIMES* (Mar. 20, 2020 05:00 AM), <https://amp.ft.com/content/19d90308-6858-11ea-a3c9-1fe6fedcca75>.

³⁸ Evgeny Morozov, *The Tech ‘Solutions’ for Coronavirus Take the Surveillance State to the Next Level*, *THE GUARDIAN* (Apr. 15, 2020, 03:46 PM), <https://www.theguardian.com/commentisfree/2020/apr/15/tech-coronavirus-surveillance-state-digital-disrupt>.

³⁹ Palkhivala, *supra* note 21, at 46.

etc.⁴⁰ Subsequent to this indefinite postponement, when elections do take place, there will be a considerable fall in the turn-out of senior citizens and other vulnerable classes. However, it is pertinent for the Indian populace to ensure that the government does not use the pandemic as a pretext to reschedule the elections to a politically convenient time. To ensure this, new electoral mechanisms can be adopted such as voting-by-mail or phase-wise voting in different constituencies. Even remote voting technologies can be developed wherein the voter can vote through the internet using a government portal or a mobile application. Countries like South Korea have adopted this mechanism and have allowed the electorate to vote from hospitals and homes, recording its highest turnout in 28 years.⁴¹ Even Taiwan held its presidential elections in March undertaking preventive measures organising a separate booth for those with fever or respiratory ailments. Therefore, taking inspiration from the international fraternity and optimistically assuming that the consequences of the pandemic will last over a year, there is a dire need to explore democratic ways of conducting elections, thereby avoiding any possibility of President's Rule.

Apart from the voting mechanisms, there can be considerable innovations in the activity of campaigning and rallying. Pre-election campaigns are very important in a democratic setup and considerably determine the political fate of the candidate. The campaign rallies involve a large congregation of party workers and citizens who turn up in huge numbers to show their support for the candidate, which can be proved to be huge health hazards and violative of social distancing norms. This curtailment of rallies and retail-style campaigning will give an impetus to all the political parties to use technology and carry out online campaigns and e-rallies. Therefore, this technological renaissance having opened the gates for innovation and a new India, it is pertinent for individuals to stay vigilant about political misuse and anti-democratic usage of this technology.

Today the people are looking forward, starry-eyed, to a new era. It is time not merely for a new budget or a new policy, but for shaping and moulding a new society. This unguarded persona of the Indian populace should not be used by the executive to further its propaganda and trivialize democracy. In the light of the pandemic, the democratic functions of our country have undergone a radical change. The executive has more power than ever - the fundamental rights have been curtailed, and the executive is leaning towards establishing an authoritative regime. Hence, it is imperative to display the power of the electorate and assert the will of the people, simultaneously ensuring obedience to the unenforceable values of discipline and integrity. This will give us the government that we need – a government which is strong without being authoritarian and humane without being weak.

⁴⁰ Arun Kumar Chaubey, *Election Commission Defers By-elections on 8 Constituencies due to Covid-19 Pandemic, Floods*, ZEE NEWS (Jul 23, 2020, 04:57 PM), <https://zeenews.india.com/india/election-commission-defers-by-elections-on-8-constituencies-due-to-covid-19-pandemic-floods-2297769.html>.

⁴¹ Mary Hui, *South Korea's Coronavirus Patients will be to Vote from Homes and Hospitals*, QUARTZ (Mar.12, 2020), <https://qz.com/1815783/south-korea-coronavirus-patients-to-vote-from-home-and-hospitals/>.

SURVIVAL OF DEMOCRACY IN LIGHT OF PANDEMICS - LABOUR LAW

-Vanita Agarwal¹

ABSTRACT

On the rise of the global pandemic and resulting the nation-wide lockdown, has restricted our economy functioning and individuals also. To subsidise its impact on the country as whole, several amendments, guidelines and announcements have been made by government, which may have long-term bearing on society at large. One of the draconian suspensions is suspending 35 out of the 38 labour laws for next three years from now, by the State of Uttar Pradesh. This move was followed by other states as well like Madhya Pradesh, Gujarat and Odisha, among others, though to a smaller extent. Now many states are exempted from certain Labour Laws Ordinance, 2020 like Workmen Compensation Act, 1923, the Bonded Labour System (Abolition) Act, 1976 and the Building and Other Construction Workers Act, 1996. The Constitution of India confers innumerable rights for protecting and safeguarding the interests of labour under Part III as well as Part IV pertaining to Fundamental Rights and Directive Principles of State Policy (DPSP), respectively.

Freedom to Form Associations has been taken away amidst the ongoing Covid – 19 pandemics. The Right to Life and Its Various Facets - The right to life does not simply mean a mere animal existence but a right to live with dignity, as stated in the case of Francis Coralie v. Union Territory of Delhi. But, this right also holds within its ambit the right to livelihood, as reiterated in the case of Olga Tellis v. Bombay Municipal Corporation

During this pandemic situation, many social security statutes like the Minimum Wages Act, 1948, Factories Act, 1948 and the Industrial Disputes Act, 1947 have been suspended. Laborers and employees are exposed to even more risk as now they do not have a guarantee of a fixed minimum income, and whether they enjoy the protection against retrenchment or layoffs anymore. The employers also need not to follow in stricter sense the Factories Act, 1948 provisions.

In Sanjit Roy v. State of Rajasthan, it has been held that Workers have Right of Protection from Exploitation and the State cannot take advantage of helplessness of labourers and also cannot pay wages less than the minimum wages.

Suspension of labour laws has been justified by a release on 06th May, 2020, specifying it as the need of the hour. Though, this suspension infringes workers' rights. Some other alternative solution should be carried out to protect the interest of employers as well as employees/workmen.

INTRODUCTION

The global pandemic has resulted into the nation-wide lockdown and has also restricted our economy functioning and individuals. In order to subsidise its impact on the country as a whole, several amendments, guidelines and announcements have been made by the government, which may have its long-term bearing,

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may be on the society at large. One of the draconian suspensions is suspending of major number of laws like 35 laws were suspended from the total of 38 labour laws and acts, for next three years from now, firstly by the State of Uttar Pradesh. The Government of many states have followed this process of suspension, though to a smaller extent, like the State of Madhya Pradesh, State of Gujarat and Odisha, among others. Now many states are Exempted from certain Labour Laws Ordinance, 2020, like “Workmen Compensation Act, 1923”, “the Bonded Labour System (Abolition) Act, 1976” and “The Building and Other Construction Workers Act, 1996”.²

Uttar Pradesh

As per UP Government Ordinance “Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020” (“Ordinance”) which has not received President assent as yet, So, finally most of labour laws have been suspended except some:

- 1] The Workmen Compensation Act, 1923,
- 2] The Bonded Labour System (Abolition) Act, 1976 and
- 3] The Building and Other Construction Workers Act, 1996.

But, Section 5 of the Payment of Wages Act, will continue to be in force. It is regarding the timely payment of wages. One of the negative outcomes of such suspension decision is that, it may encourage employers to exploit their labours.

During this pandemic, on 8th May, 2020, the Government of Uttar Pradesh had promulgated some Ordinances by suspending them for the three (3) years of time, approximately 30 labour laws and rules made thereunder in the State of Uttar Pradesh, ultimately by favouring the manufacturing process.³

Below is the list of suspended labour laws:

1. “Apprentices Act 1961”;
2. “Beedis and Cigar Workers Act 1966”;
3. “Cine Workers and Cinema Theatre W. Act 1981”;
4. “Contract Labour (Regulation and Abolition) Act, 1970”;
5. “Dookan Aur Vanijya Adhithan Act 1962”;
6. “Factories Act 1948 (barring provisions relating to safety and security of workers)”;
7. “Industrial Disputes Act 1947”;
8. “Industrial Employment Act 1946”;
9. “Minimum Wages Act 1948”;
10. “Motor Transport Workers Act 1961”;
11. “Payment of Bonus Act 1965”;
12. “The Payment of Gratuity Act 1972”;
13. “The Payment of Wages Act 1936 (barring Section 5)”;
14. “Public Liability Insurance Act 1991”;

²*Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act, 1964, Section 3, Constitutional validity of Constitution of India, Articles 14 and 23 and the Minimum Wages Act, 1968.*

³<https://www.news18.com/news/opinion/covid-19-yogi-adityanath-attempts-reforms-delivers-regulatory-chaos-in-up-2613781.html>

15. “Sales Promotion Employees Act 1976”;
16. “The Indian Boiler Act, 1923”;
17. “Trade Unions Act 1926”;
18. “Weekly Holidays Act 1942”;
19. “Working Journalists Employees Act 1955”;
20. “Dangerous Machines Act 1983”;
21. “Sick Industrial Companies Act 1985”;
22. “The Building and other construction workers (Regulation of Employment and Conditions of Services) Act 1996” (barring provisions relating to safety and security of workers);
23. “UP Shops & Establishments Act 1962”;
24. “UP Welfare Fund Act”;
25. “UP Industrial Peace (Timely Payment of Wages) Act 1961”;
26. “UP Industrial Housing Act 1955”;
27. “Industrial Establishment (National Holidays) Act 1961”;
28. “UP Industrial Undertakings Special Provisions for Prevention of (Unemployment) Act 1966”;
29. “UP Employment of Substitute Workmen Act 1978”; and
30. “UP Sugar & Power Alcohol Industries Labour Welfare & Development Fund Act 1950”.

These exemptions can be enjoyed by establishments, but they are subject to the following conditions, which need to be fulfilled:⁴

1. As per Section 62 of the Factories Act, 1948, an electronic attendance register should be maintained with the name and details of all employed workers.
2. Wages less than minimum wages should not be paid to any workers.
3. As per S.5 contained in the Payment of Wages Act, 1936, the wages of all the workers shall be within the time frame limit.
4. Any wages due to workers shall not be paid in cash but only in their bank accounts.
5. As per the Factories Act, 1948 and the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, all the provisions in relation to safety as well as security of the workers shall remain applicable.
6. As per labour law, no worker shall be made to work beyond eleven hours in a particular day and also maximum twelve hours per day, the spread over of the work can be made.
7. As per Employees Compensation Act, 1923, accidental death or disability compensation should be paid for death or disability, arising out of and in the course of employment.
8. The provisions of various labour laws in relation to the employment of women and children shall remain applicable as it is.
9. Applicability of the provisions of Bonded Labour System (Abolition) Act, 1976 shall be continued.

⁴<https://scroll.in/article/961435/is-uttar-pradeshs-decision-to-suspend-35-labour-laws-legal-experts-believe-it-could-be-challenged>

Actually, this new Ordinance has made major of labour laws and rules thereunder in relation to their working place safety, industrial disputes, if any, contract labour, trade unions, redundant for a reasonable time period.

State of Madhya Pradesh ("MP")

On 05May 2020, the Government of MP has brought into effect certain amendments in the Industrial Disputes Act, 1947 whereby exempting new undertakings and establishments from all the provisions in Chapter V-A regarding Lay-off and Retrenchment, all the provisions of Chapter V-B which deals with Special Provisions relating to Lay-off, Retrenchment and closure in certain Establishments, also deals with conditions precedent to retrenchment of workmen.

The procedure for closing down an undertaking and restarting of undertakings closed down before the commencement of The Industrial Disputes (Amendment) Act, 1976. The penalty prescribed for lay-off and retrenchment without previous permission and the penalty prescribed for the closure of an undertaking. This exemption is applicable for thousand (1000) days subject to the certain restriction.

This notification and clarification actually exempt those factories from following the provisions of the Factories Act, 1948 and MP Factories Rules, 1962 for three (3) months after the date of publication of the notification, but the following provisions are not exempted:

- provisions pertaining to approval, licensing and registration of factories,
The notice to be sent by occupier and inspectors,
- The provisions of Chapter IV (Safety),
- Chapter IV-A (Provisions relating to Hazardous Processes),
- Section 59 (Extra wages for overtime),
- Section 65 (Power to make exempting rules),
- Section 67 (Prohibition of employment of young children),
- Section 79 (Annual leave with wages),
- Section 88 (Notice of certain accidents) and
- Section 112 (General powers to make rules) and rules made thereunder.

Gujarat

On April 17, 2020, The State of Gujarat has exempted all factories registered under the Factories Act, 1948 from various provisions with some conditions relating to weekly hours, daily hours, intervals for rest etc., with effect from April 20, 2020, until July 19, 2020:

1. Maximum working hours for an adult worker shall be twelve (12) hours a day and seventy-two (72) hours in a week.
2. An interval of rest for at least half an hour after every six (6) hours on each day.
3. The working hours of female worker shall not include the time period in a factory in between 7:00 PM to 6:00 AM.
4. Wages shall be in justified proportion of existing wages. (E.g. if wages for per hour is Rs.10/, so, for eight (8) hours wages should be Rs. 80, and accordingly the proportionate wages for twelve (12) hours will be Rs. 120) and not less than that.

On the day of 8th May, 2020, the Gujarat state Chief Minister has made an announcement that all the relaxation in labour laws are applicable only for new projects in the State of Gujarat, on the pre-condition that they shall operate for minimum of twelve hundred (1200) days.⁵

Rajasthan

On April 11, 2020, The Rajasthan state government has decided to issue a notification in relation to extending working hours may be up to twelve (12) hours on each working day which may continue for three (3) months starting from the date of passing the order. This decision was taken for reducing manpower requirements specially in those factories which are involved in manufacturing essential food and grocery supplies. This additional or extra four (4) hours per day shall be paid as per overtime rules subject to a maximum overtime which may limit to twenty-four (24) hours per week.

State of Himachal Pradesh

On April 21, 2020, The State of HP has exempted all factories registered under the Factories Act, 1948 from provisions relating to weekly, daily spread hours with an interval of rest until July 20, 2020 subject to certain conditions:

- Maximum working hours for an adult worker shall be with upper limit of twelve (12) hours a day and in total, it may be seventy-two (72) hours in a week.
- An interval of rest that should be at least half an hour after every six (6) hours on each day.
- Wages shall be in proportion to an existing wage of a worker.
- All provisions of S. 59 relating to overtime wages and overtime period calculation shall be applicable as it is without having any change.
- Labourers are also protected under the Constitution of India, which covers Fundamental Rights in its Part III and Directive Principles of State Policy (DPSP) in its Part IV. Article 19(1)(c) prescribes the freedom granted to citizens for forming associations and also for forming unions. The Trade Unions Act, 1926 is that labour law which is suspended, so the fundamental right of labourers is also affected. These Trade Unions used to support bargaining power of labourers while fighting against their employers. But as per Article 19(4), certain restrictions are also reasonable to maintain Sovereignty and integrity of India. A reasonable solution to the problem should be accepted and not just suspension of laws.

The right to life as guaranteed under our Constitution, does not simply mean a mere life like an animal existence, but it's for that dignified life which is covered in the case of *Francis Coralie v. UT of Delhi* and also in *Olga Tellis v. Bombay Municipal Corporation*. In *Sanjit Roy v. State of Rajasthan*, there was a clear violation of Article 23. Even government cannot pay wages lower than the minimum wages which is prescribed under Minimum Wages Act, it may be for a worker who is employed on famine relief work. State has to pay the minimum wages, in a situation when some person is affected by drought conditions and that state has hired his services to provide him relief during this Drought Condition. A State cannot make the profit from someone's poor situation. During pandemic, the suspension of "The Minimum Wages Act" would add on to the existing problems which are already faced by workers.

The Petition was finally allowed by Court and the views of Justice BHAGWATI, P.N., and PATHAK, R.S are expressed here:

⁵<https://thewire.in/economy/gujarat-labour-law-exemption-new-industries-covid-19>

“In my judgment, the workers employed in the construction of the Madanganj Harmara Road as a measure of relief in a famine-stricken area are entitled to a minimum wage of Rs. 7 per day, and that wage cannot be reduced by reference to the Rajasthan Famine Relief Works Employees (Exception from Labour Laws) Act, 1964 because in so far as the provisions of s. 3 OF that Act countenance a lesser wage, they operate against Art 14 of the Constitution and are, therefore, void.”

The suspension of labour laws would somehow defeat Article 38 which promotes the welfare of the people by promising social, economic and political justice and minimising inequalities in income, status and opportunities. Also, Article 39 gives the right to adequate means of livelihood for all citizens and equitable distribution of material resources for the common good and prevention of the concentration of wealth and means of production. But Suspension of labour laws may increase the inequalities in income of employees. While in Article 41, the state shall protect its citizen’s right to work in the situation of unemployment and disablement. As per Article 43, the states shall be responsible to secure a living wage along with a decent and appropriate standard of living and also considering all social and cultural opportunities for all workers.

Labor Reform is Need of an hour, but not at the cost of the labor force. The Central Government intends to bring all the existing labour laws under one umbrella i.e., to bring labor codes to have maximum compliance of labour laws.

CONCLUSION

Several Central laws like the Minimum Wages Act, the Payment of Wages Act and the Payment of The Bonus Act will not apply to State. ⁶As labour is a matter on the concurrent list, so both governments viz. the Centre and the states can make laws. The reason for such suspension is to provide flexibility to industry and businesses to satisfy the employment requirements, but they need to follow basic safety standards. Such suspension would take away Trade Union rights also and goes against the interest of labours, with no grievance redressal system.

⁶<http://information.up.nic.in/attachments/CabinetDecisionfile/7c223b50d3fdc5a2c4a53863012ed0b0.pdf>

CONSTITUTIONAL VALIDITY OF RELAXATION OF LABOUR LAWS IN COVID ERA

-Richa Srivastava¹

ABSTRACT

Covid-19 has changed the face of labour laws. Various labour laws have been legislated after many years of struggle to provide justice to the labourers. These laws constitute welfare provisions for the benefit of workers. Though the implementations of labour laws are not very strict but suspension of labour laws in some states due to the pandemic has delayed the process of justice. The complete suspension of labour laws is not in accordance with the Centre's commitment to International Labour Organisation conventions. Even though the Centre is committed to protect the interest of the workers, reform does not signify a complete suspension of these laws.

A number of states have amended their labour laws during the lockdown stipulated by the Central and the State governments. States such as Uttar Pradesh, Maharashtra, Rajasthan, Gujarat, Goa, MP, Uttarakhand, Assam, Punjab, Haryana and Himachal Pradesh have increased the working hours from 8 hours to 12 hours. While Uttar Pradesh and Madhya Pradesh suspended key labour laws for the next three years, whereas Gujarat suspended them for 1,200 days. In MP, factory license will be renewed only once in 10 years instead of annually. Also, MSMEs (micro, small and medium enterprises) will be able to hire labourers, according to their requirement, to increase productivity.

In UP, only three labour laws will be applicable in the state for the next three years apart from provisions related to children and women in the suspended laws. These include the Building and Other Construction Workers Act, 1996, Workmen Compensation Act, 1923, and the Bonded Labour Act, 1976. Now, the question is whether the suspension of labour laws through ordinance is constitutionally valid or not. The other query of importance is whether the reasoning that labour laws can be suspended for the ease of doing business to better the economy is valid or not. This paper attempts to analyze the validity of relaxation in labour laws in the light of Constitution and India's commitment towards International Labour Organisation's conventions.

INTRODUCTION:

To contain Covid-19, the Union Government has to announce nationwide lockdown due to which all economic activity had to be stopped except essential services. This has led to loss of business, manufacturing etc. and none of the sector has remained aloof from the negative economic effect of this lockdown. There has been loss of employment to many citizens and had most adverse impact on the vulnerable and poor section of society. Various state governments with an intention to kick start the economic activity has resorted to suspension of labour laws in few states for a certain period to push the economic activities.

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Labour subject falls under the concurrent list of the Constitution. Therefore, both Parliament and State Legislatures can make laws on this subject. At present, there are number of labour laws regulating various aspects of labour such as resolution of industrial disputes, working conditions, social security, and wages. To improve ease of compliance and ensure uniformity in Union government labour laws, the union government is in the process of codifying various labour laws, fewer than four Codes, namely:(i) industrial relations (ii) occupational safety, health and working conditions, (iii) wages, and (iv) social security. These Codes would subsume laws such as the Industrial Disputes Act, 1947, the Factories Act, 1948, and the Payment of Wages Act, 1936.

The purpose of labour code is to have uniformity among various states and central (union) government labour legislation. The object of the same is to provide maximum benefit to the workers of unorganized sector. But the pandemic of Covid-19 has delayed the implementation of labour codes. On the contrary, few state governments have taken steps to suspend the labour laws which have opened the new ways of exploitations of laborer in the hands of their employers. The entire economic activity is assumed to be on the back seat due to poorly implemented labour laws, without being taking into consideration the fact that the most impacted community during covid-19 era is the laborer who survive on day-to-day basis.

RELAXATION OF LABOUR LAWS IN CERTAIN STATES

The Uttar Pradesh and Madhya Pradesh governments have approved the relaxation of certain aspects of labour laws through an ordinance. Further Gujarat, Rajasthan, Haryana, Uttarakhand, Himachal Pradesh, Assam and Goa have also notified relaxations to the labour laws applicable in their states through rules. These states have a sizeable number of labour force in their jurisdiction, who is now on the mercy of the employers. At first these labour laws are not implemented effectively and dilution in them has further deteriorated the small amount of safety net available for the labourers. The details of the relaxation in the labour laws by some state governments are provided below: -

MADHYA PRADESH

The Madhya Pradesh Labour Laws (Amendment) Ordinance, 2020 was promulgated by Madhya Pradesh government to change two state laws: -

- a) The Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961,
- b) The Madhya Pradesh Shram Kalyan Nidhi Adhiniyam, 1982.

The Madhya Pradesh Industrial employment of workers Act of 1961 was initially applicable to the establishments which have 50 or more workers employed in them. With the amendment, this threshold of 50 workers has been increased to 100 or more workers. Thus, a large number of establishments which employ 50 workers to 100 workers will be out of the purview of this act and would not be regulated as they were regulated in past. Another Act of 1982 modified by this ordinance is the Madhya Pradesh Shram Kalyan Nidhi Adhiniyam. This act was meant for the contribution of funds to finance the activities related to workers welfare. With this amendment, now Madhya Pradesh government may exempt any establishment or a class of establishment from making any such contributions just by a notification. The contribution into the fund by the employers was at a meagre rate of Rs. 3 for every 6 months. Now with the amendment even this may get stopped.

Further, the government of Madhya Pradesh state has also exempted new factories from some specific provisions of Industrial Dispute Act of 1947. The provisions related to dispute resolution, strikes and lockouts and trade unions etc. have been made not applicable for next 1000 days i.e., for next 33 months. Provisions related to layoffs and retrenchment of workers and closure of establishments however has not been diluted and they would continue to apply. It is also important to note there that the Industrial Disputes

Act, 1947 allows the state government to exempt certain establishments from the provisions of the Act as long as it is satisfied that a mechanism is in place for the settlement and investigation of industrial disputes².

UTTAR PRADESH

Similar to Madhya Pradesh government, Uttar Pradesh government has also approved the ordinance which as per news report seeks to exempt all the factories and establishments engaged in manufacturing processes from all labour laws for a period of three years, subject to the fulfilment of certain conditions³. This ordinance is called as the Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020.

The conditions on which the relaxation as mentioned in the approved ordinance would be provided are given below:

- **Wages:** The Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020 specifies that labourers cannot be paid below minimum wage. All the payments must be made within the prescribed time limit as provided in the Payment of Wages Act, 1936. The Act specifies that: (i) establishments with less than 1,000 workers must pay wages before the seventh day after the last day of the wage period and (ii) all other establishments must pay wages before the tenth day after the last day of the wage period. Wages must be paid into the bank accounts of workers. Therefore, to be eligible for the relaxation the industry/factory has to meet this condition.
- **Health and safety:** The Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020 states that provisions of health and safety specified in the Building and Other Construction Workers Act, 1996 and Factories Act, 1948 will continue to apply. These provisions regulate the usage of dangerous machinery, inspections, and maintenance of factories, amongst others.
- **Work Hours:** Workers cannot be compelled to work for more than eleven hours a day and the spread of work may not be more than 12 hours in a day. Thus, effectively binding the work hours in a factory.
- **Compensation:** If there is any untoward accident leading to death or disability, then the workers will be compensated as per the Employees Compensation Act, 1923. There is no relaxation in the compensation for such injuries and losses.
- **Bonded Labour:** The Bonded Labour System (Abolition) Act, 1976 will continue to remain in force. It provides for the abolition of the bonded labour system. Bonded labour refers to the system of forced labour where a debtor enters into an agreement with the creditor under certain conditions such as to repay his or a family members debt, due to his caste or community, or due to a social obligation.
- **Women and children:** Provisions of labour laws relating to the employment of women and children will continue to apply.

It is not specified and detailed whether labour laws providing for social security, industrial dispute resolution, trade unions, strikes, amongst others, will continue to apply to businesses in Uttar Pradesh for the period of three years specified in the Ordinance. Also, as this Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020 would be placing curb on some of the provisions of the acts enacted

² <https://www.prsindia.org/theprsblog/migration-india-and-impact-lockdown-migrants>

³ *ibid*

by union government therefore, it would also require the assent of the government before it comes into effect.

Changes in Work Hours

The Factories Act, 1948 gives power to state governments to exempt some factories from the restrictions related to work hours for a duration of 3 months to allow them to cope up with exceptional amount of work and it also empowers the state governments in case of public emergency to exempt the factories from all regulations of the factories Act of 1948. Using these provisions of The factories Act Of 1948, several state governments have increased the work hours for the labourers claiming it would help them to maintain social distancing as well as it would help factories to cope up with shortage of labourers due to large scale migrations etc. Gujarat, Himachal Pradesh, Rajasthan, Haryana, Uttar Pradesh, Goa, Assam and Uttarakhand state governments have passed notifications to increase maximum weekly work hours from 48 hours to 72 hours and daily work hours from 9 hours to 12 hours for certain factories using this provision. Going a step further Madhya Pradesh state government has exempted all factories from the provisions of the Factories Act, 1948 that regulate work hours⁴.

Table 1 below shows the state-wise increase in maximum work hours using provisions of Factories Act of 1948.

Table 1: State-wise changes to work hours

State	Establishments	Maximum weekly work hours	Maximum daily work hours	Overtime Pay (2x ordinary wages)	Time period
Gujarat	All factories	Increased from 48 hours to 72 hours	Increased from 9 hours to 12 hours	Not required	Three months
Himachal Pradesh	All factories	Increased from 48 hours to 72 hours	Increased from 9 hours to 12 hours	Required	Three months
Rajasthan	All factories distributing essential goods and manufacturing essential goods and food	Increased from 48 hours to 72 hours	Increased from 9 hours to 12 hours	Required	Three months
Haryana	All factories	Not specified	Increased from 9 hours to 12 hours	Required	Two months

⁴Supranote 4

Uttar Pradesh	All factories	Increased from 48 hours to 72 hours	Increased from 9 hours to 12 hours	Not required	Three months*
Uttarakhand	All factories and continuous process industries that are allowed to function by government	Maximum 6 days of work a week	Two shifts of 12 hours each.	Required	Three months
Assam	All factories	Not specified	Increased from 9 hours to 12 hours	Required	Three months
Goa	All factories	Not specified	Increased from 9 hours to 12 hours	Required	Approximately three months
Madhya Pradesh	All factories	Not specified	Not specified	Not specified	Three months

Note: *The Uttar Pradesh notification was withdrawn

CONSTITUTIONAL VALIDITY OF SUSPENSION OF LABOUR LAWS

The welfare of labourers and workers is enshrined in different provisions provided under the Fundamental Rights and Directive Principles of State Policy in the Constitution of India. These are enumerated in the Part III & Part IV of the constitution and are mechanisms to fulfil the aspirations of people of India. The relaxation and suspension of the labour laws can have negative connotations to these welfare provisions enumerated in the constitution. The following are some broad categorization under which these measures could be associated and discussed.

FREEDOM TO FORM ASSOCIATIONS

The Article 19(1) (c) of constitution of India provides the right to form associations and unions to the citizens of our country. The same is also available to the labourers and workers. This right has been most impacted by the relaxation and suspension of labour laws. Labourers are not provided with any alternative and in name of relaxation of labour laws an important defence of labourers has been taken away. In the case *Kulkarni v. State of Bombay*⁵ also the Supreme Court held that the right to form association inherently assumes the formation of organization and also includes in it the right to form trade unions.

With the suspension of labour laws including the Trade Unions Act, 1926, the right to form association and unions is severely affected to the disadvantage of labour class. The main idea behind formation of trade union was to use the collective bargaining available with the labour force to balance the power of employers. Trade unions were a great support to labourers in case of distress and disputes with the employers. They provided the support, voice and platform to the labourers to vent out their grievances which are very much essential for the welfare of the labourers. These are also inherently present in the Fundamental right enshrined in the constitution. Constitution also provides for the reasonable restrictions on the fundamental

⁵ AIR 1954 SC 73

rights on grounds of public order or morality or sovereignty and integrity of country. However, taking away the complete bargaining power from labourers and forcing them to live on the whims and fancies of employer couldn't be described as reasonable. Therefore, there is a need to balance such restrictions to maintain quality and dignity of life for all.

One Article in fundamental rights of the Constitution of India which if elaborated liberally may bring into life all other fundamental rights is Article 21. It covers all facets of life and is also referred as Right to life and liberty. This article's scope was enhanced particularly by court in the case *Maneka Gandhi v. Union of India*⁶. The court pronounced that the right to life is not related to the merely existence but it means a life full of dignity and respect. This was again reiterated by the court in the case of *Francis Coralie v. Union Territory of Delhi*⁷. This right also covers various necessities required to live a life of dignity. It also includes in itself the right to Livelihood as held by court in the case *Olga Tellis v. Bombay Municipal Corporation*⁸. The different social security acts like Factories Act, 1948, Minimum Wages Act, 1948 and Industrial Dispute Act 1947 etc. are a way to fulfil these rights towards laborers and workers. When these acts and provisions are suspended it indirectly leads to taking away the right to life. The suspension of these provisions not only takes away the right to life but created many hindrances for labourers to live a life of dignity and respect.

The suspension takes away the mechanisms available for labourers to live a dignified life by not allowing them the guarantee of a fixed income as well as protection against retrenchment or layoffs. With the suspension of labour laws, the employers would not be bound to provide safe working environment to the workers. Working environment could turn out to be unhygienic and not conducive for health contrary to provisions and aims of Factories Act 1948. The suspension of grievance redresses mechanism provided in the Industrial Dispute Act 1947 would leave labourers at the mercy of employers. The suspension of these labour laws would lead to more exploitation and harassment of the labourers. It will also lead to denial of fundamental right to access of justice, which is been held in the case of *Kushwaha v. PushapSadan*⁹ by Supreme Court.

RIGHT OF PROTECTION FROM EXPLOITATION

The payment of lower wages than prescribed minimum wages to a person is a form of pseudo bonded labour, where by the worker is been exploited by the employer on its whims and fancies. Supreme Court has also held in *Sanjit Roy v. State of Rajasthan*¹⁰, case that the payment of lower wages as compared to minimum wage to a person involved on famine relief work violates Article 23. Article 23 of the constitution of India provides for the prohibition of forced labour and traffic in human beings. By relaxing and suspension of labour laws the watchdog to monitor the payment of wages and benefits to the workers has been made irrelevant in the covid era. By not paying minimum wages is akin to forced labour by exploiting the difficult situations of pandemic. Even the state cannot pay fewer wages for services provided by the labourer, affected by the scarcity and famine, than the minimum wage on the grounds that it is provided to help them meet the famine situation. This is very much similar to the current situation arisen due to COVID-19 pandemic. The helplessness of the labourer cannot be exploited by the state and state should also not allow anyone to exploit the labourers and workers. The suspension of Minimum Wages Act would create the

⁶ AIR 1978 SC 597

⁷ AIR 1981 SC 746

⁸ AIR 1986 SC 180

⁹ AIR 2016 SC 141

¹⁰ AIR 1983 SC 0254

exploitative situation for people working in both private as well as government setup and is in effect creating the situation of forced labour which is specifically been prohibited by the constitution.

DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive Principle of State Policy is provided in the Part IV of the Indian constitution. These are non-justiciable in nature i.e.; these cannot be enforced in the court of law. These are the ideals enshrined in the constitution which acts as the guiding light for enacting the laws by the legislature. These have been the basis of large number of labour welfare legislation including social security acts.

The Article 38 of the constitution provides for the social security, economic and political justice by minimizing inequalities in income, status and opportunities. Article 39 seeks to secure to the citizens, inter alia the right to adequate means of livelihood for all citizens, equitable distribution of material resources of the community for the common good and prevention of the concentration of wealth and means of production. The state shall secure to its citizen the right to work in case of unemployment and disablement as provided in the Article 41. As per Article 43, the states are required to secure a living wage, a decent standard of living and social and cultural opportunities for all workers. Article 51 bestows a duty to foster respect for international treaties and obligations.

The suspension of labour laws leads to the promotion of social and economic injustice which is completely contrary to what is provided in the directive principles of state policy. This would lead to further divide and inequalities in the society. The equality principles like equal pay for equal work will become inapplicable. There would not be any legal remedy available for the labourers to give them relief from exploitation by employers. They would be living at the whims and fancies of employers and their livelihood will be also disrupted. It was held in the case of *Daily Rated Casual Labour v. Union of India*¹¹ that “job security” is an essential ingredient of the right to work and must be read in the light of the socio-economic philosophy of the right. The suspension of labour laws along with absence of security of employment and living wage will devoid workers from decent standard of life and life full of dignity.

Indian has been signatory of various international labour conventions. Therefore, there is international obligation for India to follow these labour conventions. Therefore, the instant suspension and dilution of the labour and social welfare Act would lead to a violation of the Directive Principle of State Policy, which is to be protected by the State.

The government is always interested in increasing the investment and they find relaxation of labour law as one of the optimistic ways to attract investors and businessman. India is already is in midst of economic slowdown along with the decrease in the demand in the economy. The purchasing power of lot of Indians has reduced considerably during this pandemic. The businesses are either shut down or running in losses. The relaxation of labour laws is mainly leading to increase the supply by increasing the production but it would not increase the purchasing power of the people. This would essentially increase the demand problem due to unavailability of disposable income among a large class of people, i.e., the labour force.

The Central Government agrees that major reforms in the field of labour laws are required due to enactment of multifarious legislation dealing with different aspects of labour law. The union government sought to consolidate the existing laws into labour codes, which will increase the compliance of these labour laws. The complete suspension of the laws to reduce the compliance burden for attracting investment is illegal from a constitutional perspective.

¹¹ AIR 1987 SC 2342

The global pandemic COVID-19 also doesn't justify the deliberate suspension of labour laws and neglect of labour force. The state and government shall work to support the labour force and to protect their interest in these difficult times. The suspension could lead to a wanton "hire and fire" policy by employers. Paradoxically, the response of other countries such as the UK, Canada, etc. has been positive to support the employees and the employers in the time of crisis. Similar planned approach is needed instead of any ad-hoc jerky approach to dilute and suspend the labour laws and social welfare legislations.

CONCLUSION& SUGGESTIONS

1. After analysing from various perspective, it can be said that strict compliance of labour laws may be difficult of have economic activity in large scale during pandemic era but suspension of labour laws may also lead to exploitation and hire and fire policy without even following serving of notice that cannot be denied.
2. The suspension of labour laws will lead to insecurity of livelihood in the minds of workers and violation of Article 21 of Constitution.
3. By not following the Minimum Wages Act, 1948 the employer will not even pay the minimum wages to his employees and there will be no way to stop exploitation.
4. There would be no collective bargaining as Trade Union Act 1926 will also be not in effect therefore the workers lost the biggest weapon.
5. The Factories Act 1948 is also suspended therefore there will be no effect of various welfare provisions related to workers.

Suggestions:

1. The balancing view need to be taken so that economic activity as well as protection of workers both would be taken care of.
2. In spite of suspension of labour laws in few states, there must be one public servant to be appointed like Labour Commissioner who could ensure that no exploitation is taking place in various factories and establishment.
3. Before suspension of labour laws in few states also there was provision of Inspector and Labour Commissioner in various Acts so no new public servants need to be appointed for that purpose.
4. The workers should be given option of complaint before Appellate Authority if they are not satisfied with the decision of Labour Commissioner.
5. As soon as the pandemic gets over, suspension of labour laws should be removed.

FUTURE OF DEMOCRACY

DEMOCRACY AND THE ROAD AHEAD

-Jaibatraka Mohanta¹

ABSTRACT

Democracy is derived from the Greek word's "demos" and "kratos" which means people and rule respectively. The cardinal principle of democracy means that people should directly have a part in the decision-making process. The noble concept of democracy evolved around the fifth century B.C.E in Athens known as Athenian democracy. Today democracy stands for the noble virtue of truth, to voice the concerns of people and to ensure equal rights to all citizens in a country.

As centuries passed by the world has come a long way from Athenian democracy. The adoption of the Universal Adult Franchise has ensured that every citizen is considered equal before the eyes of law and each vote has the same weightage. The cornerstone of democracy remains influencing people to ultimately govern them. With the advent of technology and growth in the scientific temperament, the methods of influencing people are seeing a new dawn.

This dawn has made it easier for people to connect with one another in a fraction of a second. Person to person connection is playing a major demographic dividend during the election process. On analyzing the growth of the ideal of democracy and the Information Technology revolution, one can see that it has shifted the archetype of democracy. The likes and dislikes of people are being closely monitored by various entities, artificial intelligence is being used to understand human variants and democracy is slowly becoming a game of prediction. Data is playing a significant role for governments in planning their policies and actions.

The fourth pillar of democracy which is referred to as free media, now stands under the guise of appeasement to a few political parties. Whether free media exists or not is an illusion. Today when people are no longer a part of the direct decision-making process their choices are trying to be deciphered using artificial intelligence thus understanding the needs of the voter and campaigning accordingly. Media houses should act for press rights, accountability for news and democratizing media reach out. Today the media is far from a watchdog of the government. It has rather transformed into a watchdog for people in positions of power.

Though democracy as a concept is getting older, however, its roots are getting weaker with each passing year. Faith of people in institutions governed by justice is gradually evaporating; the very institutions which strengthen democracy are falling weak. The concept of separation of power is getting diluted.

Now the big question remains: will democracy sustain? Firstly, the future will be shaped by what measures are actively being taken by citizens today to secure a free and transparent election process. Second, how citizens raise their voice and stand united for what is right. With the reinvention of democracy, the rights of people are being widely ignored. The focus is more towards appeasing people to garner popularity and satiate the needs for the vote bank. A blind eye is turned to fundamental human rights, environmental

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concerns and more. These issues accrue over time which ultimately results in the failure of various institutions thus weakening the democratic setup at large. The challenge that lies in front of this generation is to re-invent democracy amidst the growing fundamentalism in various parts of India and its neighbouring countries. To re-invent it we also need to visit the past and analyze how democracy was bestowed upon us along with the colonial virtues which have been left with us by our colonizers. The changing paradigms need to be closely knitted with the problems of today, thereby, leaving the practices of the colonial era behind. Legislations need to be crafted for posterity to cherish rather than being short sighted and address the concerns of the current day only.

This paper will analyze the future of democracy through the prism of technology with the advent of artificial intelligence. The re-invention of the concept along with the notion to rise above from the shackles of the past will be addressed: Understanding, at length, the process of how democracy had begun and how far we have travelled; the institutions, which have undergone a change with respect to the role of the opposition, specifically, from positive criticism to criticism only. Towards the end of the paper the author would try to propose a solution with respect to the democratic setup and the paradigms that are continuously changing due to factors such as globalization and liberalization.

INTRODUCTION

Twenty years of the 21st (twenty-first) century have ended with the wave of democracy as a notion being accepted in major parts of the world since there is a participation from people directly or indirectly. Today, we witness the third wave of democracy, a concept which saw the light of the day in a book by Samuel P. Huntington². It signifies the phenomenon that countries over the globe are shifting towards a democratic form of government. However, with the advancement in information and technology across various sectors and the continuous growth of scientific temper has resulted in a transition in the form of governance and democratic processes. Technology has started influencing political institutions and the road to such institutions by and large.

The virtuous virtue of democracy ensures the guarantee of rights among individuals. It evolved as a political system among the ancient Greeks and the Romans around the fifth century B.C.E. Today the vibrant economies and robust governments globally are trying to save the noble ideals of a democratic institution. The noble ideals are freedom of free speech and expression, equality in the eyes of law, universal adult suffrage, right to life, and safeguarding the interests of the under-privileged and ensuring that rights of people are safeguarded instead of being exploited. In the contemporary era, a representative form of democracy is being practiced instead of a direct democracy. The former is a form where people elect their representatives to voice their concerns and issues while the latter refers to a direct form in which people themselves deliberate and form legislations. Nations have come a long way from the direct form of democracy to the representative form in nature.

However, in the words of Heraclitus it is best portrayed that “change is the only constant in life.” In a like manner the age-old institution of democracy no doubt stands firm to date but cracks have begun to appear. These cracks with time can either destroy the concept of democracy with its name only intact, or it needs to be mended in the next few decades. The coming years will unfurl the tough questions that have been accruing in the system for centuries now. The change has to take place in a manner which evolves the democratic process for a more transparent and accountable government instead of dynastic rulings and democratic ideologies being confined amongst the political parties and in the books of records.

² Samuel P. Huntington, *Democracy's Third Wave*, *Journal of Democracy*, Spring 1991.

CRITICAL CONFLICT OF THE CONTEMPORARY ERA

With the advancement in technology, the concept of democracy is beginning to weaken. However, technology is not the only reason. It plays a crucial role in modern democracy. This moulding need to be done in a proper way or else the noble concept of democracy will fall with only the skeleton being intact. There are a few factors which are weakening this transition of contemporary democracy.

A. POLITICAL LEADERSHIP AND PARTY LEADERSHIP

Considering the India scenario, political leaders at the state and central level ensure that they appease the masses during their entire tenure while representing the people. Policies are framed keeping in mind the vote share from the large sections of society. In the 21st century artificial intelligence is playing a major role to help policy makers understand the likes and dislikes of voters. The various social media sites and other applications which are being utilized by the common public are misused and mishandled. The data generated by the use of these applications is being studied and accordingly feeds are tailored for individuals which ultimately help the policy makers to craft legislations along with crafting the minds of the commoners. Unknowingly technology is brain-washing the minds of individuals whereas in a democracy, its real purpose should be to engage more people in the decision-making process.

During the campaigning period, the wishes of people are taken into consideration for a brief period. Democratic sentiments are nurtured in its truest sense only between the period when the government is being formed and when it is formed. After assuming power, the democratic sentiment with time turns towards an autocratic sentiment. Leaders start worrying more about how to stay in power rather than the reason why they rose to power. The fear that a particular decision will lead to non-election for the next term makes elected representatives more concerned about their seat rather than the actual issues.

The very essence of democracy lies in the fact that political leadership should work for the betterment of society and not for a particular group of individuals or society. Influencing people by words rather than by action harms and hinders the progress of society rather than benefitting the institution of democracy. It leads to the murder of integrity and honest political will. Political leadership needs a reinvention in a way which caters to the needs of the changing paradigms. The confluence of technology and human minds must lead to honest and efficient systems. Instead of garnering popularity people to people crisis, gross human right violations and environmental concerns need to be addressed.

B. SOCIAL MEDIA AND AUTHORITARIAN REGIME

Social media at some point is bridging the gap which had long existed between the voters and their elected representatives. People can voice out their concern on platforms like Twitter and surprisingly it is being addressed. India's late External Affairs Minister, Mrs. Sushma Swaraj, tactfully utilized the social media platform to solve people-to-people issues. This serves as a classic example of how support and recognition was being garnered from all over the world.

On the other hand, the 2016 United States Presidential Elections roared into controversy with respect to the micro-blogging platform, Twitter. Apart from the thousand controversies which sparked, one point which is undisputed remains that Twitter, instead of remaining a platform to measure the support of a particular candidate, ended up measuring the political attention received by various candidates.³ Through the various tweets of people the sentiments were analysed, by the choices of their likes on social media accounts their

³ Matt Kapko, *Twitter's impact on 2016 presidential election is unmistakable*, *Presidential Election* (Nov. 03, 2016, 05:30 PM), <https://www.cio.com/article/3137513/twitters-impact-on-2016-presidential-election-is-unmistakable.html>.

minds were influenced. Thus, social media, in ways, is helping democratic rulers attain authoritarian virtues by ways and means unknown to the people.

Democratic politics is not a salaried permanent job; rather, it is a service to the nation and for society at large. Power no doubt, is appealing, but bidding adieu to people and popularity is another virtue which should be nurtured in democratic processes. The popularity gained through social media accounts draw a correlation with respect to political leaders and their desire to remain in power. Letting go of the public office held by an elected representative is a crucial responsibility of a democratic leader which must be inculcated amongst them. Ultimately reliance on social media for political gains needs to be reviewed and revisited time and again.

C. ELECTIONS, DEMOCRACY, AND REALITY

A major flaw in understanding the democratic process and its prolonged continuance is the election process. At least in India citizens are more concerned about democracy and the principles being adhered to while the government is being formed i.e., during the election process. Quite a lot of eagerness and concern is associated with the idea behind a free and fair election.

The election is the beginning of a democratic setup; however, it is not the be all and end all aspect of it. We need to consider aspects of how a democratic government functions rather than on government formation. Government formation is a crucial aspect whose paradigm is changing, and the most recent notion is the 2016 United States Presidential Elections as mentioned above. The use of data and artificial intelligence to influence voters hinders the growth for a free and open-minded election. With each passing election, we are witnessing the brutal murder of democracy as an age-old institution. Candidates are displaying new symbols of power and on the other hand, the price for each vote is also becoming expensive. Votes are being bought from voters on one hand and on the other hand legislative seats are being sold to candidates with a higher bid. There is no doubt that the Election Commission has been doing a remarkable job in trying to eliminate different kinds of malpractices. But at the end of the day, a very crucial part of every democracy is individual conscience. A virtue that varies from person to person and it determines the course of a nation's democratic process. Moreover, an election today promotes corruption and far less a thought even for a democratic well-being post-election.

The root problem to this is our political leaders and the backgrounds they inherit. A majority of our political leaders take politics as an occupation rather than as a development strategy for the nation. It becomes a self-development goal rather than a nation development objective. Each leader should have at least some background where they must fall back to instead of strategizing foul play to only secure one's position. As holding a political office is for a particular period and therefore, they are the political executive. It is not a job *per se*, rather a social duty which they have consented to.

How serious is the functioning of a government after election is a fundamental question that revolves around democratic nation states across the globe? If there has been a free and fair election, then the question of democracy thriving should never emerge. Howsoever, party ideologies and political leaders at times try to tilt their democratic regime towards an authoritarian regime. Policies are crafted to favour a particular section of the people within the demographic, religious ideologies, and propaganda strategies are put into practice to divide the population. This propaganda spreading becomes easier with the advancement of technology. Through social media millions of followers are garnered, unnecessary rallies by political leaders where the youth participate in large numbers only because they get free food and petrol in their vehicles and bikes. These are the little aspects which go around a democratic country like India. The youth who actually should be representing the people in the Lower House are followers for a cause unknown to them, misguided

for a wrong reason, and instead of being productive for the nation are becoming a hindrance for their own growth and the nation's development at large.

Senior Congress leader and Parliamentarian Dr. Shashi Tharoor while delivering the keynote address on 'How the lives of Mahatma Gandhi and Nelson Mandela are relevant and source of inspiration for today's youth'⁴ at the Gandhi Mandela Peace Initiative had stated that "India is a country where about 65 per cent of the population is under 35 years. Now, let us turn to the temple of democracy, Parliament, and only 2.2 per cent of all parliamentarians are below 30. And, one in every four MPs are below 45 years". He also stated that, "the 16th Lok Sabha saw the lowest number of MPs in the entire age group of 25-40, adding that the 2014 election saw the highest number of young votes ever participating in the electoral exercise."⁵

The above paragraph highlights the steep contrast as to the point of representation. The notion, that older people are wiser than the youth, till some extent, is right. However, the least that is expected from political parties is not to divert the youth towards the unnecessary political rallies for false propaganda. The entire notion of having a large group of volunteers in a political party makes little sense. A political leader has enough charisma to make people understand her/his ideologies. Therefore, the urgent dearth of proper representation needs to be addressed for a smooth functioning to a re-invented 21st country democratic setup.

D. PASSING THE BUCK NEEDS TO END

In a democratic system once, a political office has been acquired there are a few aspects which we as citizens must consider on a very crucial note. The first is accountability- political representatives are accountable to the people at large. It is the money earned by the citizens which is laid in their hands to be utilized for the holistic development of each and every individual and not a particular section or class. By the definition of books and in theory the opposition parties must ensure that the functioning of the government is for the public welfare and towards eliminating the various issues prevalent in society such as poverty, corruption and most crucially holding the ruling party accountable for their acts instead of finding loopholes in their working and making that an agenda to garner more votes in the next election.

We as citizens blame the government for every wrong step, the ruling party blames the opposition for unnecessary hurdles and very conveniently the opposition always blames the government for everything. We vote and elect our representatives and criticize them for their entire tenure with a hope to choose someone better the next time and the cycle continues. The blame game continues, and issues keep on piling up over the existing mount.

Accountability and posing questions to the government apart from the opposition a responsibility lies on the media houses as well. A free and impartial media existed at one time but now media houses have their own inclinations. News gets broadcasted after analysing the Television Rating Point(s) (TRP). Thus, the accountability falls vehemently. As citizens, we must question the policies and decisions of the government and technology is a huge factor which can be harnessed for this noble cause, rather than the use of technology which is far more for political jokes at the midnight hour.

⁴ Avishek Banerjee, *Need More Young Politicians In Our Parliament: Shashi Tharoor*, *Business World* (Jul. 12, 2019), <http://www.businessworld.in/article/Need-More-Young-Politicians-In-Our-Parliament-Shashi-Tharoor-/12-07-2019-173297/>.

⁵*Id.*

We as citizens need to be more responsible for the growth of our country and its development. The duty does not end at choosing a voter; rather it begins with that and continues as long as the political representatives are serving the office in the capacity of being the voice of the people.

E. INDIA'S COLONIZED PAST

The influence of the colonial era and later the confluence with the British parliamentary system has shaped India's democracy in many ways like the British model. Ranging from the Upper House to the Lower House the Indian system walks parallel to them in like ways. A point herein is that India did acknowledge its past to walk further ahead. It took assistance from the previous system of governance which was the British Empire and its thriving functioning.

However, India has been completely ignorant of its past prior to the advent of the British invasion. Revisiting the past to shape its future is actually crucial for the smooth functioning of a newly formed independent nation. Slightly on the contrary, a blatant ignorance of the Indian history and the richness of governance should not be ignored. Technology needs to draw a confluence with the ancient Indian texts such as the Arthashastra, which is a treatise on statecraft, economic policy and military strategy.

We have come a long way since 1947 but in a lot of aspects the colonial idea is still prevalent in the roots of the Indian democratic functioning. There is a need to re-invent the Indian democratic setup with the help of artificial intelligence and the ancient Indian manuscripts. Acknowledgment of the recent past is good but a blind eye towards the ancient Indian glorious texts is foolishness. It needs to be understood that a foreign power was ruling the subcontinent for almost a period of two-hundred years. The same foreign power was ruling a major part of the globe at the same time. The reason why they could rule almost the entire world by residing in a geographically smaller state is due to the laws that they crafted for their colonies. Without the advent of technology, they ensured their rule prolonged as the legislations were crafted in such a manner that actually delayed the efficiency and justice delivery system. Unfortunately, a few countries have continued with the prevalent British laws by amending its scope till an extent.

Any reinvention of democracy needs to ensure that technology is used wisely by everyone and not only the people in top government positions enjoy the true powers of a democratic setup rather the power is shared equally in ways by which the political representatives are accountable to their people throughout their tenure. The quality of governance still encourages the authoritarian regime in many government offices and bureaucratic functioning. These are some of the virtues and habits which need to be re-visited and re-invented. In essence, India needs to go a long way rather than only the years being passed by in the name of being an independent nation. The modality and thought process of the political setup needs to be re-visited and re-modelled on the indigenous outlay structure by paying a visit to the sources of governance and implementing the same with the help of artificial intelligence.

WAY FORWARD FOR INDIAN DEMOCRACY

First and foremost, we need to work on our demographic dividend and representation in the Indian Parliament. Political leadership needs to be re-defined; the age-old dynastic succession needs a full stop. Now, to ensure a pragmatic representation in the Lower House, technology can play a cutting-edge role by the data which the government possesses of the citizens. The number of people in the different age groups can be categorically arranged and thereby as per the numbers how many leaders are required from which segment can be well understood. This system in no way encourages a method that from one particular age group a substantial number of leaders must represent. But it definitely will put forward a study about which areas more attention is required and where more emphasis needs to be laid. The current political leaders need to assess and understand the nuances of the current demographic dividend and craft leaders with a

vision to be realized. In doing so virtues such as leadership, honesty and integrity must be given more preference than dynastic succession, wealth amassment, and influence.

Secondly, it needs to be analysed whether deserving candidates are able to reach the electoral contest. Extensive surveys can be taken into account and thereby a ground reality check needs to be carried on to analyse the factors as to why candidates are not able to reach the electoral roll as a candidate and not as a voter. The cost of electoral campaigns needs to be reduced drastically. This is crucial for an influence free and righteous democracy to sustain and thrive.

Thirdly, in the Democracy Ranking 2016, India stood at 32 out of 112 countries.⁶ This number is enough for us to introspect on the functioning of our government. There definitely have been positive outcomes since Independence, but on a weighing scale the negatives are far heavier than the positive acts. With the assistance of artificial intelligence, paperless functioning can be ensured which will eliminate a lot many transactions which take place off the records.

Fourthly, democracy has transformed into an elite club. The amount of money spent in elections in a state like Pakistan has been increasing drastically. The 1985 election cost the Government of Pakistan around 17 crore rupees (Rs. 170 Million). In 1993, the cost had risen to 41 crore rupees (Rs. 410 Million). In 1988, on an average a candidate contesting for the National Assembly seat spent around Rs 5 Lakh (Rs. 0.5 Million). In the 1997 election, the cost of a NA seat had risen to Rs. 50 Lakh (Rs. 5 Million).⁷ On the other hand, in India. Rs.55,000 crore, or \$8 billion, were spent during the 2019 Lok Sabha elections, according to a report by the Centre for Media Studies. Surprisingly the Bharatiya Janata Party (BJP) spent roughly half of that.⁸ Times have changed so much that in 20 years, involving six elections to the Lok Sabha between 1998 and 2019, the election expenditure has gone up by around six times from Rs. 9,000 crore to around Rs. 55,000 crore.⁹ Technology can easily curb the expenditure in the election process however the reality is slightly contrary. The bifurcation of the amount sheds light on the fact that voters are still being paid directly for their votes. The question arises do we really need to spend Rs. 700¹⁰ (seven-hundred) per voter.

Lastly, democracy in India needs to be re-invented from the scratch. Every political party has goons and party volunteers (sevaks) and the top leaders are well aware of this fact. However, very little is done to even address this fact. Political parties in their official websites should have a list of members associated with them and each in what capacity. Technology needs to be harnessed at the best of its abilities and strength. The grassroots at first needs to be cleared and then other aspects of a party functioning need to be addressed. An example of this is the Congress party, which has failed to choose a party president and it is going to be more than a year now that Mrs. Sonia Gandhi has become the interim President from being the President.

⁶ *The Economist Intelligence Unit, Democracy Index 2016, The Economist, https://www.transparency.org.nz/docs/2017/Democracy_Index_2016.pdf.*

⁷ *SAEED SHAFQAT, DEMOCRACY IN PAKISTAN: VALUE CHANGE AND CHALLENGES OF INSTITUTION BUILDING, Pakistan Development Review, 281-298, Dec. 1998.*

⁸ *Azman Usmani, In Charts: India's Election Becomes The World's Most Expensive, BLOOMBERGQUINT (Jun. 04, 2019, 9:05 AM), <https://www.bloombergquint.com/elections/india-election-expenditure-2019-lok-sabha-elections-was-the-worlds-costliest>.*

⁹ *Azman Usmani, In Charts: India's Election Becomes The World's Most Expensive, BLOOMBERGQUINT (Jun. 04, 2019, 9:05 AM), <https://www.bloombergquint.com/elections/india-election-expenditure-2019-lok-sabha-elections-was-the-worlds-costliest>.*

¹⁰ *Azman Usmani, In Charts: India's Election Becomes The World's Most Expensive, BLOOMBERGQUINT (Jun. 04, 2019, 9:05 AM), <https://www.bloombergquint.com/elections/india-election-expenditure-2019-lok-sabha-elections-was-the-worlds-costliest>.*

But since refined speakers are there in the party who defend this stand as well by saying that “this is the wish of the party leaders and workers that Mrs. Sonia Gandhi continues as the party President”, times have changed governments have undergone drastic changes but Mrs. Gandhi has been the President of the Congress Working Committee for the past nineteen years.¹¹ The democratic setup fails at the party level and taking the same at the national level should be rested here.

CONCLUSION

Technology and artificial intelligence are indeed changing the paradigms of the current day work culture. The same needs to be incorporated in the political functioning. At first at the party level so that there is more transparency and a clear-cut democratic culture within the party and the same needs to be followed in the functioning of the ruling as well as the opposition parties in their respective domains. The youth instead of being a part of the mid-night political jokes need to assert their voices and raise questions. Democracy in India has come a long way and there is a longer road ahead whose course will be determined by the actions that are undertaken in the current day.

¹¹ *Sonia Gandhi: Congress' saviour-in-chief in times of trouble*, LIVEMINT (Aug. 11, 2019, 9:19 AM), <https://www.livemint.com/news/india/sonia-gandhi-congress-saviour-in-chief-in-times-of-trouble-1565494538767.html>.

TECHNOLOGICAL REVOLUTION AND THE NEED TO RE-INVENT DEMOCRACY

-Sneha Meghani¹

ABSTRACT

Democracy means a rule by the people; it is the people who are both the ruled and the rulers. Democracy is based on the politics of accommodation and compromise within a well-defined public space, giving enough scope for autonomous action to each individual, as part of a larger collective, and with adequate protection of individual rights, ensured by the rule of law.

The purpose of this paper is to discuss the effect of technology on modern democracy. The paper briefly discusses democracy and its types following which it deals with big data and Artificial Intelligence (AI) by highlighting their pros and cons. In order to predict the future correctly it is important to understand the past and therefore this paper also explores the evolution of democracy.

In recent times, with AI becoming more advanced every day, data exploitation techniques are being used to manipulate people for political benefits. The author evaluates the effect that technology has had in the current scenario in some of the major democracies around the world including- India, the United States of America and the United Kingdom. Some experts claim AI driven algorithms are undermining the nature of liberal democracy.

The paper also delves into a critical analysis of the recent debates on automation being the reason for destruction of democracy. It is important to note that if adequate measures are not taken to safeguard the interest of masses, then AI has the potential of being abused. With the development of AI that is predictive (target advertisement based on one's preference) such technology can also be used for mass surveillance, thereby violating the privacy of millions of citizens. Thus, an attempt has been made to identify and elaborate such instances of abuse by the government and suggest ways to curb it.

Additionally, the author explores the effect of artificial intelligence on the earning capacity of an average individual, in the future. With machines that can rival the intelligence of an average human, experts believe that many people will be unable to find employment in the near future. Thus, there will be implications of such mass unemployment on our democratic set-up. It will therefore be pertinent to establish the relation between economic wealth and political affiliation of the nation.

Experts believe that we are on the brink of a technological revolution; some economic restructuring is inevitable as some jobs that are currently performed by humans will soon be more efficiently performed by machines. There is a need to re-invent democracy; democratic systems as we know it are more flexible and adaptable to rapid change. Thus, the development of the idea of 'Smart Democracy' is also toyed with.

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Lastly, this paper attempts to exhibit democracy as the best political system and discusses if it will be sustainable in the future with the advent of AI.

INTRODUCTION: DEMOCRACY IN THE MODERN WORLD

Democracy originated in ancient Greece and the word democracy is derived from the words ‘demos’ which means people and ‘kratos’ which means rule². After World War II, a large number of countries adopted democracy in some form. Democracy means a rule by the people, it is the people who are both the ruled and the rulers. Democracy is based on the politics of accommodation and compromise within a well-defined public space, leaving enough scope for autonomous action for each individual, as part of a larger collectivity, and with adequate protection of individual rights, ensured by the rule of law.³

Democracy belongs to this sphere of collective decision making. It embodies the ideal that decisions affecting an association as a whole, should be taken by all its members, and that they should each have equal rights to take part in such decisions. The Black’s Law dictionary describes democracy as a “government by the people, either directly or through representatives”. Democracy entails the twin principle of (i) popular control over collective decision making and (ii) equality of rights in the exercise of that control. Any modern and successful democracy primarily consists of three main elements i.e., open and accountable government, free and fair elections, and civil and political rights.⁴

Building and maintaining a democracy depends on multiple factors- stable wealth and education, a neutrality of key state institutions such as the judiciary, and a vibrant civil society. Liberal democracies consist of checks and balances in order to stop any one party from amassing too much power and abusing it, and to reconcile the interest of different groups.

The two components of a liberal democracy- individual rights and popular will are increasingly at war with each other⁵. There are three driving forces that adversely affect modern democracy- the rise of the populist moment around the world, democratization of mediums of mass communication, and the pace of technological development.

As technology becomes more nuanced with every passing year, political parties around the world are using it to win and stay in power for a longer period of time and in doing so they are sacrificing the essence of democracy itself. It is important to acknowledge that democracy has evolved over time and it is deeply interconnected with technology, economics, and cultural preconditions. Mass communications and the media have gone through a major change in the last decade. Media around the world was controlled by either the government or big media companies, and enjoyed an oligopoly over the means of mass communication. The cost associated with starting and maintaining a radio station, television channel or newspapers were largely beyond the capabilities of a common man. These establishments were therefore successful in marginalizing extreme views and politics largely remained consensual. In a well-established democracy, it results in the decline of religious intolerance, spread of conspiracy theories, and fake news.

² *Defining democracy, THE MUSEUM OF AUSTRALIAN DEMOCRACY,*
<https://www.moadoph.gov.au/democracy/defining-democracy/#>.

³ *Subrata Mukherjee and Sushila Ramaswamy, Democracy in Theory and Practice; 24 (Macmillan, 1st edition 2005).*

⁴ *David Beetham and Kevin Boyle, Democracy: 80 Questions and Answers; 29, (National Book Trust, 1st edition 2000).*

⁵ *YaschaMounk, The People Vs. Democracy: Why our Freedom is in Danger and How to Save it, (Harvard University Press 2018).*

Democracy is wilting away. Citizens have been dissatisfied by politics now ⁶. There are two main drivers of a voter's discontent which are: the stagnating living standards, and the rise in power of social media. For the first time in the history of liberal democracy countries around the world are witnessing the rise of a 'right wing populist moment'. Donald Trump in America, Nigel Farage in Great Britain, Narendra Modi in India and leaders like Putin and Recep Erdoğan turning in democracy in Russia and Turkey respectively into an electoral dictatorship.

The major democracies in the world are more divided than ever before in history. The trust in the democratic machinery of the state has gradually evaporated. As citizens grow extremely anxious about the future, there has been a demand for a centralised, powerful, and authoritative leadership, globally⁷. Some common features that can be observed in the right-wing political leaders of today are- (i) strong leadership, (ii) hatred towards institutions that restrict their power and (iii) creating enemies (such as minorities, immigrants, religions, elites or foreigners).

The entire edifice of liberal democracy relies on the fact that a civilized society must accommodate dissenters and supporters, minorities and the majority as well as different types of religious and linguistic groups. But populist leaders create polarization based on religion, race and class. Right-wing populist leaders provide relatively simple solutions for complex issues of the society by blaming such problems on a group of people. They often use fear as a political tool⁸.

As populist governments are fundamentally illiberal, and as rejecting the diversity of identity and of opinions within society tends to display authoritarian traits, it is critical to limit their erosion of democratic institutions. Populism is a frightening practice, as it gains its power through democratic means, yet strips the values of democracy away as it becomes entrenched in a nation. This degraded version of democracy leads to decreasing freedoms and quality of life for those residing in countries ruled by populists, and should cause concern among political scientists, lawmakers, and constituents⁹.

WHAT IS ARTIFICIAL INTELLIGENCE?

Simply speaking, Artificial Intelligence (AI) is a machine or a computer programme that learns to do tasks that require any form of intelligence and are usually done by humans. It is any machine that exhibits traits primarily associated with the human mind-learning and problem solving. AI is divided into several different parts, for the purpose of simplification; this paper will restrict its discussion to the main three parts- AI, machine learning and deep learning. Machine learning refers to algorithms that enable software to improve its performance overtime as it obtains more data. Its primary aim is to allow computers to learn automatically without human interference. Deep learning is a more complex form of machine learning- it consists of an artificial neural network which represents learning. It imitates the working of a human brain in

⁶Sean Coughlan, *Dissatisfaction with Democracy 'at record high'*, BBC NEWS (Jan. 29 2020), <https://www.bbc.com/news/education-51281722>.

⁷ Pradeep Chhibber and Adnan Naseemullah, *This is how Modi is different from other Right-wing populists like Trump, Erdogan & Duterte*, THE PRINT, (Aug. 21, 2019), <https://theprint.in/opinion/this-is-how-modi-is-different-from-other-right-wing-populists-like-trump-erdogan-duterte/279836/>.

⁸Shawn W. Rosenberg, *Democracy Devouring Itself: The Rise of the Incompetent Citizen and the Appeal of Right Wing Populism*, UC IRVINE, (2019), at:<https://www.semanticscholar.org/paper/Democracy-Devouring-Itself%3A-The-Rise-of-the-Citizen-Rosenberg/bf317a78ea8e2e3ac443dbcb32436cd81ce0b27e#paper-header>.

⁹Sarah Repucci, *The Global Implications Of Populism On Democracy (Task Force 2018)*, UNIVERSITY OF WASHINGTON (2018), https://jsis.washington.edu/wordpress/wp-content/uploads/2018/04/Task-Force_C_2018_Pekkanen_robert.pdf.

processing data that mimics the activity of neurons in our brain using matrix mathematics. This arrangement is called a neural network¹⁰.

For some perspective- imagine a concentric circle, the outer ring would consist of AI, the second ring would consist of machine learning, and the innermost ring would consist of deep learning. These tools are increasingly being used in various fields such as healthcare, oil exploration, energy grids, aerospace, automotive industry, military and security, research, and many more.

The growth of AI has been phenomenal in the past few years. In the days of its infancy, AI used to be about typing commands on the computer; human programmers would painstakingly handcraft knowledge items. Basically, the output was equal to input only. Since then, a paradigm shift has taken place in the field of AI with an increase in computing power and availability of large amounts of data due to the boom in the internet. With the development of machine learning, programmers create raw algorithms that learn from raw perceptual data (just like a human infant). One creates a simple mathematical model of the human brain and feeds it a bunch of information. The artificial neural network will then attempt to make sense of this information by learning from past mistakes and imitation¹¹. The result is a natural evolution that no human could ever manually programme.

The resulting AI that is not limited to one domain. This system in the near future could easily be scaled up to human levels and beyond. MRI, CT and EEG scan data is being used to learn patterns and diagnose diseases like cancer and heart disease¹². Smart watches can collect and store everyday data and that can help in diagnosing Alzheimer's disease in its earlier stages. Google researchers use AI to detect retinopathy with more than 90% accuracy¹³. It seems as if there is no limit to what deep network can achieve in the healthcare industry.

AI technology can open a world of accessibility to people with disabilities and help in their emancipation. Voice assisted AI technology like Alexa, Siri, and Google Assistant is extremely useful for someone who is visually impaired. Over 100,000 deaf individuals have used Ava, an app that allows them to take part in group conversations. Everyone engaged in a conversation opens Ava on their phones, then speaks normally as the app listens in. Ava converts spoken words into text in nearly real time, rendering each speaker's words into a different colour for those needing to read along to follow the chat¹⁴.

Such technological developments benefit democracy, by making relatively rare yet basic services available at a comparatively lower cost in all areas. In conclusion, AI as a technology has the ability to complete highly skilled work that was traditionally expensive. It could lead to new scientific breakthroughs and drastically reduce the price of goods and services.

¹⁰ ColdFusion, *Why Deep Learning Now? AI revolution documentary*, YOUTUBE (Oct. 30, 2018), https://www.youtube.com/watch?v=b3IyDNB_cil.

¹¹ Jason H. Moore, *Information about Automated Machine Learning (AutoML)*, AUTOML, <http://automl.info/>.

¹² Ravi Kalakota and Thomas Davenport, *The Potential for artificial intelligence in healthcare*, *Future Healthc J.*, 6(2), 94-98, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6616181/>.

¹³ Jonah Comestock, *Google researchers use deep learning to detect diabetic retinopathy with upwards of 90 percent accuracy*, *MOBIHEALTH NEWS* (Nov. 29, 2016), <https://www.mobihealthnews.com/content/google-researchers-use-deep-learning-detect-diabetic-retinopathy-upwards-90-percent-accuracy>.

¹⁴ Jackie Snow, *How People with Disabilities Are Using AI to Improve Their Lives*, PBS (Jan. 31, 2019), <https://www.pbs.org/wgbh/nova/article/people-with-disabilities-use-ai-to-improve-their-lives/>.

An AI can operate at a very fast speed and improve upon itself. It can teach itself how to learn new things and in doing so it would eliminate the need for human control. The fact that this is even theoretically possible has made several people around the world worried about the future¹⁵. AI is most certainly very complex. In the recent years, some intellectuals have voiced genuine concerns regarding the rise in AI, such as Elon Musk, Stephen Hawking, and Sam Harris¹⁶. As lost in this idealistic quest for improvement is the function of humanity itself. It is impossible to imagine accurately what everyday life will be like if the line between human and machine intelligence gets crossed. Regardless, the discovery and recognition of patterns and regularities in the world around us, forms the heart of scientific and technological progress. It is how we advance and innovate; it is also an area where deep learning excels.

The purpose of this paper is not to prove if AI is good or bad. It is to list out clearly its benefits and downfalls and its effects on democracy. The reason it is important to generate awareness about the effects of this automation is because it is going to happen whether we like it or not. The rate at which it is happening is faster than ever before. It is important to cushion oneself. It is not practical to resist technological advancement simply because it puts people out of work.

TECHNOLOGY AND ITS EFFECTS ON DEMOCRACY

For billions of people, digital transformation has brought enormous benefits and convenience. The increase in availability of information because of the internet has had some major positive effects including the availability of better and latest medical information globally, and improved access to education and boost in literacy. It is due to development in this technology that people could remain connected during the COVID-19 pandemic.

Citizens in a representative democracy seek to lessen the gap between the government and its people in order to make it more honest and responsive. The digital revolution greatly enhanced such expectations. There is a want to close the gap between a political insider and a political outsider. The rise of the internet and social media has redefined the dynamics of distribution. Almost two decades ago, prime-time television could easily refuse to telecast certain content, and thus it acted as a gatekeeper of information. But that role is quickly evaporating. Social media is used to both deepen and spread democracy. The golden age of the internet ended around late 2014, when conventional wisdom on social media was overwhelmingly positive.

Most technology was designed by private companies for civilian consumption. Governments did not find out about them till the product was in the marketplace. More people are using Facebook today (approximately 2.6 billion)¹⁷ than there are people in the world's largest democracy. It can affect people's lives, just like the state does- by making law which is backed up by force, when necessary; Facebook does that by influencing what its users watch.

It would therefore be foolish not to acknowledge the power of tech-giants like Apple, Google, Facebook and Amazon. A common complaint against 21st century democracy is the loss of control to such corporations. The political culture has grown to be very accommodating of their power. Google and Facebook produce services that we have come to depend on our everyday lives- from our calendar, to maps, to connectivity.

¹⁵ Kelsey Piper, *The case for taking AI seriously as a threat to humanity*, VOX (May 8, 2019), <https://www.vox.com/future-perfect/2018/12/21/18126576/ai-artificial-intelligence-machine-learning-safety-alignment>.

¹⁶ Paul Conner, *Elon Musk tweets dire warning on AI and social media*, FOX BUSINESS (Sept. 26, 2019), <https://www.foxbusiness.com/technology/elon-musk-warning-ai-social-media>

¹⁷ J. Clement, *Number of monthly active Facebook users worldwide as of 1st quarter 2020*, STATISTA (April 20, 2020), <https://www.statista.com/statistics/264810/number-of-monthly-active-facebook-users-worldwide>.

This gives them enough resources to abuse such power. But at the end of the day, they are still corporations, no matter how rich and powerful they cannot exist without support of the state. They have to operate within the rules and regulations prescribed by the state¹⁸.

We now have access to information that would have not been possible if it was not for the internet. The information that was once hidden can now be easily found. The states are in a much better condition to take advantage of it than any other party. Anytime we use the internet to look for information we end up handing over more information about ourselves, to all sorts of interested parties. To search is to be searched. AI offers new capabilities to the government that were previously unavailable to it. It gives the government the opportunity to come through multiple streams of information in order to uncover specific patterns. For example: authoritative governments can look through Twitter feeds, Facebook pages, text messages, emails and so on for anti-governmental sentiments. It can then use this information to identify dissenters, actively detain citizens to suppress free expression, and control its citizens.

Even democratic states like the U.S. and Great Britain have turned into prolific accumulators and hoarders of metadata. Digital technology has also reinforced rather than undermined the hold on power of many non-democratic regimes. Authoritarians can use it very effectively to track the movements of dissenters and crush them. This is against the principle of democracy.

Knowledge in the information age is not just power. It has the potential to become a kind of superpower, which transcends politics. This is precisely why countries around the world are willing to breach the rights of its citizens and collect information on their citizens. We have been systematically desensitized to this breach of privacy.

We cannot pretend that democracy does not face challenges – from religious/ethnic upheavals, unemployment, economic recessions, red tapism, and loss of power to international institutions to the more modern challenge which has arisen after the advent of social media which is being exploited by political parties to manipulate the voters. All of these adversely affect the principle of just and fair election in a democracy.

Renowned British political scientist David Runciman in his book “How Democracy Ends” states that modern democracy is highly mechanical and deeply artificial. It fails to provide an alternative to the complex system it purports to regulate. The power of computers to press our buttons could spell the end of democracy when it falls in the wrong hands.

Unintelligent but super-efficient machines have become a part of our daily lives and are doing a lot of work in the contemporary democracy¹⁹. They have indeed made it extremely convenient to perform everyday mundane tasks with a significant amount of ease and comfort due to which humans can concentrate on “creative work”. It also increases productivity.

Technology, as it is now, is not inherently dangerous, but it has the capabilities to mine vast amounts of data that no human can. We have consciously (simply for the sake of an easier lifestyle) or unconsciously (because of our growing reliance) prepared a platform that can be exploited by ruthless politicians and

¹⁸Dipayan Ghosh, *India's TikTok Ban Dispels the Myth of the 'China Bogyman'*, WIREd, (June 7, 2020), <https://www.wired.com/story/opinion-indias-tiktok-ban-dispels-the-myth-of-the-china-bogyman/>.

¹⁹ David Runciman, *How Democracy Ends*, (Profile Books Ltd. 2018).

businessmen. As technology falls in wrong hands and the spread of (i) misinformation and fake news, (ii) surveillance, and (iii) targeting voters by social media campaigns that are triggered at exploiting their individual prejudice- one would not be wrong to say that the end of democracy is near.

(I) Fake News

Everyone has optimized their content for the digital era and that unfortunately includes the mainstream news channels too. The news no longer has its reliable user base like it did in the past, with more people moving away from the traditional television screens and refocusing their attention on their mobile screens²⁰. The news has to compete against online platforms like – YouTube, Instagram, Twitter, Facebook, and online media houses which often have much lower production cost and expenses. James Williams, a former Google product strategist, states that we live in an “attention economy”, in which algorithms compete for users' time, placing sensational and emotionally appealing content over the rational and fact-based²¹. According to James Hamilton, a Professor of Communication at Stanford- people consume news for three reasons mainly – a sense of civic duty, hobby (diversion), and drama²².

In order to get more views to the news, the media houses decided to turn democracy into drama, making it exciting and dramatic, and optimizing it for social media. Boring news is better for people than fake news. The spread of fake news in today's day and age is successful primarily because it is a narrative driven approach, it focuses on long-term image instead of short-term victory and aims for endless story telling. News should be based on facts, giving viewers a chance to form their own opinion instead of bombarding them with their own agendas. Broadcasting companies are aware of the bias in the human brain for emotion driven stories over fact driven stories and simple information over complex information. Drew Westen, a renowned professor of psychology, in his book “The Political Brain” concluded that, “in politics, when emotions and reason collide, emotions invariably win.” We are stuck in a world that comes in viral waves. We experience more than ever before but it is mostly in two-dimension. Politicians have found the hack to democracy- it is based on the narrative, not facts. This narrative divides.

Media houses carefully curate and organize content using the illusory truth effect to create the new truth - this means that people believe everything they see, if they see it often enough and when content bots keep suggesting similar things to keep one engaged in one's own echo chamber²³. Everyone is dishd one's own curated version of the truth that can overcome rationality and sway elections. Politicians often show different versions of themselves when targeting various voter groups, this is not a new phenomenon. But the use of AI has made political marketing extremely sophisticated and effective. Candidates with more funds allocate more resources to develop AI and Big Data algorithms, making them more likely to win elections. Facebook, for example, by tweaking its news feed algorithms, has subtly influenced the behavior of millions of users, during the 2010 and 2012 U.S. elections. The company ran experiments to improve the tool which Facebook's researchers called the “voter megaphone”. The aim was to encourage more people to vote —

²⁰ Victor Pickard, *Journalism's Market Failure Is A Crisis For Democracy*, *HARVARD BUSINESS REVIEW* (March 12, 2020), <https://hbr.org/2020/03/journalisms-market-failure-is-a-crisis-for-democracy>.

²¹ Paul Lewis, ‘Our minds can be hijacked’: The Tech Insiders who fear a smartphone dystopia, *THE GUARDIAN*, (Oct. 6, 2017), <https://www.theguardian.com/technology/2017/oct/05/smartphone-addiction-silicon-valley-dystopia>.

²² James T. Hamilton, *All the news that's fit to sell: How the market transforms information into news*, (Princeton University Press 2004).

²³ An echo chamber is a metaphorical description of a situation in which beliefs are amplified or reinforced by communication and repetition inside a closed system that insulates them from rebuttal.

and it succeeded. It was estimated that voter turnout increased by around 340,000 thanks to Facebook's operation²⁴.

Another such tactic used by these organizations is the bottomless soup experiment- in a 2006 study, volunteers were asked to have as much soup as they wanted, unbeknownst to them the soup bowls were designed to refill themselves (with a hose connected to the bottom of the bowl), because of which, no matter how much soup the subject ate, the bowl never emptied. It was noted that an average person consumed 74% more soup than he usually would have. Social networking sites are designed to try and replicate the similar phenomenon, with their unlimited scrolls, to get an average user 'hooked'. The more time one spends on these sites, the more advertisements we are shown, the more money they make.

The current news and information environment is a real and persistent threat to liberal democratic governments. As exemplified by the 2016 U.S. elections, by the outcome of Brexit referendum vote, and by numerous other instances in liberal democratic governance, we have a problem of information in our society where foreign influence operations launched by: governments, non-state actors and terrorist organizations, are undermining the trust that stands as the foundation of our political systems.

There are 3 basic issues revolving around fake news:

1. Scale: Scale deals with the number of people who are on social media platforms such as Facebook, Twitter, and WhatsApp etc.
2. Severity: It is the problem of potential negative consequences that might follow from the internalization of influence operations. People who are exposed to fake news can take that information and act badly.
3. Impact: because of the nature of the information environment, we live in, people turn to social media platforms with increasing frequency to get their news and that forms the bedrock of all their subsequent political decisions. A polluted online environment has a severe political, economic, and social consequence.

It is high time that we focus on fixing the deficits in our information environment; the suggestion to do the same is as follows:

1. Eradicating the sources of exposures: This includes dealing with the issue of exposure- if the problem in the current information environment is the spread of fake news, then the next logical step should be to track and destroy the source of creation and subsequent spread of such information, such as troll farms who are trying to capitalize upon the open information environments in order to cause political disruption.
2. Platforms fixing the algorithm: Platforms should fix their algorithms in a manner that does not push people down the pathways towards increasing exposure to fake news content. Platforms like Facebook and Instagram are immensely powerful.²⁵
3. Dealing with people's receptivity to fake news: Building facts and checking information sites in order to help people to distinguish between fake and real news.

²⁴ Sukhayl Niyazov, *A.I. Could Kill Off Democracy*, MEDIUM (Oct.28, 2019), <https://medium.com/dataseries/how-ai-undermines-democracy-22ed69a14171>

²⁵ *Instagram restricts cosmetic surgery, weight-loss promoting posts*, HINDUSTAN TIMES (Sept. 19, 2019), <https://www.hindustantimes.com/more-lifestyle/instagram-restricts-cosmetic-surgery-weight-loss-promoting-posts/story-5zpYziYt2AFB3fGoNQukLN.html>.

So ultimately, it is going to be the individuals, technology companies, media platforms and government that are all going to have to work together in a way that preserves the free flow of genuine information, preserves and builds back the lost trust in this information ecosystem.

(II) Surveillance

During the initial phase of the internet, experts believed that it would enable the creation of open society; people with similar interests being able to communicate irrespective of their residence. The internet was a free place, with no rules. Despite the goal of social media being the democratization of the unrestricted access to information, the interaction we are having- what we come across is more controlled than ever before. With bots collecting user data 24/7, privacy has become an illusion.

The question that arises is, how much is the government going to use AI to monitor the citizens? With the development of AI that is predictive, which targets advertisement depending on people's preferences, location, consumer goods they need/want etc. It is important to understand that a similar kind of technology can be used for surveillance. We live in an age of surveillance capitalism- data economies are lucrative; not only does exclusive control on data gives tech giants a massive advantage in their industries but it also allows them to develop and train AI²⁶. This is shown in the exponential rise in price of shares of Google and Facebook²⁷.

In fact, India is investing heavily in creating a large centralized database. Drones are being used to monitor assembly of people in public places. In India, the anti-CAA protests experienced excessive surveillance over the areas of the protests. U.P. Police went a step further by conducting an aerial survey of houses in suspected areas. Its justification for the survey was that drones helped them track and record movements of alleged 'anti-social' elements, and capture images of houses where bricks and stones were kept on the terraces. While surveillance in public places is legal and common in India, the use of drones over private houses, and to track an individual's movements, violates the privacy law and jurisprudence in India²⁸. There is also the development of social media labs that monitor what content people are consuming and what is 'trending'. In democracy like ours the balance of power between the state and the citizen is very delicate and there is potential for AI to tip that power in favour of the state. While it is important to not kill innovation, it is also necessary to be cautious of the technological development grossly infringing a citizen's fundamental rights; technology should not do irreversible harm.

The U.S. technology giant Microsoft has teamed up with a Chinese military university to develop artificial intelligence systems that could potentially enhance government surveillance and censorship capabilities²⁹. China has very proactively embraced surveillance technology. In provinces like Xinjiang and Tibet it has the capability to track daily movement of its citizens via Wi-Fi network monitoring and widespread facial recognition cameras. It resembles the dreaded Orwellian state from the classic novel 1984, in many ways.

²⁶Kevin Körner, *Digital politics AI, big data and the future of democracy*, DEUTSCHE BANK RESEARCH (Aug. 22, 2019), https://www.dbresearch.com/PROD/RPS_EN-PROD/PROD000000000497768/Digital_politics%3A_AI%2C_big_data_and_the_future_of_d.PDF.

²⁷Kurt Wagner, *Digital advertising in the US is finally bigger than print and television*, VOX (Feb. 20, 2019), <https://www.vox.com/2019/2/20/18232433/digital-advertising-facebook-google-growth-tv-print-emarketer-2019>

²⁸Swapnil Tripathi, *UP Police's Drone Surveillance: A Step Towards 'Orwellian' State?*, THE QUINT (Jan. 3, 2020), <https://www.thequint.com/voices/opinion/uttar-pradesh-police-drone-surveillance-of-houses-right-to-privacy-security-law-constitution>.

²⁹Steven Feldstein, *AI systems, with their surveillance capabilities, are posing a threat to democracy*, SCROLL.IN (Apr. 24, 2019), <https://scroll.in/article/920987/ai-systems-with-their-surveillance-capabilities-are-posing-a-threat-to-democracy>.

China is exporting this technology to states like Pakistan, Kenya, Philippines, and Singapore to provide '24/7 intelligent security surveillance with data analytics to detect crime and help manage traffic.'³⁰

Digital repression has profoundly affected the relationship between the citizens and the state. New technologies are arming governments with unprecedented capabilities to monitor, track and keep individual people under surveillance. Even governments in democracies with strong traditions of rule of law find themselves tempted to abuse these new abilities. The stage has been set for a struggle between liberal democracy and digital authoritarianism.

It has become easier than ever before for companies and governments both to keep track of their users' and citizens' every move. Experts claim that we live in a state that is not very far from "data dystopia". AI driven algorithms are undermining liberal democracy. This has led to a creation of a surveillance state - something that all of us have consented to. Experts claim that we are going through a digital revolution, just like at the start of industrial revolution in the 19th century, there were large scale human rights violations, with extremely long working hours, poor working conditions, prevalence child labour, low wages, poor living conditions throughout Europe. All of this led to the adoption of The Universal Declaration of Human Rights in 1948, which led to development of robust labour laws, minimum wages, employee benefits, etc. Similarly, there is a need for making a charter of digital rights that shall be guaranteed to every individual on the internet.

A lot of business and services are conducted online in entirety. Every individual with a digital presence is inherently eligible for certain rights which should not be violated by any government or company. The cyber laws only protect individuals in case of crimes committed online, but it fails to protect individuals against the continuous assault on their rights by the big companies and governments. The power and value of individual data has been recognized in recent years, a similar problem did not exist three decades ago, at the beginning of the internet. The data crisis is relatively new and there are no laws to govern it.

(III) Case Study- Misuse of Technology

Political scandals abusing the social media by exposing users to deliberately misleading and deceptive information by using bots and fake accounts has become a global phenomenon. Propaganda has always been an essential political tool, but now it is never ending, and individualized. There has been a systematic increase in extreme opinions, which has led to polarization of the public dialogue in democratic societies. One of the first indications that a nation is becoming less democratic is that it becomes more polarized³¹.

Following are some of the most prominent cases of foreign interference and voter manipulation:

United States of America: In 2018, Cambridge Analytica, a data modelling and political strategy firm that worked on Donald Trump's presidential campaign, was exposed for improperly obtaining access to personal information of millions of users. It was Christopher Wylie, an ex-employee, who exposed this scandal. The application created by him acted as a huge data warehouse that contained as much information of a possible voter- demography, voting history and party affiliation. A complex model uses all of this data to create

³⁰ Steven Feldstein, *When It Comes to Digital Authoritarianism, China is a Challenge—But Not the Only Challenge*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (Feb. 12, 2020), <https://carnegieendowment.org/2020/02/12/when-it-comes-to-digital-authoritarianism-china-is-challenge-but-not-only-challenge-pub-81075>

³¹ Rebecca Henderson, *The Business Case For Saving Democracy*, HARVARD BUSINESS REVIEW (March 12, 2020), <https://hbr.org/cover-story/2020/03/the-business-case-for-saving-democracy>).

exceptionally well targeted ads in favour of a specific political candidate. The programme collected this data from various sources, some public and others not. It is alleged that the Trump campaign spent 6 million USD on Cambridge Analytica³². In 2014, the company developed an app called “thisisyourdigitallife” that conducted an informed consent survey, filled by thousands of Facebook users in exchange for a payment. However, Facebook allowed the app to collect personal information of not just the users but also of their Facebook contacts/ friends. This therefore led to collection of personal data of around 50 million users without their consent³³. This data was used for psychographic profiling and micro-targeting ads before the 2016 U.S. election. Platforms like Facebook made it too easy to get access to the data of its users for developers and it never informed people that their data was being improperly used. Consequently, it was fined 5 billion USD for this privacy breach³⁴. In the aftermath of Cambridge Analytica scandal, Facebook announced that it would work on concrete steps to ensure user personal data protection and released several features for the same³⁵.

Britain: Cambridge Analytica has been at the centre of scandal worldwide for swaying election in powerful western democracies. The same techniques that were deployed to sway the U.S. election in 2016 were used to affect the Brexit vote. The E.U. campaign and the United Kingdom Independence Party (UKIP) used Cambridge Analytica to target voters during the Brexit ballot, ahead of the 2016 referendum on Britain’s European Union membership³⁶. The U.K. Parliament has asked Facebook to disclose Brexit ads- as part of enquiry investigating fake news and the impact of online disinformation on democratic processes³⁷. When the ads of the official Vote Leave campaign, BeLeave/Brexit Central, and DUP Vote Leave, were finally released it was discovered that several such campaigns broke UK election laws. Each recipient was shown a different ad, tailored to his individual preferences, and there was no way of knowing a particular ad existed or who it was being targeted at. Britain has laws that limit the amount of money that can be spent on elections. With the rise of alternative sources of mass communication, candidates were able to exceed the spending limits via- Google, YouTube, and Facebook ads. The biggest electoral fraud in Great Britain in the last hundred years occurred in a once in a generation vote. Multiple election laws and data laws were broken during the Brexit campaign.

India: BJP spent more than Rs. 25 crore³⁸ for social media campaigns in the 2019 election. The party used marketing and advertising tools to showcase its achievements and criticize the opposition. The phenomenon of spreading fake news is an epidemic in India. It is used to manipulate voters by- Photoshop-doctored

³² *Business Casual, The man behind Cambridge Analytica, YOUTUBE (April 27, 2018),*
<https://www.youtube.com/watch?v=LuZmWvhtwaE>.

³³ *Carole Cadwalladr and Emma Graham-Harrison, Revealed: 50 million Facebook profiles harvested for Cambridge Analytica in major data breach, THE GUARDIAN (March 17, 2018),*
<https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election>.

³⁴ *Harper Neidig, Facebook hit with new questions over Cambridge Analytica, THE HILL, (April 8, 2019),*
<https://thehill.com/policy/technology/456016-facebook-hit-with-new-questions-over-cambridge-analytica>.

³⁵ *Mike Schroepfer, Facebook, An Update on Our Plans to Restrict Data Access on Facebook, FACEBOOK (April 4, 2018),* <https://about.fb.com/news/2018/04/restricting-data-access>.

³⁶ *Mark Scott, Cambridge Analytica did work for Brexit groups, says ex-staffer, POLITICO (July 19, 2019),*
<https://www.politico.eu/article/cambridge-analytica-leave-eu-ukip-brexit-facebook/>.

³⁷ *Natasha Lomas, Facebook finally hands over leave campaign Brexit ads, TECH CRUNCH (July 26, 2018, 09:59 PM),* <https://techcrunch.com/2018/07/26/facebook-finally-hands-over-leave-campaign-brexit-ads/>.

³⁸ *Anumeha Chaturvedi, BJP top spender on political ads on digital platforms, THE ECONOMIC TIMES (May 16, 2019),* https://economictimes.indiatimes.com/news/elections/lok-sabha/india/bjp-top-spender-on-political-ads-on-digital-platforms/articleshow/69351792.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

videos, WhatsApp forwards, and paid Twitter bots are used to spread fake news to promote hate and polarization. The elections were called by some as “India's first WhatsApp elections”, with WhatsApp being used by many as a tool of propaganda³⁹. The NaMo app was reported to have promoted and spread fake news.⁴⁰ There have been multiple accounts of violent incidents and mob lynching that have been conducted on the basis of this fake news. WhatsApp has now introduced various measures to curb the spread of misinformation, which includes limiting the number of people a message could be forwarded to.

In the aftermath of the Cambridge Analytica scandal, a realization has dawned on people, that the wealthy and the powerful together, can manipulate the populace and manage democracy that serves interest of the elite⁴¹.

ECONOMY

We have spent the last several decades building tools to reduce physical labour of all kinds. These tools are known as mechanical muscles; they are stronger, more reliable, and more tireless than any human being could be. We have made tools to make our survival easier - from everyone needing to make food to meet a nation's demand to advancement in modern agriculture with almost no one needing to make food and we still have abundance. Replacing human labour with mechanical muscle frees people to specialize and devote attention for more important tasks. This is how the economy and standard of living have grown.

The automation technology two decades ago consisted of custom-build, expensive robots, apt for doing specific monotonous tasks around the clock (it did not consist the ability to analysis and comprehend) and needed skilled-operators to monitor them⁴².

Baxter, a general-purpose robot, has vision and can learn by watching someone do things. Robots like him cost less than the average annual salary of a human worker. Baxter is smart enough to take over many low skill jobs. In smart supermarkets (e.g.: the Amazon supermarket) which would normally employ thirty humans as a cashier, is now one human overseeing thirty cashier robots⁴³.

We have come to believe in technological changes as new, expensive innovations, but the real change comes from last decade's technology getting cheaper and more powerful, that is what is happening to robots now. The computing processing power from 1965 has roughly doubled every two years. In a few decades computers will be much more powerful than they are today. Since the mechanical minds are capable of decision making, they are out-competing humans for jobs in a way no pure mechanical muscle ever could. This is an economic revolution.

Just as mechanical muscles made human physical labour less in demand so are mechanical minds making human mental labour less in demand. Automation is driven by a desire to reduce cost and weaken the

³⁹ Perrigo Billy, *How Whatsapp Is Fueling Fake News Ahead of India's Elections*, TIME (Jan. 25, 2019), <https://time.com/5512032/whatsapp-india-election-2019/>.

⁴⁰ Pooja Chaudhuri and Jignesh Patel, *NaMo App promotes fake news factory 'The India Eye' and users can't block it even if they want to*, SCROLL.IN (Feb. 7, 2019), <https://scroll.in/article/912405/namo-app-promotes-fake-news-factory-the-india-eye-and-users-cant-block-it-even-if-they-want-to>.

⁴¹ Carole Cadwalladr, *The Great British Brexit robbery: how our democracy was hijacked*, THE GUARDIAN (May 7, 2019), <https://www.theguardian.com/technology/2017/may/07/the-great-british-brexite-robbery-hijacked-democracy>.

⁴² CGP Grey, *Humans Need Not Apply*, YOUTUBE (Aug. 13, 2014), <https://www.youtube.com/watch?v=7Pq-S557XQU>.

⁴³ Kristina Panos, *Robots Are Coming For Our Jobs-Just Not All Of Them*, HACKADAY (Aug. 24, 2015), <https://hackaday.com/tag/general-purpose-robot>.

bargaining power of labour. Jobs such as that of travel agents, bank tellers, and stock market brokers were replaced because of advancement in technology in computing and high-speed networking⁴⁴. In a more recent example, Zomato, a food delivery app in India, laid off 540 customer support staff, since machines were able to perform their tasks⁴⁵. Several sections of society are going to be affected by the robot revolution right from low skilled workers to white collar employees, from professionals to people in the creative field.

The classic paradox we face today is that as machines increasingly do the work for us why do that not make our labour superfluous and our skills redundant? Is the path to the doom of humanity paved by our own great inventions? History has repeatedly offered an answer to this paradox: the first part of the answer is that technology magnifies our leverage, increases the importance and the added value of our expertise, our judgment and our creativity. The second part is our endless inventiveness and our bottomless desires- means that we never get enough, there is always new work to do⁴⁶.

On numerous occasions in the last two hundred years, scholars and activists have raised alarm that we are running out of work and making ourselves obsolete. Innovation does not create enough jobs. Mechanical minds will push humans out of employment. Not immediately, not everywhere, but in large enough numbers, and soon that it is going to be a huge problem if we are not prepared.

Automation creates wealth by allowing us to do more work in less time. The fact that dangerous manufacturing jobs (such as coal mining) can be taken over by robots is something to be celebrated. Technology creates newer and better jobs that result in higher productivity. As automation frees our time, increases the scope of what is possible, we invent new products, ideas and services that command our attention, occupy our time, and spur consumption.

It is true that some jobs will get obsolete and people working in those industries lose their source of livelihood. Many of the industries such as- health and medicine, finance and insurance, electronics consumer items (televisions, fridge, mobile phones, cars etc) were tiny or did not even exist a century ago.

Optimists suggest that jobs and industries that we cannot predict would exist in the future. For example, the gaming industry has grown ten-fold since the nineties and generates more than \$150 billion of revenue worldwide⁴⁷. No one would have predicted that a 'smartphone' would become indispensable. Did it affect the radio, camera, telephone, calculator, flashlight, music industry adversely? Yes, but that is the cycle of growth. Jobs in one industry get obsolete and jobs in another industry are created.

Automation is inevitable; it is a tool to produce abundance for little effort. The pace of change has been faster than ever before. This is very unsettling for societies⁴⁸. Adjusting to the real pace of technological

⁴⁴Vox, *The big debate about the future of work, explained*, YOUTUBE (Nov. 13, 2017), <https://www.youtube.com/watch?v=TUmyygCMMGA>.

⁴⁵Suneera Tandon, *Zomato lays off 540 employees across customer support teams*, LIVEMINT (Sept. 7, 2019), <https://www.livemint.com/companies/news/zomato-lays-off-540-employees-across-customer-support-teams-1567852078631.html>.

⁴⁶IntelligenceSquared Debates, *Automation Will Crash Democracy*, YOUTUBE (May 16, 2018), <https://www.youtube.com/watch?v=A7Tzbu2xJnc&t=94s>.

⁴⁷Tom Wijman, *The World's 2.7 Billion Gamers Will Spend \$159.3 Billion on Games in 2020: The Market Will Surpass \$200 Billion by 2023*, NEWZOO (May 8, 2020), <https://newzoo.com/insights/articles/newzoo-games-market-numbers-revenues-and-audience-2020-2023/>.

⁴⁸TRT World, *Roundtable: How will automation affect human employment?*, YOUTUBE (Nov. 14, 2017), <https://www.youtube.com/watch?v=IaSkfo1EAXs>.

change creates real challenges, seen most clearly in our polarized labour market, and the threat that it poses to economic mobility. Rising to this challenge is not automatic, costless, or easy, but it is feasible.

It is foolish to say that there is nothing to worry about, if we are not careful and prepared for the dystopian states depicted in sci-fi novels and movies can be a sad reality. At the same time, it would be cynical to claim that our fates are sealed and nothing can be done. The machines do not decide our future; it is decided by our institutions and us.

We are on the brink of the fourth industrial revolution. Some economic restructuring is inevitable and some jobs currently performed by humans will better be performed by machines. But if we turn away from the technological revolution then democracy will be left in the dark and other authoritative regimes like Russia and China will lead in this dimension. However, if we are prepared, cautious, and trained, technological change can be turned for better.

Democratic systems tend to be more dynamic and are by design more adaptable and flexible to rapid change. We as citizens need to build a “Smart Democracy” in the near future⁴⁹. A smart democracy will be able to combine the mass economic benefits that automation will offer inevitably. Experts claim that people will be liberated from performing monotonous tasks that keep us from exploring our true potential.

CONCLUSION AND SUGGESTIONS

The citizens of the 21st Century are more aware than ever, with massive access to information like never before, and the ease of collaborating with like-minded people makes people more widely aware about the fallacies and shortcomings of the system and exposes the corrupt intentions of people running it. Aware and educated people are capable of raising their voices, dissenting and asking for a legitimate change. The ease of contacting bureaucrats, increased standard of living, more educated youth, and a general liberal mind-set of people (than it was two decades ago) has made us capable of demanding for basic rights that seemed as a luxury in the distant past. The internet could bring about a change in the democracy of our country for the better. The rise of social media would be able to circumvent state censorship. The scales of power could be tilted in favour of the citizens for once. But the politicians would not want this- it would take away power from the supposed drivers of democracy, the corrupt government officials, industry, and politicians who have become rich and powerful because of abusing their position. The people in power distract and divide us by spreading fake news and misinformation. An individual now has to critically question and analyze any information he/she is bombarded with. The platforms that were created to connect us, are now being weaponized. Data warfare is so deep that it is successfully able to manipulate people’s perception of the world. Hate and fear are being sold across the world online- not just in the U.S. and India but in France, Hungary, Brazil, Britain, and Myanmar. It seems like we are living in a massive, global, online experiment. Democracy now has to deal with pressing questions of target manipulation, data ownership and privacy. Democracy is now facing unprecedented challenges- laws are being disrupted by technology.

What is extremely important to understand is that the question is no longer about the left or right affiliations, it is about whether it will be possible to have a free and fair election, ever again? Democracy is not guaranteed and it is not inevitable⁵⁰.

⁴⁹ *Recommendation CM/Rec(2009) of the Committee of Ministers to member states on electronic democracy (e-democracy)*, COUNCIL OF EUROPE (Feb.18, 2009), https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d1b01.

⁵⁰ *Ted, Facebook's role in Brexit- and the threat to democracy* by Carole Cadwalladr, YOUTUBE (June 10, 2019), <https://www.youtube.com/watch?v=OQSMr-3GGvQ>.

Technology is now all pervasive i.e., it affects all aspects of people's private and public lives. Technology is neutral but the companies and government that control it are not. The development of technology in the last century has been so rapid that neither the policy maker nor the individuals could analyze its effects completely. There are obvious benefits of technological development. It is a tool to achieve greatness, but if it is exploited by the rich and corrupt, it has the capability to destroy the very essence of democracy. One cannot deny that democracy is in danger, and unless preventive steps are not taken to restore and fix democracy the citizens will not be able to enjoy the rights they do now. Following are some suggestions to reinvent democracy:

1. **Ethical Designing of AI:** It should be made mandatory to answer the ethical questions when any powerful technology or AI is invented or improved significantly. Establishing a sense of responsibility and consciousness in order to safeguard the digital place. In order to achieve this goal, it becomes important to enhance communication between different academic communities, engineers and political researchers is important to understand the larger picture and implication that such technology would have on the society. Those responsible for designing AI should also ensure that human rights are upheld.
2. **Creating legal standards for Data Protection:** Data rights should be considered fundamental rights and should be enforceable against the government and corporations alike. Users should have rights over their data. Personal data should not be a commodity anymore that can be collected and sold. In states where data protection laws exist (such as the E.U.- GDPR), it is important to strengthen these laws.
3. **Withstand Repression:** Strengthening the capacity of civil society to withstand AI fuelled oppression as well as helping them shape guidelines for AI use at home is an integral part of ensuring that there is a right amount of accountability in sectors ranging from the criminal justice system to the health care. There is also a need to ensure that the AI developed is free of any human biases such as interaction bias, latent bias, and selection bias⁵¹.
4. **Ensure Digital Literacy:** There should be dialogue on data and technological ownership. Any user should be informed about the rights he/she has on the internet and the redressal mechanism in case such rights were to be violated. The long, never-ending terms and conditions that are filled with complicated legal jargons should be replaced by short and easier to understand guides to the internet service.
5. **Amendment to existing Election laws:** Democracies around the world have a body of law to ensure free and fair elections that forms one of the pillars of modern democracy. There is an urgent need to address the increasing polarization around the world and rectify it. Polarized nations tend to be less democratic, leading to a deadlock. In order to ensure that the forthcoming elections remain free and fair, creation of laws restricting or banning the use of social media, algorithms bots, or any AI technology that shall be developed in the decades to come for the purpose of elections becomes essential.

⁵¹Rebecca Heilweil, *Facebook is taking a hard look at racial bias in its algorithms*, VOX (Jul. 22, 2020), <https://www.vox.com/recode/2020/7/22/21334051/facebook-news-feed-instagram-algorithm-racial-bias-civil-rights-audit>.

6. **Independence of Media:** Democratic institutions cannot function properly in a vacuum. They depend on informed and committed citizens, and their political representatives. In this context, the digital transformation of the last two decades has increasingly presented itself as a double-edged sword. The separation of powers, independent courts and freedom of the media are democracy's protection mechanisms against authoritarian attempts to overthrow and undermine its foundation. Now it has become a norm where independence of the media has been compromised, journalists have been disrespected or worse, penalised by politicians. The lack of free and fair information in the form of facts presented to the public by independent media houses to make an informed choice shows that several democracies around the world have taken their first step to dissent. It becomes imperative for democracies across the world to establish a media that is independent and free from the grip of rich and powerful.

A STUDY OF THE EVOLUTION OF DEMOCRACY IN INDIA

-Subham Sarkar; AnushreeSaha¹

ABSTRACT

Democracy is one of the most popular practices adopted by different nations across the globe for governing their legal and constitutional machineries. Democracy is the policy of the government to involve citizens in the process of governance. A democratic State allows its citizens to elect their representatives. The concept of democracy was first observed in Ancient Greece in 380 BC. The literal meaning of the word “democracy” is “rule by the people”, but this meaning is found to be inadequate in the practical world, because it only talks about the governance of a particular society by the people. However, the problem lies in the fact that a ruler, democratically chosen, may act arbitrarily at times. Democracy is no bar to arbitrary action of the ruler. Therefore, it has been found, time and again, that democracy does not ensure rule of law. The principal purposes for establishing democracy in governing a nation are protection and promotion of rights, interests and welfare of the citizens of a nation.

Hobbes advocated Social Contract Theory where an individual mutually transferred his rights to a politically superior and subjected himself to his rule. However, he supported absolutist government. John Locke, unlike Hobbes, was supporter of individual liberty, political equality and majority rule. Rousseau’s concept of democracy was narrower than John Locke and he did not believe in representative government. Therefore, various concepts and structures of democracy are found. The concept of democracy adopted by various nations, while governing its citizens is also different. Democracy postulates that every individual is free to participate in the process of political governance in a country and hence, political freedom is embedded in the bottom of the heart of democracy. In order to transform society in the globalised era, modern democracy is consisted of three central parts, i.e., democracy, constitutionalism and liberalism.

The Preamble of the Constitution of India has envisaged a democratic structure from political and social standpoint which is infused with the spirit of justice, liberty, equality and fraternity. However, India has also witnessed the transformation of the nature of democracy within the State. India has come a long way in ensuring rule of law from A.K. Gopalan’s case to Maneka Gandhi’s case.

Democracy has a jurisprudential concept attached to it which has strengthened with the thoughts and teachings of notable jurists who emphasised on the need and practice of democracy for a just social order. Democracy and jurisprudence are practised as a domain of public law wherein public interest is its focal point.

Hence, the concept of democracy has jurisprudential links with manifold schools of legal thoughts and those thoughts have evolved and transformed democratic practices for larger public interests. In this backdrop, this paper seeks to study the journey of Indian legal system from a Democratic State devoid of Rule of Law.

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This paper will specially focus on A.K. Gopalan case and Maneka Gandhi case while analysing the aforementioned journey.

INTRODUCTION

One of the most popular ways to create a stable government is democracy as it empowers and entitles people the right and authority for electing their representatives. The representatives subsequently become a significant part of the legislature. The object of democratic governance is to elect representative of common choice and even if change the same, if needed.

Four key elements make the base of democracy, viz. (i) a stable political system where elections can commence freely and fairly, (ii) common participation process of citizens, (iii) protection of human rights and preventing its oppression and (iv) observance of Rule of Law.² There are two types of democracy, one is direct where the common citizens directly elect the head of the State for governance and the other one is representative, where public vote or through general elections an elected representative is chosen, it is a common feature of parliamentary and presidential forms of government.³

Athens in 508 BC has pioneered the path of democracy with its multiple city-states with differed governments, e.g., monarchy, oligarchy etc. Among all the different kinds of government, democracy was the most popular and favoured one. Subsequently, due to rivalries of political thought processes in cities and villages, the concept of democracy could not further develop in Greece and hence, during the 18th century with the ancient Greek and Roman civilisations helped to restructure democracy, mostly in post-monarchical period.⁴

Notable jurists and legal think-tanks, like Thomas Hobbes, John Locke and Jean Jacques Rousseau have idealised democratic practice in their writings. Democracy is a part of Natural Law and has occupied a prominent place in the arenas of ethics and politics, as well as was found as a suitable tool to morally justify erstwhile social and economic problems. The Greeks in this regard, were not interested in technical development of law, rather wished to explore philosophical and moral foundations of law, and went against analytical positivism.⁵

In the eyes of Thomas Hobbes, there was a prevailing war of every Man against every Man before the advent of Social Contract Theory and identified life as “solitary, poor, nasty, brutal and short”. Self-preservation became the key ingredient of Natural Law. Law and government together dedicated to promote order and personal security. Hobbes wanted Natural Law to operate in the then existing legal system for preservation of peace and solidarity among individuals. But scenario changed during English Revolution where the principles laid down by John Locke asserted that it was the obligation of the State to protect and guarantee natural rights of the citizens, he characterised Social Contract Theory as the Doctrine of Consent where the consent of the subjects determines the authority of the State. The concept of popular will or consent has played a massive role in strengthening democracy in India and other commonwealth nations.⁶

² L. Diamond and L. Morlino, “What is Democracy: Quality and Search of Democracy” 43 Routledge 415 (2016).

³ J.P. Boyd, *Building and Ruling the Republic 12-13* (Bradley, Garretson & Co., Philadelphia, 1st edition, 1884).

⁴ I. Morris, *The Measure of Civilisation: How Social Development Decides the Fate of Nations* (Princeton University Press, New York, 2nd edition, 2013).

⁵ S.N. Dhyani, *Fundamentals of Jurisprudence: The Indian Approach* 82 (Central Law Agency, Allahabad, 3rd edition, 2011).

⁶ *Ibid* at p.91.

The Spirit of Laws, written by Montesquieu in 1748 was another significant tool to understand and study the evolution of democracy, the said book was used as the model to frame the Constitution of the United States of America. The book has written about Separation of Power which is a sine qua non for democratic governance. Montesquieu has also developed the concept of Social Change and established a direct and proximate bond between democracy and Natural Law.⁷

The Social Contract Theory formulated by Jean Jacques Rousseau is a wholesome formal and analytical construct which can be used as means of presenting conflicting political ideas and this theory has crystalized the concept of democracy. Social Contract is a mystical construct by which the individual merges into the community and becomes part of the “general will” which ideally connotes that the people should govern themselves. But the concept of Rousseau as expressed in Social Contract is practically unimaginable to adopt and being aware of the fact, he acknowledged that it is impossible that the people in any given society should remain continually assembled for devoting their time to public affairs and therefore, he opted for specialisation and that was termed as “Elective Aristocracy”. The Social Contract Theory asserts that law is the register of general will and the government can only be tolerated so long as it accurately reflects the general will. Rousseau contended that general will is the moral will of the citizens.⁸ Therefore, the need for limiting/ controlling the power of the authority was realised for Rousseau believed that the government is legitimate only in so far it submits to the general will.

The era of Immanuel Kant and his doctrine of Rechtsstaat (Legal State or State of Rights) has significantly contributed to the growth of the concept of Rule of Law. As per the doctrine of Rechtsstaat, the power of the State to protect its citizens from arbitrary exercise of authorities is quite limited which is also upheld by the Rule of law. Where it has limited the power of the authorities and prevented it from being arbitrary. It is in the nature of constitutional state where government power can be made limited by the law and sometimes, this doctrine is also equated with the Anglo-American concept of Rule of Law. The political ideology of Kant is liberal and he described Social Contract as a regulative matter. The doctrine empowers the citizens to share their civil liberties and in case, the liberties are being violated, they can use the Courts. He believed that any nation, without observing the Rechtsstaat, cannot achieve successful democracy.⁹

The role of German Philosopher Immanuel Kant is noteworthy in understanding the theoretical concepts of democracy as he bridged a relationship between individual and State because his concept has provided a process of democratisation where the rights are fully enjoyed by citizens and the state is well within its limit while exercising its power. He understood morality in terms of freedom and felt that morality arises only from freedom. Freedom not only makes morality possible, but also determines it. Kant propounded that morality and freedom are same, provided the law is in conformity with morality and one can be forced to obey morality without forfeiting freedom. He believed that resistance to an established legal authority must be wrong because it undermines rule of law and frustrates the achievements of a community in conformity with the morality.¹⁰

⁷ *The role of Montesquieu in Democracy, available at:*

<https://www.crf-usa.org/bill-of-rights-in-action-bria-hobbes-locke-montesquieu-and-rousseau-on-government.html>
(Last Accessed on July 23, 2020 at 8:26 pm).

⁸ M.D.A. Freeman, *Llyod's Introduction to Jurisprudence* 117 (Sweet & Maxwell, London, 7th edition, 2001).

⁹ Anthony Smith, "Kant's Political Philosophy: Rechtsstaat or Council Democracy?" 47 *The Review of Politics* 255 (1985).

¹⁰ George Sorensen, "Kant and Processes of Democratisation: Consequences for Neorealist Thoughts" 29 *Journal of Peace Research* 398 (1992).

Immanuel Kant brought the concept of “Categorical Imperative” which means that an individual must act in a certain way that the maxim or principle of that action can become the maxim or principle of general action. The categorical imperative is not a mere subjective choice; rather, it is an objective necessity and therefore, an end in itself. Kant emphasises on the principles of self-consistency, so that can be followed or adopted by all the individuals throughout the whole of their lives. Kant described the civil liberties in his State of Rights as innate rights belonging to everyone by nature independent of all juridical acts of experience, “the birth right of freedom” i.e., independence from the arbitrary will of another.¹¹

In practice, the democratic process is the general will of the people who decides and determines its governing members and unless, the general will is not formed, the Social Contract Theory which has laid the foundation stones of Democracy, cannot be achieved. The Constitution of India also has adopted the structural formula of Rechtsstaat where manifold fundamental and constitutional rights are embodied to secure democracy in its fullest extent. It is therefore, the General Will and the State of Rights which is the real source of liberty and right, law and authority within a community which paves the way for democracy and modern jurisprudence of democracy lies heavily on the rights of people and independence of judiciary to protect and preserve those rights.

RULE OF LAW VIS-À-VIS DEMOCRACY: AN ANALYSIS OF A.K. GOPALAN CASE

Rule of Law (derived from French phrase *la principe de legalte* which means government based on principles of law and not of men¹²) is the supreme manifestation of human civilisation and progress. Any developed constitutionalism is inadequate without the observance of Rule of Law and it is quintessential to build a good governance. Rule of Law opposes arbitrary powers.

Eminent legal thinker Edward Coke for the first time came with the concept of Rule of Law where he pointed that any King of any region whatsoever is under the God and Law, therefore, promoting Supremacy of Law. In India, the famous Upanishad stated that Law is the King of all Kings; it is more powerful than any King in this world as law ensures triumph of truth, fairness, justice and good conscience¹³.

As per the Oxford Dictionary, the term ‘Rule of Law’ means the authority and influence of law in a given society, rather as a limitation of individual discretion and manifest arbitrariness. It is a cherished principle where law is treating all the members of society, including those belonging to the government, equally and indiscriminately. The law codes and legislations are end-products of Rule of Law. In the language of Immanuel Kant, Rule of Law is a fundamental requirement of State of Rights or Rechtsstaat.

Further developments of Rule of Law were authored by Prof A.V. Dicey in his renowned book, the Law of the Constitution (1885) and in the said book, three important notions of Rule of Law were embodied, viz., (i) Supremacy of Law, (ii) Equality Before Law and (iii) Predominance of Legal Spirit. Rule of Law is based on the ideals of non-discrimination, equality, fraternity, accountability, freedom and non-arbitrariness.¹⁴

The concept of Rule of Law as idealised by Dicey has been adopted in the Constitution of India. The Preamble of the Constitution gives a glaring reflection of equality, justice and liberty. The core branches of

¹¹ Leo Strauss and Joseph Cropsey, *Immanuel Kant in History of Political Philosophy* (University of Chicago Press, Chicago, 1st edition, 1987).

¹² I.P. Massey, *Administrative Law 25* (Eastern Book Company, Lucknow, 7th edn, 2008).

¹³ C.K. Takwani, *Lectures on Administrative Law 20* (Eastern Book Company, Lucknow, 6th edn, 2017).

¹⁴ M.P. Jain and S.N. Jain, *Principles of Administrative Law 13* (Lexis Nexis, Gurgaon, 6th edn, 2015)

the State, i.e., Legislature, Executive and Judiciary derive its powers from the Constitution of India. Part III of the Constitution which declares certain fundamental rights, are enforceable by law and based on Rule of Law. Judicial Review is also one of the significant developments of Rule of Law through case laws. In the famous case of *Indira Nehru Gandhi v. Raj Narain*¹⁵, one of the observations was that the Rule of Law is a part of the Basic Structure of the Constitution of India and hence non-amendable.

A balance of convenience is required between the needs of political independence, internal order, economic development and equality amongst all-in-one hand and his personal liberty and dignity on the other. In *National Legal Services Authority of India v. Union of India*¹⁶, the Supreme Court of India opined that the Courts must endeavour to protect the enriched concept of Rule of Law.

In India, the case of *A.K. Gopalan v. State of Madras*¹⁷, it was held that India which was back then a newly democratic nation has prescribed the idea of “procedure established by law” which only defines and denoted the legislature enacted law and nothing beyond that. A.K. Gopalan was a prominent communist leader, was detained under the Preventive Detention Act, 1950. He challenged his detention in the Supreme Court of India on the ground that his personal liberty was a fundamental right which had been jeopardised due to the preventive detention. The central focus before the Apex Court was whether the procedure established by law under Article 21 should be fair and reasonable or any kind of discretionary procedure.

The Supreme Court of India in this case came up with a dissatisfactory judgment in the backdrop of establishing democracy and held that “procedure prescribed by law” denoted only the procedure as prescribed in the statute itself and does not include any executive or administrative procedure. The judgment in the Gopalan case was heavily influenced by pure positivist approach of law and did not pay any heed to the moral or natural school of thought. The judgment therefore has been marked as “high-water mark of legal positivism”.¹⁸

Surprisingly, the Supreme Court in the aforesaid case did not interpret the golden triangle of the Constitution of India harmoniously; rather, it made a literal interpretation of law stating that Article 14, Article 19 and Article 21 must be read in isolation, and upheld the validity of the Preventive Detention Act, 1950.

H.J. Kania, C.J., in this case remarked that mere indirect encroachment of any fundamental right does not *ipso facto* make any law unconstitutional or *ultra vires* to the Constitution and the majority of the bench observed that the true intention of Preventive Detention Act, 1950 is to consider the prima facie motive of legislation and consequent detention of the detainee.

Another major observation in this case was that while the petitioner wanted to explain and differentiate the phrases “due process of law” as used in the Constitution of the United States of America and “procedure established by law” as used by the Indian Constitution, the Supreme Court did not intervene in this matter and held that principles of natural justice are indefinite and vague and not in conformity with Article 21 of the Indian Constitution. “Law” was understood as *lex* and not *jus*.

Justice Fazal Ali gave the dissenting judgment in this case which was far-reaching for subsequent developments and observed that the age-old legal principle of Natural Law are well within the scope of

¹⁵ 1975 Supp SCC 1.

¹⁶ (2014) 5 SCC 438.

¹⁷ AIR 1950 SC 27

¹⁸ M.P. Jain, *Indian Constitutional Law* 1162 (Lexis Nexis, Gurgaon, 8th edn, 2019).

Article 21 of the Indian Constitution and opined that no person shall be condemned unheard, he also tried to interpret “due process of law” and “procedure established by law” harmoniously.¹⁹

In a nutshell, the decision in this case states that if any executive action is performed under the authority of any enacted legislation that justifies the deprivation of any person’s life and personal liberty. It was indeed a draconian principle for protection of fundamental rights.

After this judgment, it became an established rule that as the legislature is empowered to enact laws by virtue of the Constitution of India, it can whimsically determine the interpretation of procedure established by law and can deprive a person from his celebrated fundamental rights. The legislature has decided the matter very non-sympathetically in the light of analytical positivism as idealised by John Austin and abandoned the fair procedure of natural laws.

One needs to understand that substantive laws (end) and procedural laws (means) are inter-related, Article 21 entrenches the relationship between the end and the means. The conservative interpretation of Article 21 in the matter of Gopalan²⁰ had denied the concept of Rule of Law its actual and just meaning. However, gradually the precedent set in this case was watered down and the celebrated judgement of Maneka Gandhi²¹ marked a new era for procedural due process.

DEMOCRACY REDEFINED: THE MANEKA GANDHI CASE AND ITS AFTERMATH

The traditional concept of Democracy which was laid down by different jurists on different context has witnessed sea-change in its scope and ambit. Constitution of India in its Preamble has portrayed the picture of a ‘Democratic Republic’ where democracy is defined not only from political, but also from social standpoint. In other words, it envisaged not only a democratic form of government, but also a democratic society, infused with the spirit of “justice, liberty, equality and fraternity”. In order to expand the scope of democracy, the judiciary has played the pivotal role and hence, at present, in India, democracy has become a practise in every field of Constitution, more than mere Right to Vote for electing representatives.

The case of *Maneka Gandhi v. Union of India*,²² is one of the key-changers of the democratic notion in India with the help of judicial activism. The words “life and personal liberty” used in Article 21 became a part of justice and liberty which is one of the founding stones of Indian democracy and from this celebrated case, the evolution of democracy was redefined in India which worked as a triggering catalyst to create many dimensions of democracy.

Prior to the decision of Maneka Gandhi, the scope of Article 21 of the Constitution of India was limited to guarantee the right to life and personal liberty to citizens only against the arbitrary actions of the executive, but not from the legislative actions²³. The State was empowered to interfere with the liberty of citizens if it could support its action by any valid law and thus the construction and interpretation of the expression “personal liberty” was restrictive. But subsequently in *Kharak Singh v. State of Uttar Pradesh*²⁴, it was held that “personal liberty” was not only restricted to bodily restraint or confinement, rather it is a compendious

¹⁹ *Ibid*

²⁰ *A.K Gopalan v State of Madras, 1975 Supp SCC I.*

²¹ *Maneka Gandhi v Union of India, AIR 1978 SC 597: (1978) 1 SCC 248.*

²² *AIR 1978 SC 597.*

²³ *A.K. Gopalan v. State of Madras, AIR 1950 SC 27.*

²⁴ *AIR 1963 SC 1379.*

term including within itself all the varieties of rights and freedoms create the personal liberty of a human being and these varieties of rights and freedoms are other than those mentioned in Article 19(1).

Maneka Gandhi case is a landmark decision of the Supreme Court of India of the post-emergency era. This case has shown how the liberalising tendencies of the Apex Court have influenced to interpret the fundamental rights, especially Article 21. The judicial attitude gained a great transformation from this case, perhaps due to the traumatic experiences of emergency and protection of fundamental rights, which is evident from the decision of *ADM Jabalpur*.²⁵ The factual proposition of Maneka Gandhi case is that Section 10(3)(c) of the Passports Act, 1967 authorises the passport authorities to impound a passport if it deems it necessary to do so in the interests of the sovereignty and integrity of India, the security of India, the friendly relations of India with any foreign country or in the general public interest. Her passport was impounded on the ground of general public interest and she therefore, filed a Public Interest Litigation (PIL) contending that she was not provided with an opportunity of fair hearing, countenancing one of the principles of natural justice. Moreover, the said order of impoundment was challenged on the ground of being violative of her fundamental rights enshrined under Article 21 of the Constitution of India.

Justice P.N. Bhagwati led the majority opinion and decided as follows:

1. The Court propounded that there is a nexus between Articles 14, 19 and 21 and they are not mutually exclusive of each other. The theme of their inter-relationship is based on the conclusion that a law prescribing a procedure for depriving a person of 'personal liberty' has to meet the requirements of these three articles and must be interpreted harmoniously.
2. The expression 'personal liberty in Article 21 was given an expansive interpretation. The Court emphasised that the expression 'personal liberty' if of the "widest amplitude" covering a variety of rights "which go to constitute personal liberty of man". In this case, Krishna Iyer, J. noted that "the spirit of man is at the root of Article 21" and thus, the preambular idea of justice under the auspices of democracy has considerably widened.
3. One of the most important, significant and creative aspect of Maneka Gandhi case is the re-interpretation of the expression "procedure established by law" by the Supreme Court of India where it was held that Article 21 would no longer mean that law could enact some semblance of procedure, irrespective of its arbitrariness or fancifulness, to deprive personal liberty of a person. The Court specifically stated that the procedure must be just, right and fair and cannot be arbitrary, unfair or unreasonable. In connection to this, Bhagwati, J. noted: "The principle of reasonableness which legally as well as philosophically is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and thus, the procedure laid down in Article 21 must be right and just and fair and not arbitrary, fanciful or oppressive, otherwise, it would be no procedure at all and the requirements of Article 21 would not be satisfied".

The truth is that Article 21 has been emerging since Maneka Gandhi case as the Indian version of American concept of "due process of law" which was substituted with "procedure established by law" and thus, Article 21 has become the source of many substantive rights and procedural safeguards to the people.²⁶

Maneka Gandhi case has completely overridden the A.K. Gopalan view which had held the narrow concepts of fundamental rights and democracy for nearly three decades. The reincarnation of democracy which

²⁵*A.D.M. Jabalpur v. Shivakant Shukla*, AIR 1976 SC 1207.

²⁶*M.P. Jain, Indian Constitutional Law 1168 (LexisNexis, Gurgaon, 8th edition, 2018).*

Maneka Gandhi case has brought about has been exerting a deep impact on contemporary constitutional jurisprudence and a harmony between Fundamental Rights, Directive Principles and Preamble of the Constitution was created to sustain, strengthen and nourish each other for larger public interests.

EMERGING TRENDS OF INDIAN DEMOCRACY

Landmarks like A.K. Gopalan case in 1950 and nearly after three decades, in 1978, Maneka Gandhi case has evolved the nature and scope of democracy to a considerable extent and materialised the Kantian principle of Categorical Imperative into a reality in the Rechtsstaat of India. As already stated, the Maneka Gandhi case has certainly paved path for judicial creativity and many avenues of democracy were discovered. The impediments of legal formalism as witnessed in the Gopalan case no longer remain in practice in the present domain of realism. The emerging trends of Indian democracy have helped India to transform socially.

We reside in a country which is governed by the Constitution and not by an individual. It is undeniable that the government is run by a group of individuals; however, these individuals derive their powers from the Constitution and have to function under the discipline of law.

The Courts ensure that the Separation of Powers are maintained and checks that the government does not have excess of political powers in its hands. The judiciary of our nation has carved an essential spot for itself in the political system of the nation. The Constitution of India has compactly built the civil, political and socio-economical rights of the people and the Courts secure these rights for the citizens as well as the non-citizens. The judicial system of India holds a prominent position as it probes upon the rationality of the laws, its elucidation and implementation framed by the legislature.

A good and sound government is the basic need of a democratic polity and to ensure the same the three pillars of the government must work in perfect synchronization; the absence of harmony might lead to an administrative chaos. Such a situation can be evaded with the aid of a bold and independent judiciary which provides skin to the skeleton of democracy. Judicial activism is the pro-active approach taken by the judiciary to ensure socio-economic justice to all. It is the step taken to bridge the gap between the normative and positive aspects of law.

Democracy cannot be established in any nation, unless certain minimal rights, which are essential for a free and civilised existence, are assured to every member of community. The Preamble mentions these essential individual rights as 'freedom of thought, expression, belief, faith and worship' and these are guaranteed against all the authorities of the State by Part III of the Constitution of India, subject, of course, to the implementation of the Directive Principles of State Policy, for the common good (Article 31C) and Fundamental Duties introduced (Article 51A) by the 42nd Constitution (Amendment) Act, 1976.²⁷

The role of the Supreme Court of India in preservation, protection and improvement of democracy has restored the faith that the judiciary is the pillar of democracy and for any democratic nation, the independence of judiciary and the role of Public Interest Litigation in this regard is quite salutary. Here are some of the domains where emerging trends in democracy were witnessed:

1. Personal injuries of rights by the hands of the government servants²⁸;
2. Police atrocities and Custodial deaths²⁹;

²⁷ Durga Das Basu, *Introduction to the Constitution of India* 26 (LexisNexis, Gurgaon, 22nd edition, 2015).

²⁸ *Bhim Singh v. State of Jammu & Kashmir*, AIR 1986 SC 494; *Peoples Union for Democratic Rights v. State of Bihar*, AIR 1987 SC 355; *Peoples Union for Civil Liberties v. Union of India*, (2013) 10 SCC 1.

3. Environmental Pollution and Protection of Animals³⁰;
4. New horizons of Article 21³¹

There are multiple avenues respecting the right to life and personal liberty where democracy was proved to be one of the important ends to achieve justice and thus, it is desirable that in the upcoming days, democracy will continue to hold a pivotal place in modern jurisprudence.

CONCLUDING REMARKS

The role of democracy in the working of the Constitution of India is truly great and it has helped our Constitution to be vibrant and transformable according to the needs of society. India has established a democratic set-up of government which is ‘of the people, by the people and for the people’ and thus, it has given widest possible amplitude to public participation in the matters of governance. Democracy has also restored faith in Social, Political and Economic justice. One of the major developments of democracy has taken place after the landmark case of Maneka Gandhi in 1978 which paved path for emancipation of multifarious rights under the broad umbrella of Article 21 of the Constitution of India.

The ideal of a democratic republic enshrined in the Preamble of the Constitution of India can be best explained with reference to the adoption of universal suffrage of voting rights and complete equality between the sexes not only before the law, but also in the political sphere. The offering of equal opportunities to men and women, irrespective of their caste and creed, in the matters of public employment also implements this democratic ideal. The treatment of minorities, even apart from the constitutional safeguards, clearly brings out that the philosophy underlying the Constitution has not been overlooked by those who in power.

In the words of Pandit Jawaharlal Nehru:³²

“Democracy has been spoken of chiefly in the past, as political democracy, roughly represented by every person having a vote. But, a vote by itself does not represent very much to a person who is down and out, to a person, let us say, who is starving on hunger. Political democracy, by itself is not enough, except that it may be used to obtain a gradually increasing measure of economic democracy, equality and the spread of good things of life to others and removal of gross inequalities.”

The Constitution of India promises not only political, but also social democracy, as explained by Dr B.R. Ambedkar in his concluding speech in the Constituent Assembly:³³

“Political democracy cannot last unless there lies at its base a bedrock of social democracy, but the problem arises with the meaning of the expression “social democracy”. It means a way of life which recognises liberty, equality and fraternity which are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to separate one from the other is to defeat the very purpose of democracy. Liberty

²⁹*D.K. Basu v. State of West Bengal*, AIR 1997 SC 610; *Nilabati Behera v. State of Orissa*, AIR 1993 SC 1960; *Khatri v. State of Bihar*, AIR 1981 SC 928.

³⁰*M.C. Mehta v. Union of India (Taj Trapezium case)*, (2001) 9 SCC 520; *M.C. Mehta v. Kamal Nath*, AIR 2000 SC 1997; *Indian Council for Enviro-Legal Action v. Union of India*, AIR 1996 SC 1446; *Animal Welfare Board of India v. A. Nagaraja and Others*, Civil Appeal No. 5388/2014 (Supreme Court).

³¹*Vishakhav. State of Rajasthan*, AIR 1997 SC 3011; *Supreme Court Advocates On Record Association v. Union of India*, AIR 1994 SC 265; *K. Puttaswamy v. Union of India*, W.P. (Civil) No. 494/2012; *ShayaraBanov. Union of India*, W.P. (Civil) No. 118/2016; *Navtej Singh Johar v. Union of India*, W.P. (Civil) No. 572/2016.

³² *Inaugural address of Pandit Nehru at the Seminar on Parliamentary Democracy on 25th February, 1956.*

³³ *Durga Das Basu, Introduction to the Constitution of India 25 (LexisNexis, Gurgaon, 22nd edition, 2015).*

cannot be divorced from equality; equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity.”

The liberal approach of interpretation of judges has tremendously helped democracy to flourish, but it would indeed be hollow if it fails to generate this spirit of brotherhood amongst all sections of people, a feeling that they are all children of the same soil, the same motherland. It becomes all the more essential in a country like India which is composed of multiple races, religions, languages and cultures.

GAUGING INDIAN DEMOCRACY IN THE AGE OF TRANSFORMATION INTO A DESIGN OF E-DEMOCRACY– ANALYSING THE CHALLENGES AND CONCERNS

-Parvathi S. Shaji¹

ABSTRACT

This paper attempts to examine the transition of the newly fangled dimensions of e-democracy and e-government with reference, primarily, to their socio-legal aspects. The exponential increase in the transformation of the process of electoral reform and political mobilization is indeed a good sign. Various government functionaries such as police departments, treasuries, land record departments, and judiciaries have taken a viable shift, thereby exhibiting maximum potential. However, even though the Global Technology Report has ranked India above China, a majority of our rural population still does not have access to technology and is struggling for basic necessities such as electricity, proper healthcare facilities and drinking water. Thus, there arises the need to examine whether the adoption of an e-communication mechanism in India to analyse the socio-legal conditions such as literacy levels of the nation is still a question to be answered and whether ultimately the change causes the lack of awareness of the benefits of e-Governance activities. As India is one of the most the populated countries in the world, there arises a comparatively higher concern regarding access to the e-governance and allied e communication technologies on a larger scale, thereby depriving the population of digital access and penetration which is vital for promoting e-Governance. In this phase, there lies the necessity for critically evaluating the role of Information and Communication Technologies (ICTs) in the promotion of e-Democracy in India. This paper tries to make an analysis of the primary responsibility of ICT in assuring the firm footing of e-Democratic and allied e Governance processes in India. It also attempts to examine the transforming grid of the inter relationship between the access to Internet, and accurate knowledge in order to substantiate the existence and growth of e-Democracy process in India. The paper examines the inter relationship between e-Governance, e-Democracy, the fundamental characteristics and merits of electronic engagement of the Government in the realisation of the core democratic activities, and the prime challenges in the implementation of e-Democracy models in the Indian Governance framework. It also evaluates the methods employed so that a balance is maintained in justifying the entity of participatory decision making. Lastly, it provides suggestions for the better implementation of the ICT mechanism in fulfilling the principal essentials of a participatory democracy. The paper also examines the question as to whether the existing implementation techniques involved with regard to e-Democracy are in concurrence with the core characteristics of e-Governance., i.e., enabling transparency, faster data availability and participation of citizens in its true sense in the governmental activities. Lastly, an evaluation is made of the transition to e-Democracy, thereby enabling the citizens to cast their votes virtually, accessing information about the candidates, and the entire process of citizen's participation in government decisions.

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INTRODUCTION

“The Internet is gradually moving society from representative democracy to participatory democracy. It does this by creating the capacity for individuals or small groups to do things for themselves”

- Stephen Downes²

As rightly enunciated by Stephen Downes, indeed it is true that the recent, rapid rise in the utilisation of digital technology among the people of a country and civil society at various institutions paving way for the possibility of strengthening citizens’ voice in politics, thereby carving out innovative political platform for activism and also by enhancing more government accountability.³ Undeniably, it is very precise about the fact that these digital technological innovations are progressively complementing citizens’ political participation, shifting the mode of interrelationships between various entities such as citizens, institutional mechanisms and public institutions involved in realisation of democratic welfare and other allied activities, and also expanding the notions of political behaviour and participation.⁴ With the extensive popularity gained with the usage of social media for political campaigning, launching interactive websites and applications, utilising of text messaging systems thereby enabling direct communication channel between constituents, people and the government. The vital process of citizen’s political participation indeed switches over to a grid of powerful, transformative force for both political and socioeconomic development with the aid of the adoption of technology driven application in the governmental services. The extend of citizens participation definitely act as an instrument in establishing democratic norms and practices and encourages governments to frame policies and programs that are responsive and accountable.⁵ The chapter tries to deliberate upon the major concern of whether the adoption of technology and using it in the citizen participatory programs amplify citizen voice, allow for greater political space, increase government responsiveness and accountability. Also, the paper evaluates the apprehension as to how far a country like India can readily create space and opportunities for citizens to express their voices and whether be able to address the critical and prime concern of access and accessibility.

UNDERSTANDING E-DEMOCRACY AND E-GOVERNANCE: AN INSIGHT INTO THE THEORETICAL AND CONCEPTUAL FOUNDATION

With the inception of World Wide Web, the idea of making a transformation from the existing conventional platform of political participation and democratic practices to the novel digital phase incorporating newer media platforms. Indeed, with the application of variant aspects of Information and Communication Technologies thereby enhancing Internet-based democratic processes, there is in place either explicitly or implicitly the formulation of well-grounded concepts of democratic theories. Considering the conventional conception of democracy, the individualistic perception of variant of Internet-driven services in a democracy is being carried forth and is being reflected by a specific understanding of an ideal-typical view of the

² Stephen Downes is a senior Research Officer for Digital Technologies with the National Research Council for Canada.

³ Aichholzer G. & Stras S. *Electronic participation in Europe*, in *ELECTRONIC DEMOCRACY IN EUROPE. PROSPECTS AND CHALLENGES OF E-PUBLICS, E-PARTICIPATION AND E-VOTING* R.55-132 (Lindne G., Aichholzer, & L. Hennen eds., 2016). Also see, Beyer, J. L., *EXPECT US: ONLINE COMMUNITIES AND POLITICAL MOBILIZATION* (2014); Borah. P & Shah D. V. *A New Space for Political Behaviour: Political Social Networking and Its Democratic Consequences.*, 19 *JOURNALS OF COMPUTER-MEDIATED COMMUNICATION* 414–429 (2014).; Boulianne, S. *Social Media Use and Participation: A Meta-Analysis of Current Research.* 18(5), *INFORMATION COMMUNICATION AND SOCIETY* 524–538(2015).

⁴ BANAJI S., & BUCKINGHAM D, *THE CIVIC WEB: YOUNG PEOPLE, THE INTERNET, AND CIVIC PARTICIPATION* (2013). Also see, BARBER B. J. *STRONG DEMOCRACY: PARTICIPATORY POLITICS FOR A NEW AGE* (1984)..

⁵ *UNDP HUMAN DEVELOPMENT REPORT, DEEPENING DEMOCRACY IN A FRAGMENTED WORLD, 2001.*

political community and the decision making process circumventing it.⁶ Depending the variations in the prime concern of the objectives and principles of a democracy as in some places on record main focus on a high degree of representativeness while others promote the protection of fundamental rights and freedoms, on the other hand others strive for an extensive and comprehensive involvement of citizens.⁷ On a wider and general note, the core understanding of democracy can be related to the essence of three ideal models of democracy: the liberal, the republican (participatory) and the deliberative model⁸. The differences among three models are enumerated on the diverging aspects in with regard to the role played by each one in connection with the society and citizenship.

The Liberal Model of Democracy- The model adopted by the majority of the democratic systems which exhibits a grounded deep-rooted priority on procedures - Apart from reflecting the predefined stereotypical structure of a society, the model exhibits and follows on the procedure involved and the institutions that ensure generally binding decision-making. In considering the political will of the people is being catalysed with the competing interaction with reference to the political will of the democratic set-up is realised as the consequence of the interaction between varying preferences and voters mandates. The aspect of an arbitrary state inference is struck down in this model.

The Republican/Participatory Model of Democracy-The model highly demands for its citizens. The holistic and crucial element under this model is the participation process, and the collective process of will formation between free and equal citizens, are enlisted as the value in itself. The state is primarily vested with the liability for ensuring the process of inclusive involvement and not so much the protection of individual rights.

The Deliberate Model of Democracy- It exhibits a close connection with the participatory model but also incorporates important elements of the liberal model. The process in which the element of public will-formation is exercised is the vitality of this model. It incorporates the aspect of constitutionalism and the guarantee of individual rights and freedoms. The aspect of political power remains tied to the institutions of the constitutional state and its established procedures for decision-making.⁹

DEFINING E-DEMOCRACY & E-GOVERNANCE

During the initial transforming phase of merge with the virtual technology, there existed a number of usage to signify the change such as “virtual democracy”, “cyberdemocracy”, teledemocracy and the connotation was narrowed down to the usage of the terms “electronic or e-democracy” and “digital democracy”¹⁰ rather with no justification for the same. Various attempts have been made to structure the historical evolution of this discourse and the different perspectives.¹¹ The definitions which are in place can either be said to have a close connection with either a normative texture or a neutral one. According to

⁶ DEPARTMENT FOR INTERNATIONAL DEVELOPMENT RESEARCH AND EVIDENCE DIVISION, *THE POLITY OF POVERTY: ELITES, CITIZENS AND STATES* (2010).

⁷ Zheng Y., & Schachter, H. L. *Explaining Citizens' E-Participation Use: The Role of Perceived Advantages*, *PUBLIC ORGANIZATION REVIEW*, 1–20(2016).

⁸ HELD D, *MODELS OF DEMOCRACY* (2006).

⁹ JOHNSON, S. B., *FUTURE PERFECT: THE CASE FOR PROGRESS IN A NETWORKED AGE* (2012).

¹⁰ Loader, B.D & MERCEA.D, *Introduction. Networking Democracy? Social Media Innovations and Participatory Politics*, 14(6) *INFORMATION COMMUNICATION AND SOCIETY*, 757–769 (1999).

¹¹ HACKER L & VAN DIJK, *DIGITAL DEMOCRACY: ISSUES OF THEORY AND PRACTICE* (2000); Vedel T, *The Idea of Electronic Democracy: Origins, Visions and Questions*, 59(2) *PARLIAMENTARY AFFAIRS* 226-235 (2006); LOADER B.D. & MERCEA D, *SOCIAL MEDIA AND DEMOCRACY: INNOVATION IN PARTICIPATORY POLITICS* (2012).

Hacker and Van Dijk's perspective of defining digital democracy reflecting in with the normative ingredients:¹²

“Digital democracy is the use of information and communication technology (ICT) and computer-mediated communication (CMC) in all kinds of media (e.g., the internet, interactive broadcasting and digital telephony) for purposes of enhancing political democracy or the participation of citizens in democratic communication.”

At a later point, subsequently they redefine the concept in neutral terms, the conceptualisation is as follows:

“We define digital democracy as a collection of attempts to practise democracy without the limits of time, space and other physical conditions, using ICT or CMC instead, as an addition, not a replacement for traditional ‘analogue’ political practices.”

Further in a more recent contribution, Van Dijk provides a more concise version of the earlier definition:

“Digital democracy can be defined as the pursuit and the practice of democracy in whatever view using digital media in online and offline political communication. The online–offline distinction should be added because political activities are not only happening on the internet”

Relooking the varied entities of these definitions, the aspect of digital democracy will not replace the use of traditional communication media and the platform of face-to-face communication. Another definition is laid down by Paiaarinta and Oystein¹³

“E-democracy refers to the use of information and communication technology (ICT) in political debates and decision-making processes, complementing or contrasting traditional means of communications, such as face-to-face interaction or one-way mass media”

Further, a wider definition is put forth by Coleman and Norris¹⁴, in placing at hand variant definitions of e-democracy, they pitch certain vital elements also:

“A common thread ... is the assumption that e-democracy has something to do with the use of information and communication technologies (ICT) to enhance democratic structures and processes. E-democracy is both top-down and bottom-up; it is both about the institutional processes of hierarchies and the more fluid arrangements of networks.”

While attempting to define e-democracy “the processes and structures that encompass all forms of electronic interaction between the Government (elected) and the citizen (electorate)”¹⁵

It is assumed that the term e-Government came into existence with the advent of government websites in late 1990s.¹⁶ Thus widely interpreting, the concept of e-Governance is considered as a connotation with the

¹² Hacker K. L. & Van Dijk J, *what is digital democracy? in DIGITAL DEMOCRACY ISSUES OF THEORY AND PRACTICE 1-9* (K. L. Hacker & J. V. Dijk eds.,2000).

¹³ PAIAARINTA AND OYSTEIN PAPACHARISSI Z. S, *MODELS OF E-DEMOCRACY. COMMUNICATIONS OF THE ASSOCIATION FOR INFORMATION SYSTEMS*, 818–840 (2006).

¹⁴ COLEMAN AND NORRIS, *A NEW AGENDA FOR E-DEMOCRACY* (2005)

¹⁵ Michiel. Backus, *E-Governance And Developing Countries. Introduction And Examples*, THE HAGUE: INTERNATIONAL INSTITUTE FOR COMMUNICATION AND DEVELOPMENT (IICD) <https://bibalex.org/baifa/en/resources/document/288383> (last updated March 4, 2001).

extensive application of the information and communication technologies to improve the activities of public sector. Thus, on a general note we can say that, e-Governance refers to the use of ICT to provide citizens and organisations with more convenient access to the government's services and information. With the utilisation of the information technology which is indeed making things accessible to each citizen within a reach of a click. "The web is dynamic, flat and unregulated, whereas the system of government is fixed, static, and hierarchical regulated"¹⁷ Thus enables the quality of transparent procedure in the governmental functionaries which has the capability in exhibiting a corruption free government. As for as the initiation taken by Govt. of India is concerned, the government has introduced varied segments of e-Democracy initiatives such as E-registration of voters¹⁸, formation of new political parties, provision of information about candidates¹⁹ and other services for effectiveness of representatives. Further, any act which inculcate the access to information and knowledge about the political process, about services and about choices available, is a characteristic requirement in all good governance systems.²⁰ Thus, with the inception of information technology enabled the governmental services to a new platform of transformed system enhancing the characteristics of good governance.

EVALUATING THE FUNCTIONAL ROLE PLAYED BY INFORMATION AND COMMUNICATION TECHNOLOGY (ICT)

The wide application of ICT has essentially nourished the demanding features of a democratic setup as potentially changed the conditions of political communications and democratic practices. However, in reality the inter-relationship between the use of technologies and democratic politics is more complex and challenging. Analysing the transforming grid of the various phase of technological advancement we can make a classification as follows:

- i. **The Wave of Teledemocracy-** With the emergence of new technologies such as telephone, radio and television, has radically changed the nature of public discourse with a transformation towards the phenomenon such as teledemocracy.²¹ Today political communication has mutated into something the framers of the Constitution could scarcely have foreseen. The switch over from the extensive voluntary associations, public spaces, local newspapers, and neighborhood assemblies of their day have given way to computer bulletin boards, satellite television, and radio call-in

¹⁶ Mittal, Pardeep, and Amandeep Kaur, *E-Governance-A Challenge for India*, 2(3) IJARCET. 119 (2013).

¹⁷ Khan Intekhab et al., *E-Governance Reforms in India: Issues, Challenges and Strategies - An Overview*, 12 (1) IJCSI 1694-0814 (2015).

¹⁸ Gowda, Rajeev, *Early Indian Initiatives in e-Democracy*, 1(2)INTERNATIONAL JOURNAL OF ELECTRONIC GOVERNANCE 174-189(2008).

¹⁹ Gramberger. Marc R, *Citizens as Partners: OECD Handbook on Information, Consultation and Public Participation in Policy-making*. INTERNATIONALBUDGET, <https://www.internationalbudget.org/wp-content/uploads/Citizens-as-Partners-OECD-Handbook.pdf> (last updated Nov 22, 2001).

²⁰ OKOT-UMA, ROGERS W'O., AND COMMONWEALTH SECRETARIAT LONDON. *ELECTRONIC GOVERNANCE: RE-INVENTING GOOD GOVERNANCE* (2000). *Good Governance may be defined as comprising the processes and structures that guide political and socio-economic relationships, with particular reference to commitment to democratic values, norms & practices, trusted services and just and honest business. Good Governance can also be conceptualized as part of a development process". The theory is based on presence of eight major characteristics i.e. Participation, Transparency, Effectiveness and efficiency, Responsiveness, Accountability, Equity and inclusiveness, Rule of Law. These principles of the effective and efficient governance. Within the public management discipline or profession Good Governance has been regarded as an aspect of the New Paradigm in Public Administration which emphasises the role of public managers in providing high quality services that citizens and diverse communities of interest, communities of expertise and communities of inter-dependence value.*

²¹ William H. Dutton, *Political Science Research on Teledemocracy*, 10(4) SOCIAL SCIENCE COMPUTER REVIEW (1992).

programs. This transformation has been paralleled by a similar shift of emphasis about the underlying rationale for political discourse.²²

- ii. **Virtual Community** – The virtual community are characterized by the entity that the group is activated through the use of computer-mediated communication. Thus, as enunciated by Rheingold virtual communities are social aggregation that emerge when people carry out public discussions on the Net long enough²³. Also, another definition as said by Preece is as follows it consist of people, policies, a shared purpose and information systems. Both the definitions carry along with element of socializing and networks built in cyberspace.²⁴
- iii. **Web 2.0** – Web 2.0 describes principally as the period characterised by easiness in content production and publication on the internet.²⁵ As far as e-democracy is concerned, a continuous tension between the utopian vision and a pessimistic view surround with the emergence of Web 2.0. As one sect considers it as the form of democratic management of the internet, others see it as a place where popularity and quantity replace quality. But there is on record a unanimous statement of support that the Web 2.0 constitutes a new phenomenon whose exact impact cannot yet be determined.²⁶

The concept of a participatory democracy can be realised only with the realisation of certain factors. On the first note, it is the complete access to information which acts as the basic pre-condition of increased participation, secondly with regard to the interest in participation or the person's intention to participate which predominantly depends on awareness - Thirdly, the element of freedom to participate, and fourthly the facility to participate - Thus, these entities can be realised with the offerings made by the tools of ICT and undoubtedly positive impact is being created with the novel information and communication technologies. As rightly enunciated by Macintosh that "ICTs offer powerful tools for searching, selecting, and integrating the vast amounts of information held by the public administration as well as presenting the results in a form that can be readily used by individual citizens"²⁷

In founding a strong democratic structure of a country, the use of information technology is playing a prime role in providing democratic services. But in reality, the introduction and implementation are challenging in variant respects. As at the inception, the prime concern with respect to the elements of access and accessibility.²⁸ Apart from the above-mentioned concern, other issues include the perceiving of the application and the procedure of using it. With the adoption of ICT considering its absolute utility, the application of it can range from multilingual translation of official documents, provision for online glossaries, ability of audio rendition of written texts would go a long way in resolving accessibility issues and would likely enhance the participation of citizens in e-democracy. There is also in place a crucial role

²² BECKER, T, *TELEDEMOCRACY: BRINGING POWER BACK TO THE PEOPLE*, 6–9(1981).

²³ RHEINGOLD, H *THE VIRTUAL COMMUNITY.HOMESTAEDING ON THE ELECTRONIC FRONTIER* (2000).

²⁴ PREECE J, *ONLINE COMMUNITIES. DESIGNING USABILITY, SUPPORTING SOCIABILITY*187 (2000).

²⁵ Jackson, N. A., &Lilleker, D. G. *Building an Architecture of Participation? Political Parties and Web 2.0 In Britain*, 6(3–4) *JOURNAL OF INFORMATION TECHNOLOGY AND POLITICS*, 232–250 (2009).

²⁶ Appearing in the early 2000s, the Web 2.0 has several definitions depending on the authors, including: a set of technologies increasing the interaction of Websites (in particular AJAX); a synonym for the Semantic Web; a collaborative vision of the Web. Also see, CARTY V, *SOCIAL MOVEMENTS AND NEW TECHNOLOGY* (2015).

²⁷ Macintosh, Ann, et al., *Promise and Problems of e-Democracy: Challenges of Online Citizen Engagement*, *ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT.*, <http://www.oecd.org/gov/digital-government/35176328.pdf> (last updated Aug 26, 2002).

²⁸ SNIDER J.H., *E-GOVERNMENT VS. E-DEMOCRACY GOVERNMENT TECHNOLOGY* (2001).

played by information mediators for dealing with accessibility issue and who are solely involved in process of identifying, aggregating and explaining the essential content information on specific policy issue of concerns to citizens is likely to grow.²⁹ The comprehensive approach of identifying the essential element of interactivity offered by the latest technologies of ICTs undeniably projects the potential to extend the scope, breadth and depth of government consultations with citizens and other key stakeholders who are involved in the process of carving out policies.³⁰ But on the other hand the advanced tool developed by ICT also is subjected newer challenges to the policy makers in terms of their technical, political and also in justifying constitutional implications³¹.

However, on an online platform, there persists the necessity for the effective resolution of complaints since the procedure involved in the communication through online channels would be in a bulkier number. The second transformation will be reflected in the drafting of the policy of the state - as with the advent of newer technologies as inculcated by the ICT's outcome of the transition in the new proponents of citizens' concerns such as civil society organizations. Consequently, a myriad number of techniques and tools stands in place making available for the government in accessing the intent of the citizens by consolidating their users suggestions on issues proposed for online consultation, including government consultation portals or websites; email lists; online discussion forums; online mediation systems to support deliberation which ICT support thereby replacing traditional "face-to-face" consultations³².

Undoubtedly, it paves obligation on the part of the government for implementing the true essence of a democratic government by ensuring good governance featuring in the interests of transparency and accountability to develop ICT tools for increasing citizens' participation in governance. The techniques thereby are required for the analysis of public input, their complaints, observations, opinions and feedback for developing the public policy for the betterment of public. Indeed, undeniably the advent of information technology had exponentially enhanced the communication, information exchange. Even though India being a culturally diverse country the domain of Information and Technology and its application has invariably shown justice in making in applying the entities of good governance aiding for the success in Indian democracy is encouraging.³³

E-GOVERNANCE IN THE NATIONAL FRAMEWORK: IS IT ACTING AS A NEW CHALLENGE IN A DEMOCRATIC STRUCTURE?

Considering the Indian system, with the extensive explosion of the application of the tools and techniques of information technology have made the policy maker think about people's involvement in the policy-making by online citizen engagement. But any kind of extensive application can be made only by evaluating the existing difficulties in the form of challenges in adopting the e-governance. Among the variant challenges

²⁹ Bradshaw, S. & Howard, P. N., *Troops, Trolls and Troublemakers: A Global Inventory of Organized Social Media Manipulation (2017)*. (Working paper no. 2017.12).

³⁰ Loukis, Euripidis, Alexander Xenakis, and Pedro Soto-Acosta. "Evaluating the Use of Structured e-Forum Tools in Consultations on Public Policies." *Public Sector Reform Using Information Technologies: Transforming Policy into Practice*. IGI Global, 2012. 174-190.

³¹ Coleman, S., & Norris, D., *A new agenda for e-democracy*, OXFORD INTERNET INSTITUTE FORUM (Jan 2005) (Discussion Paper No. 4).

³² Garrett, R. K., & Jensen, M. J., *E-Democracy Writ Small: The Impact of The Internet on Citizen Access to Local Elected Officials*, 14 (2) *INFORMATION COMMUNICATION AND SOCIETY*, 177-197(2011).

³³ Sandoval-Almazan, R., & Gil-Garcia, J. R., *Towards Cyberactivism 2.0? Understanding the Use of Social Media and Other Information Technologies for Political Activism and Social Movements*, 31(3) *INFORMATION QUARTERLY* 365-378(2014). Also see, Saurugger, S. *The Social Construction of The Participatory Turn: The Emergence of a Norm in The European Union*, 49(4), *EUROPEAN JOURNAL OF POLITICAL RESEARCH*, 471-495(2010).

with regard to the implementation of e-governance the prominent ones include the social, economic Challenges and last but not least the Technical Challenges³⁴.

i. Social Challenges – Evaluating the Concerns of the Multicultural Society

Social challenges can be the first and foremost challenge in India where there are several and providing services in their language are a challenge to the e-governance projects implementation. The access and accessibility factor are being greatly affected by the concern of low literacy rate in India posing the question as to whether e-governance is reaching the people's door step or not. Illiterate people are unable to access e-governance applications and are therefore not able to participate in the e-governance projects, whereas on the other hand, literate population too is not fully able to utilize the e-governance initiatives in certain cases due to their low level of familiarity with the digital applications. Thereby, another potential challenge is in place with respect to the recognition of the e-governance facilities by the citizens.³⁵ Another encounter lies in the readiness of the citizens to agree to change to the new system. Thus, in order to avoid the instances of resistance from the part of the citizens in accepting the technology driven government facilities, necessary resources and training through appropriate guiding mechanism need to be provided.

Further, other encounters that can be enlisted causing interruption for the acceptance lack of accessibility due age factor, poor understanding of technology and also lack of physical connectivity. Moreover, another fundamental concern is lack trust element in using the technology for transactional purposes and with the increased incidence of fraud in online transactions. Thus, there requires the activation of necessary trust building technologies for ensuring the reliability and credibility of these technologies among the users of e-governance, also eliminating the fear of victimization.

ii. Economic Challenges – A gridlock for the Accessibility of Technology Resources The access and accessibility factor is greatly affected by concerns of economic poverty causing a great obstacle leading to low success rate of e-governance on account of limited information technology resources.³⁶ Also, in this 21st century also there persists non- fulfilment of net neutrality, as even now there exists a demarcation between the individuals, communities and businesses by thick line with regard to those who have access to Information Technology. Further, on the part of the citizens there is also exhibition of resistance in the adoption and use of unique identity for individuals in India which indeed plays a vital role in the operation of e- governance projects. The Government of India has provided Aadhar Based Unique identity to its citizens and the provision of unique identity would be necessary for extensively implementing e-governance.

While the provision of unique identity would be helpful in providing the e-governance services to the citizens, but the objective of providing e-governance services is plagued by the lack of physical connectivity to all the places. Apart from the above difficulty, considering the population, preserving the database of all Indian nationals and keeping them updated and then ensuring e-Governance services to everyone is amongst huge challenges of e-governance. Moreover, the

³⁴ Khan Intekhab et al, *E-Governance Reforms in India: Issues, Challenges and Strategies - An Overview*, 12(1) IJCSI. 57 (2015).

³⁵ Sharma Priya, *Facts and Abstracts of E-Governance in India*, 2(11) INTERNATIONAL JOURNAL OF COMMERCE AND MANAGEMENT RESEARCH 34-37(2016).

³⁶ FARID SHIRAZI, *E-DEMOCRACY OPPURTUNITIES: A GLOBAL PERSPECTIVE* (2009). Also see, RALF LINDNER, *E-DEMOCRACY: CONCEPTUAL FOUADATIONS AND RECENT TRENDS* (2019).

efficacious implementation of e-governance services can be possible only with the proper and successful integration between the policies and communication channels of the Central and State governments.

Another challenges for developing economies is presented by a low capacity for resource mobilization. Also, critically, a country which is in the phase of social development, the country finds it difficult to adopt new technologies because of the necessity of huge investment for installation of the supporting architecture for the working of the novel technology. Thus, for the switching over to extensive e-governance infrastructure, a huge amount of money is required as far as the implementation, operation and the maintenance will be in front. Introducing new applications is cost effective but transferability of applications from one platform to another irrespective of the hardware or software and potential reuse by other administrators may reduce the cost. Maintenance is a key factor in a rapidly changing technical environment since it needs money and regular care. Information technology is changing day by day which need constant updating. Considering the factual reality of India, the access and accessibility is of the continuous concern when considering the economic factors majority population is unable to afford the online services of e-governance.

iii. Technical challenges - Critical Entity of Concern:

The greatest technical challenge is that of interoperability³⁷, if it lacks in the e-Governance applications then the newly developed and existing applications can't be implemented together. Further, secondly the technical challenge is with regard to the scale of applications. The scaling of e-Governance applications is required to be merged with providing multiple modes of providing accessibility to the people. Thus, for effective use of application and for the access and accessibility to the public at a larger scale, it should be accessible from variant devices. There also arises the alarming necessity of these applications to be tightly secured by appropriate security standards, which also in turn directly or indirectly limits the development and extensive implementation of e-government projects. Additionally, the e-Government projects that exclusively deals with personal and confidential information of the users such as income, medical history etc. demands for an ultra-high security standard. Therefore, the challenge of securing the privacy concern and protection of data of the citizens possess a greater investment by the Government in the successful implementation of these services.

Further, it is therefore suggested that redundancy has to be inbuilt into the system so that the technology can be scaled up and changed at the required time. Also, the present extensive usage of the medium of instruction is also a challenging one as the reality is for a far-reaching acceptance and adoption of local language can only increase the public participation in e-Governance since the acceptance of English language in India is very low especially remote rural sectors. Thus, adding to the challenge of multiple language viability is also a greater concern for the implementation of these e-governance services. There persists the necessity for evaluating the various existent models and apply with modification as per the need of Indian socio-legal environment.

³⁷ *Interoperability refers to ability of a computer system to run application programs from different vendors, and to interact with other computers across local or wide-area networks regardless of their physical architecture and operating systems. Interoperability is feasible through hardware and software components that conform to open standards such as those used for internet. Also see, BUSINESS DICTIONARY (2010), available at <http://www.businessdictionary.com/definition/interoperability.html><http://www.businessdictionary.com/definition/interoperability.html>.*

The Organisation for Economic Co-Operation and Development (OECD) defines three types of e-Democracy interaction – “one-way information provision; a two-way relationship where citizens have opportunity to give feedback on issues; and, finally, a partnership relationship whereby citizens are actively engaged in policymaking”³⁸ Definitely strong democracy need full participation out of all three modes of interaction the best suited model for Indian democratic condition is a two-way relationship where citizens have opportunity to give feedback on issues.³⁹

CONCLUSION

The terminology e-democracy and other interlinked concepts is no novel to prevailing political or governmental entities and is in a transformation which is exhibiting a wide-scale acceptance by the people who elects their representatives. With regard to theoretical concepts of democracy, e-democracy is usually based on models of participatory and deliberative democracy.⁴⁰ The persisting transformation undoubtedly changes not only with regard to the virtual mode of political processes, but also on the other hand will pose a critical query as to how the virtual shift will affect the practise and existence of diverse elements of non-virtual political processes in diverse methodologies. Also there poses the question as to whether they are also linked to the great variety of e-democracy tools applied, the nature of the political process these are embedded in, and the skills, demands and expectations of those involved in their application. With the study laid down by various findings on the impact of social media on democracy remains inconclusive and only allows us to draw some very tentative conclusions on the political dimensions of social media. But with a series of transformative changes, there is visible evidence with regard to the extensive political effect from social media use, particularly with regard to established patterns of political participation. Considering the present statistics, it can be placed on record the fact that social media and online databases is immensely playing a serious role in the field of democratic politics. There also exist the necessity for research, academics and experts in the field to address the impact of technology driven e-government services and whether it is being able to realise the prime core functions of public communication, particularly public critique, legitimation and integration. Moreover, there also persist the need to trace down the elements such as solipsistic closure and echo chambers, deliberate misinformation and computational propaganda are threatening the fundamental workings of the public sphere in democratic contexts, increasing the need for effective educational, regulatory and technological responses.

³⁸ *Caldow. J., E-Democracy: Putting Down Global Roots. Washington, DC: Institute for Electronic Government, IBM, http://www-01.ibm.com/industries/government/ieg/pdf/e-democracy_putting_down_roots.pdf (last updated May 11, 2004).*

³⁹ *Marianna Knwuer, E-democracy: A New Challenge for Measuring Democracy, 37(5) IPSA 666-678 (2016).*

⁴⁰ *Lakshmi Shanker Iyer, Opportunities & Challenges in Implementing e-Democracy in India, SSRN ELECTRONIC JOURNAL, RESEARCH JOURNAL OF SCIENCE & TECHNOLOGY https://www.researchgate.net/publication/301754829_Opportunities_Challenges_in_Implementing_e-Democracy_in_India MANAGEMENT (last updated Nov 7, 2014).*

SOCIAL MEDIA: REALITY OF DEMOCRACY

-Vaishnavi Kulkarni and Pavitra Pottala¹

ABSTRACT

Democracy refers to a system of a government which recognizes the will of the people. Abraham Lincoln once said that “democracy is of the people, for the people and by the people”. Democracy is a system of governance in which the government is formed by the people and comprises their elected representatives under a free electoral system. Democracy provides equal opportunities to all individual irrespective of their caste, religion, background and financial status.

Social media is a technology which is computer/device based, and which provides a facility to an individual, group or any public or private authority. These people are facilitated with the opportunity of sharing of ideas, thoughts and information through the media of virtual networks and communities through social media. Users can also communicate through the quick electronic transfer of content which includes a number of documents, videos, photos and other relevant personal information.

It is impossible to ignore the role of social media platforms and their influence on democracy. In a democracy, with the help of social media tools, the power of communication is provided to both citizens and governments. Social media has currently become a platform for governments and common people to directly interact with each other. Through speeches and the messages, it becomes easier for governments to portray and propagate their ideologies. Also, we can say that for governments, social media is an easy path for diplomacy.

We can also see the economic aspects of the social media industry and its impact on democracy. For instance, online technologies significantly reduce the cost of participation for citizens in both terms of time and effort, as it is certainly easier to access multiple online news sources through social media as compared to traditional media. Additionally, the internet, along with social media has often been identified as an important contributing factor in the increasing the funds raised by politicians each year. For example, the funds collected in 2004 by the candidates in the election increased dramatically in 2008 due to one social media platform, i.e. Twitter.

Social media has enabled us to expand our reach through various platforms like Twitter, Facebook, and Instagram etc. They allow users from all around the globe to share their political ideas at the press of a button. Digital technologies make it possible for common man to become more involved in political decisions. Benefit from the media industry is evident, more specifically, from the relationship between the citizens and the politicians and how they interact on the social media platforms. Social media challenges

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various discourses of the democracy as it helps the people in sharing alternative perspectives on political issues. It also helps an individual to publish their own opinions and constitute a digital network for people to connect and create common social networks for citizens thus exposing them to a wide range of messages.

Social media has created a huge impact and most of the political leaders have access to social media platforms which enables them to convey any information about their party, any supporting opinions or even criticism of any act of the government to the people, thereby helping citizens become more aware about their ideologies. We can also say that in today's world, social media has become part and parcel of democracy. Thus, we can also state that social media forms a key component of modern-day democracy.

INTRODUCTION

DEMOCRACY

Vote based system is usually characterized as a legislature of the individuals, by the individuals and for the people. Freedom and vote based system walk connected at the hip so Indian society is acknowledged vote-based system where the media assumes a crucial job in the Indian vote-based system. Media is being considered as the fourth mainstay of just society after official, governing body, and legal executive. Outside the ability to control and confinement of the government's fundamental organ in enormous enthusiasm of the majority, media here and there rise over or above. The most recent couple of years saw an improved interface between the media and basic man. It is the media (print or electronic) has become a piece of the life of the individuals of India, who are to a great extent reliant on the media inclusion for different requirements including diversion furthermore, data. Beginning from the issues identifying with regular man, their sentiments, their necessities, their desires and each part of their life firmly connected with the media.

Media keeps the people groups stirred and there is no denying the way that it has gotten one of the significant instruments of social change. In an equitable set up, it is media which reinforces the popularity-based standards and values and furthermore quickens the pace of advancement. During the British time frame, the media situation was very extraordinary and in the start of twentieth century for the sake of security of the State, individuals were denied the fundamental data and straightforwardness during the time spent administration was an inaccessible dream. During the opportunity battle the print media assumed a significant job and it got a confidence supporter it is surely understand that the majority of the political dissidents were all around familiar with journalistic knowledge and a significant number of them were supposed to be writers. It incredibly affected the opportunity development. Thusly with the achievement of freedom, the job and obligation of the media was upgraded and in spite of the fact that it was controlled and claimed by the State, for example, the individuals got a characteristic opportunity to communicate their own thoughts. Be that as it may during the crisis of 1976, the exercises of media were unequivocally managed furthermore, brutal requests were given against the media houses and their freedom was totally broken.

In the post crisis period, the media came out more grounded just as the section of every day it came a lot nearer to the hearts of the ordinary citizens and become their mouthpiece. The social, political, social what's more, monetary situations of the nation were reflected in the papers which ultimately paved the route for fortifying the vote-based system and the administration of the individuals of India. In repercussions of crisis the media alongside giving data to the individuals began instructing them. These days, other than the print media, the electronic media, especially, the TV programs broadcast through link organize by means of satellite connection has brought progressive changes in the field of news revealing and investigation.

In the process new improvement and measurement of news detailing is develop and India is being considered as one of the main nations which have progressed to an extraordinary degree so far as data and

mechanical improvement is thought of. The media fills in as a guard dog of the legislature and convey each report of the activity of organization in this manner keeping the individuals educated about the everyday happenings occurring around them. Broad freedom has been allowed to the media individuals by the Constitution and in actuality an stirred and free media is fundamental for smooth working of the government. The financial improvements as well as the man-culture relationship and different perspectives that influence the individuals, are being secured by the media. That is the reason the individuals got acclimated to media and the Indian majority rules system and its compelling capacities can't be thought without a free media. Media goes about as an extension between the individuals and the administration and furthermore a useful asset with the capacity to make and break the assessment of the individuals. It has the ability to swing recognitions or inspire feelings.

This is the reason it has picked up confidence of the general population. Media, through its different methods for papers, TV and film is the thing that manages the heart and brain of individuals. The media has assisted with forming the vote-based society by giving accentuation to issues that are at one point in time, would have been thought of carefully private, for example, labour, youngster care, aggressive behaviour at home, and sexual badgering. Straightforwardness and responsibility are most appropriate working of a fair framework. The nexus among defilement and organization interwoven by governmental issues appears to grab the quietness and tranquillity of the nation. Vote-based system can't be effective without free press. Free press is very fundamental, as it is the voice of the individuals however media will not fall as a casualty to some financial or some other enticements, and will keep on genuinely serving the individuals the individuals. Media is assuming a fundamental job in moulding human personalities. The media is considered as fourth mainstay of majority rule government. It makes us mindful of different exercises like legislative issues, sports, monetary social and social exercises and so forth. It is likewise like a mirror which shows the exposed truth and once in a while it might be unforgiving. In any case, it assumes a significant job in forming the open personalities. Media plays a significant job in forming the majority rules system. It is called as spine of vote-based system. It engages the residents through data. Media masterminds the banter on current issues and repudiating strategies with the goal that various perspectives as to same issues could be advanced.

SOCIAL MEDIA

Now a day's social media serves various purposes in relation to democracy some of them are like creating brand awareness, staying in touch with public, increasing search results and help to build public relations. Creating brand Awareness means to grow the audience or to reach maximum number of people in the world regarding the ideologies of a political party by various ways like by publishing any advertisement or to get people know about various works done by the party and reach to the general public in a nation. Social Media helps political leaders or political parties to stay in touch with the public by providing consistent contents regarding various policies, sharing their ideologies, by providing information regarding development ratios during the tenure of the government and by direct interactions with citizens and by maintaining connections to deal with their queries.

Social Media creates a platform for political leaders to be in touch with people as many of the youths are active part of social media and it helps the political leaders to convey their thoughts to the generation regarding various policies, ideologies, opinions of that particular party or political leader. People using social media are much more interested in growing their followers and following various people, social media here creates a huge platform for individuals to build their public relations by considering social media as an enhancing medium.

ROLE OF INDIAN CONSTITUTION

The Indian Constitution viewed as the lengthiest Constitution of the world presents certain privileges of its individual and on its person. The right to speak freely of discourse and expression is one such right which the residents are qualified for. In a visitor examination, the ability to speak freely and expression likewise included opportunity media. Before going to subtleties of opportunity of media as ensured under the Constitution of India it is important to see right to the right to speak freely of discourse and expression.

Article 19(1)(a) of the Constitution secure and ensures right of the right to speak freely of discourse and expression to all residents. Anyway, this privilege isn't an outright right and certain limitations are moreover forced. Indian Constitution guarantees freedom of speech and expression includes freedom of media. In a democratic country media plays a crucial role so for as communication of data cares which keeps the society vibrant. For healthy society have got sharing of views, free flow of information, free communication and expression plays a crucial role and media, print and electronic being powerful and important instruments of expression have gotten tons to contribute.

Justice Patanjali Shastri also expressed the same view when he observed that “freedom of speech and of the press laid the foundation of all democratic organization, for without free political discussion, no public education, so essential for the right functioning of the processes of popular government, is feasible.

CONSTITUTIONAL RESTRICTIONS ON MEDIA

The freedom of speech also extends to the liberty of speech and expression to media and press. The media and press enjoy the proper of freedom of speech and expression under Article 19(1) (a) of the constitution of India, whereas it's been restricted under Article 19(2) of the Indian Constitution.

Article 19(1) (a) states for the test of reasonableness, which states that the limitation imposed upon an individual in enjoyment of any right shouldn't be arbitrary or of an excessive nature, beyond what's required within the interest of the general public. The phrase, “Reasonable restriction”, connotes that the limitation imposed upon an individual in enjoyment of the proper shouldn't be arbitrary or of an excessive nature, beyond what's required within the interest of the general public . The word reasonable implies intelligent care and deliberation that's the selection of a course which reason dictates. Legislation which arbitrarily or excessively invades the proper can't be said to contain the standard of reasonableness unless it strikes a correct balance between the liberty guaranteed in Article 19(1) and (2).”

In adjudicating the reasonableness of restrictions, the court factors, in words of Justice Patanjali Shashtri; within the case of *State of Madras v. V.G.Rao*, 1. Whether the proper claimed may be a fundamental right, 2. Whether the restriction is one contemplated by any of clauses under Article 19(2) and (6) and, 3. Whether the restrictions is cheap or unreasonable are all questions which shall be decided by keeping in sight.

IMPACT OF SOCIAL MEDIA ON DEMOCRACY

The 2014 elections marked one of the greatest impacts of social media on the democracy leaving behind the traditional media. The role played by the media in these elections was something unique. It created and marked a change, as the entire election campaign the BJP revolved around governance and development to create the robust image of Narendra Modi. Even the books like Bal Narendra: “Childhood Stories of Narendra Modi”, stated the heroic deeds of Modi in his childhood were released in 2014 to penetrate a wider demographic set.²

²*Economics and Political Weekly*, ‘Media, General and the Neo-liberal Indian State’ pg.no. 27, February, 2020, Vol. LV NO. 8

After the elections in 2014, Prime Minister adopted a new way to connect with people through a social media platform and programs like *Mann Ki Baat*, to connect with people in society. The indirect impact of the same was seen on various social media platforms with the trend of kurtas, jackets and various other accessories.³

Media has created huge impact as it is sword arm of democracy, it plays very vital role in Indian democracy as it is our instrument of expression, helps people in communication, it's stand as fourth estate in India , helps educating people it can helping mass change (example- many of us have mistaken about various diseases like HIV or Aids or leprosy spread due to touching people suffering from these diseases),it have made the world smaller and closer, it promotes distribution of goods, helps in woman empowerment; via depiction of women in TV serials, coverage and representation of media of violence against women and has helped in an nation building.

DIPLOMACY- SOCIAL MEDIA- DEMOCRACY

“Diplomacy is the Management of International Relations by negotiation or the method by which these relations are adjusted and managed”⁴ and in simple way we can say that “Diplomacy is method of communication among governments for the maintenance of international relations”. Diplomacy exists from Centuries and it deals with Deal making, peace-making, avoidance of conflicts, resolution, building system and in many ways.

Today it is era of citizen diplomacy, which is subject to oversight from the population at large this is buoyed with the aid of the freedom of the internet and the web, digital global. The demands of openness and transparency in coverage deployment and expression, real-time verbal exchange, countering false information and alternative information in a post-reality world, readability and conciseness, are all upon diplomacy.

Diplomacy in an age of social media is starting to go away its ozone chamber, it's included beyond, to become interactive, higher networked and more human beings-targeted and those-pleasant. Many social media platforms (includes- Twitter, Facebook, blogs, YouTube, Instagram etc.) boast of followers and subscribers that identical the populations of big-sized international locations. Public diplomacy is a word that has been round for many years, however nowadays it is well settle with a significant other, which is social media. Diplomacy is surrounded by a habitat of migrants, broken boundaries and destroyed sovereignties, rising nativism and irredentist nationalism, intermittent natural and man-made disasters, and galloping religious extremism coupled with the unadulterated evil that is terrorism.⁵

Social media plays an important role in diplomacy, the reason is that, in the countries of democratic government it gives platform for ease of diplomacy otherwise it will be difficult in country like India with huge population and democratic country.

Let us talk about the relation of diplomacy, social media and Indian democracy. In the developed world social media platform playing a role of biggest device for diplomacy for Indian democracy for instant Yoga Diplomacy, we are trying to bring Yoga in Fashion and especially global impact. The role of the Indian diaspora, especially in the developed world, in showcasing Indian democracy, pluralism and diversity,

³ H. Margetts, P. John, S. Hale and T. Yasseri, *Political Turbulence: How Social Media Shape Collective Action*, Princeton, Princeton University Press, 2015

⁴The Oxford English Dictionary

⁵Article “Diplomacy in the Age of Social Media”, NirupamaRao, 19-07-2017.

business potential, millennial culture and the vision of Digital India, is becoming increasingly salient in this new outreach.⁶

Indian embassies and diplomatic missions across the world are energetic on Facebook, YouTube and Twitter in recent times and what was considered as a no-pass for Indian officialdom till a few years in the past is now de rigeur. Foreign minister Sushma Swaraj's Twitter timeline is a hub of interest. Sushma Swaraj is the maximum accompanied female world leader on Twitter. Her presence on-line is a powerful example of the way digital international relations connects government with residents, particularly the ones in need of consular assistance, often reuniting households and assisting people in misery. According to Twiplomacy, the maximum-followed international leaders on Twitter have one factor in commonplace: they've located Twitter as a powerful one-way broadcasting tool.⁷

Recently because of Covid-19 pandemic it is clearly seen that social media is became the biggest way of diplomacy for the world. As a result it can be said that social media platforms are tools for diplomacy and by mentioning Indian democracy instant it can be said that social media is very important for diplomacy in democracy .

INFLUENCE OF SOCIAL MEDIA ON DEMOCRACY

Martin Moore's work, "Democracy Hacked: Political Turmoil and Information Warfare in the Digital Age, is profound explanation of influence of social media on democracy."

In any country having its democratic reforms there is media which plays vital role in creating and reflecting public opinion.in the current era of IT revolution globalization and advancement etc. has contributed the globe to such a degree that the world would now be able to be known as worldwide town. We venture over the globe in various moments through a television, social media and various other connecting platforms can see the individuals; method of living; in this manner developing not too far off the idea of worldwide town.⁸ There is an expanding propensity in a segment of media to secure minor things throughout everyday life designs of the rich and the over privilege and to forcefully publicize a consumerism way of life past the range of the greater part.

Media has achieved a significant change in the manner individuals think. Media has given them a phenomenal stage to introduce themselves previously the world and contribute in their own particular manner to the changing scene situation. Media has been answerable for making the world a littler spot to live in. the hate appearance of blogging in the media world and practices like open surveys and resident news coverage have prompted the accomplishment of social control.

The media works towards stories that produce certainty about imaginative capability of the grassroots. The In any country having its democratic reforms there is media which plays vital role in creating and reflecting public opinion.in the current era of IT revolution globalization and advancement etc. has contributed the globe to such a degree that the world would now be able to be known as worldwide town.⁹ We venture over the globe in various moments through a television, social media and various other connecting platforms can

⁶Article "Diplomacy in the Age of Social Media", NirupamaRao, 19-07-2017.

⁷ *Social media and Democracy: Innovations in Participatory Politics*; by Brian D. Lodar, Dan Mercea

⁸ Tucker, J.A., Theocharis, Y., Roberts, M.E., &Barberá, P. (2017). *From Liberation to Turmoil: Social Media And Democracy*. *Journal of Democracy* 28(4), 46-59. doi:10.1353/jod.2017.0064

⁹ *The Computational Propaganda Research Project, University of Oxford*; <http://comprop.oii.ox.ac.uk/> (accessed 11 August 2018).

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MEDIA INFLUENCE IN VARIOUS CASES

- **Jawaharlal Nehru University, Delhi**

The recent incident of alleged anti-Indian slogans in JNU how some media channels have covered the whole incident without going much into the facts, have brought to forefront the issue of media ethics. It is now, said that some of the videos were doctored. But certain media channels without looking into this, kept on showing the video along with so much aggressive anchoring that which appeared to be a media trial.¹¹

- **Sushant Singh Rajput Suicide Case**

In Sushant Singh Rajput's suicide case social media is playing major role. His death has reignited the talk on nepotism and plenty of actors and artists have come ahead to elevate the difficulty on social media. It's being said that Sushant wasn't given his due in Bollywood. And this has visible a direct effect at the social media handles of a few celebrities, who've lost or won tens of millions of followers depending at the facet they have got chosen to be or talk.

Across Facebook, Twitter and Instagram, social media users have un-followed those who are being accused of nepotism in the film industry. Trough social media platforms his fans, followers and loved ones sharing their views, requesting and pressuring for CBI inquiry. In this case we can see the influence of social media and how citizens in democratic country use social media platforms.

CONCLUSION

Democracy is a type of government in which the government formed by the people and exercised by the people directly or by their elected representatives under a free electoral system. Democracy provides equal opportunities to people irrespective of their caste, religion, background and financial status.

The media fill in as a guard dog of the administration and convey each report of the activities of organization accordingly keeping the individuals educated about the everyday happenings that are occurring around them.

¹⁰ TY - JOUR T1 - From Liberation to Turmoil: Social Media And Democracy A1 - Tucker, Joshua A. A1 - Theocharis, Yannis A1 - Roberts, Margaret E. A1 - Barberá, Pablo JF - Journal of Democracy VL - 28 IS - 4 SP - 46 EP - 59 PY - 2017 PB - Johns Hopkins University Press SN - 1086-3214 UR - <https://muse.jhu.edu/article/671987> N1 - Volume 28, Number 4, October 2017 ER

¹¹ <http://www.dailyo.in/politics/jnu-row-kanhaiya-kumar-umar-khalid-anti-india-slogans-fakevideos-medias-role-accountability-democracy/story/1/9194.html>

Media is the blade arm of majority rules system, it is assuming exceptionally huge job in Indian vote-based system. Each individual is a mode of articulation. An individual communicates through the media to contact other individual and organizations. Social Media assume the job of communicator of thoughts. It is aggregate type of music, move, discourse and narrating with comic intervals.¹² Current techniques of relational media correspondence incorporate workshops, dramatizations, open meeting and workshops and so on. These are successful media techniques to address little and medium social affairs, which can be utilized as reason for supporting the Human Rights and building general conclusion. The media have a teaching job, which gives the establishment of the press, an exceptionally high impact and the force.¹³ The press instructs individuals in two ways, by giving the news and clarifying the foundation to the news or by remark. At long last, the press in India positively has the ability to teach. On the off chance that it is sans left and has a will to play out the obligation of teaching the individuals all in all, it is inside its range.

Social media has upgraded the nature of majority rule process by giving a stage to open investment on issues of national or social worry in a way that can impact the Government. Media fills a twofold need. It conveys data to the general population as well as conveys back open reactions to the legislature, convincing the later to be increasingly responsive to general supposition, the media goes about as an archive of open trust for passing on right and genuine data to the individuals. Be that as it may, when paid data is introduced as news content, it would delude people in general and hamper their judgment to shape a right supposition

¹² Tucker, Joshua A., et al. "From Liberation to Turmoil: Social Media And Democracy." *Journal of Democracy*, vol. 28 no. 4, 2017, p. 46-59. Project MUSE, doi:10.1353/jod.2017.0064

¹³ S.A. Hale, P. John, H. Margetts and T. Yasseri, 'How digital design shapes political participation: a natural experiment with social information

ETHICAL AI: A STEP TOWARDS TECHNOLOGIZED DEMOCRACY

-Vinith Kumar. M¹

ABSTRACT

“A better future is achieved by correcting the present mistakes.”

Everyone has a different vision of the future. A pertinent question to ponder upon would be the future of democracy in India. On analysing the present, it is evident that the ‘democracy of algorithms’ driven by Big-Data, and machine learning will prevail in the future. These technologies have seeped into our day to day lives. For example, in 2017 the hashtag “macronleaks” trended on Twitter during the Presidential elections in France. A study of the Oxford internet institute shows that almost half of the twitter posts related to the leaked documents are bot-generated (by just 3% of twitter accounts) and approximately 22.8 million users per hour are exposed to these contents on election day.

A similar incident relating to Twitter bots spreading misinformation was reported in 2016 during the Presidential Elections in the United States of America. This bot software created through API can mimic certain human behaviours and is used on social media platforms solely with the motive of manipulating users. A twitter bot can generate 1500 unique tweets which may or may not be true, in just an hour. One can say this is the current status of the functioning of electoral democracy. The concept of political campaigning has changed to include manipulative misinformation. This is the post-truth era where the truthfulness of information is evaluated on the basis of how viral it is.

The evidence-based policy making in India is being criticised for exclusion of a large population in entitlement of welfare benefits. On the subject of economic democracy, it is important to draw light on the mobile notifications starting with the words “You may also like....” This shows the level of privacy we have and how accurately we are targeted. But there are high hopes that this technology called Artificial Intelligence (AI), which gives the ability to think and learn computers, will create a new wave of democracy which will be more participative and transparent with the citizens. After all, humans are the one creating this AI, and while doing so, they inherit their bias within them.

This paper will deal with the role of AI in the democracy’s protection mechanism, how the technology is helping in today’s democratic governance, the legislative changes needed in this paradigm, and finally what should we do as an active user-cum-citizen in this digital era along with some suggestions in secured and proactive policy-making.

INTRODUCTION

Out of all forms of government, democracy is the most welcome form, as it works in the interest of the majority. On the other side, the most celebrated technology today is Artificial Intelligence (AI). So, the collaboration of both AI and democracy would serve the country the most. It would bring the voters and the voted representatives closer, even if the voter is in any corner of the country. At the same time, democracy cannot work in the interest of all. Here, even a party getting 60% of the votes in an election can form the government, leaving the 40% which does not prefer that party, also under their governance. Of course, each

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party would have their own followers, which shows that a considerable percentage of votes are fixed. So, in every election, the new voters and the floating voters, who are not fixed for a particular party, would be the deciding factor. These new voters, who attain the voting age (18 years in India) before an election, being teenagers, are usually surrounded by technology and social media. By relying on news provided by technology and social media they can easily be victimized by targeted manipulation. Mentioning the incident connected to the 2017 Presidential elections in France, which was trending as #Macronleaks², a study of the Oxford Internet Institute showed that almost half of the Twitter posts related to the leaked documents were bot-generated content (by just 3% of Twitter accounts) and approximately 22.8 million users per hour were exposed to such contents on Election Day.³ A similar incident of Twitter bots spreading misinformation during the U.S. presidential election in 2016 was reported.⁴ This bot software created through API⁵ can mimic certain human behaviours and are being used in social media platforms solely with the motive of manipulating users. A Twitter bot can generate 1500 unique tweets whether true or not, in just one hour. So, this is the current status of how AI in an electoral democracy works. The concept of political campaigning has changed to manipulative misinformation. Additionally, the mobile notifications start with the words “You make also like....” This clearly shows the level of privacy we have for our data and how accurately we are targeted.

ROLE OF AI IN DEMOCRACY PROTECTION

AI has the capacity to either lift a democracy from its core or destroy it completely from its existence. So, applying AI based practices on a large scale is like introducing a new medicine to cure a pandemic disease. It needs a lot of testing before implementation; the reason is because AI totally reduces human involvement. However, if implemented with utmost care, functions like e-voting in parliamentary elections would be also possible. The lack of knowledge towards several tech concepts like Machine Learning, Deep Learning, Big Data, etc., is slowing us down from achieving such technological advancements. AI is a broad field and it would be apt to say that machine learning is a form of AI and it is the only AI in use, up until now. According to Tom M. Mitchael, Machine Learning is the study of computer algorithms which allows computers to learn and improve through experience.⁶ Surprisingly, we are being used as a subject in this experience gaining mechanism in our day-to-day life. OTT platforms like Netflix, Amazon Prime, etc., and E-Shopping platforms like Flipkart, E-kart, etc. are using Machine Learning tools to read their customers’ preferences.

Let us imagine how it would be if the policy-makers get our preferences and act accordingly. It would be like a direct democracy under the veil of a representative democracy. Due to this, each and every legislation could be framed by legislators with the data collected through these technologies in mind and also before passing it, they could obtain feedback from the citizens of the country through online. A major problem in today’s governance is the mindset of people that their voices are not heard. So, in this way AI would come

² #macronleaks is a Twitter Hashtag containing the data dump of Emmanuel Macron’s email correspondence, the then presidential candidate.

³ Vyacheslav Polonski, #MacronLeaks Changed Political Campaigning. *Why Macron Succeeded Where Clinton Failed*, OXFORD INTERNET INSTITUTE, (May 19, 2017), <https://www.oii.ox.ac.uk/blog/macronleaks-changed-political-campaigning-why-macron-succeeded-where-clinton-failed/>.

⁴ Indiana University Researchers, *Study: Twitter Bots Played Disproportionate Role Spreading Misinformation During 2016 Election*, INDIANA UNIVERSITY (Nov. 20, 2018), <https://news.iu.edu/stories/2018/11/iub/releases/20-twitter-bots-election-misinformation.html>.

⁵ API, also known as, Application Programming Interface is a software intermediary that specifies how software components should interact. API is the major tool in the Indiastack initiatives like the Aadhaar authentication and UPI net banking.

⁶ Tom. M. Mitchael, *Machine Learning*; (McGraw Hill, 1997).

in handy to create such participative democracy, even though it reduces human involvement in the process. Also, spotting fraud or corruption would be a piece of cake, if we have AI. But, to create a better AI, the creator should not be a corrupt citizen. Also, a criminal justice system based on AI⁷, is under construction. On its achievement, the likelihood of a criminal committing a second offense, would be predicted easily. Even though it is not conclusive, such a prediction would help in taking preventive measures. There is no end in describing the role of AI today. It reaches a point that merely nothing is possible without technology today and politics is also not an exception.

TECHNOLOGY HELPING IN TODAY'S DEMOCRATIC GOVERNANCE

We all are aware of the saying “technology shrinks the whole world”. So, it would not be apt to speak only about the scenario in India. Usually, mass surveillance of the public with technologies is common around the globe. “Crowd counting computer vision”, a technology developed by the Hong Kong University and Texas State University, is used by the government to count the accurate number of individuals in mass gatherings. Of course, a technology like this would come in handy during protest outbreaks in many populated countries like China and India. Also, to enhance its accuracy, a facial recognition technology, named “Real-time facial recognition” is used by the Hong Kong government to identify a person in a crowd.⁸ It helps to identify the root cause of some unwanted protests induced by anti-social elements. But, on the other hand, this technology is being opposed by many civilians, as it is against their freedom to assemble. Cities like San Francisco and Boston in the U.S., have banned the use of facial recognition technology by city departments and its usage in criminal investigation or legal proceedings.⁹ So, a protected and well-tested AI is needed and until that is developed, it is better that such technology be banned.

By 2007 itself, the Singapore government introduced a technology-based system named “RAHS”¹⁰ and it is the primary decision-making tool in Singapore, collecting data from a huge set of public and private databases.¹¹ This system detects and alerts on any potential threat to National Security, by linking all the independent government agencies. In the United Kingdom, a 19-year-old teen (in 2016), Joshua Browder, created a Twitter bot named ‘Do Not Pay’, which was a bot software that was trending with the name ‘chatbot lawyer’. This chatbot dealt with parking ticket disputes and it overturned nearly 160,000 parking tickets in London in the year 2016. This ‘Do Not Pay’ initiative is now developed into a legal services chatbot app and was considered as the 1st ‘Robot Lawyer’.¹² Even though it was a single individual’s doing,

⁷ Kelsey Campbell & Dollaghan, *The Algorithmic Democracy*, FAST COMPANY (Nov. 14, 2016), <https://www.fastcompany.com/3065582/the-algorithmic-democracy>.

⁸ K.K. Rebecca Lai, Jin Wu, and L.Huang, *How AI helped improve Crowd Counting in Hong Kong protests*, THE NEW YORK TIMES, (July 3, 2019), <https://www.nytimes.com/interactive/2019/07/03/world/asia/hong-kong-protest-crowd-ai.html?mtrref=www.google.com&gwh=E000903A00CB743F8F0F9200F206D124&gwt=pay&assetType=REGIWAL> L.

⁹ Ally Jarmanning, *Boston Bans Use of Facial Recognition Technology. It's The 2nd-Largest City to Do So*, WBUR NEWS, (June 24, 2020)

<https://www.wbur.org/news/2020/06/23/boston-facial-recognition-ban>.

¹⁰ RAHS is Risk Assessment and Horizon Scanning was introduced in the International RAHS symposium, held on March 19-20, 2007.

¹¹ Risk Assessment and Horizon Scanning (RAHS) system & RAHS Experimentation Centre, DEFENCE, SCIENCE AND TECHNOLOGY AGENCY -SINGAPORE GOVERNMENT (last updated Oct. 25, 2018), <https://www.dsta.gov.sg/latest-news/news-releases/news-releases-2007/risk-assessment-and-horizon-scanning-rahs-system-rahs-experimentation-centre>.

¹² Jerry Bowles, *Who needs lawyers? DoNotPay lets you 'sue anyone' Free Via a chatbot*, DIGINOMICA (Oct. 16, 2018), <https://diginomica.com/who-needs-lawyers-donotpay-lets-you-sue-anyone-free-via-a-chatbot#:~:text=DoNotPay%20lets%20you%20'sue%20anyone%20free%20via%20a%20chatbot,-later&text>.

it created a greater impact on many governments, proving that a chatbot software can be used in a constructive way too. So, all these incidents clearly show us that, most of the countries have already started adapting to AI-based governance, but India's position is that of an amateur. Cybercrimes in India take place at a much-advanced level, which makes the Government's velocity of fitting into the cyber world, a slower and an unsatisfactory one.

AIRAWAT: AI SPECIFIC CLOUD COMPUTING INFRASTRUCTURE

AI Research, Analytics and Knowledge Assimilation platform (AIRAWAT), is the major step taken by India with a futuristic perspective that aims on providing a complete server form, for carrying out AI, Machine Learning and Big Data related tasks. It all begins with the Hon'ble Finance Minister's budget speech of 2018-2019, ordering the NITI Aayog, which is called as the 'think tank' of India, to establish a national program on AI.¹³ In pursuing that NITI Aayog, in June 2018, framed and released a National Strategy for Artificial Intelligence (NSAI), which stated about the AI's potential to boost the Annual Growth Rate of India by 1.3% and GDP by 957 Billion USD in the year 2035.¹⁴ In order to support such greater development through AI technology, it requires a greater infrastructure to process data at the required speed. AIRAWAT is aimed to serve that purpose. NITI Aayog, in order to establish this platform, made the proposal of an INR 7,500 crore budget, to be sought over 3 years to boost research and adoption. This clearly shows that funding plays a major role here. AIRAWAT is considered as an institutional framework for AI, and 5 research centres, 20 AI adoption centres have been planned in this regard. It is also stated that its major focus areas would be Agriculture, Health, Education, Smart Cities and Infrastructures, and Smart mobility & transportation.¹⁵

Upon the successful implementation of AIRAWAT, a base would be set, to achieve AI-based governance. But, on the other hand, our current rival country China, is also aiming at dominating the AI industry by investing 150 Billion USD in this regard, to achieve the leading AI power by 2030.¹⁶

THE NEED FOR AN ETHICAL AI

How can a biased human create an unbiased AI? It is an undeniable fact that, each and every one of us will have certain preferences and several likes and dislikes. Whether it may be regarding the smartphone brand we prefer or the political party we choose, we are all biased to a certain extent. So also, the individuals, who develop software and the investors funding any technology development project are no exception to this. What can be done, if an AI technology, on which the whole country is relying, was a biased creation? This fear cannot be ignored, as the government is relying on the concept of privatisation, and most government projects dealing with privacy and security are being delegated to private sectors, which cannot be made democratically accountable. At present, we are enjoying several online services like net banking, smart

¹³ NITI Aayog Approach Paper, *Airawat- Establishing an AI Specific Cloud Computing Infrastructure for India*, NITI AAYOG, (Jan. 2020),

https://niti.gov.in/sites/default/files/2020-01/AIRAWAT_Approach_Paper.pdf

¹⁴ Rekha Menon, Madhu Vazirani, and Pradeep Roy, *Rewire for Growth: Accelerating India's Economic Growth with Artificial Intelligence*, ACCENTURE (2017), https://www.accenture.com/_acnmedia/PDF-68/Accenture-ReWire-For-Growth-POV-19-12-Final.pdf.

¹⁵ NITI Aayog, *Discussion Paper- National Strategy for Artificial Intelligence: #AIforall*, NITI AAYOG (June, 2018), https://niti.gov.in/writereaddata/files/document_publication/NationalStrategy-for-AI-Discussion-Paper.pdf.

¹⁶ Pablo Robles, *China plans to be a world leader in Artificial Intelligence by 2030*, SOUTH CHINA MORNING POST (Oct. 1, 2018),

<https://multimedia.scmp.com/news/china/article/2166148/china-2025-artificial-intelligence/index.html#:~:text=In%202017%2C%20China%20published%20its,worth%20almost%20US%24150%20billion.&text=This%20is%20a%20significant%20jump,funding%20China%20made%20in%202016>.

cards, Digi Locker, E-KYC¹⁷, etc., under the ‘India stack’ initiative started by the government in 2007. The API software being used in the UPI (Unified Payment Interface) and the UIDAI (Unique Identification Authority of India) and several other services of India Stack are being developed by private sectors. So, imagine if our Aadhaar details are hacked and stolen. Then it would be like our life itself is hacked, as the Aadhaar contains the entire personal details of a citizen, and also his/her fingerprints and eye-scans (biometrics). As long as such crucial tasks of the government are being delegated to a sector, which works with a motive of making profit, troubles like these are always foreseeable? At the same time, in a participative democracy, privatisation is a must. Therefore, what is needed here is a framework to regulate AI and, in the process, regulate the private sectors involved in AI development and usage. Like ethical hacking, we need an ethical AI, which is achievable only by having a clear-cut legislation on the subject matter.

AI without a proper regulating framework will create a lot of mess in the tech world. Deep fakes, bot accounts, etc., are some of the AI techs, which are feared the most. As mentioned earlier, this bot software can mimic certain human behaviours and they are used in social media platforms to manipulate a large group of users, by using the gathered data about their preferences.

The US Senate Intelligence Committee alleged that Russia has been using bot accounts in social media platforms since 2013, to attack their political adversaries, and added that in the year 2016 alone, a Russian company named Internet Research Agency (IRA), created nearly 57,000 tweets, 2,400 Facebook posts and 2,600 Instagram posts, using bot software.¹⁸ This company is involved in online influence operations on behalf of Russia’s political and business interests. The destructive use of bot technology is being continuously reported across the globe. California has even legislated an enactment in this regard. The Bot Disclosure Law¹⁹ enacted in 2019, declares unlawful, the act of using bot software for interaction without disclosing. This framework also defines “bot”, as “an automated online account where all or substantially all of the actions or posts of that account are not the result of a person”.²⁰ Deep Fakes is an AI software that designs a video in a way in which people appear to say or do something that they have not done or said. We all are aware of morphing technology similar to this, but the difference here is the realistic outcome of this Deep fakes which clearly shows that technology has reached a point where we cannot find which video is real and which is fake.²¹

SUGGESTION: #AI_FOR_ALL

No progress can be made without proper knowledge, and sadly that is what we are lacking, when it comes to AI. Unfortunately, even the policy-makers and politicians do not understand the AI enough to implement advanced regulatory frameworks for it. So, the first and foremost step is to have AI experts in government, not as a partner to government, but as a part of government. Secondly, ideas alone will not serve the need. It

¹⁷ E-KYC-Electronic Know Your Customer is used as a rapid verification of a person's address and identification through Electronic signature.

¹⁸ Caitlin Carroll and Rachel Cohen, *New Reports Shed Light on Internet Research Agency's Social Media Tactics*, U.S. SENATE SELECT COMMITTEE ON INTELLIGENCE (Dec. 17, 2018), <https://www.intelligence.senate.gov/press/new-reports-shed-light-internet-research-agency%E2%80%99s-social-media-tactics>.

¹⁹ *The Bolstering Online Transparency “B.O.T” Act*, S.B. 1001, Cal. Bus. & Prof. Code § 17940 (Cal. 2018).

²⁰ Renee Diresta, *A New Law Makes Bots Identify Themselves-That's the Problem*, WIRED (July 24, 2019), <https://www.wired.com/story/law-makes-bots-identify-themselves/>.

²¹ Steve Grobman and Celeste Fralick addressed the RSA Security Conference held in San Francisco from March 4-8, 2019. *Lightning in a Bottle, or burning down the House?*, RSA Conference, YOUTUBE (March 6, 2019), <https://www.youtube.com/watch?v=7oQYKMNRybs>.

should be fed sufficiently with resources. So, funding the researches about AI and their effects on governance and providing sufficient infrastructure facilities to process big data, are very much required to cope with the technology. Finally, and most importantly, national as well as international frameworks are needed, which would deal with the guidelines of creating an AI and limitations on its focus areas. So, we need proactive government acting in a futuristic way, instead of a reactive one.

As a citizen of a democratic nation, we have several responsibilities towards the state. We have certain responsibilities as an active social media user too. We all are well exposed to technologies, but we lack the basic knowledge about how it works. We should stop relying on social media for our news, especially forwarding them, without knowing the level of truth in it. Whatever may be the source, but in the end, we are the ones getting manipulated. So, we should be well aware and extra precautions with the technology we are using. It is like riding a bike on a long highway, without knowing it's running condition. Even in case of a minute repair, we have to call for someone's help. This is like complaining about privacy issues, without reading the terms and conditions of certain applications we use in our gadgets. Finally, to ask for a proactive government, we should also be proactive citizens, or else we do not deserve such a government.

CONCLUSION

Technology is and always will be neutral. It is the discretion of the person using it. The phase in which we are right now, is awakening. Instead of just enjoying the technology, the country steps ahead to analyse its negative impacts. This is absolutely a positive sign. Whether it may be the "Open-AI"²² initiative by Elon Musk, or the OECD's AI recommendations²³, or the AIRAWAT plan of India, both the private as well as the public sector started focusing on the future of democracy. We should not miss the big picture, that there are bot accounts for good too. Simply put, the online search history of all users in a particular area, if collected and analysed in good-faith, can yield data to predict even a disease outbreak in that area. In conclusion, AI should be protected from learning destructive behaviour, and that is the duty of the creator, and the government's duty is to frame guidelines for that. And as users, we should be aware of the power we are dealing with.

"Let the user be aware."

²² *Open-AI, is an AI research and deployment company based in San Francisco, California, and its mission is to ensure that Artificial General Intelligence (AGI) benefits all of humanity.*

²³ *The Organisation for Economic Co-operation and Development, in May 2019, recommended 'Principles on AI', to promote innovative and trustworthy AI and it was adopted by all of its member countries.*

OECD Principles on AI, OECD (May 22, 2019), <https://www.google.com/search?q=oecd+principles+on+artificial+intelligence&oq=oecd+principles+on+artificial+intelligence&aqs=chrome..69i57.1014j0j9&sourceid=chrome&ie=UTF-8>.

The most prevalent notion of democracy adheres to the idea of popular sovereignty, seeking an answer to the vital question: Who rules? However, any attempt to unearth the answer abounds in difficulties and challenges. The concept of democracy has gained universal appeal despite its incipient evolution. The recent Covid-19 pandemic brought forth issues that made deliberations over the notion of democracy both urgent and renascent. This conference aimed to facilitate debates and initiate a dialogue to explore the conceptual foundations and practical ramifications of several aspects of democracy.

With this aim, through the conference, we strived to facilitate a platform for a discourse on democracy to arrive at a closer examination of the origin and the development of this unique form of governance. The lecture series, delivered by leading legal luminaries from across the nation, presented to the participants a valuable discourse on the concept of democracy and its defining constituents: grassroots democracy, access to justice, human rights and labor rights. In the Two-Day National Conference on Dimensions of Democracy which was held on August 8-9, 2020, academic discussions pertaining to the concept of democracy in the framework of its allied features, such as law, popular participation, access to justice, gender, arts, and technology were held at length. The proceedings of the conference bring to the reader these valuable inputs on the varied dimensions of democracy.

-The Editorial Board



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