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Message from the Vice Chancellor



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

oversight of public policy. This journal reflects the

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

-Prof. (Dr) N.K. Chakrabarti

Editor's Note



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

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

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

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

-Dr Shambhu Prasad Chakrabarty

Head and Centre Coordinator

CHILD RIGHTS AND THE ROHINGYA CRISIS

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Abstract

Child right turns in to a misnomer when Rohingya villages are revisited in Cox Bazar, Bangladesh. Irrespective of the various child right movement in various parts of the world, the Rohingya children lives a horrific life in the Bay of Bengal with very little option for resuming a life with dignity and freedom. The terrible weather condition and lack of basic facilities have made their life even more miserable in the period of lockdown and international flights being suspended preventing multiple assistance to reach the incumbent residing in the shores of the sea. Life has been as difficult as it can possible be for most of the Rohingya refugees and their new hope for resurrection has been shattered under the new world order. The question remains, would they ever come out of it during their childhood.

Keywords: *Child Right, Rohingya, Bay of Bengal, childhood, refugees*

I. Introduction

The basic elements of justice demand the adherence to the principles of human rights. After the Second World War, two major things developed one, the de-colonization movement and second, the Human Rights movement. The origin of Human Rights in the international forum can be noticed in the provisions of Universal Declaration of Human Rights (UDHR) and its up-liftment in various domestic legislations, both substantive and procedural.

a. Rohingya Crisis

The Muslim minorities of Myanmar mostly belong to the Myanmar's Rakhine State. They are identified as Rohingyas and have a population of around eight lakh people. The relationship between the Buddhist Rakhine community and Rohingya Muslims could be traced in historical records in various economic relations. The relationship and inter dependence continues irrespective of the political turmoil adversely affecting their relationship. There have been stray incidents of conflict and tension which

ultimately gave birth to a long standing tension between the two communities leading to the mass ethnic cleansing steps by the Myanmar Government. In the absence of some basic rights like the right to vote, citizenship rights and also the right to self identify. Some of the major restrictions imposed on the Rohingyas in Myanmar were banning them from free movement, work outside their villages (limiting them to livelihood opportunities) and also in personal decision making process of marriage. This huge physical and mental pressure was a *sine que non* of all the ethnic minorities in the country. Educational rights were also not available to children belonging to these members. The health care facilities were not sufficient to meet the growing demand of the community and there ware strict restrictions to go elsewhere for the said because of such mobility restrictions. Another interesting situation was the administrative existence of the children as there was restriction of children to two. And the actual, being out of control was beyond records.

In the said backdrop, there has been wide spread discontent amongst the Rohingya Muslims in Myanmar and there has been retaliation in certain belts. There has been wide spread violence leading to displacement of ethnic minorities from their location. Violence erupted leading to casualties on both sides. Almost one lakh forty thousand were displaced followed by international initiative to rehabilitate the displaced. However the efforts to rehabilitate was inadequate leading to more than a lakh people living in temporary camps and make shift shelters with nearly no access to education, health care and livelihood opportunities for them. There have been huge reliefs provided by various international organizations to provide relief to these people during 2012. There have been allegations and counter allegations as to the allocation of relief benefits leading to extremist movement amongst the Rakhine Muslims. After a couple of years, in 2014, a series of attacks by these extremist groups resulted loss of huge relief materials including the officials and their residences. This led to a huge setback in the relief and rehabilitation process. However, the process got a boost with the aid flowing in again in 2015.

Rakhine extremists erroneously perceive that humanitarian aid, which is allocated strictly according to needs, is distributed unevenly and benefits only the Rohingya. In March 2014, this triggered organized attacks targeting international community offices, residences and warehouses, which resulted in millions of Euros of losses. The flood and cyclone relief interventions which supported both communities in 2015 allowed to somewhat mitigate this perception, but it remains prevalent in the extremists' rhetoric. Access to the IDP camps around Sittwe remains highly regulated preventing sufficient assistance delivery.

The recent turmoil in the south Asian region relating to the Rohingya issue has played havoc in the maintenance of peace and tranquility of the region and

has been considered as the worst human rights violation of recent times. The creation of ethnic division and the notion of ethnic cleansing has been one of the major issues that led to the killing of hundreds while thousands were forced to leave their country, their place of abode and their way of life.¹

The Rohingya crisis has raised various questions in the international scene. Questions like the mindset and approach of the people in power to take such a decision, the way such directions were carried out and implemented, the helplessness of the people, the refugee rights, the vulnerability of the international community in such crisis and the lack of sting in the approach and process of these international bodies allotted to address these crisis.

Amongst all of these unanswered questions, the primary area of concern is the gross violation of human rights in situation like this and how such violations can be addressed.

The human rights questions raised by various national and international bodies may be summed up in furtherance of issues relating to over use of military power by the Myanmar Government and their acts concerning crimes against humanity, genocide with the objective of ethnic cleansing. The counter allegation by the Burmese Government regarding ARSA as a terrorist outfit is also one of the concern. The situation has now become more complicated with the increasing risk of the Rohingyas joining the ARSA outfit to avenge the arbitrary application of power to harm, torture and murder thousands of Rohingyas. The United Nations Human Rights Council after the immediate impact of the crisis has created an investigation team to investigate the alleged and wide spread human rights violations in

¹ UNHCR, Operational Update: Bangladesh, November 3, 2017; and Inter Sector Coordination Group, Situation Update: Rohingya Refugee Crisis, Cox's Bazar, November 9, 2017

Burma. The Government of Myanmar has however accepted the newly formed fact finding mission to Burma after initial denial of the mass allegations brought against them.

U.N. High Commissioner for Human Rights Zeid Ra'ad Al Hussein told the U. N. Human Rights Council on September 11, 2017:

We have received multiple reports and satellite imagery of security forces and local militia burning Rohingya villages, and consistent accounts of extrajudicial killings, including shooting fleeing civilians.²

Last year I warned that the pattern of gross violations of the human rights of the Rohingya suggested a widespread or systematic attack against the community, possibly amounting to crimes against humanity, if so established by a court of law. Because Myanmar has refused access to human rights investigators the current situation cannot yet be fully assessed, but the situation seems a textbook example of ethnic cleansing.³

The initial impact of the mass exodus of Rohingyas has adversely and coercively affected the women and children of this ethnic community. Child, perhaps is the worst affected amongst those involved in the refugee crisis of Myanmar. UNHCR report matches with other humanitarian as to the fact that 94% of the more than 600,000 displaced people in Bangladesh are Rohingya. Only a very small number includes the Hindu and Rakhine who were amongst the areas affected by the attack. The most fascinating fact seems to be that an estimated 54% of the displaced are

² U.N. Office of the High Commissioner, *Darker and More Dangerous: High Commissioner Updates the Human Rights Council on Human Rights Issues in 40 Countries*, September 11, 2017.

³ *ibid*

children and 4% are elderly. The remaining 42% are adult refugees, roughly 52% of who are women.⁴ The majority of refugees who entered Bangladesh are staying in temporary shelters and there has been inadequate infrastructure to deal with the crisis which may be considered as the worst in recent times. Bangladesh is establishing a new 3,000-acre camp at Kutupalong that is to reportedly accommodate 800,000 people in a single, enormous camp⁵ apart from the one in Cox Bazar, Bangladesh.

II. United Nations and Protection of Children in Rohingya Crisis

The United Nations Organization has declared the crisis in Myanmar relating to Rohingyas as the worst example of textbook style ethnic cleansing. It has condemned the act as the worst affecting human rights involving children. It declares the crisis having very serious humanitarian consequences. It reflected the concern relating to the limited access to basic necessities regarding livelihood and health. The U.N. Security Council in a presidential statement released on November 6, 2017, inter alia, expressed:

grave concern over reports of human rights violations and abuses in Rakhine State, including by the Myanmar security forces, in particular against persons belonging to the Rohingya community, including those involving the systematic use of force and intimidation, killing men, women, and children, sexual violence, and including the

⁴ The Bangladesh Refugee Relief and Repatriation Commissioner (RRRC), launched on October 4, 2017, which conducted a family counting exercise with the support of UNHCR. RRRC Fact Sheet: Family Counting, November 7, 2017.

⁵ Medhavi Aroora and Ben Westcott, "Bangladesh to Move 800,000 Rohingya into Single Enormous Camp," CNN, October 23, 2017

*destruction and burning of homes and property.*⁶

Another important concern that was raised in this regard is the status issues of the members of Rohingya community not only for those who are in Bangladesh as refugees but also those who are still in Myanmar. It is a matter of concern as these people are not provided with the status of citizen in Myanmar. They are legally regarded as people illegally staying in Myanmar for decades. The international community has already raised their voice for stopping such discriminatory practice and has urged the Myanmar Government to provide solution to this major hindrance. In the absence of a legal status, the member of this community has been subjected to limited and restrictive access to various basic and necessary facilities available in their country. It has been urged to the Myanmar Government that the standards that they should adhere in this regard must comply with international standards. The UN also recommends initiating State wise programs to develop various section of the society. Another area of concern that has been specifically highlighted by the UN is the widening of regional imbalance which will have a far reaching effect in the decades to come. Rohingyas have because of the crises fled to various other parts of the south Asian countries. The largest flock has gathered in Bangladesh where the majority of refugees have settled in. It has been estimated that around ninety four thousand people have moved into Bangladesh from the border of Myanmar till date.⁷

UN has also focused on the crisis leading to a much wider regional imbalance. There has been large scale exodus of Rohingyas to various parts of South Asia and in Bangladesh alone the numbers of Rohingyas are approximately 94,000 people till date. The

members of the international community and the UNO have appreciated the Bangladeshi government for allowing the refugees to settle and provide them with basic necessities with the support of the UNO. The largest affected in the said crisis includes children as they are in a state of vulnerability from various physical and psychological factors.

III. Child Rights under the Refugee Convention: The Primary Issues

Children are provided with the necessary protective shield by various international conventions including the Refugee Convention. The Universal Declaration of Human Rights 1948 in its declaration has proclaimed the need of special care and assistance for the child. The primary reason behind this is that the majority of child immigrants travel alone leaving behind their parents who have been subjected to major difficulties arising out of challenges and adversities. In majority of the cases that occasioned in the case of Rohingya children the parents are dead. In a case reported, there has been unwarranted attack by the state by air, where bombs were dropped on mud and straw built huts having women and children. People are found in houses engulfed with fire. After people rushed out of their houses there has been realization that some of their relatives are still stuck in their fire engulfed houses.

“Swishhh...In the middle of the night, Ismat Ara heard a faint sound. Within seconds, the 27 year old Ara knew what it meant: her mud and bamboo thatched hut was on fire. She sprang on the floor, lifted her three and a half year old son Absar and ran out, all in one movement. When she turned to look back, her dwelling was engulfed in flames. And then came the shocking realization: her

⁶ United Nations Security Council, *Presidential Statement, S/PRST/2017/22*, November 6, 2017.

⁷ This number includes statistics from 2014-2015 till date.

*13 year old daughter was still inside the hut.*⁸

As a matter of past experiences⁹ it has been identified that there are at least three ways of migration:

1. They move with their family¹⁰;
2. They migrate alone without their parents;¹¹
3. They were left behind by migrant parents who have no other option than going abroad to seek means of sustenance for their family.¹²

The situation of Rohingya children is primarily limited within the first two ways mentioned above. According to various international treaties and the standard set out by these international covenants the country states have some basic responsibility towards the refugee children. Once the country concerned has ratified the treaty, the country promises to the international commitment to follow certain basic standards provided in the treaty. There are two basic Conventions which guides the Refugee Children. One, the Refugee Convention of 1951 and secondly, the Protocol (Relating to the Status of Refugees) of 1967. The standard set forth by the said conventions categorically applies to both the children and the adults.

The three basic standards are as follows¹³:

- (1) a child who has a "well-founded fear of being persecuted" for one of the stated reasons is a "refugee",¹⁴
- (2) a child who holds refugee status cannot be forced to return to the country of origin (the principle of non-refoulement)¹⁵, and
- (3) no distinction is made between children and adults in social welfare and legal rights.¹⁶

Apart from the aforesaid position, Article 22 of the Convention provides that the refugee must receive the 'same treatment' as nationals in primary education and treatment at least as favorable as that given to non refugees while imparting secondary education.

The Convention on the Rights of Child (CRC) 1989 is applicable to refugee children as well as Article 1 of the said convention does not exclude refugee children and is thus applicable to all the children of the world. Article 2 of the said convention also prohibits discrimination. Thus the discrimination made towards the refugee children is also prevented under the said Convention. The rights thus available to the children of the country must also be provided to the refugee children in relation to juvenile justice, family rights, adoption, social welfare, health, education and the like. To make it more effective the United Nations has approached for a mandatory ratification of the said convention. A

⁸SubhojitBagchi, 'For Rohingya, it was all a blinding flash and a smear of ash', The Hindu, October 22, 2017 p 1.

⁹ 'Position paper on migrant and refugee children', 2016 SOS Children's Villages International, p 3 available at <https://www.sos-childrensvillages.org/getmedia/73abf1b5-05ca-4f1a-89bf-841350b7a8ae/SOS-CVI-Position-Migrant-Refugee-Children-A4.pdf>

¹⁰ ibid

¹¹ ibid

¹² ibid

¹³ Available at <http://www.unhcr.org/protect/PROTECTION/3b84c6c67.pdf>

¹⁴ ibid

¹⁵ ibid

¹⁶Ibid. This is one of the primary reasons for most of the countries not to allow refugees in their jurisdiction, as it is one of the prime reasons for increasing the burden on the state over the refugees. India very recently stated by highlighting this point as to why they don't want Rohingya refugees to be in India.

major development took place in this regard when the World Summit for Children adopted a Declaration and Plan of Action in 1990. The primary objectives behind the said Summit were to set major standards to work for protecting the rights of children relating to education and health.

IV. The Major Violations

The majority of refugees have got their basic rights violated due to the Myanmar ethnic cleansing. The crisis has affected basic rights of the refugees, the majority of which are children. Amongst major areas of violation are their deprivations to basic human rights *inter alia* food, medicines, vaccination, sanitation, shelter and education. The various international agencies have stepped up their assistance to provide basic rights for the needy. The three camps that was setup in Bangladesh have been provided with major aids from international assistance. However, the biggest thing missing in the process is providing education to these children. This gap has exposed the child with a massive deficiency in the intellectual development of these children. The story of such deprivation has been a bench mark of most refugee crisis, be it in Bosnia or Syria. It is not that the state concerned is not doing their duty towards the international commitment. As a matter of fact, these countries have done a commendable job but the said situation is so challenging that more efforts from newer dimensions are needed.

Another interesting challenge is the lack of major health care facilities amongst the said refugee children. The primary reason for such a condition

is the lack of basic background information about the child like their age, previous medical history etc. The lack of awareness as to the benefits of such medical advice also contributes to the children for not going for vaccination.

Children also need to be provided with a continuation of care and medical attention as they have already been affected and infected adversely due to huge sanitary issues coupled with human corpses affected ground water contamination. Compulsory monitoring of the situation is not always possible for a considerable span of time which is needed for the said purpose. In the absence of a proper citizenship provided by the Myanmar Government has led to a deprivation of state aided medical support to the Rohingya. Thus the children would, under the current scenario would eventually suffer in the long run as that would have made it worse for the children to be provided with sustained medical support and attention.

Connecting the children with their parents specially those whose parents are still alive would be a mammoth challenge for any organization. But that is what would be best for the welfare of the child concerned. Childhood that has been lost can perhaps never be returned. The children have faced the things that perhaps they should never have experienced at their age. One of the pictures drawn by a Rohingya Child refugee has reflected the various experiences that they have experienced. The figure below portrays the said experience.



Figure 1: A picture drawn by a seven year old child refugee.¹⁷

To bring back the children from the trauma would be a great challenge for all concerned under the backdrop of the traumatic condition of the homeland of these refugee children.

V. Resettlement

Normal community life of the refugees should be one of the best possible way to bring back mental well being of the traumatized refugees primarily the children. Regenerating the community well being is however not an easy task. Some of the major steps that should be taken in this regard are cultural and social re building. The elders amongst the refugees may be oriented to achieve the target audience to bring back cultural association amongst the refugees. This is commonly called Traditional leadership.¹⁸ In the absence of existing leaders there are may be efforts to develop new leadership amongst the refugees. Providing specific arrangements to bring the refugees to stay together rather than on a segregation and distributed form

¹⁷ Drawing by a Rohingya boy, Abdul, reveals horrific experiences he endured while fleeing from Myanmar to Bangladesh, at a child-friendly space at the Balukhali makeshift refugee camp in Cox's Bazar district, Bangladesh, Oct. 2, 2017.

¹⁸ A refugee population may already include part, if not all, of its traditional leadership. The aid worker can help to strengthen and reinforce traditional leaders by consulting and working through them. Preservation of the refugees' traditional form of social organization enhances not only their well-being but also the effectiveness of assistance efforts. *Supra* 14 at p 11

may be a serious effort to bring back the community life amongst the refugees. This provides a sense of security and oneness amongst the community specially the children. Once the people started living together there is every possibility to make people oriented planning on the basis of homogeneous interest areas of the community. Major homogenous areas *inter alia* include language, rituals, religion, art, recreation and the like. Efforts are already on in this direction for providing strategic measures to protect the interest of the refugees.

VI. ICJ on Refugee Rights

Very recently ICJ and seventy seven other civil society organizations and UN agencies made initiatives to protect the refugees and migrant children. The ICJ has called upon the EU institutions as well to take initiatives to prevent the ongoing atrocities of refugee and most importantly children. The ICJ has deep concern about the failure to popularize child rights in the world. Rights like access to education, access to information, access to a lawyer etc.¹⁹ The ICJ has also stated that EU and Member states can do much more than what has been done in the recent past.²⁰

ICJ also emphasized the need to work on areas including strengthening the necessary safeguards in the asylum legislations, to provide more financial aid for national child protection plan and to build developed mechanism to protect the child across borders.

¹⁹ICJ and others call on the EU to protect refugees and migrant children's rights, available at <https://www.icj.org/wp-content/uploads/2016/11/EU-Joint-Statement-Refugee-and-Migrant-Children-Advocacy-Non-Legal-Submission-2016-ENG-.pdf> accessed on 25th February 2018

²⁰ *ibid*

VII. Role of Judiciary to uphold the Rule of Law

It is common that the state shall try to implement Executive discretion to address the refugee crisis. However, the state must understand that judges also have a role to play and more importantly a much effective role to play in a refugee crisis in a state. As a matter of fact the judges must also understand the relevance of jurisdiction of refugee crisis as a part of their discretionary jurisdiction. What has been noticed from past experiences is that the state would not generally appreciate the intervention of judiciary in such cases but it must also be understood that the executive discretion in such scenario has done worse than good to the people concerned including irreparable harm and gross violation of human rights. The judiciary should play a major role that the constitution vests upon it, the rights of the people and the protection of larger interest of the State. That is what rule of law suggests and that is why the Supreme Court (SC) of India accepted the PIL filed by Rohingya Refugees which wanted the SC of India to act in favor of the right of the people whose basic rights have been abused and to prevent any further damage to their already vulnerable condition. In a state of emergency the judiciary is vested upon the power to restore justice to the people in need of it and it is not executive discretion but judicial discretion that should writ large to protect the rights of the refugees most importantly the children. The majority of refugees that are under terrible situation demands the protection of the judiciary to sustain an immediate relief to the ongoing turmoil of their life.

In India there has been sharp criticism over the acceptance of the PIL of the refugee Rohingyas by the government. The Attorney General reiterated in this regard that India would not like to be the refugee capital of the world as it has already been burdened with other problems. India has already been up preventing the Rohingya refugees to enter the country

and access to the main land. India has emphasized largely on the need of deportation of those who have already entered Indian territories and urged the Supreme Court to carry on with the Executive Discretion.

VIII. Conclusion

The cry of the Rohingya child acts as a butterfly effect²¹. As the tears roll down the eyes of millions of children, thousands of miles away, all across the planet debates, discussion and strategies are formulated to remove the difficulties, distress and abuse of human rights of all those who have survived the ordeal in furtherance of ethnic cleansing developed and executed by the Myanmar Government.

Majority of these refugees are children and Bangladesh Government has done a commendable job to provide assistance to them. The world now must stand together to provide sufficient economic and resource assistance to help the Rohingya refugees to come back to basic life. The other arrangements that should also be formulated is the re structuring of the areas in Myanmar where they used to reside. There must also be efforts to provide the solutions to major discrepancies in Myanmar that led to the massive cleansing exercise. It is not possible to solve these aspects in a short span of time. Major solutions would need considerable period of time.

Primary areas that could be taken into consideration are education, health and infrastructure.

Both long term and short term measures are needed to strategically eradicate the problems.

There have been relief teams and aids flooding in to protect the refugees in Bangladesh. Special care has been taken and newer dimensions are explored to make the life of the refugees especially the children more conducive for their overall development. Children in Bangladesh Refugee camps in Cox Bazar

²¹ The concept has been elucidated by the famous radical feminist Catharine Mackinnon.

and other areas have now started staying together in communities. Children are vaccinated on a regular basis. Huge funds are utilized to provide healthy sanitation and hygienic stay of children in these camps. Children are provided with training in various areas that would help them to address the challenges that are facing. Major improvements have been noticed in the mind of these children from the sketches they are now creating. The children are now moving towards a better tomorrow and better days are ahead. However, there shall be sustainable effort to provide them as wells as Bangladesh with the aid and support to realize the goals that the international community seeks to achieve. Recently, the Bangladeshi Prime Minister has reflected the inability to provide support to further refugee crises if created in Burma. She also urged the international organizations to provide necessary support in this regard. Time shall play the biggest role to bring back peace in Myanmar. The role that has been played by UNO is really commendable. Myanmar Government must understand the major outcome of such ethical cleansing and sanctions shall be needed to be imposed upon the Myanmar Government to prevent any such violation of public international law in the near future. Steps must also be taken to bring into books the perpetrating State officials who are grossly responsible for the major violation of human rights in the affected areas in Myanmar. Strategic rehabilitation must be made to bring back the normal and more humane condition in the Rakhine area of Burma. It must however be noted that re foulment shall only be processed when the mind of the refugees shall be without fear of further harm. In order to meet such objectives international communities must take an active role in the process of rehabilitation and refolement of the refugees in the affected state of Myanmar. The entire world must work hand in hand to bring normalcy in so called the biggest example of

ethnic cleansing and gross violation of human right in the recent past.

World community must take necessary lessons from the turn of events and understand the vulnerable position of international laws in certain situations. The provision of international refugee laws must also need introspection as most of the countries decide to turn a deaf ear and a blind eye to the refugees. The international community needs to make more stringent human right laws to make this world a better place to live in.



Fig. 2: Rohingya Refugee Children drawing in camps in Bangladesh²²

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WOMEN AND THE CONCEPT OF GLASS CEILING IN THE LIGHT OF THEIR POLITICAL RIGHTS

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I. Introduction

This paper aims at determining the role of women in world politics with special emphasis on the phenomenon of glass ceiling in their political rights. Throughout history, the claim has been made that women and men are fundamentally different from each other. Masculinity is the attribute attached to the term 'power' when a single generic term 'man' is used for both man and woman. Since the time immemorial there had been the gender groupings of different attributes like superiority, strength, rationality, power and independence had been associated with the man and weakness, inferiority, emotionally charged and dependence is associated with the woman.²³ The participation of the women in different aspects of competitive elections is an indicator of the efficacious growth of democracy in any country of the world.²⁴ But

the women are absent from the politics, policy making functions and power positions because the women are being considered weaker than the man. Men are considered to have more physical strength, rational judgment, and power as compared to women. Thus they consider having an inherent right to protect and dominate the women. When feminists think about the 'gender' they think about the ways in which the world is organised according to gender categories such as 'masculinity' and 'femininity' and they think about the ways in which those categories work in terms of hierarchy, and in some ways institutionalize and perpetuate certain kind of inequalities. Patriarchy stands for power and authority and is the prime obstacle to woman's advancement and development.²⁵ Its root lie in the myths of creation and religious world based on them and politics is also one of its aspects. "It is all about control." *Mary*

²³ Kathleen B. Jones and Anna G. Jonasdottir, Introduction: Gender As An Analytical Category In Political Theory (Sage Publications 1985).

²⁴ Praveen Rai, 'Women's Participation in Electoral Politics in India' (2017) 37 South Asia Research.

²⁵ Abeda Sultana, 'Patriarchy And Women's Subordination: A Theoretical Analysis' (2012) 4 Arts Faculty Journal.

Wollstonecraft argues that women are entitled to education consistent with their position in the society. She declares that both men and women are endowed with inalienable right to life, liberty and pursuit of happiness. If woman wish to enter business or pursue professional careers or vote they must be given chance to perform all such acts. A declaration has been made by Mary Wollstonecraft that woman should be allowed to share the rights and she will mirror down the virtues of man and she will progress more when she is free from all legal, social and political restrictions. *Virginia Woolf* has also demonstrated that the society has obstructed its own potential for constructive possibilities by divesting a woman of equality in socio political affairs and bereaving her from equal opportunities of progress.²⁶

There have been various women's movements which can be traced in the light of history of feminism. The term 'feminism' can be used to describe political, cultural or economic movement aimed at establishing equal rights and legal protection for women.²⁷ Feminist and scholars have divided the movement's history in three waves viz. **first wave of feminism** (19th and early 20th century), **second wave feminism**

(1960s to 1980s) and **third wave feminism** (1990s to 2000s).

The **first wave** refers to the feminist movements in United Kingdom and United States during 19th and early 20th century. The promotion of equal contract and property rights for women and the opposition to chattel marriage and ownership of married women by their husbands was focused by the feminist. Basically by the end nineteenth century activism focused on gaining political power and mainly the right of women's suffrage. The suffragettes campaigned for women's right to vote and in 1918 the Representation of the People Act was passed granting the voting right to women over the age of 30 years and also only those who owned houses. However in 1928 it extended to all women above the age of twenty one years. Some of the feminist thinkers during first wave of feminism in United Kingdom are *Margaret Sanger, Voltairine de Cleyre*. The United States first wave feminism included many feminist scholars like *Lucy Stone, Frances Willard, Matilda Gage*, etc. who campaigned for women's right to vote. It was in 1919 when all women were granted the voting rights in all states by 19th Amendment to the United States Constitution.²⁸

²⁶ Jasbir Jain, *Women In Patriarchy* (Rawat Publications 2005).

²⁷ <http://www.gender.cawater-info.net/knowledge_base/rubricator/feminism_e.html> (last visited on Nov 27, 2019).

²⁸ Ibid.

The **second wave** feminism focused more on social and cultural inequalities in contrast with political inequalities. *Betty Friedan* in her work *The Feminine Mystique* argued that women were victims of a false belief in the promise of femininity and urged them to look beyond their domestic situation for fulfilment. The change in the cultural attitudes on the part of men and women can bring equality between sexes. *Germaine Greer and Kate Millet* exclaimed for a sexual liberation by removing the contradictory standards applied to their sexuality and behaviour.²⁹ *Simone de Beauvoir* in her treatise on the “**Second sex**” made a detailed analysis of women’s oppression and foundational tract of contemporary feminism and she argued that the attitude that “Men should be pursued as ideal by women” should be changed. She focuses on the social construction of women as the other.³⁰

The **third wave** feminism was a response to the failures of second wave feminism. It focuses on the micro politics and challenges the second wave feminism paradigm of what is good or what is not good for the females. The race and class were neglected in second wave feminism which found due place in third wave feminism. There is debate going

on among the scholars of third wave feminism on the issue that some argue that there is difference between sexes while others contend that there is no inherent difference but the gender roles are because of social conditioning. The third wave feminism regarded race, social class and transgender rights, glass ceiling at work place, etc as central issues. In 1991, when Anita Hill accused Clarence Thomas, an African American judge, of sexual harassment Thomas denied all her accusations and later it was confirmed by the Senate also in his favor. An article was published by *Rebecca Walker* entitled “*Becoming the Third Wave*”. She argued that racial equality should come but not at the cost of dismissing women.³¹

The post feminists believe that second wave goals have been achieved but they are critical towards the third wave feminism goals. *Amelia Jones* has written that post feminist texts which emerged in 1980s and 1990s and portrayed second wave feminism as a monolithic entity and criticized it using generalizations. Contemporary feminists like *Katha Pollitt, Nadine Strossen* consider feminism simply means “women are people.” Further different feminist theories also evolved over the time which shall be discussed in the next chapter.

²⁹ Oxford Dictionaries, 'A Brief History of Feminism | OxfordWords Blog' (OxfordWords blog, 2018) <https://blog.oxforddictionaries.com/2011/03/08/international-womens-day> (last visited on Nov 27, 2019).

³⁰ *Supra* note 26.

³¹ Jennifer Drake, Barbara Findlen and Rebecca Walker, 'Third Wave Feminisms' (1997) 23 *Feminist Studies*.

In international relations men have more opportunities than women. There are about seventy five nations which have never seen any women as its head of the State. Even India also had only one women prime minister and one woman has been elected as head of the state since its independence. The study tries to answer certain questions which are as follows:-

- Have women been able to attain equality in global politics?
- What is the role of woman in global politics?
- What are the factors responsible for the apparent absence of women from politics, policy making functions and power positions?
- What is the status of women's participation in the politics of India?

The term politics comprises of interactions in elections, participation in trade unions, cooperatives, women collectives, informal and formal politics but the present paper deals only with the political rights of the women in respect of their right to vote and their right to contest elections and how far they are able to exercise these rights on different levels of government and their role in policy making functions of the government. The authors have tried to support the analysis with the statistical data. Therefore doctrinal research has been done

to analyze various international conventions entered into to protect the political rights of women and the laws enacted in India for safeguarding their political rights. As the area of study is very wide therefore the authors have confined the study to few countries of South Asia.

II. Feminist Theories

There are different feminist theories which have evolved with the span of time while recognising the rights of women as equal to that of men. The present chapter discusses the feminist theories in brief which are as follows:-

a) Liberal Feminism:

As the foremost feminist approach, liberal feminism is recognised as a first generation understanding of the study of gender in political science.³² This approach condemns the division of labour and corresponding roles, in the public and private spheres, between man and woman since that result to an unequal distribution of rights and duties and hinders women's participation in the public domain. *Marry Wollstonecraft* in her remarkable work, *The Vindication of the Rights of Women (1792)*, questioned the centuries-old societal arrangements which had took away the fundamental rights of the women. Amongst other things, most importantly, she pressed on women's right to

³² Jill Steans, *Gender and International Relations* (Rutgers University Press 1998).

sufferance and to hold political positions and offices since she believed that men and women have been gifted with equal measures of rationality and reasoning. She pointed out the importance of education in a woman's life.

Approximately after hundred years of the publication of *The Vindication*, **John Stuart Mill** postulated theoretical explanations regarding the emancipation of women. From his study, *The Subjection of Women (1869)*, it is evident that he shares the same thinking as Wollstonecraft has regarding the power of rationality and reasoning in men and women. As a champion of individual freedom, he believed that "As long as woman is imprisoned in the private sphere, she neither knows nor cares which is the right side in politics...Giving women use of their potential in occupation of their choice would double the mental faculties at humanity's service as well as stimulating men's own intellect by the additional competition".³³ He believed that this was the only way to liberate women from the parochial patriarchal bonding. Things changed only in the twentieth century when liberal feminist scholars raised their voice for the active involvement of women in public matters and their wielding of various channels of power, especially in the fields of leadership, defence

and statecraft. However, this approach of feminism faced a lot of criticism for being too universalistic in its judgments, for neglecting the domestic threats to a woman (while overemphasising her role in the public realm.) Here, it may be argued that Indira Gandhi and Margret Thatcher were successful in their public life but suffered in their respective private domains. Despite criticism, the liberal theory was the first to make a hue and cry for equal rights, duties and work assignments to all men and women.

b) Radical Feminism:

It is also called the second wave of feminism, the radical approach of feminism came up to fill up the lacunae in the liberal approach and was inspired and popularised by the Civil Rights Movement in the United States, as well as the students' movements of the US, North Atlantic region and Australia during 1960s and 1970s. As per this approach, women are subjected to male dominance right from their birth which then continues to marriage and public life. This leads to self-hatred, self-rejection and the acceptance of inferiority. Thus, this approach highlights the gender exclusivity between man and woman and sets out an autonomous identity for woman itself meaning thereby, it speaks about the nurturing of sisterhood, for their strategic similarities, irrespective of their class, race, ethnicity, nationality, colour

³³ John Stuart Mill, *The Subjection of Women*, (London, Everyman, 1929), p. 298ff, quoted in Coole, *Ibid.*, p. 141.

and so on.³⁴ According to *Christine di Stefano and Carol Pateman, Hobbes* had delegitimized women in his theory while stating his metaphor of the ‘state of nature’ in analysing international relations. *J. Ann Tickner* has propounded that women do not sow distrust, as alleged by realism, but they play important role in promoting peace and restoring confidence.

Criticizing this approach, it has been said that the world cannot be exclusively of males or females since both are complementary to each other. It has also been said that this theory seeks to create an exclusive feminist alternative to patriarchy which is contrary to the present day scenario of gender equality. Nevertheless, one cannot deny that by this theory, ‘woman’ was brought to the centre-stage to nurture sisterhood so as to solve international problems.

c) Marxian Feminism:

The Marxian school owes its origin to the works of Karl Marx and Friedrich Engels.³⁵ This school mainly focus on the economic and material bases in political and social structures related to capitalism. It focuses on dismantling capitalism to liberate women. In the current social context economic inequality, dependence, political confusion

are the reasons for the women’s oppression. Marxist considers women as a separate class and thus call for the united action for women against their oppressors.³⁶ The pre industrial society was better for women as they were on the equal footing with men but the industrialisation has divided the private and public spheres of working resulting in the commoditisation of the women and second class citizenship to them.³⁷ The property was concentrated in the hands of male which resulted in the socio-economic and political exploitation of women and denial of rights and liberty to them.³⁸ Both *Marx and Engels* considered women as “Victims of Patriarchy”.³⁹

For later Marxist scholars like *Heidi Hartmann and Zillah Eisenstein*, patriarchy remains the reason for women’s repression and precludes them from access to social-economic and political avenues of power. Thus their views were different from the early scholars in the sense that they focused on both domestic and external spheres of women’s repression. *Juliet Mitchell* in her study ‘*Women’s Estate*’ argues that there are four situations of women’s misery viz. production, reproduction, sexuality and socialisation. She supports women’s participation in work because it would make

³⁴ Chris Beasley, *What Is Feminism?* (Sage Publications 2011).

³⁵ *A History of Socialist Thought: From the Precursor to the Present* (New Delhi, Sage Publications, 2000), pp. 136, 157-159.

³⁶ *Infra* note 42.

³⁷ Mukherjee and Ramaswamy, n. 54, pp. 157-158.

³⁸ Rinita Majumdar, *A Short Introduction to Feminist Theory* (Anustup, 2001), p. 17

³⁹ Siim, in Jones and Jónasdóttir (eds.), n. 2, p. 171.

them to earn their living which leads to women's equality in the public world.⁴⁰ Women work on low wages and they are unpaid workers in private sphere.⁴¹ There are other agents too, except economic superiority that leads to oppression of women like race, ethnic affiliation, etc. According to the Marxists wealth and power are inter-related but this theory fails in third world countries where there is more violence against women where people are living below poverty line.⁴² *Simone de Beauvoir* rejected the Marxist approach saying that economic condition would never help women in acquiring prestige until moral, social or cultural consequences are brought.⁴³ Although Marxist approach to feminism has been criticized on many points but it has enlightened the world with the concept of class, wealth and private property for analyzing oppression of women.

d) Psychoanalytic Feminism:

This approach incorporates psychology and its related features that help in making gender based identities that explain male dominance over females. This approach is mainly based on the writings of *Sigmund*

Freud and psychoanalytical discussions. According to this theory the early difference between male and female identity is developed by the role played by males and females in the early life of the child like mother has the responsibility of care taker and father is portrayed as symbol of power or authority. Similarly the girls and boys attain the attributes of males and females which can also be seen in the public sphere. *Nancy Chodorow* in her work '*The Reproduction of Mothering: Psychoanalysis and the Sociology of Gender*', analyses that psychological and emotional responses leads to the male dominance in the public sphere and female passiveness in private domain.⁴⁴ Females are submissive in the dominant patriarchy. Thus Psychoanalytic feminist scholars advocate for feminisation of males⁴⁵ and establishing equitable relationship.⁴⁶ *Simone de Beauvoir* criticized this approach and argued that women can only be free when they relinquish all their traditional roles and adopt male practices to become equal to men.⁴⁷ This approach was first in analyzing the gender identities responsible for shaping the male-female behavioural patterns.

⁴⁰ Juliet Mitchell, *Women's Estate* (Harmonsworth, Penguin, 1971), pp. 139, 151, referred to in Coole, n. 24, p. 242.

⁴¹ Jill Steans, *Gender And International Relations* (Rutgers University Press 1998), p. 19

⁴² Diana Coole, *Women In Political Theory* (Rienner 1993).

⁴³ *Simone de Beauvoir The Second Sex*, translated by H.M. Parsley (New York, Vintage Books, 1989), p. 725.

⁴⁴ Nancy Chodorow, "Gender Relations and Difference in Psychoanalytic Perspective", in *The Polity Reader in Gender Studies* (Cambridge, Polity Press, 1994), pp. 41-42.

⁴⁵ *Supra* note 34.

⁴⁶ *Supra* note 44.

⁴⁷ *Supra* note 43.

III. Feminism on Race, Colour And Ethnicity:

According to this theory all earlier feminist theories are based on the society of the developed countries constituting white women who rejected the ethnic difference and racism. But the situation in the third world nations was different which gave rise to this theory of feminism. Politics is extremely colour prejudiced and this theory has tried to raise voice against injustices. The concept of “situatedness” of third world women was introduced which embraces circumstantial consequences of womanhood. Early feminist theories cannot be universalised in the non European societies as they do not owe their origin in non European philosophical traditions. This theory combines the reality of personal experiences within the context of the definite economic and political overview.⁴⁸

IV. International Instruments

Numerous international instruments have been entered into to protect and promote the rights of the women. The types of rights range from right to equality, right against discrimination, right to vote, right to contest election, etc. This chapter reproduces concerned provisions of different instruments that try to protect and promote the political rights of women.

⁴⁸ Heidi Safia Mirza, 'The Dilemma of Socialist Feminism: A Case For Black Feminism' (1986) 22 Feminist Review.

Article 21 of UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948 grants everyone the right to take part in the government, equal access to public service and equal suffrage irrespective of its gender.

The **CONVENTION ON THE POLITICAL RIGHTS OF WOMEN, 1953** has also been entered upon to guarantee right to vote to women on equal terms with men, and they shall be eligible to contest elections to all elected bodies and also provides that the women shall also be entitled to hold public office and exercise all public functions established by national law without any discrimination.

Article 3 of INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966 provides that all men and women shall be ensured of the equal right to enjoy the civil and political rights enumerated in the covenant by the member states. **Article 25** provides that every citizen without any unreasonable restrictions shall have the right and opportunity to take part in the public affairs, right to vote and be elected on the basis of equal suffrage and access to public service in their concerned states.

The **CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN**

(CEDAW) provides the basis for realizing equality between women and men by ensuring equal opportunity and access to women in political and public life including the right to vote and to contest for election as well as education, health and employment.⁴⁹ To provide such access and opportunities so that women can enjoy all their human rights and fundamental freedoms state parties have agreed to take all appropriate measures including legislation and temporary special measures.⁵⁰

FOUR WORLD CONFERENCES have been convened under the auspices of the United Nations and a further follow up is being carried forward by the member nations.

The **first world conference on women** was held at Mexico City, Mexico in 1975. The conference was the first international conference devoted solely to the women issues. The conference declared 1975 as International Women's Year and led to declare United Nations Decade for Women and also pursued to evaluate the progress made in achieving the targets fixed in the conference. The conference adopted a World Plan for Action laying down the specific targets for the nations to achieve women

empowerment. The main issues of this conference were equality of women, and their contribution to peace and development. One of the noting points of this conference is that representatives of around 6000 NGO attended the conference.

The **second world conference on women** was held at Copenhagen in 1980. The objective of this conference was to determine the progress made in achieving the goals of first world conference focusing on employment, health and education

The **third world conference** was held at Nairobi in 1985. The conference was convened for the assessment of the progress made since the first conference and also to assess the failures in implementing the goals of the earlier conferences. The forward looking strategies for the advancement of women outlining the measures for achieving gender equality at the national level and promoting women's participation in peace and development efforts was adopted by the governments.⁵¹

The **fourth world conference** was held at Beijing in 1995 earmarking twelve critical issues which requires urgent action to ensure greater equality and opportunities for everyone irrespective of their gender and one

⁴⁹ Adriana Di Stefano, Gender Issues And International Legal Standards (Edit 2010).

⁵⁰ 'Convention on the Elimination of All Forms of Discrimination against Women' (Un.org, 2019) <<http://www.un.org/womenwatch/daw/cedaw/>> (last visited on Nov 26, 2019).

⁵¹ 'World Conferences On Women' (UN Women, 2018) <http://www.unwomen.org/en/how-we-work/intergovernmental-support/world-conferences-on-women> (last visited on Nov 26, 2019).

of the issues is women in power and decision making. It was also decided in this conference that after every five year review shall be done determining the implementation of the Beijing platform for action and to consider future actions and initiatives.

Thus after looking into some of the international instruments it can be said that nations are conscious about equal rights of women in political arena but many nations have made reservations to the provisions of the convention and also all the conventions are not binding so we may also see that there is little political will to give equal status to women. Even the countries who have adopted the covenants the present scenario does not show that these are able to achieve its purpose and researcher can base my statement on the report according to which there are only 20 women holding the office as head of State or head of the government which is only 6.3% of the total number of world leaders.⁵²

The **UN Commission on the Status of Women** is presently considering the post-2015 Millennium Development Goals agenda. Progress in women's representation

⁵² '2018, Women and Political Leadership – Female Heads of State and Heads of Government' (Women in international politics, 2018) <<https://firstladies.international/2018/02/20/2018-women-and-political-leadership-female-heads-of-state-and-heads-of-government/>> (last visited on Nov 26, 2019).

and empowerment is on the agenda for attention, along with further strategies to achieve gender equality in leadership.⁵³

V. Glass Ceiling In The Political Arena

Before answering the question whether glass ceiling exists in the global politics or not it is likely to be more appropriate to proceed with what amounts to glass ceiling. According to the *U.S. Department of Labour* "a glass ceiling is a political term used to describe the unseen, yet unbreachable barrier that keeps minorities and women from rising to the upper rungs of the corporate ladder, regardless of their qualifications or achievements."⁵⁴ Glass ceiling was considered as one of the reasons for the seen dominance of men in politics. Women have strong will and ambition but there is an invisible obstacle that keeps them away from going to the position higher in professions they already have. "Glass ceiling is those artificial barriers based on attitudinal or organizational bias that prevent qualified individuals from advancing upward in their organization into management level positions."⁵⁵ The invisible barriers may be anything, it may be media related issues or

⁵³ Women politics, 'Women In Politics - Kuenselonline' (KuenselOnline, 2019) <<http://www.kuenselonline.com/women-in-politics/>> (last visited on Nov 26, 2019).

⁵⁴ Olle Folke and Johanna Rickne, 'The Glass Ceiling In Politics' (2016) 49 *Comparative Political Studies*.

⁵⁵ 'A Report On The Glass Ceiling Initiative' (US Department of Labor 1991).

stereotypes or any informal boundaries. Media plays an important role in perpetuating the stereotypes and setting standards for women candidates. Also the way women are seen in the position of power. There was a trend when women were linked to their family first and then to their professions. Politics was considered as masculine area of interest. Women everywhere are breaking the glass ceiling but their voices go unheard and their contributions too are not given appropriate recognition. They are given women's only portfolios or only allowed to sit in women committees and are forced to leave other committees because of their gender.

Women at every socio-political level are under-represented in national parliaments and far removed from decision making levels. Although each country has different political scenario but one thing is common among them this is uneven representation of women. The political, public, cultural, social environment is unfriendly to them.⁵⁶ In regards to the women representation there were no women ministers at all in 48 countries at the cabinet level in Asia-Pacific region and Eastern European and very little progress has been achieved with the proportion of women ministers being less

⁵⁶ Nadezhda Shvedova, *Women in Parliament : Beyond Numbers* Cambridge: Cambridge University Press, 1995,p.32

than 5%.⁵⁷ In regards to representation at sub- ministerial level, women held no position in relation to economy in 136 countries and only 2% of economic ministries were occupied by women in Asia-Pacific region. Only 9.9% of the sub-ministerial positions were held by women. But the statistical data shows that women are making their way in political arena. They have accounted for 10% of the members of legislative bodies in 1995 but in 2004 they constituted 15.6% of parliamentarians worldwide according to the Inter Parliamentary Union. Women constituted 16.3% of legislators in world parliament which shows 5% increase in comparison of the last data collected. It has been reported that if the women representation rates increases at this scale then an average of 30% of women in parliament would be reached in 2040 instead of 2025. So it can be said that women are making progress moderately but this needs more than moderate progress in political arena.⁵⁸

VI. An Analysis of Women in Politics in South Asia

A brief data of South Asian nations is provided below providing an overview of the status of women regarding their political

⁵⁷ Data compiled by the Division for the Advancement of Women, United Nations based on January 2004 information from the World wide government directory 1996, Bethesda, Maryland, U.S.A.

⁵⁸ Ibid.

rights. Women's participation in politics in India will be dealt in next chapter. Here the researcher has given a brief analysis of other six nations.

BHUTAN- Women were allowed to vote in 1953. According to the reports there are only 19 women out of 188 candidates in 2018 National Assembly primary elections. There is a decrease from 31 candidates in 2013.

BANGLADESH- The country has achieved the political stability in last two decades and quota has ensured women's presence in local government and national parliament. Money plays a vital role in the politics of the country because of which the women are pushed back from their participation in politics.⁵⁹ Women constitute 19.83% in the national parliament in Bangladesh.⁶⁰

NEPAL- Patriarchy has been one of the factors for the powerlessness of the women in the political arena. In Nepal also, because of the dominance of the patriarchal value system women are discriminated and treated as second class citizens. The constitution of Nepal provides special provisions to give political support to women.⁶¹ 12 seats (5.9%)

out of 205 held by women in the lower house, 9 seats (15%) out of 60 in the Upper House. 20% seat reservation in local political bodies has brought more than 39000 women in local bodies.⁶²

MALDIVES- The role of women in politics in the country had been quite high due to the existence of four Sultanas. In contemporary times women hold positions in government but they are under-represented. Women constituted 3 out of 14 government ministers and 5 out of 85 law makers in 2016.⁶³

SRI LANKA- The universal suffrage was given to citizens of Sri Lanka in 1931. Despite of the statutory freedom, women's participation in the country's politics is the lowest as compared to other South Asian nations. Only 4% seats in provincial councils and 1.9 % in local government had been held by women till 2012. Inter parliamentary Union ranked the country 180th out of 190 countries in its ranking of female representation in parliament as in June 2017. Remarking the country has introduced Local Authorities Elections (Amendment) Act No. 1 of 2016 which provides 25% of quota to

⁶⁰https://www.researchgate.net/publication/299636440_Women's_Political_Participation_in_Bangladesh_Rhetoric_and_Reality (last visited on Nov 26, 2019).

⁶¹ Prativa Pradhan, 'The Status Of Women In Political Participation In Nepal' (2005) 35 *The Himalayan Review*.

⁶² 'Money, Power And Muscles: Women In Nepalese Politics - Australian Institute Of International Affairs' (Australian Institute of International Affairs, 2018) <<http://www.internationalaffairs.org.au/australianoutlook/local-elections-womens-participation-nepal/>> (last visited on Nov. 28, 2018)..

⁶³ 'Female Candidates Win Majorities On Four Island Councils' (Maldivesindependent.com, 2018) <<https://maldivesindependent.com/politics/female-candidates-win-majorities-on-four-island-councils-130572>> (last visited on Nov 28, 2019).

women by one-third increase in the total number of seats at the local government level.⁶⁴

PAKISTAN- In Pakistan 17% of the seats are reserved for women in the general elections. 13 women were elected on the unreserved seat in the year 2007.⁶⁵ in 2013 elections 36 women acquired nominations by political parties, 108 women were contesting elections on 272 National Assembly seats in 2013.⁶⁶

However the South Asia has powerful women politicians than any other set of countries in the world. They had been the Head of the State, Prime Ministers, leader of political parties and regional governments. But overall representation is very low. The reasons for such inequality are the socio-cultural patterns. Most of the countries are influenced by the patriarchal society. Another reason is competitive nature of the politics itself. It is often equated with violence; many politicians have criminal records, etc. so in this kind of setup women are at the disadvantageous position. Thus the more women friendly South Asian country,

Sri Lanka, has a low participation rate of women in governance.⁶⁷

VII. Women's Political Participation and Representation in India

Our constitution has given equal rights to women in all respects but then also their political participation in decision making does not conform to their share in male dominated society. During the independence movements they participated with great enthusiasm and courage in the freedom struggle. Most of the women were from educated and liberal families. It was only Gandhiji's call to women to join the freedom struggle as he realized that true freedom cannot be achieved unless all sections of society are fairly represented. Gandhiji said in the non-violence struggle women have an advantage over men in the non violence struggle because women are superior to men in their religious devotion. Silent and dignified service is the attribute of woman. She can move a mountain if she does anything in the right spirit.⁶⁸ Post independence women are participating in almost all types of activities from agriculture to business and are also voting for better governance. After 61st amendment, every citizen above the age of 18 years is eligible for voting. Constitution has fixed the

⁶⁴ The Politics, 'The 25 Percent Quota & Women In Sri Lankan Politics' (Colombo Telegraph, 2018) <https://www.colombotelegraph.com/index.php/the-25-percent-quota-women-in-sri-lankan-politics/> (last visited on Nov 27, 2019).

⁶⁵ Muddassir Rizvi, *Women in Record Seats, But Not Activists Hearts* Inter Press Service, Pakistan, 2001.

⁶⁶ Muhammad Ali Awan, *Political Participation of Women in Pakistan Historical and Political Dynamics Shaping the Structure of Politics for Women*, Frankfurter For schungszentrum Global Islam (2016)

⁶⁷ A. Thanikodi and M. Sugirtha, 'Status Of Women In Politics' (2007) LXVIII Indian Journal of Political Science.

⁶⁸ Bhawana Jharta, *Women and Politics In India* (Deep & Deep Publications 1998). P.58

minimum age for contesting the elections which is 25 years.⁶⁹ Citizen below 25 years of age cannot be a candidate in Lok Sabha elections and similarly same limit applies to elections in the state assemblies.⁷⁰ India has seen only one woman Prime Minister, Mrs. Indira Gandhi and one woman President, Mrs. Pratibha Patil since independence. At present there are six women cabinet ministers in the cabinet of twenty seven ministers which constitutes around 22%.⁷¹ There are sixty two woman member of parliament which constitutes 11.8% of total number of Member of Parliament.⁷² In the last 4-5 general elections there has been a consistent rise in the number of woman Member of Parliament which is a progress and has played an important role in improving the gender divide in the highest law making body. At the Panchayats level women have significant representation because of 33% quota given to women in local level elections.⁷³ On the same model, it was tried to reserve the seats for women in Parliament also by 81st amendment but the Bill was rejected in the Parliament.

⁶⁹ Article 84 (b) Constitution of India

⁷⁰ Article 173 (b) Constitution of India

⁷¹ 'Cabinet Ministers Of India - Full List Of Narendra Modi's Ministers With Their Portfolios - Testbook Blog' (Testbook.com, 2018) <<https://testbook.com/blog/updated-cabinet-ministers-of-india-gk-notes-in-pdf/>> (last visited on Nov 28, 2019).

⁷² <https://www.mapsofindia.com/election/women-members-of-parliament> (last visited on Nov 28, 2019).

⁷³ 73rd Amendment to the Constitution of India

More representation of women in decision making has been sought because of their low political participation despite of constituting 49% of the total population. In a survey it has been found that domestic responsibilities, cultural attitudes regarding women's role in decision making and lack of family support are the main reasons responsible for women not entering into politics. Lack of confidence and finance were other reasons responsible that prevents women from entering the politics. However their representation in Panchayati Raj Institutions is significant. The same survey shows that there are 13.72 lakh elected women representatives in Panchayati Raj Institutions which constitute 44.2% of the total elected representatives as on December 2017. Women Sarpanchs constituted 43% of the total Gram Panchayats in the country which shows active leadership of women in local government.⁷⁴

The women participation as voters has also increased as compared to past years. The gender ratio of female voters over male voters accounted for 883 females over 1000 males which shows increase in trend as compared with the data of 1960s (715 female voters over 1000 male voters). In 2014 general elections 397 million women were

⁷⁴ <<https://economictimes.indiatimes.com/news/politics-and-nation/womens-political-participation-in-india-low-need-more-economic-survey/articleshow/62696726>> (last visited on Nov 28, 2019).

eligible to vote and out of these two-third turned up for voting as compared to 437 million male voters out of which only 260 million turned up for voting. This can also be put in this way 66.6 % female voters exercised their franchise as compared to 59.6% of male voters who turned up for voting.

VIII. Conclusion

Gender discrimination exists in all societies although there can be difference in its degree that varies from society to society. The feminist theories discussed itself give an idea that women are not only discriminated only in the political sphere but also in many other aspect of life. Accordingly different feminist scholars talk about freedom to women in different areas. Liberal feminist scholars have advocated for education for woman considering it as a means to change. According to Marxist approach to feminism, primary source of female oppression is capitalist economic system so they considered oppression of women through the economic glass meaning thereby they advocate for equal participation of woman in the economic production process. Radical school of feminism has argued that patriarchy is the main source of women oppression thus social change is necessary for the progress of woman in public sphere. They gave a phrase “personal is political and the political is personal. According to the

psychoanalytic feminist scholars the women are discriminated because of the identity role they have been assigned since time immemorial. Thus they argue that women can only be free when the traditional roles assigned to them withers away and an equitable relationship is established between men and women. Feminism on race, colour and ethnicity approach have focused their study on the women of the third world countries and according to them race, colour and ethnicity plays a vital role in determining the rights of the women.

World community had been conscious of the unequal treatment given to women at all aspects of life. Thus various international instruments have been entered upon by the states to recognize the rights of the women which have already been discussed. But at some points double standards of the world community is shown when they make reservation to the provisions of the conventions. For example Kuwait made reservation on the right to contest for elections to women, however later it was withdrawn. Similarly Maldives also made reservation regarding the political rights to women which was later withdrawn by the State on the objection raised by Germany.

The phenomenon of glass ceiling exists at all levels of public life and politics is also not left untouched. Although almost every nation have guaranteed equal political rights to

women in the country of their origin but then also women's participation and representation in politics is not upto mark. The report of world economic forum 2013 (covering 115 countries) shows that only 15% of the world women are politically empowered at the highest level of the government. About 97 countries have gender quota system but then also women constitute only 17% of Parliamentary seats and 14% of ministerial level seats in the world.⁷⁵ The reason for such disparity is mainly lack of support and gender stereotypes. The women were considered as nurturer, mother, peace keeper and negotiator but leaders like Margaret Thatcher, Condoleezza Rice, Golda Meir, and Indira Gandhi have broken these stereotypes. The increase of women participation in politics is necessary not because it will lead to world peace but because women have been discriminated since a long time and had been excluded from the formal places like government for the mere fact of being women. Thus higher freedom and more space is the global need. Democracy will also be strengthened by the participation of women in politics as they would be able to represent their problems more adequately and negotiate in a better way. For just and equitable society women

empowerment is vital in political sphere.⁷⁶ The women in politics will also pave way for the laws and policies which would be more directed towards improving the status of women in respect of health, education, livelihood, property rights and providing equal opportunities to women. Women have broken the glass ceiling to some extent but it needs more determination and support from the society to achieve the end.⁷⁷

As the analyses has shown that countries in the global South are committed to promote women in leadership by making pro-women policies and laws. It has also been realized that sustainable economic development is only possible only when women have a say in decision making process but this is not possible until patriarchy is removed from the society that restricts the support to women in political institutions. Women politicians take decisions through their male counterparts who reject their legitimate right of decision making.⁷⁸ Participation of women is a pre-requisite for the political society. They should participate in all functional, political and social processes of the state. However the participation of women in Indian politics cannot deny the fact that they have the administrative skills and political insights which were only attributed to men only. The

⁷⁵'Women Grossly Under-Represented In International Politics' (SAIIA, 2018) <http://saiia.org.za/research/women-grossly-under-represented-in-international-politics/> (last visited on Nov 28, 2019).

⁷⁶ *Supra* note 52.

⁷⁷ <Women in politics DAWN.COM, <https://www.dawn.com/news/1401914>> (last visited on Nov 28, 2019).

⁷⁸ *Ibid.*

reservation given to the women by 73rd and 74th Constitutional amendment is a step towards the progress in the political rights of women. But no consensus has been made to reserve the seats for women in Parliament. It is hoped that women will get rightful place in the highest law making bodies very soon. The sense of relief is that India's position as compared to other developed and developing countries is far better though it is not satisfactory in itself thus it cannot be called dismal.

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ENVIRONMENTAL CRIMES-AN ANALYSIS OF LEGAL PROVISIONS WITH REFERENCE TO INDIA

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I. Introduction

The environment provides the very foundation of sustainable development, our health, food security as well as our economies. Clean water supply is provided by our ecosystems as well as clean air and secure food and finally physical as well as mental well-being. A natural resource provides livelihoods, jobs and revenues to the government which would be used for education, medical facilities, and development and helps to prepare sustainable business models. In 2015, environment role has been recognised across internationally agreed sustainable development goals. In today's date, environmental crime is rapidly increasing day by day which is endangering not only wildlife populations but the entire ecosystems, sustainable livelihoods and revenue streams to governments. Environmental crime also includes corporate crime in the forestry sector, illegal exploitation and sale of gold and minerals, illegal fisheries/fishing, trafficking in

hazardous waste and chemicals.⁷⁹

Environmental crimes can be broadly defined as “*illegal acts that directly harm the environment. It is often perceived as victimless and incidental crimes, environmental crimes frequently rank low on the law enforcement priority list, and are commonly punished with administrative sanctions which are themselves often unclear and minor.*”⁸⁰

Environmental crimes are on the increase transversely the globe and, as a result, the world is being scoured of its rich natural resource base. Unfortunately, until recently, most countries did not accord any priority to environmental crimes. This created a dearth in appropriate and proportionate

⁷⁹ Christian Nellemann, Rune Henriksen, et. al. (eds.) *The Rise of Environmental Crime – A Growing Threat To Natural Resources Peace, Development And Security*, 8 (A UNEP/INTERPOL Rapid Response Assessment. United Nations Environment Programme and RHIPTO Rapid Response–Norwegian Center for Global Analyses, 2016)

⁸⁰ Axel Luttenberger, Lidija Runko Luttenberger, *Challenges in Regulating Environmental Crimes*, 213, available at https://bib.irb.hr/datoteka/871672.IMSC2017_Luttenberger_and_Runko_Luttenberger.pdf (last visited on August 05, 2020)

governmental response to fight such crimes. One United Nations (“UN”) study identified certain gaps in tackling environmental crimes due to reasons like lack of data, knowledge and awareness, inadequate use of legislation, lack of institutional will and governance, lack of capacity in the enforcement chain, lack of national and international cooperation and information sharing among authorities, and lack of engagement with private actors and local communities.⁸¹ The UN General Assembly adopted a resolution which recognised environmental crime as a part of other transnational organised crimes. The adoption signified a major step forward for UN Environment and its partners’ hard work in raising awareness of the rising danger that environmental crime poses to peace and security, sustainable development and environmental rule of law.

Environmental criminals pose a serious risk to our everyday lives, our planet and to future generations. Borders do not confine environmental crimes, which variety from ivory trafficking and overfishing of protected species, to illegal logging and the dumping of hazardous waste. The identical directions used to traffic wildlife across countries and continents are often used to smuggle

⁸¹ C. Yamuna Menon, Sregurupriya Ayappan, Trends in Environmental Crimes in Asia, 2019 *available at* <https://www.lawasia.asn.au/sites/default/files/20199/Trends%20in%20Environmental%20Crimes%20in%20Asia%20-%20Final.pdf> (last visited on August 05, 2020)

weapons, drugs and people. Environmental crime often occurs simultaneously with other offences such as passport fraud, corruption, money laundering and even murder. Contrasting the illegal trade in drugs and other illicit goods, natural resources are determinate and cannot be replaced in a lab. As such, there is a sense of urgency to combat environmental crime.⁸² In this paper the author’s focus shall be on the concept of environmental crime, the nature of environmental crimes, the position of environmental crimes vis-à-vis India, the drawbacks in the existing system as to why environmental crimes are on rise, followed by suggestion and conclusion.

II. Concept of Environmental Crime

The concept of environmental crime is comparatively of recent origin. But that does not minimise the importance of accurate definition and prompt detection of environmental crimes for the effective enforcement of environmental laws and preservation of healthy environment for the humanity. Only when man's interference into the natural environment reaches a dangerous level causing ecological imbalance, endangering all living things on earth and posing serious threat to the health of human

⁸² Full Article *available at* <https://www.interpol.int/en/Crimes/Environmental-crime> (last visited on August 05, 2020)

beings that law interferes in turn for countervailing this threat.⁸³

*“At the beginning of the twenty-first century environmentalists, government agencies, and environmental attorneys were still struggling to define exactly what was an environmental crime, what actions should be prosecuted, and what penalties were considered appropriate.”*⁸⁴ *“Through the 1980s and 1990s the public usually linked environmental crime with the following actions: contaminating water by dumping chemicals into a stream or river; releasing pollutants into the air; and, improper disposal, storage, or transportation of hazardous wastes such as pesticides, chemicals, and radioactive materials.”*⁸⁵ *“Legal proceedings focused on actions by corporations or businesses that violated environmental laws.”*⁸⁶ *“For this reason, early environmental crimes were considered white-collar crime or illegal activity carried on within normally legal businesses.”*⁸⁷ *“Yet many environmental crimes did not fit under the white-collar mould. A truck driver who*

*illegally stores gallons of hazardous waste rather than taking them to a proper disposal site could not be considered part of white-collar crime.”*⁸⁸ *“Likewise, a farmer who dumps pesticides into a stream, a hunter who shoots a protected bald eagle or someone who smuggles exotic birds or animals have all committed environmental crime but are not part of the white-collar world.”*⁸⁹ *“Rather than calling all environmental crime white-collar crime, law professionals tried to develop a better definition. Factors generally considered are: (1) the harm done, whether the action caused harm immediately or was only potentially harmful; (2) the action itself, ranging from littering to major dumping of hazardous wastes; and, (3) the offender, whether individual or corporation.”*⁹⁰

*“Although the definition of “environmental crime” is not universally agreed, it is often understood as a collective term to describe illegal activities harming the environment and aimed at benefitting individuals or groups or companies from the exploitation of, damage to, trade or theft of natural resources, including serious crimes and transnational organized crime.”*⁹¹ *“Unlike*

⁸³ G. Sadasivan Nair, Environmental Offences—Crimes against Humanity and the Environment, Cochin University Law Review, 66, available at <http://dSPACE.cusat.ac.in/jspui/bitstream/123456789/10932/1/Environmental%20Offences%E2%80%9494Crimes%20against%20Humanity%20and%20the%20Environment.PDF> (last visited on August 05, 2020)

⁸⁴ Read full article available at <https://law.jrank.org/pages/11964/Environmental-Crime-Defining-environmental-crime.html> (last visited on August 05, 2020)

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Read full article available at: https://wedocs.unep.org/bitstream/handle/20.500.11822/7662/-The_rise_of_environmental_crime_A_growing_threat_to_natural_resources_peace%2C_development_and_

any other known crime, environmental crimes are aggravated through their additional cost and impact on the environment and cost to future generations.”⁹² “Deforestation, dumping of chemicals and illegal fisheries causes loss of ecosystem services such as clean air and clean water, extreme weather mitigation, food security and even health and wellbeing.”⁹³ “They also deprive governments of much-needed revenues and undermine legal businesses.”⁹⁴

Mary Clifford proposed a definition of environmental crime in her 1998 book *Environmental Crime*, as “an act committed with intent to harm or with a potential to cause harm to ecological and/or biological systems” as well as with the purpose to increase business or personal gain. According to Clifford, an environmental crime “is any act that violates an environmental protection statute [law].”⁹⁵

For Y. Situ and D. Emmons, an environmental crime is an unauthorised act or omission that violates the law and is therefore subject to criminal prosecution and

criminal sanction. This offence harms or endangers people’s physical safety or health as well as the environment itself. It serves the interests of either organizations – typically corporations – or individuals.⁹⁶

According to Europol, Environmental crime encompasses the wide range of activities that breach environmental legislation and result in significant harm or risk to the environment, human health or both. These crimes include broadly, though not limited to the

- improper collection, transport, recovery or disposal of waste;
- illegal operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored;⁹⁷
- killing, destruction, possession or trade of protected wild animal or plant species;⁹⁸
- production, importation, exportation, marketing or use of ozone-depleting substances.⁹⁹

“Environmental crime is characterised by its impact on the natural environment. This impact manifests itself in increasing levels of pollution; degradation of wildlife; reduction

security-2016environmental_crimes.pdf.pdf?sequence=3&isAllowed=y (last visited on August 05, 2020).

⁹² Read full article, available at: http://www.ewra.net/ew/pdf/EW_2017_60_51.pdf. (last visited on August 05, 2020).

⁹³ Ibid

⁹⁴ Ibid

⁹⁵ Supra note 84.

⁹⁶ Dr. Virender Sindhu, “Environmental crimes: An analysis”, 3 *International Journal of Advanced Educational Research*, 274 (2018)

⁹⁷ Full Article available at <https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/environmental-crime> (last visited on August 05, 2020)

⁹⁸ Ibid.

⁹⁹ Ibid.

in biodiversity and the disturbance of ecological balance. Environmental crimes are not victimless.”¹⁰⁰ “The damage they cause to ecosystems and the environment poses

- the risk of disease
- environmental disaster
- irreversible climate change
- the contamination of the food chain
- reduced life expectancy
- the death of human beings.”¹⁰¹

“However, five broad areas of offences have been recognized by bodies such as the G8, Interpol, EU, UN Environment Programme and the UN Interregional Crime and Justice Research Institute. These are:

- Illegal trade in wildlife in contravention to the 1973 Washington Convention on International Trade in Endangered Species of Fauna and Flora;
- Illegal trade in ozone-depleting substances (ODS) in contravention to the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer;
- Dumping and illegal transport of various kinds of hazardous waste in contravention to the 1989 Basel Convention on the Control of Transboundary Movement of

Hazardous Wastes and Other Wastes and their Disposal;

- Illegal, unregulated and unreported (IUU) fishing in contravention to controls imposed by various regional fisheries management organizations (RFMOs);
- Illegal logging and trade in timber when timber is harvested, transported, bought or sold in violation of national laws.”¹⁰²

III. Nature of Environmental Crime

“More than 250 international and regional environmental agreements have been developed in the thirty years since the first landmark United Nations Conference on the Human Environment in Stockholm in 1972. As these treaties have moved beyond simple pledges of mutual scientific cooperation to incorporate substantive control measures such as trade restrictions, so attempts at evasion have increased.”¹⁰³ This broad framework reflects the international community’s recognition of the interdependence between development and the environment by integrating environmental protection in regulatory regimes. This is reflected by a crucial

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Gavin Hayman and Duncan Brack, *International Environmental Crime- The Nature and Control of Environmental Black Markets*, (Royal Institute of International Affairs, London, 2002), p. 5

¹⁰³ Ibid

concept of environmental law: sustainable development. Its most common and generally accepted definition is found in the Brundtland report of 1987: “Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”¹⁰⁴

“Environmental crime is as serious as any other crime affecting society today. In contravention of numerous international treaties, the principal motive for environmental crime is, with rare exception, financial gain and its characteristics are all too familiar: organised networks, porous borders, irregular migration, money laundering, corruption and the exploitation of disadvantaged communities. Wildlife felons are just as ruthless as any other, with intimidation, human rights abuses, impunity, murder and violence the tools of their trade. The indicators of environmental crime are evident in many areas of international development activities. Significant global threats, including the challenges addressed through the Millennium Development Goals (MDGs) are connected to, and exacerbated by, environmental crime, “affecting development, peace, security and human rights”. These issues, some of which have

¹⁰⁴ Eileen Skinnider, *Victims of Environmental Crime – Mapping the Issues*, 6 (The International Centre for Criminal Law Reform and Criminal Justice Policy, 2011)

been on the table for many years, are slowly starting to be addressed and only now are enforcement agencies worldwide beginning to recognise the role of organised criminal networks in environmental crime. Increasingly, illegal logging and wildlife trafficking are driven by organised groups who exploit natural resources and destroy habitats: robbing communities of their livelihoods, compromising the wider economy and further endangering threatened species and ecosystems.”¹⁰⁵

“Scholars have attempted to capture the various dimensions of environmental crimes. For instance, White and Heckenberg bring out ‘brown’, ‘green’ and ‘white’ environmental concerns where ‘brown’ relates to the urban life and pollution, ‘green’ refers to the wilderness areas and conservation issues and ‘white’ include impact of new technologies like genetically modified organisms.”¹⁰⁶

These environmental offences may be committed by individuals, groups, governments or businesses. Currently, there is no international treaty on tackling environmental damage. The only guiding instrument in this regard is the UN

¹⁰⁵ Debbie Banks, Charlotte Davies et. al. *Environmental Crime-A Threat to our Future*, 2 (Emmerson Press, U.K. 2008)

¹⁰⁶ Read Full Article, available at: <https://www.lawasia.asn.au/sites/default/files/2019-09/Trends%20in%20Environmental%20Crimes%20in%20Asia%20-%20Final.pdf> (last visited on August 05, 2020).

Environment Programme (UNEP) Guidelines for the Development of Domestic Legislation on Liability, Response Action and Compensation for Damage Caused by Activities Dangerous to the Environment adopted in 2010. Under this, such environmental damage can be a product of “not complying with applicable statutory or regulatory requirements or through wrongful intentional, reckless or negligent acts or omissions”.¹⁰⁷

*“In contrast to traditional predatory crime, which involves the involuntary redistribution of existing wealth through theft and robbery, etc., environmental crime involves the production and/or distribution of goods and services that are illegal by their classification. Such enterprise crime is more effectively conceptualized as a market than a form of social deviance: criminal activities are structured around multilateral exchanges involving producers, processors, retailers and final consumers where supply and demand for services interact in a free-market relationship. The traditional headhunting approach adopted by law enforcement agencies to tackle predatory crime does nothing to address the supply and demand pressures that shape profit-making opportunities.”*¹⁰⁸ *“Unlike any other known crime, environmental crimes are aggravated*

*through their additional cost and impact on the environment and cost to future generations. Deforestation, dumping of chemicals and illegal fisheries causes loss of ecosystem services such as clean air and clean water, extreme weather mitigation, food security and even health and wellbeing. They also deprive governments of much-needed revenues and undermine legal businesses.”*¹⁰⁹ *“Environmental crimes by their very nature are trans-boundary and involve cross-border criminal syndicates. In this age of globalization and free trade, the easy mode of communication and flow of goods and money facilitate the illegal business group involved in environmental crimes.”*¹¹⁰

IV. Status of Environmental Crime in India

From the above lines, “environmental crimes can be broadly defined as illegal acts which directly harm the environment. They include: illegal trade in wildlife; smuggling of ozone depleting substances (ODS); illicit trade in hazardous waste; illegal, unregulated, and unreported fishing; and illegal logging and the associated trade in stolen timber.”¹¹¹

India is a large country with a lot of diversity in natural relief forms. It also has one of the largest populations in the world which puts significant pressure on the natural

¹⁰⁷ *Supra* note 81.

¹⁰⁸ *See* note 102.

¹⁰⁹ *Supra* note 79.

¹¹⁰ *Supra* note 96.

¹¹¹ *Supra* note 105.

environment and the need for resources. The Constitution under Part IVA casts a duty on every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.¹¹² Further, the Constitution of India under Part IV stipulates that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.¹¹³ India has a lot of pieces of legislation which govern specific environmental issues, the six major ones being the Air (Prevention and Control of Pollution) Act, 1981, the Water (Prevention and Control of Pollution) Act, 1974, the Environment Protection Act, 1986, the Hazardous Waste Management Regulations, The Wildlife Protection Act, 1976 and the Indian Forest Rights Act 2006. Each of these creates multiple environmental offences with heavy penalties including imprisonment and fines which can be very harsh.¹¹⁴ Now we shall analyse the five major kind of environmental crimes vis-à-vis their position in India.

a. **Illegal trade in wildlife:**

The Illegal trade in wildlife is no longer an emerging issue. The scale and nature of the challenge has been recognized in decisions of the Convention on

International Trade in Endangered Species of Wild Fauna and Flora (CITES), the UN Commission on Crime Prevention and Criminal Justice, the Economic and Social Council (ECOSOC), the UN Security Council, UN General Assembly, INTERPOL, the World Customs Organisation (WCO) and others, including at national levels. However, the responses in terms of impact on the ground are still behind the scale and development of the threat to wildlife, including forests, as well as increasingly also development goals.¹¹⁵

Over the years illegal wildlife trade has emerged as a form of Organised Transnational Crime that has threatened the existence of many wild species across the globe. In India, it includes diverse products including mongoose hair; snake skins; Rhino horn; Tiger and Leopard claws, bones, skins, whiskers; Elephant tusks; deer antlers; shahtoosh shawl; turtle shells; musk pods; bear bile; medicinal plants; timber and caged birds such as parakeets, mynas, munias etc. A large part of this trade is meant for the international market and has no direct

¹¹² *Constitution of India* (1950), Art 51A (g).

¹¹³ *Constitution of India* (1950), art 48A.

¹¹⁴ *Supra* note 81.

¹¹⁵ Nellemann, C., Henriksen, et.al. (eds). *The Environmental Crime Crisis – Threats to Sustainable Development from Illegal Exploitation and Trade in Wildlife and Forest Resources*.7 (UNEP Rapid Response Assessment. United Nations Environment Programme and GRID-Arendal, Nairobi, 2014)

demand in India.¹¹⁶ India is also a member of the CITES (Convention on International Trade in Endangered Species of Fauna and Flora) since 1976. CITES is an international agreement between governments that aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival. CITES works by subjecting international trade in specimens of selected species listed on Appendices to certain controls. India has a strong legal and policy framework to regulate and restrict wildlife trade. Trade in over 1800 species of wild animals, plants and their derivative is prohibited under the Wildlife (Protection) Act, 1972.¹¹⁷

In India, while the term wildlife trade is not specifically defined under the Wild Life (Protection) Act, 1972, Chapter V of the Act specifically deals with Trade or Commerce in Wild animals, animal articles and trophies. Illegal wildlife trade in simple terms refers to sale or exchange of wild animals or plant resources, trade of which is prohibited under the law. This may involve live or dead animals or

plants and their derivatives. The trade may be for pet or horticultural trades, or trade in wild animal and plant products such as skins, medicinal ingredients, tourist curios, timber, wild meat and other food products sought after by humans. Apart from this Act, the other two relevant legislations worth mentioning are *Prevention of Cruelty to Animals Act, 1960* and *Biological Diversity Act, 2002*. Before the passing of the above-mentioned Acts, there were other laws in existence to protect wildlife. The Indian Penal Code, 1860, though has no specific provision relating to wildlife, but it defines the term animal under Section 47 and declares maiming, killing of animals as an offence and punishable under Sections 428 and 429. The other relevant legislations were Elephant Preservation Act, 1879 and The Forest Act, 1927.¹¹⁸

b. Illegal trade in ozone-depleting substances (ODS)

“The Ozone Layer describes the protective layer of naturally occurring gas, comprised of three atoms of oxygen found about 10-50 km above the earth’s surface that protects us from the harmful ultraviolet radiation or UV-B rays of sun. Scientist in the 1970’s

¹¹⁶ Illegal wildlife trade in India, available at https://www.wwfindia.org/about_wwf/enablers/traffic/illegal_wildlife_trade_in_india/#:~:text=Trade%20in%20over%201800%20species,Fauna%20and%20Flora%20since%201976 (last visited on August 05, 2020).

¹¹⁷ *Ibid*

¹¹⁸ Full article available at http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S001608/P001741/M022107/ET/1504181167et.pdf (last visited on August 05, 2020)

discovered that the layer was thinning as a result of the release of chlorofluorocarbons (CFC's), consequently, the Ozone Hole developed. In 1985, nations around the world convened at Vienna in an attempt to develop a framework for co-operative activities to protect the Ozone layer. This signed agreement became known as the Vienna Convention for the Protection of the Ozone Layer."¹¹⁹ "Based on scientific findings on the causes of ozone layer depletion, international community has catalysed global action to protect the ozone layer resulting in the adoption of the Vienna Convention in 1985 and the Montreal Protocol in 1987. To date, 191 countries have ratified, accessed or approved the Montreal Protocol. The Montreal Protocol's primary goal is the phase-out of both production and consumption of ODS through a step-by-step reduction schedule. The Protocol includes provisions enabling its revisions on the basis of periodic scientific and technological assessments. The Montreal Protocol allows a grace period for developing countries (referred to as "Article 5 countries" in the Montreal Protocol) in implementing the control measures. It recognises the fact that more time is required

to obtain and introduce alternative ODS-free technologies."¹²⁰

Ozone Depleting Substances are chemicals which destruct the earth's protective ozone layer. They include chlorofluorocarbons, halon, carbon tetrachloride, Methyl chloroform. Hydrobromofluorocarbons, hydro chlorofluorocarbons, methyl bromide and bromochloromethane. Protection and import of these chemicals is controlled by the Montreal Protocol on Substances that Deplete the Ozone Layer. There are some other depleting substances also but their Ozone depleting effects are very small, so they are not controlled by the Montreal Protocol. The main uses of Ozone Depleting Substances are: CFCs and HCFCs in refrigerators and air conditioners; HCFCs and halons in fire extinguishers; CFCs and HCFCs in foam; CFCs and HCFCs as aerosol propellants; and methyl bromide for fumigation of soil, structures and goods to be imported or exported.

"India, being a Party to the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer, have been sharing the global concern for protecting the ozone layer and phase out of ODSs like CFCs, halons, CTC,

¹¹⁹ Kalpana Palkhiwala, Ozone Day, available at <https://pib.gov.in/newsite/feacontent.aspx?relid=76014> (last visited on August 05, 2020)

¹²⁰ United Nations Environment Programme, "Illegal Trade in Ozone Depleting Substances Asia And Pacific Region" 2 (, Kenya Nairobi2007)

methylchloroform, methylbromide and HCFCs. These chemicals are used in industrial and pharmaceutical aerosols, refrigeration and air-conditioning equipments, foam manufacturing, fire extinguishing equipment, metal-cleaning, garment cleaning, soil fumigation and quarantine and pre-shipment applications etc. Since 1993 with the continued efforts made by stakeholders responsible for implementation of the Montreal Protocol activities, India has successfully phased-out completely the production and consumption of CFCs, CTC and halons except the use of pharmaceutical grade CFCs in manufacturing of Metered Dose Inhalers (MDIs) for treatment of Asthma, Chronic Obstructive Pulmonary Disease (COPD) and other respiratory ailments under the Essential Use Nomination (EUN) provisions of the Montreal Protocol.”¹²¹

“In India, The Environment Protection Act, 1986 empowers the Central Government to protect and improve the environment and prevent, control and abate environmental pollution. The Ozone Depleting Substance (Regulation and Control) Rules, 2000 and its amendments have been published by the Central Government in the Gazette of India, under Environment (Protection) Act, 1986. India introduced the licensing system in 1996, based on recommendation of the

Meeting of Parties at Geneva in 1995. Trade in ODS with non-party countries has been banned. Enterprises receiving ODS phaseout grant are obliged to provide information on ODS consumption and achievement of ODS phaseout. Harmonized classification of commodity codes consistent with international system has been introduced. India has implemented regulations relating to licensing of import and export of ODSs. All exports of CFCs for non-Article 5 countries shall be labelled “New Product CFCs”. The objectives of the licensing system are to regulate the import and export of ODS in accordance with the Montreal Protocol. The design and implementation of the licensing system relates to regulation of production, trade and consumption of controlled substances for implementation of provisions of the Montreal Protocol. The Ozone Cell and Directorate General for Foreign Trade (DGFT) are involved in the export/import licensing process. A license to export a specified quantity of CFC-11/CFC-12 is issued to each producer on request with reference to the limits set by the Protocol. The license is on a calendar-year basis. All ODS under Annex A, Annex B and Group I of Annex C of the Montreal Protocol are covered by the import licensing system. Import is permitted only against an import license. In addition, to the controls on production of ODS, certain controls have been imposed on the export and import of

¹²¹ *Supra* note 119.

products that contain Ozone Depleting Substances. THydrocarbons including isobutane and cyclopentane are available as non-ODS alternatives for use in aerosols, foam-blowing and refrigeration sectors. Safe use of hydrocarbons is regulated by petroleum laws in India. The Petroleum Act, 1934 and Petroleum Rules, 1976 relate to handling of a variety of petroleum products. The latter also specifies licensing requirements for handling hydrocarbons. The Gas Cylinder Rules, 1981, addresses filling, possession, import and transport of cylinders. Manufacture, Storage and import of Hazardous Chemicals Rules, 1989, specify responsibilities and reporting requirement of industrial activity using them. These rules are applicable to activities covered by the Liquefied Petroleum Gas (Regulation and Supply and Distribution) Order, 1993.”¹²²

“India has made considerable steps towards control of ODS. Nevertheless since it is still manufacturing HCFC and reports indicate smuggling of ODS through its porous borders. For some years India has suffered with ODS being smuggled across its long land borders. CFCs are frequently imported into neighbouring countries in excess of requirements and are then smuggled into India. More than 300 tonnes of CFCs and

¹²² Full article available at <http://ozonecell.in/home-page/montreal-protocol-implementation-in-india/regulatory-framework/> (last visited on August 05, 2020)

HCFCs have been seized in recent years. According to UNEP, illegal trade in CFCs and other ODS is expected to grow as a complete ban is enforced. It is believed that trade in illegal ODS can be up to 20 per cent of all trade in ODS. The regulations are not enough as by nature they are not penal. The need is to draft a strong law with stringent punishment for violators to combat the situation.”¹²³

c. Dumping and illegal transport of various kinds of hazardous waste

“Illegal waste dumping has increased as regulations governing the safe and proper disposal of hazardous waste tighten, increasing handling charges and decreasing safe disposal capacity. As illegal dumpers do not have to connect buyers and sellers in a clandestine market, but simply lose the material somewhere, waste dumping is the least specialist environmental crime and, perhaps, the most common. The increased cost of safe disposal has driven an export trade to many of the world’s least developed countries, where regulations are negligible. As most developing countries lack sufficient technical knowledge to identify hazardous materials, it may be tempting to avoid disposal charges altogether and pass off hazardous chemicals as innocuous materials like fertiliser or raw materials for recycling. At its peak, highly toxic materials from

¹²³ *Supra* note 118.

Northern industrial areas have ended up being dumped on unsuspecting villagers in remote developing countries."¹²⁴

*"During the 1970s and 1980s, an increased awareness on the negative effects of hazardous waste on human health and the environment led to an update in legislation related to the issues of waste disposal in domestic legal regimes in developed countries. The result is a reduction in the availability of landfills and an increase in costs of waste disposal, which led to an upsurge in the export of hazardous waste in developing countries which did not have strict controls for the disposal of this type of waste. Convention on the Control of Transboundary Movements of Hazardous Wastes, known as the Basel Convention, signed in 1989 and entered into force in 1992, greatly improved the picture of the condition of hazardous waste. Currently, 172 countries have adopted it. The Convention sets three key objectives: reduction in the amount of hazardous waste, reduction of amounts in the transboundary movements of hazardous waste and the promotion of undertaking all practical steps to ensure handling of hazardous or any other type of waste in the manner which protects human health and the environment."*¹²⁵

¹²⁴ *Supra* note 102.

¹²⁵ M. Obradovi} et al.: Hazardous Waste, Danger of Modern Society,38 *Coll. Antropol.* 797 (2014)

The *Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2016* (the "Hazardous Wastes Rules") are the primary regulations addressing the management of hazardous waste in India. These rules were established under the Environment (Protection) Act, 1986, which gives the Central Government the power to "take all such measures as it deems necessary or expedient for the purpose of protection and improving the quality of the environment and preventing, controlling and abating environmental pollution." This includes making rules related to hazardous wastes. The first set of hazardous wastes rules was released in 1989. These rules were amended extensively over the years and, in 2008, were replaced by the Hazardous Wastes Rules. These rules were further amended in 2016 and 2019. Under the 2019 Rules solid plastic waste has been prohibited from import into the country including in Special economic Zones and by Export Oriented Units.

Waste management generally encourages recycling, reusing and reducing waste before the disposal stage. Hazardous waste also in a few scenarios can be reused or used as a material for generating energy by using it to recover a component or act as a raw material for some recycling plants. Moreover, there have been numerous factors in the last decades of chemical and hazardous waste

being dumped in water bodies or in large quantities in landfills which degrades the land as well as leads to emission of toxins into water bodies. This is harmful to environment in the form of air, water and land as well as living creatures that consume them.¹²⁶

The Hazardous Waste Rules 2016 encourage the reduction of hazardous waste generation and encourage its recycling and reusing. They also specify strict guidelines related to the import and export or even storage and transportation of hazardous waste in order to ensure optimum waste management with regard to transportation, storage and disposal of waste. The Rules have clearly laid down the procedure for the management of hazardous and other wastes. An important point relating to the import and export of hazardous waste between countries is that as per rules of 2016, no country can export to India hazardous waste for final disposal. This implies that India only imports hazardous wastes in order to recycle, reuse or for other utilisation. The 2016 rules give a clear direction of how the facility for treatment, storage and disposal is to be established.¹²⁷

In addition to the Hazardous Wastes Rules, there are other rules and plans that address the management of hazardous waste. These include: (1) Manufacture, Storage and Import of Hazardous Chemical Rules, 1989; (2) Batteries (Management and Handling) Rules, 2001; (3) Chemical Accidents (Emergency Planning, Preparedness and Response Rules); (4) E-Waste Management and Handling) Rules, 2010; (5) Bio-Medical Waste (Management and Handling) Rules, 1998; and (6) National Implementation Plan for Stockholm Convention on Persistent Organic Pollutants.

“There is a fairly comprehensive legal and regulatory framework in place in India to address its hazardous waste management. Indeed, it has been remarked that if the number of laws were any measure of their effectiveness India would have one of the cleanest environments in the world. India nonetheless is facing several challenges in ensuring compliance and effectively enforcing hazardous waste laws. Some of the challenges include lack of financial resources, shortage of staff, lack of standardized protocols and lack of legal authority. In light of the various human health and environmental issues associated with improper hazardous waste disposal, it is critical that India overcome these challenges

¹²⁶ Sharanya Ghosh, Hazardous Waste Management Rules 2016, available at <https://blog.ipleaders.in> (last visited on August 05, 2020)

¹²⁷ *Ibid*

and ensures its hazardous waste properly managed.”¹²⁸

d. Illegal, unregulated and unreported (IUU) fishing

“Nowadays, the world’s fish stocks are not only under threat from intensive legal fishing activities; they are also at risk from illegal, unreported and unregulated (IUU) fishing. It is difficult to estimate precisely the total catch from pirate fishing.”¹²⁹ “**ILLEGAL FISHING** refers to fishing activities conducted by foreign vessels without permission in waters under the jurisdiction of another state, or which contravene its fisheries law and regulations in some other manner – for example, by disregarding fishing times or the existence of the state’s protected areas. **UNREPORTED FISHING** refers to fishing activities which have not been reported, or have been misreported, by the vessels to the relevant national authority. For example, some vessels harvest more tonnage than they are entitled to catch under official fishing quotas. **UNREGULATED FISHING** refers to fishing activities in areas where there are no applicable management measures to

regulate the catch.”¹³⁰ “The term also applies to fishing for highly migratory species and certain species of shark, which is not regulated by a Regional Fisheries Management Organization (RFMO). And finally, the term applies to fishing activities in international waters in violation of regulations established by the relevant RFMO. Although unregulated fishing is not in fact illegal under the law of nations applicable to the high seas, it is nonetheless problematical. It results in additional fish being caught over and above the maximum catches agreed by RFMO member states for their respective regions. As a result, fully exploited stocks can easily become over-exploited. Furthermore, IUU fishermen often ignore the existence of marine protected areas established by the Regional Fisheries Management Organizations to support the recovery of overexploited stocks.”¹³¹

“From the fishermen’s perspective, IUU fishing is highly attractive as they pay no taxes or duties on these catches. A further reason why IUU fishing takes place on such a large scale is that it can often be practised with impunity. This is mainly the case in the territorial waters or exclusive economic zones of countries which cannot afford to set up costly and complex fisheries control

¹²⁸Read full article, available at: <https://www.eli.org/sites/default/files/eli-pubs/eli-nsiu-enforcing-hazardous-wastes-rules-india-handbook.pdf> (last visited on August 05,2020).

¹²⁹ Full Article available at <https://worldoceanreview.com/en/wor-2/fisheries/illegal-fishing/> (last visited on August 05,2020)

¹³⁰ Read full article, available at: <https://worldoceanreview.com/en/wor-2/fisheries/illegal-fishing/> (last visited on August 05,2020).

¹³¹ Supra note 129.

structures. The situation is especially difficult in the developing countries. In a comprehensive analysis of IUU fishing worldwide, researchers conclude that IUU fishing is mainly practised in countries which exhibit typical symptoms of weak governance: large-scale corruption, ambivalent legislation, and a lack of will or capacity to enforce existing national legislation.”¹³²

In India, the need for fisheries legislation was emphasised as long back as 1873 when the attention of the then Government of India was drawn towards widespread slaughter of fish and the urgency to adopt legislative measures to conserve fisheries resources. At that the then Government of India enacted the Indian Fisheries Act which was enacted in 1897. “Fisheries in the maritime states of India, within the territorial limits of 12 miles, are dealt with under the Marine Fishing Regulation Act (MFRA). These acts are formulated on the guidelines provided by the modal piece of legislation prepared by the Ministry of Agriculture, Government of India, in 1979, which was encouraged by the fishers operating unpowered fishing vessels to safeguard their fishing space and equipment from bottom trawlers. Currently, these legislations are not just restricted to the maritime states of the country but are quite widespread in other states as well, for

¹³² *Ibid*

regulating fisheries in inland waters.¹³³ “The Maritime Zones of India (Regulations of fishing by foreign vessels) Act, 1981, was introduced to control activities of foreign fishing vessels within Indian Maritime Zone. The Act provides basis for joint ventures and chartered vessels and also for bilateral / multilateral fishing access agreements. If any foreign vessel is used in contravention of the provision of section 3 of the Act in any area within the territorial waters of India are punishable with imprisonment for a term not exceeding three years or with fine not exceeding rupees fifteen lakhs or with both. If such contravention takes place in any area within the exclusive economic zone of India be punishable with fine not exceeding rupees ten lakhs. The penalty for contravention of license is not exceeding rupees ten lakhs. The penalty for contravention of permit related to area of operation or method of fishing specified in such permit will be not exceeding rupees five lakhs and rupees fifty thousand in other cases. If any person intentionally obstructs any authorized officer in the exercise of any powers conferred under this Act or fails to afford reasonable facilities to the authorized officer or fails to stop the vessel or produce the license permit, log book or other document or any fish, fishing gear or other equipment on board the

¹³³ Sukanya Thapliyal, Fisheries Law in India – An Overview, available at <https://fishlaw.org/fisheries-law-in-india-a-brief-overview/> (last visited on August 05, 2020)

vessel when required to do so by the authorized officer, shall be punishable with imprisonment for a term which may extend to one year or with fine not exceeding rupees fifty thousand or with both.”¹³⁴ “The Coastal Regulation Zone (CRZ) 1991 notification was issued under the provisions of Environment (Protection) Act, 1986. It outlines a zoning scheme to regulate development in a defined coastal belt. It declares the coastal stretch influenced by tidal action in the landward side up to 500 m from the high tide line (HTL) and the land between the low-tide line (LTL) and the HTL as the CRZ. It imposes restrictions on setting up and expansion of industries, operations or processes etc., in the said CRZ.”¹³⁵

“The rise in IUU in India can be attributed to limited scope for expansion due to overcapacities in territorial waters, weak regulation, inefficient management and prevalence of traditional fishing practices. Inadequate infrastructure especially fishing harbours, landing centres, cold chain and distribution systems, poor processing and value addition, wastage, traceability and certification, non-availability of skilled manpower, etc. are some of the other factors constraining the growth of the capture fisheries. In inland capture fisheries,

seasonal nature of fishing operations, depleted stocks in natural waters, issues related with tenure and lease rights, use of obsolete technology for harvesting coupled with low capital infusion are some of the significant limiting factors.”¹³⁶

e. Illegal logging and trade in timber:

“Most countries charge a stumpage tax on forestry operations, based on the volume of timber extracted; these charges are often intended to reflect the value of log at the stump, i.e. its price on the market less the costs of extraction and a reasonable profit margin. There is a strong incentive to alter these charges by under-reporting harvests and under-grading the size and the quality of the timber harvested. Companies may attempt to maximize their profits by extracting timber outside their agreed harvesting areas.”¹³⁷ “Illegal logging is creating havoc in some of the remaining pristine natural forests in the world. It is a leading cause of deforestation, loss of biodiversity, collapse of community forestry and conflicts. In simple terms, illegal logging occurs when timber is harvested, transported, processed, bought or sold in violation of national or sub-national laws. The complexity of illegal logging is compounded

¹³⁴ Rajesh K.M., Fisheries Legislation in India, available at http://eprints.cmfri.org.in/9871/1/Rajesh_8.pdf (last visited on August 05, 2020).

¹³⁵ *Ibid*

¹³⁶ Read full article, available at: http://nfd.gov.in/PDF/National_Fisheries_Policy_2020.pdf (last visited on August 05, 2020).

¹³⁷ *Supra* note 102.

when countries trade in illegally sourced timber in the international market. Economic data associated with illegal timber trade confirms that it is one of the most lucrative business for individuals and countries to profit from their rich natural resource base. The trade in illegal timber is estimated to be worth between USD 30 and USD 100 billion annually. Like any other business of commodities, in the case of illegal logging there are producers, processors and consumers. Illegal logging has adverse social and economic implications for the majority of the timber producing countries, particularly the developing countries. There is loss of revenue to the exchequer as well as loss of livelihoods of forest dependent people, illegal logging also fuels crime and promotes corruption at all levels including at government levels.”¹³⁸

V. Drawbacks in the existing framework to deal with environmental crimes in India

“The root causes of environmental crimes vary greatly, and subsequently the design, identification and implementation of appropriate responses must be carefully planned. Root causes are primarily the low risks and high profits in a permissive

environment as a result of poor governance and widespread corruption, minimal budgets to police, prosecution and courts, inadequate institutional support, political interference and low employee morale, minimal benefits to local communities and rising demand in particular in Asia.” The situation is especially critical on support to prosecution and courts/the judiciary in many developing countries. Poverty also facilitates recruitments of low-level perpetrators at the frontlines. This means that the issue requires a full range of responses, also beyond enforcement. The international community is still far behind in combating the rising role of environment-associated crimes for threat finance in conflict and for development and environmental security. Resources allocated to international enforcement efforts against environmental crimes are completely underdimensioned for containing the growth in environmental crimes. Current global resources specifically allocated to international organisations such as INTERPOL, UNEP, WCO, UNODC and relevant conventions specifically for combating these transnational environmental crimes are likely combined no more than 20–30 million USD globally (dependent on calculation), resulting in continued rising involvement of organized criminal networks due to a permissive environment unless more

¹³⁸ Stephanie Lee, *Illegal Logging Imports in India*, available at https://cases.open.ubc.ca/illegal-logging-imports-india/#cite_note-illegal_logging-1 (last visited on August 05,2020)

resources are allocated and capacities shared across agencies.¹³⁹

While it can be seen that illegal trade in wildlife has been adequately dealt with in a number of legislations. But the “terms ‘exotic species’ or ‘exotic pets’ are not defined in Indian law”. The Prevention of Cruelty to Animals (Pet Shop) Rules 2016 define ‘pet animals’, but the scope of this term is limited to “dog, cat, rabbit, guinea pig, hamster, rodents of the rat or mice category and captive birds”. As such, this definition “excludes many exotic species like turtles, snakes, iguanas, monkeys, etc., which are all commonly imported into India. The Wildlife (Protection) Act 1972 curbs the smuggling and illegal trade in wildlife and its derivatives as one of its primary objectives. The major drawback of this law is that it only extends protection to animals listed under its Schedule, which are mostly animals native to the Indian subcontinent, and doesn’t have exotic species within its purview. This has allowed unrestricted trade to continue, and even those penalties that usually apply to people trading or smuggling scheduled species also don’t apply in these cases.”¹⁴⁰

¹³⁹ *Supra* note 79.

¹⁴⁰ COVID-19: India Must Act Quickly to Open the Eyes of Its Laws to Exotic Species, *available at*, <https://science.thewire.in/environment/covid-19-india-exotic-animals-wildlife-trade-environment-ministry-advisory/> (last visited on August 05, 2020)

India has made considerable steps towards control of Ozone Depleting Substances. But the legislative measures in the form of rules are not stringent enough to deal with the enormous effect it has on the environment. Thus, a statute to control the situation would be a more apt solution.

“In February 2017, the Supreme Court pulled up the Union Government for intake of waste from other countries for re-processing and recycling and allowing it to be dumped in India’s landfills, compromising citizens’ health and the environment. Earlier, following the revamped Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, India had banned the import of solid plastic waste, edible fats, animal oils and household waste so that these items are not imported and add to India’s already existing waste woes. The revamped laws of 2016 clearly state that owners of hazardous waste disposal facilities are liable to pay financial penalties if the rules of transportation, storage and recycling of such waste are not complied with, and may even be imprisoned due to negligence. The rules also specifically direct the state governments to identify spots for construction of waste treatment plants specifically to treat hazardous waste. But till now, no new waste treatment plant with regard to hazardous waste treatment has

been built since the new rules came into effect. Only 17 disposal facilities with both secured landfills and scientific incinerators exist in India. Many states like Karnataka, Kerala, Punjab and Orissa don't have such a disposal mechanism for hazardous waste. The absence of proper infrastructure for scientific disposal and recycling of hazardous waste has resulted in poor handling of such waste in India. Burning of hazardous waste at landfills is still one of the most common and primitive methods of disposing, resulting in immense harm for health and environment. Collection and transportation of hazardous waste is often akin to dry or wet waste, resulting in further problems in segregating and recycling hazardous waste. Absence of incineration infrastructure in India is also a contributing problem, as most waste collectors are habituated to burning waste in uncontrollable temperature. Waste collectors collecting hazardous waste are mostly ill-equipped, untrained and poorly paid. Workers who collect hazardous waste are often exposed to its poisonous chemical nature, resulting in them contracting severe diseases. They are seldom supplied with necessary equipment to collect hazardous waste safely."¹⁴¹

¹⁴¹ India's Deadliest Waste Pile Up: The Rising Rate Of Hazardous Wastes, available at, <https://swachhindia.ndtv.com/indias-deadliest-waste-pile-up-the-rising-rate-of-hazardous-wastes->

So far as illegal, unregulated and unreported fishing is concerned the Government policies and laws are inadequate. Poverty of the fishermen also adds to the menace. The Fisheries Policy of 2020 also does not adequately address the issue of IUU in India. Along with, Letter of permit policy must be scrapped immediately to check IUU fishing in India.¹⁴²

VI. Recommendations

To deal with the issue of Environmental Crime domestic measures have to be in consonance with international control mechanisms as they are transnational crimes. Some of the measures could improve the "effectiveness of domestic enforcement programmes". These include:

- a wide national control regime;
- effectiveness in national capacity building strategies;
- targeting blatant violators;
- increase in sanctions and introduction of the probation penalties;
- improvement in case processing;
- motivating agreement through effective incentives;
- including supply chains and processing chains in the enforcement strategies.

7856/#:~:text=The%20study%20estimates%20that%20nearly,per%20(last visited on August 05, 2020).

¹⁴² *Supra* note 79.

- Proper resources must be lent to ensure productive enforcement. In the cases of tax evasion improvement of enforcement may construct an immediate increase in revenues.
 - Lack of knowledge and training must be addressed by organising training programmes using a “cascade approach of training-the-trainer”, organising refresher courses, and a collaboration of the specialised prosecutors and investigating officers.
 - Criminal profiling is important for “focused enforcement efforts”.
 - *“Clear processes can be set up to allow field observation and intelligence from industry informants, the public and NGOs, to be relayed through appropriate government and enforcement agencies”.*
 - Special enforcement units have a huge impact in collecting intelligence, conducting market surveillance, “pursuing allegations of corruption and prosecuting complex corporate investigations”.
 - Proper funding is vital for long-term planning strategies.
- So far as the Indian scenario is concerned comprising of the five kinds of environmental crime the following suggestions may be considered:
- Wildlife Protection Act, 1972 be adequately amended to include exotic species and exotic animals to curb illegal trade of wildlife in a better way.
 - A specific legislation be brought into force for dealing with the illegal trade of ozone depleting substances and licensing officials be subject to stringent punishment in case of corruption.
 - Proper infrastructure for disposal and recycling of domestic hazardous waste and complete ban on recycling of any hazardous waste imported.
 - Better facilities to persons handling hazardous wastes including protective gear.
 - Fisheries Policy and Laws to be made more stringent towards illegal fishing, unregulated fishing and unreported fishing. Specific Enforcement Units be formed for the purpose.
 - Illegal logging and trade in timber is still dependent on archaic laws which

do not address the issue adequately. Hence new legislation be drafted for the same.

in general and particular to India is hoped if implemented shall address the issue to a great extent.

VII. Conclusion

Strictly not a white-collar crime, environmental crimes can thus be understood as transnational crimes which affect the environment in a detrimental manner. *“Environmental crime covers acts that breach environmental legislation and cause significant harm or risk to the environment and human health”*¹⁴³. Main areas of environmental crime are the illegal trade in wildlife; trade in ozone depleting substances; illegal, unregulated and unreported fishing, shipment or dumping of waste and illegal logging and trade in timber. *“Environmental crimes are not victimless. The economic, environmental and health impacts of illegal trade can be sufficiently important to disrupt whole economies and ecosystems, undermining legal and environmentally sustainable activities and reducing future options for the use of resources.”*¹⁴⁴ India is one of the most populous and developing countries which has faced environmental crimes. It has dealt with some efficiently in its legislative framework while failed to address some miserably. The drawbacks pointed out and the recommendations made

¹⁴³<https://ec.europa.eu/environment/legal/crime/index.htm>

¹⁴⁴ OECD Trade Policy Studies Illegal Trade in Environmentally Sensitive Goods

THE NATIONAL ASSOCIATION OF THE DEAF AND ANR V. UNION OF INDIA & ANR, IN THE HIGH COURT OF DELHI, W.P. (C) NO. 6250/2010, DECIDED ON 24.11.2011

Souvik Mukherjee

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The aforementioned Writ petition under Article 226 of Constitution of India was filed in the High Court at Delhi for issuance of Mandamus or appropriate direction towards the Respondent to grant driving licenses to deaf persons. It was petitioned that a Writ of Certiorari to be issued for quashing of any policy decision which creates any kind of restriction or limit on issuance of driving license to the deaf person.

Antecedent:

At the very beginning it needs to be addressed that a Writ Petition concerning issuance of Driving License to the Deaf was filed in the Supreme Court of India and was dismissed as it was withdrawn with permission to make representation before the concerned authority. Post such representation by the Petitioner before the Ministry of Surface Transport, who in response informed the Petitioner that the department was considering issuance of license to deaf along with Automative

Research Association of India, Director General of Health Services and National Road Safety Council.

In 2009, Petitioner No. 2's application for grant of learner's license under Motor Vehicles Rules, 1989 was rejected on the ground of hearing impairment.

Petitioner's Contention:

The petitioner argued that the deaf persons are protected under Person with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 and are also entitled to be treated at par under Article 14 of the Constitution of India. Furthermore it was argued Motor Vehicles Act, 1988 provides for no provision which prohibits for grant of license to totally deaf persons. At this juncture it should also to be noted that the medical form does have question relating to deafness. The petitioner urged this to be unwarranted as authorities cannot deny license merely on the ground of deafness without any specific medical opinion or

certificate which vouches for the argument that it impairs or adversely affects the driving capability of an applicant.

The Petitioner further drew support from UN Multilateral Road Traffic Convention, 1952, UN Convention on Road Traffic, 1968, UN Convention on the rights of persons with disabilities ratified by India in 2007. The petitioner argued that a person with international driving license can drive in India even if he is deaf, which creates a situation against the ones with hearing impairment applying for driving license in India. The petitioner further bolstered his argument through studies which have found that due to the benefit of not undergoing auditory distractions, people with hearing impairment make safer drivers of motor vehicles than the others. In a survey by International Association Traffic and Safety Science in countries like Japan, the United States of America, Great Britain, Australia, and France have allowed to get a car driving license unless they suffer from another disability. It also can be seen that additional equipment were affixed to ensure safety standards.

Respondent's Argument

The Respondent submitted the Central Motor Vehicles Rule- Technical Standing Committee's 21st Meeting (2007) minutes Jan- Mar 2020

that on several grounds decided not to recommend the person with hearing impairment to drive motor vehicles in India. Ministry of Road Transport and Highways also subscribed to the recommendation made by the committee. Respondent further submitted that the International Conventions which have been pressed into service were not applicable to the Indian Conditions and have been considered by an expert body only to conclude that they don't have much relevance with domestic traffic condition. It is unfair to draw comparisons with Indian Traffic Condition and that of developed nations. The respondent further argued the Motor Vehicles Act, 1988 if appropriately scrutinised, would reveal that there exists no absolute prohibition but lay certain conditions which are essential for safe driving.

The Court Observations

The Court took a note on all the arguments of the Petitioner and Respondent and the relevant statutes, rules, committee minutes and conventions.

The Court specifically read the provisions from the Central Motor Vehicles Act, 1988 w.r.t. Necessity for driving licence, Age limit in connection with driving of motor vehicles, Restrictions on the granting of learner's licences for certain vehicles,

Grant of learner's licence, Grant of driving licence further the court made specific reference to the rules under Motor Vehicles Rules, 1989 Medical certificate, Application for learner's licence, Application for a driving licence, Driving test and Form 1A. For sake of brevity same is not reproduced under this case comment.

By reading into the above provisions and rules the Court came to the opinion that there exist two kinds of licenses: (i) learners and (ii) driving license. While if an individual applies for non-transport learner's license the filling of medical certificate is not necessary. The applicant must act in accordance with Rule 11, 14, and fulfil rule 15 conditions to obtain learner or driving license. In the light of aforementioned provisions the Court took note of the the minutes of the meeting of the Ministry of Road Transport and Highways held on 9.12.2009 that:-

“(i) Indian roads have far more hazards than in those countries which have been referred to in the petition. This is evident from the fact that there is highest number of road facilities worldwide occurring due to road crash in India. Indian roads have dense vehicle population.

The pattern of driving is also mix. Besides, there is also lack of traffic discipline. While using the roads, it is predominantly required to give audio signal to the vehicles around to caution other drivers or for giving way. Such situations are not seen in developed countries.

(ii) Use of rear view mirror may not be a full proof solution because vehicles often are not fitted with such mirrors on both sides. Even if they are fitted on the vehicle, the users often fold them back.

(iii) In case of hilly roads, it is mandatory to blow horn on the sharp as well as blind corners. The driver would be in a dangerous position if he is unable to hear the audio signal.

(iv) While driving the vehicle, inside noise, such as running of engine, tyre noise etc. is an indicator for the health and safety of the vehicle. The deaf person will be in an unsafe situation because he will not be able together these signals.

(v) Luxury vehicles are often fitted with audio systems. Loud music inside the vehicle may pose unsafe situation but purely by the choice of the driver and

hence, cannot be made a ground for allowing deaf persons to drive.

(vi) The UN Convention on Rights of Persons with Disabilities does not qualify the extent of deafness.

(vii) In developed countries, there is a system for imparting training to deaf people in order to obtain driving licence. There is no such system prevalent in the country.

(viii) International Driving Permit is valid for one year only and thereafter even a foreign national is required to obtain the driving licence afresh as per the existing rules and regulations in the country. Thus, analogy given in this regard between the foreign national and Indian national is not correct.

(ix) Every year a large number of accidents took place in the country involving motor vehicles on roads. Many of them prove to be fatal. During the year 2007 alone, there were around 4.8 lakhs road accidents which killed around 1.15 lakh people and injured more than 5 lakhs person in India. While the Government has been making all efforts to bring down the rate of accidents substantially, it cannot afford to take the risk of endangering the

lives of deaf drivers as well as other road users.

Keeping in view of the above, the Committee did not recommend that deaf persons be allowed to drive motor vehicles in the country. The Committee, however, reiterated its earlier recommendations to endorse the views of health experts which was as follows:

-Hearing levels upto 60 db with use of hearing aid in better ear may be permitted for issue of driving licence for private vehicle and hearing level upto 40 db with hearing aid in better ear may be permitted for issue of driving licence for commercial vehicle. Persons suffering with severe and persistent vertigo should not be issued a driving licence.”

In the light of these observation the Court came to the opinion that persons who have hearing

level upto 60 db with use of hearing aid in better ear may be permitted for issue of driving licence for private vehicle and hearing level upto 40 db with hearing aid in better ear may be permitted for issue of driving licence for commercial vehicle. Court rejected the the argument of the Petitioner, that if the persons with total deaf aren't permitted to hold driving

license it would lead to defeat the purpose of Person with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1955 as it was a statute passed by the legislature to give effect to Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Regions (1992). The court looked into the provisions therein w.r.t. disability, hearing impairment, and how government should identify posts to reserve for persons with disability and how much post must be reserved. Hence it is apparent that the issuance of driving license stands on a different footing than reservation and education.

The Court keeping in view of the above position opined that by this committee minutes which is to be considered as a policy for the issue raised in the Writ Petition and does define certain criteria which needs to be fulfilled for issuance of driving license. It is not an arbitrary denial as one needs to look at the ground realities before incorporating or borrowing laws and practice from a third nation. Keeping all in mind if the Petitioner's writ is allowed then the objective of the legislation would be defeated.

The Court did take note of the Petitioner's Arguments on the capacity of certain person suffering from total deafness and there is prevalent practice in many countries where totally deaf may be granted driving license but keeping in view with the Policy decision and Indian context it is for the larger interest the writ petition is not justified. However, if an applicant is totally deaf and applies for learner's license without medical certificate then he must be called for test under rule 11 and if he clears then must be given Learner's License as per the statute and if he clears the subsequent test for driving license he must be granted one.

Reviewer's Comment

In my opinion the court did consider the arguments of both the petitioner and respondent. Only after taking due consideration of the International Convention, Practice around the world read along with the Motor Vehicles Act, Motor Vehicles Rules, and Person with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act it came to the conclusion which is indeed progressive. The Court correctly, did not out-rightly rule out the possibility of grant of driving license to the people with hearing impairment rather laid down that provided the conditions being met in

accordance with the Motor Vehicles Statutes.

The Court further observed correctly that although there does exist a practice in many foreign nations which provides for driving license to the hearing impairment but it would unfair to draw comparison with the developed nations and the infrastructural facility with the nation like India. Giving effect to International Convention for all practical purpose may not be feasible by all nations because economically and socially there do exist a stark difference. Indian Roads and traffic situation is at present is not prepared to provide to cater to people with total hearing disability keeping in view with the minimum safety standards.



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