

## Second Newsletter, Sept-Dec 2015

**The Centre for Regulatory Studies, Governance and Public Policy,  
West Bengal National University of Juridical Sciences, Kolkata**

### **Note from the Vice Chancellor of WBNUJS: Dr. (Prof.) P. Ishwara Bhat**

In its maiden newsletter, CRSGPP had considered carrying out empirical research in the following three field amongst other things: Victim Compensation in West Bengal, Working of Mahatma Gandhi National Rural Employment Guarantee Scheme and the assessment and documentation of the ground reality of working conditions of domestic workers inhabitant in the state of West Bengal.

The employees had specifically identified the scope of intervention by the Centre in carrying out the above projects. However empirical work in the above could not commence in the absence of clear direction from our funders on the same.

The Centre was directed to undertake a pan India based doctrinal research on the working of Executive Magistrates under the Criminal Procedural Code and the various special statutes. The findings of the same were submitted to the Higher Education Department of the State. CRSGPP also submitted to the said department a draft proposal for evaluation of the Kanyashree Scheme in West Bengal, that was suo-moto undertaken by its employees.

Apart from these activities, our employees participated in a couple of workshops and seminars over the last quarter. Ms. Zainab Lokhandwala, Research Assistant, co-authored a paper on “Ground Water Law & Policy: West Bengal’s Legal Framework in the Developmental Context” along with Prof. (Dr.) P. Ishwara Bhat which was presented in ITC, Sonar Bangla, Kolkata on 13<sup>th</sup> and 14<sup>th</sup> November, 2015 A brief overview of the paper has been given in this newsletter.

Also, considering how the functioning of Intermediate Public Transport (IPT), especially the auto rickshaws, in Kolkata is very unique to the city, two representatives from the Centre: Ms. Saha and Ms. Lokhandwala participated in the city based *Consultative Workshop at the University of Kolkata*, (Alipore Campus), which was organised by the Centre for Policy Research, New Delhi and the Centre for Urban Economics Studies, University of Kolkata on 15<sup>th</sup> of December, 2015.

The Centre is also working on coming out with a policy based publication on various policy matters by early 2016.

With the hope that the Centre will work towards gainfully adding to the gamut of knowledge in Policy and Regulatory studies, I conclude my introductory note.

## **1. Brief Note on Executive Magistrate's functioning**

By CRSGPP

There are two broad kinds of magistrates envisaged in our Code of Criminal Procedure. We have the executive magistrates, who are officers of the executive branch of the government and the judicial magistrates who try various kinds of criminal cases. There are four broad categories of the former kind of officers recognised in our criminal law: the District Magistrate, the Additional District Magistrate, the Sub-Divisional District Magistrate and the Executive Magistrate.

The Department of Higher Education assigned the Centre the task to identify the various kinds of powers, duties, function and roles that Executive Magistrates are required to perform under the Code and the special statutes. The focus of the study was to highlight the best practices with respect to utilisation of Executive Magistrate by other state governments. The intention was to supplement the existing work description of executive magistrate, should we find inspiration in other states.

The Centre engaged in a doctrinal study for the same. It identified that under the Code the EMs had the following major powers and functions:

1. Security for keeping Peace and Good Behaviour under sections 107, 109, 110 and 117 of CrPC.
2. Law and Order under sections 144, 151, 46, 51 of CrPC.
3. Inquest under sections 174 and 176 of Cr.P.C
4. Maintenance of Public Order and Tranquility under sections 133-148.
5. Issuance of Search Warrant under sections 94, 97, and 98

Besides the above broad and general mandate available to all EMs across the country, EMs have also been significantly referred to in the following statutes:

For instance the EM had the power to grant, revoke, and renew a license under the Arms Act, 1959. He also had the power to grant sanction for prosecution, or to carry out inspection of any premises including police stations, should he feel the need of under the Arms Act, 1959 and the Public Gambling Act, 1867.

He is empowered to give sanction for the prosecution of any offence under the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954; Drugs Control Act, 1950; and to authorise detention under Terrorist Affected Area Act, 1984.

If a meeting has a potential for causing disruption, he has the power to pass a prohibition order against it under the Prevention of Seditious Meetings Act, 1960. And overall, if he feels the need to take any action to maintain peace and order in his jurisdiction, he can do so, even if it is preventive in nature under the Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

## **2. Brief Note on the Proposal prepared on Kanyashree**

By CRSGPP

The CRSGPP has been engaged in conducting research on the Kanyashree scheme initiated by the West Bengal government for girls' education. In 2013, West Bengal designed a scheme titled the *Kanyashree Prakalpa* to positively impact and elevate the status of education and overall health of adolescent girl children of the state. Among other primal causes for the introduction of Kanyashree, the scheme aspired to act as a deterrent against child marriage, which is widely prevalent among adolescent girls in the State. Lamentably, the dropout rate of children in their adolescent years in the state of West Bengal is much higher than other states, which underlines the need and importance of an education scheme such as this.

Research shows that enrollment of students between Class I-X, is 63.5 % for girls and 64.9 % for boys. However, the drop-out rate of girl children jumps from 4.2% (for girls aged between 11-14 years) to 14% (for girls aged between 15-16 years). Amongst all the reasons that contributed to the girls' drop-out rate, child marriage, pregnancy and domestic responsibility are currently heading the list. In West Bengal, the state government picked five districts where the rates of child marriage was at their highest, and initiated the

Kanyashree scheme therein. At the moment, the scheme is prevalent in all but one (Alipurduar: declared an independent district in 2015) the districts of West Bengal.

Apart from the afore-stated causes of girls prematurely dropping out of school, another widely prevalent factor includes employment. Despite the ban on child labour, girls below the age of 18 years continue to be employed to supplement their families' income.

Today, Kanyashree is in its third year of operation and is under the regulation and governance of the Department of Women Development and Social Welfare, Government of West Bengal (DWD&SW). The attempt behind this scheme is to ensure that education is incentivized and an enabling environment is created for the successful implementation of The Child Labour (Prohibition and Regulation) Act, 1986 and the Prohibition of Child Marriage Act, 2006.

The CRSGPP has drafted a proposal for carrying out research so as to investigate the functioning of the Kanyashree scheme in the state. It endeavours to find out whether the scheme has reduced the school drop-out rate among young adolescent girls in West Bengal, whether the procedure for availing of the benefits of the scheme is simple and non-cumbersome, whether all the stakeholders who are involved in the working of Kanyashree are aware of their respective roles and functions, are they well-equipped to carry out the same and finally, has Kanyashree resulted in any qualitative improvements in schooling and vocational training along with its specific quantitative objectives. The Centre plans on carrying out field work for this project soon.

### **3. Status of Ground Water in West Bengal**

By Ms. Zainab Lokhandwala, Research Assistant

The Seminar on “Challenges to Ground Water Management, Vision: 2050” was organized by the Centre for Ground Water Studies (CGWS) on the 13-14<sup>th</sup> of November, 2015. This seminar comprised several paper presentations by eminent persons in the field of ground water. Several scientists, geologists, hydrologists, and persons from the social science sector attended the seminar. The CRSGPP participated in this event through two of its members: the Vice Chancellor of WBNUJS, Prof. (Dr.) P. Ishwara Bhat and Research Assistant, Zainab Lokhandwala. They wrote and presented a paper on “Ground Water Law & Policy: West Bengal’s Legal Framework in the Developmental Context”.

The paper broadly described the legal framework relating to ground water, with a specific reference to West Bengal. First, the constitutional provisions regarding ground water were analysed. Here, the authors elaborated upon various issues that arise out of interpretations relating to “water” being a central or a state subject. Even though there is no clear mention of “ground water” as a separate entry in Schedule VII, it is treated as a state subject through practice. Second, the statutes that relate to ground water management and governance were looked into. Further, in section the authors dealt with executive directives, rules and judgments that played an important role in the development of the law relating to ground water. The Supreme Court and several High Courts, with special reference to the Karnataka and the Kerala High Court have all taken an activist stand when it comes to protecting the environment and conserving ground water as a natural resource. Additionally, the Model Law passed by Parliament in 2005 was delved into. This Model Law was framed by a group of ground water experts and the central government urged state governments to adopt this Model Law and thereby usher in a new era of sound ground water management.

Third, the paper describes the situation of ground water in West Bengal. Until 2005, the Calcutta High Court adjudicated upon several ground water disputes and opined on several issues like fair distribution, detachment from the land law regime and devising ways to stop overuse. In 2005, the West Bengal government finally passed a much awaited and needed ground water legislation, called the West Bengal Groundwater Resources (Management, Control & Regulation) Act, 2005.

The paper goes into details of this legislation; its merits, flaws, lacunae and consequences of such flaws and lacunae. Further, a comparative analysis is done with legislation and policies in other states for the purpose of better appraisal of the West Bengal Act. In conclusion, the authors very briefly lay out the best practices of other countries as well in terms of management of ground water, and whether they can ever be implemented in India and specifically in West Bengal.

The paper was received well at the conference. It managed to enlighten several scientists on the legal aspects of ground water. Further, the authors themselves learned several new things about the science relating to ground water. For instance, the technical aspects of watershed management, looking at river-systems and ground water as a whole rather than viewing them separately, the ground water poisoning problems and purification processes that can be employed so as to avoid health ailments that accrue therewith, and so on. On the whole the

seminar was a wonderful experience and CRSGPP members managed to network with several people working in the field of ground water.

#### **4. Report on the Intermediate Public Transport Workshop**

By Ms. Monalisa Saha, Research Associate

This Workshop was organised by the Centre for Policy Research, New Delhi and the Centre for Urban Economic Studies, of Jadavpur University in its Alipore Campus on the 15<sup>th</sup> of December, 2015. Participants comprised students of various universities, employees from different policy organisations (including CRSGPP), economists, lawyers, police personnel (including Deputy Commissioner of Police, Mr. Solomon) and researchers who had carried out the field work and studied the nature of auto as an intermediate public transport in Kolkata.

Intermediate public transport was identified as an alternative mode of transport that operated in the absence of formal and organised methods of transportation out there. The prime focus of the workshop was on understanding the unique nature of the operation of auto rickshaws as intermediate public transport in Kolkata which was very different from how it plied in other cities; and to chalk out an action plan to possibly improve and increase this mode of public transport to counter environmental pollution and better manage road space (along with other resources, like travel expense etc).

The organisers (CPR and CUES) presented to us the detailed findings of the survey that was carried out in 2010 by Calcutta University and 2014 by CU (which was conducted along with IIT, Kharagpur) to study how autos started and have continued its operation as intermediate public transport in Kolkata Municipality. The study revealed that there were around 120 formal auto routes as on 2010 amongst which some routes had got distorted—either lengthened to accommodate the increased demand on that route, or shortened to tackle the lowering demand. Another factor for such alteration was the presence or absence of an alternative public transport along the routes in question.

Auto rickshaws, we were told, started operating in Kolkata as the middle class man's taxi in Kolkata around 1980s. But competition from hand drawn rickshaws and the stiff protest from taxi drivers' unions made the auto rickshaw drivers switch their mode of operation and stick to pocket routes instead. They then started plying as an intermediate public transport, usually between longer bus routes or metro stations. This transition from behaving like a taxi to that

of a scheduled micro bus happened without any regulation from the State and has continued to be informal. Today most people use autos everyday as their primary mode of transportation to their place of business, education etc. In fact it seemed to be the most desired form of public transport amongst women workers, 40% of who use this everyday on their way to and back from office.

The only form of regulation of autos was internal that started with the formation of Auto Unions (backed by political parties). There has surprisingly not been much interference or attempt at regulation by the public vehicles department of the government. In fact the Public Vehicles Department does not even maintain the various records pertaining to the operation of auto rickshaws: like, the authorised route chart and the fare chart. In all probability, the PVD would direct a curious person to the concerned auto union, if the former sought any of these details. But it is interesting to note that the law still doesn't accommodate the union within its regulatory regime.

The Workshop also listed out the various pros and cons of autos as an intermediate public transport. Barring sporadic allegation of extortion, termination of journey before the designated stop, rash behaviour by the driver on not being able to furnish change to passengers; the general populace using autos on an everyday basis was quite satisfied with this method of travel. The study showed that apart from the inexpensiveness, the primary reasons why passengers in Kolkata preferred autos to other modes of transport were: the guarantee of getting a place to sit, of not having to wait for too long to hop onto a vehicle, and having the opportunity to de-board wherever the passenger desires.

The study had also undertaken the profiling of the auto drivers. On further investigation the team had found that around 1980s, when autos were introduced as the middleclass man's taxi, most of these drivers had passed class 10 and 12 board examinations and had registered themselves as unemployed persons with the government under the Self Employed Scheme. Based on this list, most persons were given autos as a source of livelihood.

We then proceeded to understand the law concerning intermediate public transport like autos: Section 66(1) of The Motor Vehicles Act, 1988 was one of the few provisions concerning the operation of autos directly. According to this section anyone desirous of using a vehicle to ferry public in public places needed to obtain a license from the State Transport Authority. There were multiple kinds of permits available to a commercial vehicle and autos had to obtain their license as a contract carriage.

This was the situation till before the 1989 when the West Bengal Motor Vehicles Rules came about. According to Rule 120(4) the Regional Transport Authority (RTA) was empowered to decide auto routes and the autos were directed to cease operation by the metre (and stop behaving as taxis). So though a lot of licenses got rejected by the RTA on the basis of this rule, the number of autos did not stop increasing (as mentioned above, every auto had the backing of some political union or the other).

We also discussed issues of pollution and accidents due to all kinds of vehicle including autos. In 2008-09 the High Court had ordered for the replacement of all the “black coloured autos” which were running on two-stroke engine and which were older than 15 years. Though this was resisted initially as on 2015 all autos in the main city had been converted to LPG (with the help of easy bank loans and subsidy from the state government).

At a time when the entire global community is concerned with the environmental damage that pollution is causing, and when cities like New Delhi is trying to ration the number of cars on its roads, it is pertinent to try to convince the car-owners and bike-owners to forgo their private vehicles and instead take the public transport to their desired location.

In the context of use of autos as a public transport, it might be interesting to note that 1 car is equal to 0.5 auto which is in turn equal to 0.25 two wheelers, in terms of space. Therefore, use of autos would save a lot of road space while driving and this would also save the hassle of finding space in the congested parking-lots. Besides, the emission of Carbon Monoxide and Carbon Dioxide would reduce significantly, reducing the burden of vehicular pollution.

There was a collective resonance amongst the participants of the need to promote autos and other intermediate public transport for everyone agreed that a developed country was not one where everyone had a car, but where everyone uses public transport.

This was an extremely enriching experience for the employees of CRSGPP, who gained tremendously in terms of knowledge of field work, research design and the issue of transport system in Kolkata.