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UNIT-I

A) RELATION BETWEEN LAW AND SOCIETY:

Law and society are related to each other. Nothing can explain without any of them. Society becomes the jungle without the law. Law also needs to be changed according to the changes the society faces, because without the necessary changes law cannot keep pace with society. Without the control of the law, the society became the jungle or at least barbaric. So, to keep the society peaceful, we need to create a harmonious relationship between law and society.

We can take an example of our country, where everyday we watch so many crimes. But due to lack of evidence the criminal is set free or there are too little penalty, that law breakers did not care about it. Just the example we can see few cases of eve teasing.

What is Law:

Law is the command of the Sovereign. Law must flow from a determinate person or group of persons with the threat of displeasure, if it is not obeyed. As we know, Sovereignty is a only part of the state. So, we can say that Law is used to denote rules of conduct emanated from and enforced by the state.

According to Holland, Law is ña rule of external human action enforced by the sovereign political authority.ò

According to Salmon, ñLaw is the body of principles recognized and applied by the State in the administration of justiceò

According to Woodrow Wilson, ñLaw is that portion of the established habit and thought of mankind which has gained distinct and formal recognition in the shape of uniform rules backed by the authority and power of the government.ò

According to Anson,ò The objects of Law is Order, and the result of Order is that men are enables to look ahead with some sort of security as to the future. Although human action cannot be reduced to the uniformities of nature, men endeavoured to reproduce by Law something approaching to this uniformity.ò

So we can say that law must have three characteristics which are given below:

Law has its sovereign authority,

Law is accompanied by sanctions,

The command of law should compel a course of conduct. Being a command the law must flow from a determinate person or group of persons with the threat of displeasure, if it is not obeyed.

WHAT IS SOCIETY?

A community or a group of persons, living in any region, who are united by some common bond, is known as society. A society is a group of people related to each other through persistent relations such as social status, roles and social networks. They also share the same geographical territory and subject to the same political authority and dominant cultural expectations. Common bond is some kind of uniformity of factors like nature of the people, habit, custom, beliefs, culture, etc. This common bond helps the members of the society to form the rules of social behaviour. The punishment of disobeying the social rules is come from in the form of social disapproval. The punishments are generally excommunication or ostracism.

RELATIONSHIP BETWEEN LAW AND SOCIETY:

Theorists have traditionally maintained that there are certain broad on the substantive criminal law. One set of such constraints concerns the sorts of behaviour that may legitimately be prohibited. Is it proper, for example, to criminalize a certain kind of action on the grounds that most people in oneôs society regard it as immoral? The other set of constraints which concern what is needed in order to establish criminal responsibility that is liability, independently of the content of the particular statute whose violation is in question.

Legal system reflects all the energy of life within in any society. Law has the complex vitality of a living organism. We can say that law is a social science characterized by movement and adaptation. Rules are neither created nor applied in a vacuum, on the other hand they created and used time and again for a purpose. Rules are intended to move us in a certain direction that we assume is good, or prohibit movement in direction that we believe is bad.

The social rules are made by the members of the society. Disobedience of the social rules is followed by punishment of social disapproval. There is no positive penalty associated with the violation of rules except excommunication or ostracism. On the other hand, Law is enforced by the state. The objective of law is to bring order in the society so the members of society can progress and develop with some sort of security regarding the future.

The state makes laws. Disobedience of state laws cause penalty, which is enforced by the Government by the power of the state. Which is not enforceable is not Law.

CHANGE OF LAW AND CHANGE OF SOCIAL ROLES:

The legal system of a country reflects the rules of society. If there is a change social rules then we can say that a change in social law just occurs. Law can be changed due to social condition of any country. Many people know the revolution 1990 of Bangladesh, which is take place due to political unrest of the country. When Bangladesh Nationalist Party forms the government they change the law and under the new law lead to the parliamentary democracy in the country.

Recently acid violence, eve teasing, domestic violence took place due insufficient laws. The penalty of eve teasing is light that many people did not take the penalty seriously. The penalty of eve teasing is given in Article 76 of the Dhaka Metropolitan Police Ordinance 1976 and Article 509 of the Penal Code of 1860 affirm that any acts, conducts, or verbal abuses that are used to disgrace women are punishable by law. Article number 10(2) of the Prevention of Women and Children Repression Act 2000 mildly addressed eve-teasing. However, that section of the law was eliminated in 2003, through amendment and justified it on the ground of manipulation of the law. In its place, a new provision has been added under Article 9 of the present law that says that if a woman is forced to commit suicide as a direct consequence of somebody's willfuldishonor/sexual harassment/assault, then the guilty person will be liable to a maximum of ten years and a minimum of five years of imprisonment. This law is so light in terms of death of a innocent girl. The criminal dare breach the law this no strong law, if the law is death penalty, to force a suicide then criminal would think twice to breach law.

As we know, the acid violence is major problem I our country. Few years ago it becomes like epidemic. Now acid violence is go down due to the strong law which is death penalty. Section 4 of the Acid Crime Act, 2002 prescribes death penalty or rigorous imprisonment for life including fine taka not more than one lakh if any body causes death or makes an attempt to cause death to any child or woman by using any burning substance, e.g., acid. The law also states that, import, production, storage, sale or usage of acid without a license is a punishable offence. But the mechanisms prevalent to regulate importation, preparation and sale of the acid used in these attacks are inadequate. However, the Acid control Act, 2002, provides for

the formation of a national council to control the selling use, production, import, transportation and storing of acid.

The law is hard that everyone obey the law regarding the acid violence which causes less acid related crime. Every person loves their own life.

SOME RECENT INTRESTING EXAMPLES OF LAW INFLUENCING SOCIETY:

In early January this year, police found 13-year-old NashfiaAkandPinky, a class nine student, hanging from a ceiling fan in the city's West Agargaon area. According to her parents, 35-year-old Murad, a driver by profession, would harass Pinky on a regular basis in the streets. Fifteen days before Pinky killed herself, Murad's mother along with his grandmother had gone to Pinky's house with a marriage proposal on Murad's behalf. Pinky's parents had, obviously, declined the proposal. Murad and his family are currently absconding.

Eighteen-year-old ReshmaKhatun, a class 12 student of Salpa Technical School, took pesticides and killed herself on March 7, 2010 in Shanti Nagar village at the Sherpurupazila. She would be harassed on her way to school by her neighbour 24-year-old Munaf and his friend Robin. For a long time, Reshma had to stay silent while enduring the mental torture every day before she decided to end her life. The perpetrator in this case is also absconding.

On March 20, 2010, 15-year-old Chand Moni committed suicide by hanging herself from a ceiling fan at her house in Kishoreganj. A student of class 9 at the Azimuddin High School, Chand Moni used to be harassed on her way to school by 20-year-old Alam and his friends 21-year-old AbdurRahman, 20-year-old Saddam Hossain and 23-year-old Russel Mia. Alam's mother and aunts would also pressurise Moni's parents to marry their underage daughter off to Alam, to which the parents would always decline. A few days before killing herself, Alam and his accomplices had barged into Moni's house and threatened to kidnap Moni if the parents had rejected his proposal. So, little Moni decides to end her then marry Alam. After the incidents, Alam and his family are absconding.

Fourteen-year-old UmmeKulsumElora ended her life on April 3, 2010, by taking pesticides in her house in Madhya Nandipara. A class eight student of DakkhinBanasri Model High School in the capital, Eldora had been harassed by 19-year-old RezaulKarim and his friends for over a year. Elora ended her life by swallowing pesticides in their house at around 3:00pm. In the primary interrogation, Rezaul claimed that he had a relationship with Elora. However, when Elora was alive, Rezaul and his friends would often disturb her over the phone. Elora would go to school in a van with other children. But as the harassment got intolerable, Elora's mother Halima would take her daughter to school herself for over a month and a half. Her mother says that her husband Amin Mollah and herself had even taken the issue up with Rizalôs parents, but that does not solve the problem and in the end Elora ended her life by swallowing pesticides.

The wrongdoer set free because there is no strong law against the eve teasing. The law against eve teasing in Bangladesh is given in Article 76 of the Dhaka Metropolitan Police Ordinance 1976 and Article 509 of the Penal Code of 1860 affirm that any acts, conducts, or verbal abuses that are used to disgrace women are punishable by law. Article number 10(2) of the Prevention of Women and Children Repression Act 2000 mildly addressed eve-teasing. However, that section of the law was eliminated in 2003, through amendment and justified it on the ground of manipulation of the law. In its place, a new provision has been added under Article 9 of the present law that says that if a woman is forced to commit suicide as a direct consequence of somebody's willfuldishonor/sexual harassment/assault, then the guilty person will be liable to a maximum of ten years and a minimum of five years of imprisonment. But this is not strong law, because the girl who committed suicide because of teasing then it is just like a murder. It cannot be stopped unless strong law is passed and implemented.

CONCLUSION:

Legal system reflects all the energy of life within in any society. Law has the complex vitality of a living organism. We can say that law is a social science characterized by movement and adaptation. Rules are neither created nor applied in a vacuum, on the other hand they created and used time and again for a purpose. Rules are intended to move us in a certain direction that we assume is good, or prohibit movement in direction that we believe is bad. So, we can say that rules had to be change according to the roles of the society. Law also reflects the society. Such as, in Saudi Arabia law are based on Quran and Sunnah. In Bangladesh property act, marriage act and many other act based on the Quran and Sunnah. Also when emergency arise, then according to the social condition the law is also changed by the Government. So, we can say that, the relationship between law and society are interrelated.[1]

b) **CUSTOMARY LAW SOME CASE STUDIES**

Custom is recognized as a major source of law under the Indian legal system. Article 13(1) of Indiaôs Constitution provides that when the Constitution entered into force, all previous laws that were inconsistent with the Constitution were considered void. The Constitution defines ñlawò to include ñ custom or usage having in the territory of India the force of law.ò The Courts of India have recognized custom as law only if the custom is (1) ñancient or immemorialò in origin, (2) ñreasonable in nature and continuous in use,ò and (3) ñcertain.ò The Courts have interpreted ñancient or immemorialò to mean that for a custom to be binding it ñmust derive its force from the fact that by long usage it has obtained the force of law.ò A custom also ñderives its validity from being reasonable at inception and present exercise.ò Lastly, a ñcertainò custom is one that is ñcertain in its extent and mode of operationò and invariable.

[1] http://www.lawteacher.net/educational-law/essays/discuss-the-relationship-between-law-law-essays.php

Indiaôs Constitution also provides protection of tribal indigenous communities and their customs through Articles 244, 244-A, 371-A, and the Fifth and Sixth Schedules. The Fifth and Sixth Schedules provide for a system of ñScheduled Areasò or tribal regions, which are designed to protect the interests of listed indigenous communities or ñScheduled Tribes.ò

The Fifth Schedule provides for the administration of scheduled areas and scheduled tribes in the states outside the northeastern areas of India. The Sixth Schedule contains provisions for the administration of tribal areas in the northeastern states of India and grants tribes considerable administrative autonomy, endowing each regional administrative unit with its own regional council, and each district level unit with local district councils. Autonomous councils are invested with both executive and legislative powers, subject to the approval of the provincial governor, to ñmake laws with respect to a variety of subjects,ò and even exercise ñjudicial authority through traditional legal systems embedded with certain features of federal law.ò

Under the Fifth Schedule, on the other hand, tribal affairs are administered by the provincial government.

It was only with the enactment of the Panchayat (Extension to Scheduled Areas) Act, 1996, that tribal communities were granted a limited level of local governance at the village level and that certain ñpolitical, administrative and fiscal powersò were devolved to local village assemblies or panchayat.

In addition, other laws are in force to protect the customary rights of tribal communities. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006ñprovides for the recognition, vesting and securing of individual and community tenure rights to all forest dwelling Scheduled Tribes and Traditional Forest Dwellers on all forest lands.ò

Role Played by Custom in Hindu Personal Status Law

Custom plays a significant part in Hindu law and is accepted as part of the Indian legal system. A variety of Hindu tribal customs concerning personal status and inheritance are also recognized despite the codification efforts of the central government. Section 2(2) of the Hindu Marriage Act and the Hindu Succession Act have left the door open for the recognition of tribal customary laws and practices of ñScheduled Tribes.ò

Customary Hindu practices in marriage and divorce that are outside the traditional norm are also recognized under Indian law. Traditional Hindu law recognizes eight forms of marriage, of which threeð Brahma, Asura, and Gandharbað are the most prevalent. However, a marriage in a form ñwhich is out of practice or obsolete is not necessarily prohibited by Hindu law.òAccording to advocate D. H. Chaudari,

[i]n a vast country like India, with so many castes living in so many different places, multifarious forms of marriage allowed by custom have come into existence. These customary forms of marriage may be perfectly valid even though they do not strictly come within the definitions of any of the eight forms.

According to Hindu law, ceremonies ñof some sort are absolutely essential.ò For example, ñ[c]ourts have attached great importance to the performance of Saptapathi or the ceremony of seven steps which is considered to be the most important of ceremonies.ò

However, it should be noted that the performance of ceremonies other than those referred to above are recognized by the Indian Courts where the ceremonies are allowed by the custom of the community or caste to which the parties belong.

Divorce is not recognized by general Hindu law. Traditionally marriage, from the Hindu legal standpoint, ñcreates an indissoluble tie between the husband and the wife. Neither party, therefore, to a marriage can divorce the other unless divorce is allowed by custom.ò The Hindu Marriage Act modified this position, however, creating nine grounds for both husband and wife to claim divorce, and some additional grounds available to the wife alone. According to section 29 of the Hindu Marriage Act, dissolution of a Hindu marriage can also be obtained through a valid custom

c) ROLE OF COURTS AND LAWYERS AS SOCIAL ENGEENIERS

INTRODUCTION:

Man is a social animal and needs a society for his leaving, working and enjoying life . A group of individual forms a society. Society has become an essential condition for human life to develop his or her personality. Therefore society and human life always go together . Every human being has also born with some desires and expectations which are inherent in nature. From childhood to till old age, every human being expects that his or her desire is to be fulfilled for which their arise conflict of desires or claims which comes under the term - interestô. It is impossible to fulfil all the desires of a human being. So to fulfil the desires of maximum human being for the welfare of society the concept of Social Engineering was emerged and which was coined by Roscoe Pound . The force which asks for the adoption of Social engineering is nothing but the conflict of interests of individuals. Interests more particularly the conflicting interest are the subject of Social Engineering. Social engineering is based on the notion that Laws are used as a means to shape society and regulate peopleôs behaviour. It is an attempt to control the human conduct through the help of Law . According

to Pound, -Law is social engineering which means a balance between the competing interests in societyô, in which applied science are used for resolving individual and social problems. For this purpose this paper is going to discuss about the mechanism of Law in bringing Social Engineering. This paper is divided into three parts. Part II will discuss about the object of the paper. Part III will give suggestions and conclusion.

Conflict of interest and the order of priority ï To which interest importance will be given so that balancing of interest, can be achieved for the benefit of society by sacrificing other interest and how law helps in bringing social engineering. The object of the paper is to find out how Law helps in harmonizing conflict of interests. According to Pound, Law is Social Engineering. He says that -like an engineerôs formulae, laws represent experience, scientific formulations of experience and logical developments of the formulations, also inventive skill in conceiving new devices and formulating their requirements by means of a developed technique- . He called this theory as -Theory of Social Engineeringô. Here Pound has used two words i.e. -Socialô means group of individual forming a society. The second word is -Engineeringô which means applied science carried out by engineers to produce finished products which are necessary for the society and which fulfil all their needs. By combining these two words he tries to say about engineers and what they do. They use the formula which is based on continuous experimentation and experience to get the finished product by means of an instrument or device. Therefore Pound represents -experience with lawô, -instrument with organs of government, -engineers with judge and lawyerô and -finished product with the wants of human beingsô and -society with a factoryô. He says that like engineers, the lawyer should apply law in a court room so that the desires of the people are fulfilled. Therefore he calls law as Social Engineering and says that the aim of Social Engineering is to build as efficient a structure of society as possible which requires the satisfaction of wants with the minimum of friction and waste. It means Law should work for balancing of competing interest within the society for the greatest benefit. In a society everybody is motivated by their own interest and wants that preference be given to his or her interest over the other. Conflicts between interests arise because of the competition of the individuals with each other, with the public in order to satisfy human wants. Therefore it is needed to recognise the interest to which law should take account. For this purpose a legal system has to i.Recognize certain interest

ii.Define the limits within which such interest are to be legally recognized and given effect to it.

iii.And finally the above interest should be secured. Suppose I want to stand first in the exam. It is my desire.

But this desire cannot be fulfilled because there is no legal recognition as there is no stateôs interest in standing first position. Therefore law has to take into account the desires which need recognition. For the purpose of satisfying human interests, Pound defined interest as - claims or wants or desires which men assert de facto about which the law must do something if organised societies are to endureô . Pound classified various interests which are to be protected by the law under three categorise which are the following:

1**. INDIVIDUAL INTERESTS**: These are claims or demands involved from the stand point of the individual life which consists of interest of personality, interest in domestic relations and interest of substance.

2. **PUBLIC INTEREST**: These are the claims or desires asserted by the individual from the stand point of political life which means every individual in a society has a responsibility towards each other and to make the use of things which are open to public use.

3**. SOCIAL INTEREST**: These are the claims or demands in terms of social life which means to fulfil all the needs of a society as a whole for the proper functioning and maintenance of it. It is found that there is overlapping of interest between Public and Social Interest because both are same. Pound is silent about the overlapping of interest and discussed the problem of interests in terms of balancing of Individual Interest and Social Interest. He has classified the interest into three categories but talks about the balancing of only Individual and Social Interest. It is also found that interests are the subjects on whom law has to apply social engineering. How to evaluate the conflicting interests in due order to priority? What are the guidelines on the basis of which social engineering should be carried out? Poundôs answer by saying that every society is based on basic assumptions which help in ordering of interest. One interest is of more value than that of other and the object of law should be to satisfy the interest which is in the benefit of the maximum people. Thus these assumptions are identified as jural postulates which are based on hypothesis. According to Pound, jural postulates are not the absolute one and they keep on changing as the needs of the situation, place and time demands. In 1919, Pound summarised the postulates which every individual in civilised society must be able to take it for granted that:I. Others will not commit any intentional aggressions upon him. E.g. Assault, battery, wrongful restraint etc.

ii.Others will act with due care and will not cast upon him an unreasonable risk of injury. E.g. Negligence

iii.He can appropriate what he has created by his own labour and what he has acquired under existing economic order for his own use. E.g. agricultural land and usufruct as property.

iv.The people with whom he deals with in the general intercourse of society will act in good faith. E.g. Defamation v.He must keep the things within his boundary and should look after those things so that their escape should not harm others. E.g. Ryland vs. Fletcher case In 1942, Pound added three new postulates in the list which are

i.A person will have security as a job holder. E.g. ruled by labour law, law of contract ii.Society will bear the burden of supporting him when he becomes aged. E.g. 1/3rd concession in railway ticket, ceiling of income tax range is more. iii.And the society as a whole will bear the risk of unforeseen misfortunes such as disablement. E.g. reservation quota for physically disabled person in education, travel etc. The jural postulates are to be applied both by the legislators and judiciary for evaluating and balancing the various interests and harmonizing them. Somehow Pound has told about the procedure of evaluating interests. But he has not said anything about the interest which will be given more priority over other. Whether balance between Individual and Social Interest can be achieved or not? According to Pound, balance of competing interest means satisfaction of maximum interests with less friction and waste. It means to reconcile and adjust the social and individual interest. But in practice two interests cannot be balanced. It is also found that Pound has not given much detailed attention to the way one conflicting interest is to be compared with another. Balance can only be done only when two things are able to be compared. Here, the -balancingô metaphor is misleading. If two interests are to be balanced, that presupposes some scale or yardstick to measure and two things should be able for comparison. For balancing of anything, mathematical calculation or ratio is the outcome. For e.g. in case of ecological balance, the amount of CO2 in terms of % is to be balanced with O2 which means reduction of CO2 by afforestation or increasing the level of O2 by afforestation so that ecological balance can be attained. Therefore balance means to upgrade one thing at par with other so that neither of the two things loses anything. As per Poundôs theory, there is a clause relating to the protection of natural environment coming under social interest. There is no doubt that every society wants a healthy environment and the factory producing nuisances and pollution needs to be closed. It is in the interest of whole public for which factory is closed and the maximum satisfaction of people is achieved. But the owner of the factory having Individual Interest suffers a lot. In this circumstance, though maximum interest of the people is satisfied with least sacrifice of individual interest of the owner but balance between Individual and Social Interest has not been achieved because one has to suffer and other has to gain. When there is a matrimonial dispute between a husband and wife and wife gets a divorce decree against her husband, in this case interest of wife prevails over the husband and balance of two Individual Interests is not there because husband has to give maintenance to wife and children for which the husband suffers a lots. Exception is in case of Divorce by Mutual Consent in which both husband and wife are satisfied with divorce decree and their individual interests are fulfilled. By above discussion it is opined that conflicting interests can be satisfied by reconciliation and adjustment and the word balance is not the appropriate one for conflicting interest. How does the satisfaction of the maximum of wants with the minimum of friction and waste can be done? Pounds theory asks for the maximum gain with least friction and waste i.e. maximum satisfaction of human wants or expectations with least sacrifice. Here Pound wants to bring social control in the society. According to him social control means satisfaction of the maximum of wants of the human being in a society. Pound says that for

social control, interest is the only thing which should be taken into account and Law is a means of social control. Thus law should work for balancing of interest within the society i.e. satisfying maximum interest with least waste. Somehow this theory gives prime importance to interest of public at large over individual interest and if interpreted strictly then they may result in eliminating individual interest. Here law is not supposed to deal with individual interest but bunch of interest. The tool is given in the hands of law to set them at their right position for the maximum outcome. It is true that law and order plays an important role in a society. Law and order are carried out by the Judiciary and they keep on harmonising the conflicting interests of the individual and the public through the process of social engineering. It has been witnessed through the action of Supreme Court in Vellore Citizenôs Welfare Forum Vs. The Union of India in which **Kuldip Singh J.** delivered the judgment that -even if the industries are of vital importance for the countries progress as they provides employment but having regard to the pollution caused by him, the principle of -sustainable developmentô has to be adopted as a balancing concept between ecology and development- . In this case the two principles emerged i.e. -precautionary principleô and the -Polluter Paysô principle. In a land mark case of Union Carbide Corporation vs. Union of India , the Supreme Court laid down the rule of Absolute Liability in which it was held that -where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous activity, then the enterprise involved is strictly and absolutely liable to compensate to all those who are affected by the accident- . In this case regarding the compensation the Court said that the measure of compensation must be correlated to the magnitude and capacity of the enterprise because such compensation has a deterrent effect for future accident.

After this case, Central government passed an Act known as -**The Bhopal Gas Leak Disaster (Registration and Processing of Claims) Act, 1985**Nj which sec.5 of this Act says about the categorization and registration of claims . The various claims of the each individual relating to their own body, property and the claims arising from damage to flora and fauna were registered. Under sec11 of this Act, the quantum of compensation payable to the claimants was decided.

From this judgment it can be said that law gives first priority to social interest over individual interest of substance i.e. in conserving natural resources and in the protection of natural environment which is required by the whole public against the private individual who is the owner of the enterprise. Finally the maximum claims of the people were satisfied with least sacrifice of individual interest. By this act it can be seen that how various claims were categorized and compensation were given, which ultimately says that law is an instrument of social change.

In Deepa vs. S.I of Police It was held that the interest of society should be given paramount consideration over the individual interest of those who are running the show for profit and

who are also earning livelihood by performing the cabaret dance in a hotel . It was a situation where the whole public says that the dance was obscene in the eyes of onlookers, which is an offence u/s 294 of IPC 1860. Hence it is found that Social Interest prevails over the Individual Interest. But this is not true in many cases. Social Engineering deals with as many satisfactions of human wants which means law should play an important role in bringing social change by fulfilling the interest of the society as a whole. There are also instances where individual interest has priority over social interest. According to Sec122 of Evidence Act 1872, marital communication between husband and wife which is an individual interest in domestic relation are privileged . Then Social Interest can be fulfilled by securing privilege communication (matrimonial communication) in which individual interest in connection with domestic relation is first privileged and which in turn secure the social institution of marriages.

Law has given preference to the interest of backward classes through reservation in government jobs, educational institutions, which not only hampers the interest of eligible candidate but also it hampers the interest of the public at large. By this type of law general people cannot tell that this reservation policy which comes under constitutional law is a bad law for them. Sometimes bad law becomes good law. Here Law helps in social engineering by giving special protection to the minority class having individual interests over social interests so that there can be ultimate social progress by bringing the minority class equally to the standard of upper class.

CONCLUSION: By analysing this paper it is concluded that, Law plays an important role in reconciling and adjusting conflict of interests. Both the Social Interest and Individual Interest prevail over each other. Priority is given to both the interests. Roscoe Pound has given the concept of Social Engineering for the American Society but this concept is followed by other countries in resolving disputes. India has also followed the same concept in establishing a welfare society. Both Judiciary and Legislators play an important role in enacting the statutes which fulfil the various desires of human being. In this techsavvy society desires of human being grows and to fulfil their desires new policies, strategy has been developed.

The first principle to observe is that the wisdom of the law must be accepted. A little incursion into law-making interstitially, as Holmes put it, may be permissible. For other cases the attention of Parliament and/or Government can be drawn to the flaw.ò

The traditional role of the Judge has been envisaged as that of an impartial arbiter who hears the forensic debate before him and renders judgment without ever stepping into the arena of debate. Lately, however, it has become fashionable for Judges to jump into the fray and actively participate in the debate by supporting one side or the other and this process masquerades under the felicitous name ñjudicial activismò. In the name of judicial activism, modern day Judges in India have abandoned the traditional role of a neutral referee and have increasingly resorted to tipping the scales of justice in the name of ñdistributive justiceò. The

legitimacy of such actions needs critical appraisement at the hands of the legal fraternity, even at the risk of unpopularity by swimming against the tide.

The term ñjudicial activismò came into currency sometime in the twentieth century to describe the act of judicial legislation i.e. Judges making positive law. Although, the underlying debate on judicial activism has been around since the days of Blackstone and Bentham, the credit belongs to a non-lawyer Arthur Schlesinger Jr., for popularising the term ñjudicial activismò. His 1947 article in *Fortune*started the modern debate. It brought into focus the dichotomy observed in the judicial process: unelected Judges *versus* democratically *elected* legislatures; result-oriented judging *versus* principled decision-making; observance *versus* side-stepping of precedents; law*versus* politics and so on. On the basis of their judicial philosophies, Schlesinger characterised some Judges of the US Supreme Court as ñjudicial activistsò, some as ñchampions of self-restraintò and others as comprising the middle group. Scholars of law, practitioners as well as the general public have debated, often fractiously, the correctness or otherwise of this kind of judicial activity, some advocating John Austinôs deference to restraint and others Justice Benjamin Cardozoôs views which tended towards activism.

In India, although the activism *versus* restraint debate existed even in the pre-Constitution period, it did not vigorously take-off till the 1970s when the Supreme Court of India itself became very activist. However, the underlying philosophical issue of the relationship between means and ends has been long debated in Indian philosophy. In recent times, it was Mahatma Gandhi who advocated that the means used for achieving a particular result must also be as acceptable as the result itself. As we shall see, the saga of judicial decision-making by the highest court in India indicates that judicial activism or the mere pursuit of ends without regard to the means has become the dominant approach in judicial thinking.

With this background, it becomes necessary for the Judge to ask, like Hamlet, whether it is nobler in the mind to remain impervious to the dominant discourse around, or to trim the sails of his thinking to the winds blowing around. This is a question of great moment, which must haunt any conscientious Judge. Tradition and good sense demand that, irrespective of the political debate around, the Judge maintains a neutral stance in his decision-making, being guided only by accepted legal principles and the dictates of his conscience. The Judge being human, the social ambience in which he operates is likely to affect his judgment, but the extent to which he disallows this to happen determines his mettle. This is the theme that I propose to explore in this lecture.

II. The Fault Lines in the Debate the discourse of judicial restraint and judicial activism leads to discernment of distinct fault lines that may lead to volcanic upheavals if not repaired in good time. These fault lines can be examined under distinct heads as discussed hereinafter.

A. The relationship between "proper" judicial review and "improper" judicial activism

(*i*) *Improper exercise of the power of judicial review*

The judicial branch is invested with the power of being the final arbiter of constitutional disputes under many democratic Constitutions. India, which has modelled its Constitution, to some extent, on the US Constitution, falls in this category. One of the fundamental features of such a constitutional set-up is the judicial power to invalidate legislation on the ground of infringement of the constitutional parameters such as legislative incompetence, violation of guaranteed fundamental rights, inconsistency with an express provision or basic feature of the Constitution, etc. The power of judicial review is an exception to the principle of separation of powers, which demarcates distinct areas for the different constitutional organs to exercise their powers. The power of judicial review postulates that, in the event of a dispute as to whether the legislature or the executive has overstepped its constitutional bounds, the judiciary shall decide the dispute by application of well-established constitutional doctrines and principles of interpretation. Although the doctrine of separation of powers is not watertight or immutable, judicial interpretation must not reduce it to a nullity. Indeed, in some areas, our Constitution-framers have created evident and unambiguous barriers against judicial intervention in legislative or executive domains, but even these have been breached by the courts eager to assert their authority.

Indeed, nothing can be headier than the power to invalidate another constitutional organôs action. Such great power must of necessity bring in its wake great responsibility. The problem with judicial activism is its proclivity for excessive and legally improper use of this very great power to invalidate arguably lawful and proper legislative or executive actions. In fact, history abounds with instances where overactive Judges have jettisoned well-established principles to produce incongruous results, which they honestly thought were necessary, even if democratically elected legislatures or executive thought otherwise. I now propose to examine some of these instances in the US, India and the UK.

During the period of the Great Depression in the 1930s in the US, the US Supreme Court invalidated a series of legislative measures taken by the Government under the so-called ñNew Dealò program. These legislations were intended to directly address the problems arising from the Great Depression by generating employment, obligating minimum wages, safe working conditions and other social welfare measures. However, these legislations were struck down by a majority of the Judges on the premise that they interfered with the doctrine of freedom of contract and were, therefore, contrary to the then current philosophy of *laissez faire*. The activism of the Judges in striking down such obviously valid legislation contributed to the elongation of the Great Depression leading to unavoidable loss of life and misery for millions of people. This judicial attitude led the US President Franklin Roosevelt to threaten to ñpackò the Supreme Court with Judges who would show restraint and accept the legislative wisdom of the ñNew Dealò. With this threat hanging over their heads and with the death or retirement of the activist Judges, the US Supreme Court eventually restrained its

activism, leading to the famous quip about the ñswitch in time that saved nineòð the nine Justices!

Judicial activism has still a darker history as seen in the infamous case of ***Dared Scott* v. *Sandford*** where the US Supreme Court virtually supported slavery by denying the power of the Federal Government to abolish this practice. The preposterous reasoning put forward by the Judges, ignoring clear provisions of law, was that black people were not citizens and could not, therefore, claim constitutional protections. Moreover, since slaves were chattels of the slave-owners, freeing them from slavery meant forfeiture of the slave-ownerôs property without compensationð something, which in the thinking of those activist Judges was unfair and unreasonable. As we shall see later as well, this sort of result-oriented jurisprudence requires embarrassing legal gymnastics from Judges.

Turning to India, I wish to point to a recent and disturbing trend of using the judiciary to second-guess unambiguously legislative or executive powers. Indeed, our Judges have succumbed to the temptation to interfere even with well-recognised executive powers such as treaty-making or foreign relations. A Delhi High Court judgment in 2002, made a treaty signed by India with another sovereign foreign State virtually inoperable, by striking down an administrative order connected with it, *inter alia*, on the ground that the Court did not like the policy being effectuated by it. One shudders to think whither this trend could leadð whether, for example, the constitutionality of a declaration of war or peace treaty signed by India could also be questioned in a court of law? If the courts were to strike down the peace treaty as being ñunconstitutionalò, would the armed forces be compelled to prosecute the war under a judicial mandamus? Indeed, the mind boggles at such eventualities, however improbable they may appear, given the new-found enthusiasm for judicial activism in areas that are inarguably ***no pasaran*for Judges**.

(*ii*) ***Improper non-exercise of the power of judicial review***

ñJudicial activismò, in my view, has both a positive and a negative aspect. It involves both exceeding the judicial sphere as well as refusing to act within the judicial sphere. Improper non-exercise of judicial review is as dangerous as improper overuse of judicial review. Judicial activism of the former variety is best seen in the infamous *ADM, Jabalpur* v. *Shiva ant Shukla,*1better known as *Habeas Corpus case,*19 where the Supreme Court bent backwards to support what was clearly improper executive action in detaining persons without just cause during the ñphoney emergencyò of the 1970s. It went to the extent of expressing its ñdiamond-bright, diamond-hard hopeò that the powers that ought to have been clipped, would not be misused. As we all know, the executive, blessed with the Supreme Courtôs judgment, did precisely the opposite, confirming Lord Actonôs declaration: ñpower tends to corrupt, absolute power corrupts absolutelyò. This judgment was not, however, totally unexpected because, in previous years, we had seen the spectre of the supersession of ñindependentò Judges in favour of more politically and ideologically ñcommittedò

ones. Often judicial independence is compromised at the altar of political or social ideology in the name of activism. Indeed, an activist Supreme Court, eager to jump into the political arena by abdicating its ñcounter-majoritarianò role as the guardian of the Constitution, almost brought our cherished ideal of a democratic republic to a standstill.

Similarly disingenuous was the judgment of the House of Lords in *Liversidge* v. *Anderson*,by which the British Government was given virtually unlimited powers to detain persons, even on entirely dubious grounds, during wartime. But, inevitably, there will be conscientious Judges who will not fall prey to such dubious arguments. Thus, Lord Atkin who was the sole dissenter (like Justice H.R. Khanna in *Habeas Corpus case*19), went on to deplore the majority Judges who according to him:

ñWhen face to face with claims involving the liberty of the subject, show themselves more executive-minded than the executive.ò

This abdication of the judicial role led one Judge to later comment that from being lions under the throne, the judgment of the House of Lords had ñreduced us to mice squeaking under a chair in the Home Officeò. Thus, we have seen that judicial activism, especially the explosive admixture of law and politics, whether exceeding or abdicating the judicial function, has a thoroughly disreputable history in many parts of the world including India.

B. "Result driven" decision-making and activist interpretations of Article 14

Activist Judges have often ignored or side-stepped binding legal precedents to arrive at preconceived results, which conform to their conception of justice. However honest and *bona fide* this exercise, its legal legitimacy is open to question, as I shall presently examine.

E.P. Royappa v. *State of T.N.* is a classic example of this kind of activism in the interpretation of Article 14 of the Constitution, which, as a matter of fact, simply deals with ñequality before the law or the equal protection of the lawsò and nothing more. The classic formulation of the ñDoctrine of reasonable classificationò in *Anwar Ali Sarkar*, reformulated in *Ram Krishna Dalmia* and in *Special Courts Bill, 1978*, *In re* held the field and became formally recognised as the touchstone for testing legislative and executive violations of Article 14. However, all of a sudden, in *E.P. Royappa*25 the Supreme Court through the concept of ñsubstantive due processò, which had been specifically rejected by the Constituent Assembly,equated the concept of ñarbitrarinessò with ñinequalityò. The Court observed:

ñNow, what is the content and reach of this great equalising principle? é We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its *activist magnitude*. Equality is a dynamic concept with many aspects and dimensions and it cannot be ócribbed, cabined and confinedô within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality

and arbitrariness are sworn enemiesé . *Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14*....ñ

From *Royappa*25 it was a merry ride through *Maneka Gandhi*, *R.D. Shetty*, *Ajay Hasia*, and a host of other cases where the Supreme Court freely struck down actions of the other coordinate branches of the Government on the basis that it was not ñreasonableò or was ñarbitraryò, a standard of judicial review, neither contemplated by the framers of the Constitution nor by the plain text of Article 14.

Indeed, there are numerous other problems with this ñNew Doctrineò as some have pejoratively dubbed it.A noted critic is Mr H.M. Seervai who in his monumental book *Constitutional Law of India* has found several faults with the ñNew Doctrineò.

At the outset, Mr Seervai argues that the New Doctrine hangs in the air, because it is propounded without reference to the terms in which the guaranteed right to ñthe equal protection of the lawsò is conferred. Indeed, by obfuscating its true meaning, the ñNew Doctrineò gives Judges the untrammelled power to strike down legislative and executive action at will with a bald observation that they are not ñreasonableò. In fact, I would submit that the standard of ñreasonabilityò is no standard at all because what is ñreasonableò or ñunreasonableò is in the eye of the beholder without reference to any objective examination. It is not the duty of the court to decide whether a certain statute was ñreasonableò or not because that is in the policy realm of Indiaôs democratically elected representatives. The courtôs only duty is to examine whether the legislature had the authority to promulgate the statute and examine whether the statute violated one of the Constitutionôs textually enumerated fundamental rights.

Secondly, the ñNew Doctrineò involves the logical fallacy of the undistributed middle or the fallacy of simple conversion.The ñNew Doctrineò purports to treat ñarbitrarinessò and ñinequalityò as the same thing. In fact, not all arbitrary actions can be termed unequal simply because some arbitrary actions are both arbitrary and unequal. If, for example, all red-haired students are expelled from a school without reason, that action is both arbitrary and unequal vis-é -vis non-red-haired students. If, however, all students irrespective of hair colour are expelled, it is simply arbitrary but not unequal. Hence, while ñarbitrarinessò and ñinequalityò are conceptually different, this fact is ignored by the activist mindset.

Thirdly, the ñNew Doctrineò fails to distinguish between the violation of equality by a law and its violation by executive action. Finally, the ñNew Doctrineò, as Mr Seervai argues, fails to analyse certain concepts like ñarbitraryò, ñlawò, ñexecutive actionò or ñdiscretionary powerò and fails to recognise the necessary implication of numerous Supreme Court decisions on classification that were arguably binding precedents and certainly settled law.

C. Judicial legislation and separation of powers

(*i*) *"Substantive due process" and Article 21*

The Supreme Court, early in its history, in a series of judgments beginning from A.K. Gopalan, V.G. Row, and others, held that the discredited US concept of "substantive due process" could have no role in the interpretation of Article 21 because it essentially involved substituting a Judge's notion of "reasonableness" with that of the legislature's.However, from Maneka Gandhi31 onwards, the Supreme Court introduced into Article 21 the concept of "substantive due process", or in other words, a standard that requires executive and legislative action to be "reasonable" or "fair"—nebulous terms that are totally at the discretion of an activist Judge to use as he pleases. Indeed, as we saw in the examples of the "New Deal" cases and the Slavery judgment in the US, "substantive due process" is a concept with a blackened history. With this in mind, the Drafting Committee of the Constitution of India was not in favour of using the expression "due process" in the text of Article 21 for they were familiar with its misuse in the US context. Accordingly, the Drafting Committee while debating the Draft Constitution of India decided that "due process of law" be substituted by "procedure established by law" similar to Article 30 of the Japanese Constitution of 1946. What the framers of the Constitution consciously avoided, judicial activism has brought in by the back door.

There are several problems with the use of ñsubstantive due processò in the interpretation of Article 21. The first is the legitimacy of creating fundamental rights through judicial interpretation. With the power of ñsubstantive due processò behind them, the courts have constantly foraged the forbidden fields by creating newer rights by treating them as flowing from the ñright to lifeò in Article 21 of the Constitution. Article 21 simply reads,

ñNo person shall be deprived of his life or personal liberty except according to procedure established by law.ò

Article 21 has verily been treated as the cornucopia from which all such newly created rights flow out. Such judicial legislation is only possible by committing violence to the plain words of the article, which, as evident, is only worded in the negative. Founding new rights on Article 21 is, to say the least, debatable. The entire Constitution, in particular Part III, has been designed to provide a framework for regulation of human society in an orderly manner by providing certain *specifically enumerated* fundamental rights. The argument in favour of judicial legislation on Article 21 is that ñnew fundamental rightsò are intricately connected with the right to life and without these ñnew fundamental rightsò life would itself become meaningless. This argument, however, has a serious flaw. In fact, if these ñnew fundamental rightsò are premised on their intricate connection with the right to life, then the whole of Part III would be redundant, by the same token, as all rights guaranteed therein by specific enumeration would also be similarly connected. In other words, if the judicial legislation argument were correct, the entire scheme of Part III could have been telescoped into only one provision, namely, Article 21!

(*ii*) *Judicial legislation and international law*

Judicial activism has even extended to wholesale importation of principles of international law, which are controversial even internationally. For example, principles like ñprecautionary principleò and ñpolluter paysò have been made a part of domestic environmental law by the judicial *dicta* in *Vellore Citizens' Welfare Forum* v. *Union of India*

ñ*15*. Even otherwise once these principles are accepted as part of the customary international law there would be no difficulty in accepting them as part of the domestic law. *It is* (sic) *almost an accepted proposition of law that the rules of customary international law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law*.ò

In fact, these principles have been the subject of much critical debate and there is no unanimity amongst scholars as to their exact content. Even the concept of ñsustainable developmentò, which the Supreme Court heavily relied upon, is an extremely nebulous concept, a fact even conceded to in the judgment itself!If that is the case, then I wonder what purpose was served by making it the fulcrum of a judgment which would obviously bind all subordinate courts in India who would then inevitably fumble when considering what was ñsustainable developmentò or how it should influence their judgments. Let me make it clear that I am not against ñsustainable developmentò as a legislative or executive policy. In fact, I am personally for it; but I am against the courts dabbling in concepts that are beyond proper legal definition.

Further, acceptance of international norms and laws is an exclusively executive function since it is closely associated with questions of national sovereignty. Moreover, even if these particular international environmental law principles are trite for incorporation into domestic law, the Supreme Courtôs judgment provides for *automatic incorporation* of *all* customary international legal principles, whatever their content or validity, into domestic law. This is clearly a judicial overkill.

Similarly, in *M.V. Elisabeth* v. *Harwan Investment and Trading (P) Ltd.* the Court felt that where statutes are silent ñit is the *duty* of the court to devise procedure by drawing analogy from other systems of law and practice ñDrawing upon this rather debatable ñdutyò, the Court read into the Merchant Shipping Act, 1958, something that was not even provided for by the said Act, but provided for in international conventions and according to the Court was a part of customary international maritime law. This was despite a *catena* of Indian precedents to the contrary. Guidance from other jurisdictions is *always* welcome, but not the wholesale incorporation of foreign principles without concern for the actual state of domestic law and the consequences of such incorporation.

D. Activism, "political questions" and the problem of justifiability

ñPolitical questionsò which were meant to be out-of-bounds for the courts have often been thrown into the laps of Judges. Instead of throwing them back, the courts have, with great enthusiasm, essayed into adjudication of such questions, often with unsatisfactory results. We need to explore first the reasons for excluding the adjudication of ñpolitical questionsò by the courts.

The ñpolitical questionsô exclusionò doctrine is best stated in *Baker* v. *Carr*, where the US Supreme Court held that certain questions were non-justiciable in a court of law when there was:

ñé a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it;ò

The recent Jharkhand Assembly dispute would probably fall under the first category because there is a constitutional provision, Article 212, entrusting the adjudication of such issues to a coordinate constitutional branch, namely, the legislature, which ideally should have been left free to deal with the question, the courts keeping aloof.

Ayodhya Reference case, where the President requested the Supreme Court to answer politically sensitive questions like: whether there existed a temple at Ayodhya before the construction of the Babri Mosque, fall in the second category, where the matter cannot be resolved by reference to ñjudicially manageable standardsò. It would have in fact required the Judges to opine on a point of archaeology rather than law, and thereby step on to a political minefield. The Supreme Court was perfectly correct in refusing to answer the reference. In fact, such questions have arisen merely on account of the failure of the executive or the legislature to resolve their own political problems and are attempts to pass the buck to the judiciary. The Supreme Court should stoutly refuse the temptation to crown itself with political thorns.

Yet, despite the dangers of entering the political Eddy stone Rocks, the philosophy of judicial activism has propelled Judges to sail into uncharted waters. Judges now seem to want to engage themselves with boundless enthusiasm in complex socio-economic issues raising myriads of facts, and ideological issues, that cannot be adjudicated by ñjudicially manageable standardsò.

In *SarlaMudgal*the Supreme Court made wide-ranging observations on the need to bring in a uniform civil code and directed the State to explain the steps it had taken towards the enactment of the same.The question of a uniform civil code is undoubtedly an issue fraught with complex political fault lines involving minority rights, personal laws, womenôs rights and so on, and the Supreme Courtôs observations not unexpectedly erupted into a major political issue. In a later case, the Supreme Court was forced to back down by explaining away its controversial observations in *Sarla Mudgal*56 as having been ñincidentally

madeò. In other cases, Judges have sought to incorporate ideologically grounded concepts such as ñHindutvaò and ñSocialismò. into their judgment with no credit whatsoever.

Judicial activism has also extended to the use of authorities with political overtones for deciding casesð a wholly improper approach. For instance, in *Shah Bano*, while the final order granting maintenance to a divorced Muslim woman is probably correct, the Supreme Courtôs approach of relying on unfamiliar non-legal sources (such as the*Holy Qur'an* itself)and making sweeping generalisations, instead of narrow legal reasoning, made the Court the target of unseemly political controversies.

It appears that the Supreme Court has slowly begun to realise the futility of entering upon policy issues, especially economic policy, and this culminated in the following observations in *BALCO Disinvestment case*:

ñ*47*. Process of disinvestment is a policy decision involving complex economic factors. The courts have consistently refrained from interfering with economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the courts would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to ótrial and errorô as long as both trial and error are bona fide and within limits of authority.ò

This attitude, presently only extending to the economic sphere, should govern all policy-related disputes that are brought to the courts. Indeed, the answers to many socio-economic and political problems lie with Parliament and in a polling booth and not in a courtroom.

E. Enforceability of activist judgments

ArunShourieôs book *Courts and Their Judgments* is a useful chronicle of the difficulties that arise when the courts attempt to do what the executive is constitutionally required to do. The concept of ñcontinuing mandamusò is an admission of the fact that controversial socio-economic issues need constant monitoring over intricate details to be sustained over a considerable period of time. Frequent resort to such orders, which the courts have neither the time nor institutional mechanism to enforce to their ultimate conclusion, eventually erodes the credibility of the judicial institution. Despite the acclaim showered on *BandhuaMuktiMorcha* orders, as pointed out in *Courts and Their Judgments*, the results came to nought.

The courts possess neither the power of the sword, nor the purse; they only have to rely upon the goodwill and respect of the two coordinate constitutional branches as that of the general public, for the enforcement of their orders. This argument should, however, not be misunderstood as recommending the pursuit of public popularity, or suggesting that Judges be moved by the hysterias of the day, for even Adolf Hitler was popular in his time. It only

means that Judges should be conscious of the limitations of the judicial function and the consequent need to remain within the judicial sphere. Indeed, the only power to enforce activist judgments is the power to punish executive or legislative functionaries for contempt of court, which gets stunted with overuse. Moreover, it is not possible for the Court to keep on exercising this contempt power to implement minute details of its orders, the consequences of some of which may not even be fully realised before their implementation.

F. Erosion of the principle of stare decisis

During the 1980s, there was a tendency to deviate from settled principles of law in the name of ñinnovative principlesò; the objective being to render ñsocial justiceò. On the other hand, Professor Roscoe Pound has stated ñLaw must be stable, yet it cannot stand still.òSimilarly, Justice Aharon Barak says, ñStability without change is degeneration. Change without stability is anarchy.ò These wise observations imply that changes in law brought about by judicial interpretation must, more often than not, be evolutionary and not be revolutionary or dramatic.As dramatically changed interpretations are error-prone and based only on expediency, it would be wiser to take one step at a time than a quantum leap, particularly into unknown regions. There may, however, be situations that call for dramatic or sudden changes in law, but exceptions must be few and far between and not easily resorted to, as *stare decisis* is yet one of the fundamentals of our legal system.

Judicial activists do not easily accept *stare decisis* as a fundamental principle and in the 1980s the Supreme Court gave the lead to the process of dismantling *stare decisis*. The judgment in *D.S. Nakara*is a classic example of this approach. In *D.S. Nakara*74, the Court observed:

ñSocio-economic justice stems from the concept of social morality coupled with abhorrence for economic exploitation. And the advancing society converts in course of time moral or ethical code into enforceable legal formulations. Overemphasis on precedent furnishes an insurmountable road-block to the onward march towards promised millennium. An overdose of precedents is the bane of our system which is slowly getting stagnant, stratified and atrophied.ò

If the observations of the Court are right, then at any given time the Judge may do what he thinks in conformity with his conception of ñsocial justiceò by throwing to the winds established principles of law and binding judgments. Moreover, dramatic changes in law create immeasurable difficulties for the High Courts and the subordinate courts for they are left to flounder in a sea of conflicting precedents. They also create chaos and instability for citizens who have moulded their legal relationships based on the extant law but now find that the goal post has been moved in the middle of the game! Further, when the highest court in the land itself shows scant respect for precedents, it may well encourage the High Courts and

the subordinate courts to follow suit, leading to judicial indiscipline and anarchy, which bodes ill for any legal system.

III. Undesirable Consequences Ensuing from Judicial Activism

A. Delay, backlog and abuse of public interest litigation

The judicial system, which is currently unable to handle ordinary litigation, as it faces a huge backlog of undecided cases, has to now contend with non-traditional types of litigation in the form of public interest litigation (PILs) that are attempts to use Judges as ñsocial engineersò. Abrogating the principle of *locus standi* in the name of ushering in social justice and the upliftment of the downtrodden sections of society, the courts opened their doors so wide that they find it difficult to control the influx today. The US Chief Justice John Roberts, writing about the US Supreme Court, which only hears a small fraction of the cases the Supreme Court of India hears, had this to say about the problem:

ñSo long as the Court views itself as being ultimately responsible for governing all aspects of our society, it will, understandably, be overworked.ò

Unmindful of the sobering *dicta* that Judges have neither the power of sword nor of the purse, the courts have taken upon themselves the duty of monitoring several actions, which fall exclusively within the purview of the executive domain. Often one may not find fault with the final results achieved, but one doubts whether the reasoning by which those results were arrived at is legally supportable.

Articles 32, 136 and 142 of the Constitution invest extraordinary powers in the Supreme Court. Correspondingly, Article 226 invests the High Courts with the all-powerful writ jurisdiction. By abandoning the principle of *locus standi*, Judges have now become roaming knights-errant on white chargers tilting at windmills of injustice to defend the honour of the Dame of justice. Extraordinary powers must be reserved for extraordinary occasions. Its frequent use detracts from its efficacy and produces an incongruous effect. As is said in a well-known *subhashita*:

There are a substantial number of bogus litigations, which sneak in as public interest litigation and can simply be collusive, profiteering, or speculative. In my view, the Supreme Court should not be using Justice Felix Frankfurterôs words, an ñé umpire to debates concerning harmless, empty shadowsò. In fact, the óPô in óPILô often represents ñprofitò, ñpublicityò or ñpersecutionò as more and more manipulative litigants use the courtôs shoulder to fire at rivals. Frequent use of public interest litigation for dubious purposes, may have a chilling effect on entrepreneurs, who would become wary of venturing into business with the threat of liberally granted injunction order obtained by their business rivals.

B. Expediency and judicial error

The legislative and the executive wings of the body politic, which possess the core competence and specialisation in dealing with complex socio-economic problems, are getting progressively marginalised. The judicial organ of the State, the least equipped to deal with socio-politico-economic issues, has occupied the centre stage, and has got bogged down in more and more of such cases. Sheer expediency or the urge for immediate justice in an abstract sense is hardly a justification for taking on problems with myriad fine details that the court is ill-equipped to handle.

Fine-tuning of administrative details is beyond the capacity of the courts, but unfortunately it is something that they have engaged in with enthusiasm. Judicial forays into policy issues through trial and error, without necessary technical inputs or competence, have resulted in unsatisfactory orders that have been passed beyond ñjudicially manageable standardsò. The reliance on affidavits tendered or even placing reliance on a report of a court-appointed Commissioner can hardly supplant a judgment made by a competent executive officer with regard to the actual ground realities.

C. The credibility of the institution

As we have seen, the tendency of the Supreme Court to pronounce on issues, which require purely political decisions, has led to situations where the Court has had to subsequently back down. The most embarrassing instance has been in the case of the directive for uniform civil code legislation, as we have already seen, where the Court had to later downplay its initial activist observations.

In my view, while activist judgments may bring immediate and transitory succour, if, in the long run, the judgments do not strike at the root of the problem, what follows is loss of credibility and respect for the institution among the other constitutional branches and the general public. As Justice Felix Frankfurter said in *Baker* v. *Carr*:

ñThere is nothing neither judicially more unseemly nor more self-defeating than for this Court to make in terrorism pronouncements, to indulge in merely empty rhetoric, sounding a word of promise to the ear, sure to be disappointing to the hope.ò

Indeed, Justice Frankfurter could well have been talking about the bonded labourers and the Supreme Court of India after *BandhuaMukti Morcha*67 orders.

D. Diversion of institutional resources

Instead of playing the role that has been constitutionally assigned to it and utilising its resources towards such role, the assumption of a non-traditional, activist role by the Supreme Court has led to the diversion of its attention and resources. As in cases of ñcontinuing mandamusò, where it has to exercise continuous monitoring and supervision over executive authorities, judicial activism strains the institutional resources of the Court. It also diverts the

time, talent and energy of Judges into channels that they are neither required to navigate, nor equipped to, for lack of competence, skill or resources.

E. Personality driven rather than institutionalised adjudication

Judicial activism creates labels for Judges such as ñpro-labourò, ñanti-labourò, ñpro-tenantò, ñanti-tenantò, ñprogressiveò, ñconservativeò and so on. This is so because the scope and the extent of judicial activism ultimately depends on the personal predilections of the individual Judge and his/her own conception of what ñsocial justiceò ought to be. In effect, the result becomes personality-oriented rather than oriented towards ñjustice accords to lawò, which is the duty of a Judge. Personality-driven adjudication provides avenues for ñforum shoppingò by lawyers and litigants. Instead of ñjustice according to lawò, the courts would administer justice according to the propensities of the Judge, harking back to the days of justice at the Chancellorôs foot in England.

IV. Arguments against Judicial Restraint

A. "Judicial restraint is a 'rightist' ideology"

One of the criticisms of judicial restraint is that it is ñpro-governmentò, ñpro-richò and ñanti-social justiceò and hence a ñrightistò ideology. It is a misconception to think that judicial activism arises from ñleftò or ñrightò oriented philosophies, two terms with hazy meanings at best. Judicial activism is nothing but jumping the fence. The fact that it is done from the ñrightò or ñleftò is hardly of significance because to an activist Judge what he considers to be the correct philosophy matters, ñleftistò or ñrightistò being sheer coincidence. In fact, as we have seen earlier, the ñNew Dealò cases, the *Habeas Corpus* judgment, the ñHindutvaò judgments and the pro-slavery judgment are instances of activist Judges with a so-called ñrightistò ideology.

More often than not, the individual philosophy of the Judge becomes tailored to the dominant discourse. A Judge is enjoined by the Constitution to often perform a counter-majoritarian role to prevent unjustified executive or legislative incursions into the textually enumerated fundamental rights of citizens, or to prevent abuse of representative democracy. By entering into the political thicket, as evidenced in the *Habeas Corpus case*, judicial activism can wholly erode judicial independence and run contrary to the Judgeôs constitutional duty to decide cases ñwithout fear or favourò.

B. "Judicial restraint is an activist philosophy in itself"

There can be no difficulty in accepting judicial restraint or legal centrism as a judicial philosophy in itself. But this philosophy is very different from judicial activism that I have spoken against. Despite the high-sounding words, ñjudicial restraintò only means that the Judge shall stick by the law and decide legal controversies strictly in accordance with

established principles of law without foraging the constitutionally forbidden territories reserved for another branch of the government. In my view, that precisely is the role a Judge is called upon to play by reason of the oath that he undertakes. A Judge is not free to render justice as he thinks, but is required to render ñjustice accords to lawò. As *Times of India* in an editorial has aptly commented:

ñJudges are meant to act as humble interpreters of law, not pose as emperors who adjudicate on a whim. We need faceless, impassive Judges, compassionate but disciplined legislators and an executive that acknowledges the supremacy of the legislature and independence of the judiciary. Sadly, technical Judges are not easy to come by in India. Some arrange marriages between rapists and their victims. Others turn into committed municipal authorities. Courts are meant to be more serious than Bollywood makes them out to be.ò

Conceded that in a few cases ñjustice according to lawò may produce less-than-perfect results, but more often than not, ñjustice accords to lawò produces an outcome that is in line with crystallised public opinion. Indeed, if ñjustice according to lawò was so abhorrent, then we would have seen a revolution in India and a scrapping of the Constitution. The fact that this has not happened is positive proof that ñjustice according to lawò and ñjustice without fear or favourò is the correct approach.

*C. "Judicial restraint would have meant no Kesavananda Bharati*85nj

There may occur occasions in judicial history, when Judges must make dramatic, sudden and even revolutionary changes to law, by marginalising the ñjustice according to lawò principle. Exceptional situations may call for drastic steps, but that can happen only exceptionally. In fact, in fifty-odd years of our Constitution, I can only think of one such situation. This was when the executive and legislature in collusion sought to use the Constitution to destroy the Constitution itself. Therefore, in my view, the ñBasic Structure Doctrineò evolved by the Supreme Court in *KesavanandaBharati* is, if at all an exercise of judicial legislation, a justifiable one, because without it there would have been no Constitution and no independent judiciary worth the name. After all, as the maxim goes,*necessitas non habetlegem*.That is a different kettle of fish from the activism of the 1980s and 1990s where judicial legislation was resorted to at the drop of a hat to address every socio-economic problem of the day, however unfortunate, but nevertheless lacking the imperative urgency facing *Kesavananda Bharati*85 court. The Queensberry Rules are to be strictly observed except when your own life is at stake!

V. Conclusion

Fortunately, the fervour for judicial activism, which engulfed the courts during the third and fourth decades, seems to be ebbing with the progressive realisation that it is preferable to tread the ñhighwaysò of justice instead of resorting to the ñbye-lanesò of activism in the hope of expeditiously reaching the goal of justice. As I have pointed out, deviation from the well-

trodden path frequently leads to wholly unjust outcomes. The wholesome admonition of the *Garuda Purana* in this respect is worth bearing in mind**:**

D) AND E) SOCIAL LEGISLATION AND SOCIAL JUSTICE

LAW AND SOCIAL CHANGE

For decades now law and society theorists have been preoccupied with attempts to explain the relationship between legal and social change in the context of development of legal institutions. They viewed the law both as an independent and dependent variable (cause and effect) in society and emphasized the interdependence of the law with other social systems. In its most concrete sense, social change means large numbers of people are engaging in group activities and relationships that are different from those in which they or their parents engaged in previously. Thus, social change means modifications in the way people work, rear a family, educate their children, govern them, and seek ultimate meaning in life. In addition to law and social change there are many other mechanisms of change, such as technology, ideology, competition, conflict, political and economic factors, and structural strains.

Reciprocity between law and social change

At the beginning of industrialization and urbanization in Europe, Bentham expected legal reforms to respond quickly to new social needs and to restructure society. He freely gave advice to the leaders of the French revolution, because *he believed that countries at a similar stage of economic development needed similar remedies for their common problems*. However, *Savigny believed that only fully developed popular customs could form the basis of legal change.* As customs grow out of the habits and beliefs of specific people, rather than expressing those of an abstract humanity, legal changes are codifications of customs, and they can only be national and never universal.

There are two contrasting views on this relationship:

1. Law is determined by the sense of justice and the moral sentiments of the population, and legislation can only achieve results by staying relatively close to the prevailing social norms.
2. Law and especially legislation, is a vehicle through which a programmed social evolution can be brought about. In general, a highly urbanized and industrialized society like the US law does play a large part in social change, and vice versa, at least much more than is the case in traditional societies or in traditional sociological thinking. [eg. In the domain of

intrafamily relations, urbanization, with its small apartments and crowded conditions, has lessened the desirability of three-generation families in a single household. This social change helped to establish social security laws that in turn helped generate changes in the labor force and in social institutions for the aged.]

Social changes as causes of legal changes

In a broad theoretical framework, social change has been slow enough to make custom the principal source of law. Law could respond to social change over decades or even centuries. Today the tempo of social change accelerated to a point where todayôs assumptions may not be valid even in a few years from now. The emergence of new risks to the individual as a result of the decrease of the various family functions, including the protective function, has led to the creation of legal innovations to protect the individuals in modern society. Eg provisions of workers compensation, unemployment insurance, old-age pensions. Many sociologists and legal scholars assert on the basis of a large amount of accumulated data that technology is one of the great moving forces for change in law in three ways: (read page 335 paragraph 3). The computer and easy access to cyberspace, especially internet, also have inspired legislation on both the federal and the state levels to safeguard privacy, protects against abuse of credit information and computer crime. Change in law may be induced by a voluntary and gradual shift in community values and attitudes. [eg. People may think that **poverty** is bad, and laws should be created to reduce it in some way.] Alternations in social conditions, technology knowledge values, and attitudes then may induce legal change. in such cases law is reactive and follows social change. However, changes in law are only one of many responses to social change. Additionally, laws can be considered both as reactive and proactive in social change.

Law as an instrument of social change

The conversion of Rome from republic to empire could not have been accomplished except by means of explicit legal decree buttressed by the doctrine of imperial sovereignty. Law, far from being a reflection of social reality, is a powerful means of accomplishing reality ï that is, of fashioning it or making it.

- The Soviet Union succeeded in making enormous changes in society by the use of law.

In Spain law was used to reform agrarian labour and employment relations.

- China also managed to moderate through law its population growth and as a result devote more of its resources to economic development and modernization.

The law, through legislative and administrative responses to new social conditions and ideas, as well as through judicial re-interpretations of constitutions, statutes or precedents, increasingly not only articulates but sets the course for major social change. Attempted social change, through law, is a basic trait of the modern world. Many authors consider law as a desirable necessary and highly efficient means of inducing change, preferable to other instruments of change. In present-day societies, the role of law in social change is of more than theoretical interest. In many areas of life such as education, race relations, housing, transportation, energy utilization, protection of the environment, and crime prevention, the law and litigation are important instruments of change. Law plays an important**indirect role** in social change by shaping various social institutions, which in turn have a **direct impact** on society. [eg. Mandatory school attendance upgraded the quality of the labor force, which in turn played a direct role in social change by contributing to an increased rate of industrialization. The law interacts in many cases directly with basic social institutions, constituting a direct relationship between law and social change]. Social change through litigation has always been an important feature in the US. Whether the change produced by such action is considered ócreativeô or ódestructive,ô the fact remains that law can be a highly effective device for producing social change.

The efficacy of Law as an Instrument of Social Change

As an instrument of social change, law entails two interrelated processes: the institutionalization and the internalization of patterns of behavior.

Institutionalization of a pattern of behavior refers to the establishment of a norm with provisions for its enforcement (such as desegregation of public schools).

Internalization of a pattern of behavior means the incorporation of the value or values implicit in a law (eg. Integrated public schools are ógoodô).

The extent to which law can provide an effective impetus for social change varies according to the conditions present in a particular situation. Evan suggests that a law is likely to be successful to induce change if it meets the following seven conditions:

1. Law must emanate from an authoritative and prestigious source
2. Law must introduce its rationale in terms that are understandable and compatible with existing values

3. Advocates of the change should make reference to other communities or countries with which the population identifies and where the law is already in effect
4. Enforcement of the law must be aimed at making the change in a relatively short time
5. Those enforcing the law must themselves be very much committed to the change intended by the law
6. The instrumentation of the law should include positive as well as negative sanctions
7. The enforcement of the law should be reasonable, not only in the sanctions used but also in the protection of the rights of those who stand to lose by violation

(Suggestion: read pg 341-342)

Advantages of law in creating social change

In many instances, the state of the art of social change endeavors is not methodologically sophisticated enough to distinguish clearly among casual, necessary, sufficient, and contributory conditions to produce desired effects in society. The advantages of law as an instrument of social change are attributed to the fact that *law in society is seen as legitimate, more or less rational, authoritative, institutionalized, generally not disruptive, and backed by mechanisms of enforcement.*

Legitimate Authority

A principal advantage of law as an instrument of social change is the general feeling in society that legal commands or prohibitions ought to be observed even by those critical of the law in question. To a great extent, this feeling of obligation depends on respect for legitimate authority and the perception of power. Webber says that there are three types of legitimate authority:

1. **Traditional authority** bases its claims to legitimacy on an established belief in the sanctity of traditions and the legitimacy of the status of those exercising authority. The obligation of obedience is not a matter of acceptance of the legality of an impersonal order, but rather a matter of personal loyalty [Rule-of-elders].
2. **Charismatic authority** cases its claim to legitimacy on devotion to the specific and usual sanctity, heroism, or exemplary character of an individual and the normative patterns that are revealed or ordained. The charismatic leader is obeyed by virtue of personal trust in his or her revelation or exemplary qualities [Moses, Christ, Mohammed, Gandhi].
3. **Rational-legal authority** bases its claims to legitimacy on a belief in the legality of normative rules and in the right of those elevated to authority ti issue commands under such

rules. In such authority, obedience is owed to a legally established impersonal order. ñRationalò people ñvoluntarilyò make a ñcontractò that generates the impersonal legal order.

The binding force of law

Law is binding because most people in society consider it to be. Some consider the content of the law to command obedience, which, in turn, is seen as a compelling obligation. The law achieves its claim to obedience, and at least part of its morally obligatory force, from a recognition that it receives from those, or from most of those, to whom it is supposed to apply. Even when laws are against accepted morality, they are often obeyed. The extermination of more than six million Jews in Nazi Germany, clearly the most extreme instance of abhorrent immoral acts, was carried out by thousands of people in the name of obedience to the law. Milgram contends that the essence of obedience is that individuals come to see themselves as instruments for carrying out someone elseôs wishes, and they therefore no longer view themselves are responsible for their actions. Under certain conditions many people will violate their own moral norms and inflict pain on other human beings, and that succinctly underlines the notion that most people willingly submit to authority and, by extension, the law.

Sanctions

Sanctions for disobedience to the law are surely among the primary reasons that laws have binding force. ñThe law has teeth; teeth that can bite if need be, although they need not necessarily be bared.ò Sanctions are related to legal efficacy and are provided to guarantee the observance and execution of legal mandated to enforce behavior.

Limitations of Law in Creating Social Change

To most people law is imposed externally in an almost coercive way. Today people are characterized by a ñcrisis of confidenceò and alienation from social institutions because of uncontrollable economic conditions. Therefore, law is hardly an expression of their will. Few people participate in the formulation of laws and legislation. One of limitations of law as an instrument of social change is the possibility of prevailing conflict of interest. Other limitations related to the efficacy of law in social change include divergent views on law and the prevailing morality and values.

The scarcity of resources causes conflicting interests. Decades ago, Karl Marx and Max Weber said that many laws are created to protect special economic interests. This is because

economic interests are strong factors influencing the creation of laws. Weber recognized that besides economic interests law protects other interests too such as personal security, personal honour, and it guarantees political, ecclesiastical, and other positions of authority and social pre-eminence.

Weber emphasizes two points:

1. Conflict of interests provides the base for the formation of laws that bring change; so the stratification of society and the preferences of those who promulgate the changes determine the role of laws in social change.
2. Law as an instrument of social change can be seen as the organization of power and processes that protect special interests in society and result in social change.

For powerful and influential people *"the law in effect structures the power relationships in a society, maintains the* //status quo//*and protects various* //strata//*against each other"*. Many legislative enactments, administrative rulings, and judicial decisions reflect the power configurations in society. Even members of legal professions serve to unify the power elite by serving as ñprofessional go-betweensò for principal political, corporate and other interest groups.

Interestingly, a lot of people who are coerced or oppressed by the laws imposed by a ruling minority are unaware of their oppression. They may even strongly support the existing legal system because the ruling party has used its power to confuse them as if they are protecting their true interests. However, a distinction should be made between what people claim as their interests and what their ñtrueò interests are. There are many examples when people are organized to protect what they conceive as their interests. Blacks have been instrumental in the passage of many civil rights laws. Farmers have affected laws dealing with migrant workers, farm subsidies, importation of food items, etc. so it is the division of society into the ñpowerfulò and ñpowerlessò that simple? The mechanisms of change through law include large segments of the population. Even in democratic countries, the large-scale participation of citizens in social change is not feasible; however, the lack of participation doesnôt mean lack of representation.

UNIT-II

ISSUES OF ETHNIC AND INTER – CASTE CONFLICTS : COMUNALISM AND FUNDAMENTALISM

Subordination establishes a pattern for discriminatory behaviours at all levels and societal settings. Certain sectors of society, such as girls, women and other underprivileged groups have been identified as particularly vulnerable. At the school level, teachers tend to treat children with disabilities, children from ólowerô castes or classes with contempt and often physically and verbally abuse them. Words like depressed, disadvantaged, impoverished, poor, backward, loser and underdog have all been used to describe the term underprivileged.

SCHEDULED CASTES AND SCHEDULED TRIBES

The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 was enacted by the Parliament of India, in order to prevent atrocities against Scheduled castes and scheduled tribes. The purpose of the Act was to help the social inclusion of Dalits into Indian society, but the Act has failed to live up to its expectations.

Going through the normal judicial system is self degrading for any dalit. This is because of the still existing biases of the court judges. One example is the conduct of an Allahabad High Court judge who had his chambers "purified" with water from the óganga jalô because a dalit judge had previously sat in that chamber before him. Another example is the case of ***State of Karnataka v. Ingale (1992)***. The State of Karnataka had charged five individuals with violating the SC/ST Act. At trial, four witnesses testified that the defendants had threatened dalits with a gun in order to stop them from taking water from a well. The defendants told the dalits that they had no right to take water, because they were untouchables. The dalits finally got relief from the Supreme Court.

Rural atrocities which are not covered under this Act

Social and economic boycott and blackmail are widespread. In view of the fact that the main perpetrators of the crime sometimes co-opt a few SC/STs with them and take advantage of local differences among the SC/STs and sometimes they promote and engineer crimes but get them executed by some members of SC/STs, the Act should be suitably amended to bring such crimes and atrocities within the purview of the definition of atrocities under the Act.

Firstly, it clarified what the atrocities were: both particular incidents of harm and humiliation, such as the forced consumption of noxious substances, and systemic violence still faced by many Dalits, especially in rural areas. Such systemic violence includes forced labor, denial of access to water and other public amenities, and sexual abuse of Dalit women. Secondly, the Act created Special Courts to try cases registered under the POA. Thirdly, the Act called on states with high levels of caste violence (said to be ñatrocity-proneò) to appoint qualified officers to monitor and maintain law and order. The POA gave legal redress to Dalits, but only two states have created separate Special Courts in accordance with the law. In practice the Act has suffered from a near-complete failure in implementation. Policemen have displayed a consistent unwillingness to register offenses under the act. This reluctance stems partially from ignorance and also from peer protection. According to a 1999 study, nearly a quarter of those government officials charged with enforcing the Act are unaware of its existence.

UNTOUCHABLES

Initially the Untouchability (Offences) Act, 1955, had been enacted to abolish the practice of untouchability and social disabilities arising out of it against members of the Scheduled Castes. it was amended in 1977 and is now known as the Protection of Civil Rights Act, 1955. Under the revised Act the practice of untouchability was made both cognizable and non-compoundable and stricter punishment was provided for the offenders.

When the constitution of India outlawed untouchability in 1950 many national leaders believed that a centuries old practice had been brought to an end. But now nearly 60 years later there is no total success of the statutory measure. Millions of Dalits across the country who account for roughly 1/5th of the population continue to suffer birth-based discrimination and humiliation. In states like Tamil Nadu which boasts a long history of reformist movements is no exception.Infactuntouchability has not only survived the constitutional ban but taken new avatars in many parts of the state. Caste-based discrimination has often led to violence, leaving hundreds of the disadvantaged people in distress particularly in the 1990s.

Over 80 forms of untouchability have been identified, many of which are apparently free Indiaôs additions to the list. From time immemorial Dalits have been deprived of their right to education and the right to possess land and other forms of property. Left with nothing but their physical labor to earn their livelihood they have all along been forced to do the toughest and most menial jobs for survival.

Apart from the denial of access to public roads,tanks,temples and burial/cremation grounds there are other forms of untouchability.Segregation of Dalits is seen almost everywhere in Tamil Naduôs villages. But nothing can perhaps beat the high wall 500 meters long that has been built at Uthapuram in Madurai district as a barrier between Dalits and caste Hindus.

While untouchability is still rampant and is taking new forms particularly in villages, the constitutional ban and compulsions of modernity and development have to some extent blunted its rigor. Rail transport has been unifying forces in society. Yet the Railways have been among the worst offenders in respect of the law against manual scavenging.Dalits constitute a significant portion of its workforce of manual scavengers along railway lines.

Although all state governments claim that they have abolished manual scavenging reports reveal that this practice is very much alive in many places. Postmen have also been found to practice untouchability.A study conducted in Tamil Nadu noted that in two villages in Madurai district postmen did not deliver postal articles to Dalit addressees.Dalits were required to collect the articles at the post office. There are also road transport related violations of the law against untouchability.Among them is the unwritten rule that gives caste Hindus priority over Dalits in boarding buses in many areas, buses not stopping in Dalit areas, transport employees picking quarrels with Dalit passengers without provocation and Dalits not being allowed to use bus shelters. State government still follows a traditional procedure of making announcements in villages by beating a drum and for that they deploy Dalits.

Worse still are the roles of schools and teachers in perpetuating untouchability and sowing the seeds of caste-related discrimination in young minds. The Dalit children are often discouraged by teachers and fellow students belonging to caste Hindu social groups. In many schools Dalit pupils were not allowed to share water with caste Hindus. To punish

an erring or naughty Dalit boy teachers scold him by calling him by his caste name. If the teacher decides that the boy needed a beating as punishment the task was assigned to another Dalit boy. There is also systematic refusal of admission to Dalits in certain schools particularly at the plus two levels.

In some villages during the temple festivals Dalits are supposed to stay hidden from caste Hindus. The two-tumbler system under which Dalits and non-Dalits are served tea in different vessels is still prevalent in some teashops. In some eateries they are compelled to sit on the floor.

Report: Violence against untouchables: Indian Govt. fails to prevent Massacres, Rapes & Exploitation – Human Rights Watch 14 April 1999

Dalits throughout the country also suffer from de facto disenfranchisement. During elections, Dalits are routinely threatened and beaten by political party strongmen in order to compel them to vote for certain candidates. Dalits who run for political office in village councils and municipalities (through seats that have been constitutionally "reserved" for them) have been threatened with physical abuse and even death to get them to withdraw from the campaign.

In the village of Melavalavu, Tamil Nadu, following the election of a Dalit to the village council presidency, members of a higher-caste group murdered six Dalits in June 1997, including the elected council president, whom they beheaded. As of February 1999, the accused murderers -- who had been voted out of their once-secure elected positions -- had not been prosecuted.

MINORITIES

Each time there is a bomb blast, the Indian State reaches out its long arms of injustice to pick a scapegoat from amidst the Indian population to cover up its own incompetence in providing security to its citizens.

What we have witnessed in the last decade is that after each blast or surprise violent act, arrests are made, organisations named but the police and investigative agencies have not been able to prove their claims in any of the cases. But the people arrested continue to languish in

jails or suffer other kinds of victimisation. It is very disturbing as it shows that the agencies responsible for the security of the people are incapable and to cover their inefficiency, they keep abducting people from the minority community which are produced at their chosen time. The real culprits remain at bay and the threat remains undiminished.

Recently, on 23rd March 2011, High Court retired Judge Justice Michael. F. Saldanha said that Governor H R Bharadwaj has recommended the government to withdraw 338 false cases filed against the victims of church attacks, particularly belonging to minority community particularly their places of worship.

Among these are: arbitrary deprivation of the right to life, disregard for the protection owed to civilians caught up in conflicts, interference with freedom of movement, interference with freedom of expression, assembly and association, torture, ill-treatment, and abuses against children and women, and arbitrary deprivation of liberty and due process. Minority groups, or groups with distinct ethnic, religious, linguistic characteristics are usually the victims of the above-mentioned abuses. The vulnerability of minorities during crisis situations is also recognized. Such minorities, especially, indigenous populations and migrant workers as groups are particularly vulnerable during states of conflicts and whose protection needs to be strengthened.

India has a history of dealing dissenting voices with an iron hand. Human rights activists, media
and journalists, judges and lawyers all continue to be constrained by the Indian government. Although the government claims to be secular, still it promotes Hindus and Hinduism in all fields
of life. Religious minorities, including Christians and Muslims continue to be marginalized. A
brief account of the state injustices in the civil society fabric of India would reveal the true face of
this so called ñSecularò government.

CHRISTIANS: Christians in India report that they or fellow believers have faced threats, physical

- attacks, and jail time for sharing their faith. Baptisms, in particular, became a significant challenge
- for local churches. Under the anti-conversion laws, anyone who chose to become baptized was
- legally obligated to seek permission from the government, as well as provide them with the name
- of the person performing the baptism. Fearing repercussions, many new Christians did not make
- this outward profession of faith until after the laws were repealed.

Human rights organizations report that more than 300,000 Christians in Nagaland have been killed by the Indian government. In addition, tens of thousands of Christians have been killed throughout the country. Priests have been killed, nuns have been raped and forced to drink their own urine, churches have been burned, Christian schools and prayer halls have been attacked. No one is ever punished for these activities.

In 2002, the Associated Press reported an attack on a Catholic church on the outskirts of Bangalore in which several people were injured. The assailants threw stones at the church, then broke in, breaking furniture and smashing windows before attacking worshippers. Earlier that month, two church workers and a teenage boy were shot at while they prayed. The boy was injured. Two Christian missionaries were beaten with iron rods while they rode their bicycles home. A Christian cemetery in Port Blair was vandalized. Indian police broke up a Christian religious festival with gunfire.

The Hindu militant RashtriyaSwayamsewakSangh (RSS), of which all the leaders of the BJP and its various allies and factions are members (founded in support of the Fascists in Italy), published a booklet on how to file false criminal cases against Christians and other religious minorities.

Several Indian states have passed laws forbidding anyone to convert to any religion other than Hinduism. These laws range from requiring a government fee for converting to forcing Dalits to appear before a magistrate and prove a level of education before converting. They often restrict the religious speech of minority believers as those of a certain income or education level are prohibited from discussing religious matters with uneducated, poor Dalits.

ÅOn January 28, 2006, a group of Christians in Madhya Pradesh were engaged in prayer. A mob of Hindu militants stormed the hall, a private facility, and severely beat eight Christians.

ÅOn December 29, 2005 a landmine was planted in the Lengjen (Ngarichan) Committee Hall in Tamenglong District which is a Naga inhabited area in the state of Manipur. The land mine exploded when the children of the village went and played at the hall. One 12 year old boy died in the hospital. Another boyôs limb was ripped off and several others were seriously injured.

DALITS: óHuman Rights Watchô in its February 2007 Report states that India has systematically
failed to uphold its international legal obligations to ensure the fundamental human rights of Dalits, or so-called untouchables, despite laws and policies against caste discrimination. The Report states that more than 165 million Dalits in India are condemned to a lifetime of abuse simply because of their caste.

On December 27, 2006 Manmohan Singh became the first sitting Indian Prime Minister to openly
acknowledge the parallel between the practice of ñuntouchabilityò and the crime of apartheid. Singh described ñuntouchabilityò as a ñblot on humanityò adding that ñeven after 60 years of constitutional and legal protection and state support, there is still social discrimination against Dalits in many parts of our country.ò

Even though they are officially considered Hindus, the Dalits may be the most oppressed people

on Earth. The 250 million lower castes include 170 million people called the Scheduled Castes (Untouchables) and 70 million people called the Tribals (Adivasis). Both are looked upon by upper caste Hindus as less than human and to touch a Dalit renders a person himself ñUntouchable.ò They are called impure, they are shunned, they are banned from Hindu temples, and they are considered to be so low on Indiaôs social scale that they are outside of the caste system.

The Untouchable Dalits and Sudras (another low caste) make up 70 percent of the population of
India. Most live in very impoverished conditions. At least half the population of India lives below
the international poverty line. Forty percent live on less than two dollars per day. Discrimination against Dalits includes education inequality, economic disenfranchisement, religious discrimination, a poor system of medical care, and targeted violence against women. Dalit students are often denied the opportunity to receive the public education guaranteed by the Indian constitution. Rape is widespread and massively underreported.

ÅOn August 31, 2005, upper caste villagers in the village of Gohana burned more than 60 Dalit residences, driving over 2,000 Dalit families out of Gohana.

ÅIn 1998, a judge in Allahabad cleaned the courtroom with blessed water from the Ganges River because it was previously occupied by a judicial officer belonging to a Scheduled Caste.

When Dalits are walking in the presence of a Brahmin, they can be beaten or killed with impunity. Under strict interpretation of the caste system, Dalits are obligated to perform certain manual duties for upper caste families without compensation. These duties include cleaning latrines, skinning dead animals, and crafting leather shoes, and other menial tasks.

SIKHS: Sikhs are also highly victimized by the Indian government. According to Inderjit Singh Jaijee, over 250,000 Sikhs have been killed since the military attack on the Golden

Temple in June 1984 (reported in his the book ôThe Politics of Genocideõ). The figures were compiled by the Punjab State Magistracy, which represents the judiciary of Punjab. A report issued by the ôMovement Against State Repressionõ (MASR) showed that India admitted to holding 52,268 political prisoners. Amnesty International reports that tens of thousands of other minorities are also being held as political prisoners. How can a democracy hold political prisoners?

Amnesty International reported last year that tens of thousands of minorities are being held as political prisoners. According to many reports, some of these political prisoners have been in custody for almost two decades. These prisoners continue to be held under a law called the ñTerrorist and Disruptive Activities Actò (TADA), even after it expired in 1995. TADA empowered the government to hold people virtually indefinitely for any offence or for no offence at all.

ÅIn June 2005, at the observance of the Indian governmentõs 1984 military attack on the Golden Temple, a group of Sikhs demonstrated, then made speeches in support of independence for Khalistan, the Sikh homeland that declared its independence on October 7, 1987, and hoisted the Sikh flag. For this they were arrested. This followed the arrest of 35 Sikhs in January 2005, when they made speeches and raised the Khalistani flag at a Republic Day event. Some of the leaders were held for 50 days without trial.

ÅMASR and the ôPunjab Human Rights Organizationõ conducted an investigation of the March 2000 massacre of 35 Sikhs in the village of Chithisinghpora in Indian Kashmir on the eve of the visit of President Clinton to India. It concluded that Indian forces carried out the massacre. The apparent intent was to make use of the presence of the world press to blame Muslims for massacre and vilify the resistance to the occupation of the state by India. A separate investigation conducted by the International Human Rights Organization came to the same conclusion.

Recently in the state of Uttaranchal Pradesh, Sikh farmers were forced out of their farms, which were bulldozed, and they were thrown out of the state. They received no compensation

and have nowhere to go to find roof over their heads or livelihood for their families. The truth is that discrimination against and oppression of minority faiths is so widespread that it draws little attention within or outside India. Although outsiders are allowed to buy land in the Punjab, Sikhs cannot buy land in neighbouring Rajasthan and Himachal Pradesh. This discriminatory policy prevents Sikh farmers from making a living. It has impoverished them forcing many to migrate overseas.

About 50,000 Sikhs were ruthlessly killed by the Punjab Police and their bodies were secretly disposed off to hide the crime. Young Sikhs were abducted, tortured and killed in Police custody. Their bodies were then declared ñunidentifiedò and cremated incinerating all proof of the Indian Statesô barbarity. Countless bodies were consigned to the canals which abound in the Punjab. The secret cremation policy was exposed by human-rights activist Jaswant Singh Khalra who was arrested for publishing his report and was murdered while in police custody.

Narinder Singh, a spokesman for the Golden Temple, the seat of the Sikh religion, was interviewed in August 1997 by National Public Radio. He told his interviewer, ñThe Indian government, all the time they boast that they are secular, that they are democratic. But they have nothing to do with a democracy, nothing to do with secularism. They just kill Sikhs to please the majority.ò

MUSLIMS: The Indian government has killed over 300,000 Muslims in Kashmir. They have sent

over 700,000 troops to suppress the people of Kashmir. Amnesty International, in its 2006 Report stated that torture, deaths in custody and ñdisappearancesò continue to be reported. In January, the Minister of State for Home Affairs stated that some 600 people, including 174 foreigners, were held under the Public Safety Act (PSA), a preventive detention law. In October, 44 detainees were released but new detentions were reported. Several people had been held under the PSA for over 10 years under successive PSA detention orders.

ÅFarooq Ahmad Dar was detained in November under his ninth consecutive PSA order. He had been in continuous detention under the PSA since 1991.

ÅCivilians were repeatedly targeted by state agencies and armed groups.

Å In May, armed fighters threw a grenade just as children were leaving their school in Srinagar, killing two women who had come to pick up children and injuring 50 others, including 20 pupils.

ÅIn July, four juveniles aged between 11 and 15 were shot dead by paramilitary Rashtriya Rifles in Kupwara district. Local people said that the boys had participated in a marriage party and gone for a stroll but ran away when ordered to stop. They said that the army had been informed of possible movements of people attending the party late at night.

In September 2006, the State Human Rights Commission, which had registered 3,187 cases of
human rights violations since its inception in 1991, reiterated its earlier complaint that government departments failed to implement its recommendations. Throughout the year 2006, there were reports of abuses ï including torture, attacks and killings of
civilians in Jammu and Kashmir, the north-east and several central and eastern states.

ÅIn November 2006, during elections in Bihar, Maoists (naxalites) attacked the Jehanabad prison. More than 340 prisoners, including key Maoist leaders, were freed. Eight prisoners belonging to a private army of dominant landed castes, RanvirSena, were killed and 20 others kidnapped.

ÅIn Lunawade village in Panchmahal district of Kashmir, during the last week of December 2005, a mass grave was discovered. It contained the bodies of at least 26 victims of the Indian governmentôs pogrom against the Muslims. Their crime? The Kashmiri people were promised a referendum on their status in 1948, but that vote has never been held. In 1989, when all hope of that promise being fulfilled had evaporated, violent resistance began that is

being ruthlessly crushed resorting to pogroms and genocide that has led to 100,000 resistance fighters killed so far by the Indian military.

ÅOn February 27, 2002, a fire on a train in Godhra in Gujarat killed fifty eight passengers, among them fifteen children. This gave rise to massacres in which 2,000 to 5,000 Muslims were murdered. According to a policeman in Gujarat, who was quoted in an Indian newspaper, the government pre-planned the massacre. In an eerie parallel to the Delhi massacre of Sikhs in November 1984, the police were kept from intervening.

In a 70 page report on the massacre, Human Rights Watch reported that not a single person has been convicted in these massacres. More than one hundred Muslims have been charged under Indiaôs much criticized Prevention of Terrorism Act (POTA) for their alleged involvement in the train massacre in Godhra. No Hindus have been charged under POTA in connection with the violence against Muslims.

DRUG ADDICTION:

Addiction to drugs among young men and women is an acute social problem faced by most of the countries worldwide. Illegal trafficking of narcotics is on the increase in spite of vigilance on the part of governments. Heroin, cocaine, hashish, marijuana and other health damaging drugs are easily available today. This sordid commerce has resulted in young men and women easily obtaining and using drugs. They can be seen sprawled almost everywhere.
At first youngsters take drugs in small doses just for thrill gradually develop a compulsion to have it at intervals. Thus drug-taking becomes a habit from which there is no easy escape. Once addicted to drugs there are very few and chances of escaping.
Drugs are harmful not just because of the addiction, but also because the addicts die young! The drug addicts become irresponsible in the behaviours.

They talk of hallucinatory bliss and peace obtained from drugs; they may describe ñthe wonderful tripò.

But the fact remains that addiction causes lethal poisoning and brings physical problems which can lead to prolonged depression cycles, insanity, suicide and, in some cases, murder.

Many young people use drugs as an experiment or just for the ñfeelò of it, but they are not aware of the fact that they are destroying their physical and mental strength; they give up their precious live s that was gifted to them by God. Today you not only find drug addicts on roadside or footpaths but also in educational institutions. To be precise we have fallen down deep inside a ñfrightening pitò that there is no way out. Drug use is widespread worldwide even people who we say are our so called ñprotectorsò are attracted to drugs i.e. our police and other law enforcing agencies.

The reason for the widespread use of narcotics by students and other young men and women is the indigenous culture enthusiastically hugged by them. The young men and women who are frustrated because of alienation from the family, a sense of loneliness and consequent disillusionment easily fall prey to this culture. Once they become part of this culture they find justification for their behavior in the possibility of a nuclear holocaust. Some find justification in back to nature cult.

Can anything be done to eradicate this evil of drug addiction? The first and foremost thing to do is for every nation is to see that the illicit traffic of narcotics is completely stopped. Every country should have laws or special police force for the abolishment of narcotics, this law should be made tougher and have strict punishments. No law can be effective without the firm public backing of police and prosecutors. This will require a massive education program and dynamic leadership from the government. Parents, schools, colleges and universities too have a great responsibility. Itôs for them to be watchful and nip the evil in the bud. For example, if a student who has been doing so well in studies or in sports suddenly becomes a non achiever, see that he is given good counseling. Educational institutions should arrange special classes on the danger inherent in drug addiction. The media can play a pivotal role in this too.

Finally, it may be said we should tackle the problem of drug addiction on war-footing. We must fight the battle in all possible ways. Education is our great weapon, youngsters should be told about the dangers of taking drugs. If enough youngsters decide that the ñinò thing to do is to leave drugs out of their lives, the epidemic will die of its own accord.

ALCOHOLISM:

Alcohol consumption can have adverse social and economic effects on the individual drinker, the drinkerôs immediate environment and society as a whole. Indeed, individuals other than the drinker can be affected, for example, by traffic accidents or violence. It has an impact on society as a whole in terms of resources required for criminal justice, health care and other social institutions.

How can work performance be affected by alcohol consumption?

Alcohol consumption can affect work performance in several ways:

- Absences - There is ample evidence that people with alcohol dependence and drinking problems are on sick leave more frequently than other employees, with a significant cost to employees, employers, and social security systems. In Costa Rica, an estimated 30% of absenteeism may be due to alcohol. In Australia, a survey showed that workers with drinking problems are nearly 3 times more likely than others to have injury-related absences from work.
- Work accidents - In Great Britain, up to 25% of workplace accidents and around 60% of fatal accidents at work may be linked to alcohol. In India about 40% of work accidents have been attributed to alcohol use.
- Productivity - Heavy drinking at work may reduce productivity. In Latvia, 10% of productivity losses are attributed to alcohol. Performance at work may be affected both by the volume and pattern of drinking. Co-workers perceive that heavy drinkers have lower performance, problems in personal relationships and lack of self-direction, though drinkers themselves do not necessarily perceive effects on their work performance
- Unemployment- Heavy drinking or alcohol abuse may lead to unemployment and unemployment may lead to increased drinking.

How can the family be affected by alcohol consumption?

Drinking can impair how a person performs as a parent, a partner as well as how (s)he contributes to the functioning of the household. It can have lasting effects on their partner and children, for instance through home accidents and violence.

Children can suffer Fetal Alcohol Spectrum Disorders (FASD), when mothers drink during pregnancy. After birth, parental drinking can lead to child abuse and numerous other impacts on the childôs social, psychological and economic environment.

The impact of drinking on family life can include substantial mental health problems for other family members, such as anxiety, fear and depression.

Drinking outside the home can mean less time spent at home. The financial costs of alcohol purchase and medical treatment, as well as lost wages can leave other family members destitute. When men drink it often primarily affects their mothers or partners who may need to contribute more to the income of the household and who run an increased risk of violence or HIV infection.

What is the link between alcohol and poverty?

The economic consequences of alcohol consumption can be severe, particularly for the poor. Apart from money spent on drinks, heavy drinkers may suffer other economic problems such as lower wages and lost employment opportunities, increased medical and legal expenses, and decreased eligibility for loans. A survey in Sri Lanka indicated that for 7% of men, the amount spent on alcohol exceeded their income.

What is the link between alcohol and violence between partners?

Alcohol plays a role in a substantial number of domestic violence incidents, especially in the case of abusing husbands. Often both the offender and the victim have been drinking.

The relationship between alcohol and domestic violence is complex and the precise role of alcohol remains unclear. Heavy drinking has been strongly linked to violence between partners and to a lesser extent to violence towards others, possibly because proximity increases the opportunities for violence.

Studies conducted for instance in Nigeria, South Africa, Uganda, India, and Colombia show that a large fraction of reported domestic violence incidents is related to alcohol use by the male partner. For instance, in Uganda, 52% of the women who recently experienced domestic

violence reported that their partner had consumed alcohol, and in India, 33% of abusing husbands were using alcohol. There is a need to better understand the possible role of alcohol intoxication or dependence in the processes through which incidents escalate into violence.

There is little doubt that alcohol consumption has many social consequences, but more quantifiable data is needed to enable meaningful comparisons between countries.

What are the estimated economic and social costs?

Strong efforts are made in many countries to estimate the overall economic and social costs of alcohol use.

Social and economic costs cover the negative economic impacts of alcohol consumption on the material welfare of the society as a whole. They comprise both direct costs - the value of goods and services delivered to address the harmful effects of alcohol, and indirect costs - the value of personal productive services that are not delivered as a consequence of drinking.

In industrialized countries, estimates of social and economic costs of alcohol use can reach several percent of the Gross Domestic Product (GDP), ranging for instance from 1.1% in Canada to 5-6% in the case of Italy.

Estimates of social and economic costs can help:

- make the case for public policies on alcohol,
- target policies and public expenditure on the most important problems (e.g. the costs of alcohol versus other psychoactive drugs such as tobacco),
- identify information gaps,
- assess the effectiveness of policies and programmes against alcohol abuse.

Estimating the costs of the impact of alcohol on the material welfare of society is often difficult and requires estimates of the social costs of treatment, prevention, research, law enforcement, lost productivity and some measure of years and quality of life lost.

Alcohol is a subject in the State List under the Seventh Schedule of the Constitution of India. Therefore, the laws governing alcohol vary from state to state.

Liquor in India is generally sold at liquor stores, restaurants, hotels, bars, pubs, clubs and discos. Some states, like Kerala and Tamil Nadu, prohibit private parties from owning liquor stores making the state government the sole retailer of alcohol in those states. In some states,

liquor may be sold at groceries, departmental stores, banquet halls and/or farm houses. Some tourist areas have special laws allowing the sale of alcohol on beaches and houseboats.

Home delivery of alcoholic beverages is illegal in Delhi.However, Delhi permits home delivery of beer and wine by private vends and departmental stores. The sale of beer at departmental stores, banquet halls and farm houses, is legal in Delhi.

Legal drinking age

DRUNK DRIVING LAW

The blood alcohol content (BAC) limits are fixed at 0.03%or 35 µl alcohol in 100 ml blood. Any person whose BAC values are detected more than this limit is booked under the first offense. A person may be fined about ₹ 2000 and\or he or she may face a maximum of 6 months imprisonment.

If a second offense is committed within 3 years of the first then a person may be fined about ₹3000 and/or he or she may face a maximum of 2 years imprisonment. Despite such strict drink driving law, authorities acknowledge that many times they find it difficult to restrict and make the offenders to follow the law. The offenders tend to escape through bribery or by finding loop holes in the law.

On 1 March 2012, the Union Cabinet approved proposed changes to the Motor Vehicle Act. As per the new provisions, drunk driving would be dealt with higher penalty and jail terms - fines ranging from ₹2,000 to ₹10,000 and imprisonment from 6 months to 4 years. Drink driving will be graded according to alcohol levels in the blood.

Giving details of the proposed fine on drunken driving, officials said in cases where alcohol level is less than 30 mg per 100 ml of blood, it would not amount to an offence. However, if it is between 30ï 60 mg per 100 ml of blood, the proposed penalty would be 6 months of imprisonment and/or ₹2,000 fine. In case the alcohol level is 60ï 150 mg per 100 ml of blood, the penalty would be one year imprisonment and/or ₹4,000. If the offence is repeated within three years, the penalty would go up to 3 years imprisonment and/or ₹8,000. For those who are found heavily drunk with alcohol levels of over 150 mg per 100 ml of blood, the penalty will be 2 years imprisonment and or ₹5,000. Repeat offence within a three-year period will attract a penalty ears jail and fine of ₹10,000 besides cancellation of license.

Advertisements

Advertising alcoholic beverages is banned in India as per the Cable Television Network (Regulation) Amendment Bill, which came into effect on 8 September 2000. The government is very particular against broadcasting such advertisements on its channel, Doordarshan, whereas most of the private channels still broadcast surrogate alcohol advertisements.

Dry Days

Dry Days are specific days when the sale of alcohol is banned. National holidays such as Republic Day (January 26), Independence Day (August 15) and Gandhi Jayanti (October 2) are usually dry days throughout India.

In addition to the above the following days are also dry days:

- Muharram
- The last working day of a calendar month.
- The day of poll and proceeding two days in all General elections, By-Elections to LokSabha, Municipal Board and Panchayat.
- Any other day the Government may by notification declare to be a dry day.
- Dry days are also announced when elections are held in the state.

On dry days, sale and supply of liquor will be suspended meaning thereby all wholesalers will not make the supply of liquor and all the retail vendors will remain closed. However, service of liquor in licensed bars, hotels, clubs and restaurants is permissible even on dry days except on three national holidays. On the national holidays, even L-20 / L-49A licenses are not granted. These are special temporary licenses granted for service of liquor in parties/functions. These licenses may however, be granted on other dry days. Even on the three national holidays, liquor can be served by the hotels provided they have obtained L-3 license. L-3 licence allows hotels to serve liquor to the residents of their rooms.

There is no ban for service of liquor by anyone at his residence provided the liquor served is authorized and is within the permissible limits.

In addition to the above the following days are also dry days:

- Good Friday
- Birthday of SreeNarayana Guru
- SreeNarayana Guru Samadhi (5^{th} day of Malayalam month *Kanni*; Septemberï October)

In all areas where elections are being held, the day of polling and previous day will be declared dry days. During vote counting, the dry days will be notified by the local authority.

LAWS RELATED TO DRUGS IN INDIA:

The menace of drug addiction leads to the vicious cycle of immense human misery and illegal production, distribution and consumption of drugs. The unlawful distribution and consumption of drugs have given rise to criminal activities and violence worldwide. There are many reasons that make drug abusers out of people; it includes peer pressure, loneliness, depression, and the feeling that using drugs is ñcool.ò The abuse of drugs often results in physical and mental disorders, such as physical dependence on drugs, withdrawal symptoms and damage to the nerve cells.

The government of India has enacted the Narcotic Drugs and Psychotropic Substances Act, 1985, to regulate and control operations related to narcotic drugs and psychotropic substances. The Act extends to the whole of India. Here are some important definitions under the Act:

- **Addict:** A person addicted to any narcotic drug or psychotropic substance
- **Board:** The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963).
- **Cannabis plant:** Any plant of the genus cannabis

Indian Laws on Drugs: Prohibitions, Control and Regulation

Certain activities that are prohibited under the Narcotic Drugs and Psychotropic Substances Act, 1985, are:

- Cultivation of coca plant or collection of a portion of coca plant.
- Cultivation of cannabis plant.
- Production, manufacture, possession, sale, buying, transportation, consumption, import and export of narcotic drugs and psychotropic substances except for medical and scientific uses.
- The above mentioned acts are pertaining up to the limits as per the provisions of the Act or as per the rules pertaining to the requirement of license, permit or authorization.

The Central Government holds powers pertaining to the permit, control and regulations of narcotic drug or psychotropic substance, which include:

- Permitting or regulating the cultivation, collection, transportation, sale, purchase, import and export of coca plant.
- The Central Government may permit cultivation of opium on its own account.
- It may permit export from India or sale of opium or opium derivatives to the State Government or to manufacturing chemists from the factories of the Central Government.

E) **POVERTY:**

the term social justice was first used in 1840 by a Sicilian priest, Luigi Taparellid'Azeglio, and given prominence by Antonio RosminiSerbati in La CostitutioneCivile Secondo la GiustiziaSociale in 1848. It has also enjoyed a significant audience among theorists since John Rawls book. A Theory of Justice has used it as a pseudonym of distributive justice.

The concept of social justice is a revolutionary concept which provides meaning and significance to life and makes the rule of law dynamic. When Indian society seeks to meet the challenge of socio-economic inequality by its legislation and with the assistance of the rule of law, it seeks to achieve economic justice without any violent conflict. The ideal of a welfare state postulates unceasing pursuit of the doctrine of social justice. That is the significance and importance of the concept of social justice in the Indian context of today.

The idea of welfare state is that the claims of social justice must be treated as cardinal and paramount. Social justice is not a blind concept or a preposterous dogma. It seeks to do justice to all the citizen of the state. Democracy, therefore, must not show excess of valour by imposing unnecessary legislative regulations and prohibitions, in the same way as they must not show timidity in attacking the problem of inequality by refusing the past the necessary and reasonable regulatory measures at all. Constant endeavour has to be made to sustain individual freedom and liberty and subject them to reasonable regulation and control as to achieve socio-economic justice. Social justice must be achieved by adopting necessary and reasonable measures. That, shortly stated, is the concept of social justice and its implications. Citizens zealous of their individual freedom and liberty must co-operate with democracy which seeks to regulate freedom and liberty in the interest of social good, but they must be able to resist the imposition of any restraints on individual

liberty and freedom which are not rationally and reasonably required in the interests of public good, in a democratic way. It is in the light of these difficult times that the rule of law comes into operation and the judges have to play their role without fear or favour, uninfluenced by any considerations of dogma or isms. The term social justice is a blanket term so as to include both social justice and economic justice.

The Problems Of The Poor In India

This vice of social inequality assumes a particularly reprehensible form in relation to the backward classes and communities which are treated as untouchable; and so the problem of social justice is as urgent and important in India as is the problem of economic justice. Equality of opportunity to all the citizens to develop their individual personalities and to participate in the pleasures and happiness of life is the goal of economic justice. The concept of social justice thus takes within its sweep the objectives of removing all inequalities and affording equal opportunities to all citizens in social affairs as well as economic activities. The problem of poverty and unequal distribution of wealth may be confined to the bigger cities and towns in India but the problem accentuated by the vice of social inequality existing in a gross form prevails in all of our villages. For instance, the harijans constitute a large class of landless labourers who are treated as untouchables by the rest of the community, who have no house to live in, generally no clothes to wear, who do not get food to eat & sometimes even decent drinking water is beyond their reach. The poor also have no access to legal assistance. Poor people are vulnerable to injustice. Poverty fosters frustration, ill feeling and a brooding sense of injustice. Democracy realizes that this problem which concerns a large number of citizens cannot be successfully met unless law is used wisely to restore balance to the economic structure and to remove the causes of economic inequality.

The Constitution Of India And Social Justice

The Constitution of India has solemnly promised to all its citizens justices-social, economic and political; liberty of thought expression, belief, faith and worship; equality of status and of opportunity; and to promote among the all fraternity assuring the dignity of the individual and the unity of the nation. The Constitution has attempted to attune the apparently conflicting

claims of socio-economic justice and of individual liberty and fundamental rights by putting some relevant provisions.

Article 19 enshrines the fundamental rights of the citizens of this country. The seven sub-clauses of Article 19(1) guarantee the citizens seven different kinds of freedom and recognize them as their fundamental rights. Article 19 considered as a whole furnishes a very satisfactory and rational basis for adjusting the claims of individual rights of freedom and the claims of public good.

Articles 23 and 24 provide for fundamental rights against exploitation. Article 24, in particular, prohibits an employer from employing a child below the age of 14 years in any factory or mine or in any other hazardous employment. Article 31 makes a specific provision in regard to the fundamental right to property and deals with the vexed problem of compulsory acquisition of property.

Article 38 requires that the state should make an effort to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice social, economic and political shall inform all the institutions of national life. Article 39 clause (a) says that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular provide free legal aid, by suitable legislation or schemes, or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Article 41 recognizes every citizen's right to work, to education & to public assistance in cases of unemployment, old age, sickness & disablement and in other cases of undeserved want. Article 42 stresses the importance of securing just and humane conditions of work & for maternity relief. Article 43 holds before the working population the ideal of the living wage and Article 46 emphasizes the importance of the promotion of educational and economic interests of schedule castes, schedule tribes and other weaker sections.

The social problem presented by the existence of a very large number of citizens who are treated as untouchables has received the special attention of the Constitution as Article 15 (1) prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth. The state would be entitled to make special provisions for women and children, and for advancement of any social and educationally backward classes of citizens, or for the SC/STs. A similar exception is provided to the principle of equality of opportunity prescribed by

Article 16 (1) in as much as Article 16(4) allows the state to make provision for the resolution of appointments or posts in favour of any backward class of citizens which, in the opinion of the state, is not adequately represented in the services under the state. Article 17 proclaims that untouchability has been abolished & forbids its practice in any form & it provides that the enforcement of untouchability shall be an offence punishable in accordance with law. This is the code of provisions dealing with the problem of achieving the ideal of socio-economic
justice in this country which has been prescribed by the Constitution of India.

Where Does The Solution Lie?

The solution to social injustice lies within us only. We should be aware of the expressions - the poor, the backwards, social justice which are being used to undermine standards, to flout norms and to put institutions to work. We should subject every claim whether it is made in the name of the poor, the backward, whosoever to rational examination. After it has been in effect for a while, subject every concession to empirical evidence. We should shift from equality of outcomes to equality of opportunities. And in striving towards that, nudge politicians to move away from the easy option of just decreeing some reservations, etc to doing the detailed and continuous work that positive help requires, the assistance that the disadvantaged need for availing of equal opportunities. We must bear in mind that if the majority disregards smaller sections in the community, it drives them to rebellion. We should try to refashion the policies of state on truly secular and liberal principles. The individual and not the group should be the unit of state policy.

Since no society is static, and social processes are constantly changing, a good legal system is one which ensures that laws adapt to the changing situations and ensure social good. Any legal system aiming to ensure good should ensure the basic dignity of the human being and the inherent need of every individual to grow into the fullness of life. The hope of the Indian masses does not lie in the legal system alone, but in their conscious awakening and fight for social and economic justice. Knowledge of their legal rights however, can be an important motivating force in this. Many NGO's and individuals are emerging in different parts of the country to take up the cause of social change and change for a more just India, where justice will not merely be talked about in intellectual discussions on the intricacies of law, or written

about in books, which the masses can't read, or exchanged for good old money, but actually lived and experienced by the majority of the people.

Indian Judiciary'S Interpretation Of Social Justice

In Oriental Insurance Co. Ltd. v/s Hansrajbai V. Kodala (2001) the Apex Court held that "The object is to expeditiously extend social justice to the needy victims of accidents curtailing delay - If still the question of determining compensation of fault liability is kept alive, it would result in additional litigation and complications in case claimants fail to establish liability of defendants - Wherever the Legislature wanted to provide additional compensation, it has done so specifically."

The Supreme Court has firmly ruled in BalbirKaur v/s Steel Authority of India (2000) that "the concept of social justice is the yardstick to the justice administration system or the legal justice and it would be an obligation for the law Courts to apply the law depending upon the situation in a manner whichever is beneficial for the society" as the respondent Steel Authority of India was directed to provide compassionate employment to the appellant. In Superintending Engineer, Public Health, U.T. Chandigarh v/s Kuldeep Singh (1997) the Supreme Court held that "It is the duty of the authorities to take special care of reservations in appointments as a part of their constitutional duties to accord economic and social justice to the reserved categories of communities. If ST candidate is not available, the vacancy has to be given to SC candidate and the reserved roster point has to be filled in accordingly". In Ashok Kumar Gupta v/s State of U.P. (1997) it was held by the Apex court that "To give proper representation to SC/ST Dalits in services is a social justice which is a fundamental right to the disadvantaged. It cannot be said that reservation in promotions is bad in law or unconstitutional."

In Consumer Education & Research Centre v/s Union of India (1995) it was held that "Social justice is a device to ensure life to be meaningful and livable with human dignity. State has to provide facilities to reach minimum standard of health, economic security and civilized living to the workmen. Social justice is a means to ensure life to be meaningful and livable."

So we can see that the Supreme Court has always stepped in to protect the interest of the Indian citizens, whether it has been has the case of consumer protection or claiming insurance

or be it representation of suppressed classes. It has used the medium of social justice as an umbrella term to deliver justice.

Unit III: Social Control

SOCIAL CONTROL- IT'S MEANING; MECHANISMS AND AGENTS OF SOCIAL CONTROL, FUNCTIONS AND DISFUNCTIONS OF SOCIAL CONTROL

Social Control

According to Mannheim, social control is the sum of those methods by which a society tries to influence human behavior to maintain a given order.

Any society must have harmony and order. Where there is no harmony or order the society actually does not exist because society is a harmonious organization of human relationships. Unless the individuals live up to the prescribed norms of conduct and unless their self-seeking impulses are subjugated to the welfare of the whole it would be quite difficult to maintain effectively the social organization.

Society in order to exist and progress has to exercise a certain control over its members since any marked deviation from the established ways is considered a threat to its welfare. Such control has been termed by sociologists as social control.

Social control has been defined by Maclver as the way in which entire social order coheres and maintains itself- how it operates as a whole as a changing equilibrium. To Ogburn and Nimkoff the patterns of pressure that a society exerts to maintain order and established rules is social control. According to Gillin and Gillin social control is that system of measures, suggestions, persuasions, restraint and coercion by whatever means including physical force by which a society brings into conformity to the approved pattern of behavior or subgroup or by which a group molds into conformity its members.

Need for Social Control

Social solidarity is essential for the existence of society.No two persons is alike in their nature, ideas, attitudes and interests. Every individual is a separate personality. There are cultural differences among the individuals. As a matter of fact society is a heterogeneous organization. If every individual is allowed unrestricted freedom to act and behave, it may create social disorder. For an orderly social life social control is necessary. The aims of social control are to bring out conformity, solidarity and continuity of a particular group or society.

Social control is necessary for maintaining order in the society. It is necessary for every society or group to maintain its social order and this is possible only when its members behave in accordance with that social order. An important objective of social control is to maintain the old order. Although enforcement of the old order in a changing society may hinder so-cial progress, yet it is necessary to maintain continuity and uniformity in society.

Without social control social unity would be a mere dream. Social control regulates behavior in accordance with established norms which brings uniformity of behavior and leads to unity among the individuals. The family maintains its unity because its members behave in a similar manner in accordance with family norms.

No two men are alike in their attitudes, ideas, interests and habits. Even the children of same parents do not have the same attitudes, habits or interests. Men believe in different religions, dress, eat differently and have different ideologies. There are so many differences in the ways of living of the people that at every moment there is the possibility of clash be-tween them. In modern times this possibility has all the more increased because man has become too self-centred.Social control is necessary to protect social interests and satisfy common needs. If social control is removed and every individual is left to behave freely so-ciety would be reduced to a state of lawlessness.

The Purposes/mechanism of Social Control

The study of social control is an important aspect of sociology. It is a significant field of study. It is a unifying factor in the study of human behavior. According to Kimball Young the aims of social control are to bring about conformity, solidarity and continuity of particular group or society. These aims are good but most individuals who endeavor to control their fellow men show little perspective in their efforts. They want that others should accept the modes of conduct which they themselves prefer. This preference may be based on any fac-

tor-experience derived in life, desire to exploit others for oneôs own gain, political, personal or economic.

Some reformers and leaders try to conceal their motives by good reasons in the form of altruistic rationalization. A newspaper advertisement that offer discount to those who make purchases by a particular date is an example of such rationalizations. It is difficult to know and classify the motives of the agents of social control.

The classification of the motives or purposes of the agents of social control ï

1. Exploitative, motivated by self interest.
2. Regulative based upon habit and the desire for behavior of the customary types
3. Creative or constructive based on social benefit

The results of social control are not always beneficial to society or to the individual. Even social control for constructive purposes may confuse the public and end in inactivity. Efforts to regulate behavior in accordance to custom may cause cultural lag, mental conflict and emotional instability

AGENCIES OF SOCIAL CONTROLL:

FORMAL AGENCIES

Essay on the Agencies of Social Control ï Society or group maintains social control by creating its own agencies which may enforce formal or informal control. Agencies such as law, education, physical coercion and codes on the one hand, folkways, mores, customs, convention, tradition, religion, etc., on the other, have been used by the society for this purpose.

The number and variety of devices and agencies employed depend on the degree of complexity of life in a society. The role of some of these agencies may be briefly discussed here.

1. Control by Law:

Law is the most powerful formal means of social control in the modern society. Laws appear only in societies with a political organisation that is a government. The term óLawô has been defined in various ways. J.S. Roucek opines that ñLaws are a form of social rule emanating

from political agenciesò. Roscoe Pound says that ñlaw is an authoritative canon of value laid down by the force of politically organised societyò.

The main characteristics of law are:

(1) Laws are the general conditions of human activity prescribed by the state for its members.

(2) Law is called law, only if enacted by a proper lawmaking authority. It is a product of conscious thought, deliberate attempts and careful planning.

(3) Law is definite, clear and precise.

(4) Law applies equally to all without exception in identical circumstances.

(5) Violation of law is followed by penalties and punishments determined by the authority of the state.

(6) Laws are always written down and recorded in some fashion. Hence they cannot appear in non-literate society.

(7) Laws are not the result of voluntary consent of persons against whom they are directed.

Law is derived from various sources. As J.S. Roucek has pointed out, ñAll social rules including political rules, or laws, originated first in custom or folkways of long standing and are based upon existing conceptions of justice and right in a given communityò.

It is true that ñin all societies law is based upon moral notionsò. Laws are made and legislations are enacted on the basis of social doctrines, ideals and mores. It does not mean that the domains of law and morals are co-extensive.

Still it can be said that the maintenance of legal order depends upon the moral climate of a societyò. (Bottomore). The effectiveness of legal regulation never rests solely upon the threat of physical sanctions. It very much depends upon a general attitude of respect for law, and for a particular legal order. This attitude itself is determined by moral approval of law as containing social justice.

Law requires enforcing agencies. Laws are enforced with the help of the police, the court, and sometimes the armed forces. Administrative machinery of the state is the main law-enforcing agency.

Increasing complexity of the modern industrial society has necessitated enormous growth of administrative agencies. Law is, in fact the control of administrative power which is vested in the government officials.

Law as an instrument of control performs two functions: (i) It eliminates and suppresses the homicidal activities of individuals, (ii) Law persuades individuals to pay attention to the rights of others as well as to act in co-operation with others. In this way law tries to protect the individuals and society and promotes social welfare.

It is almost impossible now-a-days to conceive of a society of any degree of complexity in which social behaviour would be completely regulated by moral sanctions. Law has thus become inevitably a pervasive phenomenon.

Contemporary international relations would reveal the importance of law in social control. It may be true that the moral unity of the mankind is now greater than ever before. But moral sentiments alone are not enough today to regulate relations. They are by necessity supplemented by the law.

2. Control by Education:

Education may be defined as a process whereby the social heritage of a group is passed on from one generation to another. It is in this sense, Durkheim conceived of education as ñthe socialisation of the younger generationò. He also stated, ñIt is actually a continuous effort to impose on the child ways of seeing, feeling and acting which he could not have arrived at spontaneouslyò.

Brown and Roucek have said that education is ñthe sum total of the experience which moulds the attitudes and determines the conduct of both the child and the adultò. Education is every experience, trifling or profound, which durably modifies, thought, feeling or action.

Education is not just concerned with transmitting a way of life. In the modern times it is largely devoted to the communication of empirical knowledge. It is required today to prepare individuals for a changing rather than a static world.

Formal education has been communicating ideas and values which play a part in regulating behaviour. In modern society science and technology are the basis of a general rational approach to nature and social life. The whole rationalisation of the modern world is connected with the development of science. The chief instrument of this development is educational system.

In this way, formal education can be viewed as a type of social control. Education has contributed to the regulation of conduct in the early socialisation of the child. Educational reformers such as Montessori and Froebel have brought about great changes in the education

of young children. These reforms reveal the moral notions external to the educational system. But they have been influential in changing moral ideas in society at large.

Some educators have suggested that education must be used for making a ñgood societyò. Education is not primarily an attempt to stuff the mind with information, but train people to think to distinguish between truth and error to arrive at reality. In this regard, the school is taken to mean a ñcommunity of experienceò rather than as a ñseries of planned lessonsò.

George S. Counts has remarked that ñEducation, emptied of all social control and considered solely as method, points nowhere and can arrive nowhereé .òToday people send their children to the schools to be taught properly. ñTo be taught properly means, of course, to be taught in accordance with the wishes of the communityò.

The community is most sensitive; in particular, to those aspects of teaching that have social and moral significance. Hence much attention is paid to select right persons for the teaching profession.

Education from infancy to adulthood is a vital means of social control. Through education new generation learns the social norms and the penalties for violating them. Theoretical education, that is reading and writing, serves to form the intellectual basis and with practical education one learns to put this into practice.

Without proper education the harmony of the individual and society is not merely difficult but also impossible. Education makes social control quite normal. It converts social control into self-control.

In the absence of a well organised educational system, social control would remain merely as an arbitrary pressure which may not last long. Hence, education is a necessary condition for the proper exercise of social control.

3. Control by the Public Opinion:

Public Opinion is an important agency of social control. As K. Young has said, ñPublic Opinion consists of the opinion held by a public at a certain time ñ. According to V. V. Akolkar, ñPublic opinion simply refers to that mass of ideas which people have to express on a given issueò. Public opinion may be said to be the collective opinion of majority of members of a group.

Public opinion is of great significance especially indemocratic societies. Through public opinion the knowledge of the needs, ideas, beliefs, and values of people can be ascertained. It

influences the social behaviour of people. Behaviour of the people is influenced by ideas, attitudes and desires which are reflected by public opinion.

People get recognition and respectability when they behave according to accepted social expectations. Public opinion helps us to know what type of behaviour is acceptable and what is not.

There are various agencies for the formulation and expression of public opinion. The press, radio, movies and legislatures are the main controlling agencies of public opinion.

The ópressô includes newspapers, magazines and journals of various kinds. The newspaper provides the stuff of opinion for it covers everyday events and policies. Many decisions of the people are influenced by information available through the press.

As an agency of social control the press seeks to influence the tastes, ideas, attitudes and preferences of the readers. It affects their ideology also. It enforces morality by exposing the moral lapses of the leaders.

Radio is another agency of public opinion that influences behaviour. It influences our language, customs and institutions. It is through the radio that human voice can reach millions of people at the same time. It can dramatise and popularise events and ideas. In the same way, television has also been influencing peopleôs behaviour.

Movies or motion pictures exert great influence on public opinion. They have effectively changed the attitudes and behaviour of the people. Movie-goers are relaxed and unaware of the fact that they are being affected by ideas and values.

They identify themselves with the leading characters and unconsciously accept the attitudes, values, etc., implicit in the role. Some emotionally disturbed people often search solutions for their problems through, movies. Through films it is possible to improve peopleôs tastes, ideas and attitudes to some extent.

Legislature at present is the most effective agency for the formulation and expression of public opinion. The debates in the legislatures influence public opinion particularly in democratic system. It makes laws that control peopleôs life and activities. It should be noted that legislature itself is subject to the influence of the people.

4. Control by Propaganda:

ñPropaganda is an organised or systematic attempt made by a person or a group to influence public opinion and attitudes in any sphere ñ.-Akolkar. It refers to the techniques of

influencing human action by the manipulation of representations. It is a means of influencing others, often towards a desirable end.

Propaganda can affect peopleôs faith, ideology, attitude and behaviour. It can also be used to replace old beliefs and practices with the new ones. Propaganda may bring about positive as well as negative results.

Governmental departments such as medical department, planning department, cooperative department, customs department, income tax department, etc. make propaganda to help people to mend their ways and also to develop right habits, practices and approaches.

Every government maintains a department to influence people in the direction of accepted patterns. This department is called the department of ópublic relationô or ñpublicityò. The health department may make use of various devices and techniques of propaganda to impress upon people to take precautions to control contagious diseases.

The planning department may try to appeal to the people through effective propaganda the necessity of controlling birth rate. The income tax department may try to create fear in the minds of tax payers of the consequences of evading taxes through propaganda.

Propaganda plays a vital role in both democratic and dictatorial countries. In democratic countries propaganda is mainly used to persuade people to accept some opinions or reject some others or to follow some new practices or drop out some old ones.

But in dictatorial countries it is used by the government mainly to suppress public opinion or to make people to believe what it wants them to believe. Mass media of communication are used for this purpose. Propaganda by itself is neither good nor bad. It depends on the purpose for which it is used and how it is used.

To make propaganda very effective the propagandists repeat them regularly and systematically. They present only one side of the question and furnish vast evidences in support of it.

They condemn their opponents and resort to self-praise in an intelligent way. To get enduring effects they concentrate on children and try to ôbrainwashô them. Totalitarian states normally try to do this. They even make education an instrument of propaganda.

5. Control by Coercion:

Coercion, that is, the use of physical force is one of the forms of social control. Coercion refers to the use of physical force to stop or control a work or an action. Whenever people are refrained from doing a particular work or whenever some limits are put deliberately on the

range of their choice through the use of force, or through the threat of its consequences, they may be said to be under coercion.

Coercion is an extreme form of violence. State is the only association which is empowered to use coercion in social control. No other association is vested with this power. It becomes necessary for the state to resort to coercion to suppress anti-social trends and activities.

Otherwise there would be no security for social life. It is necessary to keep within limits the self-interest, the greed, the lawlessness, and the intolerance ever ready to assert its will over others. It is necessary to protect the interests of the weaker groups, minorities, servants, slaves, poor and the like. Safeguarding the political and social order is the main service of force.

Force alone cannot protect the social order, but without force the order could never be secure. ñWithout force law is in danger of being dethroned, though force alone can never keep law in its throneò.

Though force is essential, it has its own limitations. The intervention of force substitutes a mechanical for a social relationship. The use of force indicates the denial of the possibility of cooperation. It treats the human being as though he were merely a physical object. Force is the end of mutuality.

Force by itself admits no expression of human impulses against whom it is wielded. Further, the exercise of power is a wasteful operation. It checks all the ordinary processes of life, all the give-and-take of common living. The more it is used the more it breeds resistance, thus necessitating still more enforcement.

Human experience has revealed that coercion or force is necessary as the guarantee of political laws. Its service is best rendered when it is used to the minimum. Where a common rule is considered necessary or beneficial for the common good, some degree of compulsion is involved.

Hence force becomes necessary to enforce the common rule. But only when the use of force is limited it becomes the servant of fundamental liberties of people. Only then the harmony of individuality and society could be most fully achieved.

óCustomsô represent a kind of informal social control. ñThe socially accredited ways of acting are the customs of societyò. Many of our daily activities are regulated by customs.

Our ways of dressing, speaking, eating, working, worshipping, training the young, celebrating festivals, etc., are all controlled by customs. They are self-accepted rules of social life. Individuals can hardly escape their hold.

All normal people prefer to live according to the customs for they save much of our energy and time. They save us from the objections and ridicule of the society. Customs give guidance for people in every activity. One need not have to resort to original thinking on every aspect. The role played by customs in life is comparable to the role of instincts in animals. Customs enlighten man in his social life.

Customs are conformed mostly unconsciously. Man learns them from his very childhood and goes on obeying them. Customs are very rarely opposed. Even the harmful customs are also obeyed by most of the people because they do not consider them harmful. While those who consider them harmful lack the courage to oppose them, only some exceptional individuals have the courage of going against them or carrying on protest against them.

Customs are basic to our collective life. They are found everywhere. They are more influential and dominant in the primitive society than in the modern society. In the tribal societies they act as the ñKing of Man ñ. In the modern complex society custom is slowly losing its hold over people, and giving place to law.

Control by Folkways and Mores:

Folkways and mores represent two important types of informal control.

Folkways:

ôFolkwaysô refer to the ways of the people. They are ñthe repetitive petty acts of the people ñ. Folkways are the norms to which people conform because it is expected of them. Conformity to the folkways is neither required by law nor enforced by any special agency of society.

For example, there is no law that compels us to wash clothes, to take bath, to brush teeth, to greet friends, to give respect to elders, etc. Still we do many such activities without thinking over them. It is a matter of usage. They are our folkways.

Folkways are not as compulsive and obligatory as laws or morals. Those who violate folkways are not punished by formal means. But the violators are put to gossip, slander and ridicule. One can ignore a few of the folkways but no one can neglect or violate all of them. They constitute an important part of the social structure.

They contribute to the order and stability of social relations. Human infants learn them through their elders through socialisation. They learn different folkways at different stages relevant to their class, caste, ethnic, religious, occupational, marital and other statuses. We are made to follow them because they are binding. They become with us a matter of habit.

The Mores:

ôMoresô orô Moralsô represent another category of norms. When folkwaysô act as regulators of behaviour then they become ómoresô. Mores are considered to be essential for group welfare. The positive mores prescribe behaviour patterns while the negative mores or taboos prescribe or prohibit behaviour patterns.

Mores for example, instruct people to love their country, to look after their wives and children, to tell the truth, to be helpful to others, etc. They also insist on people not to become unpatriotic, not to show disrespect to the god, not to steal, cheat, etc.

Mores represent the living character of the group. They are always considered as órightô by the people who share them. They are morally right and their violation morally wrong. Hence they are more compulsive in nature.

Mores contribute to the solidarity and harmony of the group. They help the individuals to identify themselves with the group. Every group has its own mores. There are more for each sex, for all ages, for all classes, for all families and so on.

8. Control by Sanctions:

Sanctions are the supporters of norms. ôSanctionsô refer to ñthe rewards or punishments used to establish social control, that is, to enforce the norms in a societyò. The basic purpose of sanction is to bring about conformity. They are used to force or persuade an individual or group to conform to social expectations.

Sanctions may be applied in various ways, ranging from the use of physical force to symbolic means, such as flattery. Negatively, they may be anything from a raised eyebrow to the death sentence. Positively, they range from a smile to an honorary degree.

Sanctions are applied in various ways. The type of sanctions also varies with the groups and situations. They may be positive or negative. Those sanctions which inflict pain or threaten to do so are negative. Those which elicit and facilitate response by rewards are positive. Both positive and negative sanctions may apply a wide variety of means.

Positive sanctions include verbal methods such as praise, flattery, suggestion, persuasion, some of education, indoctrination, advertising, propaganda, slogans, giving rewards, medals, badges, uniforms, titles, etc.

Negative means include-gossip, slander, satire, laughing at others, name-calling, threats, commands, censorship, and finally overt action. The method of overt action is the final sanction when no other way remains open.

In this method pain, suffering and even death is included. Overt action also includes fines, imprisonment, whipping, mutilation, torture, banishment, ostracism and death. Extreme negative sanctions are applied only by the state.

9. Control by Miscellaneous Norms:

(a) Fashion:

Fashion may be defined as permitted range of variation around a norm. People want to be like their associates and friends and also want to be different from them. Fashion is a device beautifully suited to reconcile these opposing tendencies. Fashion permits and regulates variety and thereby avoids a dull and deadening uniformity. They help us to express our individuality without going against norms.

In conforming to fashion we imitate our contemporaries. Sanctions that support conformity to fashion in dress are very powerful. Thus no woman wants to attend a dinner party in a night dress. Superficial or trivial changes in fashions are called fadsâ People follow both and try to conform to their requirements. Fashion has become all pervasive. People want to eat fashionable foods, wear fashionable-dresses, read fashionable books, enjoy fashionable amusements, etc.

(b) Rites, Rituals and Ceremonies:

Rites, rituals and ceremonies add dignity and a kind of special significance to various events of social life. They mark some occasions with solemnity and introduce enjoyment to others. More than that they serve to identify the individual with his groups, his community, and his nation.

Ceremonies are observed everywhere. The birth of a baby, confirmation, graduation, the death of an old man, the inauguration of a new factory, a promotion, the publication of a book, a new record in athletics, etc., are all events that draw special attention. Ceremony confers public recognition to them.

Ceremony regularises or standardises situations which people confront for which they may not otherwise find a guide for action. For example, the funeral ceremony helps the survivors to meet the crisis of death.

ôRiteô also refers to a ceremony. It sometimes conveys a sense of secrecy, of a ceremony known only to the initiated. All secret societies have their rites and also people with high qualifications have them. Example: An oral examination for the degree of doctor of philosophy. Through this the candidate joins the limited and selected few.

Ritual is also a ceremony but it is characterised by repetition. It is periodically or repeatedly performed. Ex. Republic Day, Independence Day, Wedding Anniversary, New Yearôs Day, Martyrsô Day, May Day, etc. Ritual introduces temporal regularity and a precision of detail into many of the events that characterise our social life. Ritual also induces a sense of identification with the group.

Etiquette:

Etiquette is a code of precise procedures that governs the social interaction of people. It contains the notion of propriety. Example: To give some gifts to the host, to place a guest of honour at appropriate seat at a formal dinner, to present some gift to the bride, etc.,

Sociologically speaking, etiquette serves three functions. (i) It prescribes standard procedures to be followed on specific occasions, (ii) It indicates membership in a certain social class, and (iii) It serves to maintain social distance where intimacy or familiarity is not required. Etiquette repels unwanted approaches at specific occasions.

Social control can be considered as an important aspect of an individual's socialization process. There are some universal norms or rules which should be followed by members of all societies. Any deviation from these norms may result in a minimum level of punishment for ensuring the social order. It refers to the processes of regulation of an individual or group behavior in a society, which encourages conformity and obedience. It may include social or political mechanisms. Its two forms are formal and informal controls.

Formal Social Control:

Formal social control is implemented by authorized agents including police officers, employers, military officers, and others. It is carried out as a last option at some places when

the desired behavior is not possible through informal social control. The situations and severity where formal control is practiced varies with countries.

This is practiced through law as statutes, rules, and regulations against deviant social behavior. For example, certain laws like prohibition of murder can be directed at all members of a society. Fishing and hunting regulations are made for certain groups. Corporate laws are laid for governing the behavior of social institutions. Formal control is conducted by government and organizations through law enforcement mechanisms. It can also be conducted through some formal sanctions including fines and imprisonment. Processes of formal control in democratic societies are determined and designed through legislation by elected representatives.

Courts or judges, military officers, police officers, school systems or teachers, and government agencies or bureaucrats, enforce formal control.

Informal Social Control:

It is exercised by a society without stating any rules or laws. It is expressed through norms and customs. Social control is performed by informal agents on their own in an unofficial capacity. Traditional societies mostly embed informal social control culture to establish social order.

Shame, sarcasm, criticism, ridicule and disapproval are some of the informal sanctions. Social discrimination and exclusion are included in informal control at extreme deviant cases. Self-identity, self-worth and self-esteem are affected in informal control through loss of group approval or membership. The severity and nature of informal control mechanisms differ from varied individuals, groups, and societies.

Informal is effective in small group settings including friends, family, neighborhood, work group and others. However, in some large and complex societies, informal social control and disapproval is ignored easily. At such situations, it is necessary to follow the formal one.

Some of the differences of formal and informal social control are:

ÅFormal social control includes written, formalized and codified statements in laws, rules, and regulations. Whereas informal control does not contain any written rules.

ÅFormal control agencies are authorized ones created by government and informal control agencies are created by social networks and organizations but not by government.

ÅFormal control is much effective and stronger than informal social control. Any situations which cannot be handled by informal control are subjected to formal one.

ÅFormal control is effective for even large groups of population but informal control is effective only for a small group of people.

Social control, formal or informal, thus helps in regulation of society. The study of social control includes disciplines of sociology, anthropology, psychology, law and political science.

Unit IV

Deviance, in a sociological context, describes actions or behaviors that violatesocial norms, including formally-enacted rules (e.g., crime), as well as informal violations of social norms (e.g., rejecting folkways and mores).

It is the purview of sociologists, psychologists, psychiatrists, and criminologists to study how these norms are created, how they change over time and how they are enforced.

Norms are rules and expectations by which members of society are conventionally guided. Deviance is an absence of conformity to these norms. Social norms differ from culture to culture. For example, a deviant act can be committed in one society that breaks a social norm there, but may be normal for another society.

Viewing deviance as a violation of social norms, sociologists have characterized it as "any thought, feeling or action that members of a social group judge to be a violation of their values or rules" or group "conduct that violates definitions of appropriate and inappropriate

conduct shared by the members of a social system. The departure of certain types of behavior from the norms of a particular society at a particular time and "violation of certain types of group norms where behavior is in a disapproved direction and of sufficient degree to exceed the tolerance limit of the community.

Deviance as reactive construction Deviance is concerned with the process whereby actions, beliefs or conditions come to be viewed as deviant by others. Deviance can be observed by the negative, or a stigmatizing social reaction of others towards these phenomena. An example in many societies would be sexual acts that stray from opposite-gender interactions. Criminal behavior, such as theft, can be deviant, but other crimes attract little or no social reaction, and cannot be considered deviant (e.g., violating copyright laws by downloading music on the internet).People may have a condition or disease which causes minor segments in a society to be potentially alienated, such as having HIV, dwarfism,facial deformities, or being obese. Deviance is relative to time and place because what is considered deviant in one social context may be non-deviant in another (e.g., fighting during a hockey game vs. fighting in a nursing home). Killing another human is considered wrong except when governments permit it during warfare or for self-defence. The issue of social power cannot be divorced from a definition of deviance because some groups in society can criminalize the actions of another group by using their influence on legislators.

Sociology of deviance - the processes that divide society into different types of people and the social effects of these processes Deviance implies an alleged breach of a social norm.

There are two ways of studying deviance as a social phenomenon:
Approach deviance as objectively given;Approach deviance as subjectively problematic

Deviance as objectively given:
delineate the norms of society under study and regard any deviation from these norms as ñdeviantò; make 3 assumptions There is widespread consensus in the society in the realm of norms; this widespread agreement makes it relatively easy to identify deviance Deviance typically evokes negative sanctions such as gossip or legal action; Punishment meted out to the deviant reaffirms for the group that it is bound by a set of common norms.

Major questions raised by this approach are:

What sociocultural conditions are most likely to produce deviance?

Why do people continue to deviate despite the negative sanctions that are brought to bear on them?

How can deviance best be minimized or controlled?

Procedure for studying deviants:

List the norms of the society or group;

Study official records kept on persons who violate these rules;

Try to discover the ways in which deviants and nondeviants differ to determine sociocultural conditions that seem to make deviant behavior more likely;

Try to derive a theory to explain the deviance and apply the theory for the correction and prevention of deviance.

Strength of the approach is the sharpness and simplicity with which it phrases questions.

Weaknesses of approach is that in a heterogeneous society, people often do not agree on norms; it is not easy to identify deviants since some get caught and others do not; social control agencies operate with selective enforcement so that some categories of people are more likely to be punished for their deviance.

Deviance as subjectively problematic:

Focus on the social differentiation of deviants

Assumptions:

When people and groups interact they communicate with one another by means of shared symbols; through symbolic communication, people are able to type one another and formulate their actions accordingly. Deviance can best be understood in terms of this process, that deviant labels are symbols that differentiate and stigmatize the people to whom they are applied.People act on the basis of such definitions by treating the alleged deviant differently from other people; the alleged deviant my also react to this definition.

Focus on social definitions and how these influence social interactions

Focus on the perspectives and actions of those who define a person as deviant

Look at circumstances under which a person is cast into a deviant role, most likely to be set apart as deviant, what actions other take on the basis of that definition of a person, and the consequences of these actions.

Focus on the perspective and reactions of the person adjudged to be deviant

Consider how a person reacts to being adjudged, how a person adopts a deviant role, what changes in group membershipôs result, and what changes occur in the alleged deviantôs self-concept

Objectively given approach focuses primarily on the characteristics of the deviant or the conditions that give rise to deviant acts; the subjectively problematic approach focuses on the definitions and actions both of the deviants themselves and of the people who label them deviant, and on the social interaction between the two.

Deviants, from the interactions approach, are considered simply as people who are socially typed in a certain way

Typing usually involves an attempt to make sense of seemingly aberrant acts by employing stereotypical interpretations that define the actor as a particular kind of person that includes a judgment about the moral quality of the deviantôs motives and suggests how a person should act toward the deviant

The social definition of deviance consists of description, an evaluation, and a prescription

The definition of a person as a particular type of deviant organizes peopleôs responses to that person ï the more people share the definition that a person is a particular type of deviant, the greater the consequences.

Once a person is typed as ñdeviantò a variety of social phenomena come into play, including who types whom, on what grounds, in what ways, before or after what acts, in front of what audience, and with what effects.

Conditions that seem to make typing more effective:

When type, the person typed as deviant, and other people share and understand the deviant definition in their social relationships. The person becomes the think he is described as being.

More accepted by other people if a high-ranking person does the typing

If there is a sense that the alleged deviant is violating important norms and that the violations are extreme

Negative social typing is more readily accepted than positive typing because people find comfort in the frailties of others and negative social typing is seen as a valuable safeguard if the type indicates an aberrant behaviour pattern that will continue with major consequences

If the audience stands to gains from the labelling it may divert attention from oneôs own deviance or may sustain a status difference between oneself and the deviant.

When social typing is effective, 3 kinds of consequences most often follow:

Self-fulfilling prophecy ï typing is based on false beliefs about the alleged deviant, but the actions other people take on the basis of these false beliefs eventually make them a reality.

Typecasting ï the deviant stereotype is so widely accepted that confirmation of the typing proceeds rapidly, and typer, audience, and the person typed relate to each other in an automatic manner

Recasting ï the deviant is expected to behave conventionally and is encourage disproving the deviant typing

The process of social typing occurs within a cultural context; because different groups and cultures have different ideas about deviance, typing often has an ethnocentric bias in which the outsider is typed as a deviant

Typing is easier when cultural guidelines exist

Person typed as deviant acquires a special status that carries a set of new rights and duties or changes in old ones, and a new set of expectations about future cond

c) **JUVENILE DELIQUENCY**:

INTRODUCTION

The word ñjuvenile delinquencyò has been differently analyzed by penologists. But generally speaking the term refers to a large variety of disapproved behaviour of children and adolescents which the society does not approve of, and for which some kind of diminishment, punishment of corrective measure is justified in the public interest.

Thus, the term has a very extensive meaning and includes rebellious and hostile behaviour of children and their attitude of indifference towards society.

Certain other acts such as begging, vagrancy, obscenity, loitering, pilfering, drinking, gambling etc. which vicious persons quite often commit are also included within the meaning of the term ñjuvenile delinquencyò.

It may therefore be said that a juvenile is an adolescent person between childhood and manhood or womanhood, as the case may be, who indulges in some sort of anti-social behaviour, which if not checked, may turn him into a potential offender.

It may be noted that a great variety of acts included within the term ñjuvenile delinquencyò are otherwise non-criminal in nature and are freely tolerated if done in by adults.

For example smoking, drinking or absenting one self from home may be permissible conducts for adults but the same are treated as delinquent acts if committed by children or adolescents.

Statistics on juvenile delinquency in India reveal that the problem is not so tense here as in other advanced countries.

This may be due to a variety of reasons such as greater family affiliation and parental control and persistence of religious convictions and moral precepts in Indian society.

Nevertheless, the impact of western civilization and temptation for luxuries and pompous life greatly disturbed the modern Indian youths. With the result there has been a considerable growth in crimes committed by juveniles.

INDIAN CONCEPT:

The Indian law contains a more precise and clear-cut definition of juvenile delinquency. It provides that any violation of existing penal law of the country committed by a child less than 16 years of age and a girl less than 18 years shall be an act of juvenile delinquency for the jurisdiction of the juvenile court.

The special provision which exist in the Indian Penal Code and the Criminal Procedure Code in relation to the juvenile offenders providing for their special treatment and producer are stated below-

(a) Sections 82 and 83 of the Indian Penal Code contain provision relating to the extent of criminal liability of children belonging to different age groups. A child below the age of seven is dole inscape, that is, incapable of committing a crime. Similarly, a child between seven and thirteen years of age has only a limited criminal liability.

The contention the nature and consequences of their act due to lack of sufficient maturity and understanding. It would, therefore, be grossly unjust to treat them at par with adult offenders.

(b) Section 360 of the Code Criminal Procedure, 1973 provides that a person below twenty-one years of age is known as the ófirst offenderô and is not to be tried in a criminal court through the ordinary procedure.

He is to be dealt with and corrected through special methods of treatment under the law. The object is to segregate the young offender from hardened criminals so that he is not exposed to recidivist tendencies.

(c) Section 27 of the Code of Criminal Procedure further suggests that a lenient treatment to juveniles has already received statutory recognition in the Indian law.

The section provides that if a person below sixteen years of age commits an offence other than one punishable with death or imprisonment for life, he should be awarded a lenient punishment depending upon his previous history, character and circumstances which led him to commit the crime.

His sentence can further be commuted for good behaviour during the term of his imprisonment.

With a view to preventing the juvenile offender from stigmatization and embarrassment, the proceedings instituted against him are neither published for publicised. His name, address or identity is not disclosed and general public is excluded from witnessing the trial.

The delinquentôs parents may, however, be allowed to attend the trial. The object of these closed-door proceedings is to keep off the delinquent from rigours of procedural law and make the trial simple and less formal.

The guiding principles relating to the treatment of children and young delinquents are now contained in two Central Asia, namely, the Children Act, 1960 and the Probation of Offenders Act, 1958.

The latter Act provides for release of juvenile offenders on probation. The basic assumption underlying these legislative measures presuppose that youngsters are naughty is nature and therefore societyôs attitude towards them should be one of tolerance and generosity.

That apart, the mental attitude of juvenile delinquent at the time of committing crime certainly differs from that of a confirmed adult criminal. It would therefore be basically unjust to punish the two alike.

The juvenile offenders are apprehended by police but only ion report of a Probation Officer.

The Probation Officer makes his report on the basis of investigation made into the previous history and character of the offender and the circumstances leading to his act of criminality.

Thereafter, the young offender is produced before a lady honorary Magistrate for an informal private hearing. She explains to the juvenile the charge for which he or she is brought before her and also asks whether he/she confesses or denies the charge framed against him/her?

During the course of this informal hearing the lady magistrate resorts to affectionate methods for extracting confession from the offender.

It is pertinent to note that the process of extracting confession from offenders is clearly against the accepted legal norms.

The entire proceedings and the records of the trial are kept strictly confidential so as to save the delinquent from stigmatization. If no case is established against the offender, he is discharged forthwith.

In case he is found guilty, he is booked to a detention home for readjustment. These detention homes for juvenile offenders provide for a disciplined life with sufficient recreational facilities and delinquent treatment for physical and mental defects.

The conviction in a juvenile court shall not entail any disqualification on juvenile offender.

Causes Of Juvenile Delinquency

Family Influence

Theorists who believe in the peer influence model also tend to support the belief that family

has a strong influence on development of delinquent behaviour. They clarify this by stating that the family type is also very important and children from non-traditional families have a greater chance of engaging in delinquent behaviour than children from traditional families. Economic condition inherit to single parent families may place children at a greater risk (K.PADMAJA). A single parent also has the added pressure of trying to provide emotional support. While the reconstituted families experience difficulties in area of communication and emotional support.

One of the causes of Childôs deviation is divorce, and what accompany it are displacement, fragmentation and disunion of the families. It is undisputable that a child who is deprived of a loving mother and caring father would hasten towards crime and eventually becomes corrupt. (K.PADMAJA). Children of divorced parents also face emotional conflicts regarding their allegiance to either one or both of their parents. They also face difficulties in scheduling time with their parents and adjustments to new influences when their biological parents remarry. The author State the following- ñchildren and adolescents who experience the family disturbances due to divorce and remarriage typically demonstrate higher levels of aggressive, defiant, and delinquent behaviour.

Mental Disorder

Conduct disorder usually develops during childhood and manifests itself during an adolescence life. Some Juvenile behavior is attributed to the diagnosable disorder known as conduct disorder. Juvenile delinquent who have recurring encounters with the criminal Justice system are sometimes diagnosed with conduct disorder because they show continuous disregard for their own and others safety. Once the Juvenile reach maturation their socially unaccepted behavior has grown into life style and they develop into career criminal. (3) Abuse also affects the child yet the link between abuse and Delinquency is not very strong. Abused children tend to manifest more problematic and aggressive behaviour than children who are not abused. (K.PADMAJA.). some children are incapacitated so they can feed their so-called caretaker. Children get support from their parents in problem solving, negotiating conflict, and social behaviour. Some children who are neglected by their parents run away

from homes and appear in streets and railway station getting involved in small crimes. Also Children who have criminal parent are at a greater risk of becoming delinquent themselves. More than single parent children, children who grow up in home where marital violence prevails tend to be more delinquent. In such family children become introverts (K.PADMAJA). According to research parental disruption is one of the key predictor for delinquent behaviour. This disruption can be varied in nature from divorce to parental depression, inconsistent parenting, constantly moving from one place to another and at least one parent committing crime. The conclusion is that lack of stability and consistency in lives of children leaves them at great risk for delinquent behaviour. Mental illness and substance abuse, which often co-occur among Juvenile offender, can contribute substantially to delinquent behaviour. Studies have found very high prevalence rate of mental illness among detained and incarcerated Juveniles and Juvenile offenders. Lack of appropriate treatment may lead to future Delinquency, adult criminality and adult mental illness. (www.aboutJuveniledeliquency.com)

Social Environment

There are many reasons for widespread crises in families today such as changes in social environment. There have been many changes in our social environment over last 25 years. These changes have made the environment risky for the youth. (www.freeonlineresearchpaper.com). There is evidence in the research to demonstrate that low self-esteem may also be one of the contributing factors to delinquent behaviour. In kalpanôs theory however, young people are emotionally vulnerable. When young people experience rejection by their peer, some react by seeking out deviant peers in order to be accepted by people their own age.

Sexual Abuse

Child sexual abuse can result in both short term and long term harm, including psychopathology in later life. Physical and social effects including depression, post traumatic stress disorder, poor self esteem, anxiety disorders, general psychological distress and disorder are instilled in them. (Wikipedia). Not all victims of child abuse and neglected child

experience behaviour consequence. Studies have found abused and neglected children to be at least 25% more likely to experience problem such as Delinquency, teen pregnancy, drug use and mental health problem. According to National Institute of Justice Study, abuse and neglected children were 11 times more likely to be arrested for criminal behaviour. A Juvenile is 2.7 times more likely to be arrested for violent and criminal behaviour than an adult.

THEORETICAL CAUSES:

Rational Choice*: Many psychologists believe that this kind of behavior is the result of the self interest or will of the offender himself. In other words he does this because he wants to do this. This cause is most harmful because the offender finds a certain degree of satisfaction after committing the crime and so sees nothing wrong to it.*
Social Disorganization*: Traditionally our community lived as one. There was joint family system. The environment of the school, home everything was very different from what it is today. As our social system is undergoing a change, families are isolated, with both parents working and children left alone with no care.*

Strain and Stress*: The children are more prone to easy stress and strain from the discrimination in our society. Though India has seen fast development and living conditions have improved a lot in past one decade, still we can see that the rich have become richer and the poor are poorer. So the discrimination is still there. The desires and wants drive children to commit crimes merely for satisfaction of their want**s.***

Bad Company: *The children who are in bad company knowingly or unknowingly enter and become a part of the world of crimes. Such individuals are motivated to commit crime by their peers or criminal friends.*

Labeling*: This is the theory of our society. Generally when we see someone or hear someone's involvement in a crime, we actually label him as a criminal. In schools we see and hear terms like Back Benchers, Failures. Such terminology becomes identification marks of*

these individuals and they thus rarely make an attempt to come out of it. ***Male Phenomenon****: Mostly we see the young men at their adolescent period are naturally more aggressive and they pretend to be more powerful, strong or daring. In a pressure to prove this masculinity, they step into the world of crime.*

Reformative Remedies

For reformation of Juveniles various remedies are available under the Act. After coming out from these special homes they sometimes also get exploited where child trafficking is one of the forms for their exploitation. Child trafficking shall include at minimum exploitation of prostitution of others or other form of sexual exploitation, forced labour, slavery and practices similar to slavery servitude or removal of organs. And thus to minimize these chances remedies are given in Juvenile Justice Act.

Adoption

Adoption means the process through which the adopted child is permanently separated from his biological parents and become the legitimate child of adoptive parent with all right, privileges and responsibility. Government has also constituted various agencies for adoption and these agencies are duty bound to keep check on children who have been adopted. To safeguard malpractices and deviations from prescribed guidelines for adoption notified by Government of India, Supreme Court of India has appointed an independent Non GovernmentalOrganisations with experience in child adoption- ôThe Indian council of social welfareô with head quarters in Mumbai and branches in all States as scrutiny agencies.

Central Adoption Resource Authority CARA is another authority which has been setup to keep check on the adoption policies. It is the National level body under Ministry of Women and Child Development for all matters relating to adoption. Under section 41(5) of Juvenile Justice (Care and Protection) Act 2000 another authority has been instituted for adoption of Juvenile child. Under this section- ñNo child shall be offered for adoption ï

· Until two members of committee declares the child legally free for placement in case of abandoned child.

· Until two months period for reconsideration by the parents is over in case of surrendered children.

· Without his consent in case of child who can understand and express his consent. After fulfilling all these conditions only the child can be given for adoption.

Conclusion

Exploitation of children has been a long standing practice. These delinquent go through a lot of abuse which vary in nature as physical, sexual, or psychological or as a combination. The abuse has a long lasting and profound effect on a child's life. The problem of child abuse is a serious one and it is unlikely that it gets solved any sooner.

Also the reason why this has prolonged is that the society has affected the children in a negative way and in the society there are factors such as family influence, social environment, mental disorder and sexual abuse. This develops in young people low self esteem and they go through mental trauma which later correlates with delinquent behaviour.

What needs to be done is the question that arises before us. We cannot uproot this menace but there are solutions to keep a control on the problem of Juvenile Delinquency. In the best interest of the delinquent he or she should be rehabilitated as early as possible and integrated back in the society. Also the State must protect the rights of these children and come up with reformative methods and instil in them values that can socially uplifts them and give them a new found confidence so that they can play a constructive role in the society.

PREVENTIVE MEASURES

Juvenile Delinquency can be checked at a very primary stage and measures can be taken both at home as well as in school to help bring children out of this characterization. As it is evident from the above discussion that it's not just the will of an individual which makes him

get into the world of wrong deeds, all other factors like schools, neighborhood, Family, Society, Situations are equally responsible for the degradation or fall of a child. Hence instead of labeling them as one we must try and find ways, rectify the errors in their lives which led them to behave in this manner. Children are soft clay, we can mould them, we have the art, we have the knowledge, all that is needed is faith and patience which if we fail to practice it results in complete reform of a child to anti social elements and thereby criminals, which is wrong on our part. Criminals are not born they are made, and if we as a society can make them then we as a society also have the power to cure them.

DOMESTIC VIOLENCE:

Domestic violence and abuse can happen to anyone, yet the problem is often overlooked, excused, or denied. This is especially true when the abuse is psychological, rather than physical. Noticing and acknowledging the signs of an abusive relationship is the first step to ending it. No one should live in fear of the person they love. If you recognize yourself or someone you know in the following warning signs and descriptions of abuse, reach out. There is help available.

Domestic abuse, also known as *spousal abuse,*occurs when one person in an intimate relationship or marriage tries to dominate and control the other person. Domestic abuse that includes physical violence is called *domestic violence*.

Domestic violence and abuse are used for one purpose and one purpose only: to gain and maintain total control over you. An abuser doesnôt ñplay fair.ò Abusers use fear, guilt, shame, and intimidation to wear you down and keep you under his or her thumb. Your abuser may also threaten you, hurt you, or hurt those around you.

Domestic violence and abuse does not discriminate. It happens among heterosexual couples and in same-sex partnerships. It occurs within all age ranges, ethnic backgrounds, and economic levels. And while women are more commonly victimized, men are also abusedð especially verbally and emotionally, although sometimes even physically as well. The bottom line is that abusive behavior is never acceptable, whether itôs coming from a man, a woman, a teenager, or an older adult. You deserve to feel valued, respected, and safe.

Recognizing abuse is the first step to getting help

Domestic abuse often escalates from threats and verbal abuse to violence. And while physical injury may be the most obvious danger, the emotional and psychological consequences of domestic abuse are also severe. Emotionally abusive relationships can destroy your self-worth, lead to anxiety and depression, and make you feel helpless and alone. No one should have to endure this kind of painð and your first step to breaking free is recognizing that your situation is abusive. Once you acknowledge the reality of the abusive situation, then you can get the help you need.

Signs of an abusive relationship

There are many signs of an abusive relationship. The most telling sign is fear of your partner. If you feel like you have to walk on eggshells around your partnerð constantly watching what you say and do in order to avoid a blow-upð chances are your relationship is unhealthy and abusive. Other signs that you may be in an abusive relationship include a partner who belittles you or tries to control you, and feelings of self-loathing, helplessness, and desperation.

To determine whether your relationship is abusive, answer the questions below. The more ñyesò answers, the more likely it is that youôre in an abusive relationship.

Domestic violence, also known as **domestic abuse**, **spousal abuse**, **battering**, **family violence**, **dating abuse**, and **intimate partner violence (IPV)**, is a pattern of behavior which involves the abuse by one partner against another in an intimate relationship such as marriage,cohabitation, dating or within the family.Domestic violence can take many forms, including physical aggression or assault (hitting, kicking, biting, shoving, restraining, slapping, throwing objects, battery), or threats thereof; sexual abuse; emotional abuse; controlling or domineering; intimidation;stalking; passive/covert abuse (e.g., neglect); and economic deprivation.

Alcohol consumption and mental illness] can be co-morbid with abuse, and present additional challenges in eliminating domestic violence. Awareness, perception, definition and documentation of domestic violence differs widely from country to country, and from era to era.

Domestic violence and abuse is not limited to obvious physical violence. Domestic violence can also mean endangerment, criminal coercion, kidnapping, unlawful imprisonment, trespassing, harassment, and stalking.[5]

Laws on domestic violence vary by country. While it is generally outlawed in the Western World, this is not the case in many developing countries. For instance, in 2010, the United Arab Emirates's Supreme Court ruled that a man has the right to physically discipline his wife and children as long as he does not leave physical marks.[6] The social acceptability of domestic violence also differs by country. While in most developed countries domestic violence is considered unacceptable by most people, in many regions of the world the views are different: according to a UNICEF survey, the percentage of women aged 15ï 49 who think that a husband is justified in hitting or beating his wife under certain circumstances is, for example: 90% in Afghanistan and Jordan, 87% in Mali, 86% in Guinea and Timor-Leste, 81% in Laos, 80% in Central African Republicing to submit to a husband's wishes is a

common reason given for justification of violence in developing countries: for instance 62.4% of women in Tajikistan justify wife beating if the wife goes out without telling the husband; 68% if she argues with him; 47.9% if she refuses to have sex with him.

Traditionally, in most cultures, men had a legal right to use violence to "discipline" their wives. Although in the US and many European countries this right was removed from them in the late 19th/early 20th century, before the 1970s criminal arrests were very rare (occurring only in cases of extreme violence), and it was only in the 1990s that rigorous enforcement of laws against domestic violence became standard policy in Western countries.

Definitions

The definition of the term "domestic violence" varies, depending on the context in which it is used. It may be defined differently in medical, legal, political or social contexts. The definitions have varied over time, and vary in different parts of the world. Traditionally, domestic violence was mostly associated with physical violence. For instance, according to the Merriam-Webster dictionary definition, domestic violence is: "the inflicting of physical injury by one family or household member on another; also: a repeated / habitual pattern of such behavior." However, domestic violence today, as defined by international conventions and by governments, has a much broader definition, including sexual, psychological and economic abuse.

The Convention on preventing and combating violence against women and domestic violence states that:

> " ñdomestic violenceò shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim".

The Declaration on the Elimination of Violence against Women classifies violence against women into three categories: that occurring in the family (DV), that occurring within the general community, and that perpetrated or condoned by the State. Family violence is defined as follows:

> "Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non- spousal violence and violence related to exploitation".

The term "intimate partner violence" (IPV) is often used synonymously with domestic abuse or domestic violence. Family violence is a broader definition, often used to include child abuse, elder abuse, and other violent acts between family members.

Broad definitions of domestic violence are common today. For instance the Act XX on Domestic Violence 2006, in Malta, defines DV as follows:

"domestic violence" means any act of violence, even if only verbal, perpetrated by a household member upon another household member and includes any omission which causes physical or moral harm to the other"

Terms such wife abuse, wife beating, and battering are descriptive terms that have lost popularity recently for several reasons:

- There is acknowledgment that many victims are not actually married to the abuser, but rather cohabiting or in other arrangements.[
- Abuse can take other forms than physical abuse. Other forms of abuse may be constantly occurring, while physical abuse happens occasionally. These other forms of abuse, that are not physical, also have the potential to lead to mental illness, self-harm, and even attempts at suicide.
- Males as well as females may be victims of domestic violence, and females as well as males can be the perpetrators.
- All forms of domestic abuse can occur in same sex partnerships.

"Domestic violence" may also be the name of a specific criminal offense, in a Criminal Code of a jurisdiction, describing various criminal acts. It may also appear in the context of legislation that is not necessary criminal, but rather civil (providing for civil remedies, protection orders etc.). See, for example, Protection of Women from Domestic Violence Act 2005.

Government definitions:

The US Office on Violence Against Women (OVW) defines domestic violence as a "pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner". The definition adds that domestic violence "can happen to anyone regardless of race, age, sexual orientation, religion, or gender", and can take many forms, including physical abuse, sexual abuse, emotional, economic, and psychological abuse.[21]

The Children and Family Court Advisory and Support Service in the United Kingdom in its "Domestic Violence Policy" uses *domestic violence* to refer to a range of violent and abusive behaviors, defining it as:

Patterns of behavior characterized by the misuse of power and control by one person over another who are or have been in an intimate relationship. It can occur in mixed gender relationships and same gender relationships and has profound consequences for the lives of children, individuals, families and communities. It may be physical, sexual, emotional and/or psychological. The latter may include intimidation, harassment, damage to property, threats and financial abuse

Dynamics classification

Violence by a person against their intimate partner is often done as a way for controlling their partner, even if this kind of violence is not the most frequent. Many types of intimate partner violence occur, including violence between gay and lesbian couples, and by women against their male partners

Intimate partner violence types[

Michael P. Johnson argues for four major types of intimate partner violence, which is supported by subsequent research and evaluation. as well as independent researchers.

Distinctions are made among the types of violence, motives of perpetrators, and the social and cultural context based upon patterns across numerous incidents and motives of the perpetrator. Types of violence identified by Johnson:

- Common couple violence **(CCV)** is not connected to general control behavior, but arises in a single argument where one or both partners physically lash out at the other.
- **Intimate terrorism (IT)** may also involve emotional and psychological abuse. Intimate terrorism is one element in a general pattern of control by one partner over the other. Intimate terrorism is less common than common couple violence, more likely to escalate over time, not as likely to be mutual, and more likely to involve serious injury. IT batterers include two types: "Generally-violent-antisocial" and "dysphoric-borderline". The first type includes people with general psychopathic and violent tendencies. The second type are people who are emotionally dependent on the relationship Support for this typology has been found in subsequent evaluations.

- **Violent resistance (VR),** sometimes thought of as "self-defense", is violence perpetrated by victims against their abusive partners
- **Mutual violent control (MVC)** is rare type of intimate partner violence occurring when both partners act in a violent manner, battling for control.

Types of male batterers identified by Holtzworth-Munroe and Stuart (1994) include "family-only", which primarily fall into the CCV type, who are generally less violent and less likely to perpetrate psychological and sexual abuse.

Other

Others, such as the US Centers for Disease Control, divide domestic violence into two types: reciprocal, in which both partners are violent, and non-reciprocal violence, in which one partner is violent

Physical

Physical abuse is abuse involving contact intended to cause feelings of intimidation, pain, injury, or other physical suffering or bodily harm.

Physical abuse includes hitting, slapping, punching, choking, pushing, burning and other types of contact that result in physical injury to the victim. Physical abuse can also include behaviors such as denying the victim of medical care when needed, depriving the victim of sleep or other functions necessary to live, or forcing the victim to engage in drug/alcohol use against his/her will. If a person is suffering from any physical harm then they are experiencing physical abuse. This pain can be experienced on any level It can also include inflicting physical injury onto other targets, such as children or pets, in order to cause psychological harm to the victim

Sexual

Sexual abuse is any situation in which force or threat is used to obtain participation in unwanted sexual activity. Coercing a person to engage in sexual activity against their will, even if that person is a spouse or intimate partner with whom consensual sex has occurred, is an act of aggression and violence.

Sexual violence is defined by World Health Organization as:

- any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a personôs sexuality using coercion, *by any person regardless of their relationship to the victim, in any setting, including but not limited to home* and work.
- Categories of sexual abuse include:

1. Use of physical force to compel a person to engage in a sexual act against his or her will, whether or not the act is completed;
2. Attempted or completed sex act involving a person who is unable to understand the nature or condition of the act, unable to decline participation, or unable to communicate unwillingness to engage in the sexual act, e.g., because of underage immaturity, illness, disability, or the influence of alcohol or other drugs, or because of intimidation or pressure.

Marital rape

Marital rape, also known as spousal rape, is non-consensual sex in which the perpetrator is the victim's spouse. It is a form of partner rape, of domestic violence, and of sexual abuse. Once widely condoned or ignored by law, spousal rape is now repudiated by international conventions and increasingly criminalized. Still, in many countries, spousal rape either remains legal, or is illegal but widely tolerated and accepted as a husband's prerogative.

The criminalization of rape in marriage is recent, having occurred during the past few decades. The legal and social concept of marital rape, has developed, in most industrialized countries, in the mid to late 20th century; and in many parts of the world it is still not recognized, socially and legally, as a form of abuse. Several countries in Eastern Europe and Scandinavia made spousal rape illegal before 1970, but other countries in Western Europe and the English-speaking Western World outlawed it much later, mostly in the 1980s and 1990s. In many parts of the world the laws against marital rape are very new, having been enacted in the 2000s.

In the US spousal rape is illegal in all 50 states In Canada, spousal rape was outlawed in 1983, when several legal changes were made, including changing the rape statute to *sexual assault,* and making the laws gender

neutral. Criminalization in Australia began with the state of New South Wales in 1981, followed by all other states from 1985 to 1992. New Zealand outlawed spousal rape in 1985, and Ireland in 1990. In England and Wales, spousal rape was made illegal in 1991, when the marital rape exemption was abolished by the Appellate Committee of the House of Lords, in the case of *R v R*.

Emotional

Emotional abuse:

Emotional abuse (also called psychological abuse or mental abuse) can include humiliating the victim privately or publicly, controlling what the victim can and cannot do, withholding information from the victim, deliberately doing something to make the victim feel diminished or embarrassed, isolating the victim from friends and family, implicitly blackmailing the victim by harming others when the victim expresses independence or happiness, or denying the victim access to money or other basic resources and necessities. Degradation in any form can be considered psychological abuse.

Emotional abuse can include verbal abuse and is defined as any behavior that threatens, intimidates, undermines the victimôs self-worth or self-esteem, or controls the victimôs freedom. This can include threatening the victim with injury or harm, telling the victim that they will be killed if they ever leave the relationship, and public humiliation. Constant criticism, name-calling, and making statements that damage the victimôs self-esteem are also common verbal forms of emotional abuse.

Often perpetrators will attempt and may succeed in alienating (parental alienation), a child from a parent or extended family member, and in doing so also victimize the child when the child is engaged in emotional abuse by encouraging, teaching or forcing them to harshly criticize another victim. Emotional abuse includes conflicting actions or statements which are designed to confuse and create insecurity in the victim. These behaviors also lead the victims to question themselves, causing them to believe that they are making up the abuse or that the abuse is their fault

Emotional abuse includes forceful efforts to isolate the victim, keeping them from contacting friends or family. This is intended to eliminate those who might try to help the victim leave the relationship and to create a lack of resources for

them to rely on if they were to leave. Isolation results in damaging the victim's sense of internal strength, leaving them feeling helpless and unable to escape from the situation.

People who are being emotionally abused often feel as if they do not own themselves; rather, they may feel that their significant other has nearly total control over them. Women or men undergoing emotional abuse often suffer from depression, which puts them at increased risk for suicide, eating disorders, and drug and alcohol abuse.

Verbal

Verbal abuse is a form of emotionally abusive behavior involving the use of language. Verbal abuse can also be referred to as the act of threatening. Through threatening a person can blatantly say they will harm you in any way and will also be considered as abuse. It may include profanity but can occur with or without the use of expletives.

Verbal abuse may include aggressive actions such as name-calling, blaming, ridicule, disrespect, and criticism, but there are also less obviously aggressive forms of verbal abuse. Statements that may seem benign on the surface can be thinly veiled attempts to humiliate; falsely accuse; or manipulate others to submit to undesirable behavior, make others feel unwanted and unloved, threaten others economically, or isolate victims from support systems.

In Jekyll and Hyde behaviors, the abuser may fluctuate between sudden rages and false joviality toward the victim; or may simply show a very different "face" to the outside world than to the victim. While oral communication is the most common form of verbal abuse, it includes abusive communication in written form.

Economic

Economic abuse is a form of abuse when one intimate partner has control over the other partner's access to economic resources Economic abuse may involve preventing a spouse from resource acquisition, limiting the amount of resources to use by the victim, or by exploiting economic resources of the victimThe motive behind preventing a spouse from acquiring resources is to diminish victim's capacity to support his/herself, thus forcing him/her to depend on the perpetrator financially, which includes preventing the victim from obtaining

education, finding employment, maintaining or advancing their careers, and acquiring assets.

In addition, the abuser may also put the victim on an allowance, closely monitor how the victim spends money, spend victim's money without his/her consent and creating debt, or completely spend victim's savings to limit available resources

Specific forms in parts of the world

In some parts of the world, specific forms of domestic violence, such as honor killings, acid attacks and dowry violence, are common.

Honor killings:

An **honor killing** is the homicide of a member of a family or social group by other members, due to the belief of the perpetrators that the victim has brought dishonor upon the family or community. Although these crimes are most often associated with the Middle East, they occur in other places too.

Human Rights Watch defines "honor killings" as follows:

Honor killings are acts of vengeance, usually death, committed by male family members against female family members, who are held to have brought dishonor upon the family. A woman can be targeted by (individuals within) her family for a variety of reasons, including: refusing to enter into an arranged marriage, being the victim of a sexual assault, seeking a divorceð even from an abusive husbandð or (allegedly) committing adultery. The mere perception that a woman has behaved in a way that "dishonors" her family is sufficient to trigger an attack on her life.

Acid throwing:

Acid throwing, also called an acid attack. or vitriol age is defined as the act of throwing acid onto the body of a person "with the intention of injuring or disfiguring [them] out of jealousy or revenge". Perpetrators of these attacks throw acid at their victims, usually at their faces, burning them, and damaging skin tissue, often exposing and sometimes dissolving the bones.The long term consequences of these attacks include blindness and permanent scarring of the face and body. Acid attacks are often connected to domestic disputes in places such as Pakistan and Bangladesh. In India, these attacks also happen in connection to dowry murders.

On children

3.3 million children witness domestic violence each year in the US. There has been an increase in acknowledgment that a child who is exposed to domestic abuse during their upbringing will suffer in their developmental and psychological welfare.During the mid 1990s, the Adverse Childhood Experiences (ACE) study found that children who were exposed to domestic violence and other forms of abuse had a higher risk of developing mental and physical health problems. Because of the awareness of domestic violence that some children have to face, it also generally impacts how the child develops emotionally, socially, behaviorally as well as cognitively.

Some emotional and behavioral problems that can result due to domestic violence include increased aggressiveness, anxiety, and changes in how a child socializes with friends, family, and authorities Depression, emotional insecurity, and mental health disorders can follow due to traumatic experiences. Problems with attitude and cognition in schools can start developing, along with a lack of skills such as problem-solving. Correlation has been found between the experience of abuse and neglect in childhood and perpetrating domestic violence and sexual abuse in adulthood.

Additionally, in some cases the abuser will purposely abuse the mother or father in front of the child to cause a ripple effect, hurting two victims simultaneously. It has been found that children who witness mother-assault are more likely to exhibit symptoms of post-traumatic stress disorder (PTSD). Consequences to these children are likely to be more severe if their assaulted mother develops post-traumatic stress disorder (PTSD) and does not seek treatment due to her difficulty in assisting her child with processing his or her own experience of witnessing the domestic violence.

Family Violence prevention in Australia and other countries has begun to focus on breaking intergenerational cycles, according to the National (Aust) Standards for Working with Children Exposed to Family Violence it is important to acknowledge that exposing children to Family Violence is child abuse. Some of the effects of Family Violence on children are highlighted in the Queensland Government and SunnyKids awareness raising campaign.

Physical

Bruises, broken bones, head injuries, lacerations, and internal bleeding are some of the acute effects of a domestic violence incident that require medical attention and hospitalization. Some chronic health conditions that have been linked to victims of domestic violence are arthritis, irritable bowel syndrome, chronic pain, pelvic pain, ulcers, and migraines. Victims who are pregnant during a domestic violence relationship experience greater risk of miscarriage, pre-term labor, and injury to or death of the fetus.

Psychological

Among victims who are still living with their perpetrators high amounts of stress, fear, and anxiety are commonly reported. Depression is also common, as victims are made to feel guilty for ópro vokingô the abuse and are frequently subjected to intense criticism. It is reported that 60% of victims meet the diagnostic criteria for depression, either during or after termination of the relationship, and have a greatly increased risk of suicidality.

In addition to depression, victims of domestic violence also commonly experience long-term anxiety and panic, and are likely to meet the diagnostic criteria for Generalized Anxiety Disorder andPanic Disorder. The most commonly referenced psychological effect of domestic violence is Post-Traumatic Stress Disorder (PTSD). PTSD (as experienced by victims) is characterized byflashbacks, intrusive images, exaggerated startle response, nightmares, and avoidance of triggers that are associated with the abuse. These symptoms are generally experienced for a long span of time after the victim has left the dangerous situation. Many researchers state that PTSD is possibly the best diagnosis for those suffering from psychological effects of domestic violence, as it accounts for the variety of symptoms commonly experienced by victims of trauma.

Financial

Once victims leave their perpetrator, they can be stunned with the reality of the extent to which the abuse has taken away their autonomy. Due to economic abuse and isolation, the victim usually has very little money of their own and few people on whom they can rely when seeking help. This has been shown to be one of the greatest obstacles facing victims of DV, and the strongest factor that can discourage them from leaving their perpetrators.

In addition to lacking financial resources, victims of DV often lack specialized skills, education, and training that are necessary to find gainful employment, and also may have several children to support. In 2003, thirty-six major US cities cited DV as one of the primary causes of homelessness in their areas It has also been reported that one out of every three homeless women are homeless due to having left a DV relationship. If a victim is able to secure rental housing, it is likely that her apartment complex will have "zero tolerance" policies for crime; these policies can cause them to face eviction even if they are the victim (not the perpetrator) of violence. While the number of shelters and community resources available to DV victims has grown tremendously, these agencies often have few employees and hundreds of victims seeking assistance which causes many victims to remain without the assistance they need.

Long-term

Domestic violence can trigger many different responses in victims, all of which are very relevant for any professional working with a victim. Major consequences of domestic violence victimization include psychological/mental health issues and chronic physical health problems. Some long term effects on a child who comes from an abusive household, or have been abused themselves are guilt, anger, depression/anxiety, shyness, nightmares, disruptiveness, irritability,and problems getting along with others. Although they may have not been the ones being abused it still affects them because they had to experience and witness their loved ones being abused, which takes a toll on them as well. Domestic violence also teaches poor family structure. A child who grows up being abused thinks of that as a way a family functions, and will grow up and repeat the cycle because that is all they know. Some other long term affects include but are not limited to poor health, low self-esteem, difficulty sleeping, drug and alcohol abuse risk, isolation, suicidal thoughts, and extreme loneliness and fear. A victimôs overwhelming lack of resources can also lead to homelessness and poverty. A person who has suffered abuse is at risk for a lot of negative consequences that can put them on a destructive path for their future.

On responders

Vicarious trauma:

Due to the gravity and intensity of hearing victimsô stories of abuse, professionals (social workers, police, counselors, therapists, advocates, medical professionals)

are at risk themselves for secondary or vicarious trauma (VT), which causes the responder to experience trauma symptoms similar to the original victim after hearing about the victimôs experiences with abuse Research has demonstrated that professionals who experience vicarious trauma show signs of exaggerated startle response, hyper vigilance, nightmares, and intrusive thoughts although they have not experienced a trauma personally and do not qualify for a clinical diagnosis of PTSD

Researchers concluded that although clinicians have professional training and are equipped with the necessary clinical skills to assist victims of domestic violence, they may still be personally affected by the emotional impact of hearing about a victimôs traumatic experiences. Life et al. found that there are several common initial responses that are found in clinicians who work with victims: loss of confidence in their ability to help the client, taking personal responsibility for ensuring the clientôs safety, and remaining supportive of the clientôs autonomy if they make the decision to return to their perpetrator.

It has also been shown that clinicians who work with a large number of victims may alter their former perceptions of the world, and begin to doubt the basic goodness of others. Life et al. found that clinicians who work with victims tend to feel less secure in the world, become "acutely aware" of power and control issues both in society and in their own personal relationships, have difficulty trusting others, and experience an increased awareness of gender-based power differences in society.

The best way for a clinician to avoid developing VT is to engage in good self-care practices. These can include exercise, relaxation techniques, debriefing with colleagues, and seeking support from supervisors Additionally, it is recommended that clinicians make the positive and rewarding aspects of working with domestic violence victims the primary focus of thought and energy, such as being part of the healing process or helping society as a whole. Clinicians should also continually evaluate their empathic responses to victims, in order to avoid feelings of being drawn into the trauma that the victim experienced. It is recommended that clinicians practice good boundaries, and find a balance in expressing empathic responses to the victim while still maintaining personal detachment from their traumatic experiences.

Burnout

Vicarious trauma can lead directly to burnout, which is defined as "emotional exhaustion resulting from excessive demands on energy, strength, and personal resources in the work setting"The physical warning signs of burnout include headaches, fatigue, lowered immune function, and irritability A clinician experiencing burnout may begin to lose interest in the welfare of clients, be unable to empathize or feel compassion for clients, and may even begin to feel aversion toward the client.

If the clinician experiencing burnout is working with victims of domestic violence, the clinician risks causing further great harm through re-victimization of the client. It should be noted, however, that vicarious trauma does not always directly lead to burnout and that burnout can occur in clinicians who work with any difficult population ï not only those who work with domestic violence victims.

Biological

These factors include genetics and brain dysfunction and are studied by neuroscience.[132]

Psychological

Psychological theories focus on personality traits and mental characteristics of the offender. Personality traits include sudden bursts of anger, poor impulse control, and poor self-esteem. Various theories suggest that psychopathology and other personality disorders are factors, and that abuse experienced as a child leads some people to be more violent as adults. Correlation has been found between juvenile delinquency and domestic violence in adulthood. Studies have found high incidence of psychopathy among abusers.

For instance, some research suggests that about 80% of both court-referred and self-referred men in these domestic violence studies exhibited diagnosable psychopathology, typically personality disorders. "The estimate of personality disorders in the general population would be more in the 15ï 20% range [...] As violence becomes more severe and chronic in the relationship, the likelihood of psychopathology in these men approaches 100%."[4] Dutton has suggested a psychological profile of men who abuse their wives, arguing that they have borderline personalitiesthat are developed early in life.

However, these psychological theories are disputed: Gelles suggests that psychological theories are limited, and points out that other researchers have found that only 10% (or less) fit this psychological profile. He argues that social factors are important, while personality traits, mental illness, or psychopathy are lesser factors

studies.

ENVIRONMENTAL CRIMES:

An environmental crime is a violation of environmental laws that are put into place to protect the environment. When broadly defined, the crime includes all illegal acts that directly cause environmental harm. Such crimes are also referred to as ócrime against the environment.ô Although all illegal acts in violation of environmental legislations are environmental crimes, international bodies such as the UN Interregional Crime and Justice Research Institute, G8, Interpol, EU, and UN Environment Programme have identified some specific crimes that come under the environmental crimes category. These include:

Dumping industrial wastes into water bodies, and illicit trade in hazardous waste in contravention of the 1989 Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Other Wastes and their Disposal.

Unreported, unregulated, and illegal fishing in contravention to controls imposed by various regional fisheries management organizations.

Buying and selling endangered species in contravention to the Convention on International Trade in Endangered Species of Fauna and Flora (CITES).

Smuggling of Ozone depleting substances (ODS) in contravention to the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer;

Illegal logging and trade in stolen timber in violation of the wildlife laws.

All these illegal crimes are punishable.

CYBER CRIMES:

cybercrime, also called **computer crime**, the use of a computeras an instrument to further illegal ends, such as committingfraud, trafficking in child pornography and intellectual property, stealing identities, or violating privacy. Cybercrime, especially through the Internet, has grown in importance as the computer has become central to commerce, entertainment, and government.

Because of the early and widespread adoption of computers and the Internet in the United States, most of the earliest victims and villains of cybercrime were Americans. By the 21st

century, though, hardly a hamlet remained anywhere in the world that had not been touched by cybercrime of one sort or another.

Defining cybercrime

New technologies create new criminal opportunities but few new types of crime. What distinguishes cybercrime from traditional criminal activity? Obviously, one difference is the use of the digital computer, but technology alone is insufficient for any distinction that might exist between different realms of criminal activity. Criminals do not need a computer to commit fraud, traffic in child pornography and intellectual property, steal an identity, or violate someoneôs privacy. All those activities existed before the ñcyberò prefix became ubiquitous. Cybercrime, especially involving the Internet, represents an extension of existing criminal behaviour alongside some novel illegal activities.

Most cybercrime is an attack on information about individuals, corporations, or governments. Although the attacks do not take place on a physical body, they do take place on the personal or corporate virtual body, which is the set of informational attributes that define people and institutions on the Internet. In other words, in the digital age our virtual identities are essential elements of everyday life: we are a bundle of numbers and identifiers in multiple computer databases owned by governments and corporations. Cybercrime highlights the centrality of networked computers in our lives, as well as the fragility of such seemingly solid facts as individual identity.

An important aspect of cybercrime is its nonlocal character: actions can occur in jurisdictions separated by vast distances. This poses severe problems for law enforcement since previously local or even national crimes now require international cooperation. For example, if a person accesses child pornography located on a computer in a country that does not ban child pornography, is that individual committing a crime in a nation where such materials are illegal? Where exactly does cybercrime take place? Cyberspace is simply a richer version of the space where a telephone conversation takes place, somewhere between the two people having the conversation. As a planet-spanning network, the Internet offers criminals multiple hiding places in the real world as well as in the network itself. However, just as individuals walking on the ground leave marks that a skilled tracker can follow, cybercriminals leave clues as to their identity and location, despite their best efforts to cover their tracks. In order

to follow such clues across national boundaries, though, international cybercrime treaties must be ratified.

In 1996 the Council of Europe, together with government representatives from the United States, Canada, and Japan, drafted a preliminary international treaty covering computer crime. Around the world, civil libertarian groups immediately protested provisions in the treaty requiring Internet service providers (ISPs) to store information on their customersô transactions and to turn this information over on demand. Work on the treaty proceeded nevertheless, and on November 23, 2001, the Council of Europe Cybercrime Convention was signed by 30 states. Additional protocols, covering terrorist activities and racist and xenophobic cybercrimes, were proposed in 2002. In addition, various national laws, such as the USA PATRIOT Act of 2001, have expanded law enforcementôs power to monitor and protect computer networks.

Types of cybercrime

Cybercrime ranges across a spectrum of activities. At one end are crimes that involve fundamental breaches of personal or corporate privacy, such as assaults on the integrity of information held in digital depositories and the use of illegally obtained digital information to blackmail a firm or individual. Also at this end of the spectrum is the growing crime of identity theft. Midway along the spectrum lie transaction-based crimes such as fraud, trafficking in child pornography, digital piracy, money laundering, and counterfeiting. These are specific crimes with specific victims, but the criminal hides in the relative anonymity provided by the Internet. Another part of this type of crime involves individuals within corporations or government bureaucracies deliberately altering data for either profit or political objectives. At the other end of the spectrum are those crimes that involve attempts to disrupt the actual workings of the Internet. These range from spam, hacking, and denial of service attacks against specific sites to acts of cyber terrorismð that is, the use of the Internet to cause public disturbances and even death. Cyber terrorism focuses upon the use of the Internet by no state actors to affect a nationôs economic and technological infrastructure. Since the September 11 attacks of 2001, public awareness of the threat of cyber terrorism has grown dramatically.

e) **THEORIES OF DEVIENCE:**

Sociological Theories to Explain Deviance:

Cultural Transmission/Differential Associations Theory

-- All behavior is learned; therefore deviant behavior is also learned. The theory focuses on the key variables involved in learning. These variables are:

1. Age of the "learner"
2. Intensity of contact with the deviant "teacher"
3. Ratio of "good" to "bad" social contacts in the "learner's" life

-- Theory predicts that the younger the "learner" is, in an intense relationship with the deviant "teacher", and the more contacts with significant others who are "deviant", then the greater the likelihood the "learner" will also be deviant. The reverse is also true.

-- Theory has both strengths and weaknesses. Think about what they might be.

Control Theory

-- This theory asks a different question than most of the others; it does not ask "why does someone commit deviance?" but rather control theory asks "why do most of us **not** commit deviance?" In other words, why do most of us, most of the time, act "correctly?"

-- The theory answers that question this way -- that "normal behavior" is shaped by the power of social control mechanisms in our culture. Put differently, the social bonds that connect people help to keep us from committing deviance.

-- So what are the basic social factors/components of a social bond between individuals?

1. Attachment -- a measure of the connectedness between individuals
2. Commitment -- a measure of the stake a person has in the community
3. Involvement -- a measure of the time/energy a person is spending on activities that are helpful to the community
4. Belief -- a measure of the person's support for the morals and beliefs of the community

-- The theory argues that there tends to be an inverse correlation between these factors and deviant behavior. What does that mean? Be able to explain it.

-- The theory has both strengths and weaknesses. Think about what they might be.

Labeling Theory

(Note: the title of "labeling theory" can be a bit misleading, so be careful here. Labeling theorists**do not** like labels, okay? But they say that labeling is a social fact, especially when we talk about social institutions like law enforcement, social service agencies, and mental health facilities. So therefore they study the **power** of labels in our society). Also note that

this theory combines two theoretical perspectives--conflict theory and symbolic interactionism. You should be able to explain what that last sentence means, okay?

-- The theory explains deviances as a social process whereby some people are able to define others as deviant. It emphasizes that the deviance is relative -- it is not until a label is given to someone by someone else in a position of social power that the person actually "becomes" a deviant.

-- Has some important terms linked to the theory:
-- primary deviance -- behavior that does not conform to the social norms, but the behavior might be temporary, fleeting, exploratory, trivial, or especially, concealed from most others. The person who commits the deviant act does not see him/herself as deviant; put differently, it is not internalized as a part of the person's self concept

-- Secondary deviance -- behavior that does not conform to the social norms, but 1) the behavior tends to be more sustained over time. The person continues to do the deviant behavior **even after**being caught and labeled by a social institution. The person accepts the deviant label, incorporating it into the person's self concept.

-- Deviant career -- continued secondary deviance, that becomes one's "job" and becomes one's primary economic activity. Person accepts the deviant label.

-- Radical non-intervention: labeling theory's solution, at least to juvenile deviance. Has two parts: 1) preferably do not label anyone, but especially not a juvenile. Sociology knows that many adolescents reduce or stop their deviance as they become adults and accept adult statuses and roles. So labeling them might in fact **prevent** that "becoming good" transition as they become adults, and 2) **if** anyone has to be labeled, label fairly -- don't "peak" and notice social class, race, sex, etc., and therefore label some individuals differently than others.

-- The theory has both strengths and weaknesses. Think about what they might be.

Structural Strain Theory/Anomie Theory
-- Theory explains deviance as the outcome of social strains due to the way the society is structured. For some people, the strain becomes overwhelming to the point where they do deviance as a way to manage the strain. Often their deviance is due to their feelings of **anomie** -- meaningless due to not understanding how the social norms are to effect them. This is usually because the norms are weak, confusing, or conflicting.

-- There is a social consensus in the society about **socially approved goals** that each person ought to strive for and the **socially approved of means** to attain those goals. This consensus is largely due to a shared value system in the society.

Here is the theory's famous set of options:

Name of Option **Socially Approved Goal** **Socially Approved Means**

-- Theory has both strengths and weaknesses. Think of what they might be.

Subcultural Theories

-- there are several subcultural theories, but they all "work" like this: a person may be a member of a subculture within a larger culture; e.g., a member of a gang which lives inside of America. In the subculture, a particular behavior may be "normal"/conforming behavior but from the perspective of the larger culture, the behavior is considered to be deviant.

-- Theory makes it clear we need to ask "who has the power to decide what is 'normal' and what deviant behavior is?" These theories often are linked with labeling theory.

-- a person in such a subculture may feel **role conflict** or **role strain** trying to balance the norms of two very diverse groups of which one is a member

-- Theory has strengths and weaknesses. Think what they might be.

Medicalization of Deviance

-- Theory argues that in the last 100+ years, there has been a shift in which social institution primary is associated with the labeling/"handling" of deviance and deviants. In earlier times in Western Europe and America, the religious institutions had the social power to define/label deviant behavior and to "treat" it (e.g., exorcisms, etc.). But now science and especially medicine as a subset of science has taken over much of the social control processing of deviants.

-- This shift, it is argued by those who support the theory, is a more humane way of understanding deviant behavior. People are not "evil" but they are "sick." However, the "sick" label still has social consequences that "stick" to the person so labeled. Some of these consequences are:

1. It absolves one of responsibility for the deviant behavior
2. There is little or no stigma (so the theory claims) to the label of sick
3. So long as the person fulfills the "sick role" appropriately, he or she is able to not receive a harsh negative label. But the sick role **is** a role and has a complicated behavioral set that the person has to follow or else.
4. The key part of the sick role is that one has to accept that medical perspective is "correct" and therefore anything prescribed by physicians must be done

5. A more optimistic view of deviance

-- But there is also a "down" side to the medicalization of deviance. What is it?

I also expect you to recall from your Introduction to Sociology class or your Introduction to Social Problems class the following three theoretical perspectives in sociology and how they would discuss deviance. If you feel unsure, check out the link below. Which of the above theories that I wrote about would fit into which of these three theoretical perspectives?

1. Structural Functionalism/"Order" Perspective
2. Conflict Perspective
3. Symbolic Interactionist Perspective, especially Goffman

3. Symbolic Interactionist Perspective, especially Goffman

WHITE COLLAR CRIME:

Concept Of White-Collar Crime In India

Edwin Sutherland for first time coined the term "White-Collar crime" in his address to the American Sociological society in 1939. The whole address was aimed to shatter the conventional and stereotyped images of the criminals as grown and brought up on the dark side of a town, and the belief that the epicenter of the overall Crime problem was that of the lower Strata of the society. He defined white-collar crime as "crimes committed by a person of respectability and high social status into the course of his occupation". Subsequently he modified his earlier definition of white-collar crime as "crimes committed by a person of the upper socio-economic class who violates the criminal law in the course of his occupational activities and Professional activities" and in his work he challenged the traditional image of the criminals and the predominant etiological theories of crimes of his days. The white collar criminals, he identified were often middle aged men of respectability and high Social Status and his definition of white collate Crimes established Status, Occupation and Organization as Central features. He was of the opinion that White-Collar criminals were often found in the affluent neighbourhoods, and they were all well respected in the community. Sutherland opined that the conceptions and notions of crime in his days were not so satisfactory or rather to say were "misleading and incorrect" which were mainly based on the "biased samples" of criminals and their criminal behaviours.

Prior to Sutherland, Scholars like W. A. Bonger (1916) EA Ross (1907) Sinclair (1906) and Steffens (1903), laid emphasis on the misdeeds by businessmen and elites. Even before these scholars Edwin C. Hill laid emphasis on the Criminal behaviour of the elites in the American Congress in 1872 in his paper 'Criminal Capitalists' but the work of Sutherland was more pioneering rather compared to others.

As Prof. Hugh Barlow on White-Collar crime was of the opinion that White Collar crime is not only committed by the people of high social status in their occupational capacity but also is committed by the people of lower strata. Thereafter Sutherland's definition of White Collar crime faced a lot of criticisms as many Criminologists were of the opinion that Sutherland himself creates lots of

confusion regarding the concept of White Collar Crime. Sometimes he stressed crimes committed by individuals of high status, while at other times he stressed crimes carried out in the course of one's occupation. He used various definitions and among them most frequently cited definition gained the importance of Occupational status as an important tool for the White Collar criminals.

The absence of a precise definition of White Collar crime has plagued Criminologists to analyze and interpret the concept of White Collar crime in their own manner. Subsequently it was very much advent that for some scholars, it was really very hard to accept 'Position as primordial factor. For that very reason today there exists profound disagreement over the precise definition of White Collar crime.

White Collar Crimes may be divided into Occupational Crime and Organizational Crime but in common parlance there exist 10 popular types of White Collar Crimes as :—

1. Bank Fraud.— To engage in an act or pattern of activity where the purpose is to defraud a bank of funds.

2. Blackmail.—A demand for money under threat to do bodily harm, to injure property or to expose secrets.

3. Bribery.—When money, goods, services or any information is offered with intent to influence the actions, opinions and decisions of the taker, constitutes bribery.

4. Cellular Phone Fraud.—Unauthorized use or tampering or manipulating cellular phone services.

5. Embezzlement.—When a person who has been entrusted with the money or property, appropriates it for his or her own purpose.

6. Counterfeiting.—Copies or imitates an item without having been authorized to do so.

7. Forgery.—When a person passes false or worthless instruments such as cheque or counterfeit security with intent to defraud.

8. Tax-Evasion.—Frequently used by the middle — class to have extra-unaccounted money.

9. Adulteration.—Adulteration of foods and drugs.

10. Professional crime.—Crimes committed by medical practitioners, lawyers in course of their Occupation.

If there is an industry in which India has surpassed the developed west then it is the field of White Collar crimes. White collar crimes in India is not in total based on the theory propounded by Prof. Sutherland but partially on the concept by Prof. Hugh Barlow as "Crimes committed by the people of lower strata in their occupational status".

In India White Collar crime means and includes manipulation of funds or in stock exchanges or misrepresentation in advertising or in financial statements of a corporation or violations of labour laws, copyright, patent laws etc. which is mainly 'job oriented' i.e. which occurs during the course of one's occupation but assaulting a personal secretary by her boss will not constitute as White Collar crime.

While resorting to Sutherland it was very much advent that crimes committed by the people of 'High Social Status' will amount to White Collar crime. But in India the situation is totally different. In India mostly White Collar crimes are committed by the people of lower social strata in their occupational capacity (by Prof. Barlow) as adulteration of milk by the milk man, selling adulterated food by the shopkeeper, selling expired medicine, taking out few kilos of gas from the cylinder and so on.

Gradually White Collar crimes acquired an established place within the society and with the introduction of famous license-quota-permit Raj in the earlier seventies it took a long strive forward to the increasing trend of White Collar criminality by giving tremendous power to the Trio as — the politicians, the bureaucrats and the businessmen. These unholy three put their jaws in our administrative system in such a manner that it nurtured the total system of quasi corrupt Indian society to a complete corrupted one.

While resorting to White Collar crime in India Businessmen as a part of that unholy trio normally used to engage themselves in Tax Evasion and Tax avoidance or violation of the Foreign Exchange regulations by under invoicing of exports or by over invoicing of imports.

Traders in India were not so far behind in creating an irreparable damage to the society at large. They have mainly engaged themselves in hoarding, profiteering and black marketing of the essential commodities. Moreover sometimes for monetary gains they used to engage themselves in adulteration of foods which may turn dangerous to a person's life.

To comment specifically on Indian traders for Black Marketing of the essential commodities, profiteering and Hoarding, Monopolies Inquiry Commission gave a graphic account of that in the following words as—

"There is hardly anybody in India who has not been a victim of the practice of hoarding, cornering and profiteering. Whenever there is a slight shortage — even temporary — in any consumer goods for which the demand is urgent and inelastic, almost every trader — it is perhaps unnecessary to use the qualification 'almost' — conceals his stock and blindly tells the customers that he has not got the commodity in stock..."

In the course of their research Prof. Hugh Barlow and Sutherland repeatedly pointed out that White Collar crime was more dangerous than any ordinary street crime because the financial loss to the society from White Collar crimes is probably greater than the financial loss from ordinary burglary, theft or robberies. It was very much advent from their opinion that they were more concerned on the economic welfare of a country.

While computing the quantum of loss in India it was estimated that the average loss per theft or burglary is less than Rs. 5000/- or so is rare and the same amounted to lakh is unknown. But on the other hand embezzlement and frauds of lakhs and millions of rupees are very much advent. Indian scholars took the after effect of loss happened from White Collar crimes very seriously as according to them without economic stability a country cannot stand up and for proper functioning of a state economic prosperity is very much necessary.

According to V. R. Krishna Iyer, J. "economic offences often are subtle murders practised on the community or sabotage of the national economy." So it may be termed as the "White Collar Economic Offences".

These economic offences can devastate an entire community rather than robbing a lone victim. Their impact can last for years, stealing crucial services or a lifetime's savings through crimes invisible to their victims.

Subsequently thereafter Santhanam committee was asked to report on the misdeeds of the elites to that corruption can be traced. Santhanam committee gave a graphic account of the misdeeds of businessmen and industrialists in the following words :—

"Corruption can exist only if there is some one willing to corrupt and capable of corrupting. We regret to say that both these willingness and capacity to corrupt is found in a large measure in the industrial and the commercial classes..."

Santhanam committee found that during 1958-1962, licenses valued at millions of rupees were obtained or wrongfully utilized by nearly 700 firms through misrepresentation, forgery or other branches of the Export/Import control regulation.

Similarly, illegal accumulation of foreign exchange through just one type of fraud or through under invoicing of exports and over invoicing of imports, — is calculated to be estimated between Rs. 40-50 crores every year.

Two instances of embezzlement and fraud as provided by a report made by Vivian Bose Commission are — Notorious Dalmia-Jain and Mundhra case in which loss amounted were estimated at Rs. 3.5 crore.

While dealing with the investigation of Mundhra case, Mr. M. C. Chagla made following observations as—

"Mundhra is a flamboyant personality and a financial adventurer whose only ambition is to build up an industrial empire by dubious means."

In spite of the fact that a large number of economic offences have been unearthed in our country in the last five years as Securities Scam, Hawala Scam, Urea Scam, Sugar Scam, Banking Scam, Tele-Communication Scam, Fodder Scam, Stamp scam etc. and an effort from the government of appointing numerious Commissions as Vivian Bose Commission, BakshiTek Chand Committee, parliamentary committee on the jeep scandal, Railway corruption Inquiry Commission, Sadasivam committee of enquiry, S. R. Ray Commission of Inquiry, S. R. Das Commission, M.C. Chagla Committee and many more in which thousands of crores of rupees were involved, surprisingly no offenders have been convicted so far.

Are there really any remedies to curb these malpractices at the advent of our Welfare state? Why those obligations imposed on the state to achieve the status of welfare state are not implemented properly?

Restrictions imposed on the ownership and the distribution of the national wealth run from the following provisions of our Indian Constitution :—

"The state shall in particular direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to sub serve the common goods; that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment".

The above mentioned philosophy forced our law makers to pass certain legislations, violations of which may lead to tremendous fillip to White Collar criminals or occupational related crime in India which are :—

Essential Commodities Act, 1955, Industrial (Development and Regulation) Act, 1957. Import and Export (Control) Act, 1947, Companies Act, 1956, Foreign Exchange (Regulation) Act, 1973, Central

Excises and Salt Act, 1944, Income-tax Act, 1961, Customs Act, 1962. The Conservation of Foreign Exchange and Prevention of Smuggling Activities and Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.

Specifically, Section 4 of the Prevention of Corruption Act, 1947, where there is a presumption for instance, "that money received other than legal remuneration by a public servant is an illegal gratification". They laid more emphasis on the workings of the public servant as they may use their occupational capacity to exploit the mass in general.

Subsequently on the report submitted by Santhanam committee certain legislations earlier enacted were amended as - Anti-Corruption Laws (Amendment) Act, 1964; Foreign Exchange (Amendment) Act, 1964; Prevention of Food Adulteration Act, 1954, Wealth Tax (Amendment) Act, 1964 and more powers have been conferred on the investigating officers and on the Magistrates for conducting the proceedings of the summary trials.

After Santhanam committee report was published it was very much advent that for the first time Anti White Collar legislations include Prevention of Food Adulteration Act because it is an act of mischief done by a person out of his occupational capacity and therefore it will also be termed as a White Collar crime. The main object of Prevention of Food Adulteration Act is to eliminate the danger to the human life from the sale of unwholesome articles of food. It is enacted to curb the widespread evil of food adulteration and is a legislative measure for social defence.

If we have specific legislations to trace out White Collar Criminality then why these offenders go unpunished? Main reasons for which these white Collar criminals or occupational criminals go unpunished are :— i) legislators and the law implementers belong to the same group or class to which these occupational criminals belong; ii) less police effort; iii) favorable laws; iv) less impact on individuals.

At this present juncture what we need is the strengthening of our enforcement agencies such as Central Bureau of Investigation, the Enforcement Directorate, The Directorate of Revenue Intelligence, The Income-tax Department and the Customs Department. Concentration and distribution of national wealth must be done in a proper manner. Speedy trial should be arranged by appointing more Judges. Central Vigilance Commission must keep a constant vigil on the workings of the top ranking officers. General public must not avoid being engaged themselves in the prosecution of the White-collar criminals as the offence in general is directed towards them. Lastly if they are traced and proved guilty then Deterrent Theory of punishment is an apt one.

Property crime:

Property Crimes

Property crimes include many common crimes relating to theft or destruction of someone else's property. They can range from lower level offenses such as shoplifting or vandalism to high level felonies including armed robbery and arson. Some such crimes do not require the offender to make off with stolen goods or even to harm a victim - such as burglary, which only requires unlawful entry with the intent to commit a crime. Others require the actual taking of money or property. Some, such as robbery, require a victim present at the time of the crime. Most property crimes include a spectrum of degrees depending on factors including the amount stolen and use of force or arms in theft related cases, and actual or potential bodily injury in property destruction crimes such as arson. Below you'll find more information on specific property crimes.

Learn About Property Crimes

Theft

Theft is the act of intentionally depriving someone of his or her property. Many states use the term to describe a wide number of property crimes, such as larceny and robbery.

Larceny

One commits larceny by taking something of value without consent and with the intent to permanently deprive the rightful owner of the object. Most states use the term theft in place of larceny.

Burglary

Burglary is the unlawful entry into a home or other closed structure, often by force or coercion, with the intent of stealing property from another or committing some other crime.

Robbery

One commits robbery by using force or the threat of force to take money or property from another individual, such as pointing a gun at a bank teller and demanding cash.

Shoplifting

Shoplifting is the theft or concealment of merchandise from a retail establishment without the intent to pay for it, such as placing items in one's pocket and walking out of a store.

Arson

Arson is the intentional burning of almost any type of structure, building or forest land, with more severe degrees recognized if it causes bodily injury, or involves an inhabited building or intent to defraud insurers.

Vandalism

Vandalism occurs when an individual destroys, defaces or otherwise degrades someone elseôs property without their permission; sometimes called criminal damage, malicious trespass, or malicious mischief.

ORGANIZED CRIME:

organised crime, and often **criminal organizations** are terms which categorise transnational, national, or local groupings of highly centralized enterprises run by criminals, who intend to engage in illegal activity, most commonly for monetary profit. Some criminal organizations, such as terrorist organizations, are politically motivated. Sometimes criminal organizations force people to do business with them, as when a gang extorts money from shopkeepers for so-called "protection". Gangs may become disciplined enough to be considered *organized*. An organized gang or criminal set can also be referred to as a **mob**

Other organizationsð including states, militaries, police forces, and corporationsð may sometimes use organized crime methods to conduct their business, but their powers derive from their status as formal social institutions. There is a tendency to distinguish organized crime from other forms of crimes, such as, white-collar crime, financial crimes, political crimes, war crime, state crimes and treason. This distinction is not always apparent and the academic debate is ongoing. For example, in failed states that can no longer perform basic functions such as education, security, or governance, usually due to fractious violence or extreme poverty, organised crime, governance and war are often complimentary to each other. The term Parliamentary Mafiocracy is often attributed to democratic countries whose political, social and economic institutions are under the control of few families and business oligarchs

In the United States, the *Organized Crime Control Act* (1970) defines organized crime as "The unlawful activities of [...] a highly organized, disciplined association Criminal activity as a structured group is referred to as racketeering and such crime is commonly referred to as the work of the *Mob*. In the UK, police estimate organized crime involves up to 38,000 people operating in 6,000 various groups In addition, due to the escalating violence of Mexico's drug war, the Mexican drug cartels are considered the "greatest organized crime threat to the United States" according to a report issued by the United States Department of Justice.

Models of organized crime

Causal

The demand for illegal goods and services nurtures the emergence of ever more centralized and powerful criminal syndicates, who may ultimately succeed in undermining public morals, neutralizing law enforcement through corruption and infiltrating the legal economy unless appropriate countermeasures are taken. This theoretical proposition can be depicted in a model comprising four elements: government, society, illegal markets and organized crime

While interrelations are acknowledged in both directions between the model elements, in the last instance the purpose is to explain variations in the power and reach of organized crime in the sense of an ultimately unified organizational entity.

Organizational

Patron-client networks

Mafia boss Totò Riina behind bars in court after his arrest in 1993

Patron-client networks are defined by the fluid interactions they produce. Organized crime groups operate as smaller units within the overall network, and as such tend towards valuing significant others, familiarity of social and economic environments, or tradition. These networks are usually composed of:

- Hierarchies based on 'naturally' forming family, social and cultural traditions;
- 'Tight-knit' locus of activity/labor;
- Fraternal or nepotistic value systems;
- Personalized activity; including family rivalries, territorial disputes, recruitment and training of family members, etc.;
- Entrenched belief systems, reliance of tradition (including religion, family values, cultural expectations, class politics, gender roles, etc.); and,
- Communication and rule enforcement mechanisms dependent on organizational structure, social etiquette, history of criminal involvement, and collective decision-making

Bureaucratic/corporate operations

Bureaucratic/corporate organized crime groups are defined by the general rigidity of their internal structures. Focusing more on how the operations works, succeeds, sustains itself or avoids retribution, they are generally typified by:

- A complex authority structure;
- An extensive division of labor between classes within the organization;
- Meritocratic (as opposed to cultural or social attributes);
- Responsibilities carried out in an impersonal manner;
- Extensive written rules/regulations (as opposed to cultural praxis dictating action); and,
- 'Top-down' communication and rule enforcement mechanisms.

However, this model of operation has some flaws:

- The 'top-down' communication strategy is susceptible to interception, more so further down the hierarchy being communicated to;

- Maintaining written records jeopardizes the security of the organization and relies on increased security measures;
- Infiltration at lower levels in the hierarchy can jeopardize the entire organization (a 'house of cards' effect); and,
- Death, injury, incarceration or internal power struggles dramatically heighten the insecurity of operations.

While bureaucratic operations emphasis business processes and strongly authoritarian hierarchies, these are based on enforcing power relationships rather than an overlying aim of protectionism, sustainability or growth

Youth and street gangs

A distinctive gang culture underpins many, but not all, organized groups; this may develop through recruiting strategies, social learning processes in the corrective system experienced by youth, family or peer involvement in crime, and the coercive actions of criminal authority figures. The term “street gang” is commonly used interchangeably with “youth gang,” referring to neighborhood or street-based youth groups that meet “gang” criteria. Miller (1992) defines a street gang as “a self-formed association of peers, united by mutual interests, with identifiable leadership and internal organization, who act collectively or as individuals to achieve specific purposes, including the conduct of illegal activity and control of a particular territory, facility, or enterprise."

"Zones of transition" refer to deteriorating neighborhoods with shifting populationsconflict between groups, fighting, "turf wars", and theft promotes solidarity and cohesionCohen (1955): working class teenagers joined gangs due to frustration of inability to achieve status and goals of the middle class; Cloward and Ohlin (1960): blocked opportunity, but unequal distribution of opportunities lead to creating different types of gangs (that is, some focused on robbery and property theft, some on fighting and conflict and some were retreatists focusing on drug taking); Spergel (1966) was one of the first criminologists to focus on *evidence-based practice* rather than intuition into gang life and culture. Klein (1971) like Spergel studied the effects on members of social workersô interventions. More interventions actually lead to greater gang participation and solidarity and bonds between members. Downes and Rock (1988) on Parkerôs analysis: strain theory applies, labeling theory (from experience with police and courts), control theory (involvement in trouble from early childhood and the eventual decision that the costs outweigh the benefits) and conflict theories. No ethnic group is more disposed to gang involvement than another, rather it is the status of being marginalized, alienated or rejected that makes some groups more vulnerable to gang formation, and this would also be accounted for in the effect of social exclusion, especially in terms of recruitment and retention. These may also be defined by age (typically youth) or peer group influences, and the permanence or consistency of their criminal activity. These groups also form their own symbolic identity or public representation which are recognizable by the community at large (include colors, symbols, patches, flags and tattoos).

Research has focused on whether the gangs have formal structures, clear hierarchies and leadership in comparison with adult groups, and whether they are rational in pursuit of their goals, though positions on structures, hierarchies and defined roles are conflicting. Some studied street gangs involved in drug dealing - finding that their structure and behavior had a degree of organizational rationalityMembers saw themselves as organized criminals; gangs were formal-rational organizations, Strong organizational structures, well defined roles and rules that guided membersô behavior. Also a specified and regular means of income (i.e. drugs). Padilla (1992) agreed with the two above. However some have found these to be loose rather than well-defined and lacking persistent focus, there was relatively low cohesion, few shared goals and little organizational structur Shared norms, value and loyalties were low, structures "chaotic", little role differentiation or clear distribution of labor. Similarly, the use of violence does not conform to the principles behind protection rackets, political intimidation and drug trafficking activities employed by those adult groups. In many cases gang members graduate from youth gangs to highly developed OC groups, with some already in contact with such syndicates and through this we see a greater propensity for imitation. Gangs and traditional criminal organizations cannot be universally linked (Decker, 1998), however there are clear benefits to both the adult and youth organization through their association. In terms of structure, no single crime group is archetypal, though in most cases there are well-defined patterns of vertical integration (where criminal groups attempt to control the supply and demand), as is the case in arms, sex and drug trafficking.

Individual difference

Entrepreneurial

The entrepreneurial model looks at either the individual criminal, or a smaller group of organized criminals, that capitalize off the more fluid 'group-association' of contemporary organized crime This model conforms to social learning theory or differential association in that there are clear associations and interaction between criminals where knowledge may be shared, or values enforced, however it is argued that rational choice is not represented in this. The choice to commit a certain act, or associate with other organized crime groups, may be seen as much more of an entrepreneurial decision - contributing to the continuation of a criminal enterprise, by maximizing those aspects that protect or support their own individual gain. In this context, the role of risk is also easily understandable, however it is debatable whether the underlying motivation should be seen as true entrepreneurship or entrepreneurship as a product of some social disadvantage.

The criminal organization, much in the same way as one would assess pleasure and pain, weighs such factors as legal, social and economic risk to determine potential profit and loss from certain criminal activities. This decision-making process rises from the entrepreneurial efforts of the group's members, their motivations and the environments in which they work. Opportunism is also a key factor ï the organized criminal or criminal group is likely to frequently reorder the criminal associations they maintain, the types of crimes they perpetrate, and how they function in the public arena (recruitment, reputation, etc.) in order to ensure efficiency, capitalization and protection of their interests.

Multimodel approach

Culture and ethnicity provide an environment where trust and communication between criminals can be efficient and secure. This may ultimately lead to a competitive advantage for some groups, however it is inaccurate to adopt this as the only determinant of classification in organized crime. This categorization includes the Sicilian Mafia, Jamaican posses, Colombian drug trafficking groups, Nigerian organized crime groups, Corsican mafia, Japanese Yakuza (or Boryokudan), Korean criminal groups and ethnic Chinese criminal groups. From this perspective, organized crime is not a modern phenomenon - the construction of 17th and 18th century crime gangs fulfill all the present day criteria of criminal organizations (in opposition to the Alien Conspiracy Theory). These roamed the rural borderlands of central Europe embarking on many of the same illegal activities associated with todayôs crime organizations, with the exception of money laundering. When the French revolution created strong nation states, the criminal gangs moved to other poorly controlled regions like the Balkans and Southern Italy, where the seeds were sown for the Sicilian Mafia - the lynchpin of organized crime in the New World

SEX CRIMES:

deals with the regulation by law of sexual activity. Sex laws vary from place to place, and have varied over time, and unlawful sexual acts in a jurisdiction are also called **sex crimes**.

Some laws regulating sexual activity are intended to protect one or all participants, while others are intended to proscribe a morally, socially or religiously repugnant activity. For example, a law may proscribe unprotected sex if one person knows that he or she has a sexual disease or to protect a minor; or it may proscribe non-consensual sex, or because of a relationship between the participants, etc. In general, laws may proscribe acts which are considered either sexual abuse or behavior that societies consider to be inappropriate and against the social norms. Sexual abuse is unwanted sexual contact between two or more adults or two or more minors, and, depending on laws with regard to age of consent, sexual contact between an adult and a minor.

Definitions

Sex crimes are forms of human sexual behavior that are crimes. Someone who commits one is said to be a *sex offender*. Some sex crimes are crimes of violence that involve sex. Others are violations of social taboos, such as incest, sodomy, indecent exposure or exhibitionism. There is much variation among cultures as to what is considered a crime or not, and in what ways or to what extent crimes are punished.

Western cultures are often far more tolerant of acts, such as oral sex, that have traditionally been held to be crimes in some cultures, but combine this with lesser tolerance for the remaining crimes. By contrast, many cultures with a strong religious tradition consider a far broader range of activities to be serious crimes.

As a general rule, the law in many countries often intervenes in sexual activity involving young or adolescent children below the legal age of consent, non-consensual deliberate displays or illicit watching of sexual activity, sex with close relatives (incest), harm to animals, acts involving the deceased (necrophilia), and also when there is harassment, nuisance, fear, injury, or assault of a sexual nature, or serious risk of abuse of certain professional relationships. Separately, the law usually regulates or controls the censorship of pornographic or obscene material as well. A rape charge can only be issued when a person(s) of any age does not provide consent for sexual activity.

Possible enforcement

The activities listed below carry a condition of illegality in some jurisdictions if acted upon, though they may be legally role-played between consenting partners of legal age:

- Rape, lust murder and other forms of sexual assault and sexual abuse
- Child sexual abuse
- Statutory rape
- Spousal rape
- Obscenity
- Human trafficking
- Frotteurism, sexual arousal through rubbing one's self against a non-consenting stranger in public
- Exhibitionism and voyeurism, if deliberate and non-consensual, called "indecent exposure" and "peeping tom" respectively in this context.
- Incest between close relatives
- Telephone scatologia, making obscene telephone calls for the purpose of sexual arousal
- Sex with animals
- Necrophilia
- Sexual harassment
- Sexual acts by people in a position of trust (such as teachers, doctors and police officers), towards people under 18 which they are involved with professionally.
- Public order crimes are crimes that interrupt the flow of daily life and business according to local community standards. Public order crimes include paraphilia (deviancies).
- Various paraphilias and sexual fetishes such as transvestitism
- Prostitution and/or pimping
- Ownership of vibrators and other sex toys
- Public urination
- Streaking
- Sodomy
- Stealing underwear, sometimes regarded as more serious when done in a sexual context.

A variety of laws aim to protect children by making various acts with children a sex crime. For example, the "corruption of minors" by introducing age-inappropriate material, esp. of a sexual nature, is often a misdemeanor but can lead to a felony charge. These can include Age of Consent laws, laws preventing the exposure of children to pornography, laws making it a crime for a child to be involved in (or exposed to) certain sexual behaviors, and laws against child grooming and the production and ownership of child pornography (sometimes including simulated images). In some countries such as the UK, the age for child pornography is higher than the age of consent, hence child pornography laws also cover images involving consenting adults.

Non-consensual sadomasochistic acts may legally constitute assault, and therefore belong in this list. In addition, some jurisdictions criminalize some or all sadomasochistic acts, regardless of legal consent and impose liability for any injuries caused. *(See Consent (BDSM))*

Age of consent

While the phrase "age of consent" typically does not appear in legal statutes when used in relation to sexual activity, the age of consent is the minimum age at which a person is considered to be legally competent of consenting to sexual acts. This should not be confused with the age of majority, age of criminal responsibility, or the marriageable age.

The age of consent varies from jurisdiction to jurisdictionThe median seems to range from 16 to 18 years, but laws stating ages ranging from 9 to 21 do exist. In many jurisdictions, age of consent is interpreted to mean mental or functional ageAs a result, victims can be of any chronological age if their mental age is below the age of consent.

Some jurisdictions forbid sexual activity outside of legal marriage completely. The relevant age may also vary by the type of sexual act, the sex of the actors, or other restrictions such as abuse of a position of trust. Some jurisdictions may also make allowances for minors engaged in sexual acts with each other, rather than a hard and fast single age. Charges resulting from a breach of these laws may range from a relatively low-level misdemeanor such as "corruption of a minor", to "statutory rape" (which is considered equivalent to rape, both in severity and sentencing).

Incest

Incest is illegal in many jurisdictions. The exact legal definition of "incest," including the nature of the relationship between persons, and the types sexual activity, varies by country, and by even individual states or provinces within a country. These laws can also extend to marriage between subject individuals.

Female genital mutilation

Custom and tradition are the most frequently cited reasons for female genital mutilation (FGM), with the practices often being performed to exert control over the sexual behavior of girls and women or as a perceived aesthetic improvement to the appearance of their genitalia. The World Health Organization (WHO) is one of many health organizations that have campaigned against the procedures on behalf of human rights, stating that "FGM has no health benefits" and that it is "a violation of the human rights of girls and women" and "reflects deep-rooted inequality between the sexes".

Most countries prohibit female genital mutilationincluding prohibiting the procedure to be performed on its citizens and residents while outside their jurisdictionsand the New York State Penal Law lists female genital mutilation as a sexual offense.

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